

PE2185/A: Introduce stronger safeguards around the use of digital material in court proceedings

Scottish Government written submission, 30 October 2025

Does the Scottish Government consider the specific ask[s] of the petition to be practical or achievable? If not, please explain why.

The Scottish Government does not consider that the action called for by the petition is necessary or practical.

Issues around the gathering and presentation of evidence are matters for Police Scotland and the Crown Office and Procurator Fiscal Service who act independently in the investigation and prosecution of alleged offences.

There exist a number of safeguards and processes to ensure that concerns around the authenticity of any digital evidence can be raised and investigated. That includes disclosure obligations that the Police and Crown are under which ensure that relevant information gathered by the police is reported to prosecutors who in turn will consider and disclose to the defence. The Code of Practice issued under Part VI of the Criminal Justice and Licensing (Scotland) Act 2010 provides guidance in relation to the disclosure of evidence in criminal proceedings.

Where digital material disclosed gives rise to concerns raised in the petition over manipulation or fabrication, as with other types of evidence there are avenues available to the defence to challenge that evidence including raising the purported irregularity with the Crown or the Police who may carry out any investigations considered necessary.

Evidential rules safeguard the fairness of proceedings and mean that the provenance of all productions led in criminal trials, whether physical or digital, requires to be established if those productions are to have any evidential value. Put simply, that means that the party seeking to rely on the production must prove where the production came from, or in other words must prove its 'source' as called for by the petition.

How a party does that will vary depending on the type of production and whether there is any dispute over its origin or integrity. Where there is no dispute, the facts of the provenance of the production may be agreed by parties and admitted into evidence through a Joint Minute of Agreement. Where there is a dispute, the party seeking to rely on the production will require to lead witnesses to speak to its provenance – the production does not speak for itself.

For example, where the item is a weapon alleged to have been recovered from a crime scene, it is commonplace for the police officer who seized the item to be called to give evidence to that effect. The defence is entitled to test this evidence and if they take issue with any aspect of it, they can challenge it in cross examination. If they choose to, they may also lead their own evidence to rebut the police officer's position.

Where the item is in a digital format, the same principle applies and the party wishing to rely on the evidence requires to establish the origin of the material. Using the example of a screenshot as referred to in the petition, that will usually mean the

person who took the screenshot and submitted it to the police will be required to give evidence to that effect. That may be in addition to the Crown leading results of forensic analysis of phones or other devices from which the screenshot was captured. The defence are entitled to challenge that evidence including cross examining the witness as to whether the witness had manipulated the screenshot before submitting it to the police. The defence may also lead its own evidence to support their position that the material has been manipulated, including providing alternative screenshots, results of their own forensic analysis or oral evidence of the accused or other witnesses.

It will then be for the fact finder (i.e. judge or jury) to decide what to make of the evidence and how it affects their overall satisfaction that the Crown has discharged its burden of proof to the required standard.

The current evidential requirements therefore already mean that any production has to be adequately sourced, in other words, the facts of a production's provenance have to be agreed or proved, and the defence have ample opportunity to consider and test the evidence led by the Crown to do that, and to lead their own evidence in rebuttal.

It is not necessary to impose restrictions requiring material to be time stamped or independently authenticated before being admissible in evidence as these are matters that can already be properly tested in cases where there are concerns. Given the potential array of digital evidence, it may also not be possible or practical for every type of evidence and rather than excluding that evidence altogether, it is more appropriate for the limitations of that evidence to be tested under existing processes.

The Criminal Procedure (Scotland) Act 1995 creates some specific classes of cases in which facts are to be accepted as proved without the necessity of leading evidence, provided necessary notice has been given to the other party and no objection has been taken. This relates to a number of matters including: reports of identification parades, forensic and autopsy reports; and the time and place of video surveillance recordings. The recent Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill adds to that list the date, time and place of Body Worn Video footage as defined in the Bill.

However, there is no general presumption in relation to the provenance of digital evidence that means that this type of evidence is to be accepted without the party that seeks to rely on it leading evidence to establish where it came from.

Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?

Given the petition relates to matters concerning the investigation and prosecution of crime, the Committee may wish to contact the Chief Constable of Police Scotland as well as the Lord Advocate in her capacity as the head of the prosecution system in Scotland for views on the petition.

Criminal Justice Reform Unit | Criminal Justice Division