

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

**Child Rights and Wellbeing Impact  
Assessment (CRWIA)**

September 2024

# Child Rights and Wellbeing Impact Assessment (CRWIA) for the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill

## Disclaimer

This **draft** document is an **assessment** of the likely effects the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill on the rights and wellbeing of children and Scottish Government will continue to review and update this document where required during the parliamentary/strategic decision-making process. Any future iterations will reflect an increased understanding of these impacts as the amount of evidence available continues to grow.

Scottish Government and Executive Agencies acknowledge the importance of monitoring and evaluating the impact of strategic decisions and legislation on children's rights and wellbeing. Any information gathered during implementation of the legislation or strategic decision to which the impact assessment relates, will be used to inform future determinations of impact. Any new strategic decision or new legislation (including amending legislation) would be subject to a new CRWIA in line with the legislative requirements.

# Child Rights and Wellbeing Impact Assessment Template

## Introduction

### 1. Brief Summary

Type of proposal: Bill

Name the proposal, and describe its overall aims and intended purpose.

**Name of the proposals:** Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill

#### Key terms / terminology:

- **Custody:** When a person who is suspected of committing an offence is held by the police in a police station.
- **First diet:** A first diet is a procedural hearing which takes place in the sheriff court where a case is due to be heard by a jury. The purpose of a first diet is for the court to work out when the trial for that case will be ready to start and, if appropriate, to set a date for the trial to start. Hearings similar to first diets also happen in the High Court. They are known as “preliminary hearings”.
- **Fiscal:** This means money or finance.
- **Indictment:** This is the document which lists the offences a person is accused of committing, when they are to be tried before a jury.
- **Jurisdiction:** This word is used in lots of contexts to mean many different things. It is often used to refer to an area or country which is subject to a particular legal system e.g. the jurisdiction of Scotland or England and Wales . It can also be used to describe whether a court or other legal organisation has control or power over a particular case or issue. For example, if a sheriff court has the power to hear a trial for a criminal offence which is said to have taken place in that area, it has jurisdiction in relation to that case.
- **The Lord Justice General:** The most senior judge in Scotland.
- **Person-centred:** A person-centred approach is a way of treating people that involves:
  - Treating each person respectfully as a human being.
  - Seeking out and understanding what is important to people, their families, carers and looking at how to support them, build trust and encourage mutual respect.
  - Thinking about what makes each person unique, and doing what you can to put their needs first.

- Focusing on the person, not just the condition they are suffering from or experiences(s) they have had.
- **Prosecution (in this document):** The legal proceedings against a person who is said to have committed a criminal offence.
- **Remand :** When a person is held in custody while waiting for their trial to start.
- **Search warrant:** A search warrant is a power given to police to allow them to enter a specific place to search it. The warrant sets out the details of what the police are allowed to search, and this might include a building, a car or any people who are found within that place. Evidence obtained through such a search may be used in court as evidence.
- **Sheriff:** In Scotland, a sheriff is a type of judge who is usually assigned to work in the sheriff court of a specific area in Scotland. Sometimes they are assigned to anywhere in Scotland – such sheriffs are known as “floating sheriffs”.
- **Solemn proceedings:** These are court proceedings for more serious criminal offences. The charges for these appear on an ‘**indictment**’ and cases come before a judge and a jury of 15 people in Scotland.
- **Summary proceedings:** These are court proceedings for less serious criminal offences. The charges for these appear on a ‘complaint’. These cases come before a Justice of the Peace or a Sheriff without a jury.
- **SSI:** Scottish Statutory Instrument
- **Temporary Justice Measures** – These are actions which were put in place to respond to problems faced by the justice system during the COVID pandemic. These allowed for the justice system to continue processing and hearing cases despite the restrictions put in place such as social distancing and restrictions on indoor meetings. These measures include: electronic signatures, the option to go to court virtually rather than in person (joining through a computer, laptop, iPad etc.), national callings for custody (explained below), Fiscal fines (explained below).
- **Trauma-informed:** This is a way of thinking and acting that recognises how common trauma is in the world. It is an approach that was initially used in healthcare to consider a person’s trauma and its impact on their behaviour, mental health, and ability to engage in treatment. Nowadays, trauma-informed approaches cover different areas. Recent reports show the various ways that victims and witnesses experience the criminal justice system can make the impact of their trauma worse.

Trauma can affect people’s abilities to effectively participate in justice processes and recover. It is now recognised how important it is that staff across all organisations who work with witnesses and victims have a shared understanding about trauma and its impact, and that they have the knowledge

and skills to reduce the risk of harm and re-traumatisation, support recovery, and encourage people's participation.

### **Overall aims & intended purpose:**

There are two key purposes of this Bill.

Part One makes permanent some of the temporary justice measures put in place during the COVID pandemic and introduces additional measures that aim to modernise criminal justice processes.

Part Two of the Bill sets out provisions which will create Scotland's first national domestic homicide and suicide review model.

As the two purposes are discrete, this assessment has been set out in individual parts to reflect the distinctive impacts of the provisions.

### **Part One**

The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (the Act) includes a schedule of temporary justice measures (actions which were put in place to respond to problems faced by the justice system during the COVID-19 pandemic). These temporary measures were first introduced under previous legislation in 2020, to give Scotland's justice system the necessary flexibility, resilience and support to respond to the emerging challenges of the Covid-19 pandemic, before being included in the Act. Section 52(1) of the Act originally provided that these measures will expire at the end of 30 November 2023, subject to an ability to extend them by regulations with Parliamentary approval until a final cut-off of 30 November 2025.

The purpose of the criminal justice modernisation provision is to make permanent some of the temporary justice measures that will support and provide a basis for the future resilience, effectiveness and efficiency of the criminal justice sector.

**Electronic signatures:** These measures enable documents produced by a court, or connected with criminal proceedings, to be signed and transmitted electronically (for example by email), and in certain circumstances be sent to a party's solicitor instead of to the party themselves in a case, removing the requirement for physical movement of documents.

These are heavily used and there is widespread support across justice agencies, local authorities, and the legal profession. Current uses of the provisions include all High Court indictments being received electronically and search warrants being granted remotely.

**Virtual attendance:** Aims to make permanent current temporary provisions allowing people to attend a criminal court by electronic means (for example, by live video link). Making current temporary measures permanent in criminal cases would ensure that the court system can continue to function as efficiently as possible in a way which does not impede access to justice. It would also support the transformation to a more

trauma-informed and person-centred justice system, by enabling the courts to tailor the mode of attendance to individuals' circumstances where that is appropriate.

**National callings from custody:** Aims to make permanent provisions that enable all sheriffs to hear custody cases no matter where the accused is being held, no matter where the sheriff normally has jurisdiction, and no matter where the alleged offence took place. Having a national jurisdiction allows the court that first heard the case to deal with guilty pleas and move these out of the court system, reducing the number of cases that have to be transferred to local court.

This measure gives SCTS the flexibility to manage custody court business better. It also protects the court system in case of future crises such as transport disruption, severe weather, or unexpected public health threats that can restrict the movement of an accused person and / or use of court facilities.

While there are existing powers to move cases between sheriffdoms, this requires a judicial order for each individual case, which takes a lot of time, which is of concern considering the current pressures on Scotland's justice system.

The Bill extends these provisions to the JP Court (which is new and was not part of the temporary covid measures). It enables this national jurisdiction in the JP Court to be exercised by a sheriff as well as by justices or a summary sheriff.

**Fiscal fines:** Fiscal fines have been part of criminal procedure for a long time. They are a way of allowing less serious crimes to be dealt with outwith the criminal courts and are an alternative to prosecution. This measure temporarily increases the maximum level of fiscal fine from £300 to £500. It enables alternative action to prosecution to continue to be taken in a wider range of summary cases as an alternative to prosecution in court.

Keeping the increased maximum level of fiscal fine of £500 as a non-court disposal on a temporary basis, allows prosecutors to continue to deal with lower-level offending appropriately, freeing up space in the criminal courts system for more serious cases.

**Digital Productions:** An area that supports modernisation in our justice processes is the way evidence is gathered and processed in the criminal justice system. More evidence than ever is being captured in a digital format with opportunity to further expand in this area. Given the benefits of being able to quickly and easily obtain and use digital images in the criminal justice system this provision ensures that images of physical productions are admissible in evidence in the same way as if the item itself had been produced in court. This is a new measure which was not a temporary covid measure.

**Alternative ways to authenticate copy documents:** This provision aims to modernise the law and future proof it for technological developments that support alternative ways in which copy documents are authenticated. This is a new measure which was not a temporary covid measure.

## Part Two

A Domestic Homicide and Suicide Review is a multi-agency process which allows lessons to be learned following a homicide or suicide where abuse is suspected. The aim is to work with relevant agencies, both statutory and voluntary/ community sector organisations, where a victim, or victim and perpetrator have come into contact with services to learn from the circumstances of domestic abuse related homicides and suicides. This is to assist agencies to better identify and respond effectively to the risks associated with abuse, to prevent further deaths, and to ensure that the victim and their family are kept at the centre.

As a minimum Domestic Homicide Reviews include those who have been killed by a partner or ex-partner but across UK and international jurisdictions, the deaths included within the Review scope often include deaths of wider relationship such as children. The development of a multi-agency Domestic Homicide Review model for Scotland is an action within the [Equally Safe Delivery Plan](#) (see action 4.6). [Equally Safe](#) is Scotland's strategy – developed and co-owned by the Scottish Government and COSLA in association with a range of key partners – for preventing and eradicating violence against women and girls. This commitment was a key priority within the Scottish Government's [Programme for Government 2023-2024](#), and the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill is one of 14 Bills the Scottish Government intends to bring forward in Year 4.

In December 2022, the Scottish Government established a Taskforce to provide national leadership for the development and implementation of a multi-agency Domestic Homicide and Suicide Review (DHSR) model for Scotland. The Taskforce brings together partners from across justice, local government, health, academia, and victims organisations. The model is being informed by evidence and learning from models operating in jurisdictions across the UK and internationally, whilst taking account of the operating context in Scotland.

Under the Taskforce, a Model Development Subgroup has been established to develop the detail of the model. In addition, a number of Task and Finish Groups have been established to provide specialist input to the development of specific aspects of the model. This includes a Children and Young People Group. This Group first met in June 2024 and are responsible for a number of deliverables, including:

- Developing a clear process, communication and principles regarding the interaction with other review processes involving children and young people
- Defining the process for identifying which cases should be considered for review whilst taking into account other review processes that might also be initiated at the time of death. This includes the development of good communication processes as part of determining whether a domestic homicide review is necessary or if a joint review would be appropriate

- Developing a person centred and trauma informed approach for how children and young people can participate in a review ensuring they feel their contribution is meaningful
- Considering how each aspect of the model will operate in relation to children and young people
- Providing advice to the Model Development Subgroup and Taskforce in relation to children and young people
- Supporting the testing of the model in relation to children and young people

The Group is taking a Children’s Rights Approach grounded in the UNCRC as a basis for this work. To ensure the voices of children form a part of the model development work, stakeholders working directly with children and young people are key members of the Children and Young People Group which is helping to inform and enhance the model. For the purposes of the Children and Young People Group, a child or young person is someone up to the age of 18, and up to the age of 26 for care experienced children. Under the wider work of the model a child will also include adult children of a perpetrator or their current or former partner.

Start date of proposal’s development

Part One: **March 2023**

Part Two: **December 2022**

Start date of CRWIA process: **July 2024**



**2. With reference given to the requirements of the UNCRC (Incorporation) (Scotland) Act 2024, which aspects of the proposal are relevant to children's rights?**

**Part One**

The impact of the criminal justice measures on the rights of children and young people are deemed minimal. Where impact has been identified, we deem it will be to Articles 2, 3, 12, 23, 33 and 40.

**Part Two**

The learning gained from undertaking domestic homicide and suicide reviews could have a direct or indirect impact on:

- Children's non-discrimination as a result of their lived experience of a domestic homicide or domestic abuse related suicide (Article 2, paragraph 2 of UNCRC)
- Child protection and wellbeing, taking into account the rights and duties of parents, legal guardians, or other individuals legally responsible for them (Article 3, paragraphs 2 and 3; Articles 5, 9, 10, 18 and 20 of UNCRC)
- Children's rights to express their views freely in all matters affecting the child, and be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child (Articles 12, 13 and 14 of UNCRC)
- Children's right to privacy (Article 16 of UNCRC)
- Children's protection from violence, abuse and neglect (Article 19 of UNCRC)
- The statutory services provided to children (Articles 23, 24 and 25 of UNCRC)

**3. Please provide a summary of the evidence gathered which will be used to inform your decision-making and the content of the proposal.**

**Part One**

From:

- Public consultation: [Permanence of Coronavirus Recovery and Reform Act measures: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/Permanence_of_Coronavirus_Recovery_and_Reform_Act_measures_consultation_analysis_-_gov.scot.pdf)
- Feedback from COPFS on the impact of the specific provision of Fiscal Fines likely to impact the narrow age bracket of 16-18 year old.

**Part Two**

- Existing research/reports/policy expertise
- consultation/feedback from stakeholders

**Existing research**

The existing research/reports considered include:

- Advocacy After Fatal Domestic Abuse (2021) Resource for children and young people at: [Resource for C&YP.pdf \(aafda.org.uk\)](https://www.aafda.org.uk/resources/Resource_for_C&YP.pdf)
- Alisic, E.; Barrett, A.; Conroy, R.; Devaney, J.; Eastwood, J.; Frederick, J.; et al. (2023). 'Children and young people bereaved by domestic homicide: A focus on Australia'. The University of Melbourne. Available at: <https://doi.org/10.26188/24630690.v2>
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- Bugeja, L., Dawson, M., McIntyre, S.J. & Poon, J. (2017) 'Domestic/Family Violence Death Reviews: An international comparison', in Dawson, M. (ed.), *Domestic Homicides and Death Reviews*. London: Palgrave Macmillan. p. 3-26. DOI 10.1057/978-1-137-56276-0\_1
- Care Inspectorate (2024) Learning reviews for children in Scotland Data report at: [Learning Review Children Data Report 23-24.pdf \(careinspectorate.com\)](https://www.careinspectorate.com/learning-reviews/children-in-scotland-data-report-23-24/)
- Centre for Women's Justice and Imkaan (2023) 'Life or death? Preventing domestic homicides and suicides of black and minoritised women', *Centre for Women's Justice*. Available at: [Life+or+Death+Report+-+Nov+2023.pdf \(squarespace.com\)](https://www.squarespace.com/files/media/documents/Life+or+Death+Report+-+Nov+2023.pdf)
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- Department of Justice (Northern Ireland) (2022) 'Multi Agency Domestic Homicide Review Guidance', *Department of Justice (Northern Ireland)*. 8 July. Available at: [Multi Agency Domestic Homicide Review Guidance | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/multi-agency-domestic-homicide-review-guidance)
- Department of Justice (Ireland) (2023) 'Study on familicide & domestic and family violence death reviews', *Department of Justice (Ireland)*. 31 May. Available at: [gov.ie - Study on Familicide & Domestic and Family Violence Death Reviews \(www.gov.ie\)](https://www.gov.ie/study-on-familicide-and-domestic-and-family-violence-death-reviews)
- Devaney, J. (2023) 'The role of domestic homicide reviews in improving service responses and reducing preventable deaths: Reflections on identifying and implementing learning', *University of Edinburgh*. Available at: [Learning from Domestic Homicide Reviews - Working Paper.pdf \(ed.ac.uk\)](https://www.ed.ac.uk/learning-from-domestic-homicide-reviews-working-paper)
- Haines-Delmont, A., Bracewell, K. & Chantler, K. (2022) 'Negotiating organisational blame to foster learning: Professionals' perspectives about Domestic Homicide Reviews', *Health & Social Care in the Community*. 30, p. e2818-e2826. <https://doi.org/10.1111/hsc.13725>
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- Rowlands, J. and Cook, E.A. (2022). 'Navigating family involvement in Domestic Violence Fatality Review: Conceptualising prospects for systems and relational repair', *Journal of Family Violence*. 37, pp. 559-572. <https://doi.org/10.1007/s10896-021-00309-x>
- Safeguarding Board for Northern Ireland (n.d.) 'Learning from practice': Case management review process multi-agency guidance', *Safeguarding Board for Northern Ireland*. Available at:
- Scottish Government (2017) 'Equally safe: Delivery plan', *Scottish Government*. 24 November. Available at: [Equally safe: delivery plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/Equally-safe-delivery-plan)
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## Existing policy expertise

There has been significant consideration given to the existing child death review processes in Scotland, and collaborative working was established with the relevant policy teams. These processes currently include:

- Child Protection Learning Reviews
- Death of a looked after child
- Deaths of young people in receipt of continuing care or after care
- Deaths of young people in continuing care up to their 26<sup>th</sup> birthday

There is an average of nine domestic homicides per annum. In 2022-23, there were eight victims killed by a partner or ex-partner. The homicides comprised of six female victims (46% of all female homicide victims) and 2 male victims (5% of all male victims). Between 2018-19 and 2022-23, there were 42 victims killed by a partner or ex-partner (34 female victims and 8 male victims). Between 2013-14 and 2022-23 there were 89 victims killed by a partner or ex-partner (63 female victims and 26 male victims).

There is limited data available concerning domestic suicides, and this is something that is currently being explored by a dedicated Task and Finish Group with key stakeholders. Research has been undertaken in England and Wales which suggests the number of domestic suicides could be as much as double the number of domestic homicides. For Scotland that would equate to approximately 18 per annum based on annual averages of domestic homicides in Scotland.

Similarly, there is limited information on the number of child deaths in relation to domestic abuse and domestic homicide. Whilst the national homicide in Scotland statistics provide data on the number of children killed and the relationship between the child and the accused/ convicted, it cannot be determined which of those deaths were in a domestic abuse and domestic homicide context which makes it challenging to determine the numbers of deaths within the remit of this work. However, there is approximately between zero and seven children killed per annum in Scotland by a parent. The majority of these deaths are cases of neglect or child abuse.

These figures do not take into account the impact and emotional cost to families, the services who endeavour to prevent such losses or the services which provide support to those bereaved by domestic homicide and suicide.

In December 2022, the Scottish Government established a Taskforce to provide national leadership for the development and implementation of a multi-agency Domestic Homicide and Suicide Review (DHSR) model for Scotland. The Taskforce brings together partners from across justice, local government, health, academia, and victims organisations. The model is being informed by evidence and learning from models operating in jurisdictions across the UK and internationally, whilst taking account of the operating context in Scotland.

## Consultation/feedback from stakeholders

The Scottish Government undertook a period of consultation and targeted engagement to inform the development of domestic homicide review model for Scotland. This took place between 1 September – 30 October 2023 and gathered the views of:

- people aged 18 or over who have lived experience of domestic abuse
- people who have been bereaved due to domestic homicide/abuse
- people working in the field of domestic abuse, for example, the police, victim support organisations, social services, health services
- people with lived experience who also work in the field of domestic abuse

The outcomes of the consultation findings and Scottish Government response were [published](#) in December 2023. The consultation findings have informed [the next steps of the model](#) including which deaths are to be included within the Review Model.

These include:

- Those killed by a partner/ ex-partner;
- someone killing their child/ children or the child/ children of their partner or ex-partner (including adult children) ;
- someone killing a child/ children/ young person/s (under 18/26) who live in the same household as them or their partner/ex-partner;
- violent resistance where a victim of domestic abuse kills their abusive partner/ ex-partner;
- domestic abuse related suicide; and
- connected deaths of children and young people (under 18/26) (i.e. who die as part of a domestic abuse related death (or a near-miss) but may not be related to the victim or perpetrator).

From the nine categories of deaths and near death that were considered for inclusion within the scope of the model, the ‘Children’ category received the fourth highest support to be included within the scope of Scotland’s Domestic Homicide Review model, among those who responded to this question, at 90%. The majority of respondents who chose to include this category also chose to include it from the beginning of the model’s implementation, at 97%.

This category again made respondents highlight the importance of treating children as victims within the context of domestic abuse. It was stated that abuse to children and other dependents related to the victim are seen as extensions of her/ him, and attacks are directed at the main victim of domestic abuse by proxy. Killing a child within the context of domestic abuse was described by those who responded as a targeted/ final act of domestic abuse. Those with lived experience unanimously agreed that ‘Children’ should be included as a category within the scope of the model. Some participants with lived experience discussed whether the perpetrator needs to be charged with domestic abuse for it to go through the Domestic Homicide Review process. Two examples were

also given of women who are in prison for the murder of their child despite there being *“a horrendous catalogue of domestic abuse that was just swept under the carpet”*.

Professionals and people with lived experience stated that a joint process with other child death reviews may be the way forward to ensure no gaps are left, highlighting that domestic abuse is not the focus of child death reviews. A joint review would endeavour to fill this gap by looking at the death through the lens of domestic abuse instead of a purely child protection lens. It was also mentioned that children visiting or who were around the scene of the crime should be included, if their death is a direct consequence of domestic abuse. Professionals also expressed that children should be included to provide more information surrounding the source of risks. Including children was considered by some professionals to need a clear definition of the context and criteria for inclusion under a Domestic Homicide Review as opposed to other types of reviews.

These considerations are partly:

- To streamline the review process, avoiding duplication of work and resources
- To lessen the burden a review process takes on family members involved

Quote:

*“I felt I had to safeguard my kids from the domestic abuse by alerting social services or he would have killed them just to get at me.”* Respondent with lived experience

**4. Further to the evidence described at '3' have you identified any 'gaps' in evidence which may prevent determination of impact? If yes, please provide an explanation of how they will be addressed.**

In relation to **Part One**: No

In relation to **Part Two**: Whilst there is data available in relation to the number of children who have been killed, this cannot currently be separated into deaths where there was neglect, child abuse and where a child was killed in a domestic abuse context. Through the review model this important gap will be addressed and provide invaluable learning in understanding the extent of the issue of domestic abuse in relation to children and young people, and being able to make progress in better protecting children and young people in Scotland.

**5. Analysis of Evidence**

The evidence showed that the provisions in **Part One** of this Bill will have minimal impact on children and young people. That is not to say there is no impact, and where impact was identified, we have clearly set it out.

The evidence showed that the provisions in **Part Two** of this Bill have the potential to have a significant impact on the lives of children and young people.

**Part One**

**Electronic signing and sending**

These measures only impact 16-18 year olds in as far as they receive documentation themselves. However, it is worth noting that these provisions do not require that digital options must be used. Alternatives are usually available, if needed – this includes paper copies of documents. Therefore, one can only be sent a document digitally if they indicate they are happy to receive a document that way.

**Virtual hearings**

The age of criminal responsibility in Scotland is 12 years old; a child under the age of 12 cannot be arrested, charged or prosecuted for a crime. It is not possible for a child under 12 to get a criminal conviction.

If the behaviour of a child under 12 has been harmful, they will not go to a criminal court. Instead their case may go to a children's hearing. The hearing will focus on the child's behaviour and circumstances.

Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals aged 16 or 17 who commit a criminal offence may be dealt with by the courts.



Children and young people are also victims of crime and may be required to give evidence in criminal proceedings. Increasingly, there is a move to ensure that, where they are due to give evidence in the most serious cases, they will be allowed to have it pre-recorded in advance of the trial. Joint Investigative Interviews and other methods can be more routinely used, increasing the use of pre-recorded evidence.

This provision is designed to ensure the need for physical attendance at court is removed wherever possible; and electronic means are deployed. Insofar as these provisions underpin the continued operation of the justice system, they assist in upholding the rights of children and young people who have been victims of crime and those who offend. Measures relating to electronic means of attendance are in line with moves to allow children and vulnerable witnesses to give their evidence remotely in criminal trials and to participate in hearings within a safe, sensitive and secure environment.

In the consultation, an advocacy respondent was of the view that children should not be required to attend in-person unless unavoidably necessary, and expressed concern that this is not reflected in current practice. Respondents cited current facilities such as the Bairns Hoose in North Strathclyde as offering relevant learning to inform future development.

While some suggested that virtual attendance can have benefits for all parties, respondents also saw provisions as being particularly positive for vulnerable individuals and others who may face barriers to in-person attendance – children and young people were identified as one of the potential beneficiaries.

While it was noted that use of digital technologies could be suitable for some children, several community justice and health/social care respondents expressed concern that others may have difficulty engaging meaningfully with justice processes in this way.

As the decision on whether an individual attends a hearing in person or virtually is a decision for the court, applying the tests of fairness and interests of justice set out in the legislation, it is in line with support for our commitments towards Article 3 (Best interests of the child) – ensuring that the best interests of children in Scotland’s justice system are treated as a primary consideration in decisions that concern them, Article 8 of the second optional protocol to the UNCRC (“States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process” etc), Article 23 (Children with disability).

### **Fiscal fines**

Individuals ages from 16 to 18 who commit a criminal offence may be dealt with by the courts.

In the consultation it was suggested that proposals in relation to fiscal fines could disproportionately affect children and younger people given they typically have a more limited or no income. A legal profession respondent proposed that additional guidelines would be helpful in mitigating this impact.

Since 2021, some 16-18 year olds have been issued fiscal fines for offences such as possession of drugs, threatening and abusive behaviour and road traffic offences. Statistics indicate that the number of fiscal fines issued for 16-18 year olds have declined from 286 in 2021 to 185 in 2023.

Crucially, for the period 1 April 2020 to 25 July 2024, no 16- and 17-year-olds were offered a fiscal fine amount of £500 (the highest amount allowed).

Given that this provision provides a diversion from prosecution and alleged offenders have the right to refuse the offer by giving notice to the court, this conforms to Article 3 (Best interests of the child) and Article 12 (Respect for the views of the child). This provision also supports the use of fiscal fines for offences such as possession of drugs (instead of prosecution) which is in accord with Article 33 (Drug Abuse) and Article 40 (Juvenile Justice).

## **Part Two**

From the evidence provided, it has emerged that children – and children’s lived experiences – not being included in the scope of the Domestic Homicide and Suicide Review model would have significant negative consequences. The evidence highlights that children’s recovery following a domestic homicide or domestic suicide would be enormously dependent on the decisions that are taken in the immediate aftermath of the event, on aspects such as who they are going to live with, and the response and support provided by the caregiver. The review process could potentially highlight areas of improvement, whilst also giving a voice to children and young people who have been affected by domestic homicide and domestic suicide. The evidence also outlined the collective power felt by children and young people from the review process:

- ‘I decided to take part because I was sick of feeling neglected and rejected by society and someone offered me a chance to speak about something that was hurting me.’
- ‘If my story helps somebody else get a better understanding, then great’
- ‘I would like to maybe contribute to or influence in some small way, what happens, for others who experience it in the future’

The work of the Children and Young People Group will be developing a person centred and trauma informed approach to this particular aspect, ensuring that children and young people feel their contribution is meaningful and acted on. This is an ongoing piece of work that will inform how the model operates in practice whilst being mindful on the potential impacts this will have on the children and young people participating in the process.

**6. What changes (if any) have been made to the proposal as a result of this assessment?**

In relation to Part One: no changes have been made.

However, Scotland's Bairns Hoose Standards, based on the Barnahus model underpinned by the UNCRC, were highlighted as relevant to the potential impact of proposals on children and young people. It was suggested that the Standards should be a reference point for work around implementation of proposals for virtual attendance. For example, Article 12 of UNCRC (the right for children to be listened to and taken seriously) was cited in suggestions that children's views should be brought into decisions about virtual or physical attendance at court.

As the Barnahus model is further developed, appropriate guidance can be developed to supplement implementation of this provision.

No changes have been made at this time to Part Two of the Bill either. The CRWIA continues to be a live assessment, and its underpinning principles are currently being considered by experts on the Children and Young People Group which supports the work of the DHSR Taskforce. This ongoing work will inform and enhance the impact on children and young people as this work progresses, and the CRWIA will be continually reviewed and updated where appropriate during the consideration of the Bill. The Children and Young People Group has been specifically set up to ensure that the model developed is fully cognisant of children's rights and wellbeing and follows a Children's Rights Approach grounded in the UNCRC as a basis for this work.

## Conclusion

**7. As a result of the evidence gathered and analysed against all UNCRC requirements, what is the potential overall impact of this proposal on children's rights?**

Positive

**8. If you have identified a positive impact on children's rights, please describe below how the proposal will protect, respect, and fulfil children's rights in Scotland.**

As the measures in Part One of this Bill are not specifically for children and young people, the impact range from neutral to positive. Where they do benefit from these, the impacts have been set out below:

**Virtual hearings** are useful in situations where vulnerability and attendance at court can risk (re)traumatising children and young people or otherwise have a significant adverse emotional or psychological impact.

The use of **fiscal fines** as a diversionary measure for low level offences allows individuals between the ages of 16-18 to avoid having to undergo prosecution in the courts.

- **UNCRC Articles**

- **Article 3 Best interests of the child:**

- Virtual hearings offer more flexibility in how people, including children and young people engage with the justice system and justice processes. These provisions align to other work across our justice system that is allowing children (and vulnerable witnesses) to give their evidence in criminal trials and to participate in civil and tribunal hearings within a safe, sensitive and secure environment. This is taking into consideration the best interests of the child, and not having the default as attending court in person, which evidence shows can be traumatic and / or retraumatising.
- Fiscal Fine offers an option that is not prosecution for young people. Prosecution can have significant impacts on young people, and measures to offer an alternative are welcomed across our justice system. They are also not compulsory, meaning there is flexibility for the young person to decline and also to take into consideration their and their family's circumstances.

- **Second Optional Protocol**

- **Article 8** - States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, etc.
- While none of the measures solely focus on child victims or young people who are victims, the measures in virtual attendance takes into consideration the vulnerabilities and needs of child victims. By allowing children (and vulnerable witnesses) to give their evidence in criminal trials virtually it contributes to protecting their rights and wellbeing – in the face of traumatic events, as it does not force them to physically be in court and expose them to possibly traumatic interactions or challenges with attending court in person that have been well documented (like non-child appropriate rooms, coming into physical contact with the accused, and having to travel far distances from home).

The provisions in Part Two of this Bill help to give further effect to the rights of children as specified within UNCRC, under the following:

- Children's non-discrimination as a result of their lived experience of a domestic homicide or domestic abuse related suicide (Article 2, paragraph 2 of UNCRC)

- Child protection and wellbeing, taking into account the rights and duties of parents, legal guardians, or other individuals legally responsible for them (Article 3, paragraphs 2 and 3; Articles 5, 9, 10, 18 and 20 of UNCRC)
- Children's rights to express their views freely in all matters affecting the child, and be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child (Articles 12, 13 and 14 of UNCRC)
- Children's right to privacy (Article 16 of UNCRC)
- Children's protection from violence, abuse and neglect (Article 19 of UNCRC)
- The statutory services provided to children (Articles 23, 24 and 25 of UNCRC)

The proposal has the potential to improve long-term outcomes for children who are victims of domestic abuse or have had lived experience of a domestic homicide or domestic abuse related suicide. The proposals also are positive in relation to article 6 in that a child has a right to live. By learning lessons and helping to prevent future deaths of children in the context of domestic abuse the proposals should have a positive impact on children's right to live.

**9. If a negative impact has been identified please describe below. Is there a risk this could potentially amount to an incompatibility?**

N/A

**Mitigation Record**

What options have been considered to modify the proposal in order to mitigate negative impact or potential incompatibility issues?

Please summarise mitigation actions taken below

**Issue or risk Identified per article/ Optional Protocol**

N/A

**Action Taken/ To Be Taken**

N/A

**Date action to be taken or was taken**

N/A

**10. As a result of the evidence gathered and analysed against all wellbeing indicators, will the proposal contribute to the wellbeing of children and young people in Scotland?**

N/A in relation to Part One of this Bill.

**If yes, please provide an explanation below:**

Yes: in relation to Part Two of this Bill.

The proposal has the potential of contributing to all eight wellbeing indicators (healthy, safe, included, responsible, respected, active, nurtured, achieving) and with particular prevalence to the following indicators.

In addition to highlighting, promoting and solidifying good practice, the learning generated from individual reviews, any thematic findings that would prompt changes in practice, and the long-term focus on children's development contributes to the indicators of Safe, Healthy, Achieving, Nurtured, Active, and Responsible. The review process will also give a voice to children and young people who have been affected by Domestic Homicide and Domestic Suicide which contributes to the indicators of Respected and Included.

## **11. How will you communicate to children and young people the impact that the proposal will have on their rights?**

### **Part One**

Given the minimal impact of Part One of this Bill on children's rights, the development of an accessible CRWIA is not considered to be proportionate. However, the CRWIA will be published on the gov.scot website so those wishing to access it can do so. In so far as is possible the CRWIA has been written in accessible language so those reading it can understand its content and impact.

### **Part Two**

The Children and Young People Group, which supports the development of the Domestic Homicide and Suicide Review Model, identified that centring children's experiences and engagement with children and young people will have to be considered throughout the review process, including the use of different forums and a variety of engagement methods. It has also been recognised by stakeholders that barriers may exist when trying to communicate with children, and the approach the review would take in this regard is very important. A particular barrier identified is children and young people's experience of services and potential mistrust of services. By working closely with those who are experienced in working directly with children and young people who have lived experience of domestic abuse, the Children and Young People Group is able to help add the voices of children and young people which is helping to strengthen the model as it is developed.

### **Post Assessment Review and sign-off**

## **12. Planning for the review of impact on children's rights and wellbeing (Guidance Section 3.2, pages 31).**

As part of the decision-making process, plans for reviewing the impact on children's rights and wellbeing need to be developed.

- How will the impact of the proposal on children's rights and wellbeing be monitored?
- When will you review and update the CRWIA if required?

### **Part One**

The criminal justice modernisation provisions in the Bill will be implemented by justice agencies and as such we anticipate they will have responsibility for ensuring that impact of the provisions on children and young people's well-being is monitored.

### **Part Two**

The impact of the proposal on children's rights and wellbeing will continue to be monitored by the Domestic Homicide and Suicide Review Taskforce, Model Development Subgroup, and Children and Young People Group as the work progresses.

The discussions and decision made by the above-mentioned groups will inform future reviews and amendments of the CRWIA.

**Sign off**

**Policy Lead Signature & Date of Sign Off:** Vallath Kavitha Krishnan – 2 September 2024

Vicky Carmichael – 13 September 2024

**Deputy Director Signature & Date of Sign Off:** Anna Donald, Deputy Director, Criminal Justice Division, Directorate for Justice

**Date CRWIA team first contacted:** 19 Aug 2024

**Confirmation of engagement with SGLD:** 17 September 2024





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