

PE2085/S: 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, 14 January 2026

Thank you for your letter of 19 November regarding petition PE2085, which calls for the introduction of a statutory definition of residency for Fatal Accident Inquiries (FAIs) into the deaths of Scots abroad. I appreciate the Committee's continued engagement on this sensitive matter and acknowledge the distress experienced by families who lose loved ones overseas.

As set out in our previous correspondence of 27 March 2024 (PE2085/A), 15 July 2024 (PE2085/D), 19 July 2024 (PE2085/E) and 6 May 2025 (PE2085/K), the Scottish Government has consistently taken the view that legislating a rigid definition of "ordinarily resident" would not resolve the underlying challenges or improve outcomes for families. We have instead focused on working with the Crown Office and Procurator Fiscal Service (COPFS) and partners to strengthen processes, improve transparency, and ensure families are supported at every stage.

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 provides that an FAI may be held where the deceased was "ordinarily resident" in Scotland at the time of death, if other criteria are also satisfied. While this term is not defined in statute, it is well-established in common law. The leading authority on the meaning of "ordinarily resident" in UK law is the House of Lords decision in *R v London Borough of Barnet, ex parte Shah* [1983] 2 AC 309. In that case, Lord Scarman explained that ordinary residence refers to a person's abode in a particular place, adopted voluntarily and for settled purposes, whether of short or long duration. It is a question of fact, assessed objectively, and does not depend on a person's intentions alone. This definition has been consistently applied across a range of statutory contexts where the term is not otherwise defined.

There are a number of other statutory criteria which the Lord Advocate must consider before an FAI into the death of a Scot abroad may be held. These include whether the death was sudden, suspicious, unexplained, or occurred in circumstances giving rise to serious public concern. The Lord Advocate must also consider whether the circumstances of the death have not been sufficiently established in the course of an investigation in relation to the death, whether an FAI could realistically establish the facts and whether it is in the public interest to hold an FAI.

Investigations into deaths abroad present formidable challenges without the cooperation of local authorities. Any investigation into the circumstances of a death abroad rests with the authorities in the country where the death occurred and neither the Lord Advocate nor Police Scotland have jurisdiction to conduct inquiries overseas, and without the consent of the host nation.

Given that responsibility for an investigation will sit with the country where the death occurred, it was always intended that such FAIs would only be held in exceptional circumstances. In his Review of Fatal Accident Inquiry Legislation report, Lord Cullen, when recommending that the legislation be extended to allow for FAIs to be held in relation to

deaths abroad, indicated that he envisaged that ‘out of respect for the investigating authorities in the foreign jurisdiction, such discretion might be exercised rarely’.

While no FAIs have yet been held, the Act has enabled investigations that would not previously have been possible. COPFS has been able to commission post-mortem examinations in Scotland, take statements from witnesses based here, seek expert opinion, and request information from overseas authorities. In several cases, these steps have helped provide families with answers and reassurance.

I am aware of comparisons with the coroner system in England and Wales but it is important to note that the inquest system of England and Wales operates under a very different framework. While their processes differ, both jurisdictions face similar practical obstacles in investigating deaths abroad.

The Scottish Government has engaged with COPFS to improve communication with bereaved families and clarify procedures. This includes updating guidance, enhancing the Scottish Fatalities Investigation Unit’s visibility, and ongoing liaison with the Foreign, Commonwealth and Development Office (FCDO) to ensure families receive timely and accurate information.

The Scottish Government coordinated the creation of a Memorandum of Understanding in September 2024 between the FCDO, Police Scotland, COPFS, the Death Certification Review Service (DCRI) and Victim Support Scotland to provide coordinated support for British nationals ordinarily resident in Scotland who suffer bereavement abroad from murder or culpable homicide. While the Memorandum does not attempt to provide a rigid definition of eligibility under the auspices of ‘ordinarily resident’ it provides a range of factors that may be considered including where the victim’s main possessions and residency are, where their family lives, if they are married or in a civil partnership and where they reside or if they live with children and where they go to school.

The Memorandum includes the working arrangements between the FCDO, Police Scotland, COPFS, and the DCRS. It includes Victim Support Scotland’s specialist “Support for Families Bereaved by Crime” service which receives funding from the Scottish Government. The role of the Support for Families Bereaved by Crime Service is to provide a dedicated case worker to the members of the family requesting support. Case workers can assist with accessing specialist bereavement counselling and emotional support as well as with funeral arrangements, travel and repatriation. Help with accessing suitable legal advice or representation and financial assistance can be provided on a needs basis.

Under the terms of the memorandum, it is next due to be reviewed before the end of 2026 to ensure the processes and responsibilities are up to date.

In addition, I would highlight the Independent Review of Fatal Accident Inquiries relating to deaths in custody in Scotland. The review has concluded, and the report will be published shortly. This review has considered how FAIs can be made more efficient, transparent and trauma-informed. Although the review focuses on deaths in custody, it includes recommendations which will be beneficial to the broader FAI process, including cases involving deaths abroad. We will consider these recommendations carefully and explore how they can be applied to deliver a more effective and compassionate system.

Having considered the petition and the views expressed by stakeholders, the Scottish Government does not believe that legislating for a definition of “ordinarily resident” would resolve the underlying challenges or improve outcomes for families. However as with all

legislation, we will keep the law under review. At this stage in the current parliamentary session, any future legislative change would be a matter for the incoming Scottish Government.

We will continue to work with COPFS and partners to strengthen processes, improve transparency, and ensure families are supported at every stage. This work will form part of our wider consideration of how the FAI process can be made more effective and compassionate.

Thank you for the opportunity to respond. I hope this provides reassurance of our commitment to addressing the concerns raised and to improving the FAI system overall.

Yours sincerely,

ANGELA CONSTANCE