



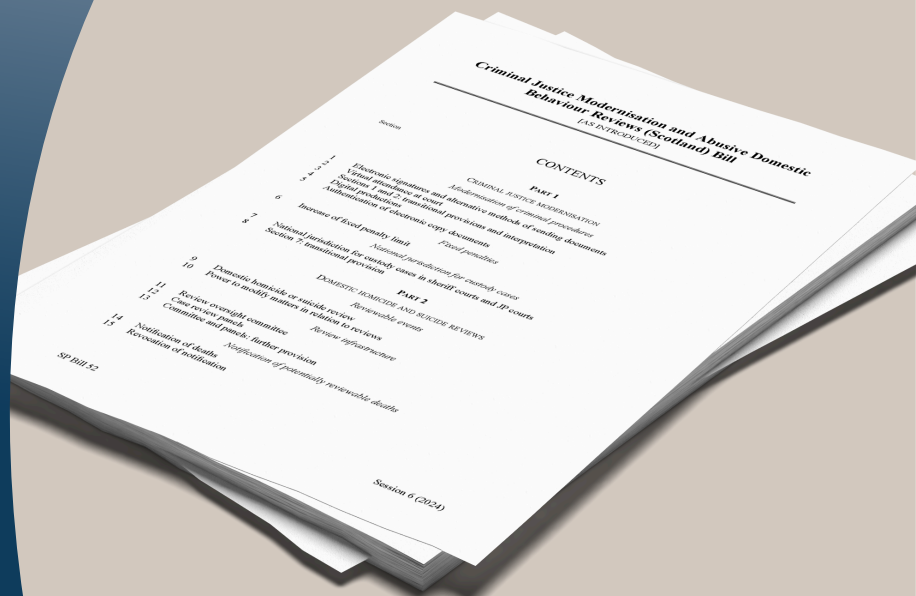
SPICe Briefing

Pàipear-ullachaidh SPICe

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

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The main provisions of this Scottish Government Bill are set out in two parts. Part 1 contains measures aimed at supporting the resilience, effectiveness, and efficiency of the criminal justice system (for example, through greater use of digital processes). Part 2 sets out a statutory framework for a national system of domestic homicide and suicide reviews.



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Summary

Part 1 - Criminal Justice Modernisation

Part 1 of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill seeks to make permanent some of the temporary justice measures set out in the Coronavirus (Recovery and Reform) (Scotland) Act 2022. The measures covered in the Bill are in following areas:

- electronic signing and sending of documents in criminal cases
- enabling virtual attendance at a criminal court
- higher fiscal fines (a type of financial penalty which can be offered by the prosecution as an alternative to going to court)
- removing geographical limitations on which criminal courts in Scotland can deal with the initial stages of a case where the accused appears from police custody.

Part 1 also sets out two new provisions aimed at supporting digital innovation in the criminal justice system. These relate to:

- the use of digital productions instead of producing physical evidence in criminal proceedings
- allowing digital copies to be treated as equivalent to items copied without the need for additional authentication.

Part 2 - Domestic Homicide and Suicide Reviews

Part 2 of the Bill sets out a statutory framework for a national system of domestic homicide and suicide reviews. The purpose of such reviews would be to identify what lessons can be learned following a death where abuse is known or suspected, with the aim of helping to prevent future abuse and deaths. Reviews would focus on those cases where:

- relevant public authorities or voluntary organisations were, or could have become, involved in the circumstances leading up to the death
- a review might lead to improvements in practice in safeguarding and promoting the well-being of those affected by abusive domestic behaviour.

Domestic homicide and suicide reviews would not seek to determine either criminal or civil liability for deaths. This may be the subject of separate legal proceedings.

The Bill's Policy Memorandum comments that domestic homicide is "a gendered crime that is overwhelming committed by men against women". However, the proposed system of reviews would cover male as well as female victims of domestic homicide and suicide.

The Bill includes provisions:

- defining and setting out the scope of domestic homicide and suicide reviews (e.g. the types of relationships covered)

- allowing for the establishment of relevant bodies (a Review Oversight Committee and Case Review Panels) to carry out the work involved in reviews
- setting out how those bodies will get the cooperation and information they need
- seeking to ensure that reviews do not prejudice other investigations or proceedings (e.g. any criminal prosecution)
- dealing with the reporting of and responding to reviews.

Introduction

The Scottish Government introduced the [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill](#) (the Bill) ¹ in the Scottish Parliament on 24 September 2024.

Documents published with the Bill include [Explanatory Notes](#), ² a [Policy Memorandum](#) ³ and a [Financial Memorandum](#). ⁴

The main provisions of the Bill are set out in two parts.

Part 1 - Criminal Justice Modernisation

Part 1 seeks to make permanent provision in relation to some (but not all) of the temporary justice measures set out in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 which are due to expire on 30 November 2025.

It also provides for some new provisions aimed at supporting digital innovation in the criminal justice sector.

A Scottish Government [consultation paper](#) ⁵ sought views on both the current temporary measures and the proposed new ones.

Part 2 - Domestic Homicide and Suicide Reviews

Part 2 provides for a national system of domestic homicide and suicide reviews. The purpose of such reviews would be to identify what lessons can be learned following a death where abuse is known or suspected, with the aim of helping to prevent future abuse and deaths.

The Bill includes provisions:

- defining and setting out the scope of domestic homicide and suicide reviews
- allowing for the establishment of relevant bodies to carry out the work involved in reviews
- setting out how those bodies will get the cooperation and information they need
- seeking to ensure that reviews do not prejudice other investigations or proceedings
- dealing with the reporting of and responding to reviews.

Work on developing the proposals in this part of the Bill has included that of a [Domestic Homicide and Suicide Review Taskforce](#) ⁶ and a [targeted consultation](#). ⁷

Part 1 - Criminal Justice Modernisation

Background

Temporary justice provisions

A range of temporary legislative provisions were initially put in place by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No. 2) Act 2020. They included, but were not limited to, provisions affecting the justice system. Given the need to respond quickly to problems arising from the COVID-19 pandemic, parliamentary scrutiny of the relevant Bills was shorter than normal.

In January 2022 the Scottish Government introduced the [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill](#).⁸ Again, it covered, but was not limited to, measures affecting the justice system. In relation to its justice measures (both civil and criminal) it sought to make:

- permanent provision in some of the areas which were at that point covered by temporary provisions in the 2020 legislation (e.g. widening the role of prisoner custody officers in police stations)
- further temporary provision in some of the other areas (beyond the period allowed under the 2020 legislation).

The case for making some permanent was based on an assessment that those measures, although initially enacted in response to COVID-19, were desirable irrespective of the pandemic. Regarding those measures where further temporary provision was made, the justification put forward at the time was (at least in large part) based on the continuing effects of the pandemic on the justice system. This included the impact of a backlog in court cases arising from restrictions in place during the pandemic.

Under the provisions of the resulting [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#) (the 2022 Act), the temporary justice provisions were originally due to expire on 30 November 2023. However, it allowed the Scottish Government to make regulations to delay the expiry of some or all of those provisions, or to expire them early. The power to delay expiry was restricted to two uses:

- a delay of one year to 30 November 2024
- a delay of one further year to 30 November 2025.

Some of the temporary justice measures in the 2022 Act were expired during 2023, whilst others were extended to 30 November 2024.

The possibility of further extending some of the remaining temporary provisions, whilst expiring others, was considered by the Criminal Justice Committee at its [meeting on 9 October 2024](#).⁹ In relation to extension, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024 were agreed by the Parliament on 30 October 2024.

Under the above regulations, temporary provisions in the following areas are extended to 30 November 2025:

- electronic signing and sending of documents in court cases
- enabling virtual attendance at court
- increased levels of fiscal fine
- removing geographical limitations on which criminal courts in Scotland can deal with the initial stages of cases where the accused appears from police custody
- extension of time limits in solemn procedure cases (e.g. in relation to the time a person can be held on pre-trial remand).

Information on the Scottish Government's justification for extending these provisions is set out in a [statement of reasons](#).¹⁰

Consultation on permanency

In November 2023, the Scottish Government published a [consultation paper](#)⁵ on making some of the remaining temporary justice provisions permanent:

- electronic signing and sending of documents in criminal court cases
- enabling virtual attendance at criminal courts
- increased levels of fiscal fine
- removing geographical limitations on which criminal courts in Scotland can deal with the initial stages of cases where the accused appears from police custody.

The consultation papers also sought views on reforming criminal procedures in two areas not covered by temporary justice provisions:

- maximising the use of remote and digital ways of working, including the use of digital productions rather than physical evidence in criminal proceedings
- alternative ways to prove copy documents to take account of digital innovations.

The consultation paper did not cover the temporary justice measures extending time limits in solemn procedure cases. Nor does the current Bill contain provisions relating to those time limits.

Also, the consultation only covered criminal matters. In relation to the temporary justice measures affecting civil cases (electronic signing/sending of documents and virtual attendance), the Scottish Government has indicated that any permanent provisions will be made separately through court rules.

A [consultation analysis report](#)¹¹ was published by the Scottish Government in July 2024. [Published responses](#)¹² are also available on online.

The consultation received 30 responses (22 from groups or organisations and eight from individuals). The consultation exercise also involved an element, focused on virtual attendance at court, which sought the views from some people with lived experience.

Brief information on the findings of the consultation analysis is provided below when looking at the relevant provisions set out in the Bill.

Provisions in the Bill

Outline of main provisions

Part 1 of the Bill seeks to make permanent some of the temporary justice measures set out in the [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#). The ones covered in the Bill are in following areas:

- electronic signing and sending of documents in criminal cases
- enabling virtual attendance at a criminal court
- higher fiscal fines (a type of financial penalty which can be offered by the prosecution as an alternative to going to court)
- removing geographical limitations on which criminal courts in Scotland can deal with the initial stages of a case where the accused appears from police custody.

Part 1 also sets out two new provisions aimed at supporting digital innovation in the criminal justice system. These relate to:

- the use of digital productions instead of producing physical evidence in criminal proceedings
- allowing digital copies to be treated as equivalent to items copied without the need for additional authentication.

Further information on the provisions in this part of the Bill is set out below, under the three subheadings used in the Bill.

Modernisation of criminal procedures

Sections 1 to 5 of the Bill would amend the Criminal Procedure (Scotland) Act 1995 to make permanent provision in:

- two areas currently covered by temporary justice measures - electronic signing/sending of documents in criminal cases and virtual attendance at criminal courts
- two new areas - use of digital productions in criminal proceedings and authentication of electronic copy documents.

Electronic signing and sending of documents

The Bill seeks to make permanent provision on the electronic signing and transmission of legal documents (e.g. by email or secure website).

The Bill's [Policy Memorandum](#) notes that, prior to temporary changes made in response to

COVID-19, hard copy legal documents were signed and physically delivered. But, that since relevant temporary changes 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" (para 19). It highlights several examples, including:

- service of documents on the defence using a secure disclosure systemⁱ
- the ability of police officers to obtain warrants electronically.

The analysis of the [relevant Scottish Government consultation](#) reported that:

- the majority of respondents agreed that provisions for the conduct of business by electronic means should be made permanent
- those expressing support described measures such as electronic signing and transmission of documents, granting of search warrants remotely, and remote citation of witnesses as essential elements of a modern justice system
- those raising concerns highlighted the potential impact of digital exclusion, and questioned how the necessary technical capacity and skills would be provided across the justice system.

Virtual attendance at court

The Bill seeks to make permanent the provisions related to circumstances when virtual attendance at criminal court proceedings is permitted.

In situations where someone is to give evidence, the general default requirement would be for in-person attendance at court. However, courts would have the power to allow virtual attendance in individual cases (e.g. to allow virtual attendance at a trial). Courts would be able to exercise this power where satisfied that virtual attendance would not be contrary to the interests of justice.

One potential use of this power of the courts could, through a series of court decisions in individual cases, be to allow the operation of a pilot virtual court for a particular type of case (e.g. to deal with all stages of some domestic abuse cases). The provisions of the Bill would not allow this to be run as a blanket policy. Each case would have to be considered for inclusion on its own merits.

The default position of in-person attendance where giving evidence, would also be subject to:

- an exception applying to proceedings where the only party is a public official (e.g. where the police or prosecution are seeking a warrant or court order)
- separate rules allowing for virtual attendance in particular circumstances (e.g. where special measures apply to vulnerable witnesses).

Where the relevant proceedings do not involve the giving of evidence, the Lord Justice General (Scotland's most senior criminal judge) would have the power to issue determinations to change the default position to virtual attendance for particular categories of case. The Bill's Policy Memorandum (para 32) notes that the Lord Justice General has

ⁱ A new digital portal for the Crown Office & Procurator Fiscal Service and defence agents is currently being piloted - [Defence Agent Service](#).¹³

used temporary powers in this area to change the default to virtual attendance in some High Court procedural and appeal hearings.

The Policy Memorandum also highlights various examples of where the current temporary provisions have been used to allow virtual attendance in court in specific cases. These include:

- allowing police officers to give evidence remotely
- some use of virtual custody courts.

In relation to the latter, the Policy Memorandum (para 41) states that:

“ 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 analysis of the [Scottish Government consultation](#) stated that:

- most respondents agreed that virtual attendance provisions for criminal courts should be made permanent
- perceived benefits of the provisions included improved efficiency (e.g. reduced transport of people in custody) and allowing witnesses to provide evidence in a less daunting setting
- objections included concerns about digital platforms creating barriers to effective participation and the quality/reliability of the available infrastructure.

Digital productions

The Bill sets out new provisions in relation to the use of digital productions in criminal proceedings. They include two new rules:

- where evidence is in electronic form or has been put into electronic form for use in court (e.g. a CCTV recording or a digital image of a weapon) - removing the right of an accused (prior to any trial) to view the evidence in a court office, if they have been given another opportunity to see it (e.g. viewing the evidence in their solicitor's office where the solicitor has been sent a secure link allowing access to the digital evidence)
- where evidence is a physical item - allowing images of a physical item to be treated for evidential purposes as if they were the item, but subject to the court having the power to direct that the original item is produced. Where a physical item is replaced by an electronic image under this provision, the rule immediately above would apply to it.

In relation to the second rule, the Bill's Policy Memorandum (para 68) notes that under current rules a "physical production may be required as it constitutes the best evidence and therefore is usually required to be produced in court". It states (para 69) that 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.”

With regard to the court's power to require production of the physical item, it adds that:

“ 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.”

The analysis of the [Scottish Government consultation](#) reported that:

- the majority of respondents agreed that digital evidence should be used in criminal cases rather than having to produce the original item in court
- perceived benefits of this included the potential to deliver efficiencies in relation to early disclosure of evidence to the defence and presentation in court
- potential concerns included questions about how the integrity and accuracy of images could be assured.

Authentication of electronic copy documents

The Bill sets out new provisions which would, in certain circumstances, remove the requirement for a signed certificate authenticating a copy document. This would apply where the copy was created by uploading the document from an electronic device onto a relevant digital evidence storage system.

The Policy Memorandum (para 77) states that the Digital Evidence Storage System used within the criminal justice system "incorporates multiple authentication and auditing measures to ensure the accuracy and integrity of digital documents". And that these negate the need for separate certificates of authentication.

The analysis of the [Scottish Government consultation](#) stated that:

- around half of respondents agreed that the transfer of digital files to a reliable digital evidence system should remove the requirement of certification
- questions were raised by both legal profession and police respondents around how the accuracy of digital evidence can be assured on the basis of information retained in the digital evidence audit system.

Fixed penalties

Where a criminal allegation is reported to the Crown Office & Procurator Fiscal Service, prosecutors have a range of actions they can take instead of prosecution through the criminal courts.

In appropriate cases, these alternatives to prosecution include offering the alleged offender the opportunity to pay a fixed penalty under section 302 of the Criminal Procedure

(Scotland) Act 1995. This form of penalty is commonly referred to as a 'fiscal fine'. The offer does not have to be accepted, but the possibility of prosecution remains if it is not.

Section 6 of the Bill would amend the [Criminal Procedure \(Scotland\) Act 1995 Fixed Penalty Order 2008](#) to make permanent provision in relation to higher fiscal fines. A prosecutor would be able to select between nine levels, ranging from £50 to £500. These are the same as currently provided for on a temporary basis in the Coronavirus (Recovery and Reform) (Scotland) Act 2022.ⁱⁱ Prior to the COVID-19 pandemic seven levels of fiscal fine were in use, ranging from £50 to £300.

The Bill's [Policy Memorandum](#) (para 57) argues that:

“ 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.”

In addition, it states that:

- the pre-pandemic scale had not been changed since it was introduced in 2008, and its maximum of £300 would now be the equivalent of almost £430 if inflation is taken into account
- fiscal fines in excess of the pre-pandemic maximum of £300 made up roughly 2% of those issued between 7 April 2020 and 25 July 2024.

The analysis of the [relevant Scottish Government consultation](#) noted that:

- most respondents agreed that provision for higher fiscal fines should be made permanent
- in support, it was suggested that the temporary provisions have been working well
- potential objections included concerns over their impact on the public protection function of the justice system, and whether ability to pay is taken into account in using them.

National jurisdiction for custody cases

In some cases, suspects are held in police custody until their first appearance in court (e.g. where the police consider that release would present a significant risk to a complainer). In addition, an accused person who has been allowed to remain in the community until trial, may be arrested following a failure to appear in court and held in police custody until returned to court.

Prior to the COVID-19 pandemic, normal practice was for a custody case to go to a court within the sheriffdom where the offence was allegedly committed. A sheriffdom is an area of the country for the purposes of court administration, with Scotland being split into [six sheriffdoms](#).¹⁴

ⁱⁱ Temporary increased levels of fiscal fine provided for in earlier COVID-19 legislation also provided for a maximum of £500, but with differences in the levels below the maximum.

Temporary provisions in COVID-19 legislation (currently under the Coronavirus (Recovery and Reform) (Scotland) Act 2022) provide greater flexibility in relation to which sheriff courts can deal with appearances from police custody. The prosecution is given the power to select which sheriff court should deal with the case during its initial stages - choosing from sheriff courts across the whole of Scotland. Normal rules on which courts can deal with a case still apply after those initial stages (e.g. following a not guilty plea which is not accepted by the prosecution).

Section 7 of the Bill would amend the Criminal Procedure (Scotland) Act 1995 to make permanent provision for a national jurisdiction when courts are dealing with the initial stages of custody cases. It goes further than the current temporary provisions by applying this national jurisdiction to justice of the peace courts as well as sheriff courts.

The Bill's [Policy Memorandum](#) (para 48) says:

“ 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 [Scottish Courts & Tribunals Service] 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.”

And that (para 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.”

The analysis of the [relevant Scottish Government consultation](#) noted that:

- the majority of respondents felt that the provision for national jurisdiction for callings from custody should be made permanent
- points made in favour included ones relating to flexibility and efficiency, as well as the suggestion that it could support a more trauma-responsive approach to custody
- concerns about the proposals included ones about local access to justice and the ability of victims to observe proceedings.

Part 2 - Domestic Homicide and Suicide Reviews

Background

Taskforce

The Bill's [Policy Memorandum](#) (para 14) notes that:

“ Work to develop the domestic homicide and suicide review model in Scotland has been progressed through the Scottish Government-led domestic homicide and suicide review taskforce, a multi-agency group which includes senior stakeholders.”

The Taskforce was set up in December 2022. Originally referred to as the Domestic Homicide Review Taskforce, its title was later changed to the [Domestic Homicide and Suicide Review Taskforce](#).⁶ This was to reflect the view that the model should cover domestic abuse related suicide as well as domestic homicide.

Membership of the Taskforce includes people from: the Scottish Government; prosecution service; police; victim support and domestic abuse organisations; health bodies; and academia.

As part of its early work, Taskforce members were issued with a questionnaire to establish their initial thoughts on what a system of reviews might look like. A [summary of the results of the questionnaire](#)¹⁵ has been published.

The information obtained from the questionnaire was used to help inform a workshop for members of the Taskforce held in February 2023. The workshop explored the purpose and scope of a system of reviews in more detail, with a [report on the outcomes of the workshop](#)¹⁶ being published in May 2023.

The work of the Taskforce is still ongoing and is expected to continue for the foreseeable future (e.g. in helping to develop proposed statutory guidance provided for in section 25 of the Bill.)

Consultation

During September and October 2023, the Scottish Government undertook targeted consultation to further inform the development of a system of domestic homicide and suicide reviews. This was carried out with people:

- who have lived experience of domestic abuse or have been bereaved due to such abuse
- working in the field of domestic abuse (e.g. police, victim support organisations and social services), including those who also have lived experience.

The consultation sought views on a range of issues in the following main areas:

- which cases should be reviewed - e.g. whether the possibility of review should exist beyond a core category of victims killed by a partner/ex-partner
- family and friend participation in reviews - e.g. who should have the opportunity to take part in the review process and what support might they need
- perpetrator involvement in reviews - e.g. potential risks and benefits of seeking information from perpetrators of abuse about any engagement they had with relevant services
- information gathering and analysis - e.g. how to ensure cooperation and participation of relevant agencies in the review process
- reporting and learning - e.g. how to successfully implement recommendations
- underpinning of a system of reviews - e.g. whether it should be embedded in legislation.

An [analysis of the consultation](#) ⁷ was published in December 2023.

Comparative information

The [Policy Memorandum](#) (para 106) published with the Bill comments that:

“ 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.”

To help inform its work, the Domestic Homicide and Suicide Review Taskforce was provided with information on how domestic homicide review models operate in various other countries. Relevant material included:

1. An [international comparator research paper](#) produced by the Scottish Government. ¹⁷ It looks at systems of review in a range of countries (as well as separate jurisdictions within those countries) and includes an outline of their various approaches. It also looks at particular aspects of reviews and provides some conclusions.
2. A [working paper](#) produced by Professor Devaney of the University of Edinburgh. ¹⁸ Although briefly mentioning approaches in some specific countries (e.g. England, Wales and Northern Ireland), it focuses on drawing lessons from relevant literature. Under the heading of conclusions, it sets out a "number of recurring messages" highlighted by international evidence.

Provisions in the Bill

Outline of main provisions

Part 2 of the Bill sets out a statutory framework for a national system to review domestic homicides and suicides. The Bill's [Policy Memorandum](#) (para 104) explains that the purpose of such reviews would be:

“ 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.”

The [Explanatory Notes](#) (para 102) state that:

“ The review is not about attributing liability to anyone but rather is about working with relevant agencies (whether statutory or voluntary) where either the victim or the perpetrator came into contact with them, in order to learn any wider systemic lessons.”

The possibility of review would cover a range of situations where:

- there was, or appears to have been, abusive behaviour within a relationship (e.g. abuse of a partner or ex-partner)
- that behaviour has, or may have, resulted in the death of the abused person or contributed to their suicide.

The situations where a review might take place would not be limited to ones where a link between abuse and death has been established with certainty.

There is also provision for the possibility of a review in some other circumstances (e.g. where an abused partner kills their abuser).

The Bill provides for the establishment of a Review Oversight Committee, with responsibility for securing and overseeing the carrying out of reviews. Members of the Committee would be appointed by the Scottish Government, which would need to ensure that the Committee includes representatives of relevant voluntary organisations. The following public bodies would be able to nominate individuals for appointment:

- local authorities
- health boards
- Police Scotland
- Crown Office & Procurator Fiscal Service
- Community Justice Scotland
- Care Inspectorateⁱⁱⁱ
- Scottish Social Services Council.

The fact that a death falls within the Bill's definition of those which may be the subject of a

iii Referred to in the Bill under its formal title of Social Care & Social Work Improvement Scotland.

review does not necessarily mean that a review would be held. The work of the Review Oversight Committee would include deciding whether to hold a review in respect of each relevant ('reviewable') death. Its decision would be based on:

- the likelihood of a review identifying lessons which would improve practice in safeguarding and promoting the well-being of those affected by abusive domestic behaviour
- whether any relevant public authorities or voluntary organisations were, or could have become, involved in the circumstances leading up to the death.

Where the Review Oversight Committee decides that a review should be held, it would establish a Case Review Panel to carry out the work. Following its review, the Panel would produce a report for consideration by the Committee. The report would cover various issues, including whether opportunities to safeguard or promote the well-being of affected people were missed, and any recommendations.

The Policy Memorandum (para 172) notes that:

“ 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.”

And also (para 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.”

The Scottish Government would be able to issue written guidance which the Review Oversight Committee and Case Review Panels would need to have regard to in carrying out their work.

The Bill's [Financial Memorandum](#) (para 92) estimates the likely number of reviews each year to be between 10 and 30.

Further discussion of the Bill's provisions is provided below.

Deaths which may be reviewed

Section 9 of the Bill states that a domestic homicide or suicide review is:

- a review of the circumstances in which a domestic abuse death, or a connected death of a young person, occurred
- held with a view to identifying the lessons to be learned from the death and the circumstances leading up to it.

The definition of a 'domestic abuse death' covers the following types of situation where a death is, or may have been, associated with abusive behaviour:

- an abuser kills a partner/ex-partner
- an abuser kills their own child, or a child of their partner/ex-partner (including an adult child)
- an abuser kills a young person who is living in the same household as the abuser or the abuser's partner/ex-partner (where not covered by the previous category)
- domestic abuse related suicide (e.g. where a person felt driven to suicide by an abusive relationship)
- a victim of domestic abuse killing their abusive partner/ex-partner.

The concept of a 'connected death' would extend the scope of reviews to cases where there is a background of domestic abuse, but the young person killed was not related to or living with either the abuser or the person being abused. The Bill's [Explanatory Notes](#) (para 110) include the example of a young person at a friend's house being killed whilst caught up in a domestic abuse incident.

The Bill defines the meaning of abusive behaviour by reference to sections 2 and 3 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#).^{iv} In broad terms, this covers behaviour which a reasonable person would consider to be likely to cause the victim to suffer physical or psychological harm.

The definition of a 'domestic abuse death' does not cover a range of scenarios where other family relationship existed between the abuser and victim. For example, the system of reviews would not apply where a child kills a parent, or a brother kills a sister. The Bill's [Policy Memorandum](#) (para 136) refers to these as 'familial homicide' and highlights the findings of a [consultation on domestic homicide reviews](#).⁷ The consultation report (p 15) noted, that whilst 75% of those responding favoured the inclusion of familial homicide within the scope of reviews, this level of support was lower than that for most other categories considered.

However, the Policy Memorandum (para 138) does say that the Scottish Government is committed to expanding the system of reviews to other family relationships where the death was an 'honour killing'. It states that this will be taken forward once work on developing an approach to address [honour based abuse](#)¹⁹ (including how to define it) has been completed.

Section 10 of the Bill would allow the Scottish Government to make various changes to the provisions in section 9. Ways in which the power could be used are outlined in the Explanatory Notes (paras 113-114) and could, for example, include changes to cover honour killings.

Review bodies

Review Oversight Committee

Section 11 of the Bill provides for the establishment of a Review Oversight Committee,

iv At the time of writing, sections 2 and 3 of the Domestic Abuse (Protection) (Scotland) Act 2021 are not yet in force.

with responsibility for securing and overseeing the carrying out of domestic homicide and suicide reviews.

As noted above when outlining the [main provisions](#) in this part of the Bill, members of the Review Oversight Committee would be appointed by the Scottish Government and would have to include representatives of relevant voluntary organisations. Again as noted above, various public bodies would be able to nominate individuals for appointment to the Committee. However, the Scottish Government would not be required to accept particular nominations (provided that at least one member was appointed from those nominated by the public bodies) and could itself identify suitable people for appointment.

Section 13 and the Bill's schedule set out further provision on the membership of the Review Oversight Committee. Whilst members are generally to be appointed on "such terms and conditions as the Scottish Ministers determine", the schedule provides more detail in relation to its chair and deputy chair. The Bill's [Policy Memorandum](#) (para 153) states that:

“ 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.”

Case Review Panels

Where the Review Oversight Committee decides that a review should be held, it would establish a Case Review Panel to carry out the work. Section 12 of the Bill provides that a Panel is to consist of:

- a chair selected by the Committee from a pool of Panel chairs appointed by the Scottish Government
- such other members as the Committee determines.

Further provision on the membership of Case Review Panels is set out in section 13 and the Bill's schedule. Members are generally to be appointed on "such terms and conditions as the review oversight committee with the consent of the Scottish Ministers, determines". The schedule provides more detail in relation to Panel chairs. They would (like the Review Oversight Committee chair and deputy chair) be recruited through a public appointment process, with the aim of providing reassurance as to their independence.

The Bill's [Explanatory Notes](#) state that members of Case Review Panels would be "people who have valuable insights to offer but who will be able to do this alongside their everyday lives and work" (para 121). The Policy Memorandum adds that each of the Panel chairs "will bring their own unique expertise, e.g. knowledge and experience of policing and domestic abuse or of the parole board" (para 158).

Notification of reviewable deaths

Section 14 of the Bill provides for the notification of reviewable deaths (i.e. ones which fall within the definition of deaths which may be reviewed set out in section 9) to the Review

Oversight Committee. This then allows the Committee to consider whether to set up a review in relation to a particular death.

Under section 14, the Chief Constable of Police Scotland and the Lord Advocate would be required to notify the Review Oversight Committee where they are aware of a death which they believe to be reviewable. The notification would include available information which might help the Review Oversight Committee in deciding whether to hold a review.

The Scottish Government would also have the ability to refer a reviewable death to the Review Oversight Committee where this has not been done by the Chief Constable or Lord Advocate. The Bill's [Explanatory Notes](#) (para 129) suggest that an example of when this might occur would be where:

“ a Scottish resident dies abroad and so the authority with responsibility for investigating the death and bringing any appropriate criminal proceedings is a foreign authority.”

Section 15 allows for the withdrawal of a notification where the death is now believed not to be a reviewable death.

Determination of whether to hold a review

Where it has received notification of a death which is believed to be a reviewable one, the Review Oversight Committee would decide whether a domestic homicide or suicide review should actually be held.

Section 16 provides that the Review Oversight Committee would firstly need to satisfy itself that the death is indeed a reviewable one. If so, it would then decide whether to hold a review based on:

- the likelihood of a review identifying lessons which would improve practice in safeguarding and promoting the well-being of those affected by abusive domestic behaviour
- whether any relevant public authorities or voluntary organisations were, or could have become, involved in the circumstances leading up to the death.

Where the Review Oversight Committee decides that a death is not reviewable, or that a review of a reviewable death should not be held, the Scottish Government would be able to overrule the Committee and direct that a review should be held. The Bill's [Policy Memorandum](#) (para 154) comments that:

“ 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.”

Conduct of reviews and relevant powers

Section 17 of the Bill provides that a domestic homicide or suicide review would be carried

out by a Case Review Panel, which would be established by and work under the supervision of the Review Oversight Committee.

The Review Oversight Committee would set the terms of reference for each review. It would also be able to:

- establish a Case Review Panel to carry out a joint review of more than one death
- instruct a Panel to carry out its review in conjunction with another form of review being carried out by someone else.

The Bill's [Explanatory Notes](#) (paras 145-146) outline some situations where the above approaches might be considered appropriate (e.g. holding a joint review where a particular organisation had similar involvement with more than one victim).

Sections 20 and 21 of the Bill set out provisions aimed at supporting the Review Oversight Committee and Case Review Panels, in getting the cooperation and information they need from others to carry out their work. The Bill's [Policy Memorandum](#) (para 168) notes that:

“ 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.”

Under section 20, certain public bodies could be required to take part in a review and/or provide relevant information. The public bodies covered are:

- local authorities
- health boards
- Police Scotland
- Scottish Police Authority
- Crown Office & Procurator Fiscal Service
- Scottish Courts & Tribunals Service
- Scottish Prison Service^v
- Community Justice Scotland
- Care Inspectorate
- Scottish Social Services Council.

Under section 21, other people and organisations (e.g. private and third sector organisations which had contact with the victim) could be required to provide information in their possession.

The requirements to provide information, under both sections 20 and 21, would not apply

^v Referred to in the Bill by reference to the Scottish Ministers in the exercise of their functions under the Prisons (Scotland) Act 1989.

in relation to information which could be refused in court proceedings (e.g. legally privileged information).

Preventing prejudice to other investigations or proceedings

The Bill's [Policy Memorandum](#) (see paras 164-167) notes that similar reviews in some other jurisdictions do not start until any criminal proceedings associated with the death have been concluded. However, it also highlights arguments in favour of holding a review as soon as possible (including in parallel with other investigations). For example:

- increasing the likelihood that those involved will remember the details of what happened and still retain relevant records
- seeking to learn lessons and make improvements as soon as possible.

The Bill would allow a domestic homicide or suicide review to be carried out in parallel with other investigations or proceedings (including criminal proceedings). But section 18 of the Bill would allow the Lord Advocate to pause or end a review in light of any other investigation, criminal proceedings or fatal accident inquiry. Before doing so, the Lord Advocate would have to consult the chair of the Review Oversight Committee. The Policy Memorandum (para 167) states that this power would be used 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).”

Section 19 of the Bill seeks to further reduce the risk of a domestic homicide or suicide review compromising other ongoing investigations or proceedings. It provides for a protocol between the chair of the Review Oversight Committee, Police Scotland, the Crown Office & Procurator Fiscal Service, and the Scottish Government. The Policy Memorandum (para 166) highlights some existing comparators in Scotland:

“ 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.”

Reporting

Case review reports

Section 22 of the Bill provides that, following the completion of each domestic homicide or suicide review, the relevant Case Review Panel would produce a report for consideration by the Review Oversight Committee. This case review report would cover various issues, including whether opportunities to safeguard or promote the well-being of affected people were missed, areas of good practice, and any recommendations.

The work of the Review Oversight Committee would include the approval of case review

reports. This could involve instructing a Case Review Panel to resubmit a report with additional information.

Once approved by the Review Oversight Committee, copies of case review reports would be provided to the Scottish Government. Where a review related to the death of a young person or an adult at risk, a copy would also be provided to the Care Inspectorate.

The Bill's [Policy Memorandum](#) (para 173) states that case review reports will also be shared with family members:

“ 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.”

The Review Oversight Committee would be required to publish information on the recommendations of each case review report. This might include publishing part or all of a report, although this would require the consent of the Lord Advocate. In addition, any information which might identify a living individual could only be published with the consent of that person.

Section 23 of the Bill provides that a case review report may require people to respond to recommendation. Those people (including organisations) will be provided with a copy of the report. The Policy Memorandum (para 172) notes that a case review 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.”

Periodic reports

Section 24 of the Bill would require the Scottish Government to report on domestic homicide and suicide reviews every two years. These periodic reports would cover a range of matters, including:

- emerging themes arising from reviews, lessons learned and actions taken
- relevant statistics.

Statutory guidance

Section 25 of the Bill provides that the Review Oversight Committee and Case Review Panels would need to have regard to any written guidance issued by the Scottish Government when carrying out their work. Such guidance would be published.

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