

Stage 3 Briefing

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

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill¹ (“the Bill”) was introduced by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, on 24 September 2024. We submitted written evidence² to the Criminal Justice Committee of the Scottish Parliament (“the lead Committee”) in January 2025. We gave oral evidence to the lead Committee on 22 January 2025³. The lead Committee’s Stage 1 Report on the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill (“the Stage 1 Report”) was published on 11 March 2025⁴. We issued a briefing ahead of the Stage 1 debate on the Bill⁵. On 1 April 2025, Parliament agreed the general principles of the Bill.

The lead Committee considered the Bill at Stage 2 on 11 June 2025. The Bill as amended was published on the same day⁶.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings scheduled for 7 October 2025.

General comments

Part 1 of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill introduces measures that aim to improve “future resilience, effectiveness and efficiency of the criminal justice sector through modernisation,

¹ [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill - as introduced \(parliament.scot\)](https://parliament.scot/bills/2024-25/criminal-justice-modernisation-and-abusive-domestic-behaviour-reviews-scotland)

² [Written Evidence: Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill \(lawsco.org.uk\)](https://www.lawsco.org.uk/written-evidence/criminal-justice-modernisation-and-abusive-domestic-behaviour-reviews-scotland-bill)

³ [Official Report of the 3rd Meeting 2025, Session 6 of the Criminal Justice Committee \(parliament.scot\)](https://parliament.scot/official-report-of-the-3rd-meeting-2025-session-6-of-the-criminal-justice-committee)

⁴ [Criminal Justice Committee of the Scottish Parliament. Stage 1 report – Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill \(parliament.scot\)](https://parliament.scot/criminal-justice-committee-of-the-scottish-parliament-stage-1-report-criminal-justice-modernisation-and-abusive-domestic-behaviour-reviews-scotland-bill)

⁵ [Stage 1 Briefing – Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill \(lawsco.org.uk\)](https://www.lawsco.org.uk/stage-1-briefing-criminal-justice-modernisation-and-abusive-domestic-behaviour-reviews-scotland-bill)

⁶ [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill – as amended at Stage 2 \(parliament.scot\)](https://parliament.scot/bills/2024-25/criminal-justice-modernisation-and-abusive-domestic-behaviour-reviews-scotland-bill-amended-at-stage-2)



in particular through greater use of digital processes”⁷. This part of the Bill makes permanent some of the temporary provisions included in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 and includes new provisions related to the use of digital evidence in criminal courts.

Part 2 of the Bill introduces a review mechanism for domestic homicide and suicide that aims to identify lessons and prevent domestic abuse deaths.

Our comments on the Bill are focused on Part 1 only.

In general terms, we are supportive of the measures contained in Part 1 of the Bill. We have highlighted the improvements that the use of digital technology has brought to the criminal justice system as a response to the COVID-19 pandemic⁸. Many of the concerns we raised at earlier stages have been addressed.

For the purposes of this briefing, we have focused on changes made to the Bill at stage 2, and amendments lodged ahead of stage 3.

Virtual attendance at court (Section 2)

We welcome provisions contained in Section 2 related to the possibility for certain witness to attend court virtually. As we indicated in our Stage 1 briefing:

“Allowing the courts to decide on a case-by-case basis on virtual attendance is appropriate as it provides flexibility to the system and may impact positively in vulnerable witnesses’ experiences by, for example, reducing re-traumatisation”⁹.

We acknowledge the comments provided by the Cabinet Secretary for Justice and Home Affairs during the Stage 2 proceedings related to the directions that witnesses receive when attending to the court by electronic means. Such directions are critical for providing flexibility to court proceedings, without interfering with the solemnity that such acts involve.

At stage 3, we therefore welcome **amendment 2** in the name of the Cabinet Secretary, which would require the direction issued by the court to include what requirements must be satisfied by the location from which the person is to appear. We consider that including basic requirements in the direction is a sensible approach, avoiding overcomplication and retaining an appropriate level of flexibility.

We note **amendment 1**, in the name of Liam Kerr MSP, which would add a new section to the Bill after Section 2 requiring the Scottish Ministers to undertake a

⁷ [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews Policy Memorandum \(parliament.scot\)](https://www.parliament.scot)

⁸ [Official Report of the Criminal Justice Committee \(3rd meeting 2025, session 6\). 22 January 2025 \(parliament.scot\)](https://www.parliament.scot)

⁹ [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews Stage 1 briefing \(lawscot.org.uk\)](https://www.lawscot.org.uk)



review of the operation of the virtual attendance provisions after 2 years. We consider that such a review is appropriate, and we support this amendment.

Digital productions (Section 4)

At Stage 2, there was discussion on the retention of physical evidence until the end of determinations of any appeal. We issued a suggested amendment on this point ahead of Stage 2¹⁰. We note the comments provided by the Cabinet Secretary related to the common law right to examine any physical item that is considered critical for the case. We also note her comments on the issues that retaining certain physical items for an indefinite time may bring.

As such, we consider that it would be appropriate to have a statutory procedure for the Crown Office and Procurator Fiscal Service regarding the destruction of retained evidence. This procedure would provide clarity to all the parties involved on retention periods, without reducing the impact that Section 4 may bring to the system. We therefore welcome **amendment 3** in the name of the Cabinet Secretary, which would require the Lord Advocate to prepare and publish guidance setting the factors which prosecutors will take into account when deciding whether to produce an image of physical evidence, and the approach of prosecutors to the physical evidence. We consider that statutory guidance will provide greater clarity to all concerned. We do note, however, that the proposed amendment would leave significant discretion to the Lord Advocate. We would welcome assurances that the Lord Advocate will consult with relevant justice sector stakeholders on the contents of the guidance. It will be vital that the statutory scheme does not undermine the right of the court to uphold an oppression plea in appropriate circumstances.

Body-worn video evidence (Section 5A)

At Stage 2, the Cabinet Secretary introduced Section 5A which introduces Section 283A to the Criminal Procedure (Scotland) Act 1995. This new section provides that when the time, date and place of events recorded on a body-worn video camera are not disputed by the defence, those details recorded on the footage are sufficient evidence of those matters.

We do not envisage any issues with this provision.

National jurisdiction for custody cases (Section 7)

We note **amendment 5** in the name of the Cabinet Secretary, which would provide a limited extension of the national jurisdiction to full committal hearings where the case cannot call in the court which authorised the person's remand due to the closure of the court building by reason of emergency or other special circumstances.

¹⁰ <https://www.lawscot.org.uk/media/vhvpoyzy/25-05-29-crim-amendments-stage-2.pdf>
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We have previously indicated our support for the national jurisdiction for custody courts in disruptive situations, although we consider that, where possible, local justice should be preferred. We therefore consider the limited extension proposed by the amendment appropriate.

Amendment of Indictment (new section after section 8)

We note that **amendment 9** in the name of the Cabinet Secretary would add a new section to the Bill which would modify the Criminal Procedure (Scotland) Act 1995 in respect of amendment of indictment.

At present, if the Crown becomes aware of evidence justifying an additional charge, in most circumstances it must desert and re-raise the case. This has consequences, including for time limits and court diets. In principle, we therefore consider it appropriate to include a power to amend an indictment on cause shown.

We do, however, have some concerns regarding the potential impact of the proposed provision on disclosure, and we would welcome clarification on this point from the Scottish Government. It would appear that the duty to disclose will only apply from the point at which the amendment to the indictment is allowed. This may limit the defence's ability to effectively challenge the amendment of the indictment (as disclosure may, for example, reveal that the amendment has not been moved expeditiously enough) and also further limits the time available to the defence to prepare for trial. In our view, it would be more appropriate for the duty to disclose to start at the point the Crown determines that an application to amend should be made.



For further information, please contact:

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