



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

16th Meeting, 2017 (Session 5)

Tuesday 2 May 2017

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Public petitions:** The Committee will consider the following petitions—

PE1370 by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrahi;

PE1501 by Stuart Graham on public inquiries into self-inflicted and accidental deaths following suspicious death investigations;

PE1567 by Donna O'Halloran on investigating unascertained deaths, suicides and fatal accidents in Scotland;

PE1510 by Jody Curtis on the closure of police, fire and non-emergency service centres north of Dundee;

PE1511 by Laura Ross on the decision made by the Scottish Fire and Rescue Service to close Inverness control room.

3. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk - petitions

J/S5/17/16/1

Agenda item 3

Private paper - work programme

J/S5/17/16/2 (P)

Justice Committee
16th Meeting, 2017 (Session 5), Tuesday 2 May 2017
Petitions
Note by the clerk

Introduction

1. This paper invites the Committee to consider its ongoing petitions:
 - **PE1370**: Independent inquiry into the Megrahi conviction.
 - **PE1501 and PE1567**: Investigating unascertained deaths, suicides and fatal accidents;
 - **PE1510 and PE1511**: Police and Fire Control Rooms; and
2. The paper sets out the terms of each the petitions along with information on the most recent consideration by the Committee. It also provides updated information and links to other relevant documentation where appropriate.
3. The Justice Committee webpage summarising its consideration of these petitions in this Session can be found [here](#). All four petitions originate from Session 4 of the Parliament and information relating to their consideration by the previous Justice Committee can be found [here](#). Further information can also be found in the Session 4 Committee's [Legacy Report](#).
4. Further general background information on the petitions process, provided by the Public Petitions Committee, can be accessed on its dedicated [webpage](#).

Options available to Committees considering petitions

5. Once a petition has been referred to a subject Committee it is for the Committee to decide how, or if, it wishes to take the petition forward. Among options open to the Committee are to:
 - Keep the petition open and write to the Scottish Government or other stakeholders seeking their views on what the petition is calling for, or views on further information to have emerged over the course of considering the petition;
 - Keep the petition open and take oral evidence from the petitioner, from relevant stakeholders or from the Scottish Government;
 - Keep the petition open and await the outcome of a specific piece of work, such as a consultation or piece of legislation before deciding what to do next;
 - Close the petition on the grounds that the Scottish Government has made its position clear, or that the Scottish Government has made some or all of the changes requested by the petition, or that the Committee, after due consideration, has decided it does not support the petition;
 - Close the petition on the grounds that a current consultation, call for evidence or inquiry gives the petitioner the opportunity to contribute to the policy process.
6. When closing a petition, the Committee should write to the petitioner notifying the decision and setting out its grounds for closure. Closing a petition does not preclude the Committee taking forward matters relevant or partly relevant to the petition in another way.

PE1370: Independent inquiry into the Megrahi conviction

Terms of the petition

PE1370 (lodged 1 November 2010): *The petition on behalf of Justice for Megrahi (JFM), calls on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.*

Current consideration

7. At its meeting on [17 January 2017](#) the Committee agreed to keep the petition open pending completion of Operation Sandwood. This is the operational name for Police Scotland's investigation into the nine allegations of criminality levelled by Justice for Megrahi at the Crown Office and Procurator Fiscal Service, the police, and forensic officials involved in the investigation and legal processes relating to Megrahi's conviction. The allegations range from perverting the course of justice to perjury.
8. The clerk understands from Police Scotland that the operation is ongoing and, although in its final stages, there are certain aspects that are not fully concluded. Once Police Scotland's report is completed, it will be submitted for consideration by an independently appointed Queen's Counsel appointed by Police Scotland, before going to the Crown Office. Clerks continue to seek updates from Police Scotland as to a likely publication date but Police Scotland is as yet not in a position to suggest when the report will be made public. (The JfM submission indicates that it will be referred to the Crown Office "in the next few months".)
9. The petitioners have provided a written submission (**Annexe A**) requesting the Committee to confirm that the petition will remain open until Crown Office consideration of the police report is complete and any related decisions are made. The submission also states that the petitioners continue to have regular meetings with the Operation Sandwood police team and that they have faith in the integrity and completeness of the police inquiry.
10. The submission notes the recent publicity suggesting that the family of Abdelbaset al-Megrahi will launch a bid to appeal against his conviction in the coming weeks. From the press coverage, the clerk understands that the family intend to lodge a request with the Scottish Criminal Cases Review Commission ([BBC news 23 April 2017](#)). The SCCRC will then decide whether there are grounds to refer the case to the Court of Criminal Appeals.
11. **The Committee is asked to consider and agree what action it wishes to take in relation to the petition (see paragraph 5 for possible options), having regard to its decision in January to keep the petition open pending the completion of Operation Sandwood.**

PE1501 and PE1567: Investigating unascertained deaths, suicides and fatal accidents

Terms of the petitions

PE1501 (lodged 13 December 2013): *Calls on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence released in deaths determined to be self-inflicted or accidental, following suspicious death investigations.*

PE1567 (lodged 28 April 2015): *Calls on the Scottish Parliament to urge the Scottish Government to change the law and procedures in regard to investigating unascertained deaths, suicides and fatal accidents in Scotland.*

12. Both petitions essentially relate to circumstances where the family of a deceased do not have confidence in the findings of the police/COPFS that a death does not appear to be suspicious, and that therefore there is no ground for a Fatal Accident Inquiry (FAI). To a limited extent issues raised in the petition were relevant to the last Justice Committee's scrutiny of the Fatal Accidents and Sudden Deaths (Scotland) Bill, now Act, near the end of Session 4. The Act itself does not generally deal with the preliminary stage to determining whether a FAI is necessary, which is the main concern of these two petitions, but it did lead to the introduction of a "[Family Liaison Charter](#)", which provides guidance on the different stages of the death investigation process and confirms what information will be provided to a bereaved family and when.

Current consideration

13. At its meeting on [24 January 2017](#) the Committee discussed correspondence it had received from Mr James Jones (who is not one of the petitioners) in relation to the Tornado collision over the Moray Firth in July 2012, which resulted in the deaths of three RAF aircrew. Mr Jones' letter raised concerns about how the COPFS had communicated with families of the deceased. The Committee agreed to write to the Scottish Government and the Lord Advocate to seek further information on how issues around military-related deaths are dealt with, in particular where cross-border issues have arisen.
14. In its response of 17 March 2017 (**Annexe B**), the Scottish Government emphasises that matters such as working practices and protocols are matters on which the Lord Advocate must lead. It notes that the protocol drawn up between the Crown Office, the Chief Coroner and the Ministry of Defence, in relation to FAIs into the death of service personnel who are killed abroad (outside of the United Kingdom) in military service is currently being updated. One of the reasons for this is to reflect the impact of the Inquiries into the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 which will make it mandatory for an FAI to be held into deaths of service personnel in the course of military service in Scotland (or the offshore area of the continental shelf adjacent to Scotland). The letter confirms that this Order will not have retrospective effect. Commencement of the Order is expected "in the near future".
15. This update to the current protocol is also noted in the response from the Crown Agent of 17 March 2017 (**Annexe C**). This letter also sets out that where a death has occurred in Scotland and the deceased's body is subsequently repatriated to another country within the United Kingdom, it is a matter for the respective Her Majesty's

Coroner in accordance with their own system of investigation of deaths to decide if they require to investigate a certain death. It states that the COPFS has a close working relationship with HM Coroners and is committed to providing information about the progress of a procurator fiscal's investigation (as appropriately can be disclosed depending on the nature of the investigation) upon request to coroners. The letter also explains that there is no legislative mechanism which permits in reverse a FAI to be held in Scotland in relation to a death (military or otherwise) which has occurred elsewhere within the United Kingdom.

16. In relation to the particular circumstances of the accident in Moray in July 2012, the letter encloses a copy of the COPFS media release issued on 12 June 2015. This sets out the reasons why Crown Counsel chose not to hold a discretionary FAI.
17. The Crown Agent's response also highlights that Mr Jones wrote to the Head of the COPFS Scottish Fatalities Investigation Unit (SFIU) in January 2017 in similar terms to his correspondence with the Committee. This was copied by Mr Jones to Mr Poole, the father of one of the three airmen killed in the accident. The COPFS has issued a full reply to Mr Jones and has subsequently been in correspondence with Mr Poole. Mr Poole by reply advised that he was satisfied with the response he received from the COPFS. The Crown Agent emphasises that Mr Poole and his family have never complained to the COPFS about the manner in which his son's death was investigated or the communications with the COPFS.
18. Mr Jones has subsequently commented on the Crown Agent's reply to the Committee, disputing some of the points made (**Annexe D**).
19. The clerks have not received further communications from the petitioners themselves.

Options for action on petitions PE1501 and PE1567

20. **The Committee is asked to consider and agree what action it wishes to take in relation to the petitions (see paragraph 5 for possible options). The Committee may wish to consider that the Scottish Government and the COPFS have previously made their position clear on the petitions. The issue discussed above does not relate directly to the matters raised by the petitions. Whilst the Committee has discretion to deal with the petition as it considers appropriate, it would be unusual to significantly extend consideration of a petition into matters that are distinct from those raised in the original petition, on the basis of representations made by someone not connected to the original petitioner(s).**

PE1510 and PE1511: Police and Fire Control Rooms

Terms of the petitions

PE1510 (lodged 23 March 2014): *Calls on the Scottish Parliament to undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knowledge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.*

PE1511 (lodged 27 March 2014): *Calls on the Scottish Parliament to urge the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.*

Current consideration

21. At its meeting on [24 January 2017](#) the Committee agreed to seek the response of the Scottish Fire and Rescue Service (SFRS) to concerns raised by Tavish Scott MSP in correspondence to the Committee. These concerns related to the impact of the loss of local knowledge following the closure of the northern control rooms. (The Inverness Control Room – the subject of PE1511 – was closed in December 2016).
22. In his response of 4 April 2017 (**Annexe E**), Alasdair Hay, Chief Officer, states that Her Majesty's Fire Service Inspector has been carrying out an inspection into the way in which the SFRS is conducting its operations. This report will be available in "due course". The letter sets out that the Inspector has kept the Chief Officer informed of the inspection and findings and has not indicated any concerns in relation to mobilisation protocols or the assurances that have been implemented. The Chief Officer goes on to say that an Internal Audit review of the Command and Control Futures (CCF) Programme deliverables reported that appropriate assurances were in place across the Programme. A final report on deliverables will be concluded by the CCF Programme by the end of April and presented to the Audit and Risk Assurance Committee on 11 May 2017. The Chief Officer concludes by offering the Committee his "personal assurances" that at no time since the creation of the new North Operations Control in Dundee have the SFRS failed to deploy the correct resource to an emergency incident.
23. In relation to PE1510 and police control rooms, since the Committee last considered the petition the Aberdeen police control room has been closed ([BBC news 29 March 2017](#)). The Inverness police control room is due to be closed by July 2017.
24. No further communications have been received from either petitioner.

Options for action on petitions PE1510 and PE1511

25. The Committee is asked to consider and agree what action it wishes to take in relation to the petitions (see paragraph 5 for possible options). In relation to PE1511, the Committee may wish to note that the Inverness Fire and Rescue Service Control Room has now closed. The Committee may also wish to note its ongoing responsibility to keep the reform of the fire and rescue services under the Police and Fire Reform (Scotland) Act 2012 under review. It may wish to consider how best to take this forward as part of its work programme consideration. In relation to PE1510, the Committee may wish to note that the Justice Sub-Committee on Policing took evidence at its meeting on [23 February 2017](#) from HM Inspectorate of Constabulary in Scotland on his [Call Handling](#)

[Update Report](#) (published January 2017). HM Inspector told the Sub-Committee that, in his view, “major progress” had been made.

**Letter from Justice for Megrahi
20 April 2017**

Justice for Megrahi (JfM) submission to the Justice Committee of the Scottish Parliament related to their consideration of Petition PE1370 on 2nd May 2017

INTRODUCTION

As you are aware the above petition has been kept open by the Justice Committee since 8 November 2011 to allow various developments related to the Lockerbie case to be monitored by the committee.

A full record of the relevant correspondence with the Justice Committee is reproduced on the Scottish Parliament website.

In this submission JfM wishes to bring the committee's attention to developments since the petition was last considered on 17th January 2017.

Clarification: In our submission to the 17th January meeting of the Justice Committee, JfM requested that the Committee continue its review of our petition until the Operation Sandwood, *'police report has been fully considered by Crown Office and its conclusions have been announced.'*

In their contributions at this meeting, MSP's Stewart Stevenson and Mary Fee stated that they agreed with our request for, *'the petition to remain open until the conclusions of Operation Sandwood have been announced.'*

In a letter informing us that the petition would be heard again by the committee on 2nd May, the Deputy Clerk to the committee informed us that it had been, *'agreed to keep the petition open pending the completion of Operation Sandwood.'*

It would be helpful to clarify that as requested in our last submission, and agreed by your committee, the petition will remain open until Crown Office consideration of the police report is complete and any related decisions are made.

Crown Office: As committee members will be aware, a series of Operation Sandwood related parliamentary questions to the Lord Advocate by MSP Alex Neil have been responded to and published.

Mr Neil thereafter wrote to the Lord Advocate and received a response on 20th April. Copies of Mr Neil's questions and the Lord Advocate's answers, his letter to the Lord Advocate and the LA's response, are attached for member's information.

Operation Sandwood: JfM continues to hold regular meetings with the Operation Sandwood police team providing mutual updates on the enquiry process and related matters, and continues to have faith in the integrity and completeness of the police enquiry.

The submission of the police report to Crown Office has been delayed and our latest understanding is that it should be submitted in the next few months.

Megrahi Family Appeal: JfM has noted the recent publicity suggesting that the family of Abdelbaset al-Megrahi will launch a bid to appeal against his conviction in the next few weeks.

If these reports are accurate then this is a significant development for those pursuing the truth about Lockerbie.

CONCLUSION

JfM appreciates the Justice Committee's continuing oversight of the Operation Sandwood enquiry and report.

Given the central importance of the findings of Operation Sandwood to any future prosecutions, enquiries or appeals, JfM believes it is critical, and very much in the public interest, that the committee continues to monitor these findings until Crown Office has fully considered them and announced its conclusions.

We would respectfully urge the Committee to allow Petition PE1370 to remain on the table.

Robert Forrester on behalf of the Committee of Justice for Megrahi.

SCOTTISH PARLIAMENT: WRITTEN QUESTIONS

2 March 2017

Alex Neil (Airdrie and Shotts) (Scottish National Party): To ask the Scottish Government when the Lord Advocate will publish a substantive response to the letters sent to him on 7 June, 30 July and 15 December 2016 from members of the Justice for Megrahi committee, which sought clarification on the Crown Office and Police Scotland enquiries into criminal allegations arising from the Abdelbaset al-Megrahi case.

S5W-06831

James Wolffe QC:

The correspondence referred to above has been responded to on 28 February 2017.

Alex Neil (Airdrie and Shotts) (Scottish National Party): To ask the Scottish Government who will decide on what action should be taken arising from the findings of the Police Scotland report on Operation Sandwood.

S5W-06844

James Wolffe QC:

If there is any report submitted by Police Service of Scotland alleging criminality by named individuals, the Law Officers consider it important that such allegations in accordance with normal practice are dealt with fairly and robustly by independent counsel, supported as required by a senior Procurator Fiscal with no prior involvement in the investigation into the bombing of Pan Am 103. Independent counsel would therefore be expected to decide on what action should be taken.

Alex Neil (Airdrie and Shotts) (Scottish National Party): To ask the Scottish Government whether it remains the case that neither the Lord Advocate nor the Crown Office and Procurator Fiscal Service personnel involved in Lockerbie-related matters would take part in the consideration of the Police Scotland report on Operation Sandwood and that an independent counsel would consider the report and, if so, who this counsel will be.

S5W-06832

James Wolffe QC:

As has been confirmed previously, in accordance with normal practice any report emanating from Operation Sandwood will be dealt with fairly and robustly by independent counsel, supported as required by a senior Procurator Fiscal with no prior involvement in the investigation into the bombing of Pan Am 103. Independent counsel will be appointed if any report alleging criminality is received.

LETTER FROM ALEX NEIL MSP

Operation Sandwood: Correspondence and Parliamentary Questions

I refer to our previous correspondence re the above and to the Lord Advocate's answers to my parliamentary questions.

I have spoken to the Justice for Megrahi (JfM) Committee and they appreciate the information contained in the Crown Office responses and have asked me to pass on their thanks to the Lord Advocate and yourself.

I share their opinion that before the potentially seminal report from Operation Sandwood is delivered to Crown Office, the processes for its consideration, and for the taking of any decisions emanating from it, should be clear and unequivocal. Your responses have greatly assisted this process.

To ensure total clarity I have undertaken to write to you outlining JfM's understanding on the current position viz:

'The Operation Sandwood investigation has already been unique in that Crown Office is not involved in instructing or guiding Police Scotland in relation to the process and focus of their enquiry. This guidance has instead been provided by an independent QC not associated with Crown Office in any way and who had no prior involvement in the investigation into the bombing of Pan Am 103.'

As outlined in its correspondence, Crown Office consideration of the police report will continue this independent process.

If there is a report submitted by the Police Service of Scotland alleging criminality, malpractice or misconduct, such allegations will be dealt with fairly and robustly by counsel independent of Crown Office and with no prior involvement in the investigation into the bombing of Pan Am 103. This independent counsel may be supported by a senior Procurator Fiscal who similarly has had no prior involvement in the investigation into the bombing of Pan Am 103. The independent counsel will be expected to decide what action should be taken arising from the report and Crown Office will abide by those decisions.'

I hope you can understand the need for absolute clarity given the previous concern expressed about the previous Lord Advocate's neutrality and objectivity, and that therefore you will advise me of any error in JfM's understanding of Crown Office's position as stated above.

Hopefully the Operation Sandwood investigation and report and the Crown Office consideration of it will cast some much needed light on this tragedy which continues to haunt Scotland's Justice System.

Yours sincerely,

Alex Neil MSP



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Our reference: R015723

20th April 2017

Thank you for your email of 27 March 2017.

I am pleased that the recent responses to the parliamentary questions that you lodged have provided you and the JFM Committee with reassurance about the processes involved in this independent investigation currently being undertaken by Police Scotland.

It is perhaps important to highlight that Police Scotland would ordinarily only report an individual to the Crown Office and Procurator Fiscal Service if there is evidence of criminality. It is however recognised that in the particular circumstances of this investigation the findings of Operation Sandwood should be intimated to Crown Office even if there is no basis for a report of criminality as there may be information and evidence gathered during the course of Operation Sandwood that is relevant to the live investigation. I have asked that Police Scotland when they have completed their investigation make it clear to COPFS and to the public on what basis they are providing any report to COPFS.

I confirm that if a report is received from Police Scotland suggesting criminality of individuals involved in the original Lockerbie investigation and/or prosecution then Independent Counsel who has not been previously involved in the investigation into the bombing of Pan Am 103 will be appointed to consider the report. This Independent Counsel may be supported by a senior Procurator Fiscal who similarly has had no prior involvement in the investigation into the bombing of Pan Am 103. The Independent Counsel will decide what action should be taken arising from the report and Crown Office will abide by those decisions.

W. JAMES WOLFFE QC



INVESTOR IN PEOPLE
The Scottish Government

**Letter from the Scottish Government
17 March 2017**

PUBLIC PETITIONS PE 1501 & PE 1567

Thank you for your letter of 9 February to Neil Robertson seeking views from the Scottish Government regarding correspondence received by the Committee discussing the position of military related deaths in which cross-border issues arise. The letter was in the context of Petitions 1501 & 1567 which are currently under the Committee's consideration and deal with the investigation of deaths. I note that the Committee is also seeking information from the Lord Advocate, given his responsibility for the investigation of all deaths in Scotland.

Firstly, I must emphasise that the Lord Advocate's functions as head of the system of investigation of deaths in Scotland are independent from the Scottish Ministers and therefore matters such as working practices and protocols are matters on which the Lord Advocate must lead.

In September 2012 Section 12 of the Coroners and Justice Act 2009, was introduced which made it possible to hold a fatal accident inquiry into the death of service personnel who are killed abroad (outside of the United Kingdom) in military service. As a result of this a protocol was drawn up between the Crown Office, the Chief Coroner and the Ministry of Defence, which set out the principles for effective liaison between the parties. The protocol is currently being updated.

One of the reasons for updating the protocol is to reflect the impact of the Inquiries into the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 which will make it mandatory for an FAI to be held into deaths of service personnel in the course of military service in Scotland (or the offshore area of continental shelf adjacent to Scotland). This Order will not have retrospective effect.

Commencement of the 2016 Act and Order is expected in the near future and once in place it will ensure that in the future in the event of the death of military personnel in Scotland whilst on military service a mandatory FAI will be held.

Yours sincerely,

Walter Drummond-Murray

**Letter from the Crown Agent
17 March 2017**

Public Petitions PE1501 & PE1567

Thank you for your letter of 9 February 2017, which seeks further information from COPFS and Scottish Government about how military-related deaths are dealt with, and in particular where cross-border issues arise.

As the Committee are aware the Lord Advocate is responsible for the investigation of all sudden, suspicious and unexplained deaths which occur in Scotland. Where a death requires investigation, this is undertaken by Crown Office and Procurator Fiscal Service. If, following the investigation, a Fatal Accident Inquiry (FAI) is to be held, the procurator fiscal makes the appropriate application to the Court, and the progress of the FAI thereafter is in the hands of the Court.

Where a death has occurred in Scotland and the deceased's body is subsequently repatriated to another country within the United Kingdom, it is a matter for the respective Her Majesty's Coroner in accordance with their own system of investigation of deaths to decide if they require to investigate a certain death. COPFS has a close working relationship with HM Coroners and is committed to providing information about the progress of a procurator fiscal's investigation (as appropriately can be disclosed depending on the nature of the investigation) upon request to coroners. There is no legislative mechanism which permits in reverse a Fatal Accident Inquiry to be held in Scotland in relation to a death (military or otherwise) which has occurred elsewhere within the United Kingdom.

In relation to the particular circumstances of the accident in Moray in July 2012 to which Mr Jones and the Committee refer to, I attach at Annex A, a copy of the COPFS release issued to the media on 12 June 2015. This explains in detail the complex and careful investigation which was undertaken following these deaths and the reasons why Crown Counsel, at their discretion, chose not to hold a discretionary Fatal Accident Inquiry.

Mr Jones wrote to the Head of the COPFS Scottish Fatalities Investigation Unit (SFIU) in January 2017 in similar terms to his correspondence with the Committee. This correspondence had been copied by Mr Jones to Mr Poole, the father of Hywel Poole, one of the three airman killed in this accident. As such COPFS issued a full reply to Mr Jones and were subsequently in correspondence with Mr Poole. Mr Poole by reply advised that he was satisfied with the response he received from COPFS. Mr Poole and his family have never complained to COPFS about the manner in which his son's death was investigated or their communications with COPFS. His family's views on whether a Fatal Accident Inquiry should be held were considered by Crown Counsel along with the views of other families prior to a decision being made.

In September 2012, Section 12 of the Coroners and Justice Act 2009 commenced which made it possible *to hold a fatal accident inquiry into the death of service personnel who are killed abroad (outside of the United Kingdom) in active service. In advance of this legislation, a protocol was agreed by COPFS, the Ministry of Defence, the Ministry of Justice and the Chief Coroner as to how responsibility to investigate an operational death abroad may be transferred from an inquest, which would ordinarily be held in England or Wales to an FAI in Scotland upon return of the body to England or Wales. This will only be considered where the nearest relatives have known links to Scotland and have expressed a wish for a FAI to be held in Scotland.*

The terms of that protocol require to be amended to reflect amongst other things the commencement later this year of both the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016. The latter changes the law in Scotland to ensure that in the event of the death of military personnel in Scotland whilst on active service in the future a mandatory FAI will be held.

I trust this information is of assistance to you and the Committee.

Yours sincerely,

David Harvie

Crown Agent

“On 3 July 2012 a collision between two RAF Tornado aircraft occurred over the Moray Firth, which led to the deaths of RAF aircrew Hywel Tomos Poole, Samuel Edward Bailey and Adam Mark Sanders.

“Following this tragic accident Crown Office’s Scottish Fatalities Investigation Unit began an investigation into the deaths. The Director General of the Military Aviation Authority, a senior RAF officer who is independent of the RAF chain of command, instructed a Service Inquiry to investigate the circumstances of the accident.

“The investigation was conducted by the Military Aviation Authority. The Service Inquiry Report was published on 30 June 2014 and is a very detailed document which considers all of the relevant factors in a forensic manner. Furthermore, the Service Inquiry Report considers important matters which would be beyond the remit of any Sheriff presiding over a Fatal Accident Inquiry (FAI).

“The report’s conclusions reveal all of the contributory causes of this accident, including the difficulties in operating with a split squadron (half of the squadron being then based in Cyprus), the lack of procedures to achieve deconfliction at the flight briefing stage, as well as the failures to have a working Secondary Surveillance Radar on the day of the collision. It also exposed the fact that one of the two aircraft did not have a working Radar Homing and Warning Receiver that day.

“The Service Inquiry considers in great detail the repeated failures to introduce a collision avoidance system for Tornado aircraft. It emphasises the need for provision of such a system in current and future aircraft in the RAF fleet.

“All of the Service Inquiry’s recommendations have been accepted by the Ministry of Defence and are in the process of being implemented, including installation of collision warning systems.

“The purpose of a Fatal Accident Inquiry is set out in law to establish the cause of death and ensure that lessons are learned for the future.

“After thorough consideration of the circumstances of the case, Crown Counsel have concluded that all the relevant issues have been comprehensively examined in the course of the Military Aviation Authority report and could not have been better considered in any FAI, which would only duplicate the months of thorough work undertaken by the Military Air Accident Investigation Branch and the Military Aviation Authority in preparing the Service Inquiry. As a result, Crown Counsel have instructed that no FAI is to be held.

Mr David Green, Head of the Scottish Fatalities Investigation Unit, said:

“Crown Counsel carefully weighed up the full circumstances of the case, and concluded that a Fatal Accident Inquiry could not better and would only repeat the highly detailed investigation into the tragedy already conducted by the Military Aviation Authority.

“The Service Inquiry Report which they produced also contains conclusions and recommendations which are more wide ranging than could be expected to be achieved in a Fatal Accident Inquiry.

“The RAF and MOD have accepted the recommendations of the Service Inquiry Report, and the nearest relatives of those who tragically died in this accident have been advised of Crown Counsel’s decision.”

“The Service Inquiry has been published and can be accessed via the following link”:

<https://www.gov.uk/government/publications/service-inquiry-accident-involving-tornado-zd743-and-tornado-zd812-over-moray-firth>.

Letter from James Jones
27 April 2017

Public Petition PE1501

Today I had sight, for the first time, of the COPFS letter, dated 17th March 2017, and whilst I am once again late with my comments I ask that the committee consider the following points.

Para 3: *"Where a death has occurred in Scotland and the deceased's body is subsequently repatriated to another country within the United Kingdom, it is a matter for the respective Her Majesty's Coroner in accordance with their own system of investigation of deaths to decide if they require to investigate a certain death."* That is all very well and clearly understood, but what legislative mechanism is in place for COPFS to notify the Coroner service that a body has been transferred? Clearly, it swung into operation in November 2016 when the body of L/Cpl Joe Spencer was transferred from Tain, Scotland, to Hampshire, England, but not for Flt Lt Poole.

Para 3: *"COPFS has a close working relationship with HM Coroners and is committed to providing information about the progress of a procurator fiscal's investigation (as appropriately can be disclosed depending on the nature of the investigation) upon request to coroners."* COPFS knew that the body of Flt Lt Poole had been repatriated, did no one in that organisation question who they should be working with in the HM Coroners service?

Para 4: *"I attach at Annex A, a copy of the COPFS release issued to the media on 12 June 2015. This explains in detail the complex and careful investigation which was undertaken following these deaths and the reasons why Crown Counsel, at their discretion, chose not to hold a discretionary Fatal Accident Inquiry".* First of all the COPFS release to the media was issued on 12 **March** 2015. Secondly, this issue is not about justifying the reason for not holding an FAI, three years after the accident, but the failure to pass on vital information to the Poole family in the two weeks following Flt Lt Poole's death. By the way, the press release makes no mention of a *discretionary Fatal Accident Inquiry*, just that Crown Council had instructed that no FAI would be held. That brings me back to one of my main points, that on Day 1 it was known that an mandatory FAI would not be held, and a discretionary FAI for a military death had never taken place under the 1976 FAI act.

Para 5: I am not sure what correspondence has taken place since I made my written statement, but I did put the following question to Flt Lt Poole's father on 24th January of this year, *"Were you ever told that a mandatory FAI would not be called, because those who died were not considered to be employees? Did the subject of mandatory and discretionary FAI ever get mentioned by the Procurator Fiscal, or Mr Green?"* His reply was simple and unambiguous *"No, none of those points were ever raised with me"*.

Yours sincerely
 James Jones

**Letter from Scottish Fire and Rescue Service
4 April 2017**

PUBLIC PETITIONS PE1510 & PE1511

Further to your letter dated 9 February 2017, I am pleased to provide you with factual evidence to address the many and varied issues raised in the letter and in petitions PE1510 and PE1511.

The Scottish Fire and Rescue Service (SFRS) was established on 1 April 2013 by the Police and Fire Reform (Scotland) Act 2012 with a core purpose to improve the safety and wellbeing of the people of Scotland.

In creating the single service, the SFRS adopted Audit Scotland's guidance to merging public bodies, which indicates four main areas of savings - staffing synergies, asset and contract rationalisation, streamlined processes and shared support services. The delivery of efficiencies has been planned and co-ordinated through the SFRS Service Transformation Programme, supported by regular Gateway Reviews.

During 2014/15 the SFRS developed a Critical Savings Pathway, which identified anticipated financial efficiencies from various initiatives to deliver total gross recurring savings of **£55.3million** up to 2019/20. A key element of these initiatives was the removal of unnecessary duplication to enable the service to improve efficiency and drive out cost.

As part of this Pathway, a Strategic Intent Programme (SIP) proposed how the Service would create a fit for purpose infrastructure through the rationalisation of the property estate inherited from the eight legacy services.

The SIP has delivered over **£18million** in capital receipts, enabling re-investment in new infrastructure while at the same time achieving annual resource savings of **£4.7million**.

A key initiative within the SIP is the rationalisation of Operations Control rooms in Scotland. The eight control rooms inherited by the SFRS had limited interoperability and resilience, coupled with ageing operating systems. In addition, activity levels were such that the model of eight control rooms was inefficient and financially unsustainable.

As part of this Programme, the SFRS established a Command and Control Futures Programme (CCF) to deliver a modern Operations Control with a resilient and scalable command and control communications system that would ensure the safety of communities across Scotland. Working in partnership with staff and the Fire Brigades Union, the decision was taken by the SFRS Board to establish three Operational Controls, which would be integral to our three service delivery areas.

A dedicated project management team was established to deliver a phased programme which saw us, first, establish an Operations Control in the West (Johnstone) and then subsequently a second in the East (Edinburgh). Taking learnings from these two highly successful integrations, the proven model was then applied to establish the North

Operations Control (Dundee). Together, the three facilities have delivered a step-change in capability, infrastructure and resilience.

In addition to enhanced operational capability, the move to three Operations Controls, delivered reductions in associated costs. The relocation of Operational Controls has enabled progress on the overall Strategic Intent Programme, allowing the closure and sale of Maddiston near Falkirk, Thornton in Fife and both North Anderson Drive and Mounthooly in Aberdeen. Further capital receipts of around **£6million** are anticipated from their combined sale, with some **£500,000** savings to be realised annually from reductions in running costs.

In relation to staffing costs, we have realised over **£3.2million** in annualised savings based on efficiencies derived by the more efficient operating model requiring around 77 fewer personnel to operate effectively – a solution agreed directly with the FBU.

In terms of systems-related efficiencies, we are working towards the procurement of a new Command and Control System for Scotland. We anticipate this should also release further efficiency savings.

In the meantime, technical improvements already made to the North SDA control room include:

- Improving the mobilising infrastructure resilience and increasing mobilising performance.
- The introduction of more resilient telephony systems.
- Replacement of servers – previously a cause for concern due to regular technical failures.
- Operator positions increased from five to eight, with a further two available in the temporary Incident Support Room.
- Standby Control upgraded from two operator positions to five.

Equipment from legacy Aberdeen and Inverness Control Rooms will be used where possible, hence the decommissioning of the legacy OCs.

Turning now to recent unverified claims of mobilisation issues within North Operations Control, I can advise Committee Members that Her Majesty's Fire Service Inspector - using powers provided under the Fire (Scotland) Act 2005 and the Police and Fire Reform (Scotland) Act 2012 paragraphs 43B.3c - moved to carry out an inspection into the way in which the SFRS is conducting its operations.

While the Inspector's full report will be available in due course, he has kept me fully apprised of his inspection and findings and has not indicated any concerns in relation to mobilisation protocols or the assurances we have implemented.

In addition, an Internal Audit Review of the CCF Programme deliverables reported (20 March 2017) that appropriate assurances were in place across the Programme and forms part of the planned assurance coverage agreed with the SFRS Audit and Risk Assurance Committee in March 2016. A final report on deliverables will be concluded by the CCF Programme by end of April and presented to the Audit and Risk Assurance Committee on 11 May 2017.

I would like to conclude by offering the Committee my personal assurances that, despite assertions to the contrary made through the media, at no time since the creation of the new North Control have we failed to deploy the correct resource to an emergency incident.

The Scottish Fire and Rescue Service responds to every emergency call without delay and this will continue, thereby ensuring that we protect the communities across Scotland with the same level of professionalism and dedication no matter where these communities may be.

Our skilled and dedicated Control Firefighters work as a team with their frontline colleagues, bringing together their combined professional knowledge with advanced mobilisation systems to always effect the most rapid and appropriate response.

I trust this information will provide Committee members with the required detail and assurances. Our carefully considered Operations Control model not only improves the safety of the people of Scotland but does so with greater efficiency and effectiveness.

Yours sincerely

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