# Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill
[As amended at Stage 2]

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# Supplementary Delegated Powers Memorandum

## Purpose

1. This memorandum has been prepared by the Scottish Government in accordance with rule 9.7.9 of the Parliament's Standing Orders to assist the Delegated Powers and Law Reform Committee in its consideration of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

## Provisions conferring power to make subordinate legislation introduced or amended at Stage 2

3. The amended or new delegated powers in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

### Section 5A(2): Power to modify list of persons issued with and wearing 'body-worn video cameras'

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative
Revised or new power: New

## Provision

4. Section 5A of the Bill inserts a new section 283A into the Criminal Procedure (Scotland) Act 1995, which, in some circumstances, provides that when body-worn video footage is produced in evidence by the prosecution, and any or all of the date, time and place of the events are displayed on the footage, the footage is deemed to be sufficient evidence of those displayed details.

5. This provision only applies to body-worn video cameras issued to and worn by Police Scotland. Under new section 283A(6), the Scottish Ministers have the power to modify this section by regulations to enable the footage from body-worn video cameras used by other organisations to fall under this provision. Prior to making such regulations, the Scottish Ministers are required to consult the chief constable of Police Scotland, the Lord Advocate and the Lord Justice General.

## Reason for taking power

6. New section 283A seeks to ensure that uncontentious evidence of time, date and location of body worn footage can be accepted by the court without routinely having to cite police officers to speak to these details. Allowing Ministers to modify the list of organisations who can benefit from this presumption future-proofs the legislation. It ensures that, if and when, other organisations are using body worn video to the satisfaction of Ministers, after consulting with the list of statutory consultees, they too will benefit from the efficiencies created by the presumption in not routinely having their staff attend court to give evidence of uncontested details. Examples of organisations that may be considered for addition in the future are the Scottish Prison Service and British Transport Police.

## Choice of procedure

7. The exercise of this power will not affect the underlying principle of the Bill and its provision for allowing the date, time and location of body worn video to be accepted as sufficient evidence of these facts if not challenged. Negative procedure following a statutory consultation requirement is therefore considered to provide an appropriate balance between the nature and content of the regulations that would be made under this power and the availability of parliamentary time and resource to scrutinise such regulations.

8. Although the power allows for the modification of primary legislation (in order to maintain one comprehensive and authoritative list), the nature of the change that would be made is very mechanical as it is limited to the naming of persons.

# Section 10 (1)(e): Power to modify the basis on which a determination under section 16 is to be made

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative
Revised or new power: Revised

## Provision

9. As introduced, section 10 of the Bill provides a regulation making power to enable the Scottish Ministers to modify what it means for abusive behaviour to result in or (in the case of suicide) be a contributing factor to a death; the relationships that need to be or have been in place for a review to be undertaken; the circumstances that would give rise to a review: and the name of the review. Section 10(1)(e) adds to the regulation-making power to enable the Scottish Ministers to modify the basis on which a determination under section 16 is to be made.

## Reason for taking power

10. The expansion of the regulation making power in section 10 was identified as necessary during the development of the amendments to the definition of a "domestic abuse death" in section 9 to anchor the required abusive behaviour within the context of abuse between partners/ ex-partners. In doing so, the sift criteria (for determining whether a review should be carried out into a domestic abuse death) also required to be adjusted to take account of the change to the scope of reviews. A similar process may be necessary in future if the regulation-making power is used to alter the scope of reviews in other ways.

11. This addition to the enabling power will help futureproof the review model in the event of changes in social and cultural circumstances that may lead to modification to the types of deaths and events that the review model encompasses. To provide an example where the power may be required, the Scottish Government has committed to expanding the review model to include so-called 'honour killings' once work has concluded on defining the term in policy and legal terms. The Bill does not currently reflect the nuances of so-called 'honour abuse' as there are often multiple 'perpetrators' which include family members, extended family and members of the community. These important distinctions may require to be reflected as part of the sift if the review model is to operate as intended for such deaths in future.

## Choice of procedure

12. This power is subject to the affirmative procedure. The Scottish Government considers this is appropriate to allow the Scottish Parliament to fully consider future changes to the sift alongside changes to the definition of what is within scope of a review, where further deaths and/ or events are included in section 9.

13. This procedure reflects the importance and significance of potential changes made under this power. As such, it is considered appropriate that the affirmative procedure applies to the use of this power.

This document relates to the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill (SP Bill 52A) as amended at Stage 2

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