

PROPOSED POST-MORTEM EXAMINATIONS (DEFENCE TIME-LIMIT) (SCOTLAND) BILL – GIL PATERSON MSP

SUMMARY OF CONSULTATION RESPONSES

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. These three sections have been prepared by the Scottish Parliament's Non-Government Bills Unit (NGBU). Section 4 has been prepared by Gil Paterson MSP and includes his commentary on the results of the consultation.

Where respondents have requested that certain information be treated as "not for publication", or that the response remain anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available on the following website <https://www.postmortemtimelimit.com/>. Responses have been numbered for ease of reference, and the relevant number is included in brackets after the name of the respondent.

A list of respondents is set out in the Annexe.

SECTION 1: INTRODUCTION AND BACKGROUND

Gil Paterson's draft proposal, lodged on 8 January 2019, is for a Bill to:

make the right of defence counsel for a person accused of homicide to instruct a post-mortem examination of the alleged victim subject to an extendable time-limit in order to minimise delays and uncertainty for victims' families.

The proposal was accompanied by a consultation document, prepared with the assistance of NGBU. This document was published on the Parliament's website, from where it remains accessible:

<https://www.parliament.scot/parliamentarybusiness/Bills/110533.aspx>.

The consultation period ran from 8 January to 9 April 2019 (the original closing date of 4 April was extended to 9 April in order to allow for a late response from one organisation).

The following organisations and individuals were sent copies of the consultation document or links to it:

- All 32 local authorities;
- All 129 MSPs;
- Police Scotland;
- Forensic Services, Scottish Police Authority;
- Royal College of Pathologists;
- Crown Office and Procurator Fiscal Service;
- Scottish Courts and Tribunal Service;
- Faculty of Advocates
- Law Society of Scotland;
- Scottish Legal Aid Board;
- Sheriffs' Association;
- Office of the Lord Advocate;
- People Experiencing Trauma and LOSS (PETAL) Support;
- Victim Support Scotland;
- Cruse Bereavement Care Scotland;
- 16 religious groups; and
- Dr Marjorie Turner, Consultant Forensic Pathologist.

Press releases were sent to the national press as well as to two local newspapers in the member's constituency. The consultation was publicised via the member's social media platforms.

The consultation exercise was run by Gil Paterson's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the Parliament's website:

- Standing orders (Chapter 9):
<https://www.parliament.scot/parliamentarybusiness/26514.aspx>
- Guidance (Part 3):
<https://www.parliament.scot/parliamentarybusiness/Bills/25690.aspx>

SECTION 2: OVERVIEW OF RESPONSES

In total, 247 responses were received.

The responses can be categorised as follows:

- 2 (1%) from representative organisations (the Law Society of Scotland and the Faculty of Advocates);
 - 3 (1%) from public sector organisations (the Scottish Courts and Tribunal Service, the Scottish Legal Aid Board, and Police Scotland);
 - 1 from a private sector organisation (Berrymans Lace Mawer); and
 - 241 (98%) from private individuals.
- 69 (28%) were anonymous submissions; and
 - 24 (10%) were “not for publication”.

The vast majority of responses (242) were received via the online survey platform Smart Survey, with an additional five responses sent directly to the member by organisations.

Most respondents were supportive of setting a time-limit for the instruction of a second post-mortem examination, by the defence, in relation to a specific death. The majority of these cited the dignity of the deceased, as well as the impact that delays in post-mortem examinations can have on families as the main reasons for supporting the proposed Bill.

Some organisations noted, however, that the proposal, although well meaning, did not tackle the root causes of the current delays experienced in some cases, namely, the lack of forensic pathologists available in Scotland to carry out post-mortem examinations. Some respondents also suggested alternative approaches that may be successful in tackling these.

Views over when a time-limit for a second post-mortem examination should begin were split; however, most respondents agreed that seven days would be an appropriate time-period for a defence to instruct a second post-mortem.

No specific issues around equalities or sustainability were raised in consultation responses.

SECTION 3: RESPONSES TO CONSULTATION QUESTIONS

This section sets out an overview of responses to each question in the consultation document.

Question 1: The proposed Bill would set a time-limit for the instruction of a second post-mortem examination, by the defence, in relation to a suspicious death. Which of the following best expresses your view of this proposal?

Two hundred and forty-four of those who responded to the consultation answered this question. The vast majority of these respondents (237, 97%) supported the proposed Bill. Only two respondents, both individuals, (1%) were opposed, three individuals and one organisation (1.5%) neither supported nor opposed the proposal, and one respondent was unsure (0.5%).

The main reasons given by those who were supportive of the proposed Bill were:

- dignity for the victim and their family;
- the impact that delays have on family members; and
- to allow family members to choose between an open and closed casket.

In addition, other more general points were made on the proposal and some alternative approaches were suggested. These will be discussed later in this section.

Reasons for supporting the proposed Bill

Dignity for the victim and their family

One of the most common themes amongst those supportive of the proposal was that of dignity, both for the victim and their family.

The member, in his consultation document, referred to the case of Paige Doherty, who was tragically murdered in 2016. In her response to the consultation, Paige's mother, Pamela Munro, stated that she felt that the proposal would –

“help maintain the dignity of a victim and help families have time to spend with a loved one.” (Response 1, ID: 103766771)

Similar sentiments were expressed by numerous respondents with several noting that everyone should be treated with dignity in death.

Louise Tricker, in her response, noted that the proposal would allow for grieving families to make arrangements for a dignified send-off for their loved one, at a time of their choosing and not at a time dictated by a legal process (Response 91, ID: 103815767).

Another respondent, Beth Christopherson, concluded that the—

“death of a loved one is always devastating, but the sudden or unexpected death due to negligence/accident/homicide is something no one is prepared for. The family needs to be able to say goodbye in whichever way best suits them ... I cannot imagine what it must feel like to have to leave your loved one in a mortuary for weeks on end. Everyone deserves dignity and respect, even in death and at present the law does not allow that.” (Response 117, ID: 103832483)

It is clear from the vast majority of responses received from members of the public that the dignity of the deceased and their family is considered to be of paramount importance and that many consider that the proposal would help to maintain that dignity during difficult circumstances.

The impact on family members

Another common theme was the view that the current situation, where family members are unable to make funeral arrangements or even in some cases to view the body, for significant periods of time whilst awaiting a second post-mortem, can have a devastating impact on a bereaved family. Several respondents also commented on the deterioration of the deceased whilst being kept in a mortuary for long periods of time and the consequent impact that can have on family members.

Lynsey Blaney stated that—

“we were unable to bring my brother home to spend one last night in his own home due to the amount of time it took for his body to be released ... processes should be in place which mean that only one post-mortem should have to take place. The families and the victims of these cases have been through enough without this added intrusion and upset.” (Response 112, ID: 103827665)

Another respondent, Fiona Macaulay, noted that—

“a lengthy drawn out process is far too damaging for family members of the deceased, who can already be suffering greatly. A victim centred approach should be taken.” (Response 200, ID: 103928367)

Most of the responses received illustrated how traumatic and distressing it is to lose a loved one in these circumstances and how this can be exacerbated further by delays and uncertainty around when they can see their loved one and when they can lay them to rest. Again, most individual respondents to the consultation believed that the proposal would help to address this, although some of the organisations that responded took a different view, which is discussed at the end of this section.

To allow family members the choice between having an open or closed casket

Closely linked to the above section on the impact on family members, is the removal, in some cases, of a choice between an open and closed casket. For many families, having the body of their loved one home prior to the burial or cremation and having an open casket at the funeral, are a big part of their cultural tradition, as well as part of their grieving process.

There was a view expressed by many that long delays in carrying out second post-mortems had significantly impacted upon families making funeral arrangements in line with their cultural traditions. Gillian Dempster, in her response (Response 47, ID 103799478) said that she had lost a relative to murder and, as a result of the second post mortem, family members were not able to see their loved one and that the body deteriorated rapidly, resulting in a closed casket at the funeral.

This theme recurred repeatedly in many of the responses, highlighting the importance placed on an open-casket funeral by many of those who responded. It also showed how devastating it can be for families when they are unable to do so as a result of decomposition following a long delay awaiting a second post-mortem.

Reasons for opposing the proposed Bill

Although two respondents stated that they were opposed to the Bill, they gave no specific reasons for their opposition.

Other general points made

Some organisations' responses made wider points about the overall aim and approach of the proposal. The Law Society of Scotland (LSS) noted that although it was partially supportive of the proposal—

“evidential requirements need to be respected to ensure that in the event of any future criminal proceedings taking place that the best evidence is secured and can and will be available for all to use, as required, in court.” (non-Smart Survey, organisation response 005)

A similar point was made by the legal firm Berrymans Lace Mawer (BLM) which believed that the proposal—

“though well-meaning, has potential to bring unwelcome consequences for justice. Those accused of crime have a right to a fair trial. If that is jeopardised, then the consequences may be unwelcome for society as a whole.” (non-Smart Survey, organisation response 006)

One of the main points made by three of the organisations was that the proposal, though well meaning, did not tackle the root cause of the problem. The Faculty of Advocates in its response stated that—

“delayed instruction of defence post-mortems is a direct result of a dearth of forensic pathologists available and willing to accept instructions and to carry them out and prepare reports.” (non-Smart Survey, organisation response 001)

A similar point was made by legal firm BLM, and by the LSS which said that—

“defence solicitors frequently experience difficulty in instructing pathologists, particularly away from the central belt. This can compound matters when the deaths take place in more remote areas or where specialist pathologists may be required where the expertise lies in England and Wales.” (non-Smart Survey, organisation response 005)

Both the LSS and Police Scotland noted that the circumstances surrounding post-mortems in cases of homicide were rarely straightforward. LSS pointed out that additional delays could be caused when an accused person had not been identified, or when there was more than one accused, each with their own defence solicitor.

Police Scotland, which was neutral on the aim and approach of the proposal, also noted circumstances where further investigations might be needed after the first post-mortem such as—

- “Body part murders – where it is necessary to retain the body parts until all or most are recovered to establish a cause of death
- Inconclusive PME – where a pathologist cannot commit to a cause of death even after a PME and more investigation is required
- Suspect status issues – where a suspect has not been charged or identified or has been arrested but not charged
- Suspects held in hospitals – where for mental health or other treatments, suspects cannot competently instruct defence council”
(non-Smart Survey, organisation response 003)

In summary, LSS stated that—

“if there was an imposition of a strict time limit to be introduced that could pose significant difficulties.” (non-Smart Survey, organisation response 005)

Alternative approaches

One general point raised on the general principles of the proposed Bill was around the recently introduced protocol formulated by the Lord Advocate, which aims to ensure that defence pathologists are in contact with the Crown pathologists and are aware of the particular issues that arise from the post-mortem. Forensic pathologist Dr Marjorie Turner, who responded in a personal capacity (Response 238, ID: 110811612), noted that, as a result of the introduction of this new protocol, in most cases, a second physical examination is not required.

LSS was also fully supportive of this protocol and suggested that one way to address the issues currently being faced could be to make the protocol “a legal requirement.”

The Faculty of Advocates also presented some alternative solutions to those in the proposed Bill, suggesting that—

“upon completion of the Crown post-mortem, a defence post-mortem is instructed from a panel of forensic pathologists overseen by their professional body the Royal College of Forensic Pathologists (RCFP) irrespective of whether a suspect has been identified or not.”

It then expanded on this by stating that—

“the instruction could emanate from the Court if there is no suspect, or, if a suspect has been identified, from the defence solicitor representing that person. Such an approach has the advantage of avoiding delay as a result of the lack of an identified suspect or, where there is a suspect, defence solicitors being unable to secure a pathologist.”

The Faculty suggested that, should this model be introduced, it should be accompanied by time limits—

“in the event that a suspect has been identified by the time of the Crown post-mortem, a defence post-mortem should take place within 21 days thereof. Where no suspect has been identified the Court should appoint a second post-mortem to take place within 28 days of the Crown post-mortem and the body could be released thereafter.” (non-Smart Survey, organisation response 001)

Legal firm BLM agreed with the above suggestion from the Faculty of Advocates in their response (non-Smart Survey, organisation response 006).

The idea of a court-appointed pathologist was also suggested by Dr Marjorie Turner, who noted that, when families face a long delay, it is often because an accused person has not yet been identified—

“whilst it would not be without its difficulties, consideration could also be given to e.g. a court appointed forensic pathologist undertaking an examination in these deaths. Whilst this removes any choice from a subsequent accused, as the number of forensic pathologists who agree to undertake this work is very limited in any case this may not be a major issue.” (Response 238, ID: 110811612)

Question 2: Which of the following best expresses your view of when any time-limit should begin?

The consultation document suggested three main options for when a time-limit for a second post-mortem examination (PME) should begin;

- On the day after the Crown PME is completed – and with no time-limit in a situation where, at the time, there is no accused person;
- On the day after the Crown PME is completed, or when defence counsel is appointed for an accused person, whichever is later; and
- On the day after the results of the Crown PME are provided to defence counsel, or when defence counsel is appointed for an accused person, whichever is later.

Respondents were also given the option to suggest another alternative or to select “unsure”.

Two hundred and forty-four respondents answered this question.

On the day after the Crown PME is completed – and with no time-limit in a situation where, at the time, there is no accused person

Seventy-seven of those who responded to this question (32%) selected this option, with most stating as their rationale that they would want their loved one home as soon as possible.

This option, however, allowed for “no time limit” on a second post-mortem examination in a situation where, at the time, there was no accused person. This does not appear to be reflected in any of the respondents’ comments, which all related simply to bringing their loved one home as soon as possible.

On the day after the Crown PME is completed, or when defence counsel is appointed for an accused person, whichever is later

Sixty of those who responded (25%) selected this option.

Pamela Munro, mother of Paige Doherty, whose case was discussed earlier in this summary, selected this option. She believed that—

“as soon as a defence is appointed a post-mortem should take place, or a date put in place ... so that families have time to plan what comes next.” (Response 1, ID: 103766771)

This echoed the sentiments of many of the responses to Question 1, where the impact on the family was cited as one of the main reasons for supporting the proposed Bill.

It was noted by Dr Marjorie Turner that, should this approach be taken, it should not be too difficult to establish timescales, as—

“with the current practice the pathologist for the defence is not approached until defence counsel/solicitor is appointed and this could be some time after the Crown PME. Thereafter the time limits should in most circumstances be achievable, as what is required is a draft Crown post-mortem report and the photographs.” (Response 238, ID: 110811612)

Police Scotland also agreed that this option would be most appropriate as the setting of a time limit in this way—

“would provide clear timescale and a framework within which decisions around defence PMEs could be taken quickly.” (Police Scotland, non-Smart Survey, organisation response 003)

On the day after the results of the Crown PME are provided to defence counsel, or when defence counsel is appointed for an accused person, whichever is later

Forty-one of those who responded using Smart Survey (17%) selected this response. The reasons given for selecting this option were broadly similar to those for the previous two options, namely dignity for the deceased and the impacts that delays have on family members.

Other/Unsure

Eighteen (7%) of those who responded to this question selected “other” and 47 (19%) selected “unsure”.

Several of these respondents simply felt that a second post-mortem examination, should one be needed, should be completed as soon as possible, with others stating that the second post-mortem should be done on the same day as the Crown PME.

One anonymous respondent argued that there should be a time limit imposed for both the Crown and defence PMEs to—

“ensure that the body is in a fit state to be viewed by the family and also to ensure that the process does not linger on with the family in limbo and not being able to make funeral arrangements.” (Response 58, ID: 103797338)

Some respondents also made similar suggestions to those of the Faculty of Advocates previously discussed, suggesting that a second independent pathologist, instructed by the Crown, could conduct a second PME, the results of which could be made available to the defence rather than a defence solicitor making these arrangements.

Although selecting “unsure” LSS noted in its response that—

“it would be appropriate to set a time period that has regard to the date of the accused person’s first appearance in court rather than taking the date of the Crown’s post-mortem examination as the starting point for the calculation of time limits.” (non-Smart Survey, organisation response 005)

LSS based this on the assumption that the Crown PME should have taken place by the time that an accused appeared in court. It was also of the view that, where no accused had been identified, no time limit should be put in place.

Question 3: How long a time-period do you think should be available to the defence in which to instruct a second PME?
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The consultation document suggested four different options for a time period for the defence to instruct a second post-mortem examination:

- 7 days (1 week);
- 14 days (2 weeks);
- 21 days (3 weeks); and
- 28 days (4 weeks).

Respondents also had the option of selecting “other”, allowing them to present their own ideas on a time limit for a second PME should they wish to.

Two hundred and forty-four of those who responded to the consultation answered this question.

7 days (1 week)

One hundred and sixty-six (68%) of those who responded to this question were supportive of the time period of one week for the defence to instruct a second PME. Most respondents felt that the family of victims had already suffered enough without then facing a delay in being able to lay their loved one to rest. This view echoed many of the comments given in response to question one, where the dignity of the deceased and the impact on loved ones were given as the main reasons for supporting the proposed Bill.

14 days (2 weeks)

Forty-nine (20%) of those who responded felt that two weeks would be a reasonable time period for the defence to instruct a second PME.

As previously discussed, the member referred to the case of Paige Doherty in his consultation document and the length of time her family had to wait for a second PME to be conducted. In her response, Paige's mother, Pamela Munro, suggested that a 14-day time limit was reasonable for all those involved, given the pressures that the system is currently under—

“It is understandable that there are other factors in the process and Scotland is limited in their pathologists so to accommodate work hours and other related circumstances I believe 14 days is sufficient.”

She also noted that two weeks would be appropriate as it would allow for family members to take their loved one home or to view the body if they wished to—

“there was still hope Paige could've come home at that point so therefore I think that time scale is very reasonable on both sides.” (Response 1, ID:103766771)

21 days (3 weeks)

Seven (3%) of those who responded were of the view that three weeks was a suitable time limit.

As already discussed, some respondents made the point that delays can sometimes occur due to the lack of forensic pathologists in Scotland. Dr Marjorie Turner argued that taking this fact into account, allowing a three-week timescale would be appropriate, noting however that there might still be a need to extend this timescale in some circumstances (Response 238, ID:110811612).

LSS and Police Scotland also agreed that 21 days was an appropriate period, as this would allow for pathologists acting for the defence to be secured and for the PME to be carried out.

28 days (4 weeks)

Seven (3%) of those who responded to this question were in support of 28 days being set as a timescale.

Other

Fifteen respondents (6%) expressed “other” views including a time limit of the same day, limits of between one and three days (20 to 72 hours), and the view that a second PME should not be required at all as the Crown PME should be sufficient.

As discussed previously, the Faculty of Advocates suggested an alternative approach to the current system. They argued that, should this model be introduced, it should be accompanied by time limits which should be dependent on whether an accused has

been identified: 21 days where a suspect has been identified, and 28 days where no suspect has been identified.

Question 4: The proposed Bill would allow the defence to apply to the courts for the time limit to be extended by up to the same amount as originally allowed, and on more than one occasion. Which of the following best expresses your view of this element of the proposal?

The consultation document suggested several options for the defence to apply to the courts to extend the original time limit discussed in the previous question. These options were as follows.

- there should be no scope for extension of the time-limit;
- there should be scope for only a single extension (shorter than the original period – please specify);
- there should be scope for only a single extension (no longer than the original period) There should be scope for repeated extensions (each shorter than the original period – please specify);
- there should be scope for repeated extensions (each no longer than the original period);
- there should be no time-limit (and so no need for any extension); and
- other (please specify).

There were 243 responses to this question.

There should be no scope for extension of the time-limit

One hundred and twenty-nine (53%) respondents felt that there should not be any scope for an extension of the time limit for a second PME to take place. Many respondents felt that, if proper procedures were followed, then there should be no requirement for a second PME and the defence should not have a right to request one.

Similar to the views expressed in responses to Question 1, many raised concerns for the victims' family and loved ones should there be a long wait for a second PME, noting the impact that this can have on families when they should be able to say goodbye to their loved ones as soon as possible.

There should be scope for a single extension (shorter than the original period – please specify)

Forty-one (17%) of those who responded to this question were of the view that there should only be scope for a single extension, shorter than that the original period.

Some believed that a short extension ranging between two and seven days could be granted; however, such an extension should only be permitted in exceptional circumstances.

Other respondents felt that a short extension should only be granted if a pathologist was unavailable within the initial time period.

There should be scope for only a single extension (no longer than the original period)

Forty-five of those who responded via Smart Survey (19%) selected this response.

A number of respondents felt that an extension should only be permitted in exceptional circumstances to prevent further upset to the family and loved ones of the victim.

In her response, Dr Marjorie Turner agreed that 21 days was an appropriate timescale for a second PME to take place. She provided examples of where a target such as this might not have been achievable prior to the introduction of the new protocol around PMEs, but noted that, since the introduction of this protocol, there should not be a need for significant extension—

“... the main instances where 21 days would not be achievable would be where the Crown and/or defence pathologist were absent for a significant part of the period or where, as was a significant problem before the new protocol, a second examination is required and there are difficulties in finding capacity/time to do so with travel to other parts of the country required. Neither of these should require longer than this period.” (Response 238, ID:110811612)

There should be scope for repeated extensions (each shorter than the original period – please specify)

Only one respondent selected this option and did not provide a reason as to why they had done so.

There should be scope for repeated extensions (each no longer than the original period)

Five of those who responded (2%) selected this option. Two of these individuals felt that offering extensions would be acceptable in the interests of justice, and one respondent made the point that each situation is different and must be dealt with on a case by case basis.

There should be no time-limit (and so no need for any extension)

Eighteen respondents (7%) selected this option. It should be noted, however, that some of the views expressed related more to option one (there should be no scope for extension to the time limit).

Other (please specify)

Four of the individuals who responded to this question selected this response (2%).

Police Scotland considered “that a time limit extension should be allowed”, but noted that—

“if an extension is required the reasons for such should be brought before a court to examine the facts and circumstances and ensure the length of any

extension is proportionate and justified.” (non-Smart Survey, organisation response 003)

LSS noted that members of its Criminal Law Committee held differing views with regard to this question—

“There was support for a single extension [and] there was also support for repeated extensions if a time limit were to be introduced as proposed. We stress that what needs to be considered is to provide enough time for the defence solicitor to decide that a defence post mortem is required and can arrange for it to be undertaken. Setting a single extension may be problematic as there should be no fettering of the required investigations if a defence post mortem needs to be carried out. The preferred outcome would be for any defence post mortem to be carried out within the 21-day period. That does however depend on factors out with the control of the defence solicitor in that there needs to be a pathologist available, legal aid in place and the practical arrangements for the post mortem examinations to be carried out.” (non-Smart Survey, organisation response 005)

Question 5: Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

- (a) Crown Office and Procurator Fiscal Service (COPFS)**
- (b) Scottish Courts and Tribunal Service (SCTS)**
- (c) victims’ families**
- (d) the accused/defence**

Two hundred and forty-four of those who responded answered this question.

Crown Office and Procurator Fiscal Service (COPFS)

Forty-one of those who responded to this question (17%) thought that there would be an increase in costs to COPFS. Increased administrative costs were noted, as well as costs associated with additional time being spent in court to arrange extensions to time limits.

Forty-five (18%) believed that the proposal would be cost neutral for COPFS. Some argued that any additional costs may be balanced out by less court time being wasted or by new streamlined processes being put in place.

Seventy-nine (32%) believed that there would be a reduction in cost for COPFS. It was noted that the proposal would allow for cases to be dealt with more quickly, allowing the system to become more efficient and cost effective.

Seventy-six (31%) were unsure of the financial impact of the proposal. Some respondents felt that they did not have enough knowledge of the costs involved in the court or prosecution process. Other respondents commented that costs should not be a deciding factor in having a PME completed in a timely manner for the benefit of the families of the victims.

Scottish Courts and Tribunal Service (SCTS)

Forty of those who responded (16%) believed that there would be an increase in costs to the courts.

In its response, the Scottish Courts and Tribunal Service noted that it would—

“expect there to be some impact on the SCTS in terms of; court time and relative court programming, associated staff and accommodation resources, [and] costs involved in relevant IT changes”.

It then went on to state, however, that—

“it is likely that the number of applications to the court will be fairly minimal and therefore be accommodated within the current court programme.” (non-Smart Survey, organisation response 002)

Forty-nine (20%) believed that the proposed Bill would be cost neutral to the courts if the Bill resulted in a less protracted process.

Other respondents were of the view that any cost increases should be passed on to the defence, therefore making the proposal cost neutral to SCTS.

Seventy-five (31%) believed that there would be a reduction in costs for the SCTS. Most respondents felt that a reduction in court time and a decrease in the number of court applications could result in a reduction in costs.

Seventy-seven (32%) were unsure of the financial impact of the proposal for the SCTS, with some noting that they did not have enough knowledge of the costs involved in the court process, in order to be able to give a substantive answer to the question.

Victims' families

Twenty of those who responded (8%) believed that the proposed Bill would result in an increase in costs to the families of victims. These individuals did not, however, provide any rationale for their selection.

Forty-two respondents (17%) thought that the proposed Bill would be broadly cost-neutral for the families of victims. Some felt that it would not affect the costs involved for the families of victims, whilst others felt that the speeding up of the process involved with ordering PMEs, would help keep the costs down.

Seventy-nine (32%) believed that there would be a reduction in costs for the victims' families. Some felt that savings may come about by reducing the amount of time involved in the process. Pamela Munro (Response 1, ID:103766771) made the point that by speeding up the process involved with regard to PMEs, family members could return to work earlier.

Ninety-nine respondents (41%) were unsure whether the proposed Bill would have any financial impact on the victims' families. Some explained that they did not have

enough knowledge of the costs involved in the court or prosecution process. Others commented that costs should not be a deciding factor in having a PME completed in a timely manner for the benefit of families of the victims.

Additionally, LSS stated that the reason it had selected this option was because any possible financial implications for victims' families could depend on whether the families needed to be represented at court hearings and if legal aid was available.

The accused/defence

Sixty-two of those who responded (25%) thought that the proposed Bill could lead to an increase in costs to the accused/defence. Several respondents commented that they felt that the onus should be on the accused/defence team to meet any increase in costs, if a second PME was requested.

LSS noted in its response where an increase in costs could arise—

“These costs would presumably include legal aid in connection with the accused’s representation. The increase in cost both to the courts and to the accused/defence stems from the fact that an application for an extension would involve an appearance in court before a Sheriff. There would be time in preparing such an application and the need to hear parties at the hearing. There would be a question as to whether the family would be present or represented as this would affect where the hearing was to be held i.e. whether in open court or in private.” (non-Smart Survey, organisation response 005)

Police Scotland believed there would be some increase in costs for the accused/defence. (non-Smart Survey, organisation response 003)

Forty-five (18%) of those who responded were of the view that the proposed Bill would be cost-neutral for the accused/defence. Some respondents questioned why reducing the time frame would have any effect on costings.

Thirty-five of those who responded (14%) believed there might be a reduction in costs for the accused/defence. Some felt that a more efficient process would result in less court time, leading to less paperwork and money spent on lawyers' fees.

Ninety-nine of those who responded (41%) were unsure whether the proposed Bill would have any financial impact on the accused/defence.

Question 6: Are there ways in which the Bill could achieve its aims more cost-effectively (e.g. by reducing costs or increasing savings)?
--

Seventy-five respondents answered this question.

The majority believed that setting a stricter timescale would help to save money, citing an overall more efficient process, reducing costs for all involved.

As discussed on page 7, the Faculty of Advocates suggested in its response a way to improve the current system, and one respondent (David Logan, Response 237,

ID:109782103) agreed that this suggestion would allow the aims of the Bill to be achieved more cost-effectively.

Police Scotland in its response questioned the need for a defence PME at all, noting that rather than setting a time limit for defence PMEs—

“the time is right to consider the need or requirement for a defence PME to take place at all ... activities at PMEs are captured through photography and notes/reports are taken and produced in disclosable formats, which can and are disclosed to the defence.” (non-Smart Survey, organisation response 003)

Question 7: What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?

There were two hundred and thirty-eight responses to this question.

Positive and slightly positive

One hundred and twenty-nine of those that responded to this question (54%) felt that the proposed Bill would have a positive or slightly positive impact on equality. Some respondents noted that the proposal would have a positive impact for the families and loved ones of victims, noting that by quantifying any potential delay, families could make funeral arrangements sooner and begin the grieving process.

Others said that the proposed Bill would promote equality by preventing undue delays, ensuring that families are able to have an open casket funeral for their loved one if that is their wish or cultural tradition.

Similarly, it was noted that some cultures/religions have specific traditions around when someone should be buried/cremated and that a long delay in a second post-mortem can impact upon this. It was noted by some respondents that by imposing a time limit on second PMEs this impact could be lessened.

Neutral

Eighty-five of those who responded to this question (35%) felt that the proposed Bill would have a neutral effect on equalities. The majority of respondents commented that they could not see how the proposed Bill would have any impact on equality.

Unsure

Twenty-three (10%) were unsure as to the impact that the proposed Bill would have on equalities.

In its response LSS recognised—

“that there are implications for the timescales for holding post-mortem reports where cultural observance issues are relevant. There is a need to ensure that

effective communication is made as it is not always possible to adhere to these requirements when there is a requirement for a post mortem to be carried out.” (non-Smart Survey, organisation response 005)

The Society then went on to note that, through effective communication, it should be possible for families’ wishes to be taken into account where possible.

Negative

Only one individual expressed the view that the proposed Bill would have a negative impact on equalities but did not give any reasons.

Question 8: In what ways could any negative impact of the Bill on equality be minimised or avoided?

Sixty-two of those who responded to the consultation answered this question, but their comments were mostly about how they did not feel that the proposed Bill would have any negative impact on equality. Indeed, most felt that the proposed Bill would make it fairer on the families of victims by ensuring that there were no unnecessary delays in carrying out post-mortem examinations.

Question 9: Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Two hundred and thirty-nine respondents answered this question.

One hundred and ninety-six of those (82%) were of the opinion that the Bill could be delivered sustainably. Most felt that the Bill would be of social benefit to the families of victims. Lynda Greig commented that—

“The Bill will improve the social impact for the family of the deceased allowing them a chance to say goodbye to their loved ones allowing them to continue with their life.” (Response 182, ID:103840845)

Some respondents, such as David Logan, believed that the proposed Bill could also lead to a potential reduction in public spending, noting that—

“there would be minimal overall cost implications if the Bill was implemented. Such additional costs (e.g. legal aid fees) would be off-set by the increased social benefit to relatives of deceased in knowing when the body of the deceased can be returned for funeral purposes.” (Response 237, ID:109782103)

Four respondents (2%) stated that they did not believe that the Bill could be delivered sustainably. These individuals did not, however, provide any commentary to support this view.

Thirty-seven respondents (15%) stated that they were unsure as to whether the proposed Bill could be delivered sustainably. Again, no additional comments were made by those who selected this option.

Question 10: Do you have any other comments or suggestions on the proposal?

Seventy-one of those who responded provided other general comments or suggestions on the proposal.

Again, most individuals who responded to this question expressed the view that the proposed Bill would help families who have lost loved ones as it would expedite the process involved should there be a request for a second PME.

It was noted that the proposal would help to strike a balance between the needs of the COPFS, the SCTS and the defence, and the emotional needs of the victim's family, ensuring they are able to hold a funeral for their loved one within a much shorter period of time after the death.

Pamela Munro believed that setting a time limit was the only way in which the process could be expedited for families in the event that a second PME is required—

“I fully believe that a second post mortem is only required in certain cases. In a case where the evidence is so clear it should be avoided. There should be other ways such as a recorded post mortem with impartial pathologists ... that way they have the recording to refer back to and the process is done a lot quicker, victims' dignity maintained, and families get to say goodbye to a loved one. However, after lots of research we understand this will never be possible so we came up with a compromise of setting a time limit and can't see any reason why this shouldn't be in place.” (Response 1, ID:103766771)

As previously discussed, Dr Marjorie Turner suggested that consideration should be given to permitting the Court to appoint a forensic pathologist in cases where no accused has been identified as this could prevent unnecessary delay in the release of the victim's body to the family.

Police Scotland, however, stated that the proposal could impact negatively on the families and loved ones of victims—

“the process proposed may impact detrimentally on families rather than supporting them in a difficult situation. We consider that this process may result in this sensitive issue becoming more cumbersome, more challenging and causing additional distress for families.” (non-Smart Survey, organisation response 003)

BLM expressed concern that the proposal could impact negatively on the right to a fair trial for those accused of committing a crime but noted that the proposal is to be welcomed as a means to allow for the root causes of the current issues to be discussed.

SECTION 4: MEMBER'S COMMENTARY

Gil Paterson MSP has provided the following commentary on the results of the consultation, as summarised in sections 1-3 above.

Firstly, I would like to thank Pamela Munro, the mother of Paige Doherty, for her strength and resilience throughout the process leading to this proposal for a Member's Bill.

My thanks also go to the numerous organisations and individuals who met with me and assisted me in the run up to and during the consultation period, not least Nicola Sturgeon, First Minister of Scotland, who met with Paige Doherty's family and myself; Chief Superintendent Grant Manders, Divisional Commander, Argyll, Bute & West Dunbartonshire Police Scotland; David Harvie QC, Crown Agent & Chief Executive, Crown Office & Procurator Fiscal Service; Dr Marjorie Turner, Consultant Forensic Pathologist (Forensic Medicine), University of Glasgow; Gordon Jackson QC, Dean of the Faculty of Advocates, and the Law Society of Scotland.

In addition, many thanks to every organisation and individual who responded to the consultation survey. I am grateful so many people took the time to respond.

Last, but by no means least, I would like to put on record my thanks to the Scottish Parliament's Non-Government Bills Unit for their professionalism and consistent support in formulating the Bill proposal.

This proposed Bill addresses the specific situation, in relation to a second post-mortem, where a suspect has been charged and a defence solicitor appointed, it does not attempt to address the circumstance where no suspect has been charged.

Currently Scotland is the only legal jurisdiction I'm aware of that affords an automatic right to a double-doctor post-mortem where two forensic pathologists carry out and verify the post-mortem examination. This would suggest that not having a second post-mortem on demand is not a barrier to a fair trial.

I very much welcome the protocol for instructing defence post-mortem examinations recently introduced by the Crown Office and Procurator Fiscal Service (COPFS) and raised by several respondents. The protocol, which is based on the Paige Doherty case, was brought about as a result of dialogue with the Cabinet Secretary for Justice throughout the run up to this proposal. However, without a time-limit, the same difficulties that arose in the Paige Doherty case could reoccur. Including a time-limit and combining it with a right to extend the limit, will enhance and complete the effectiveness of the protocol.

Another point raised during the consultation was the limited number of forensic pathologists available in Scotland. I acknowledge this problem, but also recognise it is not something that legislation can fix. Nevertheless, I believe the Bill will make better use of this scarce resource and call on the Scottish Government to do what it can through non-legislative means to increase the pool of forensic pathologists. Indeed, the adoption of a time-limit in conjunction with the COPFS protocol should ease the pressure on forensic pathology services.

As the consultation has demonstrated widespread support, I will now pursue my proposed Bill, hopefully with the support of my Parliamentary colleagues and that of the Scottish Government. If successful it will provide much needed clarity and certainty for all those involved in these tragic cases, not least families and loved ones of the victim.

Gil Paterson MSP

**Gil Paterson MSP – Proposed Post-Mortem Examination (Defence Time-Limit)
(Scotland) Bill (lodged 8 January 2019)**

List of responses of responses from individuals

Responders that selected “not for publication” in their response have not been included in this table.

	ID Number	Name
1	103766771	Pamela Munro
2	103771930	Anonymous
3	103772201	Michelle Rooney
4	103772937	Kelly Martin
5	103773689	Marie Claire McKell
6	103773711	Anonymous
7	103774521	Linda Sutherland
8	103773778	Janet Hutchison
9	103775427	Vickie Reilly
10	103772472	Elaine Cavana
11	103775558	Kylie Stevenson
12	103776737	Hannah Wallace
14	103777898	Nicola Storrie
15	103777738	Lisa Blair
16	103778439	Chris Gibbons
17	103776733	Tracy Mackenzie
18	103779219	Deborah Lafferty
19	103779666	Kirsty Maclean
20	103780614	Donna Byrne
21	103780186	Anonymous
22	103782437	Anonymous
23	103776675	Anonymous
24	103786539	Anonymous
25	103785371	Amanda Watson
26	103790105	Lynn Kelly
27	103790385	Ashley Auld
28	103790530	Anonymous
29	103793849	Michelle Leitch
30	103794055	Kellyjane Laird
31	103793157	Natasha McHugh
32	103796070	Ruth Smith
34	103796712	Irene Neilson
36	103797396	Robyn Somerville
37	103796752	Lindsay Camus
38	103797826	Anonymous
40	103797832	Stacey Quinn
41	103797691	Carolynn
42	103798214	Anonymous

43	103797770	Sharon Mclafferty
45	103797578	Gordon McPhail
46	103798600	Connor Beattie
47	103799478	Gillian Dempster
48	103799448	Anonymous
49	103799684	Hannah Lindup
50	103799811	Georgia Henry
51	103798556	Melissa Lewis
53	103799851	Anonymous
54	103798580	Georgina Sharpe
56	103801017	Kerry Starrs
57	103801024	Emma Crooks
58	103797338	Anonymous
59	103800257	Kimberley Anderson
60	103802304	Anonymous
61	103801231	Yvonne Salton
62	103802395	Kirsty
63	103803514	May Coccozza
64	103803197	Veronica Haughey
65	103803512	Christina Adamson
66	103803393	Chloe
67	103804458	Anonymous
68	103804113	Anonymous
69	103804009	Alexandra Prior
70	103806510	Anonymous
71	103806541	Joann Dalziel
72	103809571	Anonymous
74	103809097	Heather Jackson
76	103809752	Anonymous
77	103807952	Anonymous
78	103809739	Kevin Miller
79	103812004	Anonymous
80	103812242	Anonymous
81	103812298	Kevin Bowman
82	103812284	Anonymous
83	103813793	John Byrne
84	103814861	Anonymous
86	103815509	Carole Donlin
88	103816714	Pamela Meikle
89	103817211	Tam Preston
90	103817387	Linda Allan
91	103815767	Louise Tricker
92	103818634	Sandra Smyth
93	103818778	Stephanie Fielding
94	103820456	Kayleigh Mcinally
95	103820570	Anonymous
96	103821106	Wendy Carrigan
97	103822261	Anonymous

98	103823070	Anonymous
99	103824173	Bella Dickson
100	103824296	James Brown
101	103825310	Amanda Howe
102	103825810	Anonymous
103	103826143	Anonymous
104	103826045	Alison Butler
105	103826172	Theresa Cuthbertson
106	103826564	Anonymous
108	103828545	Sharon Sweeney
109	103829225	Lorraine McPhail
110	103832270	Anonymous
111	103832332	Senga Bain
112	103827665	Lynsey Blaney
113	103832462	Lisa Marshall
114	103832362	Anonymous
115	103832597	Anonymous
116	103832704	Anonymous
117	103832483	Beth Christopherson
118	103832856	Susan Campbell
119	103832956	Anonymous
120	103833061	Diane Patterson
121	103833245	Anonymous
122	103832889	Anonymous
123	103832773	Kelly Swanston
124	103833287	Andrina Dickson
125	103832750	Anonymous
126	103833228	Linsey Devlin
127	103832901	Natalia Wylie
128	103833397	Anonymous
129	103833270	Debra Hamilton
130	103833095	Anonymous
131	103833379	Kat Webater
133	103833677	J Muir
134	103833774	Anonymous
135	103833947	Teri Ross
136	103833906	Anonymous
137	103834078	Eleanor McIntyre
138	103834625	Jane McLaren
139	103833765	Michelle Rodger
141	103834196	Linda Neilson
142	103834661	Laura Campbell
143	103835087	Anonymous
144	103834608	Anonymous
145	103834827	Tracy Kelly
147	103834915	Julie Brady
148	103835449	Anonymous
149	103835360	Eileen Spiers

150	103834669	Laura Houston
151	103835644	Anonymous
152	103835670	Alison Lindsay
153	103835713	Donna Yates
154	103835751	Anonymous
155	103835841	Sheree
156	103835818	Anonymous
157	103835759	Stephen Wylie
158	103835994	Katrina Dunlop
159	103836155	Anonymous
160	103835001	Anonymous
161	103836294	Murray Forbes
163	103836801	Stephanie Lawrie
164	103836578	Anonymous
165	103837167	Amanda Millar
167	103837533	Hollie
168	103837598	Mrs M Thomson
169	103837514	Patricia Bowman
170	103838480	Anonymous
171	103838498	Anonymous
172	103838822	Anonymous
173	103839516	Eileen Gilmour
174	103839307	Anonymous
176	103839597	Anonymous
177	103839765	Sharon Cameron
178	103840051	Anonymous
179	103840278	Sarah Marquis Metzstein
180	103840289	Mary Love
182	103840845	Lynda Greig
184	103841637	Jennifer Bredin
185	103843028	Caroline O'Reilly
186	103845334	Cara Wright
187	103846218	Leeanne Martin
188	103853821	Anonymous
189	103862558	Ann Alexander
192	103872985	Debra McEwan
193	103881590	Anonymous
194	103858133	Leigh Murphy
195	103898920	Lauren Ferguson
196	103908639	Nicole McManus
198	103922861	Christina McCann
199	103925910	Jill Waugh
200	103928367	Fiona Macaulay
201	103930294	Sandra Graham
202	103938246	Anonymous
203	103938773	Roseanne McKee
204	103939210	Anonymous
205	103939502	Margaret Armstrong

206	103941639	Leanne
207	103949808	Anonymous
208	103960845	Raquel
209	103964031	Karen Adams
210	103972022	Eilidh Allan
211	104004596	Caroline Bayliss
212	104006494	Anonymous
213	104013318	Andrew Munro
214	104024516	Stefania Gradini
215	104026170	Phillip Leonard
216	104026415	Gemma Curley
217	104028388	Anonymous
218	104031786	Diane Davis
219	104037014	Miss Laura Anne Eadie
220	104051850	Anonymous
221	104076191	Stuart White
222	104081647	Rachel Kyle
223	104086176	Anonymous
224	104089828	Anonymous
226	104092502	Jane Robson
227	104103868	Gillian Connelly
228	104210114	Gillian Glancey
229	104248034	Sheena McCulloch
230	104344797	Cara
231	105044383	David Baillie
232	105297950	Ian Robert Rankine
233	105432529	Pauline Blake
235	106738013	Anonymous
236	108143084	Anonymous
237	109782103	David Logan
238	110811612	Marjorie Turner
239	112011299	Rona Mackay MSP
240	112293884	Cheryl Peden
241	113061501	Anonymous

List of responses from organisations

001	Faculty of Advocates
002	Scottish Courts and Tribunal Service
003	Police Scotland
004	Scottish Legal Aid Board (ID:113266988)
005	Law Society of Scotland
006	Berrymans Lace Mawer