



## RESPONSE

by

**THE FACULTY OF ADVOCATES**

to

**Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews  
(Scotland) Bill – Call for Views**

The Faculty of Advocates is the independent referral Bar in Scotland. Faculty is pleased to have the opportunity to respond to this consultation, although should make it clear at the outset that Faculty does not seek to comment upon issues of policy. We would comment on the topics listed as follows:

### **Question 1 Electronic signing and sending of documents**

*The Faculty welcomes this initiative. Many provisions have been in use since the pandemic and have been effective. Electronic signing is entirely reasonable and practicable. Our experience is that it works very well.*

### **Question 2 Virtual attendance at a criminal court**

*The Faculty agrees with this proposal. The use of Webex to conduct preliminary hearings in the High Court of Justiciary works extremely well. It generally allows counsel who will be instructed for the trial and is fully apprised of the evidence and issues in the case to appear at the preliminary hearing. Webex also allows counsel to appear virtually before the Appeal Court. The use of remote links for police and professional witnesses generally works well. Remote links remove the need for police and professional witnesses to travel to and wait in court buildings thereby freeing them to conduct other work while waiting to give their evidence. These undoubted and important benefits do come at a cost to the justice system. Valuable court time is regularly lost due to delays in establishing remote links and re-establishing failed remote links. For example, when police officers give evidence remotely from the same police station, the link requires to be broken and re-established for each officer. This is not a seamless process. The video and audio quality of the testimony seen and heard by the jury can vary significantly. Saving the time of police and professional witnesses is important.*

*However, making sure that court time is not lost and that the quality of evidence is not diminished are equally important.*

### **Question 3 - Digital productions**

*In principle, this is a valuable provision. There are important practical issues that must be considered in striking the balance between (a) avoiding the unnecessary seizure and storage of items and (b) ensuring that the original items are available for defence inspection and as possible defence productions. The evidential significance of original items may not be apparent to the prosecution and/or defence at an early stage of proceedings e.g. before there has been full disclosure of the prosecution case or where additional evidence emerges later. It is important to retain the ability to require original productions when this is in the interests of justice. In most cases, an image will fulfil the same function as the physical production. However, in some cases, the item may have certain distinctive physical characteristics which are less obvious in an image. This may be of particular importance in determining whether the item can be seen in CCTV footage. There may be limited occasions when this is the case. However, on such occasions the items themselves may provide decisive evidence to incriminate or exculpate an accused. It is important if the court is not satisfied by the use of an image in place of the physical evidence that it remains open to the court to otherwise direct that the original item be produced.*

### **Question 4 - Modernisation of law on copy documents**

*The Faculty agrees with this proposal.*

### **Question 5 - Fiscal fines**

*The Faculty has no comment on this.*

### **Question 6 - National jurisdiction for callings from custody**

*The Faculty recognises that Sheriffs Principal, Sheriffs and solicitors are better placed to express a view on the practicalities of the implementation of this proposal.*

### **Question 7 – Domestic homicide and suicide reviews**

*The Faculty observes that such reviews may give rise to evidential issues and legal complexities where the reviews correlate with ongoing, pending or contemplated fatal accident inquiries or criminal prosecutions. Practical implications will require to be carefully considered.*

### **Question 8 – Do you have any other comments on the Bill which you have not already covered elsewhere?**

*We have no other comment.*

**Question 9 – Are there any other proposals which have not been included in the Bill which you think should be? These should be proposals which are on the same general subject matter of the proposals currently in the Bill.**

*We have no other proposals.*

