

This document relates to the Post-mortem Examinations (Defence Time Limit) (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 May 2020

Post-Mortem Examinations (Defence Time Limit) (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Post-mortem Examinations (Defence Time Limit) (Scotland) Bill, introduced in the Scottish Parliament on 21 May 2020. It has been prepared by the Parliament's Non-Government Bills Unit on behalf of Gil Paterson MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the member who introduced the Bill (SP Bill 73–LC);
- Explanatory Notes (SP Bill 73–EN);
- a Policy Memorandum (SP Bill 73–PM).

Background

3. In any case of suspicious death, a post-mortem examination (PME), instructed by the Crown, is carried out, usually within a few days of the death. The accused, usually represented by defence lawyers, has the right to instruct a further PME, but there is no fixed timescale for exercising this right. This can lead to delays in releasing the victim's body, and these delays and the associated uncertainty can cause distress to relatives of the deceased.

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4. The purpose of the Post-Mortem Examinations (Defence Time Limit) (Scotland) Bill is to make the right of the defence to instruct a PME (also known as a defence PME) subject to a 14-day time limit, while giving the defence the right to apply (an unlimited number of times) to the courts for an extension of the time limit if it is deemed necessary, so as not to impact upon the accused's right to a fair trial.

5. The Bill applies only in cases where someone has been charged in connection with causing or contributing to a death. In practice, this means the Bill is likely to apply only to cases of murder and culpable homicide.

Homicide and PME statistics

6. Scottish Government statistics¹ show that 60 homicide cases were recorded in Scotland in 2018-19. The number of such cases has remained relatively stable in recent years with between 59 and 63 recorded each year from 2012-13 to 2018-19.

7. There is limited information available on the number of PMEs instructed in cases where a suspect has been, or is being, prosecuted for homicide, with the Crown Office and Procurator Fiscal Service (COPFS) advising that this data has only been recorded since December 2018.

8. Figures provided by COPFS² show that between December 2018 and December 2019, 182 Crown-instructed homicide PMEs³ were carried out. The body was retained for up to two weeks in 43 cases; retained for between two weeks and a month in 42 cases and retained for more than a

¹ Homicide in Scotland 2018-19: Statistics. Available at: <https://www.gov.scot/publications/homicide-scotland-2018-19/> Accessed on 17 March 2020.

² Information provided to NGBU by COPFS

³ These initial post-mortem examinations are carried out by the Crown, usually within a few days of the death taking place.

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month in 27 cases.⁴ In 59 cases, homicide trials subsequently took place. Only two defence PME were instructed in this period.⁵

9. In some cases, a defence team may instruct an expert to review the Crown pathologist's findings, as an alternative to carrying out a separate defence PME. In this document, a defence PME refers only to a separate PME carried out on behalf of the defence.

Costs on the Scottish administration

Scottish Courts and Tribunal Service

Extending the time limit

10. Other than introducing a 14-day extendable time limit for the defence to instruct a PME, the Bill does not alter the existing processes relating to the instruction and carrying out of Crown and defence PMEs. Therefore, the majority of potential additional costs generated by the Bill will be those which relate to the ability of the defence team to apply for an extension or extensions.

11. Should an application for a time limit extension be made, some costs will be incurred by the Scottish Courts and Tribunal Service (SCTS), as the body responsible for providing administrative support to the Scottish Courts.

12. The precise costs involved in this process are difficult to ascertain as the Bill does not specify what should be involved in the process of applying for an extension, leaving this to be determined either by rules of court or left to judicial discretion (based on established practice in similar circumstances).

13. It is expected, however, that applications will normally be dealt with by the trial judge based on documentation provided by the defence, but that the judge would have discretion to decide whether to hear from the

⁴ At the end of the December 2018 – December 2019 period, three bodies were still retained.

⁵ The PMEs themselves may have taken place after the end of the period; it is also possible that other defence PMEs took place within that period from homicides reported before that period began.

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parties before deciding on the application (and, if so, whether to do so in court, or in chambers).

14. As outlined, the limited figures available suggest that only a small number of defence PME are requested each year. It is not expected that the Bill's enactment will precipitate an increase in the number of defence PMEs instructed. Therefore it can be presumed that the number instructed will remain relatively low in future, and that only a small number of applications for extensions would be made.

15. In its response to the consultation on the member's proposed bill, SCTS stated that while there might be some costs associated with court time and the related staff and IT changes following the Bill's enactment, it was of the view that this would be incorporated into existing budgets—

“... given the number of homicides (and relevant accused) per annum ... it is likely that the number of applications to the court will be fairly minimal and therefore be accommodated within the current court programme.”⁶

Release of body

16. The Bill also makes provision which relates to the release of the victim's body. It provides that the body of the deceased is to be released when:

- a defence PME has been completed;
- the defence solicitor has indicated that such a PME will not be instructed; or
- the defence post-mortem period (whether the original 14-day period, or an extended period) has expired, and either no application for an extension (or further extension) has been made or an application has been made and the court has refused it.

⁶ Scottish Courts and Tribunals Service response to Member's Bill consultation, available at: https://b0dd9303-7bd8-42bf-917c-cf559717b4cc.filesusr.com/ugd/1a660c_fee9edc955fb4f80abe3d562a6dd41bc.pdf. Accessed on 17 March 2020.

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17. In any of these situations, the Crown would be obliged to release the body, provided it was satisfied that it was appropriate to do so. If it considered that the body should be retained for longer, the Crown would have to make an application to the court for an order permitting it to do so. There would therefore be some costs to SCTS in processing such applications and in accommodating any court time required.

18. It is not anticipated, however, that this component of the Bill will lead to a significant increase in workload for SCTS. As noted above, the number of homicide cases in Scotland each year is relatively low. The Crown is not expected to take up the option of applying for an order to retain the body in most homicide cases. On this basis, and taking into account the mostly administrative nature of any work required, it can therefore be concluded that any costs to SCTS will be low and thus incorporated into existing budgets.

Crown Office and Procurator Fiscal Service

Extending the time limit

19. Any costs to COPFS are also likely to be minimal as the processes which are carried out in the case of a death taking place under suspicious circumstances will remain the same, regardless of whether a defence PME is requested, or an extension is applied for.

20. However, there will be some administrative costs for COPFS each time an application for an extension is made. COPFS records will have to be updated in order to record the outcome of the application and any resulting change to the deadline. The Crown would also have the opportunity to comment on the application (for example, to challenge the reasons given for an extension) and this could lead to the Crown being represented in any consideration of the application by the judge.

Release of body

21. As set out above, the Crown may apply to the court for an order permitting it to retain the body of the deceased for an additional period. There will be some costs to the Crown in making such an application, for example, should legal representation be required. However, it is not anticipated that applying for an order would be a complex process and therefore any associated costs to COPFS would be expected to be low.

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22. If the Bill succeeds in allowing the bodies of homicide victims to be released more quickly, this may reduce costs to COPFS associated with storing bodies. However, it can be presumed that any such cost reductions would be minimal as the cost of running mortuary facilities are assumed to be similar regardless of how many bodies are in storage at a particular time.

Costs on local authorities

23. No specific costs to local authorities have been identified.

Costs on other bodies, individuals and businesses

Scottish Legal Aid Board

24. The process of applying for an extension would generate costs for the defence. In most cases, the accused could be expected to be in receipt of legal aid, meaning costs would at least partially be met by the Scottish Legal Aid Board (SLAB).

25. In its response to the member's consultation, SLAB estimated that a court hearing on an extension before a judge or sheriff would cost £175.68 based on a 2-hour hearing with a solicitor.⁷

26. It should be emphasised that this figure is only an estimate and that the Bill does not provide for the exact processes involved in applying for an extension, instead leaving this to court rules. The legal fees attached to such processes therefore cannot be fully ascertained. However, the figure provided by SLAB can be used to provide a guideline to the possible legal fees involved should hearings be required to consider applications for an extension.

27. It could therefore be estimated that each time a defence team applies for an extension, it would cost SLAB up to £176 should the judge or sheriff determine that a hearing was required. However, as previously noted, it is

⁷ Response from the Scottish Legal Aid Board to the member's consultation on Bill proposal. Available at: https://b0dd9303-7bd8-42bf917ccf559717b4cc.filesusr.com/ugd/1a660c_4aa8b6b2ea0248259498026618ab3aec.pdf. Accessed on 17 March 2020.

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envisaged that in the majority of cases it will not be necessary for court hearings to take place as part of the extension application process. Instead, it is expected that applications will normally be considered through the review of documentation only.

28. The estimates provided by SLAB should therefore be viewed as the maximum cost per application for extension.

29. Taking this into account and given that the extension process is not expected to be used very often, the costs to SLAB are expected to be low and covered by existing budgets.

The accused

30. As identified above, whilst it is expected that the majority of accused persons would be in receipt of legal aid, others may be required to pay their defence team costs, which could be increased by the need to apply for extensions of the 14-day time limit for instructing a defence PME. The estimates provided by SLAB could be used as a guide to the maximum legal fees to which an individual may be subject. However, these amounts are only relevant should hearings be required, and the costs could therefore be expected to be lower than those estimated by SLAB.

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