

Permanency of certain criminal justice measures from Coronavirus Recovery and Reform (Scotland) Act 2022 and modernising criminal justice procedures through digital processes: Consultation

The Scottish Social Services Council is the regulator for the social work, social care and children and young people workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland
- publish data and official statistics on the social work, social care and children and young people workforce.

Question 1

It is proposed that the provisions for Chapter 1 (Conduct of business by electronic means in criminal cases: documents) will be made permanent. Which of the following best describes your view?

- **I think the provisions for Chapter 1 should be made permanent.**
- **I think the provisions for Chapter 1 should be made permanent, with exceptions (please outline exceptions below).**
- **I do not think the provisions for Chapter 1 should be made permanent.**
- **Unsure.**

- **I have no view.**

I think the provisions of Chapter 1 should be made permanent.

If you have any comments on the proposal for permanency of these provisions, please provide them below.

We believe the provisions concerning electronic signing and delivery of documents should be made permanent.

Question 2

It is proposed that the provisions in Chapter 2 (Virtual attendance – criminal courts) will be made permanent. Which of the following best describes your view?

- **I think the provisions for Chapter 2 should be made permanent.**
- **I think the provisions for Chapter 2 should be made permanent, with exceptions.**
- **I do not think the provisions for Chapter 2 should be made permanent.**
- **Unsure.**
- **I have no view.**

I think the provisions for Chapter 2 should be made permanent.

If you have any comments on the proposal for permanency of this provision, please provide them below.

We believe the provisions allowing for virtual attendance at courts and tribunals should be made permanent. Our experience in holding virtual hearings has shown that this can be an effective way to conduct hearings.

Question 3

If you have any views on whether there are any specific factors the court should have to take into account when deciding whether it's appropriate for people to participate in proceedings by electronic means, please provide them below.

We have no additional comments to make.

Question 4

It is proposed that the provisions for Chapter 3 (National Jurisdiction for Callings from Custody etc.) will be made permanent. Which of the following best describes your view?

- **I think the provisions for Chapter 3 should be made permanent.**

- **I think the provisions for Chapter 3 should be made permanent, with exceptions.**
- **I do not think the provisions for Chapter 3 should be made permanent.**
- **Unsure.**
- **I have no view.**

I have no view.

If you have any comments on the proposal for permanency of this provision, please provide below.

N/A

Question 5

It is proposed that the provisions for Chapter 4 (Fiscal fines) will be made permanent. Which of the following best describes your view?

- **I think the provisions for Chapter 4 should be made permanent.**
- **I think the provisions for Chapter 4 should be made permanent, with exceptions.**
- **I do not think the provisions for Chapter 4 should be made permanent.**
- **Unsure.**
- **I have no view.**

I do not think the provisions for Chapter 4 should be made permanent.

If you have any comments on the proposal for permanency of this provision, please provide them below.

We do not believe that the provisions for Chapter 4 should be extended or made permanent. We are concerned that an increased use of alternatives to prosecution will negatively impact our ability to carry out our public protection function.

During the pandemic, there was evidence that alternatives to prosecution were used for behaviour that we would consider serious. Such behaviour would prohibit an individual from gaining inclusion on our register or would prompt an investigation by our fitness to practise department which could result in the removal of the individual from our register. Our ability to thoroughly investigate allegations against social work, social care and early years practitioners is central to our role in protecting the public and promoting confidence in the workforce.

We are prohibited from asking applicants and registrants about spent alternatives to prosecution in terms of schedule 3, paragraph 2(b) of the Rehabilitation of Offenders Act 1974. Therefore, we are deeply concerned that a continued increase in the use of alternatives to prosecution for matters considered to be minor offences by COPFS could severely limit our ability to respond to concerns by vulnerable people and their families.

We believe that the proposals in relation to the use of fiscal fines should not be adopted without ensuring that clear guidance is given regarding their use. It is also critical that the public protection functions of regulators and other bodies are not diminished by preventing them from accessing information about alternatives to prosecution that may have been applied in cases about which they have an interest.

Question 6

Do you agree or disagree with the proposal that digital evidence should be used to produce evidence in courts in criminal cases rather than having to produce the original item in court?

- **Agree**
- **Disagree**
- **Unsure.**
- **I have no view.**

Please elaborate on your answer, setting out any advantages or disadvantages of the proposal as you see them.

I have no view.

Question 7

Do you agree or disagree with the proposal that where an image is produced that it can be treated as if it was the item itself that was being produced?

- **Agree**
- **Disagree**
- **Unsure.**
- **I have no view.**

Please elaborate on your answer, setting out any advantages or disadvantages of the proposal as you see them.

I have no view.

Question 8

Do you agree or disagree that the current procedural framework as outlined in chapter 5 would allow the defence to seek for the

physical production to be brought to court if its absence would prejudice a fair trial?

- **Agree**
- **Disagree**
- **Unsure.**
- **I have no view.**

Please elaborate on your answer, setting out any advantages or disadvantages of the proposal as you see them.

I have no view.

Question 9

It is proposed that the transfer of digital files to any reliable digital evidence system such as DESC (which has a robust audit system) should remove the requirement of certification as outlined in the scheme under the 1995 Act. Which of the following best describes your view on this proposal?

- **I agree.**
- **I do not agree.**
- **Unsure.**
- **I have no view.**

If you have any comments on this proposal, please write them below.

I have no view.

Question 10

Whilst the examples given have related to files from mobile devices, there are other types of documents which could be transmitted into DESC, especially as the term document is given a wide definition in schedule 8. This could include items such as photographs of evidence or paper copies of a traditional document which are scanned and uploaded to DESC.

It is proposed that any type of document uploaded to DESC should be accepted as a true copy without the need for separate certification. Which of the following best describes your view on this proposal?

- **I agree.**
- **I do not agree.**
- **Unsure.**
- **I have no view.**

If you have any comments on this proposal, please write them below.

I have no view.

Question 11

If there were to be a challenge to the admissibility of the evidence held within DESC on the basis that the image is not a true copy, we do not consider that any new procedure need be introduced to allow this challenge. We consider that there are sufficient procedures currently in place to allow a challenge to the admissibility of such evidence through procedural pre-trial hearings in all courts.

It is proposed that any issue in relation to the admissibility of the copy held in DESC could be raised through the pre-trial hearing system already in place.

Which of the following best describes your view on this proposal?

- **I agree.**
- **I do not agree.**
- **Unsure.**
- **I have no view.**

If you have any comments on this proposal, please write them below

I have no view.

Question 12

Certification under schedule 8 will still be needed for copies of documents which are not uploaded to DESC. There are occasions where the certification of the document is incorrect or missing an essential piece of information. Where there is no valid certificate the copy document cannot generally be accepted into evidence in place of the original.

Whilst we do not consider that there should be any separate procedure to challenge the admissibility of copy documents certified under schedule 8 due to defect in certification, as the issue should be raised at a procedural hearing, an issue may arise if such a defect is not detected until after a procedural hearing in the case, particularly if it is only discovered shortly before or at the trial.

If this happened at the trial, it could potentially result in a trial being halted for the matter to be resolved or a decision taken that

the copy document could not be put in evidence. This could not just cause inconvenience to victims and witnesses but could also result in the failure of a case.

At present the ways to remedy the defect would include having the document re-certified, or to try and obtain the original document to put in evidence. This second course may not be possible as the original may no longer exist. Both of these routes to correct a defect would be time consuming.

We do not consider that this should be necessary. There may be sufficient information before the court to allow it to accept that the copy document is a true copy. We therefore consider that the law should be more flexible. The court could be given a discretion to allow the copy document to be admitted if satisfied it is a copy despite any defect in certification. It is proposed that the court therefore be given a discretion to allow a document to be led in evidence if satisfied it is a copy document despite any defect in certification.

Which of the following best describes your view on this proposal?

- I agree.**
- I do not agree.**
- I am unsure.**
- I have no view.**

If you have any comments on this proposal, please write them below.

I have no view.

Question 13

One of the ways a court may be satisfied that a document is a copy document is to simply hear oral evidence of that fact. It is therefore also proposed that the court should be able to hear evidence from witnesses, to allow it to be satisfied that the document can be deemed a true copy and treated for evidential purposes as if it were the document or material part of the document.

Which of the following describes your view on this proposal?

- I agree.**
- I do not agree.**
- I am unsure.**
- I have no view.**

If you have any comments on this proposal, please write them below.

I have no view.

Question 14

Out with the proposals outlined in chapters 1 -6, do you think any further legislative changes are needed to support the modernisation of criminal justice procedures through greater use of digital processes in order to achieve our ambitions of an efficient and resilient criminal justice system?

- **Yes.**
- **No.**
- **Don't know.**

If you answered yes, please provide details of what those legislative changes might be.

In your answer, please make reference to the particular procedure, how any additional legislation would support modernisation and what these legislative changes would achieve.

The SSSC has no view on this.

Question 15

Do you have any views on potential impacts of the proposals in the chapters of this consultation on human rights?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 16

Do you have any views on potential impacts of the proposals in the chapters of this consultation on equalities and the protected characteristics set out above?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 17

Do you have any views on potential impacts of the proposals in the chapters of this consultation on children and young people as set out in the UN Convention on the Rights of the Child (UNCRC)?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 18

Do you have any views on potential impacts of the proposals in the chapters of this consultation on socio-economic equality?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 19

Do you have any views on potential impacts of the proposals in the chapters of this consultation on communities on the Scottish islands?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 20

Do you have any views on potential impacts of the proposals in the chapters of this consultation on privacy and data protection?

- **Yes**

- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 21

Do you have any views on potential impacts of the proposals in the chapters of this consultation on businesses and the third sector?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Question 22

Do you have any views on potential impacts of the proposals in the chapters of this consultation on the environment?

- **Yes**
- **No**
- **Unsure**

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

No.

Scottish Social Services Council

January 2024