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Legal System Division



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CONSIDERATION OF PETITION PE1280

Dear Franck,

Thank you for your letter dated 11 February 2010 in which you sought responses to points raised in discussion by the Public Petitions Committee of Petition PE1280, concerning the Government's response to the review of fatal accident inquiry legislation conducted by Lord Cullen of Whitekirk. You also asked specifically what the Government's timetable was to respond to Lord Cullen's report and how and when it would take forward the recommendations.

Many of Lord Cullen's 36 recommendations have practical implications for the judicially-led Scottish Court Service (SCS) and the Crown Office and Procurator Fiscal Service (COPFS). All of the recommendations of Lord Cullen's report will require careful consideration by the Government in conjunction with SCS and COPFS and the Government is liaising closely with these bodies in identifying how the recommendations should be implemented.

There is, however, no prospect of legislation being brought forward to implement Lord Cullen's recommendations in time to be passed before the next Scottish election.

Petition PE 1280 advocates amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of a fatal accident inquiry when a person from Scotland dies abroad.

Lord Cullen recommended, at paragraph 4.43 of his report, that there should be an extension to the 1976 Act 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 made it clear, however, in his report that he envisaged that the need for such inquiries would 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.

Ministers have yet to come to a view on this recommendation, but it remains to be seen how, in circumstances where the relevant authorities in a foreign country have failed to investigate a death adequately or appropriately, such an investigation may be effectively carried out in, or from, Scotland. COPFS and the court have no powers to require witnesses from the relevant country to attend an inquiry or to require the production of evidence such as documentation. Members of the Committee recognised during discussion that it would often be impossible to get the information that a fatal accident inquiry would want.

On the other hand, and as Lord Cullen clearly recognised, where a death has been adequately and appropriately investigated by the authorities in the country where the death took place, there seems no justification in holding a fatal accident inquiry in Scotland.

Even if Lord Cullen's recommendation on deaths abroad 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).

I hope this reply is helpful.

HAMISH GOODALL