

PE1501/I

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In 2014 Scotland Welcomes the World



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Thank you for your letter regarding Petition PE1501.

Petition PE1501 calls on the Scottish Parliament *“to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.”*

The Committee has specifically asked the Scottish Government for its views on the discussions that took place at the Public Petitions Committee meeting on 3 June 2014 when taking evidence on Petition PE1501.

The Government’s views in relation to the issues raised by Petition PE1501 were provided in the letter from the Cabinet Secretary for Justice on 6 February 2014 and the position largely remains the same, except as further explained below.

Family involvement in death investigations

The Cabinet Secretary’s letter of 6 February provided information on how families are now supported during death investigations by Crown Office and Procurator Fiscal Service (COPFS) and in particular by the COPFS Victim Support and Advice Service (VIA).

Victim Support Scotland currently provides support for families who have been bereaved through murder. The Government has noted that COPFS will consider a referral mechanism for bereaved relatives in other cases, including FAIs, to Victim Support Scotland.

The Government has noted the suggestion by the Law Society of Scotland that there should be a right to request a preliminary hearing before the sheriff in whose jurisdiction the death occurred. The purpose of the hearing would be to determine whether there should be a further inquiry in the small number of cases where the bereaved family is dissatisfied with the death investigation or the decision of the Lord Advocate to exercise his discretion not to hold a fatal accident inquiry (FAI).

Lord Cullen has recommended that where the Lord Advocate decides not to apply to the sheriff for an FAI, written reasons for the decision should be provided to relatives of the deceased: in many cases COPFS already provide very detailed written reasons to families concerning these decisions. COPFS' practice does also reflect, however, that in other cases the families involved may wish decisions to be communicated through other appropriate means.

There is already a remedy available to bereaved relatives if they not agree with the decision of the Lord Advocate regarding the holding of an FAI: this is judicial review.

The creation of a statutory right to request a hearing to determine whether an FAI is held is not, however, appropriate. FAIs are judicial inquiries held in the public interest specifically to determine the time, place and cause of death and any reasonable precautions which might be taken to prevent deaths in similar circumstances in the future.

FAIs are therefore not specifically held on behalf of the bereaved family. Indeed some families do not want FAIs to be held into the deaths of their loved ones as they do not want the details of the death to be aired in public.

Patricia Ferguson's Inquiries into Deaths (Scotland) Bill

The Scottish Government will consider the content and detail of Patricia Ferguson's final proposals when they emerge after consultation. The Government believes, however, that the efforts made by COPFS in recent years to keep families informed as to progress in death investigations and to give them an opportunity to express concerns provides bereaved families with the kind of involvement envisaged in Ms Ferguson's Bill.

Government Bill to modernise the law on fatal accident inquiries

As the Committee is aware, the Government is committed to bringing forward legislation within the lifetime of this Parliament to implement the recommendations of Lord Cullen's Review of Fatal Accident Inquiry legislation.

A public consultation, seeking views on the Government's policy proposals for a prospective Bill on fatal accident inquiries in Scotland, has been published and closes on 9 September 2014. The consultation may be found at:

<http://www.scotland.gov.uk/Publications/2014/07/6772>

The proposals, arising from the recommendations made by Lord Cullen, intend to modernise the way in which FAIs are handled in Scotland. The consultation also seeks views on:

- building on the recommendations implemented by the Crown Office to make the system more efficient;
- extending the categories of death in which it is mandatory to hold a fatal accident inquiry;
- obliging those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond to the sheriff about compliance;
- permitting discretionary FAIs into deaths of Scots abroad where the body is repatriated to Scotland; and
- options for holding FAIs in alternative accommodation.

A different system more closely related to the system of coroners' inquests

The Scottish Government remains of the view expressed in the Cabinet Secretary's letter of 6 February that it would be inappropriate and unnecessary to introduce a form of inquiry akin to a coroner's inquest.

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