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Ms Gael Scott
Justice Committee Clerks
Room T2.60
Scottish Parliament
Edinburgh
EH99 1SP

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Dear Gael

Justice Committee consideration of PE1633: Private criminal prosecutions in Scotland

Thank you for your letter of 26 July seeking the Scottish Government's view on the points made in the written submissions to the above Petition.

There is little I can add to the points I made in my letter to the clerks of the Public Petitions Committee of 28 April 2017.

As regards the mechanism of private prosecution, I advised that it is not a requirement for the Lord Advocate to give permission for a private prosecution to proceed. This point was also made by the Crown Office & Procurator Fiscal Service. Whatever expression one gives to this operation, whether "permission" or "concurrence", the fact remains that the assent of the Lord Advocate to a private prosecution is not an absolute requirement. My letter of 28 April 2017 gave the example of the case of *J & P Coats Ltd v Brown* as a private prosecution which proceeded without the concurrence of the Lord Advocate. More recently, I note that the High Court considered the Bills for Criminal Letters in the cases of *Stewart & Convy v Payne* and *McQuade & Reilly v Clarke* (both judgments 9 December 2016) despite the fact that the Lord Advocate had not given his concurrence. Although ultimately it did not allow the private prosecutions to proceed, it could have done so even though concurrence was lacking.

The Petition calls for the "Scottish Government to change the law to give the people of Scotland the same legal rights as the rest of the UK by removing the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced in Scotland". There is simply no such requirement.

For the avoidance of any doubt, the Scottish Government has no current plans to make changes to the current law on private prosecution and has not taken any view on the capacity of criminal practitioners to undertake private prosecutions.

The Petition seeks this change to address what the petitioner perceives as a problem in the prosecution of health and safety cases. My letter of 28 April 2017 advised that “the criminal law on health and safety, like health and safety more generally, is reserved and the Scottish Government has no involvement in the investigation and prosecution of health and safety offences”. The petitioner appears reluctant to accept this. Nevertheless, while generally the criminal law is a devolved matter, the criminal law in health and safety is reserved. Put simply, the Scottish Parliament has no powers to create criminal offences in respect of health and safety at work, or to amend the procedures by which health and safety cases are raised. It has no powers to amend the powers and duties of the Health and Safety Executive.

I should conclude by observing that, more generally, the Scottish Government has no involvement in prosecutions. Section 48(5) of the Scotland Act 1998 provides that “Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person”.

I hope this helps make the position of the Scottish Government clear.

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Philpott', written over a long horizontal line that extends across the page.

Kevin Philpott
Criminal Justice Division