

EXPLANATORY NOTES

Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025 (asp 14)

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These notes relate to the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025 (asp 14)
which received Royal Assent on 19 November 2025

CRIMINAL JUSTICE MODERNISATION AND ABUSIVE DOMESTIC BEHAVIOUR REVIEWS (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act is in two substantive parts (with the final part dealing with the usual final provisions applicable to the whole Act).

4. Part 1 of the Act deals with measures relating to the modernisation of procedures in Scotland's criminal courts. Some of these measures make permanent (with some minor adjustments) existing provisions which have been operating on a temporary basis, while others are new. The measures are as follows—

- facilitating electronic signing and sending of documents in criminal cases,
- enabling virtual attendance at criminal courts,
- establishing a national jurisdiction for callings from custody,
- changing the scale of fiscal fines, including the permitted maximum,
- creating a process through which body-worn video footage can be treated as sufficient evidence of the time, date and place of the events recorded,
- supporting the use of images in place of physical evidence in criminal cases,
- permitting copies to be treated as equivalent to the item copied in criminal proceedings, without additional authentication, and

- setting out a procedure by which charges can be added to an indictment after the point of service.

5. Part 2 of the Act creates a statutory domestic homicide and suicide review model, under which deaths falling within the review model will be reviewed with a view to learning systemic lessons which can be used to help prevent future abusive behaviour within relationships and deaths resulting from such abuse.

CROWN APPLICATION

6. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. The freestanding text in this Act applies to the Crown in the same way as it applies to everyone else. The Act makes no change to the application to the Crown of the enactments that it amends.

INTERPRETATION

7. In these Explanatory Notes, the following abbreviations are used—

- "1995 Act" means the Criminal Procedure (Scotland) Act 1995,
- "2007 Act" means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007,
- "2008 Order" means the Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 (S.S.I 2008/108),
- "2010 Act" means the Criminal Justice and Licensing (Scotland) Act 2010,
- "2022 Act" means the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

8. The Act's freestanding text (that is, any provision which does not amend the text of another piece of legislation) is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

9. Text that the Act inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. Accordingly—

- text inserted into the 1995 Act is to be interpreted in accordance with the Interpretation Act 1978,
- text inserted into the 2007 Act or 2008 Order is to be interpreted in accordance with the Scotland Act 1998 (Transitory and Transitional Provision) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, and
- text inserted into the 2010 Act is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

PART 1: CRIMINAL JUSTICE MODERNISATION

Section 1 – Electronic signatures and alternative methods of sending documents

10. This section modifies the 1995 Act to make provision permitting the use of electronic signatures on documents in criminal proceedings. This section further enables documents to be transmitted between parties electronically, and to be sent to solicitors acting on an individual's behalf.

11. Subsection (2) inserts four new sections into the 1995 Act before section 304 (and the Part heading immediately preceding it) – i.e. immediately after section 303B.

12. Subsection (3) repeals subsections (6C) to (6E) of section 66, section 72G and section 148D of the 1995 Act. Those provisions make more limited provision about the service of certain documents on an accused person via their solicitor and are therefore superseded by the more general provision made by this section.

Inserted section 303C – Electronic signatures

13. This section provides for an electronic signature to fulfil any requirement (however expressed and for whatever purpose) that a document of a type mentioned in inserted section 303E, or a deletion or correction of it, be signed or initialled.

Inserted section 303D – Sending documents electronically and to a solicitor

14. This section provides that any requirement (however expressed) that a document of a type mentioned in inserted section 303E be given to a person may be fulfilled by (a) transmitting it to the person electronically, or (b) transmitting it to the person's solicitor.

15. Subsection (2) sets out certain requirements associated with the electronic transmission of documents as provided for in subsection (1), specifying that the transmission must be effected in a manner that the recipient has indicated (either specifically or generally) that they are willing to receive the document. The subsection further provides that in certain specified circumstances, this willingness is capable of being inferred.

16. Subsection (3) provides further detail on what references to "giving" a person a document covers.

Inserted section 303E – Documents to which sections 303C and 303D apply

17. By virtue of this section, sections 303C and 303D apply to orders, warrants, sentences, citations, minutes or any other document produced by a court, including any extracts of them. These sections also apply to any document which is required by law to be given to a person in connection with any criminal proceedings before a court, which includes documents required to initiate proceedings, and documents used as, or in place of, evidence.

18. Subsection (2) confers a power on the Lord Justice General to direct that a type of document mentioned in subsection (1) is not to be treated as falling within section 303C or 303D. Subsection (3) provides that such a direction may relate to some or all criminal proceedings, may be varied or revoked, and must be made publicly available for so long as it has effect. For example, the Lord Justice General could direct that in respect of business in the High Court, citations are not to be regarded as mentioned in subsection (1) for the purposes of section 303C or 303D.

Inserted section 303F – Interpretation of sections 303C to 303E

19. This section sets out the interpretation applicable to sections 303C, 303D and 303E. Further material on interpretation is provided in inserted section 303O (inserted by section 4).

Section 2 – Virtual attendance at court

20. This section modifies the 1995 Act to remove the requirement for people to physically attend court, and thereon permit virtual attendance at court, in certain criminal proceedings.

21. Subsection (2) inserts seven sections into the 1995 Act after inserted section 303F (inserted by section 1 of this Act).

Inserted section 303G – Suspension of requirement for physical attendance in criminal trials

22. This section applies only to hearings in criminal proceedings in which a person is to give evidence. By virtue of subsection (1)(b), this section does not apply where the only party to the proceedings is a public official such as a prosecutor (see paragraph 27 of these Notes for further discussion).

23. In the circumstances where subsection (1) applies, the default position will be for in-person attendance at court. However, by virtue of subsection (2), the court may disapply any requirement (however expressed) that a person attend a court by issuing a direction stating that the person need not do so.

24. Subsection (3) sets the test for this disapplication, being that the court must be satisfied that allowing the person to attend by electronic means would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.

25. Subsection (4) notes that this section does not affect any other basis upon which a person need not physically attend a court. For example, where a person qualifies as a "vulnerable witness" under section 271 of the 1995 Act, the court may opt to continue to apply the bespoke provisions for their attendance to the hearing in question, rather than those under this section.

26. Subsection (5) provides that references in this section to physically attending a court are to being in a particular place or before a particular person, for the purpose of any "proceedings" (defined in inserted section 303O) before a court or an office holder of a court. The effect of this provision is that applications for warrants, which take place in a judge's chambers, would be included in a reference to physically attending a court.

Inserted section 303H – Suspension of requirement for physical attendance in criminal proceedings where only party is a public official

27. This section applies only to criminal proceedings in which the sole party to the proceedings is a public official (for example, in an application for a warrant which is not intimated on the accused and where the only party is therefore a prosecutor or a constable).

28. By virtue of subsection (2), in proceedings to which this section applies, the default position will be for virtual attendance.

29. Subsection (3) permits the court to direct a person to physically attend the court. However, such a direction can only be made in the circumstances where the court considers that allowing the person to attend by electronic means would prejudice the fairness of proceedings, or would otherwise be contrary to the interests of justice.

30. Subsection (4) provides that this section does not affect any other basis upon which a person need not physically attend a court (see paragraph 25 of these Notes).

31. Subsection (5) confirms that references in this section to physically attending a court are to be construed in accordance with inserted section 303G(5) (see paragraph 26 of these Notes).

Inserted section 303I – Directions under sections 303G and 303H

32. This section makes further provision about directions issued under inserted sections 303G and 303H.

33. Subsection (1) provides that a court may issue a direction under sections 303G and 303H on the motion of a party or of its own accord.

34. Subsection (2) confirms that the power to issue a direction under sections 303G and 303H also includes the power to revoke an earlier direction made under the respective section.

35. Subsection (3) provides that the court must, in considering whether to issue or revoke a direction made under section 303G or 303H, give all parties to the proceedings an opportunity to make representations. It further requires the court to have regard to any guidance issued by the Lord Justice General when considering whether to issue or revoke a direction.

36. Subsection (4) qualifies subsection (3), in providing that the first direction made under section 303G in relation to a hearing, or under section 303H in relation to proceedings can be issued without giving the parties an opportunity to make representations first. This means that a court can initially tell individuals how they are to appear before it. Where a court proceeds in that way, subsection (5) requires the court to ensure that the parties know they can ask the court to change the way that it has asked an individual to attend, and if a party makes such a request, the court must consider it before dealing with any substantive matters at the hearing. However, the court does not have to consider such a request before dealing with a decision to adjourn or a matter that an enactment requires the court to deal with before another hearing can practically be arranged.

Inserted section 303J – Suspension of requirement for physical attendance in other criminal hearings or proceedings

37. This section applies only in relation to criminal hearings and proceedings which do not fall within the confines of section 303G or 303H (see paragraphs 22 and 27 of these Notes).

38. Where this section applies, the default position is for physical attendance, but subsection (2)(a) provides that the Lord Justice General may make a determination disapplying any requirement (however expressed) that a person attend a court. However, subsection (2)(b) allows a court to override such determinations and direct in-person attendance in individual cases.

39. Subsection (3) provides further details about determinations made under subsection (2)(a). Paragraph (a) provides that such determinations may specify the persons, hearings or proceedings to which physical attendance is disapplied, or specify the circumstances in which a court may disapply physical attendance. For example, such a determination could provide that accused persons are to attend sentencing hearings by electronic means. A determination may also empower courts in individual cases to remove the requirement for in-person attendance. Paragraph (b) enables determinations to make different provision for different purposes and different areas, so they could be used to pilot virtual attendance in certain localities. The determination must also set out the reason why the Lord Justice General has decided to make it. Determinations may be varied or revoked, and must be made publicly available for so long as they have effect.

40. By virtue of subsection (4), the Lord Justice General may only make a determination under subsection (2)(a) when satisfied that disapplying the requirement for physical attendance would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.

41. Where a court directs physical attendance in an individual case through subsection (2)(b), subsection (5) provides that such directions may be issued on the motion of a party or of the court's own accord, and may be revoked.

42. In the circumstances where a person is to attend a court hearing by electronic means following a determination made under subsection (2)(a), subsection (6) requires the court to ensure that parties know they can ask the court to make a direction under subsection (2)(b), and if a party makes that request the court must consider it before dealing with any other matter at the hearing. However, the court does not have to consider such a request before dealing with a decision to adjourn or a matter that an enactment requires that the court deal with before another hearing can practically be arranged.

43. Subsection (7) provides that this section does not affect any other basis upon which a person need not physically attend a court (see paragraph 25 of these Notes).

44. Subsection (8) confirms that references in this section to physically attending a court are to be construed in accordance with inserted section 303G(5) (see paragraph 26 of these Notes).

Inserted Section 303K – Attending by electronic means

45. Subsection (1) provides that a person excused from physically attending a court under section 303G, 303H, or 303J must instead appear by electronic means in accordance with a direction issued by the court.

46. Subsection (2) provides that where a person fails to attend court by electronic means in accordance with such a direction, they are to be regarded as having failed to comply with the requirement to physically attend from which they were excused under section 303G, 303H or 303J.

47. Subsection (3) provides that directions under subsection (1) must set out how the person is to appear by electronic means before the court or office holder, including what requirements must be satisfied by the location the person is to appear from. This is about specifying the criteria that must be met by a location, rather than specifying the location itself. For example, these requirements could include expectations regarding the privacy or formality of the location. The directions may also include any other provision which the court considers appropriate, and may be issued by the court on the motion of a party or of its own accord.

48. Subsection (4) provides that a court may vary or revoke a direction made under subsection (1).

49. Subsection (5) provides that before issuing or revoking a direction under subsection (1), the court must give all parties to the proceedings an opportunity to make representations. It further requires the court to have regard to any guidance issued by the Lord Justice General.

50. Subsection (6) qualifies subsection (5), in providing that the first direction issued under subsection (1) in relation to a hearing or proceedings can be issued without giving the parties an opportunity to make representations first. This means that a court can initially tell individuals how they are to appear before it. Where a court proceeds in that way, subsection (7) requires the court to ensure that parties know they can ask the court to change the way that it has asked an individual to attend, or to revoke the direction altogether, and if a party makes that request the court must consider it before dealing with any substantive matters at the hearing. However, the court does not have to consider such a request before dealing with a decision to adjourn or a matter that an enactment requires that the court deal with before another hearing can practically be arranged.

51. Subsection (8) requires that directions issued under subsection (1) which direct how a party to trial proceedings, including an accused person, is to attend using electronic means, must ensure that such means enable the party to both see and hear all of the other participants in a hearing including any witness who is giving evidence. A direction to a witness who is

giving evidence at a trial using electronic means must enable all of the other participants in the trial, which includes an accused person, to both see and hear the witness. Any direction by a court which is not in relation to trial proceedings is not subject to such specific requirements.

52. Subsection (9) provides that directions made under subsection (8) cannot enable a person to see or hear a witness in any way that measures taken in accordance with an order of the court, such as measures in relation to a vulnerable witness, would otherwise prevent.

Inserted section 303L – General directions under section 303K

53. Subsection (1)(a) permits a court to issue a direction under section 303K(1) that applies to all proceedings of a specified type, provided that the only party to such proceedings is a public official. For example, this would allow a court to issue a direction as to how applications for search warrants should be made by the procurator fiscal. Subsection (1)(b) allows the court to issue a further direction overriding a general direction made under paragraph (a) in individual cases.

54. Subsection (2) confirms that the requirement to give parties an opportunity to make representations under section 303K(5)(a) does not apply in relation to general directions issued under subsection (1)(a).

Inserted section 303M – Publication of guidance

55. This section requires the publication of any guidance issued by the Lord Justice General which relates to the issuing of directions under sections 303G, 303H or 303K for as long as it has effect.

Section 3 – Review of virtual attendance provisions

56. This section requires the Scottish Ministers to undertake a review of the operation of the virtual attendance provisions (sections 303G to 303M of the 1995 Act as inserted by section 2 of this Act). This review must be undertaken as soon as reasonably practicable after the expiry of the period of 2 years after the day section 2 of the Act comes into force.

57. When undertaking the review, the Scottish Ministers must consult with the various persons listed in subsection (2). Paragraph (h) provides that the Scottish Ministers must also consult such other persons as the Scottish Ministers consider appropriate.

58. Following the review, the Scottish Ministers must prepare and publish a report on the review, and lay a copy of the report before the Scottish Parliament.

Section 4 – Transitional provisions and interpretation for sections 1 and 2

59. This section modifies the 1995 Act by inserting two new sections after inserted section 303M (inserted by section 2).

Inserted section 303N – Transitional provisions

60. This section provides that any direction or determination made under a provision of the schedule of the 2022 Act specified in the first column of the table in subsection (1), or under paragraph 9(1)(a) of the schedule to that Act, is to be treated as having been made under the corresponding provision of this Act. This means, for example, that the existing determination of the Lord Justice General that there is no requirement to physically attend a preliminary hearing in the High Court will continue to operate without needing to be re-made under new section 303J.

Inserted section 303O – Interpretation of sections 303C to 303N

61. This section provides definitions for words and terms used in inserted sections 303C to 303N.

Section 5 – Digital productions

62. This section modifies the 1995 Act to make provision about the use of evidence in an electronic form in criminal proceedings.

63. Subsection (2) amends section 68 of the 1995 Act, inserting a new subsection (2A). This new inserted subsection (2A) provides that the existing entitlement of the accused (under section 68(2)) to see productions in the relevant court office does not apply where a production is in an electronic form and the accused is otherwise given an opportunity to examine it in that form. For example, where an accused person is provided with an opportunity to examine a CCTV recording at their solicitor's premises, the requirements of section 68(2) do not apply.

64. Subsection (2)(c) and (d) amends section 68(3) of the 1995 Act and inserts a new subsection (3A). Section 68(3) sets out presumptions which apply where a person who has examined a production gives evidence on it and the production was lodged by a certain time. The presumptions are that the person who examined the production received and returned it in the same condition as it was given to them, and also that it is the same item which was taken possession of by the prosecutor/police. The amendment to subsection (3) provides that the subsection will also apply where the accused is otherwise given an opportunity to see the production in an electronic form and, in such a scenario, the relevant timescales in that subsection will run with reference to the date that such an opportunity is given. Subsection (3A) confirms that where the person adduced to give evidence has examined a physical item, but it is an image of that item that is the production in the proceedings, the presumptions discussed above apply to the physical item that was examined.

65. Subsection (3) amends section 71(2A) of the 1995 Act to ensure that applications for directions under section 279B(2) (see paragraph 69 of these Notes) can be considered by the court at a first diet.

66. Subsection (4) amends section 79 of the 1995 Act:

- Paragraph (a) amends subsection (2)(b) and inserts a new sub-paragraph (va). This new sub-paragraph adds a new preliminary issue that can be raised in proceedings, being any other point concerning the accessing, examination, production, or use of evidence by digital means. This means that objections based on this ground will need to be raised in line with the processes and timescales which apply to the other matters listed in section 79(2) of the 1995 Act, unless the court allows a late objection.
- Paragraph (b) inserts a new subsection (2A) to highlight that, as per section 279B(7) (see paragraph 73 of these Notes), an application for a direction under section 279B(2) is not a preliminary issue for the purpose of section 79(2)(b).

67. Subsection (4) inserts new sections 279B and 279C after 279A in the 1995 Act.

Inserted section 279B – Images of physical evidence

68. By virtue of this section, an image of physical evidence is, unless the court otherwise directs, to be treated for evidential purposes in criminal proceedings as if it were the physical evidence itself. For the purposes of this section, it does not matter whether or not the physical evidence is still in existence. For example, an image of a weapon can be produced in court in place of the physical item, and receive equal evidentiary status for the purpose of the proceedings. However, if the court is not satisfied by the use of such an image in place of the physical evidence, it remains open to the court to otherwise direct that the original item be produced. This section does not apply to documents within the meaning of paragraph 8 of schedule 8 of the 1995 Act.

69. The court may only issue a direction that an image of physical evidence is not to be treated as if it were the physical evidence itself where, on the application of a party to the proceedings, it is satisfied that treating the image in such a manner would prejudice the fairness of the proceedings.

70. Section 279B(3) sets out the timescales within which (subject to subsection (4)) any applications for such directions must be made:

- In summary proceedings, applications must be made no later than 28 days after the date the image is disclosed to the party making the application. If the image is not disclosed to the party making the application, then the application may be made at any time (as per subsection (5)(a)).
- In proceedings on petition or indictment (solemn proceedings), where the application is made by the prosecutor, the application must be made no later than 28 days after written notice is given by the accused in accordance with section 78(4)(a). Where the application is made by the accused in respect of an image included in the list of productions lodged in accordance with section 66(5),

the application must be made no later than 28 days after the date the indictment is served. If written notice is not given in respect of the image by the accused or, as the case may be, the image is not included in the list of productions lodged in accordance with section 66(5), then the application may be made at any time prior to the image being led as evidence in proceedings (as per subsection (5)(b)).

71. Section 279B(4) provides that where the timescales for an application for a direction under subsection (3) are not met, the court can permit an application to proceed where it considers that the application was made as soon as was reasonably practicable.

72. Section 279B(6) confirms that where a court issues a direction under section 279B(1) in proceedings on petition or indictment (solemn proceedings), the court may permit the physical evidence to be produced in evidence, notwithstanding the fact that it was not included on any list lodged by the parties and that notice required by sections 67(5) and 78(4) of the 1995 Act has not been given. For example, if the court directs that an image of a weapon cannot be produced in court in place of the physical item following an application by the accused, the court may permit the weapon itself to be produced in evidence, even though it was not included on the list of productions.

73. Section 279B(7) provides that applications for directions under section 279B(2) are not preliminary issues for the purpose of section 79(2)(b) of the 1995 Act. However, the applications can still be considered by the court at the first diet (see paragraph 65 of these Notes).

Inserted section 279C – Guidance on use of images of physical evidence by prosecutors

74. This section requires the Lord Advocate to prepare and publish guidance regarding the use of images of physical evidence by prosecutors acting for the Crown Office and Procurator Fiscal Service. This guidance must set out firstly, the factors that prosecutors will take into account when deciding whether to produce an image of physical evidence in a criminal trial in reliance on section 279B(1) of the 1995 Act (see paragraph 68 of these Notes), and secondly, in general terms, when an image is so used, the approach of prosecutors to the physical evidence that the image is of.

75. The Lord Advocate may revise this guidance from time to time. Where the Lord Advocate revises the guidance, the revised guidance must also be published.

76. Subsection (6) amends section 281 of the 1995 Act. That section sets out the rules which apply where an autopsy or forensic science report is lodged as a production (for example, setting out a presumption that the body of the person identified in the report is the body of the person identified in the indictment or complaint). Subsection (6) of this section applies these rules equally to an autopsy or forensic science report where the accused has been given an opportunity to see the report in an electronic form.

Section 6 – Authentication of electronic copy documents

77. This section modifies schedule 8 of the 1995 Act to make provision for the disapplication of the requirement to authenticate copy documents where they are stored electronically, and where the court is otherwise satisfied as to their authenticity.

78. Subsection (2) inserts a new sub-paragraph (1A) into paragraph 1, which provides that where a copy document is stored on the digital evidence storage system (defined in paragraph 8 of the schedule, as modified by section 6(6) of the Act) and was created by uploading the original document to the system from another electronic device, that copy is to be deemed and treated as a true copy and for evidential purposes as if it were the document itself. Sub-paragraph (1A)(b)(ii) confirms that this also applies to subsequent versions of that initial copy that are also stored on the digital evidence storage system, unless the court otherwise directs. These rules apply to copies of entire documents but also to copies of a material part of a document.

79. Subsection (2) further inserts a new sub-paragraph (1B) into paragraph 1, which provides that the court may direct that a copy of a document (or a copy of a material part of a document) to which sub-paragraph (1) or (1A) does not apply may still be deemed and treated as if sub-paragraph (1) applied to it.

80. Subsection (3) inserts sub-paragraph (2A) into paragraph 1, which confirms that paragraph 1 is without prejudice to section 279A(2) of the 1995 Act. Section 279A(2) provides for the use of evidence from official documents in criminal proceedings, and the authentication of copies of such documents.

81. Subsection (4) expands the definition of "copy" to include documents uploaded to an electronic device from another electronic device.

82. Subsection (5) makes a consequential change to paragraph 6 of the schedule. Paragraph 6 applies where the court has given a direction preventing a document from benefitting from the default rules in the schedule and allows the court to allow additional evidence to be led. Subsection (4) extends paragraph 6 so that it also applies where the court has given a direction under inserted paragraph 1(1A)(b)(ii) preventing a subsequent copy from benefitting from the rule in paragraph 1(1A).

83. Subsection (6) inserts a new definition of "digital evidence storage system" into paragraph (8) of the schedule. This defines it based on the current system which has been developed but allows the court, by Act of Adjournal, to specify a different digital system in future.

Section 7 – Body-worn video evidence

84. This section modifies the 1995 Act to make provision regarding the use of body-worn video recordings in criminal proceedings. Subsection (2) inserts a new section after section 283 of the 1995 Act.

85. Inserted section 283A(1) provides that for the purposes of any criminal proceedings, where footage recorded on a body-worn video camera is produced in evidence by the prosecution, and any or all of the time, date and place of the events recorded are displayed on the recording produced, the recording is to be deemed sufficient evidence of the details that are displayed unless and to the extent that the details are disputed. On that basis, if it is displayed on the footage that the recording was taken at 10:00 on 30 June 2026, then this section would mean that the production of that footage in evidence by the prosecution would, if not disputed, be sufficient evidence of the date and time, and no further evidence would be required to be led in respect of those details.

86. Section 283A(2) qualifies this presumption, and provides that subsection (1) does not apply to a recording unless the prosecutor has disclosed the recording to the accused, and informed the accused in writing of the accused's ability to serve a notice under subsection (3) and the period within which any notice must be served.

87. Section 283A(3) provides that if the accused serves notice on the prosecutor that the accused disputes the accuracy of the details of the time, date or place of the events recorded, or any part of those events, as displayed, then the evidentiary presumption under subsection (1) does not apply to those details. As such, if the accused disputes that the events recorded on the body-worn video recording took place at 10:00, as displayed on the footage, then the recording will not be deemed sufficient evidence of the time of the events recorded. However, the presumption that the date (30 June 2026) was correct would remain, as that would not have been disputed.

88. Section 283(4) provides that any notice under subsection (3) must be served by the accused within 7 days beginning with the date on which the prosecutor disclosed the recording to the accused and informed the accused in writing of the accused's ability to serve notice and the time limit for doing so. If the accused was informed of their ability to serve notice on a different date to that on which the recording was disclosed to them, then the 7 days will begin from the later of those dates. Therefore, if the prosecutor discloses the evidence to the accused on 1 August, and on 5 August informs the accused that they have 7 days in which to serve notice under subsection (3), then the accused will have until 12 August to serve notice.

89. Section 283(5) provides that the body-worn video cameras covered by the provision are restricted to those issued to and worn by a constable (defined under section 307 of the 1995 Act as having the same meaning as in the Police and Fire Reform (Scotland) Act 2012 – i.e. a constable of Police Scotland), or a person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012. The Scottish Ministers have the power to modify subsection (5) by regulations so as to add a person, vary the description of a person, or remove a person. Prior to making such regulations, the Scottish Ministers must consult the chief constable of the Police Service of Scotland, the Lord Advocate, and the Lord Justice General. These regulations are subject to the negative procedure.

Section 8 – Increase of fixed penalty limit

90. Subsection (1) modifies section 302 of the 1995 Act, which deals with the offer by a procurator fiscal of a fixed penalty in lieu of criminal proceedings. It amends section 302(7A) to provide that the maximum available penalty that may be offered by the procurator fiscal under that section is £500. It then inserts a new subsection (7B), which provides the Scottish Ministers with the power to substitute the sum of £500 for a higher sum by way of regulations. The 1995 Act already contained a power to alter the maximum available penalty by way of subordinate legislation (see previous subsection (7A)), but the new power allows the change to be made on the face of the 1995 Act rather than having to remain in a separate piece of secondary legislation. Section 302(8) of the 1995 Act is also amended to require regulations made under subsection (7B) to be laid in draft before, and approved by resolution of, the Scottish Parliament.

91. Subsection (2) substitutes the scale for fixed penalties in the 2008 Order with a new scale. This scale replicates the scale that was temporarily added to the Order by the 2022 Act. This scale will continue to be able to be adjusted in future through the use of subordinate legislation, as provided for under the existing power found in section 302(7) of the 1995 Act (which became a power of the Scottish Ministers under section 53 of the Scotland Act 1998).

Section 9 – National jurisdiction for custody cases in sheriff courts and JP courts

92. This section modifies the 1995 Act to make provision regarding the national jurisdiction for custody cases in sheriff courts and justice of the peace courts.

93. Subsection (2) inserts four new sections after section 5 of the 1995 Act regarding the jurisdiction of sheriff courts. Subsection (3) inserts four new sections after section 7 concerning justice of the peace courts.

94. Subsection (4) amends section 62(3) of the 2007 Act in consequence of subsection (3).

Inserted section 5B – Jurisdiction for callings of custody cases in a sheriff court

95. This section provides that where a person appears in the sheriff court for the first time from custody in criminal proceedings, that calling of the case may be taken in any sheriff court in Scotland and may be dealt with in that court by a sheriff of any sheriffdom. As provided by section 5E, the criminal proceedings that the person is appearing in respect of can be proceedings on petition, proceedings on indictment, summary proceedings, or ancillary proceedings such as, for example, those in respect of the failure of the person to attend a diet. For example, if a person is arrested for an offence allegedly committed in Edinburgh, the first time they appear in court from custody in connection with that offence could be in Glasgow Sheriff Court (in person or virtually), despite previous rules dictating that such a case should be heard by the sheriff court where the offence was committed (in this case Edinburgh Sheriff Court). This would equally mean that if a person was arrested after failing to attend summary proceedings at Aberdeen Sheriff Court, the person could appear from custody at Dundee Sheriff Court for the ancillary proceedings in respect of the warrant for that person's arrest (see paragraphs 102 to 107 of these Notes for discussion of the procedure after such a hearing).

96. Subsection (3) (as read with subsection (1)) further provides that a calling of proceedings on petition can come before any sheriff court and may be dealt with by any sheriff where the accused is appearing from custody after a court has authorised the accused's remand, and that court is unable to open due to the court building being closed in emergency or other special circumstances. For example, where the accused first appears on petition in Edinburgh Sheriff Court, and the court does not consider that the accused should be granted bail at that hearing, the accused will be required to be brought back before the court for a further hearing, known in practice as the "full committal hearing" or the "further examination". If that hearing is unable to take place at Edinburgh Sheriff Court due to the court building being closed due to emergency or other special circumstances, such as severe weather, then subsection (3) provides that this hearing can be heard in any other sheriff court and by a sheriff of any sheriffdom. This provision will also encompass any other hearings that take place after the initial appearance on petition but before the end of the petition stage, such as a bail review hearing under section 30 of the 1995 Act if scheduled in that period, where the accused is appearing from custody and the court that authorised the accused's remand is closed in emergency or other special circumstances. As the provision is limited to callings of proceedings on petition, it cannot encompass any hearings on indictment. Subsection (6) (see paragraph 99 of these Notes) does not apply to hearings held under subsection (3), and as such any subsequent hearings will not continue to be heard by the court which dealt with this particular appearance.

97. If there is more than one person subject to the proceedings (whether under subsection (2) or (3)), subsection (4) enables the proceedings to call before any sheriff court and any sheriff, provided that at least one of the people subject to the proceedings is appearing either for the first time from custody in connection with it (see paragraph 95 of these Notes) or in the circumstances described in subsection (3) (see paragraph 96 of these Notes). This means that, for example, where two people are co-accused of committing a crime, the case can call before any sheriff court even though only one of the accused has been arrested for the crime and is therefore appearing from custody at that court.

98. Subsection (5) confirms that it is for the Lord Advocate or the procurator fiscal to determine in which sheriff court the case is to be heard.

99. Subsection (6) provides the sheriff court that has heard the initial calling of the case with continuing jurisdiction over the proceedings (and that sheriff court can be presided over by a sheriff of any sheriffdom). This subsection applies only to proceedings under subsection (2), and therefore a court which has heard a calling of proceedings under subsection (3) will not have continuing jurisdiction under subsection (6). Subsection (7) confirms that this continuing jurisdiction granted by subsection (6) will come to an end at the points described in paragraph (a) or (b):

- Paragraph (a) describes the situation where, in summary proceedings, the accused pleads not guilty and the prosecutor does not accept that plea. This means it is likely that the case will go to trial, which will be handled by the court that has normal territorial jurisdiction for the case. The court's jurisdiction under subsection (6) will end at the end of the diet at which this plea was tendered. If an accused is

charged with, say, two offences and pleads guilty to one and not guilty to the other, the continuing jurisdiction that subsection (6) creates over the proceedings will be lost only insofar as the proceedings relate to the charge to which the accused has pled not guilty. The court that has jurisdiction by virtue of subsection (6) would therefore be able to deal with the guilty plea as it sees fit, including by sentencing the accused for that offence.

- Paragraph (b) describes the situations where the court's continuing non-territorial jurisdiction will end in proceedings on petition or indictment (solemn proceedings). Sub-paragraph (i) provides that, as with summary proceedings, the jurisdiction will end where the accused pleads not guilty and the prosecutor does not accept that plea. Sub-paragraph (ii) provides that where the accused is committed until liberated in due course of law, which means that the court has ordered that the accused will be held in prison while proceedings are ongoing, the court's jurisdiction will end. Finally, sub-paragraph (iii) provides that the first diet, and any proceedings following on from it, cannot be dealt with by virtue of subsection (6). As such, the court's continuing jurisdiction will end before the first diet.

100. Subsection (8) provides that where the situations described in subsection (7) do not occur, the court's continuing jurisdiction can continue until the conclusion of the proceedings. As such, where the accused pleads guilty in advance of the first diet before a court exercising national jurisdiction under this section, the court's continuing jurisdiction will not end under subsection (7), and the court will be able to deal with the subsequent sentencing hearing.

101. Subsection (9) provides that proceedings on indictment that follow from proceedings on petition are to be treated as the same proceedings. In solemn criminal procedure (which is the procedure used for the most serious crimes), cases usually begin with a petition and then progress to an indictment, which sets out the formal charges against the accused. Subsection (9) means that a court which began dealing with a case at the petition stage can continue dealing with it, under subsection (6), once it has reached indictment stage. This will be relevant for any hearings held under the jurisdiction after the service of the indictment but before the first diet (at which point the jurisdiction would end under subsection (6)(b)(iii)), such as where the accused makes an early guilty plea under section 76 of the 1995 Act.

Inserted section 5C – Jurisdiction for cases in a sheriff court after failure to appear

102. This section allows a sheriff court to deal with prosecution proceedings for which it would not normally have jurisdiction where the accused has come before it having been arrested for a failure to appear in those prosecution proceedings.

103. When an accused person fails to appear in court, the court can grant a warrant for the accused's arrest. On arrest the person will be brought before a court as soon as is practicable. That court appearance will be a form of "ancillary proceedings" within the meaning of section 5E(d) and therefore any sheriff court can deal with it by virtue of section 5B(1). The ancillary proceedings for failing to appear are separate from the main prosecution proceedings.

If the person had been brought before the court that had normal territorial jurisdiction for the main prosecution proceedings, the court might have dealt with those main prosecution proceedings as well as the proceedings for the person's failure to appear. Section 5C allows a court that has jurisdiction to deal with the ancillary proceedings to deal with the prosecution proceedings in the same way that the court with normal territorial jurisdiction would. In most cases that will mean rescheduling diets in light of a hearing having been missed when the accused failed to attend, but in the case of summary proceedings if the accused pleads guilty it may include sentencing the accused or ordering reports ahead of sentencing. The national jurisdiction granted in respect of a person's failure to appear applies regardless of whether the main prosecution proceedings are taking place under the national jurisdiction or whether they are taking place under normal jurisdictional rules.

104. Subsection (2) provides that where the "principal proceedings" (i.e. the proceedings that the accused failed to appear at) are proceedings on indictment, the sheriff court hearing the ancillary proceedings can continue to hear those principal proceedings until the end of the diet dealing with the ancillary proceedings.

105. Subsection (3) provides that where the principal proceedings are summary criminal proceedings, the proceedings can continue to be dealt with in the same sheriff court and by any sheriff, unless, and until the end of a diet at which, a plea of not guilty by the accused is rejected. Subsection (5) defines a plea of not guilty as being rejected where the accused either tenders a plea of not guilty or adheres to a previously tendered plea of not guilty, and that plea is not accepted by the prosecutor (see paragraph 99 of these Notes).

106. However, subsection (4) provides that despite subsections (2) and (3) permitting a court to continue to deal with the proceedings, the court may only pass a sentence or otherwise dispose of the principal proceedings where—

- evidence has not been led in the principal proceedings, or
- the court considers that it would be in the interests of justice.

107. On that basis, if evidence has been led in the principal proceedings and the court does not consider that it would be in the interests of justice for it to dispose of the case, then the court's non-territorial jurisdiction will come to an end.

Inserted section 5D – Further provision about national jurisdiction of sheriff courts

108. As mentioned in the preceding paragraphs, section 5D supports sections 5B and 5C by ensuring that sheriffs and prosecutors have the necessary powers to deal with cases that come before a court by virtue of those sections. In particular, section 5D(3)(b) ensures that summary sheriffs benefit from this national jurisdiction in the sheriff court in the same way as sheriffs. Section 5D also makes clear that sections 5B and 5C supplement, rather than supersede, other legal bases for a sheriff hearing a case from outwith the sheriff's normal territorial jurisdiction (specifically those provided for in Part 1 and sections 34A and 137C of the 1995 Act – for example, section 137C makes more bespoke provision permitting the transfer of cases in exceptional circumstances).

Inserted section 5E – Interpretation of sections 5B to 5D

109. This section provides definitions for words and terms used in inserted sections 5B to 5D.

Inserted section 7A – Jurisdiction for callings of custody cases in a JP court

110. In a similar manner to inserted sections 5A to 5E, sections 7A to 7D extend the jurisdiction of JP courts, and that of those hearing JP cases, in respect of custody appearances. They also make provision allowing sheriffs to preside over JP courts in relation to the exercise of the national jurisdiction (in addition to justices of the peace and summary sheriffs, who ordinarily preside over JP courts).

111. Section 7A provides that, where a person appears in the JP court for the first time from custody in criminal proceedings, that calling of the case may be taken in any JP court in Scotland. The case may also be heard by any justice of the peace, summary sheriff or sheriff of any sheriffdom.

112. If there is more than one person subject to the proceedings, subsection (3) allows the proceedings to call before any JP court and any justice of the peace, summary sheriff or sheriff, provided that at least one of the people subject to the proceedings is appearing for the first time from custody in connection with it. This means that, for example, where two people are co-accused of committing a crime, the case can call before any JP court even though only one of the accused has been arrested for the crime and is therefore appearing from custody.

113. Subsection (4) confirms that it is for the procurator fiscal to determine in which JP court the case is to be heard.

114. Subsection (5) provides the JP court that has heard the initial calling of the case with continuing jurisdiction over the proceedings (and that JP court can be presided over by a justice of the peace, summary sheriff or sheriff of any sheriffdom). However, subsection (6) qualifies this and provides that where the accused pleads not guilty and the prosecutor does not accept that plea, the continuing jurisdiction under subsection (5) will cease at the end of the diet at which that plea was made. Such a scenario will mean it is likely that the case will go to trial, which will therefore be handled by the court that has normal territorial jurisdiction for the case. If an accused is charged with, say, two offences and pleads guilty to one and not guilty to the other, the continuing jurisdiction that subsection (5) creates over the proceedings will be lost only insofar as the proceedings relate to the charge to which the accused has pled not guilty. The court that has jurisdiction by virtue of sub-paragraph (5) would therefore be able to deal with the guilty plea as it sees fit, including by sentencing the accused for that. Subsection (7) provides that where the court's national jurisdiction is not brought to an end as described in subsection (6), the court can continue to deal with the proceedings until their conclusion.

115. Subsection (8) confirms that where a sheriff is hearing a JP case under inserted section 7A or 7B, the jurisdiction and powers of the JP court are exercisable by the sheriff. The court itself will still be a JP court and the fact that a sheriff is presiding over it should result in

no difference in treatment compared to a JP court presided over by a justice of the peace or summary sheriff. For example, where section 52A of the 1995 Act applies and there is a requirement to transfer jurisdiction to a sheriff, such a transfer would still need to be made despite the fact that the person presiding over the JP court is a sheriff.

Inserted section 7B – Jurisdiction for cases in a JP court after failure to appear

116. This section allows a JP court to deal with prosecution proceedings for which it would not normally have jurisdiction where the accused has come before it having been arrested for a failure to appear in those prosecution proceedings.

117. When an accused person fails to appear in court, the court can grant a warrant for the accused's arrest. On arrest the person will be brought before a court as soon as is practicable. That court appearance will be a form of "ancillary proceedings" within the meaning of section 7D(1) and therefore any JP court can deal with it by virtue of section 7A(1). The ancillary proceedings for failing to appear are separate from the main prosecution proceedings. If the person had been brought before the court that had normal territorial jurisdiction for the main prosecution proceedings, the court might have dealt with those main prosecution proceedings as well as the proceedings for the person's failure to appear. Section 7C allows a court that has jurisdiction to deal with the ancillary proceedings to deal with the prosecution proceedings in the same way that the court with normal territorial jurisdiction would. In most cases that will mean rescheduling diets in light of a hearing having been missed when the accused failed to attend, and if the accused pleads guilty it may include sentencing the accused or ordering reports ahead of sentencing. The national jurisdiction granted in respect of a person's failure to appear applies regardless of whether the main prosecution proceedings are taking place under the national jurisdiction or whether they are taking place under normal jurisdictional rules.

118. Subsection (2) provides that the principal proceedings can continue to be dealt with in the same JP court and by any justice of the peace, summary sheriff or sheriff. In a similar manner to section 7A(6), this continuing jurisdiction will cease at the end of the diet at which the accused either tenders a plea of not guilty or adheres to a previously tendered plea of not guilty, and that plea is not accepted by the prosecutor (see paragraph 114 of these Notes). Subsection (4) confirms the circumstances in which a plea of not guilty is rejected for the purposes of subsection (2).

119. However, subsection (3) provides that despite subsection (2) permitting a court to continue to deal with the proceedings, the court may only pass a sentence or otherwise dispose of the principal proceedings where—

- evidence has not been led in the principal proceedings, or
- the court considers that it would be in the interests of justice.

120. On that basis, if evidence has been led in the principal proceedings and the court does not consider that it would be in the interests of justice for it to dispose of the case, then the court's non-territorial jurisdiction will come to an end.

Inserted section 7C – Further provision about national jurisdiction of JP courts

121. As mentioned in the preceding paragraphs, section 7C supports sections 7A and 7B by ensuring that justices of the peace, summary sheriffs, sheriffs and prosecutors have the necessary powers to deal with cases that come before a court by virtue of those sections. It also makes clear that sections 7A and 7B supplement, rather than supersede, other legal bases for a JP court taking a case from outwith its normal territorial jurisdiction (specifically those provided for in Part 1 and section 137CC of the 1995 Act, and section 62 of the 2007 Act - for example, section 137CC makes more bespoke provision permitting the transfer of cases in exceptional circumstances).

Inserted section 7D – Interpretation of sections 7A to 7C

122. This section provides definitions for words and terms used in inserted sections 7A to 7C.

Section 10 – Section 9: transitional provision

123. This section provides that any proceedings that have come before a sheriff court by way of paragraph 16(1) of the schedule of the 2022 Act (being the first calling of a case from custody under the existing national custody jurisdiction provisions) are, for the purposes of inserted sections 5B to 5D of the 1995 Act (as inserted by section 9), to be treated as though they came before that court by virtue of inserted section 5B(1). This means that any proceedings which begin under the existing national custody jurisdiction provisions in the 2022 Act but conclude under the new legislation can continue to be dealt with under the national jurisdiction in the same way, and to the same extent, as they could if they began under the new legislation.

Section 11 – Addition of charge to indictment

124. This section modifies the 1995 Act and the 2010 Act to make provision for the addition of charges to an indictment after the point of service. Subsection (4) inserts a new section into the 1995 Act setting out the procedure by which a charge can be added. Subsections (1), (2), (3) and (5) to (12) make changes to the 1995 Act and the 2010 Act in consequence of this procedure. These changes will operate in conjunction with existing mechanisms under the 1995 Act which ought to already have sufficient flexibility to encompass this new procedure without any amendments being required. For example—

- No provision is made about adding to the witness list to reflect the addition of a new charge. However, witnesses can already be added by the prosecutor late, with the leave of the court, under section 67(5) and (5A). Late objections in respect of any deficiencies in the specification of witnesses are also permitted under section 67(3) on cause being shown. Similarly, section 78(4)(b) allows the court to, on cause being shown, allow the accused to examine witnesses who are notified to the court late.

- No change is made to section 70A which deals with the lodging of defence statements. However, if this duty has already been complied with then it would be expected that in the vast majority of cases an amendment of the indictment would amount to a "material change in circumstances" for the purposes of subsection (4). If in rare cases it did not amount to a material change in circumstances (e.g. because the additional charge was so similar and the defence to it was identical) then no adjustment to the statement would be required but the court would continue to have adequate details of the defence's approach.
- No change is made to section 78(1) which deals with special defences and incrimination. However, that provision already allows the court the latitude to allow the accused to state such a defence or lead the relevant evidence, on cause being shown, despite the normal notice not being given.
- No change is made to section 79 which deals with preliminary pleas and preliminary issues. However, subsection (1) of that section already allows the court to allow such a plea or issue to be made with the leave of the court on cause being shown despite not having been notified to the court in the normal manner.
- The duty to seek agreement of evidence under section 257 of the 1995 Act applies up until the point of the trial starting, so it will automatically apply in respect of any evidence which arises in relation to the added charge. However, it will not place an untenable burden on any party as the obligation is simply to seek to ensure that certain matters are identified and agreed.

125. Subsection (2) of section 11 inserts a new subsection (2A) into section 65 of the 1995 Act. This new subsection confirms that where a charge is added to the indictment under section 70AA (see paragraphs 128 to 137 of these Notes), section 65(1A) will not affect the indictment as respects that additional charge. As such, where the accused is discharged from an indictment due to the preliminary hearing, first diet or trial not commencing within the relevant set periods after the first appearance on petition, this discharge will not encompass any charge added to the indictment, and therefore the proceedings as respects the added charge will be able to continue. In the event that an indictment were to continue as respects only the added charge(s), the time limits in subsection (4) of section 65 would not be relevant as the accused would not have been committed to prison in respect of the added charge. Similarly, subsection (1) of section 65 will not apply to any added charges as, if the charge is added to the indictment then the accused will not have a first appearance on petition in respect of the added charge because by definition the petition stage will already have concluded by the time the charge is added.

126. Subsection (3) amends section 70(4) of the 1995 Act by inserting a new paragraph (aa). This new paragraph provides that an organisation may appear in court by way of a representative for the purpose of making representations regarding an application to add an additional charge to an indictment under section 70AA (see paragraphs 128 to 137 of these Notes).

127. Subsection (4) inserts a new section 70AA into the 1995 Act.

Inserted section 70AA – Addition of charge to indictment

128. Section 70AA provides that after the service of an indictment on an accused person, it is competent for the indictment to be amended to include an additional charge of an offence (or offences - as the singular includes the plural). This additional charge must be of an offence alleged to have been committed by the accused person on whom the indictment was served (or any or all of the accused if there is more than one person subject to the proceedings), but it does not have to relate to the charges included on the original indictment.

129. An additional charge can only be added to the indictment on application to the court by the prosecutor. As per section 70AA(18), where the indictment is in respect of the High Court, the application must be made to a single judge of that court, and in any other case the application must be made to the sheriff.

130. The application must fulfil certain conditions as regards its content and timing, as set out in section 70AA(3) and (4), in order to be granted. Section 70AA(3) provides that the application can only be granted where prosecutor was not aware, and could not have reasonably been aware, of the act or omission forming the subject matter of the additional charge at the time of service of the indictment (for example, that the accused carried out a particular assault). The second condition in subsection (3) is that the application must have been made as soon as was reasonably practicable after the prosecutor became aware of the act or omission forming the subject matter of the additional charge. If the court considers that such knowledge existed at the point of service, or that the application was not made within such time, then the application must be refused. Where the court is content that the conditions are fulfilled, under subsection (2) it must grant the application, unless it otherwise sees just cause not to. Whether and when there is just cause not to grant an application will be for the court to determine, taking into account all the varying facts and circumstances of the case in question and in particular whether any prejudice which may arise can be cured by taking action under subsection (12) instead.

131. Subsection (4) provides that any application must be made at least two months before the trial diet, or can be made at a later date on special cause being shown. The requirement as to the point at which the application is made in subsection (4) does not apply where the trial date has not been fixed at the point of making the application. When the application is made, subsection (6) requires the application to be intimated to the accused, or where there is more than one accused, to all of them. The intimation requirement applies regardless of whether the additional accused persons are also subject to the additional charge. Where an application is made within two months of the trial diet and the court is not satisfied that there is special cause to allow the application at a later date then the application will fail, regardless of whether the conditions in subsection (3) are satisfied, because subsection (4) will not be satisfied.

132. After the court receives an application from a prosecutor, under section 70AA(7) the court is required to fix a diet for hearing the application and considering any representations regarding a late application (if necessary). This requirement does not apply where there is a diet already fixed at which these matters could be dealt with, or where the accused consents to

the charge being added to the indictment (though it would remain open to the court to nevertheless hold a hearing if it saw fit, even where the accused consented). If there is a preliminary hearing or first diet fixed at which the court could determine the application but the timing of that hearing or diet is inopportune for doing so, the court would be able to exercise its existing power under section 75A(5) to adjust that date. In a case where the application is made late, it will be for the court to determine how this is dealt with at the hearing – i.e. whether to dispose of the lateness question at the outset or whether to hear representations on all matters relating to the application and reserve its decision on that preliminary point until the end.

133. Subsection (9) provides that where an application is being considered at a first diet, the court may only proceed to determine the application after the accused has stated how the accused pleads to the indictment as served. The relevant rules for this plea at a first diet are at section 71(6) of the 1995 Act. Where an application is being considered at a preliminary hearing, as a result of the amendment to section 72 of the 1995 Act in section 11(6) (see paragraph 138 of these Notes), the accused will also be required to plead to the indictment prior to the application being considered. Where, at either form of diet, the accused pleads guilty in respect of all charges on the indictment, the additional charges cannot be added and the court must refuse the application. The reference in subsection (10)(a) to pleading guilty to the indictment is, as alluded to in the previous sentence, a reference to pleading guilty to all charges on the indictment but, in line with the approach taken in the rest of the 1995 Act, this is taken as read without being spelled out[1]. However, if the accused pleads not guilty in respect of any or all of the charges on the indictment, the court may proceed to determine the application. In the event that the court grants the application, the court must then require the accused to tender a plea in respect of the additional charge at that diet.

134. Section 70AA(11) provides that where the court is determining an application at a diet other than a first diet, the court may, on cause shown, proceed to determine the application without the accused being present. Where the court is determining an application at a first diet, section 71(6) of the 1995 Act (in conjunction with section 70AA(9) as discussed at paragraph 133 of these Notes) will require the accused to be present in order to plead to the indictment, and therefore the application will not be able to be determined in their absence.

135. Where an indictment is amended under section 70AA, subsection (13) provides that the amendment must be sufficiently authenticated by the initials of the clerk of court. No provision is made about serving the amended indictment on the accused as the accused will have received notice of the application and been present or represented at the hearing at which it was disposed of.

[1] See for example sections 71(6) and 71B(1) of the 1995 Act, as contrasted with section 77(1) which makes specific provision when referring to a plea to only some of the charges. See also section 72(6) of the 1995 Act where the court is instructed not to do things like dispose of preliminary issues if a guilty plea has been accepted to the indictment (which logically must therefore mean in respect of all charges on the indictment or else there would still be preliminary pleas to be disposed of).

136. Where the charge added is of committing one or more of the offences listed in section 66(14A)(b) of the 1995 Act, and the accused has not previously received a notice under section 66(6A)(a) of that Act in respect of the current proceedings, subsection (14) requires the accused to be served with a notice specifying the matters specified in that paragraph. The matters are that the proceedings may be conducted only by a lawyer, that it is therefore in the accused's interests to obtain the professional assistance of a solicitor if not obtained already, and that if the accused does not engage a solicitor for these purposes then the court will do so on the accused's behalf. However, subsection (15) confirms that where the prosecutor fails to comply with these requirements, this will not affect the validity or lawfulness of the proceedings as a whole. As per subsection (16), service of this notice, and the intimation of an application to amend an indictment, may be effected by any officer of law (in addition to other methods of service and intimation).

137. As a result of the additional provision made by section 70AA(17), the procedure for appeals set out in section 74 of the 1995 Act and any Act of Adjournal made under that section will apply to the determination – regardless of whether an application is determined at a first diet or preliminary hearing, or at another hearing fixed by the court. Where the application is determined at a first diet or preliminary hearing, it is section 74(1) itself which provides the authority for the appeal, but where the application is determined at another hearing then it is section 70AA(17) which provides the authority.

138. Subsection (5) of section 11 modifies section 71 of the 1995 Act, to provide that applications under section 70AA can be considered at first diets. Subsection (6) amends section 72 of the 1995 Act, to similarly provide that applications under section 70AA can be considered at preliminary hearings.

139. Subsections (8) to (12) modify the 2010 Act to impose additional disclosure duties where a charge is added to an indictment under section 70AA of the 1995 Act. Subsection (8) amends section 117 of the 2010 Act, to provide that where the indictment is amended under section 70AA after the accused has appeared for the first time on petition or indictment, the disclosure duties in section 117(2) and (3) imposed on the relevant investigating agency will be triggered again in respect of the new charge. Where the investigating agency has already disclosed information to the prosecutor regarding this matter under section 117 (following the first appearance on petition or indictment), the investigating agency will only be required to disclose the relevant information that has not previously been provided to the prosecutor. Subsection (9) modifies section 118 of the 2010 Act, to confirm that the continuing duty on the investigating agency to disclose information to the prosecutor does not apply to information that has previously been disclosed to the prosecutor in accordance with the continuing duties. Subsections (10) to (12) make equivalent changes to the disclosure duties imposed on the prosecutor in sections 121 to 123 of the 2010 Act.

PART 2: DOMESTIC HOMICIDE AND SUICIDE REVIEWS

Reviewable events

Section 12 – Domestic homicide or suicide review

140. This section defines the concept of a "domestic homicide or suicide review", which is what Part 2 of the Act is concerned with. In brief, the concept is the establishment of a review mechanism for reviewing certain deaths arising from abusive behaviour within relationships, with a view to learning lessons. 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. This can also include working with agencies where there was an absence of contact with the victim or perpetrator.

141. Subsection (1) of this section provides that the term "domestic homicide or suicide review" means a review of a "domestic abuse death", or of a "connected death of a young person", which is held with a view to identifying lessons to be learned from it (and in some cases also from events following the death as well). Although the term "or" is used and the term "death" is used in the singular, section 22(2)(a) makes clear that a combined review can also be carried out – for example, there could be a review of more than one domestic abuse death, or a domestic abuse death could be reviewed together with the connected death of a young person.

142. Subsection (2) then sets out the definitions of "person A" and "person B" which are used for the purposes of this section. This is necessary because a particular relationship needs to exist between two people in order for the review model to apply.

143. For the purposes of this section, person A is a person who has, or appears to have, behaved in an abusive manner towards person B. To use more everyday language, person A is therefore the "perpetrator" of the abusive behaviour (though it is accepted that there may be some rarer cases where both parties in a relationship behave in an abusive manner). The person who is subjected to the abusive behaviour (i.e. person B) needs to be, at the time of the behaviour, one of the following—

- the partner or ex-partner of "the perpetrator",
- the child of "the perpetrator",
- the child of the partner or ex-partner of "the perpetrator",
- a young person living in the same household as "the perpetrator", or in the same household as "the perpetrator's" partner or ex-partner.

144. A number of the terms used here are defined in subsection (7). Specifically—

- **Abusive behaviour:** this term has the same meaning as it does in the Domestic Abuse (Protection) (Scotland) Act 2021 (though the categories of relationship where abusive behaviour is relevant will differ between the two pieces of legislation). This means that it covers behaviour where a reasonable person would consider the behaviour likely to cause the recipient to suffer physical or psychological harm (which includes fear, alarm and distress). Behaviour of any kind is covered, including words and failures to act, and can be directed at a person even if it is carried out by way of conduct towards property or through a third party. Behaviour can consist of a course of conduct or a single incident. A single incident can be the death in itself.
- **Partner**: a person is someone's partner if they are spouses or civil partners, or if they are in an intimate personal relationship. The term ex-partner is to be construed accordingly. There is no requirement that the parties need to be living together to be partners.
- **Child:** someone is considered to be another person's child if that person accepts them as their child, or previously accepted them as their child (prior to the abusive behaviour) even if they are no longer so accepted. In particular—
- The nature of the relationship is what matters, so it does not matter whether the child lives under the same roof as the person carrying out abusive behaviour (or under the same roof as the perpetrator's partner or ex-partner). The child could be an adult living entirely independently.
- Age is irrelevant, as the term "child" is used exclusively in this Part to denote a parent/child relationship. Although the term "child" is specifically defined in *some* Acts as meaning a person under a particular age, there is no rule that means that this applies uniformly across the statute book and it does not apply here. The term "child of" or "person A's child" is therefore left to take its ordinary meaning as signifying someone's son or daughter (or non-binary child).
- A step-child may be covered as a person's own child depending on the nature of the relationship in a particular case, but if the step-child is not covered directly as the child of "the perpetrator" then they would be covered anyway by reason of being the child of that person's current or former partner.
- Someone who is living with the "perpetrator" or with their partner/ex-partner but who is not accepted by them as their child (for example, a foster child, or a niece or nephew, who is not accepted as the person's own child) may, depending on their age, be covered instead by reason of being a young person living in the same household.

- **Young person:** the age cut-off for a young-person depends on whether or not that person has at any point been in care (a "looked after" child). If so, those under 26 are covered, but otherwise it means those under 18. The term is used to cover any minor, so as to deliberately avoid "child" being used in this Part to mean a person under a certain age. This is done to avoid any confusion given that this Part talks about a person's child and this means a parental/child relationship regardless of age.

145. Subsection (3) defines what a "domestic abuse death" is for the purposes of the review model. What is covered depends on the nature of the relationship between person A and person B – i.e. whether they were (or appear to have been) partners or ex-partners, or whether the relationship is one of the other scenarios which is covered (that is, being the child of person A, or of person A's partner or ex-partner, or a young person living in the same household as person A or person A's partner or ex-partner).

146. In relation to a case where persons A and B were or appear to have been partners or ex-partners, there are three things covered by the definition of a domestic abuse death—

- The first scenario which is covered is one where the person who is given the label of "person B" has died or may have died (otherwise than by suicide) as a result of "the perpetrator's" (i.e. person A's) abusive behaviour.
- The second scenario which is covered is one where the person who is given the label of "person B" has died by suicide and it is or appears to be the case that "the perpetrator's" (i.e. person A's) abusive behaviour was a contributing factor. This would therefore cover suicides which are connected to abusive behaviour (for example, an individual who felt driven to suicide by an abusive partner or ex-partner, or by the mental health problems brought on by the behaviour of an abusive partner or ex-partner).
- The third scenario which is covered is one where the person who is given the label of "person B" has killed the person who carried out the abusive behaviour (i.e. person A). Essentially, this covers what are sometimes known as "violent resistance" killings.

147. In relation to a case where persons A and B were not partners/ex-partners, there is one scenario covered by the definition of a domestic abuse death. Both elements of this must be satisfied:

- It must be (or appear to be) the case that person B has or may have died (otherwise than by suicide) as a result of "the perpetrator's" (i.e. person A's) abusive behaviour.
- It must also be (or appear to be) the case that at some point prior to the behaviour which resulted in the death, there was or appears to have been abusive behaviour between person A and any partner or ex-partner. It does not matter who the abusive person was in the relationship – all that matters is that there was abuse. The person with whom there was an abusive relationship could be related to person B (for example, the deceased child's mother) or it could be someone entirely unrelated.

148. Subsection (4) qualifies subsection (3) by providing that where the death in question is a case of a young person who was subjected to abusive behaviour while living in the same household as the "perpetrator" or their partner/ex-partner, the death is a "domestic abuse death" only if the person was a young person at the time of their death. So, for example, if a young person was subjected to abusive behaviour which caused them to be in a coma and then, some time later, died, the death would be a domestic abuse death only if the person was still a young person at the point of their death.

149. Subsection (5) defines the other category of death which falls within the review model, which is where there is the "connected death of a young person". In order for subsection (4) to apply, the young person has to have been killed as a result of an incident which also resulted in a domestic abuse death, or as a result of "the perpetrator's" abusive behaviour of person B which, had person B died, would have been a domestic abuse death. The former would cover, for example, a scenario where an abusive individual stabs to death their spouse, their own child and an unrelated child who happens to be present. The latter of these means that even if the intended victim of the attack (e.g. in the example above, the person's spouse and own child) survives, the young person's death is still a reviewable death.

150. The young person does not have to have any particular type of relationship to the parties who were in an abusive relationship. Examples which might be covered here would include—

- a child who was on playdate at a friend's house when domestic abuse occurred and was killed as a result (for example, due to an inaccurately aimed weapon or a decision by the perpetrator to kill all those present),
- a young person who is in a park and is killed by a stray bullet which an abusive husband was aiming at his spouse,
- a family member who does not fall within the "domestic abuse death category", such as where an individual kills (or tries to kill) their partner as well as killing their partner's young sibling.

151. Subsection (6) provides that where a review is being held in respect of a death anyway and the person whose behaviour resulted in (or appears to have resulted in) the death – i.e. "person A" – has died by suicide, the review may also encompass the circumstances of that suicide[2]. For example, an abusive husband might kill his wife and then kill himself. In that case, the suicide could be covered by the review of the woman's death. However, if a man was arrested for abusive behaviour towards his wife and he killed himself rather than face court (without killing his wife or attempting to do so in a way that led to a connected death of a young person), that on its own would not fall within the review model.

152. It should be noted that although this section sets out what deaths fall within the review model, it does not mean that a review will be held in every instance. There is a sift stage at which an assessment is taken as to whether there are lessons to be learned from the death (see the commentary on section 19). There is also a power to modify the breadth of the review model (see the commentary on section 13).

[2] In the scenario where, for example, an abused woman kills her husband and then kills herself, subsection (6) is not relevant as the suicide would be reviewable under subsection (3)(b).

Section 13 – Power to modify matters in relation to reviews

153. This section provides a broad power allowing the Scottish Ministers to, by regulations, make various changes to section 12 in particular. Regulations made under this power can modify an enactment, meaning that they could adjust section 12 directly (meaning that the full definition of a review remains in one place). However, under section 32, regulations under this section are subject to the affirmative procure so they could only be made if the Scottish Parliament first votes to approve them in draft.

154. The power to make changes under this section allows for the following—

- The power allows provision to be made changing what it means for the purpose of the review definition for abusive behaviour to "result in" or (in the case of suicide) be a contributing factor to a death. This is most likely to be relevant to deaths of partners/ex-partners by suicide following abusive behaviour, as suicides often are the cause of multiple factors which are complex and difficult to disentangle. Under section 32, it will be possible to use this power to make different provision for different purposes, meaning that bespoke provision could be made in respect of suicide. This could, for example, require there to be certain evidence of causality in cases of suicide, or a certain proximity between the abusive behaviour and the suicide.
- The power allows different provision to be made changing what the relationship between two people needs to be in order to give rise to a review. This would, for example, allow deaths arising from so-called "honour killings" or a person's former partner killing their new partner to be brought into the review model.
- The power allows the circumstances which may give rise to a review to be changed, including so as to cover circumstances in which there is no death. This would therefore allow, for example, the review model to eventually be extended to cover near-death incidents or even serious incidents which are a level below that. However, the power is limited to specifying circumstances relating to abusive behaviour, so the review model will always remain about abuse in relationships.
- The power allows the name of the review model to be changed in consequence of a change to the substance of the model. For example, if it is extended beyond deaths then the current name would no longer be appropriate, and this power could be exercised in order to remedy that. However, the power is limited to being used in consequence of a change to the substance of the circumstances which can give rise to a review.
- The power also allows changes to be made to section 19, which is the sift mechanism. This would allow, for example, any broader criteria introduced in section 12 to be narrowed appropriately using the sift mechanism.

Review infrastructure

Section 14 – Review oversight committee

155. Subsection (1) of this section provides for the creation of a review oversight committee which is to be responsible for securing the carrying out of reviews and overseeing the review process. Under subsection (2), the committee is to comprise a chair, a deputy chair, and such number of other members as the Scottish Ministers determine. Those other members will be appointed by the Scottish Ministers – from among nominations received from nominating bodies listed in subsection (3) as well as from those identified by Ministers themselves.

156. Subsection (3) sets out the nominating bodies. This list may be modified by the Scottish Ministers by regulations under subsection (5) (subject to the negative procedure) but only after they have consulted with the body to which the regulations would relate (see subsection (6)).

157. The intention is that these nominating bodies might in practice come together to provide for joint nominations (for example, a nomination on behalf of all health boards) but no stipulations are made about how the nominating process has to work, so there will be flexibility for the nominating bodies to nominate individuals as they see fit. There is no obligation on Ministers to accept these nominations (beyond the requirement in subsection (2)(c)(i) which essentially requires there to be at least one person nominated by others), but they would need to consider these nominees for appointment.

158. Where the Scottish Ministers are appointing people of their own accord, they are required under subsection (4) to do this in a way which ensures that the committee includes representatives of voluntary organisations which provide services to individuals in Scotland. For example, this might be charities which have specialist expertise in assisting victims of abusive behaviour, or those which specialise in matters such as substance abuse and which have experience and expertise in working with those who have suffered or been responsible for abusive behaviour in connection with that.

Section 15 – Case review panels

159. This section makes provision for the appointment of case review panels, which will be tasked with the carrying out of domestic homicide or suicide reviews. These panels will be appointed on an ad hoc basis as and when required for reviews.

160. Subsection (1) puts the review oversight committee in charge of establishing panels as and when they are required. Subsection (2) requires the Scottish Ministers to maintain a pool of at least three individuals who have been appointed as panel chairs, and who can therefore be called upon when a panel is being established.

161. Under subsection (3) a panel is to comprise a chair (selected from those appointed as panel chairs by Ministers) and such other members as the committee determines. The intention is that this will be a role performed by people who have valuable insights to offer but who will be able to do this alongside their everyday lives and work (e.g. police, COPFS and relevant victims' organisations).

162. Subsection (4) specifies that an individual cannot be appointed to be a panel member (which would include being the chair of a panel) if the individual is, or within the past 3 years has been, a member of the review oversight committee.

Section 16 – Committee and panels: further provision

163. This section makes further provision about the review oversight committee and case review panels.

164. Subsection (1) introduces the schedule which makes detailed provision about the chair and deputy chair of the committee, about the appointment of a person to fill in for the chair and deputy chair, and about panel chairs.

165. Subsection (2) deals with the ordinary members of the review oversight committee (i.e. those other than the chair, deputy chair and any substitute). It provides that their terms and conditions are to be set by the Scottish Ministers, and allows them to be paid such expenses as the Scottish Ministers determine.

166. Subsection (3) deals with panel members other than panel chairs. It provides that their terms and conditions are to be set by the review oversight committee but these have to be approved by Ministers, and allows them to be paid such expenses as Ministers determine.

Notification of potentially reviewable deaths

Section 17 – Notification of deaths

167. This section deals with the notification of deaths to the review oversight committee, so that they can be considered for review.

168. The chief constable of Police Scotland, the Lord Advocate and the Police Investigations and Review Commissioner ("the PIRC") are "notifying bodies" for the purpose of this section and, as such, must give written notice to the committee of any death of which they are aware and which they believe to be a reviewable death. When doing so, they must provide the Scottish Ministers with a copy of the notification.

169. The Scottish Ministers also have the power to make a written referral to the committee where they become aware of a death which is, or might be, a reviewable death and they know, from not having received a copy notification, that notice of it has not already been given by a notifying body. This might be relevant where, for example, 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. It is accepted that the Scottish Ministers may have less information about deaths which they refer under this section, and so the threshold for referral is correspondingly lower. However, if the Scottish Ministers do make a referral, they must provide a copy of it to all notifying bodies. There is no restriction upon how the Scottish Ministers may become aware of a death in order to refer it to the committee – for example, they could become aware of a death abroad through diplomatic channels, or a friend or family member might contact Ministers with information seeking a review.

170. A notification or referral under this section is to include such information as the person making it possesses or controls which they consider likely to be of assistance to the committee for the purpose of its consideration under section 19(1) (i.e. checking that the death is in fact a reviewable one and then, if it is, determining whether a review should be held). Although the committee has information-gathering powers which it may need to exercise in connection with this consideration, this ensures that the committee is at least provided as a starting point with relevant information from the person making the notification or referral. As this information is to form part of the notification or referral, this means that it forms part of what must be copied to the Scottish Ministers or (as the case may be) a notifying body under subsection (1)(b) or (3).

Section 18 – Revocation of notification

171. This section allows for the revocation of the notice or referral that is given to the review oversight committee under section 17. The notification or referral can be revoked by the person who gave it only where the person believes that the death is not a reviewable death (for example, because further information has come to light since the original notification was given, or because the original notice was given in error).

172. A notification or referral can only be revoked up until the point where a decision is made by the review oversight committee under section 19 as to whether the death is a reviewable one. If a decision on that point has already been made then, if the full outcome of the section 19 process is that a review is to be carried out, the means by which the process could be ended would be via the Lord Advocate's power to order discontinuation of proceedings under section 23.

173. Similar to the original notice, the power of revocation is exercised by the person giving notice in writing to the review oversight committee. However, reasons must be given for the original notice being revoked (i.e. why the death is not thought to be reviewable). As with the original notice, it must be copied to the copy recipient of the original notice.

174. The effect of a revocation notice being received by the committee prior to a decision being made as to the reviewability of the death is that the original notice is to be treated as never having been given. That means that if the committee's sift stage had begun, it must be brought to an end unless and to the extent that the sift is predicated on another notification or referral which was not revoked. For example, if both the Chief Constable and the PIRC made a notification but one of them then had cause to revoke it, the sift must continue to consider the notification which remains live. The notification will also not count for the purpose of the requirement in section 30 to report on the number of notifications received during the year, as the report is concerned with progress made on notifications which are not revoked.

Sift stage

Section 19 – Determination as to whether to hold a review

175. This section deals with what steps are to be taken by the review oversight committee following receipt of a notification or referral of a death.

176. Under subsection (1), the committee firstly has to satisfy itself that the death is one which is capable of falling within the review model. For example, a death may have been notified based on a misunderstanding of the relationship between two people. The threshold for referral by the Scottish Ministers is also predicated on the understanding that they may not have the full picture and permits referral where they merely believe that a death "may be" a reviewable death, with the intention that the committee will then be able to ingather sufficient information to form its own view.

177. Once the committee is satisfied that the death falls within the scope of the review model, they then have to determine whether a review should be carried out in respect of it. Alternatively, if the committee is unable to reach a unanimous decision and the chair of the committee decides it is appropriate to do so, the question may be referred to the Scottish Ministers for them to decide. There is no requirement though for the committee to reach a unanimous decision when deciding whether a review should take place – if the chair is content not to trigger the referral option then the committee could agree to take a majority decision.

178. Subsection (2) provides that the criteria on which this sift decision (i.e. whether or not to hold a review in respect of a death which has been found to be reviewable) is to be taken is to be based on three things—

- The first element is the likelihood of the review identifying lessons to be learned from the death which would improve Scottish practice in the safeguarding of those affected by abusive domestic behaviour or the promotion of the wellbeing of victims of abusive domestic behaviour.
- The second element is whether Scottish public authorities or voluntary organisations operating in Scotland were involved, or had the opportunity to be involved, in the circumstances leading up to the death. This recognises that although there may be things authorities or organisations in Scotland could learn from incidents which take place in other jurisdictions, the review model is about looking at "missed opportunities" as well as opportunities taken by authorities or organisations in Scotland in particular cases and learning lessons from those.
- The third element is relevant only in cases where the persons referred to as person A and person B were not partners/ex-partners. In such cases, the sift is to consider whether and to what extent there appears to be a connection between the death and abusive behaviour between partners/ex-partners.

179. Subsection (3) then sets out some factors which are to be considered as part of the subsection (2) tests, although other factors which are relevant to the assessment under subsection (2) could also be considered. The factors specified in subsection (3) are—

- the extent of the apparent connection between the abusive domestic behaviour and the death (this would be most relevant to either suicides or some connected deaths),
- the information which the review will be able to have at its disposal,
- the extent of the connection which both the person who has died, and other person(s) involved, have to Scotland (since if, for example, a relationship mostly took place abroad, the opportunities for earlier intervention within Scotland would have been limited).

180. While the legislation therefore sets out certain parameters for the decision-making process, it will be complemented by the guidance referred to in section 31 which will help the committee to determine whether a review ought to be held or not.

181. Subsection (4) then allows the committee to, at the chair's discretion, seek advice from the Scottish Ministers in relation to its determination as to whether to hold a review. This could, for example, relate to the overall determination or to an individual element which factors into the committee's decision-making.

182. Subsection (5)(a) requires the chair of the committee to, in cases where the committee is not going to carry out a review, provide Ministers with a summary of the committee's reasons for reaching that decision. This applies where the committee's decision is made because it believes the death is not a reviewable one, and also where it determines that, although the death falls within the review model, a review should not be carried out. Subsection (5)(b) then provides the Scottish Ministers with a power to overrule the committee. However, Ministers cannot overrule a determination by the committee that a review is to be carried out.

183. Subsection (6) requires the chair of the committee to, if putting matters to the Scottish Ministers under this section (i.e. seeking advice, or asking Ministers to make the determination), provide such information as the chair holds or controls which they consider is likely to be of assistance to Ministers in providing the requested assistance. This is additional to the power which exists under section 26 to ingather information, and which Ministers could (for example) use if deciding whether to step in and overrule the committee under this section.

Section 20 – Determination as to whether to expand the remit of a review

184. Where the outcome of consideration of a death under section 19 is that a review should be carried out (whether that outcome is reached by the review oversight committee or by the Scottish Ministers), section 20(1) will apply. It requires the review oversight committee, in relevant cases, to determine whether the remit of the review should be expanded to cover certain events following on from the death. The cases which are relevant for this purpose are set out in subsection (2) and are those where the death is one where persons A and B were partners or ex-partners (i.e. the scenario set out in section 12(3)(a)) and either or both of them,

at the time of death, had either (a) a child who was a young person or adult at risk, or (b) another young person living in their household. In such cases, it is likely that the young person/adult at risk will have lost an adult or adults who had responsibility for their care – with the loss being either due to the person being killed or the person being imprisoned.

185. Where the review oversight committee opts to expand the remit of a review in a relevant case, subsection (3) sets out what the remit can be expanded to cover. It can be expanded to cover any or all of the following things—

- It can be expanded to cover the extent to which the young person/adult at risk was able to provide their views in relation to any decisions made by a public authority following on from the death where that decision relates to matters which directly concern their welfare and where their best interests were a primary consideration. For example, this would not cover matters such as a decision by Social Security Scotland to grant or deny an application for social security assistance (as that is based on fixed criteria, rather than on trying to always do what is best for the person regardless of any other factors), but it would cover matters such as a decision by a local authority as to a foster care placement.
- It can be expanded to cover the extent to which the young person/adult at risk has received any support the person reasonably required in order to provide those views. This support would not necessarily need to be provided by the public authority itself and could also be provided by, for example, a charity or another family member. The examination would simply be of whether there was a gap in support being provided.
- It can be expanded to cover the extent to which the young person/adult at risk received the support they reasonably needed following on from the death. This would not be limited to the support they need to provide views on decisions concerning them and is about support more generally – which might include, for example, grief counselling. It does not matter whether or not the support is of a type which a public authority would normally provide.

186. Subsection (4) states that where there is more than one young person/adult at risk, the remit of the review can be expanded in respect of any or all of them. For example, the deceased may have had two children – one who is 17 and was already living full-time with their other parent and had very little contact with the deceased, and one who was 12 and living full-time with the deceased. In such a case, the review oversight committee could, for example, opt to expand the remit of the review in respect of the 12 year-old but not consider it necessary to expand it in respect of the 17 year-old.

187. Subsection (5) provides that the expansion of the remit of a review is subject to the Lord Advocate's consent being granted to the expansion.

188. While this section deals with the initial decision as to whether or not to expand the remit of a review to cover certain matters following the death, the remit can also be expanded (or, for that matter, contracted if it was initially expanded) later on. This is dealt with in section 22(4) and (5) – see paragraphs 198 and 199 of these Notes.

Section 21 – Reconsideration of whether to hold a review

189. Subsection (1) of this section allows for the reconsideration of a decision that a review was not to be carried out in respect of a death. This is permitted where the person who made that decision (i.e. the review oversight committee or, as the case may be, the Scottish Ministers) believes it is appropriate to reconsider the death as a result of becoming aware of relevant information which they did not have at the time of their previous consideration. Subsection (4) clarifies what is meant by referring to the "decision-maker" in respect of the previous consideration: other than where Ministers actually made the previous decision themselves, this means the review oversight committee (even if the committee took advice from Ministers).

190. A reconsideration could therefore take place under subsection (1) where the previous outcome was that the death did not fall within section 12 and was therefore not reviewable, or where, although the death fell within the criteria, a review was nevertheless not thought to be appropriate (for example, because the abusive behaviour was not grounded in partner/ex-partner abuse, or because the link to Scotland was insufficient to allow there to be enough information and learning to be taken from the review).

191. Where a reconsideration takes place, subsection (2)(a) provides that section 19 applies as it applies following notification/referral of a death, subject to one exception. The exception is that if the Scottish Ministers were asked to make the determination then they are to perform the review oversight committee's functions under section 19(1)(a) and (b)(i) in the reconsideration. This would mean that they would look afresh at whether they considered the death to be a reviewable one and, if so, whether a review ought to be held. If the original decision was made by the review oversight committee, they will be able to take advice from Ministers if they wish or refer the question to Ministers in exactly the same way as they would have been able to originally.

192. Subsection (2)(b) provides that the outcome of the reconsideration is to be treated as being the outcome of consideration of a death under section 19. There are two consequences to this. First, any reference to "the outcome of consideration of a death under section 19" includes a reference to the outcome of a reconsideration (meaning, for example, that a case review panel has to be convened under section 22(1)). Second, it means that the outcome of a reconsideration can itself be reconsidered if it meets the criteria in subsection (1) of this section.

193. Subsection (3) goes on to provide that where a reconsideration is itself reconsidered, references to the "previous" consideration are to the previous reconsideration or, if there has been more than one reconsideration, to the most recent of them.

Conduct of reviews

Section 22 – Carrying out of review

194. This section makes provision about what is to happen where the outcome of consideration of a death under section 19 is that a domestic homicide or suicide review is to be carried out in respect of the death. This therefore applies regardless of whether the decision to hold a review is the determination of the review oversight committee or whether it has come about because the Scottish Ministers have overturned the committee's decision and directed that a review be held.

195. Subsection (1) requires the committee to appoint a case review panel to carry out the review. The detail of the composition of case review panels is dealt with at sections 15 and 16. The same case review panel could be appointed to carry out more than one review, or different panels could be appointed each time.

196. Subsection (2)(a) further provides that the committee can appoint a panel to carry out a combined review of two or more deaths. This might, for example, be appropriate where the same perpetrator has killed two people in the same incident, or where they have killed two partners in different relationships years apart. It could equally be appropriate for a combined review to be carried out where the perpetrators of abusive behaviour are different but the involvement the victims had with a particular agency was the same. Whether it is appropriate to carry out a combined review will depend on all the facts and circumstances of the particular cases and the extent to which it makes sense to consider the cases together. However, the question of whether a review is a combined one or not should have no bearing on the level of scrutiny applied to each case, and a combined review will still be able to examine different matters (for example, where a man kills his wife and child, there may be child protection elements to consider in relation to the child).

197. Subsection (2)(b) also allows the committee to instruct a panel to carry out its review in conjunction with a review of another type (which could be statutory or non-statutory). Examples of this might include a child protection learning review or an adult support and protection learning review conducted in respect of the death of a vulnerable adult. Another example would be a mental health homicide review into the care and treatment of a homicide perpetrator with a mental disorder.

198. Subsection (3) requires the committee to set the terms of reference for the review and allows these to be modified as the committee considers appropriate. Subsection (4) ensures that where the remit of a review is expanded under section 20, that is recorded in the terms of reference.

199. Subsection (5) allows the terms of reference of a review to be modified so as to set the remit as any remit that would have been permissible under section 20. This means that the remit can be expanded later, if new information comes to light which was not available at the time that the assessment under section 20 was carried out. It also means that the remit can be contracted later if it initially appeared appropriate to expand the remit under section 20 but it

later becomes clear that this is not appropriate. However, the Lord Advocate's consent continues to be required to any expansion of the remit in the same way as it is required under section 20(5) – meaning that it can be expanded to cover events after the death only with the Lord Advocate's permission.

200. Subsection (6) requires the committee to ensure that the panel makes satisfactory progress in carrying out its review, that it acts in accordance with its terms of reference, and that it suspends, discontinues or resumes its review in line with any notice served on the committee by the Lord Advocate under section 23. Essentially, the committee will have a supervisory role in relation to any case review panels it establishes.

201. Subsection (7) allows the Scottish Ministers to pay expenses to those who participate in reviews. This is aimed at those who come and speak to the panel, as panel members themselves are able to be paid expenses under section 16(3) or the schedule.

Section 23 – Lord Advocate's power to order suspension or discontinuation of review proceedings

202. This section provides the Lord Advocate with a power to order the suspension or discontinuation of what can be thought of as "review proceedings". This covers both consideration of a death by the review oversight committee or Ministers (i.e. the sift stage) and, in those cases where the outcome of the sift is that a review is to be held, the actual review itself. Subsection (7) clarifies that for this purpose consideration of a death is to be taken to commence as soon as a notification or referral is received in respect of it, meaning that the power can be exercised even if the review oversight committee has not actually begun to actively review the file with a view to making a sift decision.

203. Under subsection (1), the Lord Advocate can order the temporary suspension of review proceedings for such period as the Lord Advocate considers necessary to allow for the conclusion of any investigation (which would include those by specialist reporting agencies, as well as by the police), or any criminal proceedings or relevant inquiry, which the Lord Advocate considers to be connected. Under subsection (7), a "relevant inquiry" means an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016[3] or an inquiry under the Inquiries Act 2005 for which the Scottish Ministers have sole responsibility. This power would therefore allow the Lord Advocate to, for example, prevent any prejudice to criminal proceedings by, where necessary, ensuring that the review is paused until the criminal proceedings are complete. This could be exercised in relation to criminal proceedings such as murder or culpable homicide proceedings in respect of the death with which the review proceedings are concerned, but it could also be exercised in relation to other matters which are connected. This might include proceedings for perverting the course of justice in respect of the death, or even proceedings for an earlier instance of abuse which did not lead to the death. Subsection (5) clarifies that this power can be used even where the

[3] Inquiries under that Act are often referred to as fatal accident inquiries, although they also cover inquiries into deaths in custody and can further cover sudden, suspicious or unexplained deaths, or those which occurred in circumstances giving rise to serious public concern.

investigation, criminal proceedings or inquiry have not yet begun. It also provides that the notice ordering the suspension can do this by stating a date on which proceedings may resume, by stating that proceedings may resume once a particular event has taken place, or by stating that proceedings may resume only once a further notice to that effect is given. Where reviews are undertaken in parallel to ongoing proceedings or a relevant inquiry, section 24 provides for a protocol which will set out how reviews are to operate in order not to jeopardise proceedings or inquiries.

204. Under subsection (2), the Lord Advocate can also order the permanent discontinuation of proceedings where it appears to the Lord Advocate to be appropriate to do so in light of any investigation relating to the death, or any criminal proceedings or relevant inquiry. This power could be exercised, for example, where a death was notified to the review oversight committee but further investigations have revealed that the death was in fact unrelated to abusive behaviour. This power will operate in conjunction with the power in section 18 which allows a notification to the review oversight committee to be revoked. As that power can only be exercised up until the point at which it is determined that the death is a reviewable one, if the Lord Advocate later decides that the notice should never have been given, there continues to be a route available under this section for the review process to be stopped.

205. The Lord Advocate's powers to order the suspension or discontinuation of review proceedings are exercised by the Lord Advocate sending a written notice to that effect to the review oversight committee, setting out the reasons for doing so (see subsection (3)). In some cases it will be the committee itself which has to pause or discontinue its own sift proceedings, but where the case has already been passed to a case review panel for a review, section 22(6)(c) ensures that the committee will convey the need for any necessary action to the panel.

206. Under subsection (4), the Lord Advocate must consult the chair of the review oversight committee before exercising the powers in this section.

207. Under subsection (6), the Lord Advocate must provide a copy of any notice ordering a suspension or discontinuation, or any notice permitting a suspended review to resume, to the Scottish Ministers.

Section 24 – Protocol in relation to interaction with criminal investigations etc.

208. Subsection (1) of this section requires various people or organisations to agree and maintain a protocol in relation to the sift process and the carrying out of reviews. The people or organisations in question are, under subsection (2), the chair of the review oversight committee, the chief constable of Police Scotland, the Lord Advocate, the PIRC, and the Scottish Ministers.

209. Subsections (3) and (4) set out more detail about what the protocol must cover. It must describe the general processes and arrangements which the parties intend to follow in order to prevent (so far as within their power to do so) review proceedings causing prejudice to—

- any criminal investigation or any other investigation directed by the Lord Advocate or a procurator fiscal (such as a non-criminal investigation which is carried out by the police at COPFS's direction prior to a fatal accident inquiry),
- any criminal proceedings,
- any relevant inquiry (which has the same meaning as it does in section 23 – see paragraph 203 of these Notes).

210. The protocol must also cover when information obtained in connection with review proceedings will be provided by the review oversight committee or a case review panel to the chief constable of Police Scotland or (where applicable) the PIRC. Further, it must cover the circumstances in which a person is not to be interviewed or required to provide information under review proceedings without the prior consent of the chief constable, the PIRC, or the Lord Advocate.

211. Subsection (5) requires the parties to the protocol to keep the protocol under review, and provides that they may agree to revise it at any time.

Section 25 – Duty on designated core participants to co-operate

212. Subsection (1) places a duty on named designated core participants to co-operate in relation to consideration of a death (i.e. the sift stage) and, in cases where the outcome of the sift is that a review is to be held, the actual review itself. This obligation of co-operation requires them to co-operate with the review oversight committee, with a case review panel which is carrying out a review and also with each other.

213. Subsection (2) provides a definition of "co-operation" which clarifies that this includes participating (if asked to do so) in a review, as well as providing such information or assistance as the review oversight committee or the relevant case review panel reasonably considers necessary to allow them to fulfil their functions. Any information or assistance must be provided as soon as reasonably practicable following a request. This duty to provide information under this section is of course subject to the general law, including data protection legislation.

214. Subsection (3) provides that a designated core participant is not required to provide information under this section which they would be entitled to refuse to provide in court proceedings (e.g. legally privileged information). However, this is subject to subsection (4). Subject to some exceptions, the Rehabilitation of Offenders Act 1974 allows a person not to provide information to a court about spent convictions (and equivalents like spent alternatives to prosecution). Because subsection (3) is based on what happens in a court, subsection (3) would therefore on the face of it limit the obligation to disclose information to a review so that information about spent convictions did not have to be provided. The effect of subsection (4)

is that if an order made under the 1974 Act allows information about spent convictions to be provided to a domestic homicide or suicide review, that provision will trump the restriction which would otherwise have applied under subsection (3).

215. Subsection (5) makes provision for the interaction of this section with the Lord Advocate's ability to pause review proceedings. The duty to co-operate ceases to apply in respect of a review during any period where it is paused, but is revived again if the pause ends with the review being recommenced (as opposed to the pause ending with the Lord Advocate ordering discontinuation of the review). No equivalent provision is made in respect of the Lord Advocate's ability to discontinue review proceedings, as in such a case there would no longer be review proceedings for a designated core participant to be required to co-operate with under subsection (1).

216. Subsection (6) lists the designated core participants which are subject to this duty. The extent to which they are called upon to co-operate in practice will depend on the death under review and the extent of their involvement in matters relevant to it. Under subsection (7), the Scottish Ministers will be able to modify this list through regulations (subject to the negative procedure). However, before any such regulations are made, subsection (8) requires Ministers to consult the public authority or other person to which the regulations would relate.

Section 26 – Provision of information

217. This section allows the Scottish Ministers, the chair of the review oversight committee and the chair of a case review panel (referred to in this section as "requiring authorities") to each require a person to provide them, as soon as reasonably practicable, with information in the person's possession or control and which the requiring authority in question reasonably considers is necessary for the carrying out of its functions under this Part. For example, this power might be used by the review oversight committee to obtain information which is relevant to whether a death ought to be the subject of a review, while Ministers might use it to obtain information for the reports they are required to produce under section 30. This power can also be used by one requiring authority to another, provided that it is relevant to the carrying out of functions under this Part by the authority requiring the information to be provided. As such, it could, for example, be used by the Scottish Ministers to obtain information from the review oversight committee when Ministers are considering whether to step in and order the carrying out of a review under section 19(5)(b).

218. Subsection (2) provides that a person is not required to provide information under this section which they would be entitled to refuse to provide in court proceedings (e.g. legally privileged information). However, this is subject to subsection (3). Subject to some exceptions, the Rehabilitation of Offenders Act 1974 allows a person not to provide information to a court about spent convictions (and equivalents like spent alternatives to prosecution). Because subsection (2) is based on what happens in a court, subsection (2) would therefore on the face of it limit the obligation to disclose information to a review so that information about spent convictions did not have to be provided. The effect of subsection (3) is that if an order made under the 1974 Act allows information about spent convictions to be provided to a domestic homicide or suicide review, that provision will trump the restriction which would otherwise have applied under subsection (2).

219. Subsection (4) provides that a notice cannot be given under this section to a person who is already subject to the duty of co-operation (which includes a requirement to provide information when so requested) under section 25. This simply avoids duplication. It is expected that the persons who will be required to provide information under this section are likely to be voluntary sector bodies operating in this field, as they could well have had contact with families where abusive behaviour has been occurring. However, imposing a full co-operation duty on such bodies may be unduly onerous, and so section 25 is intended to be restricted to public authorities and other bodies whose participation is key to the running of the review model. Persons or bodies which are not subject to section 25 (perhaps because they would only hold relevant information in rare cases) could still be required to provide information under this section though.

220. Subsection (5) provides that the where the Lord Advocate orders the suspension of review proceedings, an information notice ceases to be of any effect so far as it relates to the death. However, if the notice related to more than one death, it would continue in effect in relation to the death which is unaffected by the Lord Advocate's order. Where the suspension ends with the review being revived (as opposed to the Lord Advocate ordering its discontinuation), another notice may be issued reviving the duty to provide information. No equivalent provision is made in respect of cases where the Lord Advocate orders the discontinuation of review proceedings, as in such cases there would no longer be functions under this Part for which the information was required.

Reporting

Section 27 – Reports on case reviews: content and preparation

221. This section makes provision about the report which must, under subsection (1), be prepared by a case review panel at the conclusion of its review. This provision therefore would not apply if a review was discontinued mid-way as a result of the exercise of the Lord Advocate's power to order discontinuation of a review under section 23(2). While it is for the case review panel as a whole to prepare the report, the intention is not that the report will be "drafted by committee" – it will be for the case review panel chair to draft the report which will be endorsed by the panel as a whole. Should a case review panel chair be unable to draft the report, those providing administrative support will in practice be able to prepare the report for endorsement by the panel.

222. There are certain things which must, under subsection (2), be included in a report, but it is open to the panel to include such other information as it sees fit. The things which must be included are—

- a timeline of what the panel considers to be any key events prior to the death,
- where persons A and B were partners/ex-partners, a summary of the significant relationships they had at the time of the death, and a summary of any changes in such relationships in the period leading up to the death,

- information about any opportunities for intervention which were either missed or taken,
- the panel's conclusions,
- its reasons for reaching those conclusions, and
- any recommendations it has as a result.

223. What the panel considers to be key events will vary from case to case but these do not have to be something momentous. For example, this could include events which might seem relatively innocuous in themselves but in the context of other evidence take on a greater weight (for example, the first of a series of missed appointments with healthcare or social services after a pattern of regular attendance). The dates of these events will be important in the context of the review because of their role in establishing things such as whether a victim had already been identified as a potential victim of abusive behaviour by the time of a particular incident, or whether there had been a series of events over an extended period which should have been a warning of possible difficulties.

224. If the report is not one that is agreed upon by the panel members unanimously, the points of disagreement must be reasonably reflected (see subsection (3)).

225. The review oversight committee's general duty under section 22(6) to ensure that any case review panel appointed to carry out a review makes satisfactory progress in doing so will apply to the production of a report just as it applies to the review itself. It will consider whether a report is of satisfactory quality overall, as well as whether the review's terms of reference have been fulfilled.

226. Once a report is prepared, the chair of the panel has to submit it to the review oversight committee for approval under subsection (4). Subsection (5) then provides for the committee to decide whether modifications are required before approving it. If they are required, the committee will be able to decide whether to make these itself (which may be possible in, for example, the case of minor corrections) or whether to direct the panel chair to resubmit an amended report (for example, because the information that is missing is not within the committee's knowledge). Where a report is resubmitted, subsection (6) ensures that the same process of approval with or without modifications, or a further direction to make changes, can occur.

227. Subsection (7) provides that the chair of the panel and the chair of the review oversight committee are each entitled to share a draft report (or part of it) with any person with whom they consider it appropriate to share it for the purpose of checking its accuracy. There is no restriction upon the timing of when this is done (other than that the report still has to be in draft) but in practice when material is being shared for this purpose by the chair of the panel then the expectation is that they would normally do so prior to submitting the report to the review oversight committee for approval. However, one exception to this might be where, following

submission to the committee, the panel chair is directed to resubmit the report with some changes and the panel chair wishes to fact-check an aspect of the new material before adding it. Subsection (8) makes further provision about any such sharing—

- It obliges the person who is deciding whether or not to share the report/extract to take that decision in accordance with the protocol (see section 24 and paragraphs 208 to 211 of these Notes). Any sharing itself must also accord with the protocol. This applies regardless of whether the person taking the decision is a party to the protocol.
- It provides that the person sharing the material can redact or anonymise it as appropriate. This goes further than the ability to share a part or parts (i.e. extracts): the changes could include adding in pseudonyms or making some details vaguer rather than simply omitting them. The person sharing the material must also, at the same time, provide the Scottish Ministers with a copy of the material that is shared.
- It provides that the person with whom the material is shared may not share it with anyone else and must keep the content confidential, unless and until the information is subsequently published. As such, if an individual within an organisation needed to share it with someone else within their organisation in order to confirm the accuracy of the report, they would need to ask the chair of the panel or committee to share it with that person directly rather than doing so themselves. It should be noted that the term "person" here covers organisations as well as individuals (see schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010).

228. Once a report has been approved, the committee must, under subsection (9), provide a copy of it to the Scottish Ministers. Where the report relates to the death of a young person or an adult at risk, the committee must also provide a copy of it to Social Care and Social Work Improvement Scotland.

229. Subsection (10) gives the Scottish Ministers a regulation-making power (subject to the affirmative procedure) to make provision about the resolution of any disputes which arise between the chair of a panel and the review oversight committee in respect of any modifications which the committee proposes to make to a report or any direction it gives requiring resubmission of a report. This mechanism could be used to provide for Ministers themselves to resolve the matter, to provide for someone appointed by Ministers to provide the resolution, or to make provision allowing the parties themselves to resolve the matter.

Section 28 – Reports on case reviews: publication and sharing

230. Following a report being finalised and approved under section 27(5), the committee can also, under subsection (1) of this section, choose to publish a report (or part of it) – but only where consent has been given by the Lord Advocate. However, in every case, the committee has to publish (either in the report if it is published, or separately) such information as it considers appropriate about the recommendations made in the report.

231. Subsection (2) requires the chair of the review oversight committee to take all reasonable steps to ensure that any published reports do not include information which would or might identify specified individuals (either directly, or through information which could reasonably allow "jigsaw identification"). This rule applies regardless of whether the individual concerned has participated in the review process and regardless of whether the individual is living or dead. The individuals whose identities are protected by this rule are—

- the person whose death is the subject of the review or who is person A or person B in relation to the death in question (normally the person whose death is being reviewed will be person A or person B, but the person who has died is named separately because this will not be the case where there is the death of a connected young person),
- any individual who is or was connected with any of the individuals mentioned immediately above (for example, as a family member, friend or acquaintance),
- any individual who was involved in events which were examined by the review (for example, a social worker, doctor or police officer who had an interaction with the victim following an assault).

232. Those who are not therefore covered by the rule above and who could be identified in the report – if that was considered appropriate – would include the panel members who carried out the review and those who gave evidence to the committee but had no personal connection (for example, an unconnected social worker who gave evidence about standard social work protocols).

233. Subsection (3) allows the chair of the review oversight committee and the Scottish Ministers to each share approved reports (or extracts from them) with any person with whom they consider it appropriate to share it for the purpose of promoting the learning of lessons with a view to safeguarding those affected by abusive domestic behaviour or promoting the wellbeing of victims of abusive domestic behaviour. For example, this would allow valuable learning material which is too sensitive to be published to be shared with an organisation which is involved in tackling domestic abuse and would therefore benefit from being aware of a particular learning point. Subsection (4) makes further provision about any such sharing—

- It obliges the person who is deciding whether or not to share the report/extract to take that decision in accordance with the protocol (see section 24 and paragraphs 208 to 211 of these Notes). Any sharing itself must also accord with the protocol.
- It provides that the person sharing the material can redact or anonymise it as appropriate. This goes further than the ability to share a part or parts (i.e. extracts): the changes could include adding in pseudonyms or making some details vaguer rather than simply omitting them.
- It provides that the person with whom the material is shared may not share any unpublished material with anyone else and must keep the content confidential.

Section 29 – Requirement to respond to report recommendations

234. This section allows for the imposition of a requirement on a person to respond to the recommendations made in a case review report. This requirement is imposed by a statement being made in a report approved under section 27(5) that a person is required to provide a response. Given the role of the case review panel and the review oversight committee in the report being prepared and approved, such a requirement could therefore be imposed by either of them but if it is imposed by the panel then it would require the consent of the committee in order to remain in the report which is approved.

235. Where a requirement is imposed, the review oversight committee must give the person a copy of the report so that the person is able to give a meaningful and informed response. The person must then, within such reasonable period as the committee specifies, provide the committee and the Scottish Ministers with a statement in response. That statement must set out what the person has done, or proposes to do, to give effect to the recommendation, and to the extent that the person does not intend to give effect to the recommendation then the statement must give the person's reasons for that.

236. The review oversight committee and the Scottish Ministers are both empowered under subsection (3) to publish (fully or partially) the person's written statement, and to publicise any failure to comply with a requirement to respond.

Section 30 – Periodic reports

237. Subsection (1) of this section provides for the Scottish Ministers to prepare and publish, as soon as reasonably practicable after the end of a reporting period, a report in respect of domestic homicide or suicide reviews during the reporting period. This report must also be laid before the Parliament within the same timeframe. The first reporting period will end 2 years after the day on which the definition of the review model comes into force, and thereafter each subsequent two-year period will be a reporting period.

238. There are a number of things which the report must cover under subsection (2), although it can also include such other information in respect of reviews during the period as the Scottish Ministers see fit.

239. Specifically, the report must include—

- information about any common themes emerging from the outcome of reviews,
- information about any lessons to be learned which are identified in case reports and which the Scottish Ministers consider to be of particular importance (for example, this might include pertinent points learned about the experiences of a particular minority group which may be of wider relevance but might not be a common theme as there may be only one report relating to that minority group),
- information about any actions taken as a result of recommendations made in individual case reports and, where known, the impact of those actions,

- the reasons for any cases being sifted out – e.g. where the outcome of the sift stage is a determination that a death is not reviewable or that, although it is reviewable, a review is not to be carried out (for example, it may be that a death is not reviewed because the connection with Scotland is too peripheral for there to be any lessons to be learned for Scottish systems),
- the number of notices given by the Lord Advocate which suspend, discontinue or allow the resumption of a review, along with the reasons given for any suspension or discontinuation, and
- certain statistical information, as set out in subsection (2)(b), which will provide an overall picture of the work taking place throughout the reporting period in respect of the review model.

240. Subsection (3) requires the Scottish Ministers to consult the persons specified in this provision when preparing a report.

Guidance

Section 31 – Guidance by the Scottish Ministers

241. This section provides that where the Scottish Ministers issue written guidance about the functions of the review oversight committee or of case review panels, the committee and those panels must have regard to that guidance. The committee and any case review panel chairs must provide the Scottish Ministers with such assistance as they reasonably request in preparing any such guidance. The Scottish Ministers are also required to publish any such guidance that they opt to issue, and must do so as soon as reasonably practicable after issuing it. The term "guidance" in this section would cover both the initial guidance and any revised guidance.

PART 3: FINAL PROVISIONS

Section 32 – Regulation-making powers

242. This section makes further provision about the regulation-making powers given to the Scottish Ministers under the Act. In particular—

- it allows regulations to make different provision for different purposes, and to make ancillary provision of the types listed,
- it sets out the parliamentary procedure to which each regulation-making power is subject (i.e. negative or affirmative – see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

243. However, this section does not apply to commencement regulations as they are covered by section 34 instead (see paragraphs 247 to 251 of these Notes). This section also does not apply to the regulation-making power which the Act inserts into the 1995 Act as it is subject to separate provision under that Act.

Section 33 – Ancillary provision

244. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act or any provision made under it.

245. Regulations under this section may modify any enactment (including the Act itself). The word "enactment" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 and includes Acts of the Scottish or UK Parliaments as well as secondary legislation.

246. If regulations under this section textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure (see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 34 – Commencement

247. This section sets out when the provisions of the Act will come into force (i.e. take effect).

248. All of the final sections in Part 3, including this section, will come into force automatically on the day after Royal Assent is granted.

249. The provisions which are set out in subsection (3) will come into force on the later of the day after Royal Assent and 1 December 2025. The provisions in question are the criminal justice measures which are essentially making permanent provision which is already in force on a temporary basis just now.

250. All other provisions will be commenced in accordance with regulations made by the Scottish Ministers under this section. Such regulations may include transitional, transitory or saving provision related to commencement and may make different provision for different purposes. In particular, this allows different provisions to be commenced on different days.

251. Regulations under this section will, unless exercised in conjunction with powers under other sections, be laid before the Scottish Parliament but will not be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 35 – Short title

252. This section provides for the short title of the Act to be the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025.

SCHEDULE – DOMESTIC HOMICIDE OR SUICIDE REVIEWS: PUBLIC APPOINTMENTS

Paragraph 1 – Offices to which this schedule applies

253. Paragraph 1 sets out the positions which are referred to in this schedule as "relevant offices". These positions are the chair of the review oversight committee, the deputy chair of the review oversight committee, and a case review panel chair (i.e. someone appointed to serve as a panel chair, regardless of whether they have been allocated to a specific panel yet). Those filling those positions are referred to as "relevant office-holders".

Paragraph 2 – Status

254. Paragraph 2 provides that a relevant office-holder is not to be regarded as being a servant or agent of the Crown.

Paragraph 3 – Criteria for appointment

255. Paragraph 3(1) provides that a person is disqualified from being appointed a relevant office-holder if the person, at the time of being appointed or in the year preceding the appointment, has held any of the roles set out in this paragraph. This helps to ensure that the person is sufficiently independent, particularly from the bodies which might be involved in the review or which will already have sufficient representation on the committee from the appointments made from the nominations made by nominating bodies. These disqualification criteria continue to apply during a relevant office-holder's time in office (see paragraph 5(b) of the schedule).

256. Paragraph 3(2) imposes further restrictions upon who can be appointed as a relevant office-holder, although these restrictions are not automatic in the same way as those in paragraph 3(1) are. When the Scottish Ministers are appointing relevant office-holders, they are required to have regard to the fact that it is desirable for the person not to be, or in the year preceding the appointment have been, a member, employee or appointee of an organisation which Ministers consider to be a victim-support organisation (which is not limited to victims of abusive domestic behaviour), or involved in the oversight of services in relation to victims of abusive domestic behaviour. An organisation might be considered to have "oversight" of services where it provides grant-funding which is subject to conditions and checks (either statutory or contractual), and the organisation essentially "polices" the work carried out. An appointee of an organisation is someone who is, for example, appointed by the organisation to represent it on some external forum or as one of its committee members, etc.

257. As with paragraph 3(1), this helps to ensure that the person is sufficiently independent, particularly from the bodies which might be involved in the review or which will already have sufficient representation on the committee from the appointments made from the nominations made by nominating bodies. However, there is no automatic disqualification here, as it will be for Ministers to consider what the organisation does, and the person's role in it, before deciding if it should be disqualifying. For example, someone who has been involved as an auditor of an

organisation may have no particular allegiance to it, and some organisations may provide services which are only peripherally about victims. Again, these criteria can be applied in a continuing way during a relevant office-holder's time in office (see paragraph 5(c)(ii) of the schedule and the commentary on it at paragraph 264 of these Notes).

258. While this paragraph sets out the disqualification criteria which are unique to relevant office-holders, it should be noted that section 15(4) also provides that an individual may not be appointed to be a member of a case review panel if the individual is, or within the 3 years preceding the appointment has been, a member of the review oversight committee. This applies to chairs of case review panels just as it applies to ordinary members of case review panels.

259. Paragraph 3(3) provides a power to modify sub-paragraph (1) or (2) of this paragraph so as to add a person, vary the description of a person, or remove a person. This would allow for the adjustment of both the list of disqualified individuals in sub-paragraph (1) and also the list in sub-paragraph (2) of individuals who it is generally considered desirable not to appoint. This would be subject to the negative procedure (see section 32). This will allow the provision to be updated as necessary to avoid any conflicts of interest. In particular, the power could (but would not have to) be used in conjunction with an organisation being named as a nominating body through use of the power in section 14(5). Under sub-paragraph (4), the Scottish Ministers must consult such persons (if any) as they consider appropriate before making any regulations under this paragraph.

Paragraph 4 – Tenure

260. Paragraph 4(a) provides for the term of appointment of a relevant office-holder to be 5 years. This runs from the start of the person's appointment as a relevant office-holder, meaning that if someone is appointed to the role of panel chair but is not immediately commissioned to sit on a particular panel, the 5 year period begins running immediately regardless.

261. Paragraph 4(b) allows a relevant office-holder's term to be extended as long as the extension is for a year or less. Extension is envisaged as a less formal means of continuing on a person's contract on a short-term basis. For example, this might be used where a new appointee is unable to start immediately and there is a desire not to have a gap between the current appointee and the new one. A person's appointment could be extended on more than one occasion (for example, a 3 month extension might prove to be insufficient and another month needs to be added to it) but this would be subject to the overall cap of 1 year.

262. Paragraph 4(c) allows an individual to be reappointed, but the total period of appointment (including any extension) may not exceed 8 years. That maximum limit therefore aligns with the maximum period in the code of practice for Ministerial appointments to public bodies in Scotland. Reappointment is envisaged as a more substantial decision, closer to the process of the original appointment than the extension process would be.

Paragraph 5 – Early termination

263. Paragraph 5 sets out the circumstances under which a relevant office-holder's appointment may be terminated early. They may resign, or they may become disqualified from holding office under paragraph 3 (for example, because they take up employment as a civil servant). They can also be removed from office by the Scottish Ministers where Ministers believe the person is unable to perform the functions of the office or is unsuitable to continue to hold the office.

264. The Scottish Ministers' power of removal could be used in a variety of different cases – for example, the unsuitability ground could be used because of public statements made by the person which are incompatible with the ethos of the review model. However, it could simply be that the person, while having done nothing wrong, has taken up a role which does not lead to automatic disqualification, but which might have led to them not being appointed had they held that role earlier (see paragraph 3(2)). The power to remove on the ground of being unable to perform the functions could be used where the person has become unwell but does not resign (for example, because they have lost capacity and so can no longer do so).

Paragraph 6 – Remuneration and allowances

265. Paragraph 6 enables the Scottish Ministers to set and pay such remuneration and allowances (including expenses) to a relevant office-holder as they determine. It will be for Ministers to decide whether payments are made and the amounts of any payments. Provision is not made in respect of pensions as these are not to be pensionable appointments.

266. The Scottish Ministers must indemnify a relevant office-holder for liabilities incurred by them in the exercise of their functions.

Paragraph 7 – Other terms and conditions

267. Under paragraph 7, the Scottish Ministers may determine the terms and conditions of a relevant office-holder's appointment insofar as not already set out in the Act.

Paragraph 8 – Validity of things done

268. Paragraph 8 provides that the validity of any acts of a relevant office-holder are unaffected by any procedural defects in their appointment or them subsequently becoming disqualified from acting as the relevant office-holder.

Paragraph 9 – Review oversight committee: appointment of temporary chair

269. Paragraph 9(1) allows the Scottish Ministers to appoint a person to step in and perform the function of chair of the review oversight committee where it is unable to be fulfilled by either the chair or the deputy chair (either because the role is vacant or because the person is unable to act). This appointment could be made from among the other individuals on the committee, but it could equally be someone who is appointed to the committee on a temporary basis specifically for that purpose (for example, a temporary appointment could be made from the reserve list of candidates identified in the most recent interview round).

270. No equivalent provision is made in relation to the chairs of case review panels as the fact that there is a pool of individuals who are able to act as such chairs (see section 15(2)) will allow another chair to step in and fill any gap.

271. Paragraph 9(2) provides that an individual who is disqualified for appointment as the chair of the committee cannot be appointed as the acting chair. This means that anyone who is disqualified under paragraph 3(1) would be ineligible. Someone who had already served a full 8 years as chair would also be ineligible for appointment as chair and therefore would be unable to be appointed as the acting chair. Further, the rules on those who Ministers are discouraged from appointing apply equally to the appointment of an acting chair.

272. Paragraph 9(3) provides that an individual appointed as acting chair may be dismissed by the Scottish Ministers at any time, may resign at any time, and is appointed on such terms and conditions (including as to remuneration) as Ministers determine.

PARLIAMENTARY HISTORY

273. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

PROCEEDINGS AND REPORTS	**REFERENCE**
INTRODUCTION	
Bill as introduced	SP Bill 52 Session 6 (2024)
Explanatory Notes	SP Bill 52-EN Session 6 (2024)
Policy Memorandum	SP Bill 52-PM Session 6 (2024)
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PROCEEDINGS AND REPORTS	**REFERENCE**
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PROCEEDINGS AND REPORTS	**REFERENCE**
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