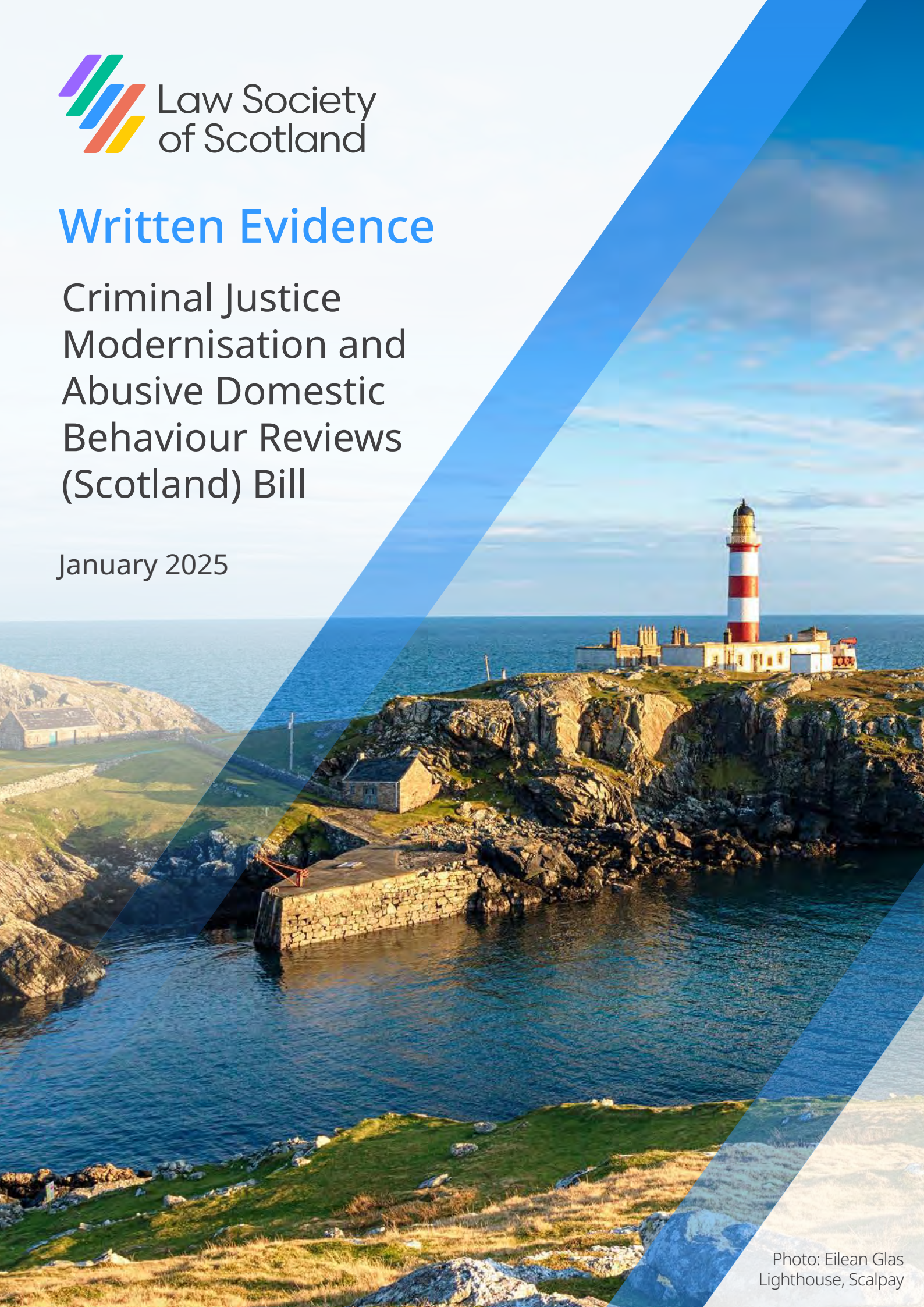


Written Evidence

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

January 2025



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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.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the call for views held by the Scottish Parliament's Criminal Justice Committee on the Criminal Justice Modernisation and Abusive Behaviour Reviews (Scotland) Bill ("the Bill")¹. We have the following comments to put forward for consideration.

Call for views questions

Part 1 of the Bill

Question 1: 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?

Section 1 makes permanent provisions contained in the Chapter 1, Part 1 of the Schedule of the Coronavirus (Recovery and Reform)(Scotland)Act 2022. Section 1 provisions provide that electronic signatures and electronic transmission of certain documents fulfil any requirement. The provisions will apply to documents produced by a criminal court, or related to criminal proceedings.

Provisions of Section 1 also provide to the Lord Justice General the power to exclude certain types of documents in all or some the criminal proceedings.

We welcome that provisions related to electronic signing and transmission of documents will become permanent. As indicated in our previous [consultation response](#), the implementation of the temporary provisions under the 2022 Act

¹ [Criminal Justice Modernisation and Abusive Behaviour Reviews \(Scotland\) Bill – Sharing your views – Scottish Parliament – Citizen Space.](#)



produced noteworthy improvements in the criminal justice system, facilitating access to justice.

We note that, at the consultation stage, relevant organisations reported that the electronic signing and transmission of documents improves the efficiency and effectiveness of the criminal justice system. The proposed measures are also expected to impact positively on carbon reduction, prepare the system for any future disruption, and to support home and hybrid working².

Question 2: 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?

We welcome the provisions contained in Section 2. At [consultation stage](#), we indicated that, in some circumstances, allowing the virtual attendance of certain types of witnesses could impact positively on the efficiency of the system. That is the case for professional and police witnesses in summary trials.

We endorse the provisions outlined in Section 2, which offer flexibility to the system by granting the courts the discretion to waive the requirement for physical attendance when a person is required to give evidence. The court will be able to determine on a case-by-case basis whether in-person or virtual evidence is most appropriate to ensure a fair trial. We anticipate that this flexibility will impact positively in the vulnerable witnesses' experiences in court, reducing traumatisation.

Section 303K of the Criminal Procedure (Scotland) Act 1995 -inserted by Section 2 of the Bill- indicates that the court must issue directions for appearing by electronic means. We consider it essential that those directions contain measures that ensure that witnesses are not susceptible to any undue influence and the

² [Criminal Justice Modernisation and Abusive Behaviour Reviews \(Scotland\) Bill – Policy Memorandum.](#)



effective participation of the accused is guaranteed. For achieving this, an appropriate connection network and suitable electronic devices are critical.

We noted that the Policy Memorandum indicates that provisions contained in Section 2 will support the development of virtual custody courts³. We welcome that the model that is being developed by justice partners will guarantee private discussions between the accused person and their solicitor and assure video and audio quality standards.

Question 3: 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?

We welcome the provisions contained in Section 4 with some reservations. We agree, as indicated in the Policy Memorandum, that currently, more evidence than ever is captured in digital formats⁴.

We appreciate that new Section 279B of the Criminal Procedure (Scotland) Act 1995, inserted by Section 4 of the Bill, allows the court to direct that a digital production should not be used in place of physical evidence in specific cases. This provision provides flexibility, addressing some of our concerns expressed at [consultation stage](#). However, we are of the view that the defence should have the right to preserve and request the physical evidence when it considers that appropriate.

In terms of the quality of the digital production, we agree with the Policy Memorandum when it states: “The accuracy and the quality of the digital image is of the utmost importance and may be something the court considers if asked to make a direction that the image is not to take the place of the physical evidence. For instance, if the significance of a physical production was its colour, then this would have to be accurately presented in any image”⁵.

Finally, we would welcome guidance on the potential privacy implications involved in digitalising forensic evidence, for instance, when blood samples are kept in open banks.

³ [Criminal Justice Modernisation and Abusive Behaviour Reviews \(Scotland\) Bill – Policy Memorandum](#). Paragraph 43.

⁴ [Criminal Justice Modernisation and Abusive Behaviour Reviews \(Scotland\) Bill – Policy Memorandum](#). Paragraph 62.

⁵ *Ibidem*. Paragraph 71.



Question 4: 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?

We welcome the provisions of Section 5. We support the flexibility provided by new paragraph 1(1A) of Schedule 8 of the Criminal Procedure (Scotland) Act 1995 that allows to the court to direct that a digital copy should not be treated as the original document itself. This provision addresses our concern expressed at [consultation stage](#) when we indicated that for some cases, the access to the original document is critical.

Question 5: 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?

We welcome provisions contained in Section 6 of the Bill. As indicated in the Policy Memorandum, “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”⁶.

We are of the view that the measures, introduced on a temporary basis in the Coronavirus (Recovery and Reform) (Scotland) Act 2022, appear to be working effectively.

⁶ Ibidem. Paragraph 56.



Question 6: 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?

We consider that provisions contained in Section 7 may have a positive impact in disruptive situations such as traffic obstructions, severe weather or large public events. In our response at consultation stage in [May 2024](#), we indicated the measures proposed in this section were working well in custody courts, providing a positive experience for accused persons.

However, we are of the view that local justice should be chosen over other options when possible. Local justice can ensure that sheriffs and justices of the peace have more knowledge about the accused person and their personal circumstances. In addition, local social workers are able to provide valuable information that can be considered in the sentencing process.



Part 2 of the Bill

Question 7: 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?

Question 8: Other views

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

Question 9

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.

We do not have any views or comments to make in response to questions 7 to 9.



For further information, please contact:

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