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Committee Stage: Wednesday 22 May 2024

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## Prison Media Bill (Amendment Paper)

This document lists all amendments tabled to the Prison Media Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

This document should be read alongside the Chair's provisional Selection and Grouping, which sets out the order in which the amendments will be debated.

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**Katherine Fletcher**

1

Clause 1, page 1, line 4, leave out from "(1)," to end of line 7 and insert "for the "or" at the end of paragraph (a) substitute—

"(aa) takes a photograph of the inside of a prison from outside the prison, or"

### Member's explanatory statement

This amendment modifies the amendments to section 40D of the Prison Act 1952 made by clause 1 so they no longer make it an offence to make a sound-recording of the inside of a prison from the outside of a prison (but they still make it an offence to take a photograph of the inside of a prison from the outside of a prison).

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**Katherine Fletcher**

2

Clause 1, page 1, line 7, at end insert—

"(2A) After subsection (1) insert—

"(1A) For the purposes of subsection (1)(a)—

- (a) a photograph taken outside a prison of an image which is being transmitted from inside the prison by electronic communications for simultaneous reception outside the prison is to be treated as a photograph taken inside the prison, and
- (b) a sound-recording made outside a prison of sounds which are being transmitted by electronic communications from inside the

prison for simultaneous reception outside the prison is to be treated as a sound-recording made inside the prison.”

(2B) Omit subsection (2).

(2C) After subsection (4) insert—

“(4A) In proceedings for an offence under subsection (1)(aa) it is a defence for the accused to show that they did not know and had no reasonable cause to believe that the photograph was of the inside of a prison.””

**Member's explanatory statement**

This amendment clarifies that taking a photograph or making a sound-recording of material transmitted from inside a prison is covered by the existing offence in section 40D(1)(a) of the Prison Act 1952. It also provides a defence in relation to the offence in section 40(D(1)(aa) of that Act.

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**Katherine Fletcher**

**3**

Clause 2, page 2, line 12, leave out “or sound-recording”

**Member's explanatory statement**

This amendment and Amendments 4 to 9 are consequential on amendment 1, and mean that new section 40DB of the Prison Act 1952 no longer makes it an offence to upload to an internet service a sound-recording of the inside of a prison made from outside the prison.

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**Katherine Fletcher**

**4**

Clause 2, page 2, line 14, leave out “or sound-recording”

**Member's explanatory statement**

See the explanatory statement for Amendment 3.

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**Katherine Fletcher**

**5**

Clause 2, page 2, line 15, leave out “or made”

**Member's explanatory statement**

See the explanatory statement for Amendment 3.

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**Katherine Fletcher**

**6**

Clause 2, page 2, line 17, at end insert—

“(1A) A person is guilty of an offence if—

- (a) without authorisation, the person uploads a sound-recording to an internet service, and
- (b) the sound-recording—

- (i) was made inside a prison, or
- (ii) records a prison worker on prison land.

(1B) Subsection (1A) of section 40D (photograph or sound recording of a transmission from a prison) applies for the purposes of subsections (1)(b)(i) and (1A)(b)(i) of this section as it applies for the purposes of subsection (1)(a) of that section."

**Member's explanatory statement**

See the explanatory statement for Amendment 3.

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**Katherine Fletcher**

**7**

Clause 2, page 2, line 22, after "(1)(b)(i)" insert "or (1A)(b)(i)"

**Member's explanatory statement**

See the explanatory statement for Amendment 3.

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**Katherine Fletcher**

**8**

Clause 2, page 2, line 26, leave out "or sound-recording"

**Member's explanatory statement**

See the explanatory statement for Amendment 3.

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**Katherine Fletcher**

**9**

Clause 2, page 2, line 27, after "(1)(b)(iii)" insert "or (1A)(b)(ii)"

**Member's explanatory statement**

See the explanatory statement for Amendment 3.

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**Katherine Fletcher**

**10**

Clause 2, page 3, line 23, at end insert—

"(4) In section 40F(1) (offences under sections 40B to 40D: extension of Crown immunity) for "40D" substitute "40DB"."

**Member's explanatory statement**

This amendment provides for persons who work at a prison, are not servants or agents of the Crown and have been designated by the Secretary of State to benefit from Crown immunity from the new offences under sections 40DA and 40DB of the Prison Act 1952.

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**Katherine Fletcher**

11

Clause 3, page 3, line 25, leave out subsection (1) and insert—

- “(1) Sections 1 and 2 of this Act extend to England and Wales only.
- (1A) Section (*Unauthorised photographs, films and sound-recordings of prisons and prison workers: Scotland*) of this Act extends to Scotland only.
- (1B) Sections (*Unauthorised photograph or sound-recording of the inside of a prison: Northern Ireland*) and (*Unauthorised photographs and sound-recordings of prisons and prison workers: Northern Ireland*) of this Act extend to Northern Ireland only.
- (1C) This section extends to England and Wales, Scotland and Northern Ireland.”

**Member's explanatory statement**

This amendment makes provision about extent that is consequential on NC1 to NC3.

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**Katherine Fletcher**

12

Clause 3, page 3, line 26, leave out “Sections 1 and 2 of this Act come” and insert “Except as provided by subsections (2A), (2B) and (4), this Act comes”

**Member's explanatory statement**

This amendment and Amendments 13 to 17 make provision about commencement that is consequential on NC1 to NC3.

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**Katherine Fletcher**

13

Clause 3, page 3, line 27, at end insert—

- “(2A) Section (*Unauthorised photographs, films and sounds-recordings of prisons and prisons workers: Scotland*) so far as it—
- (a) inserts sections 41ZC and 41ZD into the Prisons (Scotland) Act 1989, and
  - (b) inserts sections 41ZF and 41ZG into that Act as those sections apply to section 41ZC or 41ZD of that Act,
- comes into force on such day as the Scottish Ministers may by regulations appoint.
- (2B) The following provisions come into force on such day as the Department of Justice in Northern Ireland may by order appoint—
- (a) section (*Unauthorised photograph or sound-recording of the inside of a prison: Northern Ireland*);
  - (b) section (*Unauthorised photographs and sound-recordings of prisons and prison workers: Northern Ireland*) so far as it—
    - (i) inserts section 34D into the Prison Act (Northern Ireland) 1953, and

- (ii) inserts section 34F into that Act as that section applies to section 34D of that Act."

**Member's explanatory statement**

See the explanatory statement for Amendment 12.

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**Katherine Fletcher**

**14**

Clause 3, page 3, line 28, leave out "Different days may be appointed" and insert "Regulations under subsection (2) or (2A), and orders under subsection (2B), may appoint different days"

**Member's explanatory statement**

See the explanatory statement for Amendment 12.

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**Katherine Fletcher**

**15**

Clause 3, page 3, line 32, at end insert ", other than a provision mentioned in subsection (2A) or (2B)."

**Member's explanatory statement**

See the explanatory statement for Amendment 12.

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**Katherine Fletcher**

**16**

Clause 3, page 3, line 32, at end insert—

"(5A) The Scottish Ministers may by regulations make transitional, transitory or saving provision in connection with the coming into force of the provision mentioned in subsection (2A).

(5B) The Department of Justice in Northern Ireland may by order make transitional, transitory or saving provision in connection with the coming into force of a provision mentioned in subsection (2B)."

**Member's explanatory statement**

See the explanatory statement for Amendment 12.

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**Katherine Fletcher**

**17**

Clause 3, page 3, line 33, after "(5)" insert ", or (5A), and the power to make orders under subsection (5B),"

**Member's explanatory statement**

See the explanatory statement for Amendment 12.

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Katherine Fletcher

18

Clause 3, page 3, line 34, at end insert “or areas”

**Member's explanatory statement**

This amendment enables transitional provision in connection with the coming into force of the Bill to make different provision for different areas. This is for consistency with the commencement power in clause 3(3).

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Katherine Fletcher

19

Clause 3, page 3, line 34, at end insert—

- “(6A) For regulations made under subsection (2A) or (5A) by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments).
- (6B) A power of the Department of Justice in Northern Ireland to make an order under subsection (2B) or (5B) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).”

**Member's explanatory statement**

See the explanatory statement for Amendment 12.

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Katherine Fletcher

NC1

To move the following Clause—

**“Unauthorised photographs, films and sound recordings of prisons and prison workers: Scotland**

After section 41ZB of the Prisons (Scotland) Act 1989 insert—

**“41ZC Unauthorised photograph, film or sound recording of a prison**

- (1) A person commits an offence if, without authorisation—
- (a) the person takes a photograph, or makes a film or a sound recording, inside a prison, or
  - (b) the person takes a photograph, or makes a film, of the inside of a prison from outside the prison.
- (2) For the purposes of subsection (1)(a)—
- (a) a photograph taken outside a prison of an image which is being transmitted from inside the prison by electronic communications for simultaneous reception outside the prison is to be treated as a photograph taken inside the prison,
  - (b) a film made outside a prison of an image which is being transmitted from inside the prison by electronic communications for simultaneous reception outside the prison is to be treated as a film made inside the prison, and

- (c) a sound recording made outside a prison of sounds which are being transmitted from inside the prison by electronic communications for simultaneous reception outside the prison is to be treated as a sound recording made inside the prison.
- (3) In proceedings for an offence under this section it is a defence for the accused person to show that—
    - (a) the person reasonably believed that the person was acting in circumstances to which an authorisation applied (even though no authorisation did apply), or
    - (b) in the circumstances there was an overriding public interest which justified the person's actions.
  - (4) In proceedings for an offence under subsection (1)(b) it is a defence for the accused person to show that they did not know and had no reasonable cause to believe that the photograph or film was of the inside of a prison.
  - (5) A person who commits an offence under this section is liable—
    - (a) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine (or to both);
    - (b) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both).
  - (6) In this section "electronic communications" has the same meaning as in the Electronic Communications Act 2000 (see section 15(1) of that Act).

#### **41ZD Unauthorised photograph, film or sound recording of a prison worker on prison land**

- (1) A person commits an offence if—
  - (a) without authorisation the person takes a photograph, or makes a film or a sound recording, of a prison worker while the prison worker is on prison land, and
  - (b) the person intends the photograph, film or sound recording to record a prison worker on prison land.
- (2) It is immaterial for the purposes of subsection (1) where the recording medium is located.
- (3) In proceedings for an offence under this section it is a defence for the accused person to show that—
  - (a) the person reasonably believed that the person was acting in circumstances to which an authorisation applied (even though no authorisation did apply), or
  - (b) in the circumstances there was an overriding public interest which justified the person's actions.

- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**41ZE Uploading of a photograph, film or sound recording of a prison or prison worker**

- (1) A person commits an offence if—
- (a) without authorisation, the person uploads a photograph or film to an internet service, and
  - (b) the photograph or film—
    - (i) was taken or made inside a prison,
    - (ii) is of the inside of a prison, or
    - (iii) records a prison worker on prison land.
- (2) A person commits an offence if—
- (a) without authorisation, the person uploads a sound recording to an internet service, and
  - (b) the sound recording—
    - (i) was made inside a prison, or
    - (ii) records a prison worker on prison land.
- (3) Subsection (2) of section 41ZC (photograph, film or sound recording of a transmission from a prison) applies for the purposes of subsections (1)(b)(i) and (2)(b)(i) of this section as it applies for the purposes of subsection (1)(a) of that section.
- (4) In proceedings for an offence under this section, it is a defence for the accused person to show that—
- (a) the person did not know and had no reasonable cause to believe—
    - (i) in a case within subsection (1)(b)(i) or (2)(b)(i), that the photograph was taken or the film or sound recording was made inside a prison;
    - (ii) in a case within subsection (1)(b)(ii), that the photograph or film was of the inside of a prison;
    - (iii) in a case within subsection (1)(b)(iii) or (2)(b)(ii), that the photograph, film or sound recording recorded a prison worker on prison land,
  - (b) the person reasonably believed that the person was acting in circumstances to which an authorisation applied (even though no authorisation did apply), or
  - (c) in the circumstances there was an overriding public interest which justified the person's actions.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.



- (6) In this section “internet service” has the meaning given by section 228 of the Online Safety Act 2023.

**41ZF Sections 41ZC to 41ZE: meaning of “authorisation” and other interpretation**

- (1) In sections 41ZC to 41ZE “authorisation” means a written authorisation given for the purposes of the section in question—
- (a) in favour of any specified person or person of a specified description,
  - (b) for a specified purpose, and
  - (c) by—
    - (i) the governor or director of a prison in relation to activities at that prison, or
    - (ii) the Scottish Ministers in relation to activities at any specified prison.
- (2) In subsection (1) “specified” means specified in the authorisation.
- (3) In sections 41ZC to 41ZE—
- “film” has the same meaning as in Part 1 of the Copyright, Designs and Patents Act 1988 (see section 5B(1) of that Act);
  - “photograph” has the same meaning as in that Part (see section 4(2) of that Act);
  - “sound recording” has the same meaning as in that Part (see section 5A(1) of that Act).
- (4) In sections 41ZD and 41ZE “prison worker” means any of the following—
- (a) an officer of a prison;
  - (b) a person certified as a prisoner custody officer under section 114(1) of the Criminal Justice and Public Order Act 1994 who is authorised to perform custodial duties (within the meaning of section 117(1) of that Act);
  - (c) any other person who (whether as a servant or agent of the Crown or otherwise)—
    - (i) works in a prison, or
    - (ii) visits, or attends at, a prison for the purposes of the person’s work (including voluntary work).
- (5) In sections 41ZD and 41ZE “prison land” means—
- (a) a prison, or
  - (b) any land which—
    - (i) is occupied by a person for a purpose connected with the provision, running or management of a prison, and
    - (ii) has been declared by the Scottish Ministers to be prison land in a declaration for the purposes of the section in question.

- (6) A declaration under subsection (5)(b)(ii) must be made in writing and published in such manner as the Scottish Ministers consider appropriate.

#### **41ZG Offences under sections 41ZC to 41ZE: extension of Crown immunity**

- (1) An individual who—
- (a) works at a prison,
  - (b) does not do that work as a servant or agent of the Crown, and
  - (c) has been designated by the Scottish Ministers for the purposes of this section,
- is to be treated for the purposes of the application of sections 41ZC to 41ZE as if the individual were doing that work as a servant or agent of the Crown.
- (2) A designation for the purposes of this section may be given—
- (a) in relation to persons specified in the designation or persons of a description so specified, and
  - (b) in relation to all work falling within subsection (1)(a) or only in relation to such activities as the designation may provide.””

#### **Member's explanatory statement**

This new clause amends the Prisons (Scotland) Act 1989 to create new offences of taking a photograph, or making a film or a sound-recording, inside a prison; of taking a photograph, or making a film, of the inside of a prison; of taking a photograph, or making a film or a sound-recording, of a prison worker on prison land; and of uploading content relating to prisons to an internet service.

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Katherine Fletcher

NC2

To move the following Clause—

#### **“Unauthorised photograph or sound-recording of the inside of a prison: Northern Ireland**

- (1) Section 34C of the Prison Act (Northern Ireland) 1953 (offences relating to prison security) is amended as follows.
- (2) In subsection (1), for the “or” at the end of paragraph (a) substitute—
  - “(aa) takes a photograph of the inside of a prison from outside the prison, or”.
- (3) After subsection (1) insert—
  - “(1A) For the purposes of subsection (1)(a)—
    - (a) a photograph taken outside a prison of an image which is being transmitted from inside the prison by electronic communications for simultaneous reception outside the prison is to be treated as a photograph taken inside the prison, and
    - (b) a sound-recording made outside a prison of sounds which are being transmitted from inside the prison by electronic

communications for simultaneous reception outside the prison is to be treated as a sound-recording made inside the prison.”

(4) Omit subsection (2).

(5) After subsection (4) insert—

“(4A) In proceedings for an offence under subsection (1)(aa) it is a defence for the accused to show that they did not know and had no reasonable cause to believe that the photograph was of the inside of a prison.””

#### **Member's explanatory statement**

This new clause amends section 34C of the Prison Act (Northern Ireland) 1953 to include a specific offence of taking a photograph of the inside of a prison from the outside of a prison. It also clarifies that photographing or making a sound-recording of material transmitted from inside a prison is covered by the existing offence of taking a photograph or making a sound-recording inside a prison.

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**Katherine Fletcher**

**NC3**

To move the following Clause—

#### **“Unauthorised photographs and sound-recordings of prisons and prison workers: Northern Ireland**

After section 34C of the Prison Act (Northern Ireland) 1953 insert—

##### **“34D Unauthorised photograph or sound-recording of a prison worker on prison land**

- (1) A person is guilty of an offence if—
  - (a) without authorisation the person takes a photograph, or makes a sound-recording, of a prison worker while the prison worker is on prison land, and
  - (b) the person intends the photograph or sound-recording to record a prison worker on prison land.
- (2) It is immaterial for the purposes of subsection (1) where the recording medium is located.
- (3) In proceedings for an offence under this section it is a defence for the accused to show that—
  - (a) the accused reasonably believed that they had authorisation to do the act in respect of which the proceedings are brought, or
  - (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

##### **34E Unauthorised uploading of a photograph or sound-recording of a prison or prison worker**

- (1) A person is guilty of an offence if—

- (a) without authorisation, the person uploads a photograph to an internet service, and
  - (b) the photograph—
    - (i) was taken inside a prison,
    - (ii) is of the inside of a prison, or
    - (iii) records a prison worker on prison land.
- (2) A person is guilty of an offence if—
  - (a) without authorisation, the person uploads a sound-recording to an internet service, and
  - (b) the sound-recording—
    - (i) was made inside a prison, or
    - (ii) records a prison worker on prison land.
- (3) Subsection (1A) of section 34C (photograph or sound recording of a transmission from a prison) applies for the purposes of subsections (1)(b)(i) and (2)(b)(i) of this section as it applies for the purposes of subsection (1)(a) of that section.
- (4) In proceedings for an offence under this section, it is a defence for the accused to show that—
  - (a) the accused did not know and had no reasonable cause to believe—
    - (i) in a case within subsection (1)(b)(i) or (2)(b)(i), that the photograph was taken or the sound-recording was made inside a prison;
    - (ii) in a case within subsection (1)(b)(ii), that the photograph was of the inside of a prison;
    - (iii) in a case within subsection (1)(b)(iii) or (2)(b)(ii), that the photograph or sound-recording recorded a prison worker on prison land,
  - (b) the accused reasonably believed that they had authorisation to do the act in respect of which the proceedings are brought, or
  - (c) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section “internet service” has the meaning given by section 228 of the Online Safety Act 2023.

#### **34F Interpretation of sections 34D to 34E**

In sections 34D and 34E—

- “authorisation” means authorisation given for the purposes of the section in question and subsections (6) to (8) of section 34C apply in relation to authorisations so given as they apply to authorisations given for the purposes of that section;
- “photograph” has the meaning given by section 34C(11);

“prison land” means —

- (a) land vested in the Department for a purpose connected with the provision, running or management of a prison, and
- (b) other land in which the Department has an interest, or which is occupied by the Department, for a purpose connected with the provision, running or management of a prison;

“prison worker” means any of the following—

- (a) a prison officer;
- (b) any other person who (whether as a servant or agent of the Crown or otherwise)—
  - (i) works in a prison, or
  - (ii) visits, or attends at, a prison for the purpose of the person’s work (including voluntary work);

“sound-recording” has the meaning given by section 34C(11).”

**Member's explanatory statement**

This new clause amends the Prisons Act (Northern Ireland) 1953 to create new offences of taking a photograph, or making a sound-recording, of a prison worker on prison land and uploading content relating to prisons to a internet service.