

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

Lord Advocate written submission, 31 December 2025

Thank you for your letter dated 1st December 2025 seeking my views in respect of the petition and the timing concern expressed by the petitioner

It is important to say from the outset that in our criminal justice system it is not evidence that requires to be proved but the charge against the accused person as a whole.

Prosecutors consider the particular facts and circumstances of each case and in line with the Prosecution Code, as to whether there is sufficient admissible evidence and whether it is in the public interest to take prosecutorial action.

With any evidence, digital or otherwise, the prosecutor must be satisfied that it is both credible and reliable. With digital evidence, a part of that assessment includes being satisfied as to the provenance of it.

The limits of how far the prosecutor should go to make that assessment will depend on the facts and circumstances of a case. The credibility and reliability of any evidence can and will be tested against the totality of evidence available and does not necessitate forensic examination in every case. If evidence is *ex facie* valid there would be no reason to question its veracity.

Prosecutors are under a duty to continually assess each case in light of any new information brought to their attention. If concerns are raised in respect of the evidence, prosecutors treat such allegations seriously and prosecutors would independently assess and investigate such matters.

As was highlighted in the briefing prepared by the Scottish Parliament Information Centre (SPICe), provenance of any evidence, be that digital or otherwise must be established and the law already provides safeguards as the authenticity and accuracy of evidence is capable of challenge.

It is important to note, also, that digital evidence may form only part of the whole evidence available to prosecutors when making their decisions. It is not the entire case.

Given existing safeguards and procedures which work well, the amendments suggested to the Criminal Procedure (Scotland) Act 1995 as proposed in the petition, has the potential to significantly delay access to justice for many victims of crime.

I trust the above is of assistance to you and the Committee.

Yours sincerely,

THE RIGHT HONOURABLE DOROTHY BAIN KC

LORD ADVOCATE