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# Post-mortem Examinations (Defence Time Limit) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to impose an extendable time limit on the period during which a person charged with an offence in connection with causing or contributing to a death can instruct a post-mortem examination.

## **1 Time limit for post-mortem examinations**

- 5 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.  
(2) After section 291 insert—

### *“Post-mortem examinations*

#### **291A Time limit for defence post-mortem examinations**

- (1) This section and sections 291B and 291C apply where—

- 10 (a) a post-mortem examination has been carried out under the authority of  
the prosecutor in connection with a death,  
(b) a person has been charged with an offence in connection with causing  
or contributing to that death, and  
(c) the body of the deceased person has not been released.

- 15 (2) The accused must, within the defence post-mortem period, either—

- (a) instruct the carrying out of a further post-mortem examination for the  
purposes of the accused’s defence, or  
(b) notify the prosecutor that the accused will not exercise the accused’s  
right to instruct a post-mortem examination.

- 20 (3) In this Act, “defence post-mortem period” means—

- (a) the period of 14 days beginning with the day on which the post-mortem  
examination’s finding as to the cause of death is notified in writing to  
the accused,  
25 (b) where the court has granted an extension (or more than one extension)  
to the period under section 291B(2) or (3), that period plus the period  
of each such extension granted by the court.

**291B Extension of time limit**

- (1) This section applies where—
- (a) the defence post-mortem period has started, and
  - (b) the accused has not notified the prosecutor under section 291A(2)(b) that the accused will not exercise their right to instruct a post-mortem examination.
- (2) On an application made prior to expiry of the defence post-mortem period, the court may, on cause shown, extend the defence post-mortem period.
- (3) On an application made after that period has expired, the court may grant an extension to the period, but only if—
- (a) the court is satisfied that there are special circumstances which justify granting the extension, and
  - (b) the body of the deceased person has not been released under section 291C.
- (4) An extension under subsection (2) or (3) may—
- (a) be for a period of up to 14 days as the court considers appropriate beginning with the later of—
    - (i) the date on which the defence post-mortem period would otherwise expire, or
    - (ii) the date of the granting of the extension, and
  - (b) be granted on one or more occasions.

**291C Release of body**

- (1) Subsection (2) applies where one of the following conditions is satisfied—
- (a) a post-mortem examination has been carried out by the accused,
  - (b) the prosecutor has received notification that the accused does not intend to instruct a post-mortem examination, or
  - (c) the defence post-mortem period has expired and—
    - (i) no application made under section 291B for an extension or further extension of that period awaits determination by the court, or
    - (ii) the court has determined that no extension or further extension should be granted to the accused.
- (2) The prosecutor must—
- (a) if satisfied that it is appropriate to do so, release the body of the deceased person, or
  - (b) if not satisfied, apply to the court for an order permitting the retention of the body for such further period as the court on cause shown considers appropriate in the circumstances.
- (3) But, where there is more than one accused, subsection (2) does not apply until such time as subsection (1) is satisfied in respect of each accused person.”.

**2 Consequential amendments**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 281, for the words “an autopsy” in each place where they occur, substitute “a post-mortem examination”.

**3 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory, or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may modify any other enactment.
- (3) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, are subject to the negative procedure.

**4 Commencement**

- (1) This section, section 3 and section 5 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on the expiry of the period of 6 months beginning with the day after Royal Assent.

**5 Short title**

The short title of this Act is the Post-mortem Examination (Defence Time Limit) (Scotland) Act 2021.

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Introduced by: Gil Paterson  
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