



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

5th Meeting, 2015 (Session 4)

Tuesday 3 February 2015

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

1. **Decisions on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.

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

PE1280 by Dr Kenneth Faulds and Julie Love on fatal accident inquiries;

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

PE1427 by Robert Kirkwood on behalf of Leith Links Residents' Association on multi-party actions;

PE1479 by Andrew Muir on complaints about solicitors;

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

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. **Subordinate legislation:** The Committee will consider the following negative instruments—

Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014 (SSI 2014/360);

Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1).

4. **EU engagement:** The Committee will consider a draft report to the European and External Relations Committee on the EU engagement work it undertook during 2014 and consider and agree its EU priorities for 2015-16.
5. **Prisoners (Control of Release) (Scotland) Bill:** The Committee will consider the evidence received on the Bill in order to inform the drafting of its Stage 1 report.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk J/S4/15/5/1

Agenda item 3

Paper by the clerk J/S4/15/5/2

[Victims and Witnesses \(Scotland\) Act 2014 \(Prescribed Relatives\) Order 2014 \(SSI 2014/360\)](#)

[Civil Jurisdiction and Judgments \(Amendment\) \(Scotland\) Regulations 2015 \(SSI 2015/1\)](#)

Agenda item 4

Private paper J/S4/15/5/3 (P)

Agenda item 5

Private paper J/S4/15/5/4 (P)

[Prisoners \(Control of Release\) \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Justice Committee

5th Meeting, 2015 (Session 4), Tuesday 3 February 2015

Petitions

Note by the clerk

Introduction

1. This paper invites the Committee to consider what, if any, action it wishes to take in relation to a number of on-going petitions.
2. These petitions are—
 - PE1280: Fatal Accident Inquiries on deaths abroad;
 - PE1370: Independent inquiry into the Megrahi conviction;
 - PE1427: Multi Party Actions;
 - PE1479: Legal profession and legal aid time bar;
 - PE1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations; and
 - PE1510 and PE1511: Police and Fire Control Rooms.
3. The terms of each petition are annexed to this paper (Annexe A).

Developments

PE1280: Fatal Accident inquiries on deaths abroad

4. The Committee has already agreed to consider this petition in the context of the forthcoming fatal accident inquiry (FAI) legislation. The Minister for Community Safety and Legal Affairs wrote to the Committee on 15 January 2015 restating the Scottish Government's commitment to introduce a Bill on FAIs within the current parliamentary session, and providing further details on the scope of the proposed Bill. This correspondence is annexed to this paper (Annexe F).

5. **The Committee is invited to note the correspondence from the Minister.**

PE1370: Independent inquiry into the Megrahi conviction

6. The Committee has received the record of the latest meeting between Justice for Megrahi (JFM) and Police Scotland. This update at Annexe B. The Convener has also received correspondence from Justice for Megrahi (JFM) (Annexe C), highlighting recent comments by the Lord Advocate on the Megrahi investigation.

7. Separately, the Scottish Criminal Cases Review Commission (SCCRC) is currently considering a joint application from members of Mr Megrahi's family and JFM, to review the conviction. The SCCRC has previously stated that members of Mr Megrahi's family had not provided appropriate evidence supporting their involvement in the application.

8. The SCCRC has asked for a High Court ruling on the legal status of the victims' relatives to enable it to decide whether they can pursue an appeal on his behalf. A hearing date has been set by Lady Dorrian for 27 March.¹

¹ <http://www.bbc.co.uk/news/uk-scotland-south-scotland-30945057>.

9. Further information on the application is available on the SCCRC website.²

10. The Committee is invited to note the updates provided by Justice for Megrahi and the developments with the SCCRC application.

PE1427: Multi Party Actions

11. The Committee previously wrote to the Scottish Government inviting it to include the petitioner in its consultation on matters to be taken forward by primary legislation following recommendations of the Taylor Review, and to respond to the petitioner's concerns raised regarding withholding documents by private companies. The Scottish Government has been invited to respond by 3 April 2015.

12. The Committee is invited to keep the petition open pending a response from the Scottish Government.

PE1479: Legal profession and the legal aid time bar

13. At its meeting on 4 November, the Committee agreed to keep this petition open pending the outcome of the Scottish Legal Complaints Commission's (SLCC) consultation on its proposal to increase the legal aid time bar from one year to three years. The consultation closed on 17 November 2014. The new time bar was due to become operational from 1 January 2015. However, following the consultation the SLCC has decided that the time bar provisions will be altered in July 2015 to coincide with an Alternative Dispute Resolution directive coming into force, and with the start of a new operating year for the SLCC.³

14. The Committee may wish to keep the petition open until after the SLCC rules change has taken effect. Alternatively, the Committee could agree to close the petition.

PE1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations

15. Following its meeting on 4 November the Committee wrote to the Crown Office and Procurator Fiscal Service (COPFS) to ascertain the level of investigation carried out into the 4,000 deaths classified as self-inflicted in the last five years. The COPFS response is available at Annexe D.

16. The Committee has also received correspondence from the Minister (about both PE1280 and PE1501) (Annexe E).

17. The petitioner has indicated that the forthcoming FAI legislation is unlikely to directly address the issues raised in his petition, and the Minister has re-stated the Scottish Government's position that it has no plans to introduce proposals along the lines requested by the petitioner. **Nevertheless, the Committee may wish to keep the petition open and consider it again after the legislation has been introduced, and once there is greater clarity on the scope of the legislation. Alternatively, the Committee could consider closing the petition.**

² SCCRC news release on the application, 22 December 2014. Available at: <http://www.sccrc.org.uk/ViewFile.aspx?id=632>.

³ Further information on the SLCC Rules Change consultation is available at: <http://www.scottishlegalcomplaints.org.uk/about-slcc/what-we-do/our-processes/slcc-rules/slcc-rules-change-consultation-october-2014.aspx>.

PE1510 and PE1511: Police and Fire Control Rooms

18. The Committee agreed to consider the issues raised in these petitions during scrutiny of the Scottish Government's Draft Budget 2015-6. As the budget process has now concluded, **the Committee may wish to keep the petitions open pending the Audit Scotland report on the Scottish Fire and Rescue Service (SFRS) and a possible evidence session with SFRS in Autumn 2015. Alternatively the Committee may wish to consider closing the petitions.**

OPEN PETITIONS

PE1280: Fatal Accident inquiries on deaths abroad

Terms of the petition

19. PE1280 is a petition by Julie Love and Dr Kenneth Faulds calling on the Scottish Parliament to urge the Scottish Government to give the same level of protection to the families of people from Scotland who die abroad as is currently in place for people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of an FAI when a person from Scotland dies abroad.

PE1370: Independent inquiry into the Megrahi conviction

Terms of the petition

20. PE1370 is a petition by Dr Jim Swire, Professor Robert Black QC, Mr Robert Forrester, Father Patrick Keegans and Mr Iain McKie on behalf of Justice for Megrahi on opening 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.

PE1427: Multi Party Actions

Terms of the petition

21. PE1427 is a petition by Robert Kirkwood on behalf of Leith Links Residents Association calling on the Scottish Parliament to urge the Scottish Government to implement the Scottish Civil Courts Review recommendations on multi-party actions by making changes to existing protocols that will (1) encourage the Rules Council to use rule of court 2.2 for multi-party actions; (2) modify court fees to a single payment; (3) encourage the Rules Council to introduce a protocol on recovery of documents; (4) clarify the common law right of nuisance, and (5) introduce compulsory insurance.

PE1479: Legal profession and legal aid time bar

Terms of the petition

22. PE1479 is a petition by Andrew Muir calling on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

PE1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations

Terms of the petition

23. PE1501 is a petition by Stuart Graham calling on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.

Referral to the Justice Committee

24. In referring the petition to the Justice Committee, the Public Petitions Committee (PPC) drew the Committee's attention to the extensive body of evidence that it has received on this issue from the petitioner, Victim Support Scotland, the Scottish Government, the Crown Office and Procurator Fiscal Service (COPFS), the Law

Society of Scotland and Police Scotland. Full details of the PPC's consideration of the petition, and the submissions it has received, are available here: (<http://external.scottish.parliament.uk/GettingInvolved/Petitions/thevictimsstraight>).

PE1510 and PE1511: Police and Fire Control Rooms

Terms of the petitions

25. **PE1510** is a petition by Jody Curtis calling 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.

26. **PE1511** is a petition by Laura Ross calling 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.

ANNEXE B

**RECORD OF MOST RECENT MEETING BETWEEN JUSTICE FOR MEGRAHI AND
POLICE SCOTLAND (PE1370)**

Précis of MEETING RECORD

Police Scotland and Justice for Megrahi (JfM)

Tulliallan: Monday 24th November 2014

Present:

Justice for Megrahi (JfM): Iain McKie; James Robertson.

Police Scotland: Deputy Chief Constable Iain Livingstone; Detective Superintendent Stuart Johnstone; Detective Chief Inspector Scott Cunningham.

Apologies: Len Murray.

Agenda:

This is the fourth meeting held to facilitate liaison between Police Scotland and JfM in respect of the ongoing investigation by Police Scotland into JfM's complaint of nine criminal allegations made in September 2012.

DCC Livingstone introduced the meeting and welcomed those present whilst acknowledging the apology sent by Len Murray due to illness.

He referred to the previous meeting held on 29th September 2014; despite neither himself nor James Robertson being present, he acknowledged this still provided opportunity for meaningful dialogue and discussion on the progress of the enquiry and that much of the discussion at the last meeting focused on what is essentially the conclusion, meantime, of enquiries into Allegation 8.

It was agreed by both parties that the précis of the last meeting was accurate for submission to the Justice Committee and DCC Livingstone confirmed he would update the JC convener's clerk. The confidential meeting record was also discussed to be agreed.

DCC Livingstone confirmed that a meeting with the appointed independent QC had been arranged for early December 2014 to discuss the draft report in relation to Allegation 8.

DSU Johnstone referred to the close relationship between Police Scotland and JfM; this allowed for open and frank discussion which had been, and would continue to be recorded in an agreed confidential record of meetings, with also a subsequent agreed précis for public release. JfM were in full agreement with this and emphasised the importance of keeping certain discussions confidential.

DCC Livingstone reiterated that consideration was ongoing in terms of the necessity and proportionality of interviewing witnesses, and that the matter of interviewing witnesses would be considered by the investigating officers and actioned if deemed

necessary. JfM, acknowledging this, however stated they expected in principle that witnesses would require to be interviewed at some stage.

DCC Livingstone added that as these were unique circumstances the appointment of an independent QC provided the police investigation with an appropriate level of scrutiny prior to reporting the findings to Crown Office, which was clearly not the normal procedure. It was again emphasised that this was a key relationship and preparatory work was underway prior to the next formal meeting with the QC.

JfM highlighted their desire to discuss the findings of the police investigation at the conclusion and acknowledged although they may not be in full agreement or entirely satisfied with the findings, they appreciated a thorough investigation was ongoing.

DSU Johnstone confirmed that the analytical research had been opened out and wider reaching including analysis of publications by Morag Kerr, John Ashton along with the JfM allegations. A document listing 64 assertions had been compiled which was particularly complex and included key areas of forensics, 3 airports security and movement of baggage. This was identified as the largest body of work due to the sheer volume of information and documentation.

DSU Johnstone highlighted that there was a good relationship with the SCCRC who are assisting the police investigation with providing relevant documentation and information, where necessary.

Police Scotland also confirmed that to date, there has been no dialogue with Crown Office in relation to the police investigation into the 9 allegations made by JfM.

JfM emphasised that it was critical that the present level of trust was maintained with Police Scotland and that this should not be jeopardised by either party.

Although not directly linked to their criminal allegations JfM raised concerns about a perceived lack of follow up treatment by the authorities for police officers and others who had been traumatised as a result of their Lockerbie related duties. It appeared as if a number had suffered from post traumatic stress and other psychological and emotional reactions and these effects had not been effectively monitored and treated by the various responsible authorities. They felt that these issues were worthy of recognition and comment. DCC Livingstone acknowledged this concern and outlined how Police Scotland were alert to such issues and had built in welfare procedures to identify, diagnose and care for those officers who suffered such reactions.

The JfM representatives asked Police Scotland to confirm in respect of their enquiries into the 'timer' fragment found at Lockerbie, whose provenance had subsequently been challenged by JfM in their allegations, that should these challenges be upheld, would further enquiry then be made into the evidence of the witnesses who allegedly found the fragment and who had subsequently handled and analysed it.

DCC Livingstone explained that while he would not go into detail about any aspect of their investigation, no legitimate lines of enquiry arising from their investigations would be excluded.

DSU Johnstone confirmed that a specific timeline was being compiled in relation to 'evidence' related to the "bomb" used in the atrocity.

The matter of forensic issues and experts was raised by JfM. DSU Johnstone explained there were several areas which would require independent forensic experts.

In terms of the projection of the police investigation, DSU Johnstone indicated this would progress well into 2015. Additional expert support was being provided by the National Crime Agency emphasising the degree of specialist support to the police investigation.

Conclusion

JFM representatives stated they were satisfied with the updates and with the process whereby a confidential record of discussions is maintained and circulated to both parties, and an agreed précis released to the public. It was agreed to hold the next meeting around February 2015.

Both parties agreed that the positive relationship and mutual trust which had been built was apparent and that the discussions continued to be open, frank and extremely beneficial.

ANNEXE C

CORRESPONDENCE FROM JFM TO THE CONVENER (PE1370)

We refer to previous Justice Committee decisions to keep the above petition open until the ongoing Police Scotland major enquiry into JFM's 9 criminal allegations, made in October 2012, are investigated and reported on.

We have no doubt that you and the committee members are aware of last weekend's public interventions by the Crown Office and Lord Advocate in relation to their Lockerbie investigations. These comments are comprehensively reviewed in Professor Robert Black's 'Lockerbie blog' at <http://lockerbiecase.blogspot.co.uk> and across the media.

You will recollect JFM's earlier submissions where we voiced our serious concerns in relation to the Crown Office/Lord Advocate's public rejection of our criminal allegations in 2012 before the police investigation had even started.

It is quite clear that yet again these authorities, despite being aware of the ongoing police enquiry, are publicly stating that they have no doubts about the guilt of Mr Megrahi and that any who do not share that view are conspiracy theorists.

In making these statements it seems to JFM that the Crown Office and Lord Advocate have effectively prejudged the police enquiry, dismissed the criminal investigation as irrelevant and severely compromised that investigation.

Given that this is the Crown's second public rejection of our allegations we cannot see how we, the Justice Committee or public can have any confidence that when the police report is delivered to the Crown Office and Lord Advocate it will be dealt with in a fair and objective manner.

The Lord Advocate, as Scotland's independent prosecutor in the public interest and a member of the Scottish Government, has severely compromised his constitutional position by making these comments when the enquiry is going on.

We would value your observations and hope that your committee takes steps to clarify the Lord Advocate's position in relation to these matters.

It is important to underline that we value the excellent working relationship that we have forged with Police Scotland and have confidence in the integrity and thoroughness of their enquiry.

Sadly these latest public comments by the Lord Advocate only serve to undermine this cooperation and trust and insult those who honestly believe that a public enquiry is needed into all the circumstances surrounding the Lockerbie disaster.

**The Committee of Justice for Megrahi
24 December 2014**

ANNEXE D

CORRESPONDENCE FROM THE COPFS (PE1501)

I am writing to you in response to your request of 7 November 2014 that the Crown Office and Procurator Fiscal Service (COPFS) provide information on “the level of investigation carried out into the 4,000 deaths classed as self-inflicted in the last five years”.

As previously explained in letter dated 13 February 2014 to the Public Petitions Committee there are around 13,000 deaths reported to COPFS annually, of which around 800 are classed as “self inflicted”. It might be helpful to explain that the figure of around 800 deaths annually was arrived at from statistics published by the National Records of Scotland (NRS) of what are described as “probable suicides” which includes deaths which are the result of intentional self-harm or events of undetermined intent. This information can be accessed using the following links:

<http://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/suicides/main-points>

<http://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/suicides/the-definition-of-the-statistics>

Since mid 2009 COPFS has provided NRS with information about the nature of death for “traumatic/suspicious” deaths by the Procurator Fiscal completing and submitting a Form and indicating the most appropriate category for that death on a balance of probabilities. The categories under that section of the form are: accident; intentional self-harm; assault; and undetermined intent. As explained NRS collectively group those deaths categorised as intentional self harm and undetermined intent in producing figures for “probable” suicides in Scotland. Prior to 2009 a different system existed for COPFS notifying NRS of deaths understood to be a suicide although the changes made had little effect on the overall total number of probable suicides recorded by NRS.

COPFS operates a live operational database and its use is not designed for statistical or research purposes. It is not possible other than by a manual check of cases to establish the level of investigation into each of the cases involving self inflicted deaths over the last 5 years. A manual check would be too resource and time intensive impacting on the current work of COPFS. It may be possible, if you wish it, for some of these cases to be dip sampled as representative of the 4,000 cases.

That said, the Scottish Fatalities Investigation Unit (SFIU) have been able to provide some general information on the approach to such investigations which I hope you will find useful.

All investigations by Procurators Fiscal in respect of deaths in Scotland begin by ascertaining the cause of death. The vast majority of deaths reported are as a result of natural causes and do not require further investigation once the cause of death has been ascertained by expert medical examination. In the vast majority of these categories of death the cause and circumstances of death are uncontroversial. Those few deaths that do tend to require further investigation include, where the circumstances are as a result of accident, medical error or potential criminality.

Most deaths reported to the Procurator Fiscal which require further explanation are reported initially because a doctor is unable to confirm the cause of death and therefore unable to issue a death certificate often as the Doctor available to confirm certification of death has no knowledge of the patient. The requirement to report deaths which cannot be immediately certified by a doctor is necessary not only in order to minimise the risk of undetected homicide or other crime but also in pursuance of the public interest to eradicate dangers to health and life, to allay public anxiety and to ensure that full and accurate statistics are compiled.

The level of investigation involved for each death will differ according to the unique facts and circumstances of the death. The views and wishes of nearest relatives and any concerns they have are important and may inform the approach taken to any given investigation as these will always be important considerations for COPFS in deciding the level of investigation required and the approach to be adopted in that investigation. It is recognised by COPFS that Article 2 of the European Convention of Human Rights places a procedural duty on the state to carry out an effective investigation into deaths and that in order for an investigation to be effective this must involve the nearest relatives to an appropriate extent and therefore the nearest relatives may have an input into the investigation where they wish to do so.

As a generality deaths which raise the possibility of being caused by self-inflicted injury which are reported to the Crown for investigation are as follows:

- (a) Deaths where there are clearly no suspicious circumstances and there is a strong basis on the facts and circumstances to indicate it was self inflicted/suicide for example where there is an obvious mechanism of death suggesting suicide and a suicide note has been left.
- (b) Deaths where there are clearly no suspicious circumstances and the facts indicate it was self inflicted/suicide but where the mechanism/cause of death requires further investigation for example where it appears that the deceased has taken drugs to end their life but toxicology is required to confirm that.
- (c) Deaths where there are clearly no suspicious circumstances but from the facts it is not clear that the deceased intended to take their own life.
- (d) Deaths where there are clearly no suspicious circumstances and the facts indicate it was self inflicted/suicide but the background circumstances necessitate a more detailed investigation for example where the deceased was either under medical care or had recently been so perhaps for depression and concerns have been raised about the standard of care or where perhaps a critical incident review has taken place.
- (e) Deaths where suspicious circumstances cannot be ruled out and a full investigation is required in order to rule out homicide.

Currently all of the above categories will at the very least involve: the review of the police report by a Procurator Fiscal with specialist training in deaths investigation and instruction of a post mortem; contact with the nearest relatives informing them of the need for a post mortem; review of the final post mortem report and full statements that have been ingathered by the police once these are available; and corresponding with the nearest relatives offering them a meeting.

In relation to categories (a) and (b) above this will be the level of involvement for most cases although for category (b) any toxicology report will also have to be reviewed and depending on the results of that toxicology it may also be necessary to investigate the

possibility of criminal proceedings if for example the presence of controlled drugs is found and/or where the initial investigation indicate that the drugs involved were supplied illegally. Where any of the deaths under these categories fall under section 1(2)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 necessitating a mandatory FAI there will be the following additional aspects to the investigation: the Procurator Fiscal will order health records (and if the person died in prison any prison records) and on receipt these will be reviewed along with the full statements, the post mortem report and any other relevant additional records; there will be contact with the nearest relatives informing them of the proceedings and offering them a meeting once the post mortem report is received and a level of contact will be maintained with the family throughout the preparation for FAI commensurate with the wishes of the particular family involved; the FAI will be conducted. It will be for the family to decide if they wish to be separately represented at the FAI; the nearest relatives will be formally informed of the determination and offered a final meeting before the case is closed.

Deaths falling under Category (c) above may include a wide range of facts and circumstances. Often it is difficult to conclude with precision what the intentions were of the deceased. For instance where death has been caused by a drugs overdose this may have been either intentional or accidental and it is important not to make any assumptions. The nature and level of investigation required will very much depend on the surrounding facts and circumstances and level of concerns expressed by nearest relatives during the investigation.

In relation to deaths falling under category (d) above the level of investigation will necessarily be more involved. This may involve amongst other things: a thorough and independent investigation into the deceased's mental health treatment or other treatment prior to the death; a review of any Critical incident or other internal review that may have taken place; consideration of any action taken by others, for instance Health Boards, to avoid a similar event occurring in the future; in these cases there may well be significant interaction with the nearest relatives depending on their wishes and this may involve meetings to ascertain any further concerns they have and to advise them of the outcome of investigations as they progress; when investigations are complete a detailed report will normally be submitted for the consideration of Crown Counsel who will decide whether there should be a discretionary FAI; if Crown Counsel instruct that no FAI is to be held then the nearest relatives will be informed and offered a meeting and if an FAI is held the nearest relatives will be advised of their right to be represented and after conclusion of the FAI and receipt of the determination offered a final meeting before the case is closed.

Some deaths falling under this category may raise concerns in terms of Health and Safety Legislation. For instance where there is some indication that inadequate risk assessments have been carried out, these cases will be referred to the Health and Safety Division (HSD) of Crown Office and further investigation will be undertaken. HSD have indicated that they have around six such investigations ongoing at any one time.

In relation to category (e) COPFS guidance states that any deaths where suspicion cannot be ruled out must be investigated as a suspicious death until such time as the Procurator Fiscal is satisfied that there are no longer reasonable grounds to suspect that the death may be homicidal or caused by the criminal act of any other person. In order to rule out homicidal or criminal acts, a detailed further investigation will be required and again much will depend on the facts and circumstances but these additional investigations may include a variety of matters such as a full forensic

examination of the locus including fingerprint examination, DNA analysis, toxicological examinations, examination of any available CCTV evidence and analysis of mobile phones and other devices. As with category (d) there will also likely be similar interaction with the nearest relatives.

SFIU is the central point for liaising with the nearest relatives of a deceased's family. One exception to this would be in category (e) above, where the Procurator Fiscal is investigating a suspicion of homicide. In this type of case, the COPFS Victim and Information Advice Service (VIA) will normally oversee liaison with relatives. SFIU provides general information to nearest relatives on the investigation of deaths by the Procurator Fiscal; it engages and consults with families of the deceased throughout each investigation keeping them apprised of the outcome of investigations; and it provides them with reasons where the Lord Advocate decides not to apply for an FAI. This engagement is done sensitively, an assessment having been made in each case as to the most appropriate method of communication in line with the expressed wishes of individual relatives and therefore this may be done by letter, telephone or by face-to-face meetings. In many instances different relatives may wish to have different types of response and this is accommodated.

Liaison with the deceased's family forms an integral part of any deaths investigation. There of course cannot be a "one size fits all" approach to death investigations as each death has its own unique facts and circumstances and the level and type of interaction with the family will very much depend on the needs, concerns and wishes of the family.

Where the family of the deceased wish to be advised of the information uncovered as a result of the investigation then SFIU will appraise them of what the investigation has found and share all relevant information as far as possible. If family members wish to have sight of evidence obtained during the investigation such as pathology or other expert reports and photographs then this will be disclosed in as sensitive a way as possible. For instance sometimes the post mortem report disclosure will be arranged through the family GP where, for example medical terms require to be explained and the family prefer that is done in such a setting. Any further investigation that may be required as a result of additional matters which may be raised by family members will be considered and, if appropriate, instructed and the results explained.

Finally, if as I understand it is being proposed by the petitioner that it should be mandatory to hold an FAI into all deaths where the investigation by the Procurator Fiscal concludes that it appears most likely that the death was a result of self inflicted injury or cannot rule out the possibility of self inflicted injury this would be a real concern. Article 2 of the European Convention of Human Rights does not go so far as to require all proceedings following an investigation into a violent death to be public. The degree of public scrutiny required may vary from case to case: *Anguelova v Bulgaria* (2004) 38 EHRR 31; *Ramsahai v The Netherlands* (2008) 46 EHRR 43. It is the experience of COPFS that most families in such circumstances do not wish a mandatory Inquiry in public to take place and this raises important considerations in terms of Article 8 of the convention, the right to respect for private and family life.

I hope you find this information helpful. COPFS did consider whether we could provide you with some specific examples in order to illustrate the level of investigation that is sometimes required into these types of deaths however we have refrained from doing so as there was a risk that families may feel that this would potentially identify individual circumstances relating to a death of a loved one and we would not want to

add to any distress already experienced by them. If you require any further information then I will be happy to assist.

Catherine Dyer
Crown Agent and Chief Executive
21 January 2015

ANNEXE F

CORRESPONDENCE FROM THE MINISTER FOR COMMUNITY SAFETY AND LEGAL AFFAIRS (PE1280 AND PE1501)

Thank you for your letter of 10 November 2014 to the then Cabinet Secretary for Justice concerning Petitions PE1280 and PE1501. I am replying as fatal accident inquiries (FAIs) fall within my Ministerial responsibility.

Petition PE1280 calls on the Scottish Parliament to urge the Scottish Government to amend the Fatal Accidents and Sudden Deaths (Scotland) Act 1976 “*to require the holding of a fatal accident inquiry when a person from Scotland dies abroad*”.

Petition PE1501 calls on the Scottish Parliament “*to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.*”

The Committee has asked the Scottish Government for an update on the timescales and scope of its legislation on FAIs.

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill

As stated in the Programme for Government for 2014-15, a Bill on FAIs will be introduced within the current parliamentary session.

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill will provide the legislative framework needed to implement the remaining recommendations of Lord Cullen’s Review of the FAI legislation. The Crown Office and Procurator Fiscal Service have already implemented the recommendations addressed to it by Lord Cullen, mainly by the establishment of the Scottish Fatalities Investigation Unit, which now oversees the investigation of deaths in Scotland.

The new Bill will repeal the current Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 and will:

- Build on the recommendations implemented by the Crown Office to make the system more efficient.
- Extend the categories of death in which it is mandatory to hold a fatal accident inquiry.
- Permit FAIs on a discretionary basis into deaths of Scots abroad where the body is repatriated to Scotland.
- Place a requirement on those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond.
- Provide flexibility for the location and accommodation for FAIs.

It is worth reiterating, in relation to Petition PE1280, that Lord Cullen expressed the view that it would be unjustifiable to hold mandatory fatal accident inquiries in cases and that such inquiries should only be held at the discretion of the Lord Advocate. Lord Cullen thought that, out of respect for the investigating authorities in the foreign jurisdiction, such discretion might be exercised rarely.

The Government indicated in its response to the Review that there would have to be strict criteria about the circumstances in which a fatal accident inquiry would be carried out by Scottish authorities.

In relation to Petition PE1501, I regret that there is nothing I can usefully add to the Government's responses of 6 February and 22 August 2014.

I hope that this information is helpful to inform the Justice Committee's consideration of both petitions.

Paul Wheelhouse
Minister for Community Safety and Legal Affairs
15 January 2015

Justice Committee

5th Meeting, 2013 (Session 4), Tuesday 3 February 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014 (SSI 2014/360); and
 - Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1).
2. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

**Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014
(SSI 2014/360)**

Introduction

3. This instrument defines those relatives of victims to which measures introduced by sections 2 (standards of service) and 6 (disclosure of information about criminal proceedings) of the Victims and Witnesses (Scotland) Act 2014 apply. To ensure consistency in approach for victims and witnesses, the same list of prescribed relatives¹ has been developed for the purposes of both sections 2 and 6 and is legislated for in this single Order.
4. The instrument comes into force on 30 January 2015.
5. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2014/360/contents/made>

Consultation

6. The policy note on the instrument states that a public consultation paper, *Making Justice Work for Victims and Witnesses*², was published prior to the development and introduction of the Bill (which became the 2014 Act). This consultation closed in July 2012, and non-confidential responses³ and an analysis⁴ are available. The policy note

¹ With the exception that the instrument excludes the accused from being a prescribed relative for the purpose of requesting information under section 6 of the 2014 Act but does not exclude the accused as a prescribed relative in relation to standards of service under section 2 as “if the accused were to be excluded as a prescribed relative for the purpose of section 2, relatives of victims who happened to be an accused in an unrelated case would also be excluded from being covered by the standards of service”.

² <http://www.scotland.gov.uk/Publications/2012/05/8645/0>

³ <http://www.scotland.gov.uk/Publications/2012/09/3650/0>

also states that consultation with stakeholders (including various victim support groups and the named organisations affected by the legislation) was undertaken throughout the Bill process, and will continue in relation to the implementation of the 2014 Act.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 13 January 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

8. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 16 February 2015.

Policy Note: Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014 (SSI 2014/360)

1. The above instrument was made in exercise of the powers conferred by sections 2 and 6 of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to the negative procedure.

Policy Objectives

2. The 2014 Act introduces various measures to improve the support and information available to victims and witnesses of crime in Scotland, and is being implemented in stages.

3. The policy objective of this instrument is to define those relatives of victims to which the measures introduced by sections 2 (Standards of service) and 6 (Disclosure of information about criminal proceedings) of the 2014 Act apply.

4. Section 2 of the 2014 Act requires the police, Crown Office and Procurator Fiscal Service (COPFS), Scottish Court Service (SCS), Scottish Prison Service and Parole Board for Scotland to set and publish standards in relation to the functions which those organisations carry out in relation to victims (including prescribed relatives of victims) and witnesses.

5. Section 2 allows the Scottish Ministers to prescribe, by way of an order subject to the negative procedure, the relatives of victims to which the standards apply. The intention is to ensure certain relatives of a victim are covered by the standards in the same way that a victim would be, in recognition of the impact a criminal offence can have on those in a close relationship with the victim.

6. Section 6 of the 2014 Act provides victims, witnesses and, where a victim died as a result of an offence, certain relatives of victims, with a new right to request certain information from the police, COPFS and SCS. The type of information that may be requested includes a decision not to proceed with a criminal investigation and any reason for it, a decision not to institute criminal proceedings and any reasons for it, and details about the trial and the nature of the charges labelled against a person. This

⁴ <http://www.scotland.gov.uk/Publications/2013/01/8185/0>

measure is intended to ensure victims and witnesses are able to keep up-to-date with the progress of a case.

7. Section 6 allows the Scottish Ministers to prescribe, by way of an order subject to the negative procedure, the relatives of a victim to which the rights under section 6 apply, though only where the victim has died of the offence in question.

8. To ensure consistency in approach for victims and witnesses, the same list of prescribed relatives has been developed for the purposes of both section 2 and section 6 (with one exception, see paragraph 11 below) and is legislated for in a single order subject to the negative procedure.

9. Turning to the instrument itself, article 2(1) sets out the prescribed relatives for the purposes of sections 2 and 6 of the 2014 Act, capturing the key familial relationships. Article 2(1) of the instrument also defines those persons who have charge of an individual's welfare needs under separate statutory provisions. In addition, article 2(1) provides for the reciprocal operation of the statutory definitions (for example, where the deceased victim is a foster parent, their foster child will be considered as a prescribed relative).

10. Article 2(2) of the instrument is to provide for those whose relationship has ended, only as a result of the victim's death, to be prescribed relatives. Thus, where a marriage, a guardianship or foster care arrangement is ended by the victim's death, the spouse, the guardian or foster carer would continue to be a prescribed relative notwithstanding the end of that relationship.

11. Article 2(3) of the instrument excludes the accused from being a prescribed relative for the purpose of requesting information under section 6 of the 2014 Act in relation to the case in which they are the accused, where they could also fall under the definition of a prescribed relative of the victim. The accused is not excluded as a prescribed relative in relation to standards of service as section 2 applies in general to victims, prescribed relatives of victims and witnesses, and not in relation to a specific offence. As such, if the accused were to be excluded as a prescribed relative for the purpose of section 2, relatives of victims who happened to be an accused in an unrelated case would also be excluded from being covered by the standards of service.

12. In the future, the Scottish Ministers may utilise the order-making powers in sections 2 and 6 to modify the list of prescribed relatives. This will allow for the Scottish Ministers to respond to future developments in legislation and changes to the recognised definitions of familial relationships, as required.

Development of the list of prescribed relatives

13. In identifying the key familial relationships, consideration was given to existing legislation and related materials on the categories of individual who should be, or are, treated as relatives of a victim. In particular:

- article 2(1)(a)(ii) of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU)⁵ requires that

⁵ <http://db.europol.europa.eu/db/en/doc/1828.pdf>

families of those persons who die as a result of a criminal offence, and who have suffered harm as a result, be treated as victims;

- section 14(6)(a) of the Criminal Justice (Scotland) Act 2003⁶ (“the 2003 Act”) allows any or all of the four qualifying persons listed highest in section 14(10) of the 2003 Act to make a victim impact statement where the victim has died as a result of the offence;
- section 14(1) of the Damages (Scotland) Act 2011⁷ defines, for the purposes of entitlement to raise a claim for damages, “relative” in relation to a person who has died;
- the Code of Practice for Victims of Crime in England and Wales⁸, issued by the Secretary of State for Justice under section 32 of the Domestic Violence, Crime and Victims Act 2004, specifies who is entitled to receive services under the Code and the term ‘close relatives’ is defined in the Glossary;
- Police Scotland has advised of individuals who will be treated as relatives in line with current policing practice; and Victim Support Scotland has given an indication of whom it might regard as relatives for these purposes.

14. As well as taking into consideration precedent and current Scottish Government policy in areas such as family law and equalities, the list was developed in consultation with the justice organisations on which the duty falls. The police and COPFS are already experienced in liaising closely with victims and their families, particularly where an allegation of a serious crime is involved, and the measures in section 6 of the 2014 Act should build upon that existing practice.

15. Furthermore, a targeted consultation was undertaken with key victim support groups, including Victim Support Scotland, Scottish Women’s Aid, Rape Crisis Scotland and others represented on the Victims Organisations Collaboration Forum Scotland. A number of responses were received, which were analysed and, where appropriate, taken into account when finalising the list.

16. In prescribing relatives for the purpose of section 6 of the 2014 Act, consideration was given to the sensitive nature of some of the information that the named organisations would be obliged to disclose, if requested to do so, and the operational requirements around verifying that the requestor is who they say they are. It is considered that the definitions listed can be readily verified by the named organisations.

17. It was considered appropriate to utilise a generic definition of the key familial relationships, for example, parent, child etc., rather than providing statutory based definitions, in order to provide an acceptable level of discretion for the named organisations when considering a request for information under section 6 of the 2014 Act.

⁶ <http://www.legislation.gov.uk/asp/2003/7/section/14>

⁷ <http://www.legislation.gov.uk/asp/2011/7/section/14>

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254459/code-of-practice-victims-of-crime.pdf

18. In considering how to define those persons who are or have been living together with the victim as if they were married, reference was made to how this relationship is defined and measured elsewhere in legislation and related materials to ensure a consistent approach. Section 14(11) of the 2003 Act uses a minimum period of 6 months cohabitation in determining those who can receive information about the release of an offender (operated through the Victim Notification Scheme), where the victim has died, as applied by section 16 of the 2003 Act. Given both section 16 of the 2003 Act and section 6 of the 2014 Act relate to the provision of information to a victim or relative of a victim, it was considered appropriate that the minimum period for cohabitation be defined in the same terms. Furthermore, it was necessary to set out in the instrument a period that would allow the named organisations to verify the relationship and 6 months was considered a proportionate length of time.

Consultation

19. A public consultation paper, “Making Justice Work for Victims and Witnesses”⁹, was published prior to the development and introduction of the Bill for the 2014 Act. This closed in July 2012, and non-confidential responses¹⁰ and an analysis¹¹ are available.

20. In addition, consultation with stakeholders (including various victim support groups and the named organisations affected by the legislation) was undertaken throughout the Bill process, and will continue in relation to the implementation of the 2014 Act.

21. For the purposes of this instrument, as detailed at paragraphs 14 and 15, a targeted consultation with the named justice organisations and various victim support organisations was carried out.

Impact Assessments

22. An Equality Impact Assessment (EQIA) was carried out for the purposes of the Victims and Witnesses (Scotland) Bill (“the Bill”), and it was determined that the Bill would be unlikely to have any significant differential effect on the protected characteristics. In addition, an EQIA was carried out for the purposes of this instrument; the final results of which were in the same terms as the EQIA carried out for the purposes of the Bill and identified no significant differential effect on the basis of the protected characteristics. The results of the EQIA will be published on the Scottish Government website.

23. In terms of Strategic Environmental Assessment and the Scottish Government’s statutory obligations under the Environmental Assessment (Scotland) Act 2005, it is considered that the Order is likely to have no or minimal effects on the environment and can be exempted under Section 7 of the 2005 Act. A pre-screening notification has therefore been submitted to the Consultation Authorities, which once processed will be added to the SEA Database.

⁹ <http://www.scotland.gov.uk/Publications/2012/05/8645/0>

¹⁰ <http://www.scotland.gov.uk/Publications/2012/09/3650/0>

¹¹ <http://www.scotland.gov.uk/Publications/2013/01/8185/0>

Financial Effects

24. A Financial Memorandum was completed for the purposes of the Bill. As this instrument is simply defining relatives for the purposes of section 2 and 6, and not introducing substantive policy, it is not considered to have any significant financial implications on the justice organisations affected.

25. The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate
December 2014

Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1)

Introduction

9. This instrument makes provision to further facilitate the application in Scotland of Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It amends the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929) to make it explicit that an application for an order adapting a measure or order which is contained in a foreign judgment but is unknown under the law of Scotland (an “adaptation order”), or an application to challenge such an adaptation made without an order, must be made to the Court of Session.

10. The instrument comes into force on 7 February 2015.

11. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2015/1/contents/made>

Consultation

12. The policy note on the instrument states that the Scottish Government has worked closely with the Lord President’s Private Office in relation to these Regulations.

Delegated Powers and Law Reform Committee consideration

13. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on 20 January 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

14. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by 23 February 2015.

Policy Note: Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1)

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Policy Objectives

These Regulations make provision to further facilitate the application in Scotland of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast) (“the recast Regulation”).

The recast Regulation is directly applicable in Scotland with effect from 10 January 2015 and applies to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after that date. Therefore, the regulations made under section 2(2) of the 1972 Act only make provision insofar as this is needed to facilitate the application of the recast Regulation.

Regulation 44/2001 (Brussels I) is the bedrock instrument in European judicial cooperation in civil and commercial matters. It establishes common rules on jurisdiction in cross-border disputes; and provides for the mutual recognition and enforcement of judgments. The “recast” of Brussels I, Regulation 1215/2012, repeals and replaces Brussels I. The revision follows a review which sought to update Brussels I and address problems which had emerged since 2001.

The UK opted into the recast Regulation at an early stage, acknowledging the benefits that a streamlined process for the EU cross-border recognition and enforcement of civil and commercial judgments would have for the UK legal economy. Certain aspects of its operation in the UK require secondary legislation under the European Communities Act 1972 to remove inconsistencies in existing UK legislation (most notably the Civil Jurisdiction and Judgments Act 1982 and the Civil Jurisdiction and Judgments Order 2001). Agreement was reached to have Regulations for the whole of the UK, made at Westminster, on the basis that this is the most effective way of ensuring the continuing pan-UK operation of the Brussels Regulation in its recast form. These were made by the Civil Jurisdiction and Judgments (Amendment) Regulations 2014 (S.I. 2014/2947).

Regulations specific to Scotland are also required to make it clear which court is to be concerned in the adaptation of orders and measures under Article 54 of the recast Regulation. Regulation 3 of the Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 amends the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929) (“the 2001 Order”) to make it explicit that an application in terms of Article 54 of the recast Regulation for an order adapting an order or measure which is contained in a foreign judgment but is unknown under the law of Scotland (an “adaptation order”), or an application to challenge such an adaptation made without an order, must be made to the Court of Session.

Consultation

The Rules of Court require to be updated and the Scottish Government has worked closely with the Lord President's Private Office. Rules of Court are made by the Lord President of the Court of Session with the assistance of the Scottish Civil Justice Council.

Impact Assessments

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

No Equality Impact Assessment has been prepared as equality groups are not likely to be adversely affected by these Regulations.

Financial Effects

No financial impact is expected on business.

Scottish Government
Justice Directorate
6 January 2015

ANNEXE A**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee’s web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx>