

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

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill introduced in the Scottish Parliament on 24 September 2024.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 52–EN);
  - a Financial Memorandum (SP Bill 52–FM);
  - a Delegated Powers Memorandum (SP Bill 52–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 52–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Policy objectives of the Bill

4. This is a dual purpose Bill and covers provisions that relate to criminal justice modernisation and domestic homicide and suicide reviews.
5. Both parts of the Bill support one of the Scottish Government's priorities, namely the delivery of effective and sustainable public services. The first part of the Bill aims to do this by providing a basis for the ongoing and future resilience, effectiveness and efficiency of the criminal justice sector through modernisation, in particular through greater use of digital processes. The second part of the Bill ensures that change and improvements are delivered through effective learning from a robust review process so that individuals and communities are better supported by public services, and deaths can be prevented.

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6. There is broad support from stakeholders for the policies included in the Bill, as evidenced in the responses to the consultations that have taken place on both the criminal justice modernisation provisions<sup>1</sup> and the domestic homicide and suicide review model<sup>2</sup>. Scottish Government officials have engaged extensively with key justice partners and third sector groups, as set out in more detail below. Discussions with these stakeholders have informed detailed policy positions in a number of areas.

## Criminal justice modernisation

7. The COVID-19 pandemic increased the pace of adoption of digital processes and innovation in many spheres, including the justice system. Throughout this period, a number of changes were made to operational practices and procedures, including the use of digital technologies, to ensure the continued operation of a viable justice system. These technological solutions allowed justice agencies to meet the challenges of the pandemic whilst also providing the basis for the delivery of a more effective and efficient justice system.

8. As Scotland becomes a more digital nation, the nature of government, at a national and local level, is changing. Those using public services expect them to be responsive and tailored to their needs, efficient and of high quality.

9. The Scottish Government's Vision for Justice<sup>3</sup>, published in February 2022, and the associated Three Year Delivery Plan<sup>4</sup>, published in November 2023, set out a transformative vision to deliver a just, safe resilient country. Delivering the Vision requires changes to the operation of Scotland's justice services, ensuring that its processes and laws meet the needs of people now and in the future.

10. The criminal justice modernisation provisions form a key part of a programme of work that takes forward the Scottish Government's commitment to modernise justice processes through greater use of digital processes.

11. The Coronavirus (Recovery and Reform) (Scotland) Act 2022 ("the 2022 Act")<sup>5</sup> built on previous legislation<sup>6</sup> introduced in response to the pandemic. It continued a range of temporary justice provisions which have proven crucial to maintaining and enhancing the effectiveness and efficiency of the justice system and helped to facilitate the desired move to a more digitalised justice sector.

12. One of the main objectives of this part of the Bill is to make some of these provisions permanent, to deliver significant longer term benefits and provide a basis for

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<sup>1</sup> [Permanence of Coronavirus Recovery and Reform Act measures: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/permanence-of-coronavirus-recovery-and-reform-act-measures-consultation-analysis-2022-01-20-2022-02-01/html)

<sup>2</sup> [Domestic homicide reviews: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/domestic-homicide-reviews-consultation-analysis-2022-01-20-2022-02-01/html)

<sup>3</sup> [The Vision for Justice in Scotland 2022 \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/01/the-vision-for-justice-in-scotland-2022/html)

<sup>4</sup> [The Vision for Justice in Scotland Three Year Delivery Plan - 2023/24 to 2025/26 \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2023/01/the-vision-for-justice-in-scotland-three-year-delivery-plan-2023-24-to-2025-26/html)

<sup>5</sup> [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2022/16/section/1)

<sup>6</sup> The Coronavirus (Scotland) Act 2020; the Coronavirus (Scotland) (No.2) Act 2020; and the Coronavirus (Extension and Expiry) (Scotland) Act 2021



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## Policy objectives

### Electronic signing and sending of documents

17. Prior to the Coronavirus (Scotland) Act 2020<sup>9</sup>, the usual method of signing documents in Scottish criminal procedure was to affix a hard copy document with a ‘wet signature’ (a physical signature made in pen). The transmission of legal documents took place by having the hard copy document physically couriered between parties or organisations, or by personal service on individuals.

18. The provisions for electronic signing and sending enable documents produced by a criminal court, or connected with criminal proceedings, to be signed and transmitted electronically (for example, by email), and to be sent to a party’s solicitor instead of to the party themselves, removing the requirement for physical movement of documents. The provisions also retain the Lord Justice General’s power to direct that the provisions do not apply to specified documents, either generally or in particular proceedings. While these powers have never been used, they have been retained to provide flexibility.

19. Since the provisions were introduced in 2020, they have become firmly embedded in Scotland’s justice system, have made many justice processes more efficient, and have reduced costs. A joint inspection carried out in September 2020 by the HM Inspectorate of Prosecution in Scotland and HM Inspectorate of Constabulary for Scotland found that the provisions bring significant benefits to all users of the justice system.<sup>10</sup>

20. The use of these measures has enabled process changes that have allowed justice partners to operate more efficiently and effectively. Electronic signing and sending of documents allows High Court and sheriff and jury indictments, and other legal documents, to be served on the defence using the Secure Disclosure System<sup>11</sup>. These documents can also be lodged with the court electronically. In practical terms, this means that police officers are not required to serve documents, freeing them up for other duties. Prior to the pandemic an indictment was, in most circumstances, served by two police officers.

21. The provisions also enable police officers to obtain warrants electronically, saving considerable time: evidential warrants can be obtained in as little as two hours via electronic means, which helps ensure that cases (particularly serious crime) can progress without delay. Previously, obtaining wet signatures on warrants would often have required two police officers to attend court and to wait for a sheriff to become available. The current provisions have also enabled applications for search warrants to be applied for out-of-hours and granted without the need for a police officer to attend at a sheriff’s home. This is a much more efficient process for all concerned.

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<sup>9</sup> [Coronavirus \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>10</sup> [Joint inspection of emergency criminal justice provisions](#)

<sup>11</sup> A website onto which the Crown can securely upload the relevant documentation and from which it can be downloaded by the defence.

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22. In response to the consultation, a range of organisations including the judiciary, legal profession representatives and the police referred to these measures having a range of specific positive impacts for justice processes. These included improving the efficiency of these processes and an associated reduction in resource requirements.

23. The Scottish Government recognises the provisions as contributing to a more sustainable justice system that supports delivery of wider carbon reduction policy priorities. It was noted in responses to the consultation that conduct of business by electronic means reduces the use of hard copy papers and the travel associated with lodging such documents. The provisions were also described as contributing to the creation of a more resilient justice system and ensuring business continuity in the event of any future disruption. It was further noted that this approach can support more home and hybrid working (thus helping to improve the wellbeing of staff and justice system users).

24. The requirement to produce, transport and lodge often multiple copies of large bundles of papers has been both time and resource intensive for members of the legal profession and will have had a consequential impact on Scotland's global carbon footprint and the environment.

25. The ability to remotely seek warrants has also led to benefits for Police Scotland. The reduction in travel time, whilst realising small savings, frees up resource and supports a reduction in vehicle use and has an associated positive reduction in the environmental impact.

26. The Bill seeks to repeal some existing provisions of the Criminal Procedure (Scotland) Act 1995 where they duplicate sections of the 2022 Act provisions which are now being made permanent. Where previously these could exist alongside the 2022 Act measures (as those were only temporary), they now need to be consolidated to avoid any overlap or ambiguities.

## Virtual attendance at a criminal court

27. In Scotland, criminal proceedings are usually held in person at court. Generally, all parties are either physically present, or represented by an agent who is physically present.

28. Before the pandemic, some legislation required people to physically attend court proceedings. Temporary provisions in the 2022 Act adjusted those requirements to create more flexibility, by enabling any participant in criminal proceedings (including judges, clerks, legal representatives, parties to proceedings, accused people, convicted people, appellants, jury members and witnesses) to take part in some proceedings by way of live visual (television) or audio (telephone) link, from any location. This extends to the ability to conduct fully audio or video-enabled procedural hearings (where no one is physically in the same place), as well as being able to hold hearings in a court building with some participants joining remotely. The Bill seeks to make these provisions permanent. The default position is still that people attend court in person

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(with one exception, outlined below), 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 subject to taking account of any representations received.

29. The exception to the ‘in person default’ position is proceedings where the only party is a public official. In practice, this means police officers or prosecutors seeking warrants or court orders, where the proceedings have not been intimated to anyone else (e.g. a suspect). For these proceedings, the Bill provides that the default position is virtual attendance. Again, the court can overturn this default on a case-by-case basis and require physical attendance.

30. The provisions outline the tests that a court needs to apply if it is overturning the default positions on mode of attendance. When the default is physical attendance, the court may only direct a person to attend virtually if it is satisfied that virtual attendance would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice. When the default is virtual attendance, a court may only require a person to attend physically if allowing them to attend by electronic means would prejudice the fairness of proceedings or would otherwise be contrary to the interests of justice. The decision is ultimately for the court, although the Bill makes provision to allow the parties to make representations to it.

31. The Bill also retains the Lord Justice General’s power – initially created in the 2022 Act’s temporary provisions – to issue determinations to change the default to virtual attendance for certain types of cases or in certain circumstances. This is provided for in inserted section 303J. The availability of the determination-making power provides flexibility for the default approaches for different types of case and different circumstances to be tailored to reflect the latest operational practice. There is an exception to this power: the Lord Justice General cannot issue a determination that trials should be held virtually by default (as a trial would be covered by inserted section 303G, and the power in inserted section 303J is limited to cases where neither section 303G nor 303H applies). However, on a case-by-case basis, a court can direct a person to attend a trial virtually. Whenever a party is directed to attend criminal proceedings virtually (either because that is the default under a determination, or because the court has specifically directed them), they may make representations requesting that the court allows them to attend physically instead. As above, the decision remains ultimately with the court.

32. In 2022, the Lord Justice General used the power mentioned above to disapply a requirement to attend court physically in a number of scenarios including: those participating in a Preliminary Hearing, Continued Preliminary Hearing or procedural hearing relating to appeal proceedings in the High Court; detained persons participating in appeal hearings in the High Court; and where the court was satisfied that a person was suffering from COVID-19 or required to remain in self-isolation.<sup>12</sup>

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<sup>12</sup> [Disapplication of certain requirements for physical attendance in criminal proceedings.](#)

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33. Justice partners, including the Scottish Courts and Tribunals Service (“SCTS”), Police Scotland and the judiciary, have emphasised that virtual attendance can both support more person-centred approaches to justice and help ensure that the system’s resources are used as efficiently as possible.

34. Examples of the current operation of the temporary provisions which the Bill would allow to continue include:

- fully virtual Preliminary Hearings and other procedural hearings in the High Court;
- appearance from custody for an accused at a full committal hearing<sup>13</sup>, reducing the requirement to transfer an accused for a short hearing;
- remote attendance of witnesses: enabling police officers to give their evidence remotely when appearing as professional witnesses, reducing the amount of time they are taken away from the communities they work in.

35. Through this provision, Police Scotland benefit from the ability for staff to provide evidence by appearing as remote witnesses. In evidence to the Criminal Justice Committee on 11 September 2024, Chief Constable Jo Farrell said<sup>14</sup>, “The demands made by the criminal justice system form one of the largest elements that saps away the capacity of policing in Scotland. Going to court takes away 500 officers a day on many occasions, they will not give evidence. Equally, if not more, important is the fact that, every time we as professionals go to court but do not give evidence because the trial does not go ahead, there is also a victim. In order to maximise the front line of policing and deliver all the things that we need to deliver, we, as leaders in a system, must make sure that the criminal justice system works more efficiently.”.

36. Remote witness evidence, which is enabled by this provision, reduces the logistical challenges of displacement and travel, enabling police officers to remain on duty until their evidence is required, thereby enhancing overall operational efficiency and productivity within the force. Additionally, by reducing the need for travel and extended absences from regular duties, remote witness evidence supports officer welfare, contributing to better work-life balance and overall job satisfaction.

37. The provision gives justice partners the tools to be able to continue to innovate to improve people’s experiences of justice processes. An example of this is the ongoing collaboration between justice agencies to develop a sustainable model for virtual custody courts (which also relies on the provision relating to “national jurisdiction for calling from custody”).

38. Prior to the pandemic, all accused persons who appear at court from police custody were required to do so in person. They were collected from the police custody

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<sup>13</sup> Full committal is the second appearance of an accused person in court in solemn proceedings. It takes place after the accused has been remanded in custody at the committal for further examination hearing. Afterwards, the court may grant bail or keep the accused on remand until the trial.

<sup>14</sup> [Official Report \(parliament.scot\)](https://www.parliament.scot/Official-Reports/2024/20240911)

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centre on the morning of their scheduled court appearance and transported to the relevant court. In response to the pandemic, Police Scotland installed video conferencing facilities in some custody centres to allow accused persons to appear virtually at designated custody courts – this was enabled by the emergency legislation. Generally, it was only the accused person who appeared virtually and other parties appeared in person within the court (although there were some examples of other parties such as the prosecutor appearing virtually).

39. Whilst not currently in widespread use, virtual custody courts were used to varying extents in different areas across the country in response to the pandemic. They helped to maintain essential court business in a manner which reduced the risk of transmitting COVID-19.

40. Post-pandemic, one of the most significant logistical challenges facing the summary justice system on a daily basis is the movement of large numbers of individuals from police custody and prisons to courts for very short custody or procedural hearings. This requires high levels of custody transport and involves individuals being moved from location to location at financial and environmental cost. Physical custody hearings consume a disproportionate amount of resources, and modernising these processes represents a significant opportunity for the criminal justice system.

41. Virtual custody hearings reduce the unnecessary movement of custodies around the country, improving efficiencies, reducing costs and most importantly improving the experience for the accused by eliminating displacement and reducing the potential for trauma. This also removes the potential delays that can prevent the progression of court business. Justice partners are therefore working collaboratively to develop a sustainable model for virtual custody courts. The platform currently being developed will guarantee minimum standards for video and sound will apply and has a built-in facility for solicitors and social work to have a private discussion with their clients, before and after hearings. This work is being taken forward as part of a cross sector Transformational Change Programme focused on improving the efficiency and effectiveness of the criminal justice system so that all people involved within it will have a better experience of the system while they move through it and cases will reach an outcome as efficiently and effectively as possible.

42. Supporting the need for virtual custody hearings, Eric McQueen, former chief executive of SCTS, said, “if we look back from 10 years down the line, we will question why we put thousands of people into the backs of white vans every day and drove them all around Scotland. We will question why we were picking people up at prisons and police custody units at 6 o’clock in the morning, sticking them in a white van, driving them to the sheriff court and why we had them sitting in a sheriff court or a crowded cell for six or seven hours for a court hearing that might last a couple of minutes, and we will question why we put them in another white van at the end of the day to drive them back. I think we will look back and say that it was madness.”<sup>15</sup>

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<sup>15</sup> [Official Report | Scottish Parliament](#)



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43. By providing for virtual attendance, the Bill supports ongoing collaboration and innovation to modernise and improve justice processes including the development of virtual custody courts.

44. Responses to the consultation also highlighted potentially significant cost savings for the wider public if virtual attendance enables them to avoid travel and accommodation costs associated with attending court.

## National jurisdiction for callings from custody

45. Normally in criminal proceedings, cases are dealt with according to where offences are committed. A sheriffdom is a geographical area governed by a sheriff principal with Scotland split into six sheriffdoms (or areas) for the purpose of processing of cases. Sheriffdoms are further broken down into sheriff court districts. First appearances, including from custody, would be within the sheriffdom where the offence was allegedly committed, usually also in the sheriff court district where it was allegedly committed.

46. Before the national custody jurisdiction was created in the temporary covid legislation, where a detainee was subject to multiple warrants from more than one sheriff court, they generally appeared in each court on consecutive days, thereby extending their stay in police custody. Where a person had several warrants, they could spend several nights in custody.

47. The temporary measures in the 2022 Act provide 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, and it may be dealt with in that court by a sheriff of any sheriffdom - 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). The Bill seeks to make permanent this Scotland-wide jurisdiction for first appearances from police custody, minimising the number of cases that have to be transferred to a local court.

48. Maintaining a national jurisdiction for custody cases as a feature of Scotland's criminal justice system would enable a flexible response in the management of custody business. Justice partners including SCTS and Police Scotland have expressed clear support for permanency due to the continued flexibility and efficiency in the programming and management of custody court business which is provided for through a national jurisdiction for callings from custody.

49. They have also recognised that maintaining the provisions would enable an effective operational response to transport disruption, severe weather, large public events or other unexpected situations that restrict either the capacity to move an accused person or to use court facilities within a particular area.

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50. Feedback from justice agencies has highlighted that this measure supports the move to modernise Scotland's court procedures and processes, and to facilitate the increased use of technology. In particular, a national jurisdiction for custody cases would enable the increased use of virtual custody courts by allowing accused persons to attend any sheriff court in Scotland remotely by electronic means from the local police station they are being held at, and have their case dealt with by any sheriff across the country. This may minimise the length of time a person is held in custody prior to their first court appearance and enable the swift and efficient processing of custody cases.

51. To allow further flexibilities, these provisions have been extended to grant the same powers to the Justice of the Peace (JP) courts, such that they also have a national jurisdiction for callings from custody. The provisions enable this national jurisdiction to be exercised by a sheriff as well as by a summary sheriff or justices of the peace (summary sheriffs can already exercise the powers and jurisdiction of the JP court in all cases). The number of appearances from custody in the JP court is low and the need to deal with such a case no later than the next working day after the individual is charged/arrested on a warrant can mean that a JP court has to be held when it would not otherwise be scheduled to sit, causing inefficiency. Where a sheriff in the local area is dealing with sheriff court custody cases on that day, it would be more efficient for them also to be able to deal with any JP court appearances from custody.

## Fiscal fines

52. Fiscal fines are one of a suite of direct measures which prosecutors may offer to an accused person as an alternative to prosecution in court (provided the accused pays the fiscal fine).<sup>16</sup> Fiscal fines are a long-standing part of criminal procedure, dating back to the mid-1990s. They can only be used for offences capable of being tried summarily. In cases where they are offered, fiscal fines represent a proportionate response to the offending behaviour. This enables cases to be resolved without the need for court procedure and associated appearances at court, which gives the courts and prosecutors more time to deal with more serious cases.

53. An accused does not have to accept the offer of a fiscal fine and may give notice to that effect. In those circumstances, the prosecutor will decide what further action to take including whether to prosecute the accused in court.

54. Prior to the pandemic, the maximum fiscal fine which could be offered was £300. That was raised to £500 by the Coronavirus (Scotland) Act 2020 and retained on a temporary basis through the Coronavirus (Extension and Expiry) (Scotland) Act 2021 and the 2022 Act, to enable alternative action to prosecution to continue to be taken in a wider range of summary cases as an alternative to prosecution in court.

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<sup>16</sup> The other direct measures are a fiscal work order, a fiscal compensation offer and a combined fixed penalty and compensation offer. Direct measures are among a range of prosecutorial options available to the prosecutor; others include the initiation of proceedings, diversion and a warning.

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55. The 2022 Act introduced a more balanced nine-point scale to that which was originally introduced by the Coronavirus (Scotland) Act 2020.<sup>17</sup> The nine-point scale includes the seven levels of fiscal fine that were available to prosecutors before the 2020 Act (up to £300) and two new levels of fiscal fine of £400 and £500. The table below sets out the levels of fiscal fine which were available prior to the coronavirus pandemic and subsequently.

| Fiscal Fine Level | Pre-pandemic – up to 6 April 2020 | As amended by the 2020 Act and extended by 2021 Act: 7 April 2020 to 30 September 2022 | As amended by the 2022 Act: 1 October 2022 onwards |
|-------------------|-----------------------------------|--|--|
| 1                 | £50                               | £50  | £50  |
| 2                 | £75                               | £125   | £75  |
| 3                 | £100                              | £175   | £100   |
| 4                 | £150                              | £250   | £150   |
| 5                 | £200                              | £325   | £200   |
| 6                 | £250                              | £400   | £250   |
| 7                 | £300                              | £500   | £300   |
| 8                 |                                   |  | £400   |
| 9                 |                                   |  | £500   |

56. 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 2022 Act. 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.

57. Making the increased maximum level of fiscal fine of £500 permanently available to prosecutors as a non-court disposal allows prosecutors to continue to deal with less serious offending appropriately, freeing up capacity in the criminal courts system for more serious cases. It reduces the number of cases entering the criminal justice system, allowing the courts and prosecutors more time to deal with more serious cases. Although the increased range of fines covers the same range of summary offences as before<sup>18</sup>, it allows fines to be offered in a wider range of cases – i.e. it now covers those cases where prosecutors consider that a £300 fiscal fine is not an appropriate disposal in the circumstances, but a £500 fiscal fine is, therefore taking these “£300 - £500” cases out of the courts. Cases that prosecutors consider require a court disposal will still, as before, be marked for prosecution in court rather than dealt with by a fiscal fine.

58. Crucially, this allows prosecutors to issue proportionate penalties for lower-level offences while also providing a higher maximum penalty for appropriate cases.

<sup>17</sup> The scale introduced by the Coronavirus (Scotland) Act 2020 contained seven fine levels, ranging from £50 to £500. This was amended by the 2022 Act because it was considered that more gradual increments would allow more effective use of fiscal fines by prosecutors.

<sup>18</sup> As a matter of law, there are no offences that are now capable of receiving a fiscal fine which could not also have been dealt with by a fiscal fine before the higher maximum level was first introduced in 2020 Coronavirus legislation (with the small exception of any offences created since April 2020).

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59. Between 1 April 2020 and 31 March 2024, 652,084 individuals were reported to the Crown Office and Procurator Fiscal Service (“COPFS”), of which 208,220 individuals (31.9%) received a first marking action for a Direct Measure<sup>19</sup>. Approximately 23% (46,907) of those individuals were offered a fiscal fine.<sup>20</sup>

60. Between 7 April 2020 and 25 July 2024, approximately 2% of the fines issued were above the previous scale maximum of £300, and a total of 125 accused individuals were offered a fiscal fine amount of £500.

61. Whilst a relatively small proportion of the fines issued have been above the previous scale maximum, the change has been a useful modification, which has allowed the Crown to respond proportionately, efficiently and in a timely manner to offending for which such a measure is appropriate.

## Digital productions

62. This provision supports modernisation in Scotland’s justice processes in the way evidence is gathered and processed in the criminal justice system. The provision reflects the fact that more evidence than ever is being captured in a digital format, with the opportunity to further expand in this area.

63. The Digital Evidence Sharing Capability (“DESC”) is a collaborative programme, being developed by and for criminal justice partners, and supported by the Scottish Government. The programme includes resource from Police Scotland, COPFS and SCTS and modernises and streamlines the way digital evidence is collected, managed, and shared throughout the criminal justice process. It removes the need for digital evidence to be duplicated and shared in hard copy format as well as providing the opportunity for a greater range of evidence to be presented in a digital format. It transforms how evidence is presented in court, removing the need for a physical item to be produced.

64. Through DESC, digital evidence, such as photographs or video footage, can be shared by members of the public at the point of reporting a crime to the police. This evidence is then shared with the prosecution and the defence agent for the accused in order to allow early consideration and possible resolution of cases. The use of digital evidence through DESC has the potential to improve the experience of victims, witnesses, and the accused in terms of providing swifter justice.

65. Evidence in criminal cases can also take the form of “physical productions” such as proceeds of a theft, a knife used in an assault, controlled drugs or clothing taken

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<sup>19</sup> When a case is received, Procurators Fiscal review and mark the case to decide on how it should progress. In some cases, although the Procurator Fiscal may consider that it is in the public interest to take action, prosecution may not be the most appropriate course of action. In those cases there are a number of direct measures available. More information is available [here](#).

<sup>20</sup> Of those 46,907 individuals, 178 were issued with a fine under the old scale and 46,729 were issued with a fine under the new scale with effect from 7 April 2020.

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from a victim or accused. When they are taken by the police for the investigation of a crime or offence, this is known as seizure.

66. Productions will be seized if they are evidentially necessary to assist the investigation or required for forensic examination. The physical evidence is then required to be stored by the police. If the case is reported to the procurator fiscal and court proceedings are taken forward, the physical evidence will continue to be stored by the police until the procurator fiscal requests to have it lodged with the court.

67. A large amount of property is seized by the police as potential productions for criminal cases, of which only a small proportion is produced in court. Storage of productions in secure conditions, accounting for them, and transporting them to and from court is very resource intensive for Police Scotland, COPFS and SCTS.

68. At present, a physical production may be required as it constitutes the best evidence and therefore is usually required to be produced in court. If such evidence is not produced in court, there may be an objection to the evidence or a submission of “no case to answer” and the Crown case may fail. In order to safeguard the position, the police and the Crown may consider it necessary to retain many productions and routinely lodge them at court so that they may be produced at the trial.

69. 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, and to treat the image as the equivalent of the actual production itself. This promotes the use of modern technology including DESC, supports greater efficiency across the criminal justice system and enhances the way that evidence is led in order to create improvements in the court experience.

70. The Bill gives the court the power to direct that an image of physical evidence may not be used in place of the physical evidence. This is important to protect a party’s right to have physical evidence produced where the court is satisfied that is required. In these circumstances, the party relying on that evidence may have to produce it in court. Therefore, there may be items seized that require to continue to be stored after they have been photographed or video recorded in case the court makes such a direction and the items have to be produced. In solemn cases, the Bill makes issues and objections around the use of digital evidence a ‘preliminary issue’, which means that the party seeking to raise an objection has to give notice of that to the court in accordance with timescales set out in the 1995 Act: two clear days before a first diet in sheriff solemn proceedings or seven clear days before a preliminary hearing in High Court cases. This provision removes the need to routinely transport and lodge items of physical evidence with the court or to store the items beyond this timescale.

71. 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.

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72. There must also be assurance that the integrity of the image is secure and that the image has not been manipulated inappropriately. Where the image in question is stored on DESC, assurance can be provided through its automatic audit function which shows every activity on the uploaded file from its receipt to the conclusion of the case. So, whilst DESC does allow police officers and prosecution staff to clip or redact the original image, the original file of the image uploaded to DESC remains intact. The redacted or clipped file is produced as a separate file bearing its own unique identification number. Therefore, if any question arose about the evidential impact of changes to the original image, the fact that the original image is still available with the audit trail would show what changes had been made.

73. This proposal received support from stakeholders during the consultation, with the majority of the respondents agreeing that digital evidence should be used in the presentation of criminal cases rather than having to produce the original item in court. These respondents cited a range of anticipated advantages associated with use of digital productions, most commonly the potential to deliver efficiencies and reduce pressure on court and justice partner resources. It was noted that DESC enables all parties – police officers, prosecutors, defence agents and the judiciary – to access evidence in an efficient and secure way.

74. Digital productions and the use of DESC can also help the ongoing summary case management pilot which seeks to reduce the number of unnecessary hearings at summary level by facilitating early disclosure of evidence, early engagement between the Crown and defence, and early judicial case management. It aims to reduce the number of cases set down for trial unnecessarily and to reduce the volume of late pleas of guilty and late decisions to discontinue proceedings. In evidence to the Criminal Justice Committee, the Deputy Crown Agent at COPFS endorsed the role of DESC in supporting early disclosure of evidence “in a way that is convenient, logical and easy for people to use”.<sup>21</sup>

## Modernisation of law on copy documents

75. The Bill also seeks to modernise current legislation on the use of copy documents in criminal cases to maximise use of existing and potential future digital technologies, and to give courts more discretion in relation to acceptance of copies of physical documents.

76. Currently, copy documents to be admitted in evidence are authenticated through the use of signed certificates. 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).

77. The development of DESC has significantly changed the way in which digital evidence can be stored, edited, transmitted, and presented in court. DESC incorporates

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<sup>21</sup> [Meeting of the Parliament | Scottish Parliament Website](#)

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multiple authentication and auditing measures to ensure the accuracy and integrity of digital documents, including where documents must be edited or redacted. As such, this avoids the need for separate certificates for authentication as all the necessary information is available from the internal audit trail in DESC.

78. Stakeholders who responded to this proposal in the consultation agreed that the transfer of digital files to any reliable digital evidence system should remove the requirement of certification. They recognised that removing the requirement of certification for files transferred to DESC could deliver significant efficiencies in the management of evidence, particularly with respect to resources.

## Alternative approaches

79. A number of alternative approaches to achieving the aims of the Bill have been considered by the Scottish Government. However, no other approach would provide the desired benefits within the constraints of time and resources.

80. The temporary provisions are due to expire on 30 November 2024 and the Parliament is being asked to extend them for the final time through a Scottish Statutory Instrument laid in Parliament on 19 September.<sup>22</sup> Allowing the temporary provisions to expire with no suitable replacement would have a detrimental impact on justice partners who have come to rely on these measures for effective and efficient operations. Informal and formal consultations confirm that they are content for the provisions to be made permanent with minimal changes to their form. Allowing these provisions to expire would also have an adverse effect on people's experiences of the justice system.

## Electronic signing and sending of documents

81. An alternative approach considered was to allow this measure to expire, requiring a return to paper documents. This approach was rejected as it would surrender efficiencies and benefits arising from the temporary provisions currently in place, be resource-intensive, and would undermine the system's recovery from the pandemic and ability to meet new pressures.

## Virtual attendance at a criminal court

82. It is recognised that use of video or remote technology must be accompanied by proactive efforts to understand individuals' needs and the making of reasonable adjustments where these are required or where video or remote technology makes effective participation unlikely. It is also acknowledged that there is considerable work to be done to ensure that the digital infrastructure across justice agencies is improved in line with the growth in volume of criminal court business. However, it is considered important that the legislative framework remains in place to allow benefits to be realised when the infrastructure is further enhanced in the future.

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<sup>22</sup> [The Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(Extension of Temporary Justice Measures\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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83. An alternative approach would be to not make these measures permanent and instead rely on section 288H of the Criminal Procedure (Scotland) Act 1995 which provides that the court can determine that a detained person is to participate in the hearing by means of a live television link. However, that provision does not apply for parties such as professional witnesses, victims and witnesses. Nor does it allow other participants in proceedings to attend remotely, including sheriffs, judges and lawyers. Under section 288H, the court would also need to make a determination that the hearing will be virtual prior to the hearing, so this provision could not be used for a virtual custody model.

84. If reliance had instead been placed on section 288H, police officers and professional witnesses would not be able to give evidence remotely, which would significantly increase the time they had to spend travelling to and attending court, reducing their time providing policing and other services in their communities. More procedural hearings, such as preliminary hearings, would need to be in court, resulting in fewer efficiencies, particularly for court practitioners, and increasing travel and waiting times. It would also not be possible to continue pilots that rely on the virtual hearing provisions, like the new model SCTS is developing for virtual trials in summary domestic abuse cases.

85. Another alternative approach considered was taking a more prescriptive approach than the 2022 Act and making provision which disapplied the physical attendance as being the default in a greater number of cases, to reflect arrangements in place through the existing determination by the Lord Justice General discussed at paragraph 32 above. However, it was felt that the provision in its current form was more flexible, providing greater discretion to the courts.

## National jurisdiction for callings from custody

86. In the absence of the provision made by the Bill, the law would revert to the pre-pandemic position that criminal proceedings before a sheriff court must normally take place in a court in the sheriff court district where the offence was allegedly committed. Though there are existing powers to transfer cases between sheriffdoms, this requires a judicial order for each individual case, making it onerous and not suitable in light of custody timescales, where cases have to be brought to court quickly. This was therefore considered unsuitable as an option.

87. Another alternative would have been to make permanent the provision made by the coronavirus legislation, but to do so without any changes. However, based on feedback from justice agencies, it was recognised that given the positive impact of the national sheriff court, it was worth expanding the provision to JP courts. Although JP courts do not deal with many custodies (as the cases they hear do not normally merit detaining the person in custody), it was felt to be beneficial to allow those involved in these cases to benefit from similar flexibility to sheriff courts.

88. Furthermore, the option of allowing JP courts to have national jurisdiction but with only JPs and summary sheriffs to preside over it would have limited the benefits of the



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provision in practice, particularly in areas where there are no summary sheriffs, as it would have meant that a JP still needed to be called in on a day they would not otherwise have been sitting.

## Fiscal fines

89. If the higher maximum fines were not available for use in appropriate cases, those cases would be prosecuted in the Justice of the Peace Court instead. That would increase demands on court capacity, and judicial and Crown time – reducing the resources available to focus on more serious cases. It could also result in longer journey times (i.e. an accused person’s criminal justice journey time from offence date to case conclusion or verdict) as more cases would require to be prosecuted in court. (As an indication, at the end of July 2024 the average time between pleading diet and evidence led trial in the JP courts was 28 weeks.)

90. An alternative approach would have been to use the existing power under the 1995 Act to make the changes by secondary legislation: the permitted maximum could be changed under section 302(7A) of the 1995 Act, while the levels of fines could be set under section 302(7). The power to do these things by secondary legislation will continue to exist and could be used in future, (subject to Parliamentary approval via the affirmative procedure). However, given that primary legislation was required to make permanent other temporary measures from the 2022 Act, allowing the Parliament to consider the changes as part of the primary legislation process on this occasion was considered to be more transparent and would allow greater scrutiny. It also provided the opportunity to adjust the way that the existing secondary legislation power to make changes to the maximum operated, so that changes to the figure were made on the face of the 1995 Act in future, rather than sitting alongside it in secondary legislation which countermanded it.

## Digital productions & alternative ways to authenticate documents

91. The provisions that relate to digital productions and alternative ways to authenticate documents are aimed at ensuring that court processes can benefit from the latest advances in digital technology and deliver a better experience for victims and witnesses.

92. Without the legislative underpinning provided by these provisions, there is a risk that digital evidence produced using DESC could be challenged during trial simply because of its format, which could cause delays to proceedings. This in turn could reduce the confidence of justice partners in adopting DESC. Given that DESC is a significant investment into transforming the justice services by the Scottish Government, the absence of these provisions would present legal obstacles to maximising the returns from this investment and achieving the desired efficiencies.

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## Consultation

93. The consultation on permanency of certain criminal justice measures from the 2022 Act and modernising criminal justice procedures through digital processes ran for 14 weeks between 6 November 2023 and 12 February 2024.

94. In total, 30 consultation responses were received<sup>23</sup>. Twenty-two were from groups or organisations, mainly from the justice sector, and eight from individual members of the public. The analysis report was published on 8 July 2024.

95. The main issues that respondents raised around the temporary measures being made permanent were that the legislative changes should not undermine the principles of local justice or digitally exclude vulnerable people.

96. The majority of those who responded to each question (defined as 50% or over who chose permanent/permanent with exceptions/agree) expressed support for every proposal. A brief summary of the responses is outlined in the following paragraphs.

97. On the matter of permanence of measures from the 2022 Act, the proposal received broad support from justice partners including judiciary, police and third sector organisations. Those expressing support highlighted benefits such as system efficiencies, cost savings, and support for vulnerable individuals. Those objecting to the proposals cited digital exclusion and barriers for individuals with complex needs, access to local justice and the financial impact of fiscal fines. As the existing provisions have been seen as working well by justice partners, the Bill follows this approach as closely as possible in this Bill, taking into account suggested improvements. The concerns raised during the consultation were considered as part of the impact assessments and mitigated, where appropriate.

98. The proposal around virtual attendance received the most engagement from respondents. Those objecting (four of thirty respondents) to making the provisions permanent raised issues that the Scottish Government is already aware of, such as having the potential to disproportionately disadvantage vulnerable individuals and those with complex needs, the quality and reliability of digital technologies, and the impact on those experiencing digital poverty. The Scottish Government has taken these points into consideration but considers that they are mainly operational and not a barrier to making virtual attendance available on a permanent basis, to be applied where appropriate. Furthermore, the court retains the power to make directions which take account of the specific circumstances affecting parties to the proceedings, and the ability to adjourn where representations are made on this. This includes the power to direct that persons attend court in person where remote attendance would prejudice the fairness of proceedings or otherwise be contrary to the interests of justice. Justice agencies are also aware of the potential difficulties and working to develop the infrastructure further to improve the reliability of digital technology.

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<sup>23</sup> [Permanence of Coronavirus Recovery and Reform Act measures: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/permanence-of-coronavirus-recovery-and-reform-act-measures-consultation-analysis)

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99. The new topics introduced in Part 1 of the Bill are both about supporting the use of Digital Evidence Sharing Capability (DESC) and the policy intention of modernising and streamlining the way in which digital evidence can be stored, shared and presented in court, thereby enabling efficiencies to be achieved in the management of evidence across the system without prejudicing the rights of the accused.

100. The proposal on digital productions received favourable responses from majority of respondents during the consultation. Cited benefits included efficiencies and quicker resolution of cases, and fewer trials, which could bring significant benefits for victims, witnesses and the accused. Specific benefits for justice partners included reduced resourcing requirements and carbon emissions associated with storage and transport of physical evidence (including reducing the need for long-term storage of physical productions if digital evidence can be treated as “best evidence”), reduced risk of loss of or tampering with evidence, and minimising risk to staff from any toxic substances.

101. The proposal on authentication of copy documents also received support with most respondents recognising the potential to reduce resources required to certify digital evidence.

102. Those who were not in favour of both the new proposals raised concerns around the reliability of DESC and the rising threat of Artificial Intelligence to the integrity of digital files as well as their susceptibility to manipulation. Respondents suggested an independent review of DESC, “road testing” of the proposal as well as close collaboration with experts in digital imaging and cybercrime.

103. The Scottish Government does not consider these issues to be a barrier to taking forward the changes in legislation. As with all digital projects delivered by the Scottish Government, the DESC programme has been subject to both the Technology Assurance Framework<sup>24</sup> and Digital First assessment<sup>25</sup> by the Digital Assurance Office (DAO) at appropriate points in the programme lifecycle. Recommendations emerging from these assessments, such as the establishment of a project management office, have been implemented to ensure the effectiveness of DESC. The use of DESC has already been piloted in Dundee since January 2023 and has been rolled out across Tayside with successful results being delivered and its robustness demonstrated. The comments provided during the consultation will also be reflected during the implementation, once the Bill is commenced.

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<sup>24</sup> The Technology Assurance Framework was introduced in 2017 to support programmes and projects to deliver successful outcomes. The Framework is intended to improve delivery and ensure that the lessons learned from previous experience are reflected and embedded in future practice. For further details visit: [Technology Assurance Framework - Digital - gov.scot \(www.gov.scot\)](https://www.gov.scot/technology-assurance-framework-digital)

<sup>25</sup> [The 14 criteria of the Digital Scotland Service Standard - Service Manual](#)

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## Part 2 – Domestic homicide and suicide review

### Policy context and background

104. The purpose of domestic homicide and suicide reviews is to identify what lessons can be learned and applied following a death where abuse is known or suspected in order to help prevent future abuse and deaths.

105. Domestic homicide and suicide reviews are not investigations into how someone died and are not about apportioning blame and/or guilt. They are fundamentally about learning in order to identify areas for change and improvement in order to help prevent further deaths and give a voice to those who have died – “they illuminate the past to make the future safer”<sup>26</sup>.

106. Domestic homicide reviews were first established in the United States in the early to mid-1990s and have since been implemented in England, Wales, Northern Ireland, Canada, Australia, New Zealand, and many other jurisdictions. In England and Wales and in Northern Ireland, legislative provision has been available for domestic homicide reviews since 2004 but they were only established in England in 2011. Scotland is currently the only part of the UK that does not have a multi-agency domestic homicide review model.

107. In 2022-23, police recorded 52 victims of homicide in Scotland, the lowest number of recorded homicide victims since 1976. Within this, 25% (13) of the 52 recorded homicide victims were female. There were no children killed in 2022-23. The majority (54%) of male homicide victims were killed by an acquaintance (21 of 39 male victims). Female victims were most likely to be killed by a partner or ex-partner (46% or six of 13 female victims).<sup>27</sup>

108. In 2022-23 there were eight homicide victims killed by a partner or ex-partner. The homicides comprised of six female victims (46% of all female homicide victims) and two male victims (5% of all male victims). Between 2018-19 and 2022-23 there were 42 victims killed by a partner or ex-partner (34 female victims and eight male victims), and three children killed by a parent. Between 2013-14 and 2022-23 there were 81 victims killed by a partner or ex-partner (63 female victims and 18 male victims), and 18 children killed by a parent. It should be noted that where a child has been killed by a parent these deaths will predominately be due to child abuse or neglect.

109. For the purposes of the statistics set out above, a child is a person under the age of 16 years old.

110. The statistics demonstrate that domestic homicide is a gendered crime that is overwhelmingly committed by men against women. However, there is also a consistent

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<sup>26</sup> [Guest Blog by Frank Mullane for DA Commissioner - AAFDA](#)

<sup>27</sup> [Homicide in Scotland 2022-23 - gov.scot \(www.gov.scot\)](#)

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number of male victims of domestic homicide each year in Scotland, across the wider UK and other jurisdictions. The gendered nature of domestic homicide is not unique to Scotland – it is a worldwide issue.<sup>28</sup>

111. There is no universal definition for what constitutes a ‘domestic homicide’. Consequentially, there is significant variation across different jurisdictions on what deaths are within scope for review models, but as a minimum all include intimate partner homicide where there has been, or it is suspected that there has been, domestic abuse. However, the majority of jurisdictions have a review model with broader scope and can include the deaths of children, domestic abuse related suicides, wider family members, bystanders, and some review models include near-death events.

112. In December 2022, the Scottish Government established a multi-agency taskforce<sup>29</sup> to provide national leadership and drive forward change and improvement through the development and implementation of a national, multi-agency review model that is cognisant of existing processes and reflective of the operating context within Scotland. The taskforce includes senior representatives from across justice, health, local government, academia and the third sector.

113. In September 2023, a model development subgroup was established to develop the detail of the model for Scotland. The subgroup is chaired by Prof. John Devaney, Dean and Head of the School of Social and Political Science, University of Edinburgh, who is widely and internationally respected within this area of work. The subgroup membership includes representatives from COPFS, Police Scotland, COSLA, Social Work Scotland, British Medical Association, NHS Dumfries and Galloway, Victim Support Scotland, Scottish Women’s Aid, Abused Men in Scotland, PETAL Support, ASSIST and academics from Manchester Metropolitan University and the University of Edinburgh.

114. The taskforce is committed to an evidence-based approach. A package of evidence was published in 2023 which included international comparator research of domestic homicide review models across 17 jurisdictions<sup>30</sup>. In February 2023, a workshop was held with taskforce members which sought views on the principles on which the model should be built and the scope of the model. Whilst there was unanimous support for those killed by a partner or ex-partner to be included within the model, there was also strong support that the scope should be broader with domestic abuse related suicide strongly supported by taskforce members to be included<sup>31</sup>.

## Consultation

115. Building on the findings from the workshop held in February 2023, a programme of targeted engagement was undertaken to gather wider views on a range of aspects, including scope, to help shape and inform the model. The targeted engagement took

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<sup>28</sup> [Facts and figures: Ending violence against women | UN Women – Headquarters](#)

<sup>29</sup> [Domestic Homicide and Suicide Review Taskforce - gov.scot \(www.gov.scot\)](#)

<sup>30</sup> [Domestic Homicide Reviews: evidence briefing - gov.scot \(www.gov.scot\)](#)

<sup>31</sup> [Domestic homicide review workshop report – Healthcare Improvement Scotland](#)

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place between 1 September and 30 October 2023. It sought the views of those with lived experience of domestic abuse, those who have been bereaved by abuse, professionals working in the field of domestic abuse, and professionals working in the field who also have lived experience of domestic abuse or have been bereaved.

116. A range of options in how to engage were made available, including through an online and written consultation and one-to-one and group engagement sessions using questions and an engagement pack prepared by the Scottish Government in conjunction with health boards and victim support organisations. Those with lived experience of domestic abuse, as well as analytical and academic colleagues, directly contributed to the development of the questions and engagement pack to ensure they were clear, concise, and importantly, person-centred and trauma informed.

117. The series of one-to-one and group engagement sessions were organised by the Scottish Government and facilitated by either Healthcare Improvement Scotland, the University of Edinburgh or Scottish Government officials. Due to the nature of the subject matter, safeguarding support was available for each session. This was provided by Scottish Women's Aid and SafeLives.

118. The targeted engagement gathered views on a number of aspects of the model, including scope of the types of death and non-death events, family and friends' involvement in the review, perpetrator involvement, information gathering and analysis, reporting and learning, and whether the model should be underpinned by legislation or not (the possibility of a non-legislative model is considered as an alternative approach at paragraphs 177 and 178 below). Taskforce members unanimously supported the view that reviews should include, as a minimum, incidents where a victim is killed by a partner/ex-partner. This was therefore considered the starting position for the Scottish model and as such, questions were not asked through the consultation on whether this should be within scope.

119. In total, there were 235 responses to the consultation and targeted engagement, including 31 (13%) individuals with lived experience of domestic abuse or bereaved by abuse, 134 (57%) professionals working in the field of domestic abuse, and 70 (30%) professionals with lived experience working in the field of domestic abuse.<sup>32</sup>

120. Of the 235 responses, 173 (74%) participants took part in one of the 28 engagement sessions, and 62 (26%) took part by answering individually to the online consultation. The sectors represented in the targeted engagement include social services, health, third sector, justice, housing, education, victim support organisations, and local authorities. There were 35 organisational responses.

121. In relation to the scope of the model as outlined, it had already been agreed through the considerations of the multi-agency taskforce that as a minimum the developing model in Scotland would include where a person is killed by their partner or ex-partner. As a result, the consultation questions in respect of the model scope were

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<sup>32</sup> [Domestic homicide reviews: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-homicide-reviews-consultation-analysis/pages/22.aspx)

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focussed towards additional deaths and events, and whether these should be also form part of the model.

122. The consultation findings highlighted that there was near unanimous support for inclusion of domestic abuse related family homicide (98%) where the perpetrator kills their partner/ex-partner and related children. There was also strong support for including violent resistance homicide (where a person experiencing domestic abuse behaviours kills the perpetrator of the abuse) (92%), domestic abuse related suicide (91%) and children who die in a domestic abuse context (90%). This could be where a child is killed as a means to cause additional harm and abuse to the primary victim of domestic abuse, but it also includes connected children who die in a domestic abuse context, for example, whilst on a play date. There was also strong support (76%) for reviews to be undertaken as soon as possible including in parallel to ongoing criminal proceedings in order to ensure that learning and lessons were captured and implemented as soon as possible. 8% of respondents were unsure on whether a review should begin as soon as possible or following conclusion of any criminal proceedings. Of the 16% of respondents who said a review should be undertaken following conclusion of any criminal proceedings, their reason for giving this response was to ensure a review did not jeopardise criminal proceedings. In response to this concern, a protocol will be developed between relevant parties including the Lord Advocate and Police Scotland. The Lord Advocate will also have the ability to pause a review. These steps will avoid any risk of jeopardising criminal proceedings.

123. There was unanimous support for the involvement in the review of adult family members of the victim in the review (100%), as well as children (99%), close friends (90%) and relevant work colleagues (94%) of the victim. There was less support for the involvement of adult family members of the perpetrator (49%), children (62%), close friends (49%) and relevant work colleagues (46%) of the perpetrator. The three main barriers to the involvement of family and friends in the review process were identified as fear of the perpetrator (100%), grief (91%), and danger of re-traumatisation (83%).

124. Respondents were also asked whether or not the model should be underpinned by legislation. There was strong support for the model to be on a statutory footing (75%). Some of the benefits to a legislative underpinning that were outlined by respondents included that it would ensure that information would be shared which would enable lessons to be learned, it would enable reviews to be prioritised by relevant agencies and it would demonstrate the commitment to learning lessons, creating change and that those who died are important. The consideration which was given to a non-legislative model is discussed as an alternative approach at paragraphs 177 and 178 below.

125. The consultation findings were published in a consultation analysis report in December 2023. In addition to the analysis report, a poster summarising the Scottish Government response to the findings<sup>33</sup>, was also published. The findings were used to inform next steps including a number of fundamental aspects of the domestic homicide

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<sup>33</sup> [Supporting documents - Domestic homicide reviews: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-domestic-homicide-reviews-consultation-analysis)

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and suicide review model provisions within the Bill, such as the detail of the types of deaths to be included within the review model.

126. Following the consultation findings, the taskforce was renamed to reflect the inclusion of domestic abuse related suicide within the scope of the model. A number of ‘task and finish groups’<sup>34</sup> were also established to take forward specific aspects of the model development work. These groups report into the model development subgroup. The groups include:

- Domestic Abuse Related Suicide;
- Children and Young People;
- Workforce and Training; and
- Information Governance Delivery Group

127. The consultation findings provided clarity on a number of the fundamental aspects of the review model in Scotland. However, work on how the model would operate in practice within the existing landscape in Scotland was required to be worked through. To do this the taskforce, model development subgroup and the four groups have been developing the detail of the model. A number of findings from the consultation have been considered in depth by the taskforce and model development subgroup. These considerations have helped shape and inform the development of the provisions within the Bill and are set out below.

## Inclusion of children, young people and connected deaths

128. The Bill proposes inclusion of children and young people in the review model. This is based on the responses from the taskforce work, the consultation and targeted engagement undertaken in 2023, a review of domestic homicide and suicide review models in other jurisdictions and a review of the existing review landscape in Scotland.

129. The inclusion of children and young people in Scotland’s domestic homicide review model received the fourth highest support in the consultation, among those who responded to this question, at 90%.

130. The findings from the taskforce workshop and consultation analysis highlighted the importance of treating children as victims within the context of domestic abuse. It was stated that abuse to children and other dependents related to the victim are seen as extensions of her/ him, and attacks are directed at the main victim of domestic abuse by proxy. Killing a child within the context of domestic abuse was described by those who responded as a targeted, final act of domestic abuse. Those with lived experience unanimously agreed that children should be included within the scope of the model.

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<sup>34</sup> Task and finish groups are short-life groups established to take forward specific detailed pieces of work. These groups are dissolved once the work is concluded.



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131. It was also considered by taskforce members and respondents to the consultation that the current review processes for children and young people have gaps in relation to domestic abuse. This is due to existing reviews taking a child protection perspective. As such, it was considered that while these existing review processes have strengths, they also have limitations, particularly in relation to domestic abuse. Specific criticism of the existing review processes in relation to children and young people were that in only applying a child protection lens to reviews, the parent experiencing domestic abuse can appear invisible or, in some cases (mostly in relation to mothers), can be seen as failing in her duty to protect her children.

132. Acknowledging this feedback while being mindful of the pre-existing review landscape for deaths of children and young people, the domestic homicide and suicide review model proposed in the Bill will include children and young people but, where appropriate, a joint review would be undertaken. This would ensure that both the domestic abuse and child protection lens can be applied and that the learning generated will have wider benefits.

133. It is anticipated that relevant agencies and organisations for a domestic homicide or suicide review will be similar for both reviews but where there is a need to bring in specific review panel members from either a domestic abuse or child protection perspective, the review oversight committee chair will invite them to participate in a domestic homicide or suicide review and feed into the review terms of reference.

134. Work to develop how domestic homicide and suicide reviews will operate where children and young people are either a victim, or where they may participate in a review, is being taken forward through the children and young people group under the taskforce. The group included representatives of key organisations in relation to existing reviews in relation to children and young people.

## Children's involvement in reviews

135. Within the consultation, professionals expressed that children should be included in reviews to provide more information surrounding the source of risks. Involving children in the review process, if they choose to participate, will help give a voice to children and young people who have been affected by domestic homicide and suicide. However, it is essential that children's participation in a review is done in a person-centred, trauma-informed and age-appropriate way. It is also acknowledged that, depending on the age and stage of children, it may not be appropriate for them to participate in a review. If they do participate it will be essential that they are supported to do so before, during and after a review. The support for children and young people relates to the Bairns' Hoose approach to delivering child protection, justice, and health support and services to child victims and witnesses of abuse and harm. The overall vision of a Bairns' Hoose in Scotland is that all children in Scotland who have been victims of or witnesses to abuse or violence, as well as children under the age of criminal responsibility whose behaviour has caused significant harm or abuse, will have access to trauma-informed recovery, support and justice.<sup>35</sup>

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<sup>35</sup> [Bairns' Hoose - Scottish Barnahus: vision, values and approach - gov.scot \(www.gov.scot\)](http://www.gov.scot/bairns-choose)

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## Familial homicide, including honour killings

136. The consultation showed that inclusion of familial homicide within the model scope was not strongly supported (75% support for inclusion) in comparison to other types of deaths that are to be included within the model. The types of deaths and events to be included within the review scope was drawn at 90% support or higher for inclusion. For the purposes of the consultation, familial homicide included a range of deaths where there was abuse and the perpetrator and victim/s were immediate and/or extended family members. This included examples such as: one brother killing another brother, a grandchild killing a grandparent, a child killing parent, a parent-in-law killing their daughter in law.

137. In considering the consultation responses in respect of familial homicide, there was support for 'honour killings' to be included in the model. The inclusion of honour killings was considered as part of the wider work undertaken to refine the model scope. However, at present there is not a definition of what so-called 'honour based abuse' and in turn, 'honour killings', means in a Scottish context.

138. The Scottish Government is committed to include honour killings in the review model. This work will be progressed once the commitment under the Scottish Government and COSLA co-owned Equally Safe Strategy<sup>36</sup> and the refreshed Equally Safe Delivery Plan<sup>37</sup>, to develop an approach to address honour based abuse, including consideration of a statutory definition, has concluded. Consultation will also need to be undertaken to ensure the review model captures and reflects honour killings in a way that responds to how it is experienced by black and minority ethnic women in Scotland. The Bill therefore includes provisions to enable the future modification of the scope of the review model by an affirmative Statutory Instrument.

## Associated homicide

139. In addition to familial homicide, support for associated/ bystander homicide to be included within the model was less than 90%. In total, 83% of respondents supported the inclusion of associated homicide within the review model. Within the associated death questions asked in the consultation, there was support for specific associated deaths. Most notably, where the perpetrator of the abuse kills their ex-partner's new partner. This would need to be looked at in more detail but could be included in the future following further work on the detail of what that could look like.

## Summary of the provisions of Part 2 of the Bill

140. The measures in Part 2 of the Bill include:

- definition and scope of a domestic homicide or domestic suicide review;

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<sup>36</sup> [Equally Safe 2023 - preventing and eradicating violence against women and girls: strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equally-safe-2023/preventing-and-eradicating-violence-against-women-and-girls-strategy/pdf/#:~:q=equally%20safe%20strategy)

<sup>37</sup> [Equally Safe Delivery Plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equally-safe-delivery-plan/pdf/#:~:q=equally%20safe%20delivery%20plan)

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- an enabling power to modify the scope and name of the review model;
- provision to establish a review oversight committee, chair, deputy chair, and case review panels and chairs;
- provisions requiring a notifying body to notify of any death which is thought to meet the review criteria;
- provisions to ensure a review does not prejudice any other live investigation or proceedings;
- provisions to ensure co-operation, participation and recovery of information; and
- reporting requirements.

## Policy objectives

### Definition and scope of a domestic homicide or domestic suicide review

141. In defining the scope of the model, the domestic homicide and suicide review taskforce workshop helped to inform the consultation and targeted engagement undertaken in 2023. The scope of the model is reflective of the consultation findings and the near unanimous scope in respect of the types of deaths that should be included. A threshold of 90% support by consultation respondents was where the cut-off was drawn. Whilst it is recognised that the model scope threshold may appear unusually high, it emphasises the significant support for the types of deaths that should be included from the outset of the model which is an important foundation from which the model can start from, and in time, can expand once embedded.

142. The rationale for why certain types of deaths are not included in the outset of the model is set out above.

143. It is acknowledged that the scope of the review process is broader than that of the current definition of domestic abuse which amounts to criminal conduct as outlined in the Domestic Abuse (Scotland) Act 2018. This is in recognition of the strong support and opportunity for domestic homicide and suicide reviews to go further. That distinction is recognised in how the review model has been defined. This is also considered important in respect of futureproofing the model which may in time see it depart further from the definition of domestic abuse within the 2018 Act in recognition of changing social circumstances.

144. In considering the model scope and potential to expand in the future, a deliberate focus has been placed on the 'behaviours' of domestic abuse rather than the 'relationships'. The Bill's approach is therefore in keeping with domestic abuse without tying it to the relationships set out within the 2018 Act or the Domestic Abuse (Protection) (Scotland) Act 2021.

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145. Those experiencing domestic abuse can often not report to the police for some time. Where a report is made to the police, under the 2018 Act there must be a course of conduct established, meaning that there must be two or more recorded incidents of domestic abuse.

146. In approximately half of domestic homicides in Scotland, victims did not report any prior domestic abuse incidents. There will, however, often be a footprint on other agencies and services systems such as General Practice. Therefore the domestic abuse behaviour in terms of the model is as per the 2021 Act, which does not require a course of conduct to be met. This means that for the purposes of domestic homicide reviews, the death itself is enough to constitute abusive behaviour.

147. It should also be noted that whilst victims of domestic homicide and suicide are predominately women, the model recognises that domestic homicide and suicide victims also include men and as such, the model will include victims of any gender.

148. The types of deaths that are covered by the Bill's proposed review mechanism are:

- those killed by a partner or ex-partner;
- someone killing their children or the children (of any age) of their partner or ex-partner;
- violent resistance where a victim of domestic abuse kills their abusive partner/ex-partner;
- someone killing children/young people who live in the same household as them or their partner/ ex-partner;
- domestic abuse related suicide; and
- connected deaths of children and young people (those who die as part of a domestic abuse related death (or a near-miss) but who may or may not be related to the victim or perpetrator).

149. For the purposes of the review, a young person means a person who is under 18 or up to the age of 26 for care-experienced individuals.

## Enabling powers to modify the scope and name of the review model

150. As a means to futureproofing the legislation, the Bill proposes a power to enable the extension of the review model (by regulations subject to the affirmative procedure) to other relationships and/or to events other than death in future. The consultation and targeted engagement work highlighted support for other types of deaths to be included, such as honour killings and new partners.

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151. The enabling power is being included to help to futureproof the legislation. However, given the nature of the reviews, it is fundamental that the reviews are conducted correctly and deliver effective learning, and it is therefore important to ensure the scope of the model is manageable, particularly at the early stages of implementation as the reviews will include bereaved family members, friends and communities. It is therefore imperative that reviews are done well to ensure the best possible outcomes for all involved and experience for family members. It is fully recognised that there will be a future need to expand the model. One example is in respect of honour killings. At present, further work is required to define honour killings in a Scottish context but, following conclusion of this work, the enabling power will allow for an extension to the model scope and in turn, the name of the model, where Ministers consider it necessary and appropriate.

## Provision to establish a review oversight committee, chair, deputy chair, case review panels and panel chairs

### Review oversight committee

152. In considering the approach to take in Scotland, the taskforce and model development subgroup explored the approaches adopted by other jurisdictions in terms of domestic homicide and suicide reviews and considered review processes undertaken currently in Scotland. It determined that a review oversight committee in respect of domestic homicide or suicide reviews was necessary, and that it would have responsibility for overseeing the carrying out of such reviews following notification from the Chief Constable, Lord Advocate or the Scottish Ministers.

153. The review oversight committee chair and deputy chair are to be public appointments. This is to ensure that the model is independent, robust, resilient, fit for purpose and inspires trust in those engaging in the process. This approach is very distinct from that taken in other jurisdictions, where the absence of confidence and engagement with the model has undermined its ability to deliver effective change as a result of its deliberations. Examples of such include, review chairs being assigned a review based on cost rather than ensuring they have the necessary skills and expertise. A further example of challenges in other jurisdictions review models is the relationship between the review chair, panel members and those commissioning reviews. The lack of independence has resulted in learning being missed or not reported and in turn, has an impact on families at a time where they are already experiencing trauma. In addition to the chair and deputy chair, the review oversight committee is to consist of representatives from a number of public authorities and will include victim support representation. The review oversight committee will comprise of key agencies and organisations with the ability to add and remove those listed in the Bill. It is intended that the review oversight committee members will be fairly static in order to build up a body of collective knowledge in relation to domestic homicide and suicide reviews. The review oversight committee will review notifications received and determine whether cases proceed to review. The Bill sets out the criteria against which the review oversight committee will consider each case.

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154. The Scottish Ministers will also have an important role in the review process. In line with a number of other jurisdictions e.g. England and Wales, Scottish Ministers will have the ability to overrule a decision made by the review oversight committee not to review a case. This will form part of the mechanism to appeal a decision. It is anticipated that the number of occasions where Ministers would overrule the review oversight committee will be rare; however, it is important to have the ability for families to be able to escalate a case if they consider a review should be undertaken but the review oversight committee reach a different conclusion.

## Case review panels

155. The Bill will enable the review oversight committee to establish case review panels for the purpose of carrying out domestic homicide or suicide reviews. Similar to the review oversight committee chair and deputy chair, the chairs of the case review panels will be recruited through a public appointment process to reflect the views of the taskforce, model development subgroup and consultation findings which all indicated that independent chairs are key.

156. Both the taskforce and the model development subgroup considered the approaches adopted by other jurisdictions in terms of domestic homicide and suicide reviews. They also considered wider review processes in Scotland. The approaches each have advantages and limitations, but in considering them in conjunction with multi-agency partners, it was clear that the chair must be seen to be independent. Deficiencies in chairing identified in other jurisdictions have created issues in impartiality and quality, low quality or less robust reports, learning not being identified and recommendations being incomplete or ambiguous. This has resulted in lessons not being learned or implemented. It also often results in family members being wholly dissatisfied with the review and report in respect of their loved ones.

157. Following its considerations, it was determined that in order to ensure the review oversight committee and case review panel chairs are independent, they are to be recruited through a public appointment process. This independent approach to appointments is a fundamental aspect of the review model for stakeholders and families both in ensuring robustness but also in ensuring confidence in the process and willingness to engage.

158. When it is determined that a case is to proceed to review, the review oversight committee will draw a chair from the pool of case review panel chairs. Each of the chairs will bring their own unique expertise e.g. knowledge and experience of policing and domestic abuse or of the parole board. Due to there being a small bank of chairs, should there be any conflict of interest, another individual can chair a review.

159. To reflect the nature of the review landscape in Scotland, the review oversight committee will be able to establish a joint review where it is considered relevant and appropriate. It is anticipated that this approach will be taken where a review includes the death of a child. The joint review approach is intended to reduce duplication and burden

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on family members and stakeholders by engaging in multiple reviews in addition to a potential criminal investigation.

## Payments to, and disqualification provisions relating to, committee and panel members

160. In accordance with other domestic homicide and suicide review models and international good practice, the review oversight committee chair, deputy chair and panel chairs are to be paid appointments. To help ensure the chair and deputy chair of the review oversight committee and case review panels chairs are independent, in addition to the public appointment process, the provisions include a list of those disqualified from appointment, which is designed to ensure no conflict of interest.

161. Representative members of the committee and members of panels other than the chair will not be paid. Further detail of the operating costs of the review model are set out in the financial memorandum.

## Provisions requiring a notifying body to notify of any death which meets the review criteria

162. The Bill will place a duty on the Chief Constable of Police Scotland and the Lord Advocate to notify the review oversight committee in writing of any death of which they are aware which they believe is a reviewable death. A copy of the notification is also to be provided to the Scottish Ministers as part of their role in providing the secretariat function to the review process to enable it to function effectively. The Scottish Ministers may also make a written referral to the review oversight committee where they become aware of a death which they believe is, or may be, a reviewable death. Ministers may also receive a notification from families or an advocate on behalf of a family requesting a review. Ministers will be able to refer this into the review oversight committee for consideration.

163. The criteria for a reviewable death is set out within the provisions of the Bill and is discussed above.

## Provisions to ensure a review does not prejudice any other investigation or proceedings

164. The consultation analysis highlighted strong support for reviews to commence as soon as possible, including in parallel to ongoing investigations. This is due in part to the recency of the event increasing the likelihood of those who had been engaging with the victim and/or perpetrator remembering the detail of those engagements. In addition, records held on those subject to a review should still be held by organisations. One of the key reasons for why respondents thought reviews should be undertaken as soon as possible was to ensure that the learning was captured quickly and actioned in order to see change and improvements as soon as possible.

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165. Reviews in some jurisdictions do not commence until criminal proceedings have concluded. A number of issues were highlighted by consultation respondents to the idea of Scotland taking a similar approach. These included: a delay in capturing learning and implementing change, particularly where proceedings are lengthy; where there is a delay in capturing learning, it can often then be out of date; the memories of those who were involved with the victim and/or perpetrator can fade, staff may have moved roles and families can feel frustrated that the learning that could be gained from their loved one's death is delaying in being identified and in turn, change is not happening as quickly as it could be.

166. There are a number of review processes that do begin following a death and in parallel to ongoing criminal proceedings. Examples of such reviews in Scotland include child protection learning reviews and death in custody reviews. Both these reviews have taken steps to minimise the risk of jeopardising any live investigation or proceedings. These steps include working closely with relevant justice agencies to develop a protocol that sets out certain aspects of how a review will operate. A similar approach will be taken for domestic homicide and suicide reviews which will involve a protocol being developed by Police Scotland, COPFS and the Scottish Ministers. Provision has been made in relation to the relevant agencies entering into such a protocol to enable reviews to be undertaken as soon as possible following a death without prejudicing a live investigation or criminal proceedings.

167. To further ensure that a review does not jeopardise criminal proceedings, the Bill includes a power for the Lord Advocate to pause or end a review where the Lord Advocate deems this necessary in order to prevent potential prejudice to a live investigation or to criminal proceedings or a Fatal Accident Inquiry (including protecting the outcome of proceedings). This will be discussed with the chair of the review oversight committee before a review is paused or brought to an end. The review oversight committee would then stop or pause any ongoing review where applicable, until such time as notified otherwise.

## Provisions to ensure co-operation, participation and recovery of information

168. In order for a review to be undertaken, information on the victim(s) and the perpetrator (where being considered) needs to be shared with the review. This has been a challenge with other non-statutory reviews and therefore a duty to participate, co-operate and to share information through a legal data gateway is a key component of the Bill that will support the review process to operate successfully.

169. The duty to participate, co-operate and share information is relevant to public authorities but the Scottish Government considers it should not be applied to voluntary sector organisations as it may be too burdensome. This is particularly relevant as often victims of domestic abuse have had prior contact with a third sector victim support organisation prior to their death and as such, these organisations hold information that would be relevant to a review. The Bill makes separate provision for the Scottish Ministers, the chair (or anyone deputising for the chair) of the review oversight



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committee and case review panel chairs to be able to, by notice in writing, require a person to provide them with information which the person holds and which is considered necessary for the carrying out of a review. Organisations which are made subject to a requirement to provide information would be able to participate more fully in a review if they were content to do so, but would not be compelled to do anything beyond providing the requisite information.

## Reporting requirements

170. In relation to reporting, the Bill contains reporting requirements which will require the Scottish Ministers to lay regular thematic reports in Parliament. Biannual thematic reports will include the following:

- Common themes and key learning points emerging from recommendations in individual reports;
- Any actions taken as a result of recommendations and where known, the impact of those actions;
- The number of notifications of deaths received which were suspected to fall within the scope of the domestic homicide and suicide review model, broken down by Lord Advocate notifications, chief constable notifications and Ministerial notifications, and between homicides and suicides;
- The number of cases considered for review by the review oversight committee broken down between homicides and suicides;
- The number of decisions not to undertake a review and the reasons for this, broken down between homicides and suicides;
- The number of reviews commenced and the number completed, broken down between homicides and suicides; and
- Any other information the Scottish Ministers consider appropriate.

171. Recognising the limitations of a number of review processes, it is important to ensure that the domestic homicide and suicide review model learns from these limitations and is open and transparent about how the review model is operating once implemented. Part of this will be achieved through reporting to Parliament on a biannual basis on the learning gained through the reviews undertaken, the progress made by organisations on implementation of learning and the impact that implementation of the learning and recommendations has made.

172. Following completion of a review, the report will be shared with the organisations where learning, recommendations and actions have been identified. This will in practice be discussed with the organisations to ensure the recommendations are clear and achievable. This will not give any organisation a veto, but it will enable them to ensure what is recommended is feasible (though if it is not then they will be able to respond to the recommendation to that effect). Reports will be submitted to the review oversight committee and where relevant, to the Care Inspectorate. The learning will be shared

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locally and nationally through a number of mechanisms and the Scottish Ministers will track and monitor progress against the recommendations and actions.

173. Review reports will be shared with family members in line with guidance which will be issued on this point, and they will be given time to fully digest the report with an opportunity to meet and discuss the report with the panel. Family members are central to the review and will be kept updated throughout the whole process if they choose to be.

174. While review reports will be anonymised, there may be occasions where a review report or a summary report is not able to be published. This will be discussed with relevant justice agencies. Where a report is not able to be published, the review oversight committee is required to publish what it can in terms of a summary of the lessons learned.

## **Alternative approaches**

175. The approach to developing Scotland's domestic homicide and suicide review model has from its inception been a multi-agency one rooted in evidence. Existing and comparable review models in Scotland have been considered, as have a range of domestic homicide and suicide reviews in jurisdictions across the UK and internationally. In addition, the findings of the consultation and targeted engagement have also been considered as part of a package of evidence viewed within a Scottish context.

176. Whilst Scotland is the only jurisdiction in the UK to not have a domestic homicide or suicide review model, one advantage this brings is the ability to learn from what has worked well and what has not, and for that learning to be fully examined by multi-agency stakeholders and those with lived experience of domestic abuse and those bereaved by domestic homicide and suicide.

177. This work has identified a number of fundamental aspects that are necessary in order for the review model for Scotland to operate effectively and successfully in accordance with the evidence base and stakeholder aspirations. A number of these fundamentals will require or benefit from legislative provision. In particular, provision to ensure those key to the review process participate and share information requires a legislative underpinning in order to provide a lawful basis for information to be shared (in line with data protection legislation). The use of legislation is also standard practice in relation to the appointment of office-holders, and is a means of instilling confidence in the integrity of the appointment process. The Bill includes provision for Scottish Ministers to recruit the review oversight committee chair and deputy chair, and the case review panel chairs through a public appointments process.

178. Whilst a non-legislative approach was fully considered, it was deemed not to be sufficient in ensuring a number of key aspects of the model could be delivered in a way that stakeholders would have confidence in (for example, in providing for statutory public appointments). In relation to information-sharing, it is not merely about

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stakeholder confidence: the creation of a statutory obligation to provide information facilitates a lawful basis for processing under section 8(c) of the Data Protection Act 2018 and Article 6(1)(c) and/or (e) of UKGDPR. Given those parameters, a non-legislative model was not considered a viable option from a Scottish perspective.

179. The scope of the model (in the sense of the deaths which are reviewed) also presented a variety of different options which could have been pursued as alternative approaches. Given that the question of which deaths are reviewable is integral to the review model as a whole, discussion on these points and the alternatives considered is set out earlier in this memorandum, as part of the discussion of the overarching policy. See in particular paragraphs 111 to 114 and 128 to 139 above for further details.

180. A number of alternative approaches to achieving specific aspects of the model have also been considered, including the format in which information will be sought from those participating in a review (e.g. the review panel analysing an individual's medical records or whether an organisation undertakes its own review of its records and submits a report alongside a chronology of key events leading up to the death). Consideration of how to ensure learning is disseminated and implemented effectively was also considered following research being undertaken to explore what has worked well in different jurisdictions in terms of domestic homicide and suicide reviews but also other learning reviews<sup>38</sup>. It was considered that the approach taken and the decisions made by the taskforce, in consideration of the consultation findings, would deliver a robust, fit-for-purpose review model that will achieve the benefits sought by stakeholders, which are to learn from domestic homicides and suicides by identifying areas for improvement and implementing change in order to help prevent further deaths.

181. Another key consideration was in relation to the number of reviews conducted per annum and how that should inform the approach to be taken. In relation to the number of homicide victims killed by a partner or ex-partner, the average number of cases per year is 9. That suggested that undertaking local reviews would not be appropriate due to some local authority areas potentially not undertaking any reviews for a considerable period, and others undertaking a limited number, which would not enable confidence to be gained in undertaking reviews. It could also impact the trust in the process to be followed, particularly for bereaved families. It is also difficult to look at themes and trends on a local authority by local authority basis. Reviewing the estimated volume of cases at a national level enables learning to be disseminated locally and nationally and for implementation to be tracked more effectively. This approach is similar to other jurisdictions that operates nationally with a similar average number of reviews that are considered to be delivering an effective model.

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<sup>38</sup> [Domestic homicide reviews: identifying best practice in learning lessons and implementing change - gov.scot \(www.gov.scot\)](http://www.gov.scot)

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## Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

### Equal opportunities

182. The Scottish Government has assessed the potential impact of the provisions on the protected characteristics and has determined that no adverse effect on protected characteristics is anticipated with regard to the majority of the provisions. Where impact has been perceived, the Scottish Government considers there are sufficient mitigations in place within the justice system. An Equality Impact Assessment has been undertaken and will be published in due course.

183. With regards to the provisions on electronic signing and sending of documents, digital exclusion is a significant issue to consider. Lack of access to remote technology, lack of digital skills and connectivity issues may present a barrier to electronic communication. However, it is important to note that the provisions will not remove the option of traditional means of communication. Instead, they will simply offer an additional option to those who wish to, and are able to, use electronic means.

184. With regards to the provisions on virtual attendance at a criminal court, it is acknowledged that the provisions relating to remote attendance for criminal procedures may have more of an impact on some of the protected characteristic groups, in particular those with certain disabilities. However, the court and tribunal in every case retains the power to make directions which take account of the specific circumstances affecting parties to the proceedings, and the ability to adjourn where representations are made on this. This includes the power to direct that persons attend court where remote attendance would prejudice the fairness of proceedings or otherwise be contrary to the interests of justice.

185. With regards to the provisions on domestic homicide and suicide reviews, the EQIA evidenced that there would be a greater impact on women and girls in terms of the deaths which are the subject of a review and who are therefore the cohort who will benefit most in future from the lessons learned from reviews. The research undertaken for the EQIA and wider policy development outline that between 2018-2019 and 2022-2023, there were 42 victims killed by a partner or ex-partner (34 female victims and 8 male victims). In addition, there were 3 children killed by a parent over the same time period. Due to domestic homicide being a gendered crime, the lessons learned following a review will therefore have a greater impact on women between 26 and 65 years old.

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## Human rights

### Criminal justice modernisation

186. The Scottish Government has assessed the potential impact of provisions on human rights and considers that there are sufficient safeguards in the justice system to ensure all provisions are used in a manner that is compatible with the European Convention on Human Rights (ECHR). Aspects of the Bill promote human rights, such as by enabling an individual in custody to be brought before a court more swiftly and criminal proceedings to be concluded more promptly. It should be noted that while there can be downsides to use of digital technology for some vulnerable people (which can be dealt with by effective judicial oversight in individual cases, including by ensuring physical attendance whenever needed), for others such as those living far from the court or with physical disabilities the same technologies can be key in enabling effective participation.

187. During the consultation, only one respondent raised concerns about the impact of virtual attendance at criminal court concerns with respect to the conditions in which individuals present evidence remotely and ensuring they are not subject to undue influence, as well as guaranteeing that accused persons have confidential communication with their defence solicitor. The Scottish Government has assessed the potential impact of this provision on human rights and considers that, although Article 6 of the ECHR (the right to a fair trial) is engaged by the provisions, there is no breach of Article 6 and the provisions are ECHR compliant. The courts are obliged to make decisions about remote proceedings in an ECHR compliant manner, and to ensure that due process is being followed during proceedings. Guidance is currently in place for the courts, and efforts will be made to widen awareness in response to concerns identified during the consultation process.

188. With regards to national jurisdiction for callings from custody, the provisions uphold the rights of the accused by ensuring those appearing from custody can be processed without delay; this also upholds Article 5 under ECHR. By contributing to reducing backlogs in courts through quick processing of custody cases, the provision has beneficial impacts for the victims and accused.

189. With regards to digital productions, where an accused person considers that in any individual case the use of an image in place of a physical item of evidence would be unfair, they will be able to seek a direction from the court that it should not be treated as equivalent. With regards to alternative ways to authenticate copy documents, the courts will retain the ability not to accept a copy as equivalent to the document/item copied where they consider this necessary. The first version of an item of evidence scanned or uploaded to DESC is always identical to the item scanned or uploaded, as there is no ability to edit during transfer to DESC and any subsequent editing produces a new version and does not change the first version. There can therefore never be any prejudice to the interests of justice in accepting this first version as equivalent to the item scanned or uploaded.

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## Domestic homicide and suicide reviews

190. Violence against women is a fundamental violation of human rights and is wholly unacceptable. Domestic homicide is a gendered crime that is predominately committed by men against women. The learning to be gained from domestic homicide and suicide reviews will assist in protecting and promoting the human rights of future victims of abuse, predominantly women and girls.

191. The Scottish Government has assessed the potential impact of this measure on human rights and has concluded that it is ECHR compliant.

192. The lessons learned as part of the domestic homicide and suicide review process will not determine criminal or civil liability, so Article 6 (right to a fair trial/hearing) is not engaged. Whilst Article 8 (the right to respect for private and family life) is engaged where there is interference with privacy of living people and reputation (connected to the content of reports), the Scottish Government considers that the provisions do not breach Article 8 and are ECHR compliant. The Bill provides for published case review reports to be anonymised and redacted where this is necessary to avoid “jigsaw identification”. Where effective anonymisation is impossible, the report will not be published, although at a minimum information about recommended improvements will still be made public to ensure that lessons can still be learned from the review. Safeguards such as the Lord Advocate’s power to suspend a review have been built in to ensure that there is no interference with the effective enforcement of the criminal law as protected under article 2 ECHR (right to life).

193. In addition, as noted above, to ensure ECHR compliance, the reporting requirements of the review oversight committee not only require the consent of the Lord Advocate but also that the chair must ensure that any published report does not identify, or include information which would or might allow the identification of, a living individual unless the individual has consented to the identification or (as the case may be) the inclusion of the information.

## Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

194. The Cabinet Secretary for Justice and Home Affairs has made a statement in writing that, in her view, the provisions of the Bill are compatible with the UNCRC requirements.

## Island communities

195. The Scottish Government has assessed the potential impact of these measures on island communities and has determined no significant adverse impact is likely. The provision relating to virtual attendance at a criminal court will likely have benefits for the island communities by improving the accessibility of court proceedings. This was

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identified as a particular issue for communities where no court is available locally, and where travel to and from the mainland can be costly and unreliable. It was also noted that justice social work teams are typically smaller on Scotland's islands, and that these teams could benefit from greater use of digital technologies and remote communication.

196. In relation to the domestic homicide and suicide reviews provision, it is also recognised that in order to ensure those in the island communities, including representatives from public organisations and wider stakeholders, are able to fully and meaningfully engage and have confidence in the review model, the opportunity to participate virtually and/or to meet reasonable travel costs to attend meetings in persons will form part of that approach.

## Local government

197. The Scottish Government has assessed the potential impact of measures within the Bill on local government and has determined that no adverse effect is anticipated.

198. Whilst no specific adverse effects have been identified, there will be a duty on public authorities to co-operate, participate and share information where it is determined that a domestic homicide or suicide review is to be undertaken. Whilst this will be a new requirement for public authorities, this is in line with other review processes that are currently in operation in relation to other types of reviews and can be managed through existing structures.

## Sustainable development

199. It is not envisaged that the provisions in the Bill will have a detrimental effect on sustainable development or the environment. Although difficult to quantify, some of the measures here will have a positive effect on sustainable development and deliver environmental benefits as a result of reduced printing and paper usage and will also lower climate impact through reducing the level of travel required.

200. The provision that relates to virtual attendance at a criminal court is considered to have helped reduce the financial and environmental cost associated with travel. The use of digital productions is likely to reduce environmental impacts associated with travel to and from court due to reduced transport of evidence and people.

201. Overall, criminal justice modernisation is aligned with the United Nations Sustainable Development Goal 16<sup>39</sup> (promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels); one of the key indicators (16.6.2) relates to improving the proportion of the population satisfied with their experience of public services, which is one of the aims of these provisions.

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<sup>39</sup> [Goal 16 | Department of Economic and Social Affairs \(un.org\)](#)

This document relates to the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 24 September 2024

202. The provisions also aim to improve the Outcome for Human Rights of the National Performance framework by improving the indicator that relates to 'Access to Justice'<sup>40</sup>.

## Crown consent

203. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

204. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

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<sup>40</sup> [Measuring progress - Human Rights | National Performance Framework](#)





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

## Policy Memorandum

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