

Criminal Justice Committee  
Wednesday 29 January 2025  
4th Meeting, 2025 (Session 6)

## Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill

### Note by the Clerk

#### Introduction

1. The [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill](#) was introduced in September 2024.
2. Part 1 makes changes in relation to criminal cases. The Bill makes the following permanent for criminal cases:
  - using electronic signatures on court documents
  - sending court documents electronically
  - attending criminal court hearings virtually
  - increasing fixed penalty limits that may be offered by a procurator fiscal ('fiscal fines') as an alternative to prosecution through the courts
  - a national jurisdiction for first callings from custody, allowing the initial stage of some criminal cases to be taken in any sheriff court in Scotland
3. Part 1 of the Bill also makes some new changes to procedures in criminal courts. These are:
  - treating pictures of physical evidence in the same way as the original physical evidence in criminal cases
  - establishing a process for electronic copies of documents to be trusted
4. Part 2 of the Bill creates a process for reviewing deaths which relate to abusive behaviour within relationships. These reviews would look at what lessons can be learnt in relation to a death to try to stop similar things happening again. The Bill also creates an oversight committee and case review panels to undertake and manage the reviews.

#### Today's evidence on the Bill

5. At today's meeting, the Committee will evidence from the following witnesses.

##### Panel 1

- **Laura Buchan**, Policy and Engagement, Crown Office and Procurator Fiscal Service
- **Emma Forbes**, National Lead for Domestic Abuse, Crown Office and Procurator Fiscal Service.

- **Malcolm Graham**, Chief Executive, Scottish Courts and Tribunals Service
- **Superintendent Richard Thomas**, Police Scotland
- **Detective Superintendent Adam Brown**, Police Scotland.

Panel 2

- **Professor John Devaney**, University of Edinburgh
  - **Professor Neil Websdale**, Director of the Family Violence Center at Arizona State University
  - **Dr Grace Boughton**, Criminologist
6. Professor Devaney is a member of the Scottish Government's Domestic Homicide and Suicide Review Taskforce and chairs the Domestic Homicide Review Model Development Subgroup. He has advised on domestic abuse policy and practice to a range of governments internationally, and the European Commission. He chaired the child death review arrangements for the Safeguarding Board for Northern Ireland between 2012-2016 as an appointee of the Northern Ireland Minister of Health.
  7. Professor Neil Websdale is Director of the Family Violence Center at Arizona State University and the National Domestic Violence Fatality Review Initiative (NDVFR) funded by the US Department of Justice. Professor Websdale's social policy work involves helping establish networks of domestic violence fatality review teams across the United States and elsewhere.
  8. Dr Grace Boughton completed her doctoral research at the University of South Wales' Centre for Criminology. Her PhD examines and critically analyses both the principles and operation of Domestic Homicide Reviews in England and Wales.
  9. The following submissions have been provided to the Committee, which are reproduced at the Annex—
    - Crown Office and Procurator Fiscal Service
    - Scottish Courts and Tribunals Service
    - Police Scotland
    - Professor Devaney, University of Edinburgh
    - Dr Grace Boughton, Criminologist

**Previous meetings**

10. At the committee meeting on 22 January, the Committee took evidence from representatives from—
  - Scottish Solicitors Bar Association
  - Law Society of Scotland
  - Edinburgh Bar Association
  - Victim Support Scotland
  - Age Scotland

**Further reading**

11. A [SPICe briefing on the Bill](#) can be found online.

12. The [responses to the Committee's call for views on the Bill](#) can be found online.

**Clerks to the Committee  
January 2025**

## **Annex: submissions received**

### **Crown Office and Procurator Fiscal Service**

#### **COPFS Submissions Part 1 - CRIMINAL JUSTICE MODERNISATION**

1. COPFS welcomes the policy intent underpinning part one of the Bill namely, that it aims to make permanent the efficiencies and innovation created by the temporary measures which resulted from the Covid 19 legislation. It also seeks to bring changes for digital productions and electronic copy documents to keep up with new technological advances in the criminal justice system.

#### **Discussion on sections 1, 2, 6 and 7 of part one of the bill:**

##### **Section 1 - Electronic signatures and alternative methods of sending documents**

2. The creation of the temporary measures (created originally in 2020 and extended by the 2022 Act) for electronic signatures and transmission, brought about efficiencies and modernisation to the practice of signing and serving legal documents in the criminal justice system.
3. Prior to the creation of these measures, which were introduced at great speed as part of an emergency response to the coronavirus pandemic, a great deal of time was required to arrange the service of physical documentation, including printing paperwork, obtaining a 'wet signature', arranging a police officer to courier documents and then processing any receipts to confirm the process had been completed. This process affected police, prosecutors, defence solicitors as well as sheriff's and sheriff clerks at the court service.
4. Police, prosecutors, court staff and solicitors have all become used to the technology and efficiency of receiving service of documents electronically. The practice has become embedded over the last four years and is now the default position for colleagues in terms of how they go about their day-to-day business.
5. Prior to the pandemic, COPFS already used an electronic system known as the he secure disclosure system (SDS) to effect disclosure statements and documentary evidence to defence solicitors electronically. More recently an improved application has been developed known as the [Defence Agent Service \(DAS\)](#). DAS provides a new digital portal for defence agents and COPFS staff to provide online access to digital services and information about cases. DAS also integrates with the Digital Evidence Sharing Capability (DESC) service. There is therefore no need for any new technology outlays or training other than to adequately inform staff of the new processes for electronic signing and service.
6. There remain instances where documents will still require to be printed and served on accused persons personally, particularly where they are not

represented, and there is no way of electronically contacting the accused. However, by making these measures permanent it allows the criminal justice system to perform in a much more flexible, efficient and environmentally friendly manner.

7. No new process would need to be implemented if this measure were to be adopted as permanent.
8. If they were not adopted there would be a requirement to re-train staff (especially where they have only been recruited post pandemic) on the previous methods of working. This would involve reverting to printing extensive quantities of paperwork, creating and scanning receipts and many hours of police resource to courier and effect service of documents.
9. For these reasons COPFS would strongly welcome these measures being made permanent.

## **Section 2 - Virtual attendance at court**

10. Section 2 of the bill modifies the Criminal Procedure (Scotland) Act 1995 Act (the 1995 Act) to remove the requirement for people to physically attend court and allow for virtual attendance at court, in certain criminal proceedings.
11. The measures which were put in place temporarily because of the pandemic and allowed flexibility in enabling all participants of criminal proceedings to attend virtually, by live video or audio link from anywhere. This included judges, clerks, legal representatives, parties to proceedings, accused people, convicted people, appellants, jury members and witnesses.
12. The use of police and professional witnesses giving their evidence virtually is a default measure for High Court cases currently. This has saved time in travel and reduced the costs for payment of travel expenses. This allows police and doctors in the NHS to be detained for less time and allow them to attend court from their place of work, meaning they may not need to take an entire day away from their duties.
13. Professional witnesses are sent additional information on what is expected of them should they be cited to attend a trial as a witness virtually (attached at **Annex 1**). This covers what is expected when providing evidence from a remote site. This information is emailed to the professional when we are organising the time for their evidence. The general guidance for all witnesses giving evidence is still included as part of the citation pack.
14. Consideration is being given by SCTS (Scottish Courts and Tribunal Service) to extend this practice out to sheriff and jury cases in Grampian Highlands and Islands, given the geography. Both COPFS and SCTS monitor the progress of virtual attendance, and the loss of court time due to technical issues is very low. When this process started mid-pandemic, it was rolled out at pace and so there

were some ‘teething issues’ but they have been resolved and technical issues or disruption caused by IT are very rare.

15. Remote attendance is consistent with our desire to be people centred and reduce inconvenience, distress and expense to those involved in the criminal justice process, particularly for victims and witnesses.
16. There may be wider considerations in respect of better participation for people who have sight or hearing loss, or for example to allow real time transcription through digital means.
17. The COPFS welcome making this measure permanent to continue to take advantage of the efficiencies created using technology in the saving of not only time for police and professional witnesses but the payment of travel and accommodation expenses by COPFS to those witnesses. It should be an aim of the criminal justice system to provide for remote attendance for witness wherever appropriate.

**Section 6 - Increase of fixed penalty limit**

18. Section 6 seeks to make permanent the temporary increase from £300 to £500 of an offer by the procurator fiscal of a fixed penalty in lieu of criminal proceedings.

19. This would make permanent the 9-point scale for fiscal fines, as set out below:

Fiscal Fine Level	Pre-pandemic – up to 6 April 2020	As amended by the 2020 Act and extended by 2021 Act: 7 April 2020 to 30 September 2022	As amended by the 2022 Act: 1 October 2022 onwards
1	£50	£50	£50
2	£75	£125	£75
3	£100	£175	£100
4	£150	£250	£150
5	£200	£325	£200
6	£250	£400	£250
7	£300	£500	£300
8			£400
9			£500

20. The Scottish Government Policy memorandum explains: “*The previous seven-point scale and pre-pandemic maximum level of £300 had not been revisited since they were introduced in 2008. According to the GDP deflator measure of inflation, £300 in 2008 would be the equivalent of £428.90 today.*”

21. Prosecutors in Scotland have a range of direct measures available, for example, fiscal fines, conditional offers of road traffic offence fixed penalties, compensation orders and fiscal work offers, which have been made available to prosecutors by Parliament over the years. Fiscal fines can also be combined with compensation orders to create “combined offers”. These direct measures are designed to enable prosecutors to deal efficiently and proportionately with uncontested cases namely, those cases where an accused accepts their

involvement in the alleged offending. In such cases, there would not likely be a trial and the direct measure allows the case to be dealt with promptly without the unnecessary use of resources or for example, the need to cite witnesses.

22. Direct measures can only be used by prosecutors where there is sufficient evidence and, in their assessment an alternative to prosecution is in the public interest for low level offences. Prosecutors are bound by the [Prosecution Code](#) and any other guidance issued by the Lord Advocate.
23. Where prosecutors consider that an outcome only available to the Court following a conviction is required, they will not offer a direct measure but will commence court proceedings. An example would be a non-harassment order.
24. The Lord Advocate has previously written to the committee (most recently October 2024 **attached at Annex 2**) to update them on the operation of fiscal fines which included the following paragraph:

*Impact of the Revised Fiscal Fine Scale on Court Numbers*

*Since implementation of the revised scale on 7 April 2020, on average, 2% of individuals offered a fiscal fine and less than 0.5% of individuals offered a combined offer have been issued with a fine amount between £300 and £500. Previous COPFS analysis of Justice of the Peace court disposal data is that approximately 4% of relevant cases were formerly disposed of with a fine amount between £300 and £500.*

*These statistics demonstrate that prosecutors have not responded to the revised scale by simply increasing the fine amount in individual cases which would previously have been dealt with by way of fiscal fine but have reserved the use of the highest level of fiscal fines to appropriate cases.*

25. Although the use of the increased amount of £300-£500 has not been used in many cases it allows an additional tool for prosecutors to respond to low level offences in keeping with the response that would likely have been applied by the justice of the peace court, should a prosecution have commenced.
26. Whilst a relatively small proportion of the fines issued have been above the previous scale maximum the change has been a useful modification, which has allowed the Crown to respond proportionately, efficiently and in a timely manner to offending for which such a measure is appropriate.

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

27. COPFS supports making these temporary measures permanent. Should the measures not be made permanent, where a person has more than one outstanding matter in a separate jurisdiction, they may require to be held in custody for a number of days, while they were taken to each court separately to answer each case, opposed to having it all dealt with in one court hearing, without the added transportation complications and costs.

28. Though there were pre-pandemic powers to transfer cases between sheriffdoms, they are not as convenient as this general power which allows criminal justice partners to efficiently use resources and potentially limit the time an accused remains in custody.
29. This measure enables a flexible response in the management of custodies and creates efficiencies in terms of court business where a person may have several outstanding matters across the country. It also protects the accused's right to be appear before a court promptly as required by Article 5 of the European Convention on Human Rights.
30. This measure also takes advantage of an increased use of virtual custody courts by allowing accused persons to attend any sheriff court in Scotland remotely by electronic means from the local police station they are being held at, and have their case dealt with by any sheriff across the country. This combination of modern practices allows for a more agile criminal justice system which will be better equipped to deal with custodies in cases of extreme weather, especially for rural court jurisdictions as well as any future public health (or other such) emergency.

#### **Discussions on Sections 4 and 5 of part one of the bill**

31. There are advances being made in the criminal justice system in terms of the use of technology including the implementation of [Digital Evidence Sharing Capability \("DESC"\)](#), which is funded by the Scottish Government and led by Police Scotland the wider roll out of the use of Body Worn Video (BWV) by police officers across Scotland (likely in 2025).
32. DESC is an efficient and far more productive way for criminal justice partners to be able to share evidence and present it in court. The police can share evidence in faster time with Prosecutors in a digital format, who in turn can disclose it to defence solicitors and share it with the court service for use in proceedings. This creates a huge saving in terms of time and resource of transporting and disclosure of productions and should ultimately speed up elements of the criminal justice process which will only go to serve victims and witnesses.
33. Given the advances in technology COPFS welcome the new provisions in the Bill, proposed under section 4 and 5 and sees them as necessary to make sure the law keeps up with these advances and makes certain they are used to their fullest potential. Furthermore, COPFS have engaged with the Scottish Government about amendments to the Bill which could further streamline the legislation for a more efficient use of digital productions during proceedings. These amendments are still being discussed and refined.



#### **Section 4 - Digital productions**

34. One significant issue in criminal cases is the number of productions which require to be physically seized and then stored in anticipation of a criminal trial. On many occasions those items can be bulky and difficult to store and transport. Despite the large number of productions seized and stored, many of them are never used in the process of a criminal trial.
35. Under section 4 an image of physical evidence would be, unless the court otherwise directs, treated for evidential purposes in criminal proceedings as if it were the physical evidence itself.
36. This could significantly reduce the need for storing and transporting unnecessary productions of any size, and mean DESC could be used to its fullest potential by all justice partners.

#### **Section 5 - Authentication of electronic copy documents**

37. In addition, section 5 the Bill also seeks to modernise current legislation on the use of copy documents in criminal cases to make full use of the advent of new digital technologies such as DESC.
38. Schedule 8, which has effect by way of section 279 of the 1995 Act, applies to both copy documents and business records. Before the Schedule 8 provisions were introduced it was necessary to lead the author of any document as a witness in a trial, to prove the veracity of its content.
39. Paragraph 1 of Schedule 8 provides that, for the purposes of criminal proceedings a copy of, or of a material part of, a document purporting to be authenticated in such manner and by such person as may be prescribed, shall unless the court otherwise directs be: deemed a true copy; and treated for evidential purposes as if it were the document, or the material part, itself, whether or not the document is still in existence. For example, when evidence is required of medical records, most hospitals would not wish to relinquish the original medical records and would instead produce a copy of them. In that case the copy of the records, together with an attached physical certificate of authentication, is thereafter treated as being equivalent to the original file.
40. New section 1A proposes that where a copy document is stored on the digital evidence storage system (which will also now be defined in 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. This means there is no need for separate physical certificates to be added or signed because all the necessary information is available from the internal audit trail in DESC.
41. This maximises the use of existing and potential future digital technologies and gives courts more discretion in relation to acceptance of copies of physical

documents. Removing the requirement of certification for files transferred to DESC is likely to make the management of evidence more efficient and streamlined.

### **Conclusion on part one of the bill**

42. COPFS supports the provisions set out in part one of this Bill and would work constructively with partner agencies to implement the additional new changes.
43. The roll out of new technology in the criminal justice system brings with it the benefits of increased productivity and efficiency savings in terms of time for staffing across the sector, from prosecutors, police officers and court staff. This will allow colleagues to dedicate more time to processing the increased number of cases within the system, improving journey times and offering improved services to victims and witnesses. Without the retention of the temporary provisions productivity and efficiency created over the last four years is likely to be lost
44. The retention of already embedded practice in terms of the electronic signing and transmission of documents, virtual attendance and national custody courts only complement the use and advantages of digital improvements.
45. The modernisation of the law is critical to take full advantage of these improvements of new technology and modern practice.
46. Undoing the practices which are now embedded will also come at a financial cost, in terms of the re-training of staff, increased printing services, the use of police officers to hand deliver citations to accused and witnesses and the increased transport of prisoners for short procedural hearings in court.
47. The introduction of BWV later in 2025 provides another, significant opportunity to improve the experiences for victims and witnesses when considered alongside other advances such as the use of DESC. It also builds on the success of the [summary case management pilot](#), where cases are front loaded to effect early disclosure, with a view to earlier resolution in cases.
48. It is hoped these measures can help to deliver a modern and more productive criminal justice system to serve the public.

### **COPFS Submissions Part 2 - Domestic Homicide and Suicide Reviews**

49. COPFS is supportive in principle of domestic homicide reviews and has been committed to working with SG and stakeholder partners to develop a model. COPFS is represented on the multi-agency Domestic Homicide Review Taskforce and several of the associated work strands that are engaged in developing the Domestic Homicide and Suicide Review (DHSR) model.

### **Criteria and Scope of DHSR**

50. The purpose of a Domestic Homicide Suicide Review is to identify what lessons can be learned and potentially applied following a domestic death in order to help prevent future domestic abuse, deaths and homicides. The importance of this preventative work cannot be underestimated whilst recognising that conducting a DHSR must be undertaken with recognition of the potential for a DHSR enquiry or the timing of publication of any resulting DHSR report to prejudice an ongoing criminal investigation, prosecution or deaths investigation.
51. The criteria for the inclusion of a death within the scope of DHSR is a matter for Scottish Government and ultimately the Scottish Parliament and it is recognised that the existing criteria include child deaths and deaths by suicide.
52. COPFS have concerns that the scope of categories of deaths to be included in DHSRs is too wide and may result in unintended risks to the definition and tackling of domestic abuse in Scotland.
53. The definition of domestic abuse in Scotland, in terms of its limitation to (ex)partners and child aggravations, is applauded globally as the “gold standard.” It is recognised, worldwide, that Scotland’s law acknowledges the unique dynamic of abusive offending between those in an intimate partner relationship and the impact of that abuse on children.
54. The Bill, as currently drafted, extends the definition of “domestic deaths” to circumstances where there may be no abusive behaviour directed against a partner or ex-partner but where it is directed solely against the child of a partner or ex-partner, regardless of that child’s age or against a young person who is a member of a household regardless of any familial relationship.
55. This definition is extended to the inclusion of death by suicide and will similarly include the suicide of an individual of any age who suffered abusive behaviour at any point by a partner or ex-partner of a parent in circumstances where no currently recognised inter partner abuse occurred. This is a significant extension of the definition of domestic abuse with the inclusion of parental abuse towards individuals who are both children and adults.
56. The inclusion of these circumstances as being statutorily defined as “domestic deaths” will result in different definitions applying to victims of domestic abuse dependant on whether or not the victims subsequently died as a result of homicide or suicide as opposed to having suffered injury short of death.
57. It is also submitted that, under the existing internationally envied definition of domestic abuse, formal justice and support agencies do not currently recognise those wider categories in their operational and policy approach to tackling domestic abuse and so the learning that can be identified in DHSR of these wider categories of deaths would not fit within the work being undertaken by these agencies in tackling domestic abuse.

58. It is recognised that the circumstances of these wider deaths may benefit from consideration of a homicide or suicide review, but it is inappropriate to include these under the auspices of a “domestic” review. By way of example, there is currently a system of Learning Reviews in place in Scotland whereby Child Protection Committees (CPCs) examine the circumstances of a child being harmed or killed to evaluate the quality of professional contact with the child, identify any system failures, and learn any relevant lessons.
59. Similarly, there are concerns over the proposals within the Bill to enable the criteria of DHSR to be extended in the future by Scottish Government. The Policy memorandum refers to potential expansion to family members and “near death” attacks. It is noted that other jurisdictions include these categories under their models of domestic homicide reviews, but such inclusion is reflective of the much wider definition of “domestic abuse or violence” adopted by these jurisdictions and do not reflect the accepted definition in Scotland.
60. It is proposed that the criteria and definition of what qualifies as a “domestic death” that would result in consideration of the undertaking of a DHSR should be aligned to the existing definition of “domestic abuse” in Scotland as involving abusive offending between those in an intimate partner relationship.
61. The inclusion of child deaths can be appropriately accommodated within a DHSR model that reflects the existing definition of domestic abuse within Scotland standing the definition contained within the Domestic Abuse (Scotland) Act 2018 that recognised the impact of domestic abuse on children through the introduction of the aggravation within section 5 of that legislation.
62. It is submitted that extending the application of DHSR to child deaths where the child is a child of a recognised “domestic” relationship and where that child’s relationship would constitute an aggravation under section 5 in a criminal prosecution. This would allow a DHSR to be undertaken within the existing definition of domestic abuse in Scotland.
63. COPFS recognises that there are occasions where domestic abuse by one individual against a partner or ex-partner may be a contributing factor to a death by suicide but consider that the inclusion of deaths as a result of a suicide within the scope of DHSRs would be appropriate only in circumstances where there exists inter-partner abuse, within the existing definition, and where there is identifiable causation surrounding the recency of abuse and the taking of life.
64. It is considered that the existing proposals create too wide a category that would fall to be considered by a DHSR following a death by suicide due to the expanded definition of “domestic deaths” within the legislation. The inclusion of suicides within the scope of a DHSR should therefore be subject to a requirement for the meeting of clear and defined criteria that identify the existence of inter-partner abuse and in relation to causation surrounding recency of abuse and the taking of life.

## **Interaction between DHSR and Other Agencies and Proceedings**

65. As indicated the relationship between DHSR and other proceedings are intertwined and it is important that DHSRs do not prejudice or interfere with any criminal investigations, criminal proceedings or the conduct of any Fatal Accident Inquiries.
66. The provisions within the Bill relating to the requirement for a protocol to regulate these matters is therefore welcomed by COPFS along with the intention for there to be clear guidance in relation to the sharing by the oversight committee and DHSR panels with Police Scotland of any relevant information identified during the conduct of reviews.
67. COPFS also welcome the provision that allows the Lord Advocate to pause or discontinue any DHSR to enable the undertaking of an investigation for the conclusion of proceedings or an Inquiry.
68. In relation to the provisions surrounding the requirement for individuals to co-operate with a DHSR and to provide information, COPFS are to raise with Scottish Government the necessity to include provisions relating to the operation of these requirements for COPFS staff.
69. It is submitted that it would be appropriate to include within the Bill similar provisions to the provisions within section 12 of the Victims Witnesses and Justice Reform (Scotland) Bill which govern the requirement of representatives of the Crown Office and Procurator Fiscal Service to co-operate with and provide information to the Victims Commissioner.

## **List of Annexes for part one**

**Annex 1** - Remote Evidence - Guidance for Professional Witness V1

**Annex 2** - Lord Advocates letter to the Criminal Justice Committee dated 30 October 2024.

## **Annex 1**

### **GUIDANCE FOR GIVING EVIDENCE IN A VIRTUAL SETTING**

#### **Introduction**

The remote provision of evidence by witnesses, including Police and Professional witnesses is now an option for the courts to consider. This means that a witness involved in the case will participate from a location that is remote to the court.

#### **How notified?**

Professional witnesses will be notified of a virtual trial by a citation in the normal manner.

A link will be emailed to the professional witness by the administrative team in the high court.

### **PREPARATION**

#### **Mobile phones/Smart Watches/Other devices**

Any digital or battery operated device that is likely to beep, ping, vibrate or emit a noise of any sort must remain switched off at all times while giving evidence. This includes items such as mobile phones, smart watches, step counters etc.

#### **Headphones**

If you have headphones it is advisable to use these as this stops interference which can impact you giving evidence.

#### **Appearance**

When attending a virtual court professional attire should be worn as if attending the court room personally.

In order to minimise noise interference, windows in the room may need to remain closed during court proceedings.

Witnesses should sit smartly, without slouching forward or back in their seat. They should remain seated where possible for the duration of their evidence.

If the witness needs glasses, please ensure you have them available.

## GIVING EVIDENCE

### Standards

When cited to attend any court, witnesses must make suitable preparations so that their evidence is accurate, professional and can withstand scrutiny.

Witnesses must be prepared and know the details of their case. They should consider what questions might I be asked?

There is a common misconception that the PF will lead witnesses through their evidence/statement. This is not always the case and should never be presumed. Witnesses must be prepared to lead their own evidence and go off script if required.

While giving evidence, **THE WITNESS MUST BE THE ONLY PERSON IN THE ROOM.**

Once a witness has commenced or has completed giving their evidence in a trial, **THEY MUST NEVER DISCUSS THE DETAILS OF THE CASE OR THEIR EXPERIENCE AS A WITNESS IN THE CASE WITH ANY OTHER PERSON UNTIL THE TRIAL HAS FULLY CONCLUDED.**

### Reasonable adjustments

If a Witness has an impairment or disability that requires a reasonable adjustment to support them to participate in a virtual setting, if they wish to do so, they should flag this as soon as possible to the Procurator Fiscal running the case allowing COPFS/SCTS time to ensure that any support/adjustments can be provided where possible.

## Annex 2 – Letter from the Lord Advocate to the Criminal Justice Committee

### FISCAL FINES

As you are aware, I have committed to providing updates to the Committee on the operation of fiscal fines under the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (the “2022 Act”). These updates have most recently been provided every 6 months.

Fiscal fines, compensation orders and combined fiscal fines and compensation orders, (“combined offers”) are made available to prosecutors by Parliament as one of a suite of direct measures (including for example fiscal work offers). These direct measures are designed to enable prosecutors to deal efficiently and proportionately with uncontested cases i.e., those cases where the accused accepts their involvement in the alleged offending. In such cases, there would not likely be a trial and the direct measure allows the case to be dealt with promptly without the unnecessary use of resources or for example, the need to cite witnesses.

Where prosecutors consider that an outcome only available to the Court following a conviction is required, they will not offer a direct measure but will commence court proceedings. An example would be a non-harassment order.

COPFS officials have produced an updated indicative analysis of relevant marking decisions for cases reported between 1 April 2020 and 31 March 2024 where the offer of either a fiscal fine or a combined offer was made.

**Key Points:**

- Between 1 April 2020 and 30 September 2024, **727,634** individuals were reported to COPFS.
- 230,722 individuals received a first marking action for a direct measure.
- 67,233 or approximately 29% of those individuals were offered either a fiscal fine or a combined offer.
- 2% of the fiscal fines or combined offers were above the previous scale maximum of £300.

**Fiscal Fine data-set April 2020 – September 2024**

- 50,470 or approximately 22% of those individuals who received a first action marking for a direct measure, were offered a fiscal fine.
- 178 those individuals were issued with a fine under the old scale and 50,292 of those individuals were issued with a fine under the new scale with effect from 7 April 2020.
- 1,040, individuals, approximately 2% of the fines issued were above the previous scale maximum of £300.
- 243 individuals were issued a Fiscal Fine of £500.

**Combined Offers data-set April 2020 – September 2024**

- 16,763 or approximately 7% of those individuals who received a first action marking for a direct measure, were issued with a combined offer.
- 18 of those individuals were issued with a combined offer under the old scale and 16,745 of those individuals were issued with a combined offer under the new scale.
- 44 individuals, less than 0.5% of the combined offers issued were above the previous scale maximum of £300.



### Impact of the Revised Fiscal Fine Scale on Court Numbers

Since implementation of the revised scale on 7 April 2020, on average, 2% of individuals offered a fiscal fine and less than 0.5% of individuals offered a combined offer have been issued with a fine amount between £300 and £500. Previous COPFS analysis of Justice of the Peace court disposal data is that approximately 4% of relevant cases were formerly disposed of with a fine amount between £300 and £500.

These statistics demonstrate that prosecutors have not responded to the revised scale by simply increasing the fine amount in individual cases which would previously have been dealt with by way of fiscal fine but have reserved the use of the highest level of fiscal fines to appropriate cases.

#### Further information

I am very happy to consider any additional requests the Committee have for information on the use of fiscal fines.

It may be helpful for members to have sight of the COPFS [Case processing statistics 2019 to 2024 which](#) are updated annually and which provides some context for the use of financial direct measures compared to other options available to the Procurator Fiscal. Those statistics are published on the COPFS website, but I have attached a copy for the convenience of Committee Members.

The Committee may also wish for example to see the note that for 2023- 2024, the most common (top 10) offence types for which a first marking of a fiscal fine was issued, is as follows:

Scottish Government Classification	Total charges
Drugs - Possession	2,872
Unlawful use of vehicle	2,038
Threatening and abusive behaviour	1,626
Shoplifting	1,240
Community and public order offences	547
Common assault	538
Drunkenness and other disorderly conduct	420
Crimes against public justice	402
Other theft	271
Vandalism	174

#### Further updates

If the revised scale is not extended beyond 30 November 2024, I would be grateful if the Committee could confirm whether members still wish to receive these updates.

## Scottish Courts and Tribunals Service

### Q1: Electronic signing and sending of documents

Section 1 of the Bill proposes to make permanent the temporary changes in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 allowing for the electronic signing and sending of documents in criminal cases.

What are your views on this proposal?

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The SCTS is fully supportive of these provisions being made permanent.

The provisions were widely used during the pandemic and contributed positively to the way the justice sector has continued to perform post pandemic, modernising the way we work.

The provisions are currently being used to allow electronic transmission of documents in a number of areas.

For example –

- In the High Court, all indictments are received electronically and warrants are submitted electronically to the prison service
- In some cases, COPFS send summary complaints in electronic form to courts
- Vulnerable witness and procedural applications are lodged by prosecutors electronically
- Fines Enforcement Officers use the provisions to make electronic applications for a range of orders
- Search warrants can be submitted and signed electronically creating a much more efficient and secure process

Any potential reversal of the progress made to date would be contrary to the direction of travel in the wider digital reforms within the justice sector in Scotland.

### Q2: Virtual attendance at a criminal court

Section 2 of the Bill proposes to make permanent the temporary changes in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 enabling any participant in criminal proceedings to take part in some proceedings by way of live visual (television) or audio (telephone) link, from any location.

Under the proposals, it would remain the default position that people attend court in person, but the court can overrule this default and direct someone to attend court by virtual means – subject to what is in the interests of justice, and taking account of any representations received. The exception is for a public official (in practice, police officers or prosecutors seeking warrants or court orders, where the proceedings have not been intimated to anyone else) where the default is virtual attendance.

What are your views on this proposal?

The SCTS fully supports this proposal which provides flexibility in how courts can conduct business. Making the provisions permanent is essential to enable fully virtual or hybrid hearings to take place.

The benefits include, but are not limited to:

- 1). Legal practitioners being able to conduct business in more than one location on a daily basis (see further point 6 below).
- 2). Reducing the movement of large numbers of individuals from police/ prison custody to the courts for what are frequently and essentially very short custody or procedural hearings.
- 3). Supporting a trauma informed approach whereby a complainer/ witness may participate in proceedings in a separate building.
- 4). Reducing the risks of transporting certain persons from custody to court - for example (alleged) terrorism offences. This reduces risk from a security perspective for these matters, which may also benefit other justice partners such as Police Scotland and the custody contract provider.
- 5). Enabling the remote balloting of jurors, whereby jurors can initially answer their citations by remote attendance until the ballot is completed. This has been a key change in the day to day operation of the solemn courts and has been seen as a positive step by members of the public as it reduces repeated physical attendances at court and also reduces juror costs. This can also be of benefit to those in more rural areas, where jurors no longer have to make lengthy journeys to court for the ballot when they may not be required.
- 6). Supporting the use of fully virtual preliminary hearings in the High Court of Justiciary. These virtual hearings are now the default format and have allowed extensive flexibility, with legal professionals now having the ability to join these virtual hearings before conducting substantive business/trials in other locations across the country.
- 7). Enabling the remote attendance of jurors over the pandemic which allowed jurors to attend jury centres was key to the SCTS being able to conduct solemn business and work towards recovery while COVID restrictions were in place. The permanency of these provisions is essential to allow the remaining remote jury centre operating in the High Court of Justiciary to continue to operate. They also provide the ability to make use of remote centres to support future needs and as a contingency for any future health crisis or pandemic.
- 8). Allowing the remote attendance of professional witnesses. The permanency of these provisions will allow the pilot currently being trialled in the High Court of Justiciary to continue and will be essential in taking forward the SCTS's ambition to expand this initiative in the sheriff courts in the future. The pilot has reduced the

number of professional witnesses having to physically attend trials in the High Court to give their evidence.

Since January 2022 more than 952 police officers and more than 371 expert witnesses have provided evidence remotely to the High Court of Justiciary.

9). Dealing with search warrants/ other urgent applications virtually- the provisions have improved flexibility and enabled applications for search warrants to be applied for in particular out of hours without the need for a police officer to attend at a sheriff's home address. This process is far more efficient for all concerned.

10) Enabling virtual custodies – the provisions allow accused persons to appear at court virtually. Although a full virtual custody model is not in use, accused do currently appear virtually from a PCU under certain circumstances such as where there is a risk to public health due to illness.

### **Q3: Digital productions**

Section 4 of the Bill aims to change the law in order to allow an image (such as a scan, photograph or video) of a physical item (such as a knife) to be received in evidence in lieu of the item, without objection on the basis that the original item has not been produced to the court. The image should be treated as the equivalent of the actual production itself.

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What are your views on this proposal?

The SCTS is fully supportive of this proposal. This provision supports modernisation of how productions and evidence is gathered in the criminal justice system and supports the use of systems such as the Digital Evidence Sharing Capability (DESC). Digital Evidence Sharing Capability ("DESC").

DESC seeks to allow for earlier consideration and disclosure of evidence and it is hoped it will lead to quicker resolution of cases and potentially fewer trials, improving the experiences of victims, witnesses and the accused.

It also provides a more secure method for the transmission of evidence.

The pre-recorded evidence from the recordings made during Evidence by Commissioner hearings can be uploaded to DESC so that they can be shared with the prosecution and defence in advance of the trial. This allows for more time for preparation of evidence ahead of a trial which should ensure the trial runs more smoothly.

The use of digital productions, for example, through systems such as DESC support the on-going Summary Case Management (SCM) pilot through early disclosure. The

SCM pilot aims to reduce the number of cases set down for trial unnecessarily. It is hoped it will lead to quicker resolution of cases and potentially fewer trials, improving

the experiences of victims, witnesses and the accused. The final evaluation [report](#) published in September 2024 demonstrates some of the benefits and successes in the initial pilot courts.

We are of the view that these technological improvements overall will increase efficiency and public confidence in the justice system.

**Q4: Modernisation of law on copy documents**

Section 5 of the Bill aims to update existing requirements which govern how copy documents should be authenticated. It recognises that these rules must accommodate the wide definition of ‘document’ (which can include media or devices on which sound or other data are recorded).

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What are your views on this proposal?

The SCTS has no view on this proposal.

**Q5: Fiscal fines**

Section 6 of the Bill seeks to make permanent the nine point scale of fiscal fines ranging from £50 to £500 currently in place through the operation of the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

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What are your views on this proposal?

Fiscal fines are a credible alternative to court prosecution and we would support provisions that extend their use,

The use of these fiscal fines contributes to ensuring that only those cases that genuinely require a judicial intervention are routed through the prosecution/court process making the system more resilient to deal with fluctuations in demand (for example from seasonal/targeted campaigns/policy).

**Q6: National jurisdiction for callings from custody**

Section 7 seeks to make permanent the temporary measures in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 that where a person appears in court for the first time from police custody in criminal proceedings, the calling of the case may be taken in any sheriff court in Scotland, no matter where the alleged offence took place.

They also allow a sheriff court that has taken on the initial calling of a case to continue dealing with it up until a not guilty plea is tendered (or until full committal in more serious cases, known as solemn proceedings).

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What are your views on this proposal?

The SCTS is supportive of this proposal.

These provisions allow a degree of flexibility for occasions where there is a need to manage unexpected or emergency situations. For example, they allow business to call in another court where a court requires to close due to severe weather or any other unexpected event.

The alternative is that courts would have had to go through the process of transferring cases which would be burdensome (hearing etc. unless on joint motion) or a direction would need to be sought from the Sheriff Principal for each diet of the court.

These provisions are also used to facilitate courts where a public holiday may impact on the normal sitting day in some sheriffdoms, allowing a limited number of courts covering more than one court jurisdiction to convene. These provisions also support compliance with the European Court of Human Rights legislation to ensure matters are heard on charges within certain time frames.

The provisions could help reduce pressures on other justice partners, by improving flexibility on where a case can call. For example, appearances in relation to warrants granted in different courts can be heard in one location rather than transporting the accused to multiple courts allowing a trauma informed approach given journeys can be lengthy.

This provision would also allow for any future modernisation of custody matters such as a virtual custody model, if this was to be taken forward at a later date.

### **Q7: Domestic homicide and suicide reviews**

What are your views on the proposal in the Bill to create a model for domestic homicide and suicide reviews?

For example:

- Do you have any comments on the proposed circumstances set out in the Bill in which a review could be carried out?
- Do you have any comments on the proposed arrangements for undertaking domestic homicide and suicide reviews?

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Do you have any other comments you wish to make on the proposals?

The SCTS has no further comments to make.

**Q8. Do you have any other comments on the Bill which you have not already covered elsewhere?**

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The SCTS has no further comments to make.

**Q9. Are there any other proposals which have not been included in the Bill which you think should be? These should be proposals which are on the same general subject matter of the proposals currently in the Bill.**

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The SCTS has no further comments to make.

## Police Scotland

### Q1: Electronic signing and sending of documents

**Section 1 of the Bill proposes to make permanent the temporary changes in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 allowing for the electronic signing and sending of documents in criminal cases.**

#### What are your views on this proposal?

The Police Service of Scotland is supportive of this proposal.

The provisions set out in Chapter 1, Part 1 of the Schedule of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (“the 2022 Act”) have proved to be positive innovations for the Police Service of Scotland (“PS”). Particularly in the following areas:

1. **Citation of witnesses** - Extended use of electronic means provides a more efficient, responsive, justice system; reducing police officers time spent travelling to achieve the same outcome and allowing them to return to other duties, more quickly.
2. **Warrants** - the ability for officers to apply for and be granted a search warrant without the need to travel reduces the time officers are abstracted from an investigation.

Whilst it was necessary to update the PS IT systems to allow for these new provisions, now that those updates have been made, there would be significant operational benefits for PS in having the provisions in Chapter 1 of Part 1 of the Schedule of the 2022 Act continue.

PS would be happy to participate and input to future discussions with SG and partners on how the proposed innovations in this area could best be implemented operationally; and what additional funding and infrastructure changes may be needed to make this possible, long term.

### Q2: Virtual attendance at a criminal court

**Section 2 of the Bill proposes to make permanent the temporary changes in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 enabling any participant in criminal proceedings to take part in some proceedings by way of live visual (television) or audio (telephone) link, from any location.**

Under the proposals, it would remain the default position that people attend court in person, but the court can overrule this default and direct someone to attend court by virtual means – subject to what is in the interests of justice, and taking account of any representations received. The exception is for a public official (in practice, police officers or prosecutors seeking warrants or court



**orders, where the proceedings have not been intimated to anyone else) where the default is virtual attendance.**

**What are your views on this proposal?**

PS is fully supportive of this proposal. However, as presently drafted, PS is concerned the proposal may give rise to an unrealistic expectation that it will always be practicably possible for PS to facilitate virtual attendance by a police custody or a police witness, whenever the court directs this should happen.

Under this proposal, the forums and circumstances in which virtual attendance is possible is to be determined by the judiciary, on a case-by-case basis. Quite properly, the possible negative impact on police resource and budget is not a factor the court is to consider when deciding whether participation by electronic means is appropriate. However, this could result in circumstances arising where the court determines it is appropriate for accused and police witnesses to attend virtually, but it is not practicable for this to happen because the operating model, budget and or infrastructure doesn't allow for it.

In terms of the police budget for 2025-26, PS couldn't support any increase in current use of virtual attendance for police custodies or witnesses, without compromising service delivery elsewhere. Under current arrangements, virtual attendance from a police custody unit is utilised on average twice a month, nationally. Availability of evidence giving rooms across PS estate means that, presently, it is only practicably possible for police witnesses to give evidence virtually in around 40% of High Court cases. To maintain operational effectiveness and facilitate any increased use of virtual attendance in terms of this proposal, PS would require substantial additional funding from SG.

Ensuring adequate funding for 'virtual court' ("VC") infrastructure, including custody suite upgrades and IT systems, will be critical not only to the long-term success of this proposal, but also to the proposal on 'national jurisdiction', and the wider reforms and modernisation of the criminal justice system the Bill is designed to deliver in future.

PS would welcome the opportunity to discuss with SG and partners their plans and proposals for implementing virtual attendance of accused and witnesses on a permanent basis and how existing barriers to successful implementation of this innovation might be overcome before this provision comes into force in or around 1 December 2025.

**Q3: Digital productions**

**Section 4 of the Bill aims to change the law in order to allow an image (such as a scan, photograph or video) of a physical item (such as a knife) to be received in evidence in lieu of the item, without objection on the basis that the original item has not been produced to the court. The image should be treated as the equivalent of the actual production itself.**

**What are your views on this proposal?**

PS is supportive of any proposal aimed at maximising use of technology to provide swifter access to justice.

However, there is a cost of developing and implementing the ‘mutually agreed retention, archiving and deletion policies’ (see paragraph 73 of the Financial Memoranda to the Bill) necessary to give this proposal operational effect.

PS would be supportive of further discussions taking place on this question between and among representatives of affected stakeholders, criminal justice partners, and SG to “road test” this proposal, what it might mean, and when and how it should best be introduced, from a practical and operational standpoint.

**Q4: Modernisation of law on copy documents**

**Section 5 of the Bill aims to update existing requirements which govern how copy documents should be authenticated. It recognises that these rules must accommodate the wide definition of ‘document’ (which can include media or devices on which sound or other data are recorded).**

**What are your views on this proposal?**

PS has no view on this proposal.

**Q5: Fiscal fines**

**Section 6 of the Bill seeks to make permanent the nine point scale of fiscal fines ranging from £50 to £500 currently in place through the operation of the Coronavirus (Recovery and Reform) (Scotland) Act 2022.**

**What are your views on this proposal?**

PS has no view on this proposal.

**Q6: National jurisdiction for callings from custody**

**Section 7 seeks to make permanent the temporary measures in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 that where a person appears in court for the first time from police custody in criminal proceedings, the calling of the case may be taken in any sheriff court in Scotland, no matter where the alleged offence took place.**

**They also allow a sheriff court that has taken on the initial calling of a case to continue dealing with it up until a not guilty plea is tendered (or until full committal in more serious cases, known as solemn proceedings).**

**What are your views on this proposal?**

PS is supportive of any measures that safeguard individual's Art 5 rights, by reducing the time officially accused persons spend in custody before being brought before a court.

Under current arrangements, national jurisdiction for callings from custody (particularly with regards to appearance on certain warrants) hasn't had the impact hoped for. This seems to be due largely to administrative issues and logistical hurdles that partners, to date, haven't been able to overcome – notwithstanding the potential benefits of national jurisdiction are recognised by all.

Based upon use of national jurisdiction under the current arrangements, it seems clear that ensuring adequate funding for VC infrastructure, including custody suite upgrades and IT systems, will be critical to the long-term success of this proposal.

PS would welcome further engagement with affected partners and SG to discuss how existing operational barriers might be overcome to make national jurisdiction possible in the short- and longer term.

## **Part 2 of the Bill**

### **Domestic homicide and suicide reviews**

**Part 2 of the Bill proposes to create a model for domestic homicide and suicide reviews.**

**Part 2 includes the definition and scope of a domestic homicide or domestic suicide review.**

**Section 9 of the Bill states that a domestic homicide or suicide review is:**

- **a review of the circumstances in which a domestic abuse death, or a connected death of a young person, occurred; and**
- **which is held with a view to identifying the lessons to be learned from the death and the circumstances leading up to it.**
- 

**The definition of a 'domestic abuse death' covers the following types of situation where a death is, or may have been, associated with abusive behaviour:**

- **an abuser kills a partner/ex-partner;**
- **an abuser kills their own child, or a child of their partner/ex-partner (including children who are now adults);**
- **an abuser kills a young person who is living in the same household as the abuser or the abuser's partner/ex-partner, but is not covered by the previous category;**
- **domestic abuse related suicide (e.g. where a person felt driven to suicide by an abusive relationship); and**
- **a victim of domestic abuse killing their abusive partner/ex-partner**

**The measures in Part 2 of the Bill include:**

- **provision to establish a Review Oversight Committee and Case Review Panels;**

- **provisions requiring the Review Oversight Committee to be notified of any death which is thought to meet the review criteria;**
- **provisions to ensure a review does not prejudice any other live investigation or proceedings;**
- **provisions to ensure co-operation, participation, and recovery of information; and**
- **reporting requirements**

**Members of the Review Oversight Committee would be appointed by the Scottish Government, which would need to ensure that the Committee includes representatives of relevant voluntary organisations.**

**Where the Review Oversight Committee decides that a review should be held, it would establish a Case Review Panel to carry out the work. Following its review, the Panel would produce a report for consideration by the Committee. The report would cover various issues, including whether opportunities to safeguard or promote the well-being of affected people were missed, and any recommendations.**

#### **Q7: Domestic homicide and suicide reviews**

**What are your views on the proposal in the Bill to create a model for domestic homicide and suicide reviews?**

**For example:**

- **Do you have any comments on the proposed circumstances set out in the Bill in which a review could be carried out?**
- **Do you have any comments on the proposed arrangements for undertaking domestic homicide and suicide reviews?**
- **Do you have any other comments you wish to make on the proposals?**

As a general proposition, PS fully supports the development and introduction of a multi-agency system of review to identify learnings and adapt practice following a 'domestic abuse death'.

In terms of the current proposal, PS has some concerns about the proposed circumstances in which a review could be carried out, and the proposed arrangements for undertaking domestic homicide and suicide reviews. In particular, how the inclusion of 'domestic suicides' in the proposed model is to work from an operational perspective.

In response to earlier consultation, PS internal stakeholders were unanimous that were 'domestic suicides' to be included from the outset, the legislation should make plain the need for a 'clear link' between the suicide and the related domestic abuse before the death could be subject of review under the model. However, in terms of this proposal, a review could be conducted into a suicide where domestic abuse 'may be a contributing factor'. As presently drafted, the scope of the model is so wide that it may prove unaffordable and therefore unsustainable for PS, based upon current

budget, available resource, and other operational demands, to participate in all reviews without compromising service delivery elsewhere. This would defeat the purpose of the model and, since section 20 places a duty on the Chief Constable to cooperate, be reputationally damaging for PS and partners.

It may be that some or all of PS' concerns will be addressed in the protocol it is proposed should be drawn up relative to the interaction between reviews and criminal proceedings. However, at this stage, PS is concerned that the practicalities of giving effect to the proposals from an operational perspective have not been entirely thought through – particularly against a background where the Bill's financial memorandum fails to provide any analysis of the costs to PS of implementing the provisions set out in Part 2.

PS would welcome further engagement with affected partners and SG to discuss how existing operational barriers might be overcome before this provision is enacted and brought into force.

**Q8. Do you have any other comments on the Bill which you have not already covered elsewhere?**

PS is fully supportive of the Bill's objectives, in principle. However, some of the criminal justice reforms proposed in Part 1 of the Bill, and the new system of review proposed in Part 2, would require to be implemented by PS alongside and at the same time as other criminal justice 'transformation' programmes currently in train, all of which remain unfunded. Those projects include the development of the 'Trauma Informed Domestic Abuse Model' Pilot in Aberdeen, as well as the national rollout of 'Summary Case Management'. It is not immediately clear to PS that the Bill, as presently drafted, has considered any of this ongoing transformation work, the functionality and capacity of existing digital platforms, or the impact of the provisions on the PS estate, budget, and resource.

The urgency surrounding the passage of this Bill is to ensure the temporary justice provisions that have proved useful innovations can continue after the 2022 Act ceases to have effect in November 2025. PS is fully supportive of these provisions being made permanent. To ensure this primary objective can be achieved, the Bill's main focus needs to be identifying the temporary justice measures that are essential to the daily operation of the criminal justice system, and amending the Criminal Procedure (Scotland) Act 1995 to ensure those measures can continue past 30 November 2024, and on a permanent footing.

In relation to Part 2 of the Bill, PS' internal experts have some concerns that such important provisions appear to have been 'tacked' onto the end of a largely unrelated Bill, for reasons of expediency. In PS' respectful submission these provisions require further discussion, in longer time, to ensure that they can be given practical and administrative effect, upon enactment. There are other recent examples of Bills enacted but not brought into force because the provisions of the Bill were only discovered not to be practicable operationally, after the Bill was passed. The objective and aims of these provisions are, in PS respectful submission, too important to PS,

partners and, most importantly, victims of domestic abuse, for Part 2 to suffer a similar fate.

PS would welcome further engagement with SG and affected partners to ensure that the provisions proposed to be enacted and or brought into force on or around 1 December 2025 are appropriately funded and capable of being given operational effect, before the Bill is passed.

**Q9. Are there any other proposals which have not been included in the Bill which you think should be? These should be proposals which are on the same general subject matter of the proposals currently in the Bill.**

No

## Professor John Devaney

Thank you for the opportunity to present evidence in relation to the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill. I am a professionally qualified social worker, and currently hold the position of Centenary Chair of Social Work at the University of Edinburgh. I have undertaken research related to domestic abuse and child maltreatment for over 20 years, published three books on domestic abuse, and over one hundred other relevant publications. I have provided expert advice on domestic abuse policy and practice to a range of governments internationally, and the European Commission. In addition, I chaired the child death review arrangements for the Safeguarding Board for Northern Ireland between 2012-2016 as an appointee of the Northern Ireland Minister of Health. More recently, I was a member of the working group on misogyny and criminal justice, chaired by Dame Helena Kennedy, and currently I am member of the Scottish Government's Domestic Homicide and Suicide Review Taskforce and chair the Domestic Homicide Review Model Development Subgroup. I currently convene an international network of 125 researchers, practitioners and policy makers from over twenty countries on the issue of domestic abuse related homicides and suicides, and have undertaken the UK's first study on the impact on children of parental intimate partner homicide.

Internationally, many jurisdictions have introduced, or are considering introducing systems to facilitate the review of deaths as a consequence of domestic abuse. While the systems and processes can differ between jurisdictions, the common aim is to foster reflection, rather than blame, and to identify how the death of an individual or individuals can generate learning to strengthen future prevention and response efforts. Such review systems need to garner the support of a range of stakeholders, including surviving family members, professionals who may have been involved with the deceased, organisations working with victims and perpetrators of domestic abuse, let alone the general public, politicians and the media. Both the review system, and the reviews of individual cases must strive to instill a confidence in the outcome of individual reviews, and the legitimacy of the process.

In England, Northern Ireland and Wales, where processes for reviewing domestic abuse related homicides and suicides already exist, the purpose of a review is to:

- a) establish what lessons are to be learned from the domestic homicide or suicide regarding the way in which local professionals and organisations work individually and together to safeguard victims;
- b) identify clearly what those lessons are both within and between agencies, how and within what timescales they will be acted on, and what is expected to change as a result;
- c) apply these lessons to service responses including changes to inform national and local policies and procedures as appropriate;
- d) prevent future instances of domestic abuse and homicide, and improve service responses for all adult and child victims of domestic abuse by

- developing a co-ordinated multi-agency approach to ensure that domestic abuse is identified and responded to effectively at the earliest opportunity;
- e) contribute to a better understanding of the nature of domestic violence and abuse; and
- f) to highlight good practice that can inform future policy and practice.

The purpose of a review is to identify the timeline and sequence of events leading up to the homicide or suicide; along with an understanding of the involvement, or lack of involvement of key agencies and practitioners with the victim(s) and other professionals; whether their actions might have altered the course of events; and finally, to gain insight into the everyday experiences of victims leading up to their death.

Introducing a system to review domestic abuse related deaths should be informed by a clear set of principles:

- *centered on the experiences and needs of the deceased and ancillary victims*, such as their bereaved children. We know very little about what happens to a child when a parent dies as a result of domestic abuse, particularly if the child's other parent is responsible.
- *trauma-informed*, to reduce the likelihood of the review causing further pain for family members and involved professionals.
- *transparent*, so that family members and the wider community can have confidence in the review's conclusions.
- *inclusive* of the range of situations and individuals who die as a result of domestic abuse, and the perspective of family members, and professionals involved with the deceased or the accused.
- *domestic abuse competent* given the nature and dynamics of gender-based violence.
- *evidence informed*, to ensure that the process, and individual reviews are based on the current best available knowledge about the dynamics of domestic abuse, and how best to undertake comprehensive and meaningful reviews.
- *learning and action orientated* as there are already a host of processes to hold organisations and individual practitioners accountable for their actions or non-actions. The review process should be focused on identifying and implementing learning to improve the response to victims of domestic abuse.
- 

A key learning from other jurisdictions has been the importance of the review's terms of reference, including the timeframe of specific interest. Too many reviews have had unspecific terms of reference that have meant the review has become unfocused, or is looking at matters that are not pertinent to the death under review. As such, the learning that could be identified can be lost without a clear focus, and any recommendations will lack credibility if readers cannot see the necessity for any recommendations from the analysis undertaken. Therefore, the Bill's proposal for an Oversight Committee to initiate and quality assure individual reviews is a significant element of the new process.

In any given situation there may be the need for different review processes to attend to varying issues. For example, alongside the domestic homicide and suicide review



there may be a need for a serious incident review (undertaken by the Care Inspectorate into issues arising from an individual involved with the criminal justice system) or a child protection learning review (undertaken by local child protection committees to reflect, learn and improve child protection systems and practice when a child or young person dies, is significantly harmed, or was at risk of death or significant harm or where effective practice has prevented harm or risk of harm). In such instances, it is helpful to note that the Bill promotes consideration of the possibility of a joint review, with mutually agreed terms of reference, and relevant experience within the review team to deal with all the issues that each process needs to consider. Such joint reviews, which take place successfully in other jurisdictions, can reduce the burden on participating agencies in facilitating the review, as well as ensuring that the issues relating to different family members are seen in the round, rather than in isolation. This is likely to increase the prospect that subsequent changes in systems, policies and processes are holistic. However, the needs of each review process must be equally prioritised, rather than the needs of one predominating. This needs careful managing by the chair of the review process, as well as clarity between different bodies sponsoring the individual reviews that are part of the joint review.

Internationally, many review systems are now starting to incorporate the review of deaths by suicide where domestic abuse has been a significant factor that has likely contributed to the death. In the context of domestic abuse the number of deaths by suicide may be greater than the number of deaths by homicide in Scotland (and elsewhere). The inclusion of deaths by suicide in the proposed Bill is to be welcomed. Despite recommendations being the most concrete and tangible outcomes of domestic homicide and suicide reviews, there is a dearth of systematic research that sheds light on what improvements or changes have been recommended, how often similar recommendations are made, what sectors or organisations are tasked with implementing recommendations, or what outcomes and impacts have developed, if any, as a result. The lack of knowledge can be attributed, in part, to the fact that few jurisdictions mandate agencies to account for their actions in response to recommendations, which makes monitoring implementation difficult. This means that there is also a lack of systematic knowledge about overall impacts of domestic homicide and suicide reviews, including accountability of agencies/organisations/sectors meant to improve responses. The inclusion of provisions on this aspect of the review process in the Bill places Scotland at the forefront of international best practice.

Finally, there is a balance to be struck between maintaining the confidentiality of the deceased, and that of involved practitioners, with the need to ensure that the learning gleaned from a specific review can be disseminated widely and in a timely manner. Different jurisdictions have approached this in differing ways, including publishing the full, unredacted report (although this can only happen after all legal cases have concluded and therefore can delay the sharing of learning), to the publication of short anonymised summaries of each case, through to only publishing an overview report of reviews undertaken during a specific time period, or related to a specific theme. The learning from an individual review needs to be seen as a resource for wider professional dissemination, and potentially as a tool for raising public awareness and understanding of domestic abuse. Therefore, consideration needs to be given to a

dissemination strategy for the learning from individual and groups of reviews, such as professional learning events, thematic overview reports, and items in the media. As such, the provisions within the Bill for Parliamentary oversight of the implementation of recommendations from reviews is to be welcomed.

Professor John Devaney, PhD, MBE Centenary Chair of Social Work and  
Dean of the School of Social and Political Science

## Dr Grace Boughton

I welcome and fully support Scottish Government adopting Domestic Homicide and Suicide review processes. The benefit for Scotland adopting such reviews at this moment in time is that there are a plethora of academic- and practice-led evidence and evaluations of other similar reviews, which can contribute towards developing a holistic review model suitable for Scottish inhabitants.

I would like to thank the Criminal Justice (CJ) Committee for their invitation to participate in this part of the process.

### ***Reviewable events (sections 9-10)***

#### ***9 Domestic homicide or suicide review***

I agree with those persons already identified in Section 9.2. Notwithstanding the commentary provided in the [policy memorandum](#), the CJ Committee should clarify with Scottish Government as to whether including other adult cohabitants has been discussed. For instance, Section 9.1.b of England and Wales's [Domestic Violence, Crime and Victims Act \(2004\)](#) acknowledges "a member of the same household as himself". This broadens the scope of Domestic Abuse Related Death Reviews (DARDRs, formerly Domestic Homicide Reviews) to victim-perpetrator relationships that are not strictly classified as intimate partner or familial, but to those who share the same living space (e.g. housemates/lodgers etc.) where abusive behaviours and tendencies are evident.

- Evidence of reviews focused on such relationships can be found via the [Domestic Homicide Review Library](#).

### ***Review infrastructure (sections 11-13)***

#### ***11 Review oversight committee***

I agree with the inclusion of the voluntary sector as currently drafted (S11.4). May I suggest that area specialisms which the Review Oversight Committee (ROC) would like to regularly engage are incorporated into the Bill directly and unambiguously (e.g. domestic abuse support services; drug and alcohol services), with the option of approaching others on a bespoke basis (similarly exemplified in S20.5). This may help to cement the importance of third sector involvement in such cases and avert a hierarchy of testimony ([Home Office, 2016: p. 17](#)).

#### ***12 Case review panels***

Reading the Bill in isolation of the [policy memorandum](#), Sections 11 & 12 would benefit from having a clearer distinction between the ROC and the Case Review Panels (CRPs). Upon first reading, I was not sure whether the ROC were to sit nationally and CRPs locally, or if both authorities were to operate nationally.

Suggestion for the CJ Committee to seek clarity from Scottish Government regarding Section 12.2. Namely, is each individual review conducted to be overseen by a consortium made up of at least three Chairs?

I fully support Domestic Homicide and Suicide reviews being evolutionary; to appropriately diversify policy and practice as and when needed (e.g. widening the pool of review personnel as previously exemplified). Depending on how these reviews are to be conducted, may I suggest that the piloting of two panel members per represented agency is considered, e.g. two senior personnel, or a junior teamed with a senior staff member ([Boughton, 2022](#)).

My doctoral research highlights multiple systemic and procedural issues with Domestic Homicide Review practice in England and Wales, of which panel membership is a feature. When researched, there were no exact status requirements for panel members, aside from being independent. Hence, what constituted as an 'appropriate staff member' was ambiguous and open to interpretation, which led to examples of ill-prepared junior personnel performing these roles ([Boughton, 2022](#)). Scottish processes could benefit by formally acknowledging (and limiting) the role of junior personnel, whom often have more flexibility to commitments and could partake for continuous professional development. Retaining senior staff involvement is imperative, as they have the authority to agree, pursue & oversee the development of recommendations in their respective organisation.

***Revocation of notification (section 15)***

Suggestion for an additional layer of accountability to be added whereby the Chief Constable of the Police Service of Scotland and the Lord Advocate jointly review all notifications marked for revocation (similarly exemplified in S19.2).

***Conduct of reviews (sections 17-18)***

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

Suggestion for an additional layer of accountability to be added whereby the Lord Advocate consults with the Chief Constable of the Police Service of Scotland (similarly exemplified in S19.2), prior to communications with the ROC.

***Reporting (sections 22-24)***

*22 Reports on case reviews*

The CJ Committee should seek clarity from Scottish Government on where published reports are to be hosted.

As per the statistics in the [policy memorandum](#) (107;108;181), providing dates even if approximated could potentially jeopardise anonymity when considering the small number of police recorded homicides in Scotland (S22.2.a). The CJ Committee should

question Scottish Government about what the purpose and importance of anonymity is here – is it to protect the victim, their family, or the perpetrator? I understand this is more difficult to address when reviewing cases of DA-related suicide, which is why separate guidance should be contemplated ([see additional observations](#)).

Suggestion for reviews to also include and highlight positive practice (S22.2.b).

There is a distinct lack of [co-victim](#) consideration in the Bill, but I hope this is to be appropriately reflected in following policy & guidance. May I suggest that co-victims are included as a key stakeholder to be offered/have sight of the review prior to publication and receive a copy of the report if requested (S22.4; S22.7).

In my opinion, the existing presentation of Section 22.9 directly contradicts Section 22.2.a.23 *Requirement to respond to report recommendations*

I question the purpose of Section 23.3. If Scottish reviews are to adopt similar philosophical approaches as per comparative processes, then avoiding blame or culpability will be a central tenet. I appreciate this is to act as an accountability measure, however, I am of the opinion that the publication of this information could inadvertently invite blame into the review process. The sentiment behind this could be repurposed and filtered into the periodic reports (below).

#### *24 Periodic reports*

This is a welcomed inclusion - are the ROC to play an active role in this part of the process? Has there been any consideration regarding Scottish Government hosting a review repository system? Related examples of such repositories include:

- England - [Domestic Homicide Review Library](#) (open access).
- Wales - Safeguarding Repository (closed access).
- National Society for the Prevention of Cruelty to Children (NSPCC) - [National Case Review Collection](#) (open access).

#### **Additional observations**

- Suggestion for the CJ Committee to ascertain if Scottish Government are considering the new Welsh Government's [Single Unified Safeguarding Review \(SUSR\)](#) as a blueprint for Scottish reviews. Launched in late 2024, the SUSR allows for five safeguarding reviews to flow through one overarching process<sup>1</sup>. Being victim-centred was one of the driving forces for the SUSR's introduction, hence there is an emphasis on streamlining procedures, distributing learning more quickly, and appropriately reducing co-victim participation ([Robinson et al., 2018; Welsh Govt., 2024](#)).
- Reviewing cases of domestic homicide and suicide are in different stages and formats across the United Kingdom, but all can encounter similar procedural, organisational, and systemic issues and blockages. Have Scottish Government discerned whether there is any willingness from other devolved

Parliaments/Governments and Westminster to work together in respect of these reviews (in any/some capacity)?

- Suggestion for Scottish Government to consider separate, albeit related, policy & guidance for DA-related suicide reviews. There is a notable increase of such cases being referred for review across England and Wales. Twinned guidance may give the recognition that these cases deserve, help clarify DA-related suicide review criteria, and help professionals when assessing such cases ([Boughton, 2022](#)).
- Although implied, financial abuse and coercion are not explicitly mentioned within Sections 2 & 3 of the [Domestic Abuse \(Protection\) \(Scotland\) Act \(2021\)](#). I am noting this here to ensure they are considered during review referral processes.