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Criminal Justice Committee

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CRIMINAL JUSTICE COMMITTEE
6th Meeting 2025, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)
*Sharon Dowey (South Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Justice and Home Affairs)
Louise Miller (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 19 February 2025

[The Convener opened the meeting at 10:03]

Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill: Stage 1

The Convener (Audrey Nicoll): Good morning, and welcome to the sixth meeting in 2025 of the Criminal Justice Committee. We have received no apologies. Katy Clark will be joining us shortly.

Our main item of business is to continue our stage 1 scrutiny of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill. I am very pleased that we are joined by Angela Constance, the Cabinet Secretary for Justice and Home Affairs; Vallath Kavitha Krishnan, the bill team leader in the criminal justice reform unit; Vicky Carmichael, the team leader of the violence against women and girls justice unit; and Louise Miller, a solicitor in the Scottish Government legal directorate. Thank you very much for joining us.

I refer members to papers 1 and 2. I intend to allow up to 90 minutes for the session.

I invite the cabinet secretary to make some opening remarks.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning. Thank you very much for the opportunity to provide evidence on the bill. The bill has a dual purpose: part 1 relates to criminal justice modernisation and part 2 relates to domestic homicide and suicide reviews. Both parts support the Scottish Government's ambition to deliver effective and sustainable public services. There is broad stakeholder support for the bill, and we have engaged extensively with key justice partners and third sector groups, whose views have shaped the policy positions in the bill.

Part 1 of the bill seeks to make permanent some of the temporary measures that are set out in the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Those provisions have been in force for some time—they were introduced in 2020—and have become firmly embedded in Scotland's justice system, making many justice processes more efficient and reducing costs. They deliver tremendous benefits to various users of the justice system, including victims, witnesses, the accused and partners such as the Crown Office and Procurator Fiscal Service, the courts and the police.

The bill's intention is to enable partners to maximise their resources and deliver services in an effective, efficient and sustainable way. I have listened carefully to the evidence that has been presented over the past few weeks and acknowledge that there is some work to be done to ensure that the system benefits everyone. However, even where there are practical issues to be worked through, the legislative underpinning provided in the bill is essential to allow pilots to be tested and for a sustainable model to be explored.

Part 1 also introduces two new provisions that will support the greater use of digital technologies. The provisions on digital productions and authentication of copy documents are key to on-going work such as the summary case management pilot and the roll-out of body-worn video.

The second purpose of the bill is to create the statutory framework for Scotland's first national multi-agency domestic homicide and suicide review model. That presents a real opportunity to realise a model that so many of our stakeholders across justice, health, local government, social work, the third sector and academia have contributed to and worked towards for a considerable period.

It is right that we recognise the work of the multi-agency domestic homicide and suicide review task force, its sub-group, the task and finish groups and all those who have responded to the consultation and targeted engagement, particularly those with lived experience of domestic abuse and those who have been bereaved by it. Collectively, that has informed the development of the model.

Although we appreciate that Scotland is the only jurisdiction in the United Kingdom not yet to have such a model, a benefit that comes from that is that we have been able to learn lessons from other jurisdictions, not only across the UK but internationally, in order to understand what works well and where the limitations are. That has also been central to the scope of the model, which I know has been subject to some debate, and I very much welcome the opportunity to talk it through.

I recognise that the deaths in the scope of the review model do not mirror the definition in the Domestic Abuse (Scotland) Act 2018. As the committee is aware, the 2018 act focuses more narrowly on relationships between partners and is about domestic abuse as an offence. However, the impact of domestic abuse reaches beyond the relationships that are set out in the 2018 act. The bill therefore focuses on that broader impact to better understand the full effect and create wider opportunities for learning in order to prevent the

wide range of abusive domestic behaviour and future deaths.

The approach that we have taken to get to this point has been collaborative, open, transparent and evidence based—and that shall remain the case. I therefore see today as an opportunity to shape what is a significant and necessary piece of legislation on domestic homicide and suicide. The committee has always played an important role in shaping and improving legislation, and I look forward to hearing the committee's views on the bill and on how we can collectively deliver a more efficient and effective justice system that works for everybody.

The Convener: Thank you very much, cabinet secretary. I propose that, in order to protect appropriate time for questions on each part of the bill, members should ask questions on part 2 first, and then we will return to part 1. Do members agree to that?

Members *indicated agreement.*

The Convener: Thank you.

Cabinet secretary, before we get under way, I wonder whether I could take the liberty of beginning with a question that I hope you will not mind my asking. I appreciate that it might not sit entirely within the scope of the bill. You might recall that, last year, the Citizen Participation and Public Petitions Committee led a debate on a petition calling for the creation of a specific offence that would enable courts to hand down longer sentences when miscarriage has been caused by an act of domestic violence. In your contribution, you said that you believed that there should be a statutory aggravator for causing miscarriage through such violence. Given the consensual nature of that debate, and the points covered in it, will you now consider introducing such an aggravator? Are you willing to meet me to discuss its possible introduction at stage 2 of the bill process?

Angela Constance: I very much remember the powerful debate that was led by the Citizen Participation and Public Petitions Committee. The petition had come about as a result of a tragedy experienced by the petitioner, a lady called Nicola Murray, who had miscarried after experiencing domestic violence. It was the final debate that our current First Minister participated in as a back bencher. He had a particular interest in it because Ms Murray is one of his constituents.

During the debate, there was a lengthy exploration of what the current law facilitated. We explored a range of the potential unintended consequences of having such an aggravator, but there was a coalescing of minds around the principle. The debate certainly played into the sense that much more needs to be done to address violence against women, particularly when the victim is pregnant and the violence leads to a tragic loss.

The short answer is that I am very much open to having such a conversation. The Government has continued to give thought to introducing such an aggravator, and I am happy to have a full discussion about the idea. I am a bit cautious in that the bill has a dual purpose and is time sensitive, but I would be happy to have discussions on that and, equally, with other members on other issues.

The Convener: Thank you very much, cabinet secretary. That is appreciated.

We will move on to part 2 of the bill. I will begin by asking a question about the proposed definition of domestic abuse. You have helpfully outlined why you have settled on the definition that is set out in the bill. However, as you have acknowledged, we heard a range of views on the proposed definition, including that it is too broad and is out of line with Scotland's current definition. One recent witness, Dr Emma Forbes, described it as borrowing

"too much from other jurisdictions when we should be setting our own path."—[*Official Report*, *Criminal Justice Committee*, 29 January 2025; c 27.]

Could you add a little more detail on the thinking behind the range of situations that might be subject to a domestic homicide or suicide review?

Angela Constance: In broad terms, it is important that we do not fall into the trap of Scottish exceptionalism, which I am always mindful to avoid. Learning from other jurisdictions, whether they are elsewhere in the UK or international, is vital. However, we can never simply lift and shift anyone else's system, and we cannot cherry pick. We need to understand and learn from those other systems and adapt them to the Scottish context.

As is often the case in these situations, on the one hand, people will say that the definition and the scope are too narrow, but, on the other hand, people will say that they are too wide. Although you never get 100 per cent unanimity, there was an overwhelming consensus among the task force members, which included the entire range of statutory and non-statutory partners. They rested on the position that is outlined in the bill and its documents.

10:15

The work of the task force has been informed by the learning that other jurisdictions have not needed to rely on domestic abuse legislation. I understand and endorse the fact that the Domestic Abuse (Scotland) Act 2018 was ahead of its time. I

know that the Parliament is very proud of that legislation, as are prosecutors, who use it to good effect in delivering justice. There has been a lot of international interest in the 2018 act. There is always a lot of interest in our legislative provisions, particularly those around violence against women and girls.

However, the review process is not legislation. It is not about finding blame, it is not about establishing who has done what and it is not about establishing guilt in a court.

The Crown Office spoke very powerfully about the ripple effect of domestic abuse. I know that the committee also received evidence from Fiona Drouet, who spoke about the importance of the wider context and about the missed opportunities and near misses. We sometimes have to cast the net a bit wider to capture all the relevant learning.

My final point is that an offence that is committed in the context of domestic abuse or suicide might not actually be an offence under domestic abuse legislation.

I feel that we have landed in the correct place.

The Convener: Thank you very much. I am conscious of time, so I will move on to other members.

Liam Kerr (North East Scotland) (Con): Good morning, cabinet secretary. The committee heard—or it has been suggested to us—that, by not sticking to the definitions in the 2018 act, there was a risk of undermining the current understanding of domestic abuse. Is that a risk, or is that not going to be a problem?

Angela Constance: No, I do not believe that that is a risk. That is partly because of the breadth and depth of the work undertaken by the task force, the members of which have included the Crown Office, Social Work Scotland, the Convention of Scottish Local Authorities, victim support organisations, Scottish Women's Aid and academics. The issues have been well debated—notwithstanding the fact that it is also for this committee to debate and test them. I will not repeat what I said to the convener, to avoid the risk of incurring her wrath, but the purpose of the review is very different from the purpose of the previous legislation, which is to secure convictions.

Liam Kerr: I am grateful for that answer. To stick with the issue of definitions, you may have seen that, in a previous evidence session, it was suggested to the committee that the definitions in section 9 of "child" and "young person" are used a little loosely, interchangeably and insufficiently clearly. What is your view on that, having reflected on those evidence sessions? Is that something that you propose to tighten at stage 2 or that you would welcome the committee tightening?

Angela Constance: I listened carefully to the comments that were made by, for example, Marsha Scott from Scottish Women's Aid, and I have also seen the written representations that have been made to the committee. The point that we have to capture is that, although the term "child" is normally defined in statutes to mean a person below a certain age, that approach has not been adopted in the bill, because it is about relationship and connection, and the child could be an adult who is living independently.

We are all familiar with cases where children are harmed or murdered as part of a coercive control and domestic violence relationship but, for example, someone's child can be an adult and can be living independently. Given the cases that have occurred in the past, across jurisdictions, if we get into defining children by age, we will have to define all sorts of other categories of people. Therefore, as things stand, my view is that we are trying to capture those who have been impacted, where there is a relationship between two people, and regardless of age. The phrase that we have used in the explanatory notes on the bill is:

"The nature of the relationship is what matters".

Liam Kerr: I understand—that is interesting.

I will move on to my final question for now. The committee has previously expressed concern, on a general level, about the time that elapses between bills passing and the provisions coming into force. In your view, does this bill allow for reviews to take place of deaths that occur before the relevant provisions are brought into force?

Angela Constance: There are two parts to that question. On the broader point about the implementation of legislation, I will not stray too much into part 1, but there are aspects of it that are already happening in practice, because of the temporary nature of the Covid legislation restrictions. On part 2, what needs to be done is the recruitment of chairs and the drafting of statutory guidance. As soon as the structure is ready, the provisions can be implemented. The gap between commencement and implementation should be about six months. In broad terms, we are looking at 2026 for implementation of part 2 of the bill.

The retrospective aspect is difficult, because there is a question about how retrospective to make it. There will be cases that occur after the commencement of the legislation. If I have understood you correctly, you are asking for the provisions to be implemented and to apply to domestic homicides and suicides that occurred prior to the introduction of the bill, or its implementation.

Liam Kerr: I will press you on that. The Parliament sometimes passes bills, saying that that is what we want the law to be, but then there is a significant delay between that point and the commencement of the provisions. The committee might be worried that, if the Parliament passes the bill and says that it wants the reviews to be carried out, and if the provisions do not commence for a significant time, there could be a large window in which incidents are happening but not being reviewed. Is that a concern?

Angela Constance: Okay. I understand that your question has more specificity and that you are not advocating going back years. My first point is that, if the bill passes this year, it will be implemented next year, so I do not envisage a significant window, but I will look at the gap—even if it is six months or 12 months—and have a think about whether there is anything that could or should be done. I will not make a commitment either way just now, but I will go away and look at it.

Liam Kerr: Thank you.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I will ask about the review bodies. The bill provides for a review oversight committee and for case review panels to carry out the work involved in reviews. I would be grateful if you could outline the Scottish Government's thinking in proposing that approach and the proposed membership of those bodies.

Angela Constance: Again, that approach comes from the learning from other countries that having a statutory underpinning is important. I noticed that some of the evidence that the committee received was very supportive of having a review oversight committee.

Another aspect of our learning from elsewhere was the importance of independence. The chair and deputy chair of the review oversight committee will be subject to the public appointments procedure, so there will be real scrutiny of the process in order to support the independence of their roles. The public appointments process will also be deployed for the chairs of individual case reviews. Again, that is about emphasising the importance of the work and the review and, I suppose, the importance having a national system.

In terms of funding for public appointments, the role of the oversight committee, supported by the development of things such as statutory guidance, is to ensure that we have consistency. There is always a need for flexibility and variation, but we do not want unwarranted variation, because we want to ensure the quality of the process.

The membership of the regional oversight group will have to be broad and capture a range of expertise. The task force has a working group that is looking at things such as job descriptions and training needs. The membership of individual case reviews will depend on the facts and circumstances of the case, but I expect that it will include statutory organisations, such as the police, social workers and organisations that have a responsibility in and around public protection.

Ben Macpherson: Section 11 and the schedule are quite specific about membership. Section 11 states that the review oversight committee must include

"representatives of voluntary organisations which provide services to individuals".

However, it does not require that they have specific knowledge of domestic abuse. I am interested in any comment on that. The schedule discourages the appointment of people who are involved in victims organisations as chairs of the review oversight committee or case review panels. I am interested in fully appreciating the rationale for that.

10:30

Angela Constance: With regard to representatives of voluntary organisations, we should remember that individuals who have been impacted or who are deceased may well have been in receipt of services from voluntary organisations. Those will not necessarily have been domestic abuse organisations, but they could be organisations that, like families, friends and communities of interest, will be able to give voice to the suffering and experience of victims. They could be organisations that specialise in domestic abuse, but they could also be voluntary organisations that have been involved with a victim in some other capacity.

I refute the point that there is a specific discouragement of people who have been involved in victims organisations from applying for the role of chair. There is a long list of people who would not be able to apply within a year of occupying a particular role, and that includes parliamentarians. People who have been involved in victims organisations are also mentioned in that list.

It is about ensuring independence. A core part of the learning from elsewhere is that the independence of the chair is crucial. We want people to come from various relevant backgrounds, but that gap of a year is based on learning from elsewhere. It is imperative to ensure the independence of the person chairing not just the oversight committee but the individual case review panels.

Ben Macpherson: Thank you for that, and thank you particularly for emphasising the point in

paragraph 3(2) of the schedule about the restriction applying to the period of the year prior to the appointment. That is a key point for us to consider.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. I will ask about the determination of when and whether to hold a review. Where there is a reviewable death, the oversight committee would still need to decide whether to hold the review. I guess that that would mean determining, for example, whether lessons could be learned from the situation.

Could you say a wee bit more about how that would work in practice? To get an idea of the context and scale of numbers, in what proportion of cases where there is a reviewable death do you anticipate a review being carried out?

Angela Constance: Notwithstanding the independent functions of the chair and the review oversight committee that I have spoken about, I anticipate that the vast majority of cases would be reviewable. For example, in cases where victims and deceased people have not been involved with services, there might not be lots of records in various public protection agencies, so the question of why people did not come to the attention of services—or why such agencies were not sighted on their suffering—would be worthy of exploration to see what lessons could be learned, given the often invisible nature of domestic violence and domestic abuse. I hope that that helps to give a steer.

Rona Mackay: It absolutely does. I want to ask you about when reviews are carried out in parallel with criminal proceedings and with regard to preventing prejudice. The Lord Advocate would have power to pause or end a review to prevent prejudice in those proceedings. How often and in what types of situations would that power be used?

Angela Constance: It is important that we have that power in the bill, because nobody wants to jeopardise criminal proceedings. A similar arrangement exists for other reviews. That said, the policy intention, which has been particularly informed by the experience of victims, is for reviews to take place earlier as opposed to later, because families and survivors need answers. The court process can give answers, but there is a deeper experience and learning, particularly in relation to prevention, so we want the review to take place sooner as opposed to later, notwithstanding the care that needs to be taken around the processes and procedures, as well as in engaging with people and protecting their welfare.

The two obvious examples in which the Crown Office might exercise the right to pause or end a review would relate to fatal accident inquiries or criminal proceedings. It is important that there is a protocol, as there is for other reviews in which there is interaction with the Crown Office. That needs to be transparent. My understanding is that there are no objections from the Crown Office in relation to that, because it is generally helpful for people to understand the relationships.

Rona Mackay: It is encouraging to know that the review would be speeded up for the families involved. That would definitely help to comfort them.

Angela Constance: That is the aim.

Sharon Dowey (South Scotland) (Con): Good morning. I have questions about resources. Some witnesses, including those representing COSLA and Police Scotland, raised concerns about a lack of resources to support the effective implementation of the proposals. What discussions have you had about those concerns?

Angela Constance: Are you talking about just part 2 of the bill or about part 1 as well when you mention concerns about resources?

Sharon Dowey: There were general concerns about the bill's financial implications. In its submission, Police Scotland said a lot about its concerns about the financial memorandum. It also said that it wanted a lot more communication with the Scottish Government. COSLA also mentioned the issue. There was a lot of concern about the financial memorandum.

Angela Constance: Okay, so the concern is a bit broader than part 2 of the bill. I will try to trot through things fairly briefly, if I can.

Several provisions in part 1 make permanent measures that are currently temporary but which have been in practice, broadly, since 2020. The new provisions in part 1 on digital productions and the authentication of electronic copy documents will be addressed through the digital evidence sharing capability—DESC—programme, which the Government is committed to funding to the tune of £33 million.

On areas where we want to see improvements, such as the practical improvements that are required around measures such as virtual attendance or virtual custodies, I know that you will be aware of the evidence from the Scottish Courts and Tribunals Service that it has paused some work for further evaluation.

There is still work to be done on evaluation and on defining models that can be operationalised in a systems-wide sense, and there will be further work on business cases. The Scottish Courts and Tribunals Service and Police Scotland, both verbally and in writing, have indicated that it is a bit too early to say what some costs will be. In

broad terms, we are not making mandatory operational requirements as such, although we should bear in mind that the bill will enable innovation and that it bolts in the gains that have been made thus far. We will need people to proceed to develop business cases, which will be brought forward in the normal course of annual budgeting.

In relation to part 2, the financial memorandum states that the costs of setting up the review oversight committee and the public appointment of the chairs and deputy chairs, including financial support for expenses related to their recruitment, would fall to the Government. There is also provision to support families with some of the costs that they bear. Therefore, costs under part 2 will be met by the Government, as detailed in the financial memorandum.

Sharon Dowey: You mentioned practicalities, and concerns have been raised about the practicalities and costs of implementing the bill. Are conversations continuing with stakeholders since they raised their concerns?

Angela Constance: Absolutely. There has been in-depth conversation and engagement with stakeholders by the bill team and other officials, both verbally and in writing. The powers and provisions in the bill are enabling; they do not compel or force justice agencies to go down a particular operational path. It is when people come forward with specific operational plans or a specific business case that we can have specific discussions around finance.

Sharon Dowey: The Finance and Public Administration Committee has highlighted evidence stating that the financial memorandum does not include an estimate of the costs that organisations, including the prosecution service and the police, will incur if they are to "meaningfully engage" in the proposed reviews. Is that the case? If so, what is being done to provide that information?

Angela Constance: I wrote to the Finance and Public Administration Committee in response to its correspondence and pointed out that the financial memorandum outlined the substantial savings that have been made by the provisions that are currently in place. There are savings for justice partners—the police, in particular—if you think about things such as remote professional witness evidence. I set out largely what I have just outlined to you just now.

The most significant costs associated with the bill are those around the domestic homicide and suicide reviews, as opposed to those associated with part 1, with 70 per cent of the costs relating to the review chairs and secretariat. We have been very clear about that in the financial memorandum.

Sharon Dowey: Scottish Women's Aid raised concern about the financial memorandum's near silence on costs, especially those that are associated with part 2. Dr Marsha Scott expressed concern about the

"failure to implement the Children (Scotland) Act 2020 and the Domestic Abuse (Protection) (Scotland) Act 2021"

due to money not being

"set aside in the process of passing those acts."—[*Official Report, Criminal Justice Committee,* 5 February 2025; c 5.]

I am looking for reassurance that enough money will be set aside for this bill.

Going back to Liam Kerr's earlier point, there will be a six-month period between the Parliament passing the bill and the commencement of the provisions. We do not want to be in a situation where not enough money has been set aside in the first place so the legislation just sits on a shelf and is not implemented because the finances are not there.

10:45

Angela Constance: As I indicated to Liam Kerr, if the bill is passed in 2025 we will seek to implement it in 2026. The financial considerations will therefore have to form part of the forthcoming budgetary process. I do not suggest that the costs will be in any way insignificant, bearing in mind the continuing pressure on public finances. The cost of the review model varies from £421,000, based on 10 reviews per annum, to £656,000, based on 20 reviews per annum. A high estimate would be 30 reviews per annum, which would cost just under £900,000. I do not suggest that that is not a lot of money, but I would be far less concerned about the affordability of implementing this bill than I would be about the affordability of implementing other pieces of legislation.

The Convener: We have time for a couple of final questions. I will come in first with a question on existing systems of review and the potential for crossover and then I will bring in Fulton MacGregor.

The committee has received evidence that raised concerns about adding a new system, or a new layer, of reviews to an already complex review landscape. There were also suggestions that a bit more could be done in existing systems of review to incorporate or align with the bill's proposals. Has any consideration been given to ensuring that the various review processes are aligned and that organisations will not be overwhelmed by their competing demands?

Angela Constance: The bill provides for joint reviews and multi-agency reviews. That is important, because a scenario could include both a significant child protection concern and a

concern about domestic abuse or suicide. At the end of the day, we want to achieve one set of recommendations, and it is of central importance that they be joined up.

As for the broader public protection landscape, I chair a ministerial oversight group that is attended by several ministers. Mirroring that is a senior officers group that is led by the agencies and people on the ground at the local level. Alignment of public protection matters is a particular focus of my attention, which is why I chair the oversight group, and so I understand the importance of that point. If it would be useful, I would be happy to share with the committee some information on the group's work to reassure members that we are not constantly creating new systems and that, in practice, our aim is to achieve such alignment and focus on core duties and responsibilities.

There is a gap in the current legislation, which the bill intends to address. None of the previous forms of review focused on domestic abuse or domestic abuse-related homicides or suicides, so we need to address that, but that work can be joined up with other reviews and other issues.

The Convener: Thank you. I note the provisions in the bill that say that a case review panel could be instructed to carry out its review in conjunction with another form of review. That is reassuring.

I am conscious of time, so I will bring in Fulton MacGregor. We will then move on to part 1.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. I will try to be quick.

I understand that it will be possible for review reports to be shared with families and for the recommendations that are contained in such reports to be published. How can the privacy of family members be protected in such situations, while ensuring that lessons are learned?

Angela Constance: The default position is that reports should be shared with families and loved ones. Nonetheless, consideration needs to be given to sensitive information about survivors who are living. Thought has been given to the need to respect people's privacy. We live in a world of data protection and the general data protection regulation, but we want to be in a position in which information is shared with families who, in essence, are seeking answers. That is important to individual families, but the learning from such cases is also important to us as a nation.

With regard to what is published, we want to ensure that the learning and the findings are clear. There are always—rightly—sensitivities around information about individuals. Other matters need to be considered, too. I do not want to be in any way graphic, but we would not want to advertise in detail how someone took their life, for reasons that I am sure are obvious to Mr MacGregor. Under the auspices of the task force, there is a working group that is working through the issues of data and information sharing, confidentiality and transparency. That group is in regular engagement with the Information Commissioner's Office.

Fulton MacGregor: As part of the process of learning lessons from reviews, responses or actions might be required on the part of specific service providers. Will extra funding be available to such providers, when that is appropriate and a request has been made?

Angela Constance: The whole purpose of requiring ministers to report to Parliament every two years is to provide transparency on findings and to give visibility to learning or points of failure that need to be addressed on a systems-wide basis. It is hard to predict what the costs might be, because there are some lessons and recommendations that one could anticipate could be adopted by engaging in different ways of working, which might not incur costs. However, there might well be learning that has financial consequences, and it would be for Parliament and the Government, as well as for stakeholders, to pursue that in the normal fashion.

I hope that I am not being obtuse. Extra funding has not been ruled in or ruled out; whether that is required will depend on the findings. I certainly acknowledge that recommendations could be made that would mean that financial costs would be incurred.

Fulton MacGregor: I understand that it is hard to answer when I have not given a concrete example of a lesson learned and what the implications of that might be.

The Convener: I will now move us on to part 1. I will go first to Liam Kerr—once he is ready—and I will then bring in Pauline McNeill.

Liam Kerr: Cabinet secretary, I wish to ask about virtual appearances from police custody. The committee has heard various concerns about the practical arrangements for such virtual appearances—regarding the ability of defence solicitors to consult clients, for example. You have obviously been through the evidence that we have heard. Do you recognise those concerns? Do you think that the solution is a legislative one or a practical one?

Angela Constance: I think that it is a practical one. There are clearly practical issues around the virtual custody court model. We have heard lots of examples of practical issues, including with policing. We have also heard evidence from defence agents. That was clearly acknowledged by the Scottish Courts and Tribunals Service, which leads on the development work around the

virtual custody court model, and its representatives spoke about the practical, logistical and technical solutions. I would endorse their assessment.

The arrangements have worked well in most instances. The practice arose out of necessity during the pandemic, and it is fair to say that that would have been done at pace. For the record, I endorse the approach that the Scottish Courts and Tribunals Service is taking in stopping or pausing various pilots to evaluate the work and to explore how we can get system-wide learning. That is important because it will require collaboration, and it will enable further work to be done in developing a robust operational model, which will then lead to a robust business case.

Liam Kerr: Practical solutions require resources, of course. On a related note, we have heard the provisions being described as "enabling", such that they allow for certain developments but do not require them. The financial memorandum does not seem to provide figures for the costs of expanding any virtual attendance. Is there a risk that what is enabled is not progressed because there are not any associated resources?

Angela Constance: I appreciate why the member would want to explore that thoroughly but, until there is an operational model and a business case, costs are conjecture. The financial memorandum is right to reflect the bill as it stands.

I could draw parallels with other reform work that has been enabled and supported financially, and I would cite DESC—the digital evidence sharing capability. Other work has been led by justice agencies on summary case management, which has led to significant savings for justice partners and, not least, to a better experience for victims.

Those are all examples of practice that has been enabled and supported but that did not require the detail to be set out in legislation. The difficulty—bearing in mind that many justice partners have independence in their operations—is that a lot of operational detail cannot and should not be dictated by Government when it comes to how to do things or how to develop models that will actually work in practice. That relates to partnership. We have a parliamentary and budget process that must be alive to new opportunities as well as new challenges.

Liam Kerr: One operational challenge that the committee has heard about is that the current temporary provisions on time limits in solemn cases are scheduled to end in November this year, but the solemn court system is not on track to be able to cope with pre-Covid time limits by that time. You will have seen that the Scottish Courts and Tribunals Service suggested some solutions. What is your view of those solutions, and, in any event, what is the Government doing in response to those concerns?

11:00

Angela Constance: I recognise and endorse the good work that the SCTS has led in tackling the backlog. The backlog has reduced by 52 per cent and, in fact, the Covid backlog is almost away. However, it is fair to talk about the increasing business for prosecutors and, therefore, the court system. I recognise that demand on solemn court capacity will increase.

I have been to the committee twice now to extend the temporary measures. We have always had a robust debate and there has been some reticence among members of the committee every time that I have come to extend those time limits. I have been clear, and the legislation has always been clear, that the remaining solemn time limits were going to come to an end.

Although there is scope to extend time limits on a case-by-case basis, and that has existed for a long time, I do not want court recovery to be jeopardised and I do not want our court system to be wrapped up in procedural hearings, as opposed to getting on with the business of trials. We are therefore looking closely at the notion of a savings provision, which was one of the suggestions. That would require a statutory instrument and, therefore, the approval or otherwise of the committee. It would ensure that the current temporary time limits would apply to cases that are already in the system prior to 1 December 2025. For new cases that come into the system after 30 November 2025, the pre-pandemic time limits would apply.

To me, that speaks of an orderly process of transition. I want to explore that possibility further with partners, but the view of committee members is also important in that regard.

Liam Kerr: I am very grateful.

The Convener: We have a bit to get through, so I am keen to encourage succinct questions and answers—I should have asked for that earlier. I will bring in Pauline McNeill.

Pauline McNeill (Glasgow) (Lab): I will do my best, but the problem is that there is a lot of complexity in the bill. I want to try to understand what the Government is writing into the bill.

My question should be fairly succinct and is on the broad provisions to allow virtual attendance for any proceedings. The Lord Justice General has powers to say that someone can attend virtually. How is that process kicked off? My reading of the bill is that the court can overturn that, which I

presume is on an individual case-by-case basis. What would prompt the Lord Justice General to make such a decision in a case that they are not directly involved in?

Angela Constance: I will do my best to be succinct. The member speaks to the fact that there are many applications of virtual attendance. I will try to speak to this with clarity. The default position is that people attend court in person. However, on a case-by-case basis, the court can determine otherwise. Virtual attendance might be used for things such as procedural hearings.

The Lord Justice General has the power to issue a determination to change the default in certain cases or circumstances. They cannot issue a determination that trials should be held virtually by default. In 2022, the Lord Justice General made a determination on when the default is for trials to be virtual: that is, preliminary hearings in the High Court, sentencing hearings, full committal hearings in the sheriff court and bail appeal hearings. However, for things such as custody hearings, the default remains for them to be held in person.

I have given an overview, but Louise Miller may add anything more specific.

Pauline McNeill: Maybe I have misunderstood. The Lord Justice General can use the power for a class of hearings. I have followed this line of questioning previously and I did not get that answer, although it was not you I was asking. You are saying that the power is for a class of hearings. For example, the Lord Justice General could say that all sentencing hearings will be done virtually.

Louise Miller (Scottish Government): Yes. It is for particular categories of cases or of circumstances. The determination also says that, if an individual is suspected of having Covid, they should appear virtually. That is about circumstances rather than a particular category of case.

The determination is at a more general level. There is still an ability for an individual court in an individual case to go back to requiring physical appearance instead.

Pauline McNeill: Right. It is important to get that on the record, as you said, cabinet secretary. I am sure that you agree that there is a balance to be struck between the operational matters and a fair legal framework, in which the default position is physical appearance but virtual appearance is allowed when the case can be made for it.

On the specified locations, I have a similar line of questioning to Liam Kerr's. Does the bill specify requirements in relation to setting? Does the appearance have to be from a specific approved place?

Angela Constance: No, the bill does not specify where evidence should be presented. If there are concerns, people's legal representatives can raise issues such as fairness and integrity of proceedings, issues that are prejudicial to the process and safeguards.

Pauline McNeill: My next questions are the same as those that I put to the Scottish Criminal Bar Association and relate to the subsections of the bill that deal with how far the approach can go after the first appearance. When I raised the issue with the association, its position was that, on the face of it, the bill will allow the court to go much further than a custody hearing.

I will tell you what my concerns are in that respect. If we take the bill as a whole—that is, the national jurisdiction elements, with sheriffs being able to sit anywhere, virtual attendance and that provision, which, as I understand it, means that the approach can go well beyond the first appearance—does it give the court system an awful lot of power to determine many things beyond the first appearance? I had thought that, in the way that it was presented, the bill would apply only to certain hearings, but the provision seems to allow things to go much further, if the court thinks fit. That gives me cause for concern.

I accept the cabinet secretary's point about letting the Scottish Courts and Tribunals Service run the courts, but there are principles of fairness and established things such as jurisdiction, where people are tried and so on that could be overturned. First of all, though, can you tell me whether the bill does that?

Angela Constance: I will address the national jurisdiction point first and then, if it will be useful to the member, Louise Miller can expand on any points of detail.

Perhaps I can distinguish, first of all, between summary and solemn cases. I am talking about national jurisdiction here, which, of course, can be either in person or virtual. Sometimes we assume that national jurisdiction equates to virtual custody cases, but it can happen in person, too. In summary cases, national jurisdiction applies to appearances from custody but ceases after the accused pleads not guilty. If the accused pleads not guilty, the case has to go on to further proceedings and to trial, so it is very clear when national jurisdiction stops.

There is also clarity on when national jurisdiction ceases in solemn cases. In such cases, it ceases after the accused is fully committed, so it is only used for appearances in relation to questions of bail, not broader appearances with regard to first diets or trial court.

Pauline McNeill: In that case, does anyone want to explain what is meant by proposed new

section 5B(7) in the Criminal Procedure (Scotland) Act 1995, as inserted by section 7 of the bill? The explanatory notes say:

"Subsection (7) means that a court which began dealing with a case at the petition stage can continue dealing with it".

I previously put this question to the Crown. The notes go on to say:

"In practice, because jurisdiction under subsection (5) ends with an accused being fully committed for trial ... subsection (7) is likely to be relevant".

When I put the question on that, I got the impression that people were asking, "Why do we even need that in the bill?"

Angela Constance: Over to Louise.

Louise Miller: It is mainly there because a lot of cases, especially at summary level, never go to trial, because the accused wants to plead guilty. In a summary case, if they want to plead guilty, that can normally be done at a fairly early stage, and the case can be disposed of quite quickly. If the case was not going to trial, it could be dealt with under the national jurisdiction. The court could just dispose of the case and sentence the individual, and that would be the case over with. It would have to go back to the local jurisdiction only if there were a not guilty plea that the Crown did not accept, and so the case had to go to trial. That would be the point at which it would be compulsory for it to revert back.

Pauline McNeill: But the notes about the subsection say that

"a court which began dealing with a case at the petition stage can continue dealing with it".

Does that not refer to solemn cases, too?

Louise Miller: Yes, it does, but in solemn cases, the national custody jurisdiction ends when the accused is fully committed—that is, committed until liberated in the due course of law. Therefore, there is no potential for a solemn trial to be held under national jurisdiction. If it is a sheriff-and-jury trial, the case will go back to the local sheriff court for the trial to take place.

Pauline McNeill: Why is the subsection needed, then?

Louise Miller: Because, over and above the first appearance on petition, there can still be hearings to come before the accused is fully committed.

11:15

Pauline McNeill: The explanatory notes referred to a court "dealing with a case". Up to what stage does that mean?

Louise Miller: National jurisdiction ends with full committal in solemn proceedings, or when a not guilty plea is tendered, if that is earlier—although it would not usually be. It would normally be at the full committal stage.

Pauline McNeill: Does that mean, then, that this subsection applies up to full committal?

Louise Miller: Yes, that is where the cut-off is.

Pauline McNeill: Beyond that, would the normal rules apply?

Louise Miller: Yes.

Pauline McNeill: Thank you very much. That was helpful.

I want to ask about the costs, but perhaps you cannot answer this question. I think that Liam Kerr tried to get an answer from you about it.

You said in the letter to the Finance and Public Administration Committee that £4.2 billion is being invested across the criminal justice system, but I am interested in what amount of that £4.2 billion is being allocated for modernisation. Most witnesses who believe that this is a good thing will still say that it cannot really do what it is supposed to do unless there is some investment in the technology. I believe that a sheriff court went down yesterday, because the connection was so poor. Indeed, I have seen it myself—it happens all the time.

We have seen this before with promises that we will be able to work out the costs once the legislation is passed. However, I have concerns about passing laws that substantially overturn existing practices without knowing what the Government will spend. Even the police are saying that they would love to have the flexibility of not physically having to attend court but, under the current arrangement, that is not practical. The Government needs to give us an answer on what investment it will make and how quickly it can make it.

Angela Constance: The budget bids that different justice partners make annually are based partly on their headcounts and staffing costs, which tend to be the largest part of justice agencies' financial commitments. Within that, they will also make bids for or asks around their ambitions for transformation, reform and investment.

For example, Police Scotland has had an increase of £10 million in capital investment, and there will be an increase in the capital budget for the coming financial year—provided that the budget is passed—of £2 million for the Scottish Courts and Tribunals Service. Moreover, Police Scotland has a three-year business plan; it has clearly identified reform work on the better use of

digital expertise, equipment and provision and is working through its estates master plan.

Although I cannot make commitments without seeing an operational model or a business case that all partners have signed up to, that is not to say that nothing can happen right now because of a budget settlement.

Pauline McNeill: I totally understand that. Obviously, you have to start somewhere. Notwithstanding what you might say about its being a matter for the courts, though, surely it is still a matter for you, as cabinet secretary, to be satisfied that the courts, using the powers that you will give them, are rolling out the virtual system at the point at which everyone feels content that it is the quality that it should be.

Angela Constance: It is a matter for my attention, and I am sure that MSPs would make sure of that if they had any doubt about it.

All that I am speaking to, Ms McNeill, is the fact that that reform is an on-going process. If we sat back and waited until every business case was completed, the legislation would be playing catch-up. Part 1 of the bill has come about because certain provisions in the emergency coronavirus legislation are coming to an end. Financially, we cannot afford to return to—heaven forfend—wet signatures, when, by and large, the court system communicates via electronic transmission. We do not want to return to those pre-Covid days, so we need to ensure that we are not turning the clock back and that the provisions in the bill will allow justice partners to proceed. I cannot give financial commitments in the absence of system-wide operational models or in the absence of a business case.

Earlier, I said that I endorsed the approach of the SCTS system in pausing the many and varied pilots, getting the learning and seeing how a systems-wide approach can be developed, particularly around virtual custodies. There will indeed be savings for the police in that. It is the right approach, and one that I support.

The Convener: A couple of members still have questions, but I just want to ask about digital productions and the authentication of electronic copy documents. In relation to digital productions, some concerns have been expressed that the original physical item—the physical production—might be disposed of before the potential evidence benefits of retaining it have been fully explored. What work is being done on a retention and disposal policy? Given some of the evidence that we have heard, might there be scope to make the position clearer in the bill?

Angela Constance: There will indeed need to be a retention and disposal policy—that is for sure. It will need to be developed. The Government will have an interest in that, but the policy will need to be informed and developed by the justice agencies with expertise in the area, and it will need to be done on a partnership basis.

As for safeguards, the bill gives the court the power to say that the evidence has to be physical, as opposed to a digital image, so that it can exercise that power when it is satisfied that such an approach would be appropriate. The bill also makes digital productions for solemn cases relevant in issues and objections. The use of digital evidence can be a preliminary issue; representatives can, with notice, raise objections, and the court can grant leave to raise a preliminary issue if it believes that cause has been shown. There are, therefore, some safeguards and powers that the court can exercise in particular circumstances, if it so wishes.

The Convener: That was reassuring and very clear. I call Rona Mackay and will then bring in Fulton MacGregor.

Rona Mackay: I want to follow on from the convener's question by asking about electronic signing of documents in criminal cases. That approach has been broadly supported and welcomed, but there has been a bit of discussion about the potential for digital exclusion in relation to some members of the public. Can you provide any reassurance in that respect to people who are not au fait with that technology?

Angela Constance: Our justice partners—in particular, the Scottish Courts and Tribunals Service—have been acutely aware of the risks in and around digital exclusion and have their own policies in relation to that. Notwithstanding what I said earlier—heaven forfend that we return to wet signatures and so on—it is important to emphasise that the traditional way of communicating still exists. The bill does not remove the scope to communicate in the traditional way, if that is required; in fact, it simply makes permanent the temporary measures that are currently in force. It also retains the Lord Justice General's power to give a direction that the provisions should not apply to specific documents. That power has never been used, but the flexibility is available, should it be required.

Rona Mackay: Moving on to the subject of fiscal fines, is the Government content that the powers of the prosecution to offer fiscal fines have been appropriately used and that the ability to impose higher fiscal fines has not given rise to problems in relation to people's ability to pay and so on?

Angela Constance: I am conscious that the Crown Office and Procurator Fiscal Service provides the committee with regular updates on the use of fiscal fines. Such fines have existed for

a very long time. By making it possible for cases to be resolved outwith the court, where that is proportionate and appropriate, they free up court time and enable the courts to deal with more serious offences. I do not have any evidence to suggest that fiscal fines are being used inappropriately. I note that, in its most recent update to the committee, COPFS said that higher fines—that is, those in the £300 to £500 bracket—had not been used with 16 to 18-year-olds, because of concern about younger people having less income.

Rona Mackay: That was helpful. Do you agree that victims should be informed when a case has been dealt with by way of a fiscal fine?

Angela Constance: Throughout our justice system, we need to get better at giving the right information to victims at the right time. The issue that you raise is part of a much bigger discussion and, indeed, a much bigger body of work. The question pivots around the need to respect personal agency when it comes what information victims want to receive. I am sympathetic to the calls for the system to be more proactive, while respecting personal agency.

The issue with fiscal fines is that, given that they tend to be used in less serious cases—and I make it clear that there is no excuse for any offending—it might be difficult to identify the victim. From an operational point of view, I am not sure how that would be done. Those who operate the system might have more fruitful and practical ideas about that. As a point of principle, however, the justice system needs to find better ways to proactively inform victims.

The Convener: The final question will be asked by Fulton MacGregor.

Fulton MacGregor: The questions that I intended to ask were in a similar area to the one that Pauline McNeill asked about, and I think that most of them were covered in your exchanges with her.

However, there is still one aspect that I want to ask about. We understand that one potential use of the power to allow virtual attendance could be to allow, through a series of court decisions in individual cases, the operation of a virtual trial court for domestic abuse cases. Each case would need to be considered for inclusion on its own merits. Can you update us on any pilots on that, including the number of cases involved? Is there any risk that such an innovation would not gain traction if the parties could simply refuse to take part? Would there be anything to compel their involvement in such an initiative?

11:30

Angela Constance: Before I answer that question, I want to put on the record, for absolute clarity, a point that Mr MacGregor's question has reminded me about. In my exchange with Pauline McNeill, I think that I equivocated on a point on which there is, in fact, clarity, which is that the default position for custody hearings is appearance in person. I was perhaps less than clear about that earlier.

On Mr MacGregor's question about virtual trial court pilots for domestic abuse cases, that is actively being explored. Some time ago, I met Sheriff Pyle, who is based in the Grampian area. There were initial difficulties in getting full engagement from the whole range of partners, but when I met him, he spoke positively about his own engagement with various partners and said that the work is progressing and that people are working together. I was also heartened by the Law Society of Scotland's evidence that defence agents are broadly supportive of the working group that Sheriff Pyle leads.

I should say that other measures are very important in domestic abuse cases. Earlier, I mentioned summary case management, which leads to earlier resolution of cases and so reduces the need for matters to proceed to trial.

Right now, we need to work on partnership; I am not persuaded that enforcement is the place to go. I want to see progress, and I very much support the work being led by Sheriff Pyle on trialling the holding of domestic abuse cases virtually. It is important that that approach is explored fully. We should largely be in the terrain of enabling and supporting, because some of the issues are about culture and practice. This is about having the right operational models that are deliverable in practice, as well as paying attention to and overcoming practical infrastructure issues.

The Convener: Thank you very much. As members have no further questions, I will draw our session to a close, and I thank the cabinet secretary and her team for their attendance.

We look forward to the cabinet secretary joining us again next week, when we will hear a wee bit more about her proposals for amendments to the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 2.

11:33

Meeting continued in private until 12:51.

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