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2 Oct 2025

Dear Pauline and Katy

I am writing to let you know I cannot support the majority of the amendments you have lodged for Stage 3 of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill on Tuesday 7 October. My reasoning follows and I would ask you not to press the amendments.

I hope you find this information useful.

Yours sincerely



ANGELA CONSTANCE

Cc: Convener, Criminal Justice Committee

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PART 1 – CRIMINAL JUSTICE MODERNISATION

Group 1- amendments 58 and 60 - Virtual attendance at court

These are similar to Stage 2 amendments that sought to require a court official to be in attendance with every person who was due to attend a trial virtually and for the court to be satisfied that the means by which a person attends virtually is of sufficient speed and quality.

A requirement for an official, regardless of whether they are a court official or are an official appointed by the court, to be in attendance with any person attending a trial virtually is wholly unworkable in practice and would place an unsustainable burden on the justice system, leading to significant costs. It would make virtual attendance so impractical that it essentially could not be used and the benefits that virtual attendance has been providing over the past five and a half years, including to witnesses such as police officers, would be totally lost.

In relation to the electronic means of attendance being of sufficient speed and quality, the Bill already provides that if a direction is being given on virtual attendance then it must require the witness to use means that enable all of the other parties, the judge and where applicable the jury to both see and hear the witness. Placing an obligation on SCTS to be satisfied as to the speed and quality of the electronic means in every instance would be exceptionally onerous given the potential volume of witnesses attending from multiple differing locations. In addition, these amendments are not future proofed as technology expands and improves constantly but, in years to come, courts would still be required to check on the speed and quality of internet connections.

However, I hope you will be reassured by my amendment 2 which will require courts in issuing directions permitting virtual attendance to include what requirements have to be satisfied by the location from which a person appears. This maintains flexibility and is not overly prescriptive or burdensome for courts but will ensure the court sets out its requirements to parties seeking to have their witnesses attend virtually.

Group 1 - amendment 59 - Virtual attendance at court

I am happy to support amendment 59 which sets out that the Lord Justice General must provide reasons when making any determination that disapplies a requirement for physical attendance. It is right that the Lord Justice General has the power to make determinations, but I recognise that it is also right that the rationale for those determinations is readily available and understood.

Group 2 - amendments 61, 62 and 63 - Digital productions

Amendments 61 and 62 are similar to Stage 2 amendments seeking to enable parties to require physical items to be produced in court at any point during a trial, regardless of any direction already made and whether any prejudice would be caused by the use of an image.

The intention of the Bill has always been about using digital opportunities to support justice partners in modernising their operational practices, including those around retention. The Bill

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already allows both the defence and the prosecution to apply for a judicial direction where they consider the image to be insufficient and therefore provides a mechanism to deal with those issues clearly and promptly.

If passed, these amendments would undermine the greater use of modern technology in our courtrooms to enhance the way evidence is presented, including through the successful Digital Evidence Sharing Capability (DESC).

The requirement to retain all kinds of physical items for lengthy periods is not in keeping with current practices and would need significant resourcing. It would require seized drugs or dangerous and unstable chemicals to be retained throughout, even where the fact of the substance being a particular drug or chemical is not being challenged, nor is any objection being taken as to the use of the image in lieu of presenting the physical evidence in court.

More worryingly, as I outlined during Stage 2, this would be detrimental to victims and their families, as personal items would need to be kept for longer than is required, and this would include human remains.

I understand that [Police Scotland has written to the Convenor of the Criminal Justice Committee](#) setting out the detrimental impact this would have on the rights of the victims, witnesses and accused as well as Police Scotland's ability to operate effectively in this area.

I can reassure you that my amendment 3 will better achieve what may be your intent behind amendment 63. It will require the Lord Advocate to prepare and publish guidance setting out factors that prosecutors will take into account when deciding whether to use images in place of physical productions and the approach of prosecutors to the physical evidence itself where such images are used. This is a proportionate approach that balances the many interests involved by providing guidance setting out the approach of prosecutors to physical evidence where an image is used in its place.

Group 4 - amendments 64 and 65 – National jurisdiction for calling from custody

These amendments would add unnecessary confusion to a process that has been working well in practice.

The national jurisdiction provisions have operated for over five years and are designed to enable custody hearings to be dealt with swiftly. Where sheriffs require background or other reports, they will request them through existing avenues and I am not aware of any concerns being raised in relation to sheriffs not being able to access information through normal channels to allow national jurisdiction to operate effectively.

I would also note that the amendments refer to the sheriff requesting information from the court where the accused resides. This court would not necessarily be the local court that would have jurisdiction over any complaint or indictment – as jurisdiction follows the locus of the offence, not the residency of the accused. It is therefore not clear to me how this provision would operate or what information might be requested under it.

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