

PE2085/K: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad

Cabinet Secretary for Justice and Home Affairs written submission, 6 May 2025

Thank you for your letter of 7 April 2025 in relation to PE2085. I note that this Petition was lodged by Mr Cornock following the death of his son in Thailand in 2019. Since his son's death Mr Cornock has been in regular contact with the Scottish Government and more recently he has focussed on seeking a change in the law so that the term 'ordinarily resident' is defined in the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act (2016) ("the 2016 Act").

Mr Cornock has met with myself in May 2023, the Lord Advocate in March 2024, and the First Minister on 21 April 2025. At his meeting with the First Minister, it was confirmed that the Scottish Government do not plan to change the 2016 Act after a major review of previous provisions by Lord Cullen.

The term "ordinarily resident" that is contained within the legislation is viewed as sufficiently flexible and workable by the Crown Office and Procurator Fiscal Service who have the responsibility, on behalf of the Lord Advocate, for the investigation of deaths in Scotland. The Scottish Government also consider that the current definition in common law is sufficient to allow the Lord Advocate to conduct an assessment into ordinary residence depending on the facts and circumstances of each particular case.

It would be sensible to note that a change to the definition would require primary legislation and it is not clear that this would in fact achieve the aim that Mr Cornock seeks. Being 'ordinarily resident' is only one of the conditions that needs to be met for an FAI to be considered appropriate. The Lord Advocate would also need to consider that the death was sudden, suspicious or unexplained, or occurred in circumstances giving rise to serious public concern; that the circumstances of the death had not been sufficiently established in the course of an investigation in relation to the death; that there is a real prospect that those circumstances would be sufficiently established in an inquiry; and that it would be in the public interest for an inquiry to be held into the circumstances of the death.

Inquiries into deaths abroad were always anticipated to be rare and none have been held since the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 came into force in 2017. Irrespective of whether an FAI is permissible under the 2016 Act, an investigation into a death abroad faces formidable hurdles without the cooperation of the domestic authorities. Neither Police Scotland nor the Lord Advocate has jurisdiction to conduct investigations overseas and the primacy of the relevant foreign jurisdiction must be respected.

I understand that the coronial system in operation in England and Wales is different to the system of FAIs in Scotland. However, the coroners and police in England and

Wales face the same restrictions in relation to gathering information and investigating a death abroad as we do here in Scotland; they do not have jurisdiction to conduct investigations overseas and are reliant on the co-operation of the relevant foreign authority. There is therefore no intention to change the current system in Scotland.

Yours sincerely,

ANGELA CONSTANCE