CRIMINAL JUSTICE MODERNISATION AND ABUSIVE DOMESTIC BEHAVIOUR REVIEWS (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill, introduced in the Scottish Parliament on 24 September 2024.

2. The following other accompanying documents are published separately:

- a Financial Memorandum (SP Bill 52–FM);
- a Policy Memorandum (SP Bill 52–PM);
- a Delegated Powers Memorandum (SP Bill 52–DPM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 52–LC).

3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

5. The Bill is in two substantive parts (with the final part dealing with the usual final provisions applicable to the whole Bill).

6. Part 1 of the Bill deals with measures relating to the modernisation of procedures in Scotland's criminal courts. Some of these measures make permanent (with some minor adjustments) existing provisions which have been operating on a temporary basis, while others are new. The measures are as follows—

- facilitating electronic signing and sending of documents in criminal cases,
- enabling virtual attendance at criminal courts,

- establishing a national jurisdiction for callings from custody,
- changing to the scale of fiscal fines, including the permitted maximum,
- supporting the use of images in place of physical evidence in criminal cases, and
- permitting copies to be treated as equivalent to the item copied in criminal proceedings, without additional authentication.

7. Part 2 of the Bill creates a statutory domestic homicide and suicide review model, under which deaths falling within the review model will be reviewed with a view to learning systemic lessons which can be used to help prevent future abusive behaviour within relationships and deaths resulting from such abuse.

CROWN APPLICATION

8. Section 20 of the Interpretation and Legislation Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. The freestanding text in this Bill applies to the Crown in the same way as it applies to everyone else. The Bill makes no change to the application to the Crown of the enactments that it amends.

INTERPRETATION

9. In these Explanatory Notes, the following abbreviations are used—

- "1995 Act" means the Criminal Procedure (Scotland) Act 1995,
- "2007 Act" means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007,
- "2008 Order" means the Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 (S.S.I 2008/108),
- "2016 Act" means the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016,
- "2022 Act" means the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

10. The Bill's freestanding text (that is, any provision which does not amend the text of another piece of legislation) is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

11. Text that the Bill inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. Accordingly—

- text inserted into the 1995 Act is to be interpreted in accordance with the Interpretation Act 1978, and
- text inserted into the 2007 Act or 2008 Order is to be interpreted in accordance with the Scotland Act 1998 (Transitory and Transitional Provision) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999.

PART 1: CRIMINAL JUSTICE MODERNISATION

Section 1 – Electronic signatures and alternative methods of sending documents

12. This section modifies the 1995 Act to make provision permitting the use of electronic signatures on documents in criminal proceedings. This section further enables documents to be transmitted between parties electronically, and to be sent to solicitors acting on an individual's behalf.

13. Subsection (2) inserts four new sections into the 1995 Act before section 304 (and the Part heading immediately preceding it) – i.e. immediately after section 303B.

14. Subsection (3) repeals subsections (6C) to (6E) of section 66, section 72G and section 148D of the 1995 Act. Those provisions make more limited provision about the service of certain documents on an accused person via their solicitor and are therefore superseded by the more general provision made by this section.

Inserted section 303C – Electronic signatures

15. This section provides for an electronic signature to fulfil any requirement (however expressed and for whatever purpose) that a document of a type mentioned in inserted section 303E, or a deletion or correction of it, be signed or initialled.

Inserted section 303D – Sending documents electronically and to a solicitor

16. This section provides that any requirement (however expressed) that a document of a type mentioned in inserted section 303E be given to a person may be fulfilled by (a) transmitting it to the person electronically, or (b) transmitting it to the person's solicitor.

17. Subsection (2) sets out certain requirements associated with the electronic transmission of documents as provided for in subsection (1), specifying that the transmission must be effected in a manner that the recipient has indicated (either specifically or generally) that they are willing to receive the document. The subsection further provides that in certain specified circumstances, this willingness is capable of being inferred.

18. Subsection (3) provides further detail on what references to "giving" a person a document covers.

Inserted section 303E – Documents to which sections 303C and 303D apply

19. By virtue of this section, sections 303C and 303D apply to orders, warrants, sentences, citations, minutes or any other document produced by a court, including any extracts of them. These sections also apply to any document which is required by law to be given to a person in connection with any criminal proceedings before a court, which includes documents required to initiate proceedings, and documents used as, or in place of, evidence.

20. Subsection (2) confers a power on the Lord Justice General to direct that a type of document mentioned in subsection (1) is not to be treated as falling within section 303C or 303D. Subsection

(3) provides that such a direction may relate to some or all criminal proceedings, may be varied or revoked, and must be made publicly available for so long as it has effect. For example, the Lord Justice General could direct that in respect of business in the High Court, citations are not to be regarded as mentioned in subsection (1) for the purposes of section 303C or 303D.

Inserted section 303F – Interpretation of sections 303C to 303E

21. This section sets out the interpretation applicable to sections 303C, 303D and 303E. Further material on interpretation is provided in inserted section 303O (inserted by section 3).

Section 2 – Virtual attendance at court

22. This section modifies the 1995 Act to remove the requirement for people to physically attend court, and thereon permit virtual attendance at court, in certain criminal proceedings.

23. Subsection (2) inserts seven sections into the 1995 Act after inserted section 303F (inserted by section 1).

Inserted section 303G – Suspension of requirement for physical attendance in criminal trials

24. This section applies only to hearings in criminal proceedings in which a person is to give evidence. By virtue of subsection (1)(b), this section does not apply where the only party to the proceedings is a public official such as a prosecutor (see paragraph 29 of these Notes for further discussion).

25. In the circumstances where subsection (1) applies, the default position will be for in-person attendance at court. However, by virtue of subsection (2), the court may disapply any requirement (however expressed) that a person attend a court by issuing a direction stating that the person need not do so.

26. Subsection (3) sets the test for this disapplication, being that the court must be satisfied that allowing the person to attend by electronic means would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.

27. Subsection (4) notes that this section does not affect any other basis upon which a person need not physically attend a court. For example, where a person qualifies as a "vulnerable witness" under section 271 of the 1995 Act, the court may opt to continue to apply the bespoke provisions for their attendance to the hearing in question, rather than those under this section.

28. Subsection (5) provides that references in this section to physically attending a court are to being in a particular place or before a particular person, for the purpose of any "proceedings" (defined in inserted section 303O) before a court or an office holder of a court. The effect of this provision is that applications for warrants, which take place in a judge's chambers, would be included in a reference to physically attending a court.

Inserted section 303H – Suspension of requirement for physical attendance in criminal proceedings where only party is a public official

29. This section applies only to criminal proceedings in which the sole party to the proceedings is a public official (for example, in an application for a warrant which is not intimated on the accused and where the only party is therefore a prosecutor or a constable).

30. By virtue of subsection (2), in proceedings to which this section applies, the default position will be for virtual attendance.

31. Subsection (3) permits the court to direct a person to physically attend the court. However, such a direction can only be made in the circumstances where the court considers that allowing the person to attend by electronic means would prejudice the fairness of proceedings, or would otherwise be contrary to the interests of justice.

32. Subsection (4) provides that this section does not affect any other basis upon which a person need not physically attend a court (see paragraph 27 of these Notes).

33. Subsection (5) confirms that references in this section to physically attending a court are to be construed in accordance with inserted section 303G(5) (see paragraph 28 of these Notes).

Inserted section 303I – Directions under sections 303G and 303H

34. This section makes further provision about directions issued under inserted sections 303G and 303H.

35. Subsection (1) provides that a court may issue a direction under sections 303G and 303H on the motion of a party or of its own accord.

36. Subsection (2) confirms that the power to issue a direction under sections 303G and 303H also includes the power to revoke an earlier direction made under the respective section.

37. Subsection (3) provides that the court must, in considering whether to issue or revoke a direction made under section 303G or 303H, give all parties to the proceedings an opportunity to make representations. It further requires the court to have regard to any guidance issued by the Lord Justice General when considering whether to issue or revoke a direction.

38. Subsection (4) qualifies subsection (3), in providing that the first direction made under section 303G in relation to a hearing, or under section 303H in relation to proceedings can be issued without giving the parties an opportunity to make representations first. This means that a court can initially tell individuals how they are to appear before it. Where a court proceeds in that way, subsection (5) requires the court to ensure that the parties know they can ask the court to change the way that it has asked an individual to attend, and if a party makes such a request, the court must consider it before dealing with any substantive matters at the hearing. However, the court does not have to consider such a request before dealing with a decision to adjourn or a matter that an enactment requires the court to deal with before another hearing can practically be arranged.

Inserted section 303J – Suspension of requirement for physical attendance in other criminal hearings or proceedings

39. This section applies only in relation to criminal hearings and proceedings which do not fall within the confines of section 303G or 303H (see paragraphs 24 and 29 of these Notes).

40. Where this section applies, the default position is for physical attendance, but subsection (2)(a) provides that the Lord Justice General may make a determination disapplying any requirement (however expressed) that a person attend a court. However, subsection (2)(b) allows a court to override such determinations and direct in-person attendance in individual cases.

41. Subsection (3) provides further details about determinations made under subsection (2)(a). Paragraph (a) provides that such determinations may specify the persons, hearings or proceedings to which physical attendance is disapplied, or specify the circumstances in which a court may disapply physical attendance. For example, such a determination could provide that accused persons are to attend sentencing hearings by electronic means. A determination may also empower courts in individual cases to remove the requirement for in-person attendance. Paragraph (b) enables determinations to make different provision for different purposes and different areas, so they could be used to pilot virtual attendance in certain localities. Determinations may be varied or revoked, and must be made publicly available for so long as they have effect.

42. By virtue of subsection (4), the Lord Justice General may only make a determination under subsection (2)(a) when satisfied that disapplying the requirement for physical attendance would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.

43. Where a court directs physical attendance in an individual case through subsection (2)(b), subsection (5) provides that such directions may be issued on the motion of a party or of the court's own accord, and may be revoked.

44. In the circumstances where a person is to attend a court hearing by electronic means following a determination made under subsection (2)(a), subsection (6) requires the court to ensure that parties know they can ask the court to make a direction under subsection (2)(b), and if a party makes that request the court must consider it before dealing with any other matter at the hearing. However, the court does not have to consider such a request before dealing with a decision to adjourn or a matter that an enactment requires that the court deal with before another hearing can practically be arranged.

45. Subsection (7) provides that this section does not affect any other basis upon which a person need not physically attend a court (see paragraph 27 of these Notes).

46. Subsection (8) confirms that references in this section to physically attending a court are to be construed in accordance with inserted section 303G(5) (see paragraph 28 of these Notes).

Inserted Section 303K – Attending by electronic means

47. Subsection (1) provides that a person excused from physically attending a court under section 303G, 303H, or 303J must instead appear by electronic means in accordance with the court's direction.

48. Subsection (2) provides that where a person fails to attend court by electronic means in accordance with such a direction, they are to be regarded as having failed to comply with the requirement to physically attend from which they were excused under section 303G, 303H or 303J.

49. Subsection (3) provides that directions under subsection (1) must set out how the person is to appear by electronic means before the court or office holder, may include any other provision which the court considers appropriate, and may be issued by the court on the motion of a party or of its own accord.

50. Subsection (4) provides that a court may vary or revoke a direction made under subsection (1).

51. Subsection (5) provides that before issuing or revoking a direction under subsection (1), the court must give all parties to the proceedings an opportunity to make representations. It further requires the court to have regard to any guidance issued by the Lord Justice General.

52. Subsection (6) qualifies subsection (5), in providing that the first direction issued under subsection (1) in relation to a hearing or proceedings can be issued without giving the parties an opportunity to make representations first. This means that a court can initially tell individuals how they are to appear before it. Where a court proceeds in that way, subsection (7) requires the court to ensure that parties know they can ask the court to change the way that it has asked an individual to attend, or to revoke the direction altogether, and if a party makes that request the court must consider it before dealing with any substantive matters at the hearing. However, the court does not have to consider such a request before dealing with a decision to adjourn or a matter that an enactment requires that the court deal with before another hearing can practically be arranged.

53. Subsection (8) requires that directions issued under subsection (1) which direct how a party to trial proceedings, including an accused person, is to attend using electronic means, must ensure that such means enable the party to both see and hear all of the other participants in a hearing including any witness who is giving evidence. A direction to a witness who is giving evidence at a trial using electronic means must enable all of the other participants in the trial, which includes an accused person, to both see and hear the witness. Any direction by a court which is not in relation to trial proceedings sets no specific requirements.

54. Subsection (9) provides that directions made under subsection (8) cannot enable a person to see or hear a witness in any way that measures taken in accordance with an order of the court, such as measures in relation to a vulnerable witness, would otherwise prevent.

Inserted section 303L – General directions under section 303K

55. Subsection (1)(a) permits a court to issue a direction under section 303K(1) that applies to all proceedings of a specified type, provided that the only party to such proceedings is a public official. For example, this would allow a court to issue a direction as to how applications for search warrants should be made by the procurator fiscal. Subsection (1)(b) allows the court to issue a further direction overriding a general direction made under paragraph (a) in individual cases.

56. Subsection (2) confirms that the requirement to give parties an opportunity to make representations under section 303K(5)(a) does not apply in relation to general directions issued under subsection (1)(a).

Inserted section 303M – Publication of guidance

57. This section requires the publication of any guidance issued by the Lord Justice General which relates to the issuing of directions under sections 303G, 303H or 303K for as long as it has effect.

Section 3 – Transitional provisions and interpretation for sections 1 and 2

58. This section modifies the 1995 Act and inserts two new sections after inserted section 303M (inserted by section 2).

Inserted section 303N – Transitional provisions

59. This section provides that any direction or determination made under a provision of the schedule of the 2022 Act specified in the first column of the table in subsection (1), or under paragraph 9(1)(a) of the schedule to that Act, is to be treated as having been made under the corresponding provision of this Act. This means, for example, that the existing determination of the Lord Justice General that there is no requirement to physically attend a preliminary hearing in the High Court will continue to operate without needing to be re-made under new section 303J.

Inserted section 303O – Interpretation of sections 303C to 303N

60. This section provides definitions for words and terms used in inserted sections 303C to 303N.

Section 4 – Digital productions

61. This section modifies the 1995 Act to make provision about the use of evidence in an electronic form in criminal proceedings.

62. Subsection (2) amends section 68 of the 1995 Act, inserting a new subsection (2A). This new inserted subsection (2A) provides that the existing entitlement of the accused (under section 68(2)) to see productions in the relevant court office does not apply where a production is in an electronic form and the accused is otherwise given an opportunity to examine it in that form. For example, where an accused person is provided with an opportunity to examine a CCTV recording at their solicitor's premises, the requirements of section 68(2) do not apply.

63. Subsection (2)(c) and (d) amend section 68(3) of the 1995 Act and insert a new subsection (3A). Currently, section 68(3) sets out presumptions which apply where a person who has examined a production gives evidence on it and the production was lodged by a certain time. The presumptions are that the person who examined the production received and returned it in the same condition as it was given to them, and also that it is the same item which was taken possession of by the prosecutor/police. The amendment to subsection (3) provides that the subsection will also apply where the accused is otherwise given an opportunity to see the production in an electronic form and, in such a scenario, the relevant timescales in that subsection will run with reference to the date that such an opportunity is given. Subsection (3A) confirms that where the person adduced to give evidence has examined a physical item, but it is an image of that item that is the production in the proceedings, the presumptions discussed above apply to the physical item that was examined.

64. Subsection (3) amends section 79(2)(b) of the 1995 Act and inserts a new sub-paragraph (va). This new sub-paragraph adds a new preliminary issue that can be raised in proceedings, being any other point concerning the accessing, examination, production, or use of evidence by digital means. This means that objections based on this ground will need to be raised in line with the processes and timescales which apply to the other matters listed in section 79(2) of the 1995 Act, unless the court allows a late objection.

65. Subsection (4) inserts a new section 279B after 279A in the 1995 Act.

Inserted section 279B – Images of physical evidence

66. By virtue of this section, an image of physical evidence is, unless the court otherwise directs, to be treated for evidential purposes in criminal proceedings as if it were the physical evidence itself. For the purposes of this section, it does not matter whether or not the physical evidence is still in existence. For example, an image of a weapon can be produced in court in place of the physical item, and receive equal evidentiary status for the purpose of the proceedings. However, if the court is not satisfied by the use of such an image in place of the physical evidence, it remains open to the court to otherwise direct that the original item be produced. This section does not apply to documents within the meaning of paragraph 8 of schedule 8 of the 1995 Act.

67. Subsection (5) amends section 281 of the 1995 Act. That section sets out the rules which apply where an autopsy or forensic science report is lodged as a production (for example, setting out a presumption that the body of the person identified in the report is the body of the person identified in the indictment or complaint). Subsection (5) of this section applies these rules equally to an autopsy or forensic science report where the accused has been given an opportunity to see the report in an electronic form.

Section 5 – Authentication of electronic copy documents

68. This section modifies schedule 8 of the 1995 Act to make provision for the disapplication of the requirement to authenticate copy documents where they are stored electronically, and where the court is otherwise satisfied as to their authenticity.

69. Subsection (2) inserts a new sub-paragraph (1A) into paragraph 1, which provides that where a copy document is stored on the digital evidence storage system (defined in paragraph 8 of the schedule, as modified by section 5(5) of the Bill) and was created by uploading the original document to the system from another electronic device, that copy is to be deemed and treated as a true copy and for evidential purposes as if it were the document itself. Sub-paragraph (1A)(b)(ii) confirms that this also applies to subsequent versions of that initial copy that are also stored on the digital evidence storage system, unless the court otherwise directs. These rules apply to copies of entire documents but also to copies of a material part of a document.

70. Subsection (2) further inserts a new sub-paragraph (1B) into paragraph 1, which provides that the court may direct that a copy of a document (or a copy of a material part of a document) to which sub-paragraph (1) or (1A) does not apply may still be deemed and treated as if sub-paragraph (1) applied to it.

71. Subsection (3) inserts sub-paragraph (2A) into paragraph 1, which confirms that paragraph 1 is without prejudice to section 279A(2) of the 1995 Act. Section 279A(2) provides for the use of evidence from official documents in criminal proceedings, and the authentication of copies of such documents.

72. Subsection (4) expands the definition of "copy" to include documents uploaded to an electronic device from another electronic device.

73. Subsection (5) makes a consequential change to paragraph 6 of the schedule. Paragraph 6 applies where the court has given a direction preventing a document from benefitting from the default rules in the schedule and allows the court to allow additional evidence to be led. Subsection (4) extends paragraph 6 so that it also applies where the court has given a direction under inserted paragraph 1(1A)(b)(ii) preventing a subsequent copy from benefitting from the rule in paragraph 1(1A).

74. Subsection (6) inserts a new definition of "digital evidence storage system" into paragraph (8) of the schedule. This defines it based on the current system which has been developed but allows the court, by Act of Adjournal, to specify a different digital system in future.

Section 6 – Increase of fixed penalty limit

75. Subsection (1) modifies section 302 of the 1995 Act, which deals with the offer by a procurator fiscal of a fixed penalty in lieu of criminal proceedings. It amends section 302(7A) to provide that the maximum available penalty that may be offered by the procurator fiscal under that section is £500. It then inserts a new subsection (7B), which provides the Scottish Ministers with the power to substitute the sum of £500 for a higher sum by way of regulations. The 1995 Act already contained a power to alter the maximum available penalty by way of subordinate legislation (see previous subsection (7A)), but the new power allows the change to be made on the face of the 1995 Act rather than having to remain in a separate piece of secondary legislation. Section 302(8) of the 1995 Act is also amended to require regulations made under subsection (7B) to be laid in draft before, and approved by resolution of, the Scottish Parliament.

76. Subsection (2) substitutes the scale for fixed penalties in the 2008 Order with a new scale. This scale replicates the scale that was temporarily added to the Order by the 2022 Act. This scale will continue to be able to be adjusted in future through the use of subordinate legislation, as provided for under the existing power found in section 302(7) of the 1995 Act (which became a power of the Scottish Ministers under section 53 of the Scotland Act 1998).

Section 7 – National jurisdiction for custody cases in sheriff courts and JP courts

77. This section modifies the 1995 Act to make provision regarding the national jurisdiction for custody cases in sheriff courts and justice of the peace courts.

78. Subsection (2) inserts four new sections after section 5 of the 1995 Act regarding the jurisdiction of sheriff courts. Subsection (3) inserts four new sections after section 7 concerning justice of the peace courts.

79. Subsection (4) amends section 62(3) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 as a consequence of subsection (3).

Inserted section 5B – Jurisdiction for callings of custody cases in a sheriff court

80. This section provides that, where a person appears in the sheriff court for the first time from custody in criminal proceedings, that calling of the case may be taken in any sheriff court in Scotland and may be dealt with in that court by a sheriff of any sheriffdom. For example, if a person is arrested for an offence allegedly committed in Edinburgh, the first time they appear in court from custody in connection with that offence could be in Glasgow Sheriff Court (in person or virtually), despite previous rules dictating that such a case should be heard by the sheriff court where the offence was committed (in this case Edinburgh Sheriff Court). If there is more than one person subject to the proceedings, subsection (3) enables the case to call before any sheriff court and any sheriff, provided that at least one of the people subject to the proceedings is appearing for the first time from custody in connection with it. This means that, for example, where two people are co-accused of committing a crime, the case can call before any sheriff court even though only one of the accused has been arrested for the crime and is therefore appearing from custody.

81. Subsection (4) confirms that it is for the Lord Advocate or the procurator fiscal to determine in which sheriff court the case is to be heard.

82. Subsection (5) provides the sheriff court that has heard the initial calling of case with continuing jurisdiction over the proceedings (and that sheriff court can be presided over by a sheriff of any sheriffdom). Subsection (6) confirms that this continuing jurisdiction can continue until the conclusion of the proceedings, unless the proceedings come to an early end in a manner specified in paragraph (a) or (b):

- Paragraph (a) describes the situation where, in summary proceedings or proceedings on petition or indictment, the accused pleads not guilty and the prosecutor does not accept that plea. This means it is likely that the case will go to trial, which will be handled by the court that has normal territorial jurisdiction for the case. If an accused is charged with, say, two offences and pleads guilty to one and not guilty to the other, the continuing jurisdiction that subsection (5) creates over the proceedings will be lost

only insofar as the proceedings relate to the charge to which the accused has pled not guilty. The court that has jurisdiction by virtue of subsection (5) would therefore be able to deal with the guilty plea as it sees fit, including by sentencing the accused for that offence.

- Paragraph (b) describes the situation where the accused is committed until liberated in due course of law, which means that the court has ordered that the accused will be held in prison while proceedings are ongoing. Upon this committal, the court's non-territorial jurisdiction will end. This only concerns proceedings on petition or indictment (solemn proceedings), and not summary proceedings.

83. Subsection (7) provides that proceedings on indictment that follow from proceedings on petition are to be treated as the same proceedings. In solemn criminal procedure (which is the procedure used for the most serious crimes), cases usually begin with a petition and then progress to an indictment, which sets out the formal charges against the accused. Subsection (7) means that a court which began dealing with a case at the petition stage can continue dealing with it, under subsection (5), once it has reached indictment stage. In practice, because jurisdiction under subsection (5) ends with an accused being fully committed for trial, which marks one way the petition stage can end, the effect of subsection (7) is likely to be relevant only where an accused makes an early guilty plea under section 76 of the 1995 Act.

Inserted section 5C – Jurisdiction for cases in a sheriff court after failure to appear

84. This section allows a sheriff court to deal with prosecution proceedings for which it would not normally have jurisdiction where the accused has come before it having been arrested for a failure to appear in those prosecution proceedings.

85. When an accused person fails to appear in court, the court can grant a warrant for the accused's arrest. On arrest the person will be brought before a court as soon as is practicable. That court appearance will be a form of "ancillary proceedings" within the meaning of section 5E(d) and therefore any sheriff court can deal with it by virtue of section 5B(1). The ancillary proceedings for failing to appear are separate from the main prosecution proceedings. If the person had been brought before the court that had normal territorial jurisdiction for the main prosecution proceedings, the court might have dealt with those main prosecution proceedings as well as the proceedings for the person's failure to appear. Section 5C allows a court that has jurisdiction to deal with the ancillary proceedings to deal with the prosecution proceedings in the same way that the court with normal territorial jurisdiction would. In most cases that will mean rescheduling diets in light of a hearing having been missed when the accused failed to attend, but in the case of summary proceedings if the accused pleads guilty it may include sentencing the accused or ordering reports ahead of sentencing. The national jurisdiction granted in respect of a person's failure to appear applies regardless of whether the main prosecution proceedings are taking place under the national jurisdiction or whether they are taking place under normal jurisdictional rules.

86. Subsection (2) provides that where the "principal proceedings" (i.e. the proceedings that the accused failed to appear at) are proceedings on indictment, the sheriff court hearing the ancillary proceedings can continue to hear those principal proceedings until the end of the diet dealing with the ancillary proceedings.

87. Subsection (3) provides that where the principal proceedings are summary criminal proceedings, the proceedings can continue to be dealt with in the same sheriff court and by any sheriff, unless, and until the end of a diet at which, a plea of not guilty by the accused is rejected. Subsection (4) defines a plea of not guilty as being rejected where the accused either tenders a plea of not guilty or adheres to a previously tendered plea of not guilty, and that plea is not accepted by the prosecutor (see paragraph 82 of these Notes).

Inserted section 5D – Further provision about national jurisdiction of sheriff courts

88. As mentioned in the preceding paragraphs, section 5D supports sections 5B and 5C by ensuring that sheriffs and prosecutors have the necessary powers to deal with cases that come before a court by virtue of those sections. In particular, section 5D(3)(b) ensures that summary sheriffs benefit from this national jurisdiction in the sheriff court in the same way as sheriffs. Section 5D also makes clear that sections 5B and 5C supplement, rather than supersede, other legal bases for a sheriff hearing a case from outwith the sheriff's normal territorial jurisdiction (specifically those provided for in Part 1 and sections 34A and 137C of the 1995 Act – for example, section 137C makes more bespoke provision permitting the transfer of cases in exceptional circumstances).

Inserted section 5E – Interpretation of sections 5B to 5D

89. This section provides definitions for words and terms used in inserted sections 5B to 5D.

Inserted section 7A – Jurisdiction for callings of custody cases in a JP court

90. In a similar manner to inserted sections 5A to 5D, sections 7A to 7D extend the jurisdiction of JP courts, and that of those hearing JP cases, in respect of custody appearances. They also make provision allowing sheriffs to preside over JP courts in relation to the exercise of the national jurisdiction (in addition to justices of the peace and summary sheriffs, who ordinarily preside over JP courts).

91. Section 7A provides that, where a person appears in the JP court for the first time from custody in criminal proceedings, that calling of the case may be taken in any JP court in Scotland. The case may also be heard by any justice of the peace, summary sheriff or sheriff of any sheriffdom.

92. If there is more than one person subject to the proceedings, subsection (3) allows the case to call before any JP court and any justice of the peace, summary sheriff or sheriff, provided that at least one of the people subject to the proceedings is appearing for the first time from custody in connection with it. This means that, for example, where two people are co-accused of committing a crime, the case can call before any JP court even though only one of the accused has been arrested for the crime and is therefore appearing from custody.

93. Subsection (4) confirms that it is for the procurator fiscal to determine in which JP court the case is to be heard.

94. Subsection (5) provides the JP court that has heard the initial calling of case with continuing jurisdiction over the proceedings until their conclusion (and that JP court can be presided over by

a justice of the peace, summary sheriff or sheriff of any sheriffdom). However, subsection (6) qualifies this and provides that where the proceedings have come to an early end because the accused pleads not guilty and the prosecutor does not accept that plea, the continuing jurisdiction under subsection (5) will cease at the end of the diet at which that plea was made. Such a scenario will mean it is likely that the case will go to trial, which will therefore be handled by the court that has normal territorial jurisdiction for the case. If an accused is charged with, say, two offences and pleads guilty to one and not guilty to the other, the continuing jurisdiction that subsection (5) creates over the proceedings will be lost only insofar as the proceedings relate to the charge to which the accused has pled not guilty. The court that has jurisdiction by virtue of sub-paragraph (5) would therefore be able to deal with the guilty plea as it sees fit, including by sentencing the accused for that.

95. Subsection (7) confirms that where a sheriff is hearing a JP case under inserted section 7A or 7B, the jurisdiction and powers of the JP court are exercisable by the sheriff. The court itself will still be a JP court and the fact that a sheriff is presiding over it should result in no difference in treatment compared to a JP court presided over by a justice of the peace or summary sheriff. For example, where section 52A of the 1995 Act applies and there is a requirement to transfer jurisdiction to a sheriff, such a transfer would still need to be made despite the fact that the person presiding over the JP court is a sheriff.

Inserted section 7B – Jurisdiction for cases in a JP court after failure to appear

96. This section allows a JP court to deal with prosecution proceedings for which it would not normally have jurisdiction where the accused has come before it having been arrested for a failure to appear in those prosecution proceedings.

97. When an accused person fails to appear in court, the court can grant a warrant for the accused's arrest. On arrest the person will be brought before a court as soon as is practicable. That court appearance will be a form of "ancillary proceedings" within the meaning of section 7D(1) and therefore any JP court can deal with it by virtue of section 7A(1). The ancillary proceedings for failing to appear are separate from the main prosecution proceedings. If the person had been brought before the court that had normal territorial jurisdiction for the main prosecution proceedings, the court might have dealt with those main prosecution proceedings as well as the proceedings for the person's failure to appear. Section 7C allows a court that has jurisdiction to deal with the ancillary proceedings to deal with the prosecution proceedings in the same way that the court with normal territorial jurisdiction would. In most cases that will mean rescheduling diets in light of a hearing having been missed when the accused failed to attend, and if the accused pleads guilty it may include sentencing the accused or ordering reports ahead of sentencing. The national jurisdiction granted in respect of a person's failure to appear applies regardless of whether the main prosecution proceedings are taking place under the national jurisdiction or whether they are taking place under normal jurisdictional rules.

98. Subsection (2) provides that the principal proceedings can continue to be dealt with in the same JP court and by any justice of the peace, summary sheriff or sheriff. In a similar manner to section 7A(6), this continuing jurisdiction will cease at the end of the diet at which the accused either tenders a plea of not guilty or adheres to a previously tendered plea of not guilty, and that plea is not accepted by the prosecutor (see paragraph 94 of these Notes). Subsection (3) confirms the circumstances in which a plea of not guilty is rejected for the purposes of subsection (2).

Inserted section 7C – Further provision about national jurisdiction of JP courts

99. As mentioned in the preceding paragraphs, section 7C supports sections 7A and 7B by ensuring that justices of the peace, summary sheriffs, sheriffs and prosecutors have the necessary powers to deal with cases that come before a court by virtue of those sections. It also makes clear that sections 7A and 7B supplement, rather than supersede, other legal bases for a JP court taking a case from outwith its normal territorial jurisdiction (specifically those provided for in Part 1 and section 137CC of the 1995 Act, and section 62 of the 2007 Act - for example, section 137CC makes more bespoke provision permitting the transfer of cases in exceptional circumstances).

Inserted section 7D – Interpretation of sections 7A to 7C

100. This section provides definitions for words and terms used in inserted sections 7A to 7C.

Section 8 – Section 7: transitional provision

101. This section provides that any proceedings that have come before a sheriff court by way of paragraph 16(1) of the schedule of the 2022 Act (being the first calling of a case from custody under the existing national custody jurisdiction provisions) are, for the purposes of inserted sections 5B to 5D of the 1995 Act (as inserted by section 7), to be treated as though they came before that court by virtue of inserted section 5B(1). This means that any proceedings which begin under the existing national custody jurisdiction provisions in the 2022 Act but conclude under the new legislation can continue to be dealt with under the national jurisdiction in the same way, and to the same extent, as they could if they began under the new legislation.

PART 2: DOMESTIC HOMICIDE AND SUICIDE REVIEWS

Reviewable events

Section 9 – Domestic homicide or suicide review

102. This section defines the concept of a "domestic homicide or suicide review", which is what Part 2 of the Bill is concerned with. In brief, the concept is the establishment of a review mechanism for reviewing certain deaths arising from abusive behaviour within relationships, with a view to learning lessons. The review is not about attributing liability to anyone but rather is about working with relevant agencies (whether statutory or voluntary) where either the victim or the perpetrator came into contact with them, in order to learn any wider systemic lessons.

103. Subsection (1) of this section provides that the term "domestic homicide or suicide review" means a review of a "domestic abuse death", or of a connected death of a young person, which is held with a view to identifying lessons to be learned from it.

104. Subsection (2) then sets out the definitions of "person A" and "person B" which are used for the purposes of this section. This is necessary because a particular relationship needs to exist between two people in order for the review model to apply.

105. For the purposes of this section, person A is a person who has, or appears to have, behaved in an abusive manner towards person B. To use more everyday language, person A is therefore the

"perpetrator" of the abusive behaviour (though it is accepted that there may be some cases where abusive behaviour goes in both directions). The person who is on the receiving end of the abusive behaviour (i.e. person B) needs to be, at the time of the behaviour, one of the following—

- the partner or ex-partner of "the perpetrator",
- the child of "the perpetrator",
- the child of the partner or ex-partner of "the perpetrator",
- a young person living in the same household as "the perpetrator", or in the same household as "the perpetrator's" partner or ex-partner.

106. A number of the terms used here are defined in subsection (7). Specifically—

- **Abusive behaviour:** this term has the same meaning as it does in the Domestic Abuse (Protection) (Scotland) Act 2021 (though the categories of relationship where abusive behaviour is relevant will differ between the two pieces of legislation). This means that it covers behaviour where a reasonable person would consider the behaviour likely to cause the recipient to suffer physical or psychological harm (which includes fear, alarm and distress). Behaviour of any kind is covered, including words and failures to act, and can be directed at a person even if it is carried out by way of conduct towards property or through a third party. Behaviour can consist of a course of conduct or a single incident.
- **Partner**: a person is someone's partner if they are spouses or civil partners, or if they are in an intimate personal relationship. The term ex-partner is to be construed accordingly. There is no requirement that the parties need to be living together to be partners.
- **Child:** someone is considered to be another person's child if that person accepts them as their child, or previously accepted them as their child (prior to the abusive behaviour) even if they are no longer so accepted. In particular—
    - The nature of the relationship is what matters, so it does not matter whether the child lives under the same roof as the person carrying out abusive behaviour (or under the same roof as the perpetrator's partner or ex-partner). The child could be an adult living entirely independently.
    - A step-child may be covered as a person's own child depending on the nature of the relationship in a particular case, but if the step-child is not covered directly as the child of "the perpetrator" then they would be covered anyway by reason of being the child of that person's current or former partner.
    - Someone who is living with the "perpetrator" or with their partner/ex-partner but who is not accepted by them as their child (for example, a foster child, or a niece or nephew, who is not accepted as the person's own child) would be covered instead by reason of being a young person living in the same household.
- **Young person:** the age cut-off for a young-person depends on whether or not that person has at any point been in care (a "looked after" child). If so, those under 26 are covered, but otherwise it means those under 18.

107. Subsection (3) defines what a "domestic abuse death" is for the purposes of the review model. There are three things covered by this—

- The first scenario which is covered is one where the person who is given the label of "person B" has died or may have died (otherwise than by suicide) as a result of "the perpetrator's" (i.e. person A's) abusive behaviour.
- The second scenario which is covered is one where the person who is given the label of "person B" has died by suicide and it is or appears to be the case that "the perpetrator's" (i.e. person A's) abusive behaviour was a contributing factor. This would therefore cover suicides which are connected to abusive behaviour (for example, an individual who felt driven to suicide by an abusive relationship or by the mental health problems brought on by an abusive relationship).
- The third scenario which is covered is one where persons A and B are partners or ex-partners, and the person who is given the label of "person B" has killed the person who carried out the abusive behaviour (i.e. person A). Essentially, this covers what are sometimes known as "violent resistance" killings.

108. Subsection (4) qualifies subsection (3) by providing that where the death in question is a case of a young person who was subjected to abusive behaviour while living in the same household as the "perpetrator" or their partner/ex-partner, the death is a "domestic abuse death" only if the person was a young person at the time of their death. So, for example, if a young person was subjected to abusive behaviour and then, some time later, died by suicide, the death would be a domestic abuse death only if the person was a young person at the point of their death.

109. Subsection (5) defines the other category of death which falls within the review model, which is where there is the connected death of a young person. In order for subsection (4) to apply, the young person has to have been killed as a result of an incident which also resulted in a domestic abuse death, or as a result of "the perpetrator's" abusive behaviour of person B. The former would cover, for example, a scenario where an abusive individual stabs to death their spouse, their own child and an unrelated child who happens to be present. The latter of these means that even if the intended victim of the attack (e.g. in the example above, the person's spouse and own child) survives, the young person's death is still a reviewable death.

110. The young person does not have to have any particular type of relationship to the parties who were in an abusive relationship. Examples which might be covered here would include—

- a child who was on playdate at a friend's house and who gets caught up in a domestic abuse incident and killed,
- a young person who is in a park and is killed by a stray bullet which someone, following an abusive relationship, was aiming at their spouse,
- a family member who does not fall within the "domestic abuse death category", such as where an individual kills (or tries to kill) their partner as well as killing their partner's young sibling.

111. Subsection (6) provides that where a review is being held in respect of a death anyway and the person whose behaviour resulted in (or appears to have resulted in) the death – i.e. "person A"

– has died by suicide, the review may also encompass the circumstances of that suicide[1]. For example, following an abusive relationship a man might kill his wife and then kill himself. In that case, the suicide could be covered by the review of the woman's death. However, if a man was arrested for abusive behaviour towards his wife and he killed himself rather than face court (without killing his wife or attempting to do so), that on its own would not fall within the review model.

112. It should be noted that although this section sets out what deaths fall within the review model, it does not mean that a review will be held in every instance. There is a sift stage at which an assessment is taken as to whether there are lessons to be learned from the death (see the commentary on section 16). There is also a power to modify the breadth of the review model (see the commentary on section 10).

Section 10 – Power to modify matters in relation to reviews

113. This section provides a broad power allowing the Scottish Ministers to, by regulations, make various changes to section 9. Regulations made under this power can modify an enactment, meaning that they could adjust section 9 directly (meaning that the full definition of a review remains in one place). However, under section 26, regulations under this section are subject to the affirmative procure so they could only be made if the Scottish Parliament first votes to approve them in draft.

114. The power to make changes under this section allows for the following—

- The power allows provision to be made changing what it means for the purpose of the review definition for abusive behaviour to "result in" or (in the case of suicide) be a contributing factor to a death. This is most likely to be relevant to deaths by suicide following abusive behaviour, as suicides often are the cause of multiple factors which are complex and difficult to disentangle. Under section 26, it will be possible to use this power to make different provision for different purposes, meaning that bespoke provision could be made in respect of suicide. This could, for example, require there to be certain evidence of causality in cases of suicide, or a certain proximity between the abusive behaviour and the suicide.
- The power allows different provision to be made changing what the relationship between two people needs to be in order to give rise to a review. This would, for example, allow deaths arising from so-called "honour killings" or a person's former partner killing their new partner to be brought into the review model.
- The power allows the circumstances which may give rise to a review to be changed, including so as to cover circumstances in which there is no death. This would therefore allow, for example, the review model to eventually be extended to cover near-death incidents or even serious incidents which are a level below that. However, the power is limited to specifying circumstances relating to abusive behaviour, so the review model will always remain about abuse in relationships.

[1] In the scenario where, for example, an abused woman kills her husband and then kills herself, subsection (5) is not relevant as the suicide would be reviewable under subsection (3)(b).

- The power allows the name of the review model to be changed in consequence of a change to the substance of the model. For example, if it is extended beyond deaths then the current name would no longer be appropriate, and this power could be exercised in order to remedy that. However, the power is limited to being used in consequence of a change to the substance of the circumstances which can give rise to a review.

Review infrastructure

Section 11 – Review oversight committee

115. Subsection (1) of this section provides for the creation of a review oversight committee which is to be responsible for securing the carrying out of reviews and overseeing the review process. Under subsection (2), the committee is to comprise a chair, a deputy chair, and such number of other members as the Scottish Ministers determine. Those other members will be appointed by the Scottish Ministers – from among nominations received from nominating bodies listed in subsection (3) as well as from those identified by Ministers themselves.

116. Subsection (3) sets out the nominating bodies. This list may be modified by the Scottish Ministers by regulations under subsection (5) (subject to the negative procedure) but only after they have consulted with the body to which the regulations would relate (see subsection (6)).

117. The intention is that these nominating bodies might in practice come together to provide for joint nominations (for example, a nomination on behalf of all health boards) but no stipulations are made about how the nominating process has to work, so there will be flexibility for the nominating bodies to nominate individuals as they see fit. There is no obligation on Ministers to accept these nominations (beyond the requirement in subsection (2)(c)(i) which essentially requires there to be at least one person nominated by others), but they would need to consider these nominees for appointment.

118. Where the Scottish Ministers are appointing people of their own accord, they are required under subsection (4) to do this in a way which ensures that the committee includes representatives of voluntary organisations which provide services to individuals in Scotland. For example, this might be charities which have the purpose of assisting victims of abusive behaviour, or those which deal with matters such as substance abuse and which have experience of working with those who have suffered or been responsible for abusive behaviour in connection with that.

Section 12 – Case review panels

119. This section makes provision for the appointment of case review panels, which will be tasked with the carrying out of domestic homicide or suicide reviews. These panels will be appointed on an ad hoc basis as and when required for reviews.

120. Subsection (1) puts the review oversight committee in charge of establishing panels as and when they are required. Subsection (2) requires the Scottish Ministers to maintain a pool of at least three individuals who have been appointed as panel chairs, and who can therefore be called upon when a panel is being established.

121. Under subsection (3) a panel is to comprise a chair (selected from those appointed as panel chairs by Ministers) and such other members as the committee determines. The intention is that this will be a role performed by people who have valuable insights to offer but who will be able to do this alongside their everyday lives and work.

122. Subsection (4) specifies that an individual cannot be appointed to be a panel member (which would include being the chair of a panel) if the individual is, or within the past 3 years has been, a member of the review oversight committee.

Section 13 – Committee and panels: further provision

123. This section makes further provision about the review oversight committee and case review panels.

124. Subsection (1) introduces the schedule which makes detailed provision about the chair and deputy chair of the committee, about the appointment of a person to fill in for the chair and deputy chair, and about panel chairs.

125. Subsection (2) deals with the ordinary members of the review oversight committee (i.e. those other than the chair, deputy chair and any substitute). It provides that their terms and conditions are to be set by the Scottish Ministers, and allows them to be paid such expenses as the Scottish Ministers determine.

126. Subsection (3) deals with panel members other than panel chairs. It provides that their terms and conditions are to be set by the review oversight committee but these have to be approved by Ministers, and allows them to be paid such expenses as Ministers determine.

Notification of potentially reviewable deaths

Section 14 – Notification of deaths

127. This section deals with the notification of deaths to the review oversight committee, so that they can be considered for review.

128. The chief constable of Police Scotland and the Lord Advocate are "notifying bodies" for the purpose of this section and, as such, must give written notice to the committee of any death of which they are aware and which they believe to be a reviewable death. When doing so, they must provide the Scottish Ministers with a copy of the notification.

129. The Scottish Ministers also have the power to make a written referral to the committee where they become aware of a death which is, or might be, a reviewable death and they know, from not having received a copy notification, that notice of it has not already been given by a notifying body. This might be relevant where, for example, a Scottish resident dies abroad and so the authority with responsibility for investigating the death and bringing any appropriate criminal proceedings is a foreign authority. It is accepted that the Scottish Ministers may have less information about deaths which they refer under this section, and so the threshold for referral is

correspondingly lower. However, if the Scottish Ministers do make a referral, they must provide a copy of it to both notifying bodies.

130. A notification or referral under this section is to include such information as the person making it possesses or controls which they consider likely to be of assistance to the committee for the purpose of its consideration under section 16(1) (i.e. checking that the death is in fact a reviewable one and then, if it is, determining whether a review should be held). Although the committee has information-gathering powers which it may need to exercise in connection with this consideration, this ensures that the committee is at least provided as a starting point with relevant information from the person making the notification or referral. As this information is to form part of the notification or referral, this means that it forms part of what must be copied to the Scottish Ministers or (as the case may be) a notifying body under subsection (1)(b) or (3).

Section 15 – Revocation of notification

131. This section allows for the revocation of the notice or referral that is given to the review oversight committee under section 14. The notification or referral can be revoked by the person who gave it only where the person believes that the death is not a reviewable death (for example, because further information has come to light since the original notification was given, or because the original notice was given in error).

132. A notification or referral can only be revoked up until the point where a decision is made by the review oversight committee under section 16 as to whether the death is a reviewable one. If a decision on that point has already been made then, if the full outcome of the section 16 process is that a review is to be carried out, the means by which the process could be ended would be via the Lord Advocate's power to order discontinuation of proceedings under section 18.

133. Similar to the original notice, the power of revocation is exercised by the person giving notice in writing to the review oversight committee. However, reasons must be given for the original notice being revoked (i.e. why the death is not thought to be reviewable). As with the original notice, it must be copied to the copy recipient of the original notice.

134. The effect of a revocation notice being received by the committee prior to a decision being made as to the reviewability of the death is that the original notice is to be treated as never having been given. That means that if the committee's sift stage had begun, it must be brought to an end. The notification will also not count for the purpose of the requirement in section 24 to report on the number of notifications received during the year, as the report is concerned with progress made on notifications which are not revoked.

Sift stage

Section 16 – Determination as to whether to hold a review

135. This section deals with what steps are to be taken by the review oversight committee following receipt of a notification or referral of a death.

136. Under subsection (1), the committee firstly has to satisfy itself that the death is one which is capable of falling within the review model. For example, a death may have been notified based on a misunderstanding of the relationship between two people. The threshold for referral by the Scottish Ministers is also predicated on the understanding that they may not have the full picture and permits referral where they merely believe that a death "may be" a reviewable death, with the intention that the committee will then be able to ingather sufficient information to form its own view.

137. Once the committee is satisfied that the death falls within the scope of the review model, they then have to determine whether a review should be carried out in respect of it. Alternatively, if the committee is unable to reach a unanimous decision and the chair of the committee decides it is appropriate to do so, the question may be referred to the Scottish Ministers for them to decide. There is no requirement though for the committee to reach a unanimous decision when deciding whether a review should take place – if the chair is content not to trigger the referral option then the committee could agree to take a majority decision.

138. Subsection (2) provides that the criteria on which this sift decision (i.e. whether or not to hold a review in respect of a death which has been found to be reviewable) is to be taken is to be twofold. The first element is the likelihood of the review identifying lessons to be learned from the death which would improve Scottish practice in the safeguarding of those affected by abusive domestic behaviour or the promotion of the wellbeing of victims of abusive domestic behaviour. The second element is whether Scottish public authorities or voluntary organisations operating in Scotland were involved, or had the opportunity to be involved, in the circumstances leading up to the death. This recognises that although there may be things authorities or organisations in Scotland could learn from incidents which take place in other jurisdictions, the review model is about looking at "missed opportunities" by authorities or organisations in Scotland in particular cases and learning lessons from those.

139. Subsection (3) then sets out some factors which are to be considered as part of the subsection (2) tests, although other factors which are relevant to the assessment under subsection (2) could also be considered. The factors specified in subsection (3) are—

- the extent of the apparent connection between the abusive behaviour and the death (this would be most relevant to either suicides or some connected deaths),
- the information which the review will be able to have at its disposal,
- the extent of the connection which both the person who have died, and other person(s) involved, have to Scotland (since if, for example, a relationship mostly took place abroad, the opportunities for earlier intervention within Scotland would have been limited).

140. Subsection (4) then allows the committee to, at the chair's discretion, seek advice from the Scottish Ministers in relation to its determination as to whether to hold a review. This could, for example, relate to the overall determination or to an individual element which factors into the committee's decision-making.

141. Subsection (5) provides the Scottish Ministers with a power to overrule the committee if the committee decides that a review is not to be carried out (either because it believes the death is

not a reviewable one, or because it determines that, although it falls within the review model, a review should not be carried out). However, Ministers cannot overrule a determination by the committee that a review is to be carried out.

142. Subsection (6) requires the chair of the committee to, if putting matters to the Scottish Ministers under this section (i.e. seeking advice, or asking Ministers to make the determination), provide such information as the chair holds or controls which they consider is likely to be of assistance to Ministers in providing the requested assistance. This is additional to the power which exists under section 21 to ingather information, and which Ministers could (for example) use if deciding whether to step in and overrule the committee under this section.

Conduct of reviews

Section 17 – Carrying out of review

143. This section makes provision about what is to happen where the outcome of consideration of a death under section 16 is that a domestic homicide or suicide review is to be carried out in respect of the death. This therefore applies regardless of whether the decision to hold a review is the determination of the review oversight committee or whether it has come about because the Scottish Ministers have overturned the committee's decision and directed that a review be held.

144. Subsection (1) requires the committee to appoint a case review panel to carry out the review. The detail of the composition of case review panels is dealt with at sections 12 and 13. The same case review panel could be appointed to carry out more than one review, or different panels could be appointed each time.

145. Subsection (2)(a) further provides that the committee can appoint a panel to carry out a joint review of two or more deaths. This might, for example, be appropriate where the same perpetrator has killed two people in the same incident, or where they have killed two partners in different relationships years apart. It could equally be appropriate for a joint review to be carried out where the perpetrators of abusive behaviour are different but the involvement the victims had with a particular agency was the same. Whether it is appropriate to carry out a joint review will depend on all the facts and circumstances of the particular cases and the extent to which it makes sense to consider the cases together. However, the question of whether a review is a joint one or not should have no bearing on the level of scrutiny applied to each case, and a joint review will still be able to examine different matters (for example, where a man kills his wife and child, there may be child protection elements to consider in relation to the child).

146. Subsection (2)(b) also allows the committee to instruct a panel to carry out its review in conjunction with a review of another type (which could be statutory or non-statutory). Examples of this might include a child protection learning review or an adult support and protection learning review conducted in respect of the death of a vulnerable adult. Another example would be a mental health homicide review into the care and treatment of a homicide perpetrator with a mental disorder.

147. Subsection (3) requires the committee to set the terms of reference for the review and allows these to be modified as the committee considers appropriate.

148. Subsection (4) requires the committee to ensure that the panel makes satisfactory progress in carrying out its review, that it acts in accordance with its terms of reference, and that it suspends, discontinues or resumes its review in line with any notice served on the committee by the Lord Advocate under section 18. Essentially, the committee will have a supervisory role in relation to any case review panels it establishes.

149. Subsection (5) allows the Scottish Ministers to pay expenses to those who participate in reviews. This is aimed at those who come and speak to the panel, as panel members themselves are able to be paid expenses under section 13(3) or the schedule.

Section 18 – Lord Advocate's power to order suspension or discontinuation of review proceedings

150. This section provides the Lord Advocate with a power to order the suspension or discontinuation of what can be thought of as "review proceedings". This covers both consideration of a death by the review oversight committee or Ministers (i.e. the sift stage) and, in those cases where the outcome of the sift is that a review is to be held, the actual review itself. Subsection (7) clarifies that for this purpose consideration of a death is to be taken to commence as soon as a notification or referral is received in respect of it, meaning that the power can be exercised even if the review oversight committee has not actually begun to actively review the file with a view to making a sift decision.

151. Under subsection (1), the Lord Advocate can order the temporary suspension of review proceedings for such period as the Lord Advocate considers necessary to allow for the conclusion of any investigation (which would include those by specialist reporting agencies, as well as by the police), or any criminal proceedings or inquiry under the 2016 Act[2], which the Lord Advocate considers to be connected. This power would therefore allow the Lord Advocate to, for example, prevent any prejudice to criminal proceedings by, where necessary, ensuring that the review is paused until the criminal proceedings are complete. This could be exercised in relation to criminal proceedings such as murder or culpable homicide proceedings in respect of the death with which the review proceedings are concerned, but it could also be exercised in relation to other matters which are connected. This might include proceedings for perverting the course of justice in respect of the death, or even proceedings for an earlier instance of abuse which did not lead to the death. Subsection (5) clarifies that this power can be used even where the investigation, criminal proceedings or 2016 Act inquiry have not yet begun. It also provides that the notice ordering the suspension can do this by stating a date on which proceedings may resume, by stating that proceedings may resume once a particular event has taken place, or by stating that proceedings may resume only once a further notice to that effect is given.

152. Under subsection (2), the Lord Advocate can also order the permanent discontinuation of proceedings where it appears to the Lord Advocate to be appropriate to do so in light of any investigation relating to the death, or any criminal proceedings or inquiry under the 2016 Act. This power could be exercised, for example, where a death was notified to the review oversight committee but further investigations have revealed that the death was in fact unrelated to abusive

[2] Inquiries under the 2016 Act are often referred to as fatal accident inquiries, although they also cover inquiries into deaths in custody and can further cover sudden, suspicious or unexplained deaths, or those which occurred in circumstances giving rise to serious public concern.

behaviour. This power will operate in conjunction with the power in section 15 which allows a notification to the review oversight committee to be revoked. As that power can only be exercised up until the point at which it is determined that the death is a reviewable one, if the Lord Advocate later decides that the notice should never have been given, there continues to be a route available under this section for the review process to be stopped.

153. The Lord Advocate's powers to order the suspension or discontinuation of review proceedings are exercised by the Lord Advocate sending a written notice to that effect to the review oversight committee, setting out the reasons for doing so (see subsection (3)). In some cases it will be the committee itself which has to pause or discontinue its own sift proceedings, but where the case has already been passed to a case review panel for a review, section 17(4)(c) ensures that the committee will convey the need for any necessary action to the panel.

154. Under subsection (4), the Lord Advocate must consult the chair of the review oversight committee before exercising the powers in this section.

155. Under subsection (6), the Lord Advocate must provide a copy of any notice ordering a suspension or discontinuation, or any notice permitting a suspended review to resume, to the Scottish Ministers.

Section 19 – Protocol in relation to interaction with criminal investigations etc.

156. Subsection (1) of this section requires various people or organisations to agree and maintain a protocol in relation to the sift process and the carrying out of reviews. The people or organisations in question are, under subsection (2), the chair of the review oversight committee, the chief constable of Police Scotland, the Lord Advocate, and the Scottish Ministers.

157. Subsections (3) and (4) set out more detail about what the protocol must cover. It must describe the general processes and arrangements which the parties intend to follow in order to prevent (so far as within their power to do so) review proceedings causing prejudice to—

- any criminal investigation or any other investigation directed by the Lord Advocate or a procurator fiscal (such as a non-criminal investigation which is carried out by the police at COPFS's direction prior to a fatal accident inquiry),
- any criminal proceedings,
- any inquiry under the 2016 Act.

158. The protocol must also cover when information obtained in connection with review proceedings will be provided by the review oversight committee or a case review panel to the chief constable of Police Scotland. Further, it must cover the circumstances in which a person is not to be interviewed or required to provide information under review proceedings without the prior consent of the chief constable or the Lord Advocate.

159. Subsection (5) requires the parties to the protocol to keep the protocol under review, and provides that they may agree to revise it at any time.

Section 20 – Duty on public authorities to co-operate

160. Subsection (1) places a duty on named public authorities to co-operate in relation to consideration of a death (i.e. the sift stage) and, in cases where the outcome of the sift is that a review is to be held, the actual review itself. This obligation of co-operation requires them to co-operate with the review oversight committee, with a case review panel which is carrying out a review and also with each other.

161. Subsection (2) provides a definition of "co-operation" which clarifies that this includes participating (if asked to do so) in a review, as well as providing such information or assistance as the review oversight committee or the relevant case review panel reasonably considers necessary to allow them to fulfil their functions. Any information or assistance must be provided as soon as reasonably practicable following a request. This duty to provide information under this section is of course subject to the general law, including data protection legislation.

162. Subsection (3) provides that a relevant public authority is not required to provide information under this section which they would be entitled to refuse to provide in court proceedings (e.g. legally privileged information).

163. Subsection (4) makes provision for the interaction of this section with the Lord Advocate's ability to pause review proceedings. The duty to co-operate ceases to apply in respect of a review during any period where it is paused, but is revived again if the pause ends with the review being recommenced (as opposed to the pause ending with the Lord Advocate ordering discontinuation of the review). No equivalent provision is made in respect of the Lord Advocate's ability to discontinue review proceedings, as in such a case there would no longer be review proceedings for a relevant public authority to be required to co-operate with under subsection (1).

164. Subsection (5) lists the public authorities which are subject to this duty. The extent to which they are called upon to co-operate in practice will depend on the death under review and the extent of the authority's involvement in matters relevant to it. Under subsection (6), the Scottish Ministers will be able to modify this list through regulations (subject to the negative procedure). However, before any such regulations are made, subsection (7) requires Ministers to consult the public authority to which the regulations would relate.

Section 21 – Provision of information

165. This section allows the Scottish Ministers, the chair of the review oversight committee and the chair of a case review panel (referred to in this section as "requiring authorities") to each require a person to provide them, as soon as reasonably practicable, with information in the person's possession or control and which the requiring authority in question reasonably considers is necessary for the carrying out of its functions under this Part. For example, this power might be used by the review oversight committee to obtain information which is relevant to whether a death ought to be the subject of a review, while Ministers might use it to obtain information for the reports they are required to produce under section 24. This power can also be used by one requiring authority to another, provided that it is relevant to the carrying out of functions under this Part by the authority requiring the information to be provided. As such, it could, for example, be used by the Scottish Ministers to obtain information from the review oversight committee when Ministers are considering whether to step in and order the carrying out of a review under section 16(5).

166. Subsection (2) provides that a person is not required to provide information under this section which they would be entitled to refuse to provide in court proceedings (e.g. legally privileged information).

167. Subsection (3) provides that a notice cannot be given under this section to a person who is already subject to the duty of co-operation (which includes a requirement to provide information when so requested) under section 20. This simply avoids duplication. It is expected that the persons who will be required to provide information under this section are likely to be voluntary sector bodies operating in this field, as they could well have had contact with families where abusive behaviour has been occurring. However, imposing a full co-operation duty on such bodies may be unduly onerous, and so section 20 is restricted to public authorities. Public authorities which are not subject to section 20 (perhaps because they would only hold relevant information in rare cases) could still be required to provide information under this section though.

168. Subsection (4) provides that the where the Lord Advocate orders the suspension of review proceedings, an information notice ceases to be of any effect so far as it relates to the death. However, if the notice related to more than one death, it would continue in effect in relation to the death which is unaffected by the Lord Advocate's order. Where the suspension ends with the review being revived (as opposed to the Lord Advocate ordering its discontinuation), another notice may be issued reviving the duty to provide information. No equivalent provision is made in respect of cases where the Lord Advocate orders the discontinuation of review proceedings, as in such cases there would no longer be functions under this Part for which the information was required.

Reporting

Section 22 – Reports on case reviews

169. This section makes provision about the report which must, under subsection (1), be prepared by a case review panel at the conclusion of its review. This provision therefore would not apply if a review was discontinued mid-way as a result of the exercise of the Lord Advocate's power to order discontinuation of a review under section 18(2). While it is for the case review panel as a whole to prepare the report, this does not mean that it needs to be "drafted by committee" – it could, for example, be prepared by one member of the panel on behalf of them all, or by those providing their administrative support, and endorsed by the panel as a whole.

170. There are certain things which must, under subsection (2), be included in a report, but it is open to the panel to include such other information as it sees fit. The things which must be included are—

- a timeline of what the panel considers to be any key events prior to the death,
- information about any missed opportunities for intervention,
- the panel's conclusions,
- its reasons for reaching those conclusions, and
- any recommendations it has as a result.

171. What the panel considers to be key events will vary from case to case but these do not have to be something momentous. For example, this could include events which might seem relatively innocuous in themselves but in the context of other evidence take on a greater weight (for example, the first of a series of missed appointments with healthcare or social services after a pattern of regular attendance). The dates of these events will be important in the context of the review because of their role in establishing things such as whether a victim had already been identified as a potential victim of abusive behaviour by the time of a particular incident, or whether there had been a series of events over an extended period which should have been a warning of possible difficulties.

172. If the report is not one that is agreed upon by the panel members unanimously, the points of disagreement must be reasonably reflected (see subsection (3)).

173. The review oversight committee's general duty under section 17(3) to ensure that any case review panel appointed to carry out a review makes satisfactory progress in doing so will apply to the production of a report just as it applies to the review itself. It will consider whether a report is of satisfactory quality overall, as well as whether the review's terms of reference have been fulfilled.

174. Once a report is prepared, the chair of the panel has to submit it to the review oversight committee for approval under subsection (4). Subsection (5) then provides for the committee to decide whether modifications are required before approving it. If they are required, the committee will be able to decide whether to make these itself (which may be possible in, for example, the case of minor corrections) or whether to direct the panel chair to resubmit an amended report (for example, because the information that is missing is not within the committee's knowledge). Where a report is resubmitted, subsection (6) ensures that the same process of approval with or without modifications, or a further direction to make changes, can occur.

175. Once a report has been approved, the committee must, under subsection (7), provide a copy of it to the Scottish Ministers. Where the report relates to the death of a young person or an adult at risk, the committee must also provide a copy of it to Social Care and Social Work Improvement Scotland. The committee can also, under subsection (8), choose to publish a report (or part of it) but only where consent has been given by the Lord Advocate. However, in every case, the committee has to publish (either in the report if it is published, or separately) such information as it considers appropriate about the recommendations made in the report. Subsection (9) requires the chair of the review oversight committee to ensure that any published reports do not include information which would or might identify living individuals (either directly, or through information which could reasonably allow "jigsaw identification") unless the individual has given their consent. This rule applies regardless of whether the individual concerned has participated in the review process.

Section 23 – Requirement to respond to report recommendations

176. This section allows for the imposition of a requirement on a person to respond to the recommendations made in a case review report. This requirement is imposed by a statement being made in a report approved under section 22(5) that a person is required to provide a response. Given the role of the case review panel and the review oversight committee in the report being

prepared and approved, such a requirement could therefore be imposed by either of them but if it is imposed by the panel then it would require the consent of the committee in order to remain in the report which is approved.

177. Where a requirement is imposed, the review oversight committee must give the person a copy of the report so that the person is able to give a meaningful and informed response. The person must then, within such reasonable period as the committee specifies, provide the committee and the Scottish Ministers with a statement in response. That statement must set out what the person has done, or proposes to do, to give effect to the recommendation, and to the extent that the person does not intend to give effect to the recommendation then the statement must give the person's reasons for that.

178. The review oversight committee and the Scottish Ministers are both empowered under subsection (3) to publish (fully or partially) the person's written statement, and to publicise any failure to comply with a requirement to respond.

Section 24 – Periodic reports

179. Subsection (1) of this section provides for the Scottish Ministers to prepare and publish, as soon as reasonably practicable after the end of a reporting period, a report in respect of domestic homicide or suicide reviews during the reporting period. This report must also be laid before the Parliament within the same timeframe. The first reporting period will end 2 years after the day on which the definition of the review model comes into force, and thereafter each subsequent two-year period will be a reporting period.

180. There are a number of things which the report must cover under subsection (2), although it can also include such other information in respect of reviews during the period as the Scottish Ministers see fit.

181. Specifically, the report must include—

- information about any common themes emerging from the outcome of reviews,
- information about any lessons to be learned which are identified in case reports and which the Scottish Ministers consider to be of particular importance (for example, this might include pertinent points learned about the experiences of a particular minority group which may be of wider relevance but might not be a common theme as there may be only one report relating to that minority group),
- information about any actions taken as a result of recommendations made in individual case reports and, where known, the impact of those actions,
- the reasons for any cases being sifted out – i.e. where the outcome of the sift stage is a determination that although a death is reviewable, a review is not to be carried out (for example, it may be that a death is not reviewed because the connection with Scotland is too peripheral for there to be any lessons to be learned for Scottish systems), and
- certain statistical information, as set out in subsection (2)(b), which will provide an overall picture of the work taking place throughout the reporting period in respect of the review model.

Guidance

Section 25 – Guidance by the Scottish Ministers

182. This section provides that where the Scottish Ministers issue written guidance about the functions of the review oversight committee or of case review panels, the committee and those panels must have regard to that guidance. The Scottish Ministers are also required to publish any such guidance that they opt to issue, and must do so as soon as reasonably practicable after issuing it.

PART 3: FINAL PROVISIONS

Section 26 – Regulation-making powers

183. This section makes further provision about the regulation-making powers given to the Scottish Ministers under the Bill. In particular—

- it allows regulations to make different provision for different purposes, and to make ancillary provision of the types listed,
- it sets out the parliamentary procedure to which each regulation-making power is subject (i.e. negative or affirmative – see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

184. However, this section does not apply to commencement regulations as they are covered by section 28 instead (see paragraphs 189 to 193 of these Notes). This section also does not apply to the regulation-making power which the Bill inserts into the 1995 Act as it is subject to separate provision under that Act.

185. Further information on regulation-making powers can be found in the Delegated Powers Memorandum for the Bill.

Section 27 – Ancillary provision

186. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act or any provision made under it.

187. Regulations under this section may modify any enactment (including the Bill itself once enacted). The word "enactment" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 and includes Acts of the Scottish or UK Parliaments as well as secondary legislation.

188. If regulations under this section textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure (see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 28 – Commencement

189. This section sets out when the provisions of the Bill, once enacted, will come into force (i.e. take effect).

190. All of the final sections in Part 3, including this section, will come into force automatically on the day after the Bill receives Royal Assent.

191. The provisions which are set out in subsection (3) will come into force on the later of the day after Royal Assent and 1 December 2025. The provisions in question are the criminal justice measures which are essentially making permanent provision which is already in force on a temporary basis just now.

192. All other provisions will be commenced in accordance with regulations made by the Scottish Ministers under this section. Such regulations may include transitional, transitory or saving provision related to commencement and may make different provision for different purposes. In particular, this allows different provisions to be commenced on different days.

193. Regulations under this section will, unless exercised in conjunction with powers under other sections, be laid before the Scottish Parliament but will not be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 29 – Short title

194. This section provides for resulting Act (if the Bill is passed and given Royal Assent) to be known as the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025.

SCHEDULE – DOMESTIC HOMICIDE OR SUICIDE REVIEWS: PUBLIC APPOINTMENTS

Paragraph 1 – Offices to which this schedule applies

195. Paragraph 1 sets out the positions which are referred to in this schedule as "relevant offices". These positions are the chair of the review oversight committee, the deputy chair of the review oversight committee, and a case review panel chair (i.e. someone appointed to serve as a panel chair, regardless of whether they have been allocated to a specific panel yet). Those filling those positions are referred to as "relevant office-holders".

Paragraph 2 – Status

196. Paragraph 2 provides that a relevant office-holder is not to be regarded as being a servant or agent of the Crown.

Paragraph 3 – Criteria for appointment

197. Paragraph 3(1) provides that a person is disqualified from being appointed a relevant office-holder if the person, at the time of being appointed or in the year preceding the appointment, has held any of the roles set out in this paragraph. This helps to ensure that the person is sufficiently independent, particularly from the bodies which might be involved in the review or which will already have sufficient representation on the committee from the appointments made from the nominations made by nominating bodies. These disqualification criteria continue to apply during a relevant office-holder's time in office (see paragraph 5(b) of the schedule).

198. Paragraph 3(2) imposes further restrictions upon who can be appointed as a relevant office-holder, although these restrictions are not automatic in the same way as those in paragraph 3(1) are. When the Scottish Ministers are appointing relevant office-holders, they are required to have regard to the fact that it is desirable for the person not to be, or in the year preceding the appointment have been, a member, employee or appointee of an organisation which Ministers consider to be a victim-support organisation (which is not limited to victims of abusive domestic behaviour), or involved in the oversight of services in relation to victims of abusive domestic behaviour. An organisation might be considered to have "oversight" of services where it provides grant-funding which is subject to conditions and checks (either statutory or contractual), and the organisation essentially "polices" the work carried out. An appointee of an organisation is someone who is, for example, appointed by the organisation to represent it on some external forum or as one of its committee members, etc.

199. As with paragraph 3(1), this helps to ensure that the person is sufficiently independent, particularly from the bodies which might be involved in the review or which will already have sufficient representation on the committee from the appointments made from the nominations made by nominating bodies. However, there is no automatic disqualification here, as it will be for Ministers to consider what the organisation does, and the person's role in it, before deciding if it should be disqualifying. For example, someone who has been involved as an auditor of an organisation may have no particular allegiance to it, and some organisations may provide services which are only peripherally about victims. Again, this criteria can be applied in a continuing way during a relevant office-holder's time in office (see paragraph 5(c)(ii) of the schedule and the commentary on it at paragraph 205 of these Notes).

200. While this paragraph sets out the disqualification criteria which are unique to relevant office-holders, it should be noted that section 12(4) also provides that an individual may not be appointed to be a member of a case review panel if the individual is, or within the 3 years preceding the appointment has been, a member of the review oversight committee. This applies to chairs of case review panels just as it applies to ordinary members of case review panels.

Paragraph 4 – Tenure

201. Paragraph 4(a) provides for the term of appointment of a relevant office-holder to be 5 years. This runs from the start of the person's appointment as a relevant office-holder, meaning that if someone is appointed to the role of panel chair but is not immediately commissioned to sit on a particular panel, the 5 year period begins running immediately regardless.

202. Paragraph 4(b) allows a relevant office-holder's term to be extended as long as the extension is for a year or less. Extension is envisaged as a less formal means of continuing on a person's contract on a short-term basis. For example, this might be used where a new appointee is unable to start immediately and there is a desire not to have a gap between the current appointee and the new one. A person's appointment could be extended on more than one occasion (for example, a 3 month extension might prove to be insufficient and another month needs to be added to it) but this would be subject to the overall cap of 1 year.

203. Paragraph 4(c) allows an individual to be reappointed, but the total period of appointment (including any extension) may not exceed 8 years. That maximum limit therefore aligns with the maximum period in the code of practice for Ministerial appointments to public bodies in Scotland. Reappointment is envisaged as a more substantial decision, closer to the process of the original appointment than the extension process would be.

Paragraph 5 – Early termination

204. Paragraph 5 sets out the circumstances under which a relevant office-holder's appointment may be terminated early. They may resign, or they may become disqualified from holding office under paragraph 3 (for example, because they take up employment as a civil servant). They can also be removed from office by the Scottish Ministers where Ministers believe the person is unable to perform the functions of the office or is unsuitable to continue to hold the office.

205. The Scottish Ministers' power of removal could be used in a variety of different cases – for example, the unsuitability ground could be used because of public statements made by the person which are incompatible with the ethos of the review model. However, it could simply be that the person, while having done nothing wrong, has taken up a role which does not lead to automatic disqualification, but which might have led to them not being appointed had they held that role earlier (see paragraph 3(2)). The power to remove on the ground of being unable to perform the functions could be used where the person has become unwell but does not resign (for example, because they have lost capacity and so can no longer do so).

Paragraph 6 – Remuneration and allowances

206. Paragraph 6 enables the Scottish Ministers to set and pay such remuneration and allowances (including expenses) to a relevant office-holder as they determine. It will be for Ministers to decide whether payments are made and the amounts of any payments. Provision is not made in respect of pensions as these are not to be pensionable appointments.

207. The Scottish Ministers must indemnify a relevant office-holder for liabilities incurred by them in the exercise of their functions.

Paragraph 7 – Other terms and conditions

208. Under paragraph 7, the Scottish Ministers may determine the terms and conditions of a relevant office-holder's appointment insofar as not already set out in the Bill.

Paragraph 8 – Validity of things done

209. Paragraph 8 provides that the validity of any acts of a relevant office-holder are unaffected by any procedural defects in their appointment or them subsequently becoming disqualified from acting as the relevant office-holder.

Paragraph 9 – Review oversight committee: appointment of temporary chair

210. Paragraph 9(1) allows the Scottish Ministers to appoint a person to step in and perform the function of chair of the review oversight committee where it is unable to be fulfilled by either the chair or the deputy chair (either because the role is vacant or because the person is unable to act). This appointment could be made from among the other individuals on the committee, but it could equally be someone who is appointed to the committee on a temporary basis specifically for that purpose (for example, a temporary appointment could be made from the reserve list of candidates identified in the most recent interview round).

211. No equivalent provision is made in relation to the chairs of case review panels as the fact that there is a pool of individuals who are able to act as such chairs (see section 12(2)) will allow another chair to step in and fill any gap.

212. Paragraph 9(2) provides that an individual who is disqualified for appointment as the chair of the committee cannot be appointed as the acting chair. This means that anyone who is disqualified under paragraph 3(1) would be ineligible. Someone who had already served a full 8 years as chair would also be ineligible for appointment as chair and therefore would be unable to be appointed as the acting chair. Further, the rules on those who Ministers are discouraged from appointing apply equally to the appointment of an acting chair.

213. Paragraph 9(3) provides that an individual appointed as acting chair may be dismissed by the Scottish Ministers at any time, may resign at any time, and is appointed on such terms and conditions (including as to remuneration) as Ministers determine.

This document relates to the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 24 September 2024

CRIMINAL JUSTICE MODERNISATION AND ABUSIVE DOMESTIC BEHAVIOUR REVIEWS (SCOTLAND) BILL

EXPLANATORY NOTES

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