

Citizen Participation and Public Petitions Committee  
Wednesday 2 April 2025  
6th Meeting, 2025 (Session 6)

## PE2085: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad

### Introduction

**Petitioner** David Cornock

**Petition summary** Calling on the Scottish Parliament to urge the Scottish Government to introduce a statutory definition for Fatal Accident Enquiries into deaths abroad.

**Webpage** <https://petitions.parliament.scot/petitions/PE2085>

1. [The Committee last considered this petition at its meeting on 15 May 2024](#). At that meeting, the Committee agreed to write to the Scottish Government, the Crown Office and Procurator Fiscal Service, Police Scotland, and relevant legal stakeholders.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from the Law Society of Scotland, the First Minister, the Scottish Government, the Petitioner, Police Scotland, the Crown Office and Procurator Fiscal Service, and the Minister for Victims and Violence Against Women and Girls, which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 27 March 2024](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 242 signatures have been received on this petition.

### Action

8. The Committee is invited to consider what action it wishes to take.

**Clerks to the Committee**  
**March 2025**

## **Annexe A: Summary of petition**

### **PE2085: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

#### **Petitioner**

David Cornock

#### **Date Lodged**

28 February 2024

#### **Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to introduce a statutory definition for Fatal Accident Enquiries into deaths abroad.

#### **Background information**

We were informed through a third party and not official channels about the death of our dearly loved family member overseas. We have named suspects, suspected foul play and motive.

It's clear that the system defined by the Lord Advocate is broken and not understood by the Scottish Government as the 'term ordinarily resident' is undefined in law.

The common response is that the 2016 Lord Cullen report offers extra support. There have been no FAls following the deaths of Scots abroad since its introduction, despite statements from the Scottish Government that FAls would take place if it is in the public interest to do so or an investigation would prevent further deaths.

Scotland should afford as a minimum similar protection and support as England and Wales when an individual who lives or works abroad is repatriated.

Most families, if correctly informed of the differences and lack of intervention by Scotland would choose to repatriate to England or Wales. Clearly, it's the duty of the Scottish Government to make the UK Government aware of this.

## **Annexe B: Extract from Official Report of last consideration of PE2085 on 15 May 2024**

**The Convener:** PE2085, which has been lodged by David Cornock, calls on the Scottish Parliament to urge the Scottish Government to introduce a statutory definition of residency for fatal accident inquiries into deaths of Scots abroad. We are joined in our consideration of the petition by our colleague Michael Marra. Welcome to you, Mr Marra.

The SPICe briefing explains that the term “ordinarily resident” is a commonly used and well-understood legal concept. The term is intended to be flexible to cover a wide range of circumstances.

In England and Wales, a coroner’s investigation will take place where the death was violent or unnatural, the cause of death was unknown, or the deceased died in state detention. The inquest will mainly determine how, where and when someone died. Coroners will rarely make wider recommendations but can do so through a prevention of future deaths report. That system is significantly different from the Scottish system of death investigations.

In Scotland, fatal accident inquiries aim to establish what happened and to prevent future deaths from happening in similar circumstances. Fatal accident inquiries take place in limited circumstances at the discretion of the Lord Advocate where a death was sudden, suspicious or unexplained or gives rise to a serious public concern and she considers that it is in the public interest to hold a fatal accident inquiry. The Crown Office and Procurator Fiscal Service has a role in investigating a wide range of suspicious deaths. However, only a small proportion of those are deemed to require the level of public investigation that is delivered by a fatal accident inquiry.

The Scottish Government has stated that it does not intend to define “ordinarily resident” in legislation and has highlighted that inquiries short of an FAI can take place in relation to deaths abroad, such as the instruction of a post-mortem.

The petitioner’s written submission details his personal experience and raises concerns about the quality of communication to next of kin in such circumstances. The submission also outlines improvements that the Lord Advocate has committed to progress as a result of his engagement with her. The petitioner has obviously been pursuing the aims and objectives of the petition.

Before I ask members to give their consideration to what we might do, I invite Michael Marra to address the committee.

**Michael Marra (North East Scotland) (Lab):** Thanks very much, convener, and thank you to the committee for its consideration.

The petition of my constituent—Davy Cornock, as I know him—arises from, as you have noted, convener, a very deeply personal tragedy: the loss of his son, David, who died in Thailand in 2019. That is a loss that many of us cannot begin to comprehend. That tragedy has been exacerbated by our legal system, which has failed to give Davy and his family the answers that they have long sought, as a fatal accident inquiry into David’s death never took place.

The crux of the issue appears to be the definition of “ordinarily resident”, as the convener set out. It is on that matter that Mr Cornock’s petition is seeking a change from the Scottish Government through the Parliament.

Since the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 was passed by this Parliament, not one single fatal accident inquiry into the deaths of Scots abroad has taken place. On 8 February 2024, I raised this issue directly with the then First Minister in the chamber. He agreed that

“it is the issue of residency—in that particular case, ordinary residency—that is causing the issue”.

Regarding any potential changes to the legislation, Mr Yousaf said that he would

“take a look and speak to the Cabinet Secretary for Justice and Home Affairs on that matter.”—[Official Report, 8 February 2024; c 25-26.]

My office has followed up with the First Minister’s office on 22 March and again on 24 April but, as yet, we have received no response. I ask whether the committee might consider using its good offices to help me in that regard to elicit a response from the Cabinet Secretary for Justice and Home Affairs, who is still in post following the recent change of First Minister.

I was pleased to accompany Mr Cornock to a meeting with the Lord Advocate on 28 March. The Lord Advocate has agreed to contact the Foreign Office regarding formalising a memorandum of understanding to ensure that families are given the correct information if a family member dies abroad. There is some progress there, I am glad to say.

However, in order for the Lord Advocate to carry out a fatal accident inquiry or to instruct one into a death abroad, the issue of residency will have to be addressed. I note that the Scottish Government has made the submission that the convener references, in which it is stated that the term “ordinarily resident” has been established through case law and the Scottish Government does not intend to define the term in legislation. I will come to that in short order.

Regarding the fact that no fatal accident inquiries have taken place into deaths abroad, the Scottish Government’s submission concedes that that is the case but also notes “that the Crown Office and Procurator Fiscal Service are able to conduct inquiries short of an FAI in relation to deaths abroad, such as the instruction of a post-mortem examination which has allowed further information to be provided to the family and given them reassurance and closure about the circumstances”.

I suggest that it would be worth the committee exploring the nature of those inquiries that are short of an FAI and the circumstances in which they might be granted. That would be very useful to my constituent. Mr Cornock’s family has certainly not had any reassurance and closure about his son’s death—very far from it, in fact.

In closing—if I can be so bold, convener, as to make some suggestions as to how the committee might consider proceeding with the petition—it is noteworthy that no FAIs have taken place into deaths of Scots abroad in the eight years since the

legislation was passed. I hope that the committee will agree with me that that shows that there is a problem with the legislation and that Parliament should be considering what that is. It indicates a flaw in the system.

I appreciate the significant differences between the legal systems in Scotland, and England and Wales, as the convener set out. I suggest that the committee might seek to ascertain how many deaths abroad of people from England and Wales have been investigated in the same time period, from 2016 to the present. That might offer some ready comparison for whether the laws and procedures that we have in place are serving our constituents on a level footing to the rest of the UK.

Finally, regarding the Scottish Government's position that "ordinarily resident" need not be defined in legislation, it might be worth the committee seeking the view of other stakeholders on this matter, such as the legal profession and perhaps Police Scotland, to understand the impact of that decision on their work in this area. If it is not the definition of that term, certainly how the term is used in our legislation and the ambiguity around it are part of the issue that is leading to a lack of justice and transparency and a lack of resolution for constituents.

It is not just Mr Cornock. I do not believe that there will be any members of the Scottish Parliament who do not have constituents who are in a similar situation, looking for answers about how a loved one died abroad. There is an issue of broad justice in this. If the committee could be implored to continue assisting my constituent in this matter, it would be of great assistance to many people in Scotland.

**The Convener:** Thank you very much, Mr Marra. Are we content in the first instance to embrace the suggestions that Mr Marra has made?

Following the conversation and the meeting that Mr Marra attended with the Lord Advocate, I wonder whether we might consider also asking the Scottish Government what progress has been made in relation to working with the UK Government to ensure that the differences between the system in England and Wales and the system in Scotland are being properly communicated to the next of kin. We could follow up on that specific point.

Are there any other suggestions that colleagues want to make? There were a few suggestions there. We will have to think from whom we would obtain information about the incidence in England and Wales, but we can certainly seek to do that, because that would evidence and underpin the contrast in how these matters are being taken forward.

**Foyso Choudhury:** Can we also ask the First Minister for an update? Mr Marra said that he wrote to the First Minister's office and is still waiting for an answer. Therefore, can we also ask the First Minister's office for a response?

**The Convener:** Sorry, Mr Marra, did you say that you wrote to the First Minister.

**Michael Marra:** I did. I raised the issue with the First Minister in the chamber and had no response. We followed up with a letter twice. Obviously, that First Minister has now demitted office and there is a new First Minister. It may be worth—if the committee was so minded, as Mr Choudhury suggests—trying to ascertain the

current First Minister's view of this issue as well. I imagine that it is in common with that of the Government.

**The Convener:** We could certainly draw the First Minister's attention to the fact that we have received a petition following up on the issues that were raised with the previous First Minister at FMQs. Do you know the date?

**Michael Marra:** Yes, I raised the matter on 8 February 2024, and I wrote on 22 March and then again on 24 April.

**The Convener:** Thank you very much. Are we content with the suggestions that have been made?

**Members *indicated agreement.***

**The Convener:** We thank the petitioner and the petitioner's advocate for raising this important matter with us. We will keep the petition open and proceed on that basis.

## **Annexe C: Written submissions**

### **Law Society of Scotland written submission, 27 June 2024**

#### **PE2085/C: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

You have asked whether the Law Society of Scotland is concerned that ‘ordinarily resident’ is not defined in legislation and whether it is clear how this term should be applied in practice. You have also asked whether the Law Society of Scotland is aware of circumstances where the test of ‘ordinarily resident’ has prevented investigations from taking place.

Having now had an opportunity to seek the views of our relevant committees, we would note the following:

- The term ‘ordinarily resident’ is a term which is widely used and which, in other legislation, is given its ordinary meaning.
- We consider that the concept of ‘ordinary residence’ is generally widely recognised and accepted. We do not consider that it would be necessary or desirable to develop a bespoke legislative definition for the purposes of Fatal Accident Inquiries (FAIs).
- We do not hold any data on whether the test of ‘ordinarily resident’ has prevented FAIs from taking place.

We have the upmost sympathy anyone who has lost a loved one in tragic circumstances. We do consider that there may be circumstances where it is appropriate for a discretionary FAI to be held in relation to the death abroad of someone ordinarily resident in Scotland. We note that the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 allows for such FAIs to take place.

More generally, we note that there are currently lengthy delays in FAIs. This is a matter of significant concern, and we recognise that delays can be distressing for families. The system should be properly resourced to ensure that the situation improves. Any changes to the law which might lead to an increase in the number of FAIs taking place would have to be based on robust evidence, careful consideration of the likely impact on COPFS, and suitable additional resourcing.

I hope that the above is helpful. We would be happy to assist the committee with any other information that is relevant.

### **First Minister written submission, 15 July 2024**

#### **PE2085/D: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

Thank you for your letter of 29 May 2024, drawing my attention to petition PE2085 which seeks to introduce a statutory definition of ordinary residence for Fatal Accident Inquiries into deaths abroad.

I understand that at FMQs on 8th February 2024, Michael Marra MSP raised the issue of FAls into deaths abroad, specifically regarding his constituent David Cornock, whose son died in Thailand in 2019.

I would firstly like to extend my condolences to Mr Cornock and his family regarding the tragic death of his son in such difficult circumstances.

I understand that my predecessor Humza Yousaf MSP asked the Cabinet Secretary for Justice and Home Affairs to consider the question of ordinary residence regarding deaths abroad following FMQ's on 8<sup>th</sup> February. Ms Constance wrote to Mr Marra on the 15<sup>th</sup> April 2024 addressing his concerns following on from these discussions.

I am advised that Scottish Government officials have been working on this issue with the Crown Office for some time, and that a conclusion was reached that it was not necessary to change the law at this present time. As it is the Crown Office who investigate deaths, officials have sought their views on the operation and effectiveness of the current law. The Crown Office have advised that the definition of ordinary residence in common law is sufficient to allow the Lord Advocate to conduct an assessment into ordinary residence depending on the facts and circumstances of each particular case. This is something that will be kept under review and officials will continue to liaise with the Crown Office regarding this matter.

**JOHN SWINNEY**

## **Scottish Government written submission, 19 July 2024**

### **PE2085/E: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

We write in respect of Petition PE2085 entitled "Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad", and in particular your letter of 17<sup>th</sup> May 2024.

The Committee asked whether the Scottish Government would consider working with the UK Government to ensure that the differences of the system in England and Wales compared to Scotland are being communicated clearly to the next of kin when someone dies abroad to ensure that families can take an informed decision about repatriation and the options for further investigation of the death of abroad.

As you may be aware, responsibility for all death investigations lies with the Crown Office and Procurator Fiscal Service (COPFS), who act independently of government. We work closely with officials at COPFS to ensure that the FAI legislation operates as effectively as possible.

We understand that COPFS are looking closely at their current processes in relation to the investigation of deaths abroad to identify any improvements that can be made, particularly in relation to the areas of communication with nearest relatives and ensuring they are fully aware of the process that applies to repatriation to Scotland. As part of that, they are engaging with relevant external stakeholders. Their aim is to ensure that families are always given accurate information at the outset about the



correct process for repatriations to Scotland. It is not, however, to provide the families with options for repatriation.

As Mr Marra MSP mentioned at the meeting of the Committee on 15 May, 'the Lord Advocate has agreed to contact the Foreign Office regarding formalising a memorandum of understanding to ensure that families are given the correct information if a family member dies abroad'. Contact has been initiated and discussions are ongoing. We are conscious of the fact that FCDO are likely to be one of the main initial points of contact for bereaved families following a death, whereas COPFS may in many cases first be made aware of the death a number of weeks later when the body is being returned to Scotland.

## **Justice Directorate**

### **Petitioner written submission, 30 July 2024**

#### **PE2085/F: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

I am absolutely disgusted by the First Minister's and his official superficial response. It's to the public and those in power that the ordinarily resident definition is unclear and ineffective.

It's also clear following our meeting with the Lord Advocate attended by my MP, MSPs, a Senior SFIU member and government officials that the ordinarily resident definition is not understood and indeed the definition is vague and untenable.

Also constantly referencing the Lord Cullen report from 2016 where again I believe we have questioned that, and I believe we have demonstrated that this report-based UK healthcare issue does not have the gravity to be referenced when a suspicious death abroad occurs.

Please ask the First Minister to demonstrate where the ordinarily resident criteria following the death of a Scot abroad has been effectively used, with the family satisfied with the outcome. I believe that there is not one example.

The First Minister has also referenced Michael Marra who despite a question at FMQs months ago on our situation and residency still awaits an answer.

In response to the First Minister's comments on the Crown Office and the Lord Advocate, I would again question this based on our meeting and multiple communications with the Lord Advocate who has taken the following action since we met:

- 1 Has started discussions with Senior Advocates on my son's residency status following information supplied which was never requested by any organisation previously.
- 2 In discussions with the Death Certificate Review Service (DCRS) and Police Scotland with regards to procedures for reporting and investigating deaths

abroad in particular in relation to communicating with nearest relatives. A document will be produced will replace existing guidance.

- 3 Set up a Memorandum of Understanding between the Foreign, Commonwealth & Development Office (FCDO) and COPFS detailing roles and responsibilities including the extent of the ability of the COPFS to investigate deaths abroad.
- 4 The official COPFS website has also been updated with specific details for relatives to contact the Scottish Fatalities Investigation Unit (SFIU) whom we had never heard of and were never put in touch with.

It appears that The Justice Directorate is attempting to defend the status quo despite knowing that since the Lord Cullen report and since they have taken office no FAI has been undertaken following the death of a Scot abroad, and that at every level there is a complete lack of understanding on how the system should work effectively.

The Justice Directorate also quotes that the COPFS now in 2024 are looking at improvements that can be made. Is this an admission that the Lord Cullen report has been ineffective?

Grieving families should be given as a matter of urgency from the FCDO and SFIU the hard facts on the differences between an FAI in Scotland and an Inquest in England and the differing criteria for residency. In England, a suspicious death abroad guarantees an Inquest and the protection of His Majesty the Kings passport.

The FCDO until my discussion in December 2023 were unaware of the differences between the Scottish and English systems. This is despite an intended memorandum of understanding in 2019 by the Scottish Government following an all-party parliamentary group meeting reacting to the concern of 60 grieving families. How then could they advise correctly?

In regard to repatriation, the grieving families pay all costs legal and funeral and should have the choice of where to repatriate to. I would suggest, if correctly informed, all would choose England or Wales. The implications are severe in Scotland. No one has ever been considered resident and worthy of an FAI, even when a legal professional states a murder. Also having an undetermined death and not having an FAI or Inquest negates insurance payouts, amplifying the tragic situation. Parity on deaths abroad with England and Wales must be established as a minimum immediately.

I am also requesting my MP to communicate with the Home Secretary and Foreign Secretary on the implications of the differences between the Scottish and English systems particularly on residency and repatriation. I have also reached out to the Police and Crime Commissioner in Manchester with my concerns that when a Scot dies abroad Police Scotland are not allowed to investigate purely on residency.

## **Police Scotland written submission, 8 October 2024**

### **PE2085/G: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

As the Committee is aware, Section 6 of the Inquiries into Fatal Accident and Sudden Death etc (Scotland) Act 2016 deals with Inquiries into deaths which occur abroad. In terms of Section 6 (1) (b) an Inquiry will only be held if, at the time of death, the deceased was "ordinarily resident" in Scotland. In terms of Section 6 (3) the decision to hold a Fatal Accident Inquiry into a death which occurred abroad lies solely with the Lord Advocate. Accordingly, the Police Service of Scotland is not required to consider if the deceased was "ordinarily resident" at the time of their death. This is a matter to be determined by the Lord Advocate prior to instruction of any relevant investigation.

## **Crown Office and Procurator Fiscal Service written submission, 29 November 2024**

### **PE2085/H: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 provides jurisdiction for COPFS to investigate deaths abroad when the person who died was ordinarily resident in Scotland at the time of their death. Where that is not the case, we have no jurisdiction to carry out any investigation into the death. However, not every such investigation under the 2016 Act will result in a Fatal Accident Inquiry. A Fatal Accident Inquiry will only be held into such a death if the Lord Advocate considers it to be in the public interest.

As such, whilst it is correct to say that the Crown Office and Procurator Fiscal Service can conduct inquiries short of a Fatal Accident Inquiry in relation to deaths abroad, we can only do so where the person who died was ordinarily resident in Scotland.

Those Inquiries can include the instruction of a post-mortem examination, obtaining statements in Scotland from witnesses who were with the person at the time of their death, or requesting information from the country where the death occurred about the extent and findings of their investigation. This is not an exhaustive list but rather a general indication of the most common lines of inquiry. The outcomes of these inquiries are shared with the family of the deceased to provide clarity and reassurance to them regarding the death of their loved one.

I hope this information is of assistance to the Committee.

## **UK Government Minister for Victims and Violence Against Women and Girls written submission, 16 December 2024**

### **PE2085/I: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

Thank you for your letter to the Lord Chancellor of 13 November requesting information on coroner investigations into deaths abroad to support the Citizen Participation and Public Petitions Committee's consideration of petition PE2085 concerning Fatal Accident Investigations into deaths abroad. I am responding as the Minister responsible for coroner policy and law in England and Wales.

As you are aware, coroners are independent judicial office holders who investigate reported deaths that are suspected to have been violent or unnatural, to have an unknown cause, or to have occurred in prison or other types of state detention. The coroner's jurisdiction is based solely on the deceased person's body lying within their coroner area. Therefore, where a person dies outside England and Wales, and regardless of whether they were previously resident, the coroner's jurisdiction is engaged if the body enters the coroner area and the death is reported to the coroner. The coroner's duty to investigate is then triggered in line with the criteria set out above. Where, prior to inquest, the cause of death is established to have been natural, the coroner can (subject to certain conditions) discontinue the investigation without proceeding to an inquest.

You have requested information on the annual number of inquests into deaths abroad since 2016. It may be helpful to mention that this department publishes annual Coroner Statistics each May, covering the preceding calendar year – the series is available at: <https://www.gov.uk/government/collections/coroners-and-burials-statistics>. For ease of reference, I have enclosed an annex setting out the requested information and, for additional context, the total number of reported deaths and inquests opened each year.

You have also asked for information on the number of these cases in which a Prevention of Future Deaths (PFD) report was issued. As you will know, a coroner must issue a PFD report if they consider an investigation has revealed that action could be taken to mitigate or prevent the risk of future deaths.

Since 2021, the annual Coroner Statistics have included the number of PFD reports issued in the preceding calendar year, and this information is also summarised in the annex. We do not hold information on how many PFD reports relate to investigations into deaths which occurred abroad. However, all PFD reports and the responses to them must be copied to the Chief Coroner, who publishes them on the Judiciary website at:

[https://www.judiciary.uk/?s=&pfd\\_report\\_type=&post\\_type=pfd&order=relevance](https://www.judiciary.uk/?s=&pfd_report_type=&post_type=pfd&order=relevance).

It may also be helpful to mention the Preventable Deaths Tracker, administered by Dr Georgia Richards at King's College London, which uses web-scraping techniques to enable data from PFD reports to be aggregated for analysis by public and academic bodies. The tracker is available at: <https://preventabledeathstracker.net/> – access to the full range of its functions may attract a fee.

Yours Sincerely

**ALEX DAVIES-JONES MP**

**Minister for Victims and Violence Against Women and Girls**

**Annexe**

**Deaths Abroad Reported to the Coroner, 2016 – 2023**

<b>Year</b>	<b>Deaths abroad reported to the Coroner</b>	<b>Total number of deaths reported to the Coroner</b>	<b>Inquests concluded on deaths abroad</b>	<b>Total number of inquests concluded</b>
2016	1,849	241,211	405	40,504
2017	2,094	229,700	485	33,900
2018	2,145	220,600	355	30,700
2019	1,939	210,900	395	31,300
2020	771	205,400	269	30,900
2021	725	195,200	209	32,300
2022	1,474	208,400	190	35,600
2023	1,561	195,000	277	39,500

**Notes**

1. Death abroad is one that occurred outside England and Wales
2. Not all deaths reported to a Coroner result in an inquest
3. An inquest can conclude in a different year to when reported
4. Statistics on deaths abroad can be found here:  
[Coroners Statistics Annual 2023 Tables.ods](#)

**Prevention of Future Death Reports, 2021 – 2023**

<b>Year</b>	<b>Number of Prevention of Future Death Reports Issued</b>
2021	440
2022	403
2023	569

## **Petitioner written submission, 15 January 2025**

### **PE2085/J: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad**

Following my earlier submission (PE2085/F) and subsequent responses from The Law Society (PE2085/C), Police Scotland (PE2085/G), Justice Directorate (PE2085/I) and the Lord Advocate's report, I offer feedback highlighting unresolved concerns, particularly regarding the new Memorandum of Understanding (MOU) involving the Scottish Government, Foreign Commonwealth and Development Office (FCDO), Death Certification Review Service, Police Scotland, Crown Prosecution Service, Crown Office and Procurator Fiscal Service (COPFS), and others.

#### **PE2085/C: Law Society of Scotland**

The Law Society affirms the term "Ordinarily Resident" is widely recognised but lacks data on its role in preventing Fatal Accident Inquiries (FAIs). They cite the Lord Cullen Report (2016), which we argue is insufficient to address suspicious deaths abroad. No FAIs have occurred following deaths of Scots abroad, as no individual has met the residency criteria. In our case, we were only asked for residency information in 2024, five years after the incident. This contradicts claims of systematic improvements.

The Law Society notes that FAIs are underfunded and need investment. Despite our evidence; statements from lawyers identifying murder, a poor police investigation, and recommendations for a criminal inquiry, Police Scotland was blocked by the residency definition. With increased budget allocations, Scotland could address these resource gaps. Investigating suspicious deaths of Scots abroad is vital.

Despite repeated requests, we remain unaware of how residency was determined in our case. The Lord Advocate's responses reveal systemic failures, including lack of process in 2019 and contradictions in the 2024 MOU.

#### **PE2085/G: Police Scotland**

Police Scotland references the Sudden Deaths Act (2016) and "ordinarily resident" criteria. At the inspector level, their willingness to investigate our case was commendable. They noted issues with the Thai police investigation, potential motives, named suspects, and a lawyer's murder statement. Despite producing a major incident report in 2019 and engaging further in 2023 on FCDO advice, they were blocked from investigating due to the residency definition.

The "ordinarily resident" test, applied arbitrarily, prevents FAIs for Scots who die abroad.

#### **Lord Advocate and Residency Definition**

In March 2024, I met the Lord Advocate and a Senior Scottish Fatalities Investigation Unit (SFIU) member with my MP, MSP sponsor, my constituency MSP, and staff. My constituency MSP cannot sponsor my petition due to her Ministerial position. Post-

meeting, I received five communications detailing measures to improve processes, including:

1. **Updated Processes:** A Minute of Agreement to improve reporting and investigations.
2. **Enhanced Communication:** SFIU will now notify families about investigation decisions and explain why decisions have been taken. This should have happened since 2016 and improved in 2019. I believe their intervention will still be too late as repatriation will have occurred by the time decisions are communicated.
3. **Style Letters:** Will allow families to share concerns post-repatriation. However, I feel this will lack timely impact.
4. **New MOU:** Defines COPFS and FCDO responsibilities.

However, the residency test remains undefined and inconsistently applied. Despite UK banking, voting, having a Scottish employer and having a UK mortgage, our loved one was deemed not “ordinarily resident.” These criteria contradict the Lord Advocate’s stated considerations, such as possessions and family ties. This decision was delayed five years, and key information, including the 2019 MOU, was withheld from us.

I received the 2024 MOU from a third party after official requests through my MSP were denied. A troubling pattern persists: my request for an FAI for Scots’ deaths in Thailand was initially denied yet immediately granted to two friends. Late obstacles were also presented attempting to exclude the MSP sponsoring my petition and my MP in their attendance at the Lord Advocate’s meeting.

### **FCDO and Systemic Failures**

The 2024 MOU burdens the FCDO, which only in 2023 acknowledged differences between Scottish and English systems for FAIs and inquests abroad. While in regular communication with the FCDO, I remain doubtful they can prevent similar issues. Grieving Scots families face justice barriers due to the undefined residency test.

I’ve asked my MP to seek meetings with the Foreign Secretary and relevant ministers. Scotland urgently needs a public appointee to liaise with the FCDO and clearly explain repatriation options to bereaved families. Ireland for example also has a repatriation trust assisting families emotionally and financially. Scotland has no such service.

### **Scotland FAIs vs. UK Coroner’s Inquests**

The disparity between the system in Scotland and the system in England and Wales is stark. Over 1,000 inquests occur annually in England and Wales, yet not one FAI has been held for a Scot abroad since 2007. This systemic failing breaches Scots’ human rights.

My MP asked the Secretary of State for Foreign, Commonwealth and Development Affairs:

*"How many coroner's inquests have been held in (a) England and (b) Wales for the death of a UK national abroad in the last five years?"*

Response:

- 2019: 1,100
- 2020: 1,000
- 2021: 1,000
- 2022: 1,300
- 2023: 1,300

It's clear that there exists a glaring and incomprehensible mismatch in the active assessment of suspicious deaths abroad between those deceased UK citizens resident in England or Wales, and those resident in Scotland. This goes beyond the highly questionable residency test and points to systemic dysfunction within the SFIU since its inception. A dysfunction to which my family's experience can attest.

Proportionately these UK figures indicate that there may have been in the region of 100 cases per annum deemed suspicious in Scotland for the same period however the SFIU investigated not a single suspicious death of a Scot abroad. An institutional and operational failure on the part of the SFIU is apparent since its inception.

### **PE2085/I UK Inquests and Preventable Future Deaths**

The UK Government's Minister for Victims and Violence Against Women and Girls' response confirms that the criteria for an inquest includes that the death was suspected violent or unnatural. Communication from the Cabinet Secretary for Justice and Home Affairs stated the same criteria for an FAI. If the UK Minister's response also confirms no residency test and that it is the Coroner's duty to investigate. It also confirms that many hundreds of inquests are undertaken every year. Also significant are the figures on future preventable deaths, another documented criterion by SPICe in Scotland, however again never on one occasion has this criteria been applied.

This confirms the Scottish system's ineffectiveness. Urgent reform is essential to ensure justice for Scots families. The residency test remains unfit for purpose, perpetuating a policy that seems to "delay, deny and wait for those grieving to give up or die."