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

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 29	Schedule
Long Title	

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Pauline McNeill

58 In section 2, page 3, line 21, after <if> insert <—

(a) an official appointed by the court will be in attendance with the person who is to attend by electronic means,

(b) it is satisfied that the electronic means is of sufficient speed and quality to enable the person to both see and hear all of the other parties, the judge and (where applicable) the jury and any witness who is giving evidence, and

(c)>

Pauline McNeill

59 In section 2, page 5, line 15, at end insert—

<(ca) must set out the reason for making the determination,>

Angela Constance

2 In section 2, page 6, line 10, after <holder,> insert <including what requirements must be satisfied by the location from which the person is to appear,>

Pauline McNeill

60 In section 2, page 6, line 10, at end insert—

<(aa) is to set out the requirements of the electronic means in relation to the speed and quality of connection to enable the person to both see and hear all other parties,>

After section 2

Liam Kerr

1 After section 2, insert—

<Review of virtual attendance provisions

(1) The Scottish Ministers must, as soon as reasonably practicable after the end of the review period—

(a) undertake a review of the operation of the virtual attendance provisions,

(b) prepare a report on that review,

(c) publish the report and lay a copy of it before the Scottish Parliament.

(2) In undertaking the review, the Scottish Ministers must consult—

(a) the Lord Justice General,

(b) the Scottish Courts and Tribunals Service,

(c) the chief constable of the Police Service of Scotland,

(d) the Lord Advocate,

(e) the Scottish Legal Aid Board,

(f) the Law Society of Scotland,

(g) the Faculty of Advocates, and

(h) such other persons as the Scottish Ministers consider appropriate.

(3) For the purposes of this section—

"review period" means the period of 2 years beginning with the day on which section 2 comes into force,

"virtual attendance provisions" means sections 303G to 303M of the Criminal Procedure (Scotland) Act 1995, as inserted by section 2.>

Section 4

Pauline McNeill

61 In section 4, page 9, leave out line 25 to line 14 on page 10, and insert—

<(1ZA) Where an image of physical evidence is to be treated in criminal proceedings as if it were the physical evidence itself, either party in the proceedings may request that the physical item be produced in court.

(1ZB) Where a request is made under subsection (1ZA) before or during the trial, the physical item must be produced in court.>

Pauline McNeill

62 In section 4, page 10, line 18, at end insert—

<(2A) Notwithstanding any direction made under this section, where either party in the proceedings requests for the physical evidence to be produced in court, the request must be granted.>

Pauline McNeill

63 In section 4, page 10, line 18, at end insert—

<(2A) Where an image of physical evidence is used under subsection (1), the physical evidence may not be destroyed while proceedings are ongoing against the accused, and in any event, not until final determination of any appeal.>

Angela Constance

3 In section 4, page 10, line 20, at end insert—

<279C Guidance on use of images of physical evidence by prosecutors

(1) The Lord Advocate must prepare and publish guidance setting out—

(a) factors that prosecutors will take into account when deciding whether to produce an image of physical evidence in reliance on section 279B(1), and

(b) in general terms, where an image is so produced, the approach of prosecutors to the physical evidence.

(2) The Lord Advocate—

(a) may revise the guidance from time to time, and

(b) where the guidance is so revised, must publish the guidance as revised.

(3) In this section, "prosecutor" means the Lord Advocate, the Solicitor General, Crown Counsel or the procurator fiscal (and any person duly authorised to represent or act for them).>

Section 7

Angela Constance

4 In section 7, page 13, line 20, after <(2)> insert <or (2A)>

Angela Constance

5 In section 7, page 13, line 30, at end insert—

<(2A) This subsection applies to a calling of proceedings on petition in which—

(a) the person who is the subject of the proceedings is appearing from custody after a court authorised the person's remand, and

(b) the hearing is not able to be held in that court due to the closure of the court building by reason of emergency or other special circumstances.>

Angela Constance

6 In section 7, page 13, line 32, after <(2)> insert <or (as the case may be) (2A)>

Angela Constance

7 In section 7, page 14, line 2, after <(2)> insert <or (2A)>

Angela Constance

8 In section 7, page 14, line 4, after <(1),> insert <and are proceedings to which subsection (2) applies,>

Katy Clark

64 In section 7, page 15, line 33, at end insert—

<(3A) For the purposes of sections 5B and 5C, a sheriff may, when dealing with the case, request information relating to the person who is the subject of the proceedings from the court in the jurisdiction where that person resides.

(3B) If more than one person is the subject of the proceedings, the reference in subsection (3A) to the person who is the subject of the proceedings is to be read as referring to any of them.>

Katy Clark

65 In section 7, page 18, line 2, at end insert—

<(3A) For the purposes of sections 7A and 7B, a justice of the peace, summary sheriff or sheriff may, when dealing with the case, request information relating to the person who is the subject of the proceedings from the court in the jurisdiction where that person resides.

(3B) If more than one person is the subject of the proceedings, the reference in subsection (3A) to the person who is the subject of the proceedings is to be read as referring to any of them.>

After section 8

Angela Constance

9 After section 8, insert—

<*Amendment of indictment*

Addition of charge to indictment

(1) The Criminal Procedure (Scotland) Act 1995 is modified in accordance with subsections (2) to (6).

(2) In section 65 (prevention of delays in trials), after subsection (2) insert—

"(2A) For the avoidance of doubt, where a charge has been added to the indictment under section 70AA, nothing in subsection (1A) affects the indictment as respects the additional charge (and, accordingly, the accused is not discharged from the indictment in relation to that charge).".

(3) In section 70 (proceedings against organisations), in subsection (4), after paragraph (a) insert—

"(aa) making representations regarding an application to add an additional charge to the indictment under section 70AA; or".

(4) After section 70A insert—

"70AA Addition of charge to indictment

(1) After the service of the indictment on the accused, it is competent, on application by the prosecutor, to amend the indictment to add an additional charge against the accused (or any or all of the accused if more than one).

(2) The court—

(a) may grant an application only where the conditions mentioned in subsection (3) are satisfied, and

(b) must, if those conditions are so satisfied, grant the application, unless it considers there is just cause not to.

(3) The conditions are that—

(a) the prosecutor was not aware, and could not reasonably have been aware, of the act or omission forming the subject matter of the additional charge before the service of the indictment, and

(b) the prosecutor made the application as soon as reasonably practicable after becoming so aware.

(4) Any application under subsection (1)—

(a) must be made at least two months before the trial diet, or

(b) may be made at a later date on special cause shown.

(5) Subsection (4) does not apply where the trial diet has not been fixed at the time of making the application.

(6) At the same time as an application under subsection (1) is made, the application must be intimated to the accused or, if more than one, to all of the accused (regardless of whether the additional charge would be against all of them).

(7) On receipt of an application under subsection (1) the court must, subject to subsection (8), fix a diet for hearing the application and, in a case where subsection (4)(b) applies, for considering any representations regarding a late application.

(8) The court may proceed to determine the application without fixing a diet under subsection (7) where—

(a) a diet has already been fixed at which such matters can be appropriately dealt with, or

(b) the accused consents to the charge being added to the indictment.

(9) The court may determine an application at a first diet only if the accused has first stated how the accused pleads to the indictment under section 71(6) (as to preliminary hearings, see section 72(6)).

(10) Where an application is being heard at a first diet or preliminary hearing—

(a) if a plea of guilty is tendered and accepted in respect of the indictment, the court must refuse the application,

(b) in the event that the court grants the application, the court is to require the accused to tender a plea in respect of the additional charge at that diet.

(11) Where the court is determining an application at a diet other than a first diet, the court may, on cause shown, allow a hearing in respect of an application to proceed notwithstanding the absence of the accused.

(12) Where it appears to the court that the accused may in any way be prejudiced in the accused's defence on the merits of the case by an amendment to the indictment under this section, the court must grant such remedy to the accused by adjournment or otherwise as appears to the court to be just.

(13) An amendment to an indictment made under this section must be sufficiently authenticated by the initials of the clerk of court.

(14) Where—

(a) the charge added to the indictment under this section is of committing an offence listed in section 66(14A)(b), and

(b) the accused has not previously received a notice containing intimation of the matters specified in section 66(6A)(a) in respect of the current proceedings,

the accused must, as soon as is reasonably practicable after the charge is added to the indictment, be served with a notice specifying such matters.

(15) A failure to comply with subsection (14) does not affect the validity or lawfulness of the proceedings against the accused.

(16) Intimation of an application under subsection (1) and service of any notice under subsection (14) may be effected by any officer of law.

(17) Where an application under subsection (1) is determined at a diet other than the first diet or preliminary hearing, section 74 and any Act of Adjournal made under that section apply to the determination as they apply to a decision taken at a first diet or a preliminary hearing.

(18) In this section, "the court" means—

(a) where the indictment has been served on the accused in respect of the High Court, a single judge of that court,

(b) in any other case, the sheriff.".

(5) In section 71 (first diet)—

(a) in subsection (2A), after "of" where it first appears insert "section 70AA,",

(b) in subsection (3), for the words from "for" to the end substitute "mentioned in subsection (2A)".

(6) In section 72 (preliminary hearing procedure), in subsection (6)(b)(iii), after "section" insert "70AA,".

(7) The Criminal Justice and Licensing (Scotland) Act 2010 is modified in accordance with subsections (8) to (12).

(8) In section 117 (provision of information to prosecutor: solemn cases)—

(a) in subsection (1)—

(i) the word "or" immediately following paragraph (a) is repealed,

(ii) in paragraph (b) at the end insert ", or

(c) a charge is added to the indictment under section 70AA of the 1995 Act after the accused has appeared as mentioned in paragraph (a) or (b).",

(b) in subsection (2)—

(i) after "appearance" where it first appears insert "or, as the case may be, the addition of the charge",

(ii) after "appearance" where it second appears insert "or additional charge",

(iii) at the end, insert "(other than, in the case of an additional charge, any information that has previously been provided to the prosecutor in relation to the accused under this section)".

(9) In section 118 (continuing duty to provide information: solemn cases), in subsection (2), at the end insert "(other than, in the case of an additional charge, any information that has previously been provided to the prosecutor in relation to the accused under this section)".

(10) In section 121 (prosecutor's duty to disclose information)—

(a) in subsection (1)—

(i) the word "or" immediately following paragraph (b) is repealed,

(ii) after paragraph (b) insert—

"(ba) a charge is added to the indictment under section 70AA of the 1995 Act after the accused has appeared as mentioned in paragraph (a) or (b), or",

(b) in subsection (2)—

(i) in the opening words after "appearance" insert ", the addition of the charge",

(ii) in paragraph (b), at the end insert "(other than, in the case of an additional charge, any information that has previously been disclosed to the accused under this section)".

(11) In section 122 (disclosure of other information: solemn cases)—

(a) in subsection (1), for "or (b)" substitute ", (b) or (ba)",

(b) in subsection (2), at the end insert "(other than, in the case of an additional charge, any information that has previously been disclosed to the accused under this section)".

(12) In section 123 (continuing duty of prosecutor), in subsection (3)—

(a) for "or (b)" substitute ", (b) or (ba)",

(b) at the end insert "(other than, in the case of an additional charge, any information that has previously been disclosed to the accused under this section)".>

Section 11

Angela Constance

10 In section 11, page 21, line 16, at end insert—

<( ) the Risk Management Authority,>

Angela Constance

11 In section 11, page 21, line 17, at end insert—

<( ) Social Work Scotland Ltd. (company number SC317274).>

Angela Constance

12 In section 11, page 21, leave out line 18

Section 14

Angela Constance

13 In section 14, page 23, line 1, leave out <and 16> and insert <, 16 and *(Reconsideration of whether to hold a review)*>

Angela Constance

14 In section 14, page 23, line 4, at end insert—

<( ) the Police Investigations and Review Commissioner,>

Section 15

Angela Constance

15 In section 15, page 23, line 20, after <(1)> insert <—

( )>

Angela Constance

16 In section 15, page 23, line 21, leave out <and any consideration of the death under section 16 is to be discontinued.> and insert <, and

( ) consideration of the death under section 16 is to be discontinued, unless and to the extent that it is predicated on another notification or referral which has not been revoked.>

Section 16

Angela Constance

17 In section 16, page 24, line 24, after <(4))> insert <—

( ) the chair of the committee must provide the Scottish Ministers with the committee's reasons for reaching that outcome, and

( )>

After section 16A

Angela Constance

18 After section 16A, insert—

<Reconsideration of whether to hold a review

(1) The question of whether a death is a reviewable death and, if so, whether a domestic homicide or suicide review should be carried out in respect of it may be reconsidered where—

(a) the outcome of the previous consideration under section 16 was that a review was not to be carried out, and

(b) the decision-maker in respect of that consideration believes it appropriate to reconsider the death as a result of becoming aware of relevant information which was not held by the decision-maker at the time of that consideration.

(2) Where reconsideration of a death is to take place by virtue of subsection (1)—

(a) section 16 applies as it applies following notification or a referral of a death under section 14, with the exception that if the Scottish Ministers were the decision-maker in respect of the previous consideration then they are to perform the review oversight committee's functions under section 16(1)(a) and (b)(i) in the reconsideration,

(b) for the purposes of this Part, the outcome of the reconsideration is to be treated as being the outcome of consideration of a death under section 16 (and, accordingly, may itself be reconsidered if subsection (1) is satisfied in respect of it).

(3) Where the outcome of reconsideration of a death is itself subject to reconsideration, references in this section to the previous consideration are to be read as references to the previous reconsideration (or, where applicable, to the most recent reconsideration) in respect of the death.

(4) For the purposes of this section, the decision-maker in respect of consideration of a death is—

(a) where the Scottish Ministers made the determination under section 16(1)(b)(ii) or (as the case may be) performed the review oversight committee's functions in a reconsideration as mentioned in subsection (2)(a), the Scottish Ministers,

(b) otherwise, the review oversight committee.>

Section 19

Angela Constance

19 In section 19, page 27, line 25, at end insert—

<( ) the Police Investigations and Review Commissioner,>

Angela Constance

20 In section 19, page 27, line 36, after <constable> insert <or, as the case may be, the Police Investigations and Review Commissioner>

Angela Constance

21 In section 19, page 28, line 5, at end insert—

<( ) the Police Investigations and Review Commissioner.>

Section 20

Angela Constance

22 In section 20, page 28, line 8, leave out <relevant public authority> and insert <designated core participant>

Angela Constance

23 In section 20, page 28, line 12, leave out <relevant public authorities> and insert <designated core participants>

Angela Constance

24 In section 20, page 28, line 18, after <But> insert <, subject to subsection (3A),>

Angela Constance

25 In section 20, page 28, line 18, leave out <relevant public authority> and insert <designated core participant>

Angela Constance

26 In section 20, page 28, line 19, leave out <authority> and insert <person>

Angela Constance

27 In section 20, page 28, line 20, at end insert—

<(3A) Subsection (3) does not relieve a designated core participant of the obligation under subsection (1) to provide any information to which a request mentioned in subsection (2)(b) extends by virtue of provision made under section 4(4) or paragraph 6 of schedule 3 of the Rehabilitation of Offenders Act 1974.>

Angela Constance

28 In section 20, page 28, line 26, leave out <relevant public authority> and insert <designated core participant>

Angela Constance

29 In section 20, page 28, line 33, at end insert—

<( ) the Police Investigations and Review Commissioner,>

Angela Constance

30 In section 20, page 28, line 38, at end insert—

<( ) the Risk Management Authority,>

Angela Constance

31 In section 20, page 29, line 2, at end insert—

<( ) Social Work Scotland Ltd. (company number SC317274).>

Angela Constance

32 In section 20, page 29, line 3, leave out from <public> to end of line 4 and insert <designated core participant, vary the description of a designated core participant, or remove a designated core participant.>

Angela Constance

33 In section 20, page 29, line 6, after <authority> insert <or other person>

Section 21

Angela Constance

34 In section 21, page 29, line 13, after <But> insert <, subject to subsection (2A),>

Angela Constance

35 In section 21, page 29, line 14, at end insert—

<(2A) Subsection (2) does not relieve a person of the obligation under subsection (1) to provide any information to which a notice extends by virtue of provision made under section 4(4) or paragraph 6 of schedule 3 of the Rehabilitation of Offenders Act 1974.>

Angela Constance

36 In section 21, page 29, line 16, leave out <relevant public authority> and insert <designated core participant>

Angela Constance

37 In section 21, page 29, line 17, leave out <public authority> and insert <person>

Section 22

Angela Constance

38 In section 22, page 30, line 26, at end insert—

<(6A) The chair of the panel and the chair of the review oversight committee may each share a draft report, or part of a draft report, with any person with whom the chair in question considers it appropriate to share the draft for the purpose of checking its accuracy.

(6B) In relation to the sharing of a draft report (or any part of it) under subsection (6A)—

(a) the chair in question's taking of a decision as to whether to share material and, if so, the sharing of it must be carried out in accordance with the protocol produced under section 19,

(b) the person sharing the material—

(i) may redact or anonymise it as the person considers appropriate,

(ii) must, at the same time as sharing it, provide a copy of it to the Scottish Ministers for information, and

(c) the person with whom the material is shared under subsection (6A) may not share it with any other person and must keep its content confidential unless and until it is subsequently published under section (*Reports on case reviews: publication and sharing*)(8).>

Angela Constance

39 In section 22, page 30, line 33, leave out <subsection (5)> and insert <section (*Reports on case reviews: content and preparation*)(5)>

Angela Constance

40 In section 22, page 30, line 37, after <must> insert <take all reasonable steps to>

Angela Constance

41 In section 22, page 30, line 39, leave out from <a> to end of line 40 and insert <—

(a) the person whose death is the subject of the review, or who is person A or person B for the purpose of section 9 in relation to the death in question,

(b) any individual (including a deceased individual) who—

(i) is or was connected with a person mentioned in paragraph (a) (for example, as a family member, friend or acquaintance), or

(ii) was involved in events which were examined by the review.>

Angela Constance

42 In section 22, page 30, line 40, at end insert—

<(9ZA) The chair of the review oversight committee and the Scottish Ministers may each share reports, or parts of reports, approved under section (*Reports on case reviews: content and preparation*)(5) with any person with whom the chair or, as the case may be, Ministers consider it appropriate to share them for the purpose of promoting the learning of lessons with a view to—

(a) safeguarding those affected by abusive domestic behaviour, or

(b) promoting the wellbeing of victims of abusive domestic behaviour.

(9ZB) Where a report approved under section (*Reports on case reviews: content and preparation*)(5) contains material which has not been published under subsection (8)—

(a) the taking of a decision under subsection (9ZA) as to whether to share the report (or any part of it) and, if so, the sharing of it must be carried out in accordance with the protocol produced under section 19,

(b) the person sharing the report (or the part of the report) may redact or anonymise material as the person considers appropriate, and

(c) the person with whom the report (or the part of the report) is shared may not share any unpublished material within it with any other person and must keep the content of that material confidential.

(9ZC) In subsection (9ZA), "abusive domestic behaviour" means abusive behaviour by person A towards person B, within the meaning of section 9(2).>

Angela Constance

43 Divide section 22 into two sections, the first (*Reports on case reviews: content and preparation*) to consist of subsections (1) to (7), (9A) and (10) and the second (*Reports on case reviews: publication and sharing*) to consist of subsections (8) to (9ZC)

Section 23

Angela Constance

44 In section 23, page 31, line 24, leave out <22(5)> and insert <(*Reports on case reviews: content and preparation*)(5)>

Section 24

Angela Constance

45 In section 24, page 32, line 13, leave out <22> and insert <(*Reports on case reviews: content and preparation*)>

Angela Constance

46 In section 24, page 32, leave out lines 15 and 16 and insert—

<( ) where the outcome of consideration of a death under section 16 was that a review should not be carried out, the reasons for reaching that outcome,>

Angela Constance

47 In section 24, page 32, line 16, at end insert—

<( ) the number of notices given by the Lord Advocate under section 18(1), (2) or (5)(b)(iii) and any reasons given under section 18(3) in connection with those notices,>

Angela Constance

48 In section 24, page 32, line 20, at end insert—

<( ) the Police Investigations and Review Commissioner,>

Angela Constance

49 In section 24, page 32, line 26, at end insert—

<( ) In preparing a report under subsection (1), the Scottish Ministers must consult—

(a) the chair of the review oversight committee appointed by virtue of section 11(2)(a),

(b) the deputy chair of the committee appointed by virtue of section 11(2)(b),

(c) the case review panel chairs appointed under section 12(2),

(d) such other persons as the Scottish Ministers consider appropriate.>

Section 25

Angela Constance

50 In section 25, page 32, line 35, at end insert—

<( ) The review oversight committee and any case review panel chairs appointed under section 12(2) must provide the Scottish Ministers with such assistance as they reasonably request in preparing any such guidance.>

Section 26

Angela Constance

51 In section 26, page 33, line 10, leave out <22(9A)> and insert <(*Reports on case reviews: content and preparation*)(9A)>

Angela Constance

52 In section 26, page 33, line 13, at end insert—

<( ) paragraph 3(2A) of the schedule.>

Schedule

Angela Constance

53 In the schedule, page 35, line 24, at end insert—

<( ) the Police Investigations and Review Commissioner,>

Angela Constance

54 In the schedule, page 35, line 26, at end insert—

<( ) the Risk Management Authority,>

Angela Constance

55 In the schedule, page 35, line 26, at end insert—

<( ) the Scottish Social Services Council,>

Angela Constance

56 In the schedule, page 35, line 30, at end insert—

<( ) a person who is a director, employee or appointee of Social Work Scotland Ltd. (company number SC317274).>

Angela Constance

57 In the schedule, page 36, line 6, at end insert—

<(2A) The Scottish Ministers may by regulations modify sub-paragraph (1) or (2) so as to add a person, vary the description of a person, or remove a person.

(2B) Before making regulations under sub-paragraph (2A), the Scottish Ministers must consult such persons (if any) as they consider appropriate.>

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