

Stage 1 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 the Scottish Government on 24 September 2024. The Bill proposes measures for the modernisation of the criminal justice system in Part 1, and the introduction of a review process for violent deaths in domestic abuse cases in Part 2. The introduction of Part 1 followed the Scottish Government's previous consultation published in November 2023² and a review of the temporary justice provisions in the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

We previously submitted written evidence on the Bill to the Criminal Justice Committee of the Scottish Parliament³ and provided oral evidence as part of the Committee's stage 1 consideration of the Bill on 22 January 2025⁴.

The Criminal Justice Committee's Stage 1 Report on the Bill (the Stage 1 report)⁵ was published on 11 March 2025.

We welcome the opportunity to consider and provide comment for the benefit of MSPs ahead the Stage 1 debate scheduled to take place in the Scottish Parliament on 1 April 2025.

General Comments

The Bill has two parts that cover quite different aspects. Part 1 is focused in introducing on a permanent basis some of the criminal justice measures contained in the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Part 2 introduces a review mechanism for deaths produced in the context of abusive domestic

¹ [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill – as introduced | Scottish Parliament website](#)

² [Consultation on the Coronavirus Recovery and Reform \(Scotland\) Act 2022 – criminal justice measures | Scottish Government website](#)

³ [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill written evidence \(Jan 2025\) | lawscot.org.uk](#)

⁴ [Criminal Justice Committee, 3rd meeting 2025, Session 6 Official Report | Scottish Parliament website](#)

⁵ [Criminal Justice Committee, Stage 1 report – Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill | Scottish Parliament website](#)

behaviours. We are of the view that other organisations are in a better position to comment on Part 2 of the Bill. Accordingly, our comments will be focused only on Part 1.

We are of the view that a flexible criminal justice system impact positively in its efficiency. The implementation of measures that modernise procedures and were introduced on a temporary basis due to the Covid-19 Pandemic may produce significant improvements. While we have some concerns that we aim to develop in the comments on individual sections of the Bill, we mainly welcome provisions contained in Part 1.

Comments on sections of Part 1 of the Bill

Section 1 – Electronic signatures and alternative methods of sending documents

Section 1 inserts sections 303C-303F to the Criminal Procedure (Scotland) Act 1995, providing that electronic signatures and transmissions of certain documents fulfil any requirement. This provision applies only to documents produced by a criminal court, or related to criminal proceedings. The measure makes permanent a provisional provision introduced by the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

We support the introduction of Section 1. We consider that electronic signing and transmission of documents has a positive impact on the efficiency of the criminal justice system and contribute to the continuity of business in any future disruption. We have noted that provisions allowing the digital transmission of documents reduced the need for paper files in criminal trials at the High Court of Justiciary, which in our view is a positive change from the pre-pandemic system.

Section 2 – Virtual attendance at criminal court

Section 2 inserts sections 303G-303M to the Criminal Procedure (Scotland) Act 1995, suspending the requirement for physical attendance in criminal proceedings where the only party is a public official and providing to the courts the power to allow for virtual attendance in particular circumstances. Section 2 also provides to the Lord Justice General the power to make determinations in favour of virtual attendance for particular categories of cases. This provision was also introduced on a temporary basis by the Coronavirus (Recovery and Reform) (Scotland) Act and the Bill aims to make it permanent.

We note that the Criminal Justice Committee support the provisions at Section 2, subject to more detailed circumstances in which virtual attendance is permitted⁶.

⁶ [Criminal Justice Committee – Stage 1 report](#), Para. 111.

We welcome provisions contained in Section 2. 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.

We also welcome the Criminal Justice Committee's recommendation that calls for amendments to include provisions that require the courts to issue directions related to appropriate locations for virtual attendance. As we indicated in the oral evidence session, members of the public may require guidance and care to ensure they are not being overheard or put under pressure. We also suggested a series of places where members of the public may participate to help to address those concerns, such as dedicated rooms in local libraries.

We agree with the Criminal Justice Committee's Stage 1 Report that recommends an urgent evaluation of virtual custody courts pilots⁷. As indicated by the Committee, any evaluation should involve the legal profession.

Development of virtual custody courts requires that accused persons have effective participation, appropriate opportunities for communicating with their lawyers and receiving legal advice. To achieve this, appropriate investment of time and financial resources is needed.

Section 4: Digital productions

Section 4 inserts new rules for the use of digital evidence productions in criminal proceedings. Provisions permit digital productions of physical evidence, such as videos or photographs, to be used, replacing the physical item. For specific cases, the court could direct that the physical item cannot be replaced by the digital production. In addition, provisions in Section 4 remove the right of the accused person to access the evidence in the court office prior the trial, if that person has had another opportunity to see that evidence .

We agree with the Criminal Justice Committee when it recommends more safeguards for the parties in criminal proceedings to ensure that the parties can request production of physical items in court⁸ when they consider it appropriate.

We note that the Committee recommends that the Scottish Government engage with Police Scotland on developing an updated policy for the retention of productions⁹. We consider this very important, especially given potential privacy implications related to the digitalisation of forensic evidence, such as blood samples.

Section 5 – Authentication of electronic copy documents

Section 5 modifies Schedule 8 of the Criminal Procedure (Scotland) Act 1995, removing the requirement for a signed certificate authenticating copy document

⁷ Ibid. Para. 118.

⁸ Ibid. Para. 147-148.

⁹ Ibid. Para. 150.

when the copy is created for being uploaded from an electronic device onto the digital evidence storage system.

We indicated at consultation stage that in some circumstances, accessing the original document was critical, for example, in fraud cases¹⁰. However, we welcome that provisions in the Bill allow the court to direct when an original document should be required and cannot be replaced by a digital copy.

We note that the Criminal Justice Committee supports measures contained in Section 5.

Section 6 – Increase of fixed penalty limit

Section 6 modifies section 302 of the Criminal Procedure (Scotland) Act 1995, setting a new scale of fixed penalties ranging from £50 to £500. This measure was also introduced on a temporary basis by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 and the Bill aims to make it permanent.

We note that the Criminal Justice Committee supports the increase of the level of fiscal fines in line with inflation as is proposed in the Bill. However, the Committee calls for the need to monitor the impact that the increment may have on individuals with financial difficulties and custody rates¹¹.

We reiterate the comments we made at consultation stage¹². We are not aware of any inappropriate use of the new scale of fixed penalties after its introduction on a temporary basis in the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

Section 7 – National jurisdiction for custody cases

Section 7 introduces eight new sections to the Criminal Procedure (Scotland) Act 1995, making permanent the temporary provisions of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 related to a national jurisdiction for custody cases at early stages. In addition, Section 7 extends the national jurisdiction for custody cases to justice of peace courts and sheriff courts.

We note that the Criminal Justice Committee supports the provisions contained in Section 7, subject to further clarification on the end point of the national jurisdiction.

We welcome that the Committee considers that the principle of local justice should be preserved as it benefits the users of the local justice system¹³. As we have indicated in our written evidence, the national jurisdiction for custody courts

¹⁰ [Coronavirus Recovery and Reform \(Scotland\) Act 2022 – Criminal Justice Measures consultation response \(January 2024\)](#) | lawscot.org.uk

¹¹ [Criminal Justice Committee – Stage 1 report](#), Para. 180-182.

¹² [Coronavirus Recovery and Reform \(Scotland\) Act 2022 – Criminal Justice Measures consultation response \(January 2024\)](#) | lawscot.org.uk

¹³ [Criminal Justice Committee – Stage 1 report](#), Para 224.

may have a positive impact in disruptive situations, but, when possible, local justice should be preferred.

We also highlighted at the oral evidence session that for High Court cases -that has national jurisdiction- there are relatively few occasions on which issues that emanate in one city are called in another city due to court availability. Moving away from local justice has huge implications for all the users of the criminal justice system, including witnesses who only receive support when providing evidence, and not if they want to attend at the sentencing hearing. We consider that careful consideration should be given to unintended consequences that may arise as a result of the implementation of provisions in Section 7.



For further information, please contact:

Liliana Torres Jimenez
Policy Team
Law Society of Scotland
LilianaTorresJimenez@lawscot.org.uk