

Citizen Participation and Public Petitions Committee  
Wednesday 15 May 2024  
9th Meeting, 2024 (Session 6)

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

### **Introduction**

**Petitioner** David Carnock

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

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

1. This is a new petition that was lodged on 28 February 2024.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 236 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received a submission from Scottish Government, which is set out in **Annexe C** of this paper.
7. 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. This system is significantly different to the Scottish system of death investigations.
8. In Scotland, fatal accident inquiries aim to establish what happened and 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, unexplained or gives rise to serious public concern, and she considers it is in the public interest to do so. The Crown Office and Procurator Fiscal Service has a role in investigating a wide range of suspicious deaths. However, only a small proportion of these are deemed to require the level of public investigation delivered by a fatal accident inquiry.

**Action**

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

**Clerks to the Committee  
May 2024**

## **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 Inquiries 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 FAIs following the deaths of Scots abroad since its introduction, despite statements from the Scottish Government that FAIs 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: SPICe briefing on PE2085



### Brief overview of issues raised by the petition

The petitioner wants the Scottish Government to introduce a statutory definition for Fatal Accident Inquiries (FAIs) into deaths abroad. The key concern is that FAIs can only be held into deaths which occur abroad when the deceased was “ordinarily resident” in Scotland.

The petitioner argues that the fact that the term “ordinarily resident” is not further defined in law undermines the effectiveness of the FAI system. The petitioner also argues that more support is available under the coroner system in England and Wales, meaning families should choose to repatriate bodies there instead of to Scotland.

- The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 contains the current law in relation to FAIs. This legislation took forward most of the recommendations of a review into FAIs carried out by Lord Cullen, which reported in 2009.
- One of the recommendations of the Cullen Review was that it should be possible to hold FAIs where someone “normally resident” in Scotland dies abroad and the body is repatriated to Scotland. Before the 2016 Act came into force, it was only possible to hold FAIs where someone died in Scotland.
- Lord Cullen recommended that FAIs into deaths abroad should be discretionary, and he expected them to happen rarely. This was in recognition of the fact that, in many circumstances, there would be nothing additional to gain by holding an FAI. For example, the courts in Scotland cannot compel a witness based abroad to attend an FAI<sup>1</sup>.
- The 2016 Act creates a power to hold an FAI where a death occurs outwith the UK and, at the time of death, the deceased was “ordinarily resident” in Scotland. In addition, the Lord Advocate must consider that:
  - the death was sudden, suspicious, unexplained or gives rise to serious public concern
  - the circumstances of the death have not been sufficiently established in the course of other investigations (e.g. by the country in which the death occurred)

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<sup>1</sup> Lord Cullen of Whitekirk. (2009) [Review of Fatal Accident Inquiry Legislation – the Report](#). See paragraphs 4.36 to 4.43.

- there is a real prospect that an FAI could sufficiently establish the circumstances of the death (e.g. evidence about the circumstances of the death is available); and
  - it is in the public interest to hold an FAI.
- The term “ordinarily resident” is not further defined in the 2016 Act. However, it is a commonly used and well-understood legal concept. Disputes about whether someone is ordinarily resident in Scotland in a particular context can be taken to court.
  - The term is intended to be flexible to cover a wide range of circumstances. For example, if someone moved to Scotland yesterday, they may be ordinarily resident if they intend to stay here permanently. However, someone who has spent significant time in Scotland over many years may not be ordinarily resident here if they mainly live and work in another country.
  - The system of coroner’s inquests used in England and Wales is significantly different to the Scottish system of death investigations. Coroner’s inquests mainly determine how, where and when someone died. They rarely make wider recommendations in relation to the circumstances of the death. In 2022, 36,300 coroner’s inquests were opened. However, only 403 Prevention of Future Deaths reports were issued<sup>2</sup>.
  - Coroners have duties to investigate where a body is within their area. This includes bodies which have been repatriated to England or Wales from another country. Thus, coroners will investigate where:
    - a death was violent or unnatural
    - the cause of death is unknown
    - the deceased died in state detention (e.g. in police custody).
  - In practice, this will generally mean that a coroner will investigate deaths meeting these criteria, even in relation to someone who is ordinarily resident in Scotland, if their body is repatriated to England or Wales.

## **Background information**

FAIs are held before a sheriff to establish the circumstances surrounding certain deaths. The sheriff is able to make recommendations to prevent future deaths where appropriate. The Lord Advocate, supported by the Crown Office and Procurator Fiscal Service, makes decisions in relation to FAIs. The Lord Advocate is the senior law officer for the Scottish Government but acts independently in relation to FAIs.

FAIs are usually mandatory where a death occurs in the course of someone’s work or in legal custody. The Lord Advocate also has discretion to hold an FAI where a death was sudden, suspicious, unexplained or gives rise to serious public concern, and she considers it is in the public interest to do so.

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<sup>2</sup> Ministry of Justice. (2023) [Coroners statistics 2022: England and Wales](#).

FAls are the most public form of death investigation in Scotland and are carried out where the Lord Advocate believes wider scrutiny of a death is necessary. However, the Crown Office and Procurator Fiscal Service investigates all sudden, unexplained or suspicious deaths. There were 43 FAls between April 2022 and March 2023. In 2016, the Scottish Government estimated that around 5,500 death investigations were carried out per year.

**Abigail Bremner**  
**Senior Researcher**  
23 April 2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## **Annexe C: Written submissions**

### **Scottish Government submission of 27 March 2024**

#### **PE2085/A: 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”.

The Scottish Government recognises that each death abroad is a tragedy, with additional heartache for families when their loved one dies far from home.

The law on Fatal Accident Inquiries is contained in the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the 2016 Act”).

The law governing fatal accident inquiries was comprehensively reviewed by Lord Cullen and the findings of that review were reflected in the 2016 Act. Lord Cullen dealt specifically with the question of fatal accident inquiries concerning a death abroad, and considered that the deceased should be defined as a person normally resident in Scotland. This was ultimately the test that was reflected in the Act.

Section 6 of the 2016 Act allows the Lord Advocate to hold a fatal accident inquiry into a death of a person “ordinarily resident” in Scotland, if the death occurs outwith the United Kingdom. On the matter of ordinary residence, the terms “ordinarily resident” and “habitually resident” (and other similar terms) are not defined in legislation, and their meanings have been established through case law. The leading case on this matter is *R. v Barnet LBC Ex p. Shah* [1983] 2 A.C. 309 per Lord Scarman at p349 who asked ‘...has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences?’

These are the types of factors the Lord Advocate and Crown Office and Procurator Fiscal Service (COPFS), (acting independently of Government and all other agencies) will take into account when assessing whether a person who has died outwith the UK is ordinarily resident in Scotland - based on the information available. Where a person is considered to be ordinarily resident in Scotland, the Lord Advocate/COPFS will go on to consider whether the death was either sudden, suspicious or unexplained, or occurred in circumstances giving rise to serious public concern. The Lord Advocate must also consider whether the circumstances of the death have already been established in the course of an investigation by the appropriate authorities in the country where the death occurred, and whether there is a real prospect that the circumstances would be sufficiently established in an inquiry. An inquiry will only be held if the Lord Advocate decides that it is in the public interest to investigate the circumstances of the death.

At present, we do not intend to define ordinarily resident in legislation. The term is a flexible one, and it has been subject to sufficient judicial comment to assist the Lord Advocate in taking into account the deceased’s individual circumstances. It seems flexible enough to exclude a temporary or transitory relationship by the person with Scotland, but be generous enough to permit an FAI into the death of a person who is

here on a semi-permanent basis. In most cases, whether the deceased was ordinarily resident will be clear from the outset. In others, further information can be sought by the Procurator Fiscal and a decision taken based on all the facts and circumstances.

The background information contained in the petition states that no FAIs have taken place in relation to deaths abroad. That statement is correct, however, although no FAIs have taken place into deaths abroad, it is important to note that COPFS are able to conduct enquiries 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. There are various reasons why the Lord Advocate may decide not to hold a FAI depending on the individual circumstances of the case as considered against the criteria in section 6.

The Petition states that Scotland should afford as a minimum similar protection and support as England and Wales when an individual who lives or works abroad is repatriated. The systems for investigating deaths abroad in Scotland and England and Wales are different (as they are for the investigation of deaths generally). All

UK nations, irrespective of their legislation, will encounter the same problems in trying to establish the truth in relation to a death abroad when faced with an unfamiliar legal system. It is considered that it is a reasonable minimum requirement before an investigation can take place for the deceased person to have been ordinarily resident in Scotland.

The petition also suggests that ‘most families would choose to repatriate to England or Wales’. We understand that in the vast majority of cases where there is a death abroad, the primary concern of the family is having the body of their loved one released as soon as possible so that funeral arrangements can be finalised. It is a matter for the relevant Coroner in England or Wales to determine whether they have jurisdiction to investigate a death occurring abroad and, if so, whether an inquest should be held into that death. It would not be appropriate for the Scottish Government to offer advice in that regard.

## **Justice Directorate**

### **Petitioner submission of 9 April 2024**

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

The common and deflecting response is the 2016 Lord Cullen report. No FAIs have been undertaken following the deaths of Scots abroad since its introduction or the 2019 APPG designed to help Scots families losing loved ones abroad. This APPG was commissioned as a result of 60 families questioning the Lord Cullen report. SPICe also confirmed in July 2023 that no FAIs have occurred. This is despite multiple statements from the Scottish Government stating that an FAI would be conducted if it is in the public interest to do so or an investigation would prevent further deaths. Foreign, Commonwealth and Development Office (FCDO) Thailand



statistics show that 400-500 UK Citizens die every year in Thailand – around 150-200 undetermined deaths. There appears to be a wilful ignorance of the subject.

With regard to normally resident and non-defined status, again no Scot who has died abroad has met these criteria as it is undefined, and families are not interviewed by the relevant Government body the Scottish Fatalities Investigation Unit (SFIU). It's clear that if the DCRS has concerns regarding the nature of the death, the SFIU should interview families, loved ones and potentially lawyers and witnesses regarding the nature of the death and residency. There is in fact no statutory definition of ordinary resident which it appears is very convenient preventing and investigation. On no occasion did the SFIU speak with me or the unqualified DCRS in terms of establishing criminality before making the decision to allow our son to be put to rest. DCRS, despite having serious concerns regarding our son's death, never mentioned SFIU or any process. I later received an apology including some very inaccurate statements. Not surprisingly no electronic record of this call exists. I referred my concerns to the Ombudsman.

The SPICe document states that it is the coroner's duty to investigate and must investigate if the death is unnatural or unknown. David's death was documented by legal professionals, Government Officials, death certification authorities as unnatural and probably sinister. We did not know there was a formal process until communicating with the Lord Advocate last year. If we had known about the process, we would have chosen to repatriate to England.

In reference to the Lord Scarman report, and as discussed with several officials including my MPs MSPs and the Lord Advocate, it certainly does not deal with the gravity of a death abroad in suspicious circumstances. This is certainly not an appropriate reference and refers to a healthcare situation between the East Lothian and Milton Keynes Councils.

On March 28th, 2024, myself Mr Dave Doogan MP, Mr Michael Marra MSP and Mairi Gougeon MSP met with the Lord Advocate and a representative from the SFIU to discuss our son's case and that of the systematic failures. The Lord Advocate is committed to identifying improvements in relation to investigating and reporting on deaths abroad and consulting with families. The Lord Advocate has also added information on their external website in relation to deaths abroad. This contains links to Scottish Government and FCDO advice and if necessary, will include details for families on how to contact SFIU. The Lord Advocate will also provide a memorandum of understanding to the FCDO as they are typically the 1st point of contact following tragedy to ensure that families are aware of procedures. I would suggest this includes the option to repatriate to England or Wales where a non-residency status does not exist. UK Citizens wherever they live are granted the protection of His Majesties Government.

The Lord Advocate, following my expression regarding the decision made on David's residency having never been asked by any official body, has asked for further detail. David was not a Thai resident always having a short term temporary visa and, at the time of his death been denied a visa in 2019, he held a UK Passport, worked for a UK/Aberdeen Company between 2016- 2019, banked in the UK, could vote in Elections and referendums, owned a UK property for several years and demonstrated considerable links to the UK living here holidays work trips etc.

Had the SFIU spoken with me, I am convinced they would have agreed that David qualified for any criteria on residency. This would certainly have been true in the UK.

I also asked the Lord Advocate if she could demonstrate a case where a Scot has died suspiciously abroad and the correct process had been followed.

There is no such example.

The Lord Advocate has also committed to look at FOI denials to me only occurring since the First Minister was questioned by Mr Marra MSP at FMQs. These FOIs provided to others were denied to me stating that they were not in the public interest. The First Minister however appears to recognise that improvements are required into the current failure to support families following the death of a loved one abroad and has committed publicly to look at legislation and respond to Mr Marra.

These dreadful uninformed decisions have emotional and financial consequences. David's family were initially homeless having lost out not only on David's support, estate but on employer insurance. Totalling around £700K. The sustained emotional impact has resulted in severe psychological issues.

The UK Government and FCDO had grave concerns regarding David's death and attempted to engage Interpol and Senior Thai Police to prove UK residency and record deaths abroad including the nature of the death. Scotland still does not include nature and appears unconcerned as there are no FAIs deeming this information unnecessary.

I have been told by Government officials in Scotland that the Solicitor General and Police Chief work for them which is concerning.