

Constitution, Law and Courts Directorate
Legal System Division



E: Lachlan.Stuart@scotland.gsi.gov.uk

Fergus Cochrane
Clerk to the Committee
Public Petitions Committee
The Scottish Parliament



9 November 2009

Dear Fergus

Thank you for your letter dated 7 October 2009 in which you asked various detailed questions in connection to PE 1280, concerning the Government's response to the review of fatal accident inquiry legislation conducted by Lord Cullen of Whitekirk.

At paragraph 4.43 of his report Lord Cullen recommends that there should be an extension to the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to make provision for the Lord Advocate to have a power to apply for a fatal accident inquiry into the deaths of persons normally resident in Scotland where the body is repatriated to Scotland. Lord Cullen makes it clear in his report that he envisages the need for such inquiries to be infrequent, and for the discretion to be exercised only where the relevant authorities of the country in which a death has occurred have failed to investigate a death adequately or appropriately.

This and the many other recommendations of Lord Cullen's report will require the Government's full and careful consideration. Lord Cullen published his report and recommendations only on 3 November 2009 and until such time as full consideration has been made possible, I am unable to answer your questions on the timetabling of a response or whether or not the Government will adopt this particular recommendation. I can however inform the Committee that at the time of writing the Government has no intention to introduce further changes to the current legislation in this Parliamentary session.

On the hypothetical question of preparing guidelines for circumstances in which overseas FAIs could be held, it is of course quite easy to envisage that such guidelines could be established, but also that they would not easily be established. Further, and more importantly, in the circumstances of a discretionary inquiry, the discretion in question is the Lord Advocate's (in respect of retained functions within the meaning of Section 52(5) of the Scotland Act 1998), and not the Scottish Ministers'.

Section 48(5) of the Scotland Act 1998 requires the Lord Advocate to take such a decision independently of any other person and it would therefore be inappropriate for the other Scottish Ministers or their officials to prepare such guidelines.

Further questions on this subject should therefore be addressed to the Lord Advocate or the Crown Office and Procurator Fiscal Service. The question of whether a current system exist that liaises with and informs victims' families at each stage following a death abroad is also best addressed to the Crown Office and Procurator Fiscal Service, for the same reasons.

Even if Lord Cullen's recommendations were to be implemented, most cases of deaths occurring abroad would not be investigated by Scottish authorities. Foreign affairs including

relations with territories outside the United Kingdom are reserved under Schedule 5 of the 1998 Scotland Act and in those circumstances which are not being investigated by Scottish authorities, I understand that the appropriate authorities for liaison with the next of kin would be the Consular Services of the UK Foreign and Commonwealth Office (who are empowered to engage with foreign governments and local investigating authorities overseas).



Lachlan Stuart
Legal System Division
Constitution, Law and Courts