

Proposed Post-Mortem Examinations (Defence Time-Limit) (Scotland) Bill

Page 1: Introduction

A proposal for a Bill to make the right of defence counsel for a person accused of homicide to instruct a post-mortem examination of the alleged victim subject to an extendable time-limit in order to minimise delays and uncertainty for victims' families. The consultation runs from 9 January 2018 to 4 April 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document](#) [Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

Page 2: About you

Are you responding as an individual, or on behalf of an organisation? Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Professional with experience in a relevant subject

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

Forensic Pathologist

Please select the category which best describes your organisation

No Response

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Marjorie Turner, Dept of Forensic Medicine and Science, University of Glasgow

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

Page 8: Aim and Approach

Q1. The proposed Bill would set a time-limit for the instruction of a second post-mortem examination (PME), by the defence, in relation to a suspicious death. Which of the following best expresses your view of the proposal?

Fully supportive

Please explain the reasons for your response.

With the introduction of the new protocol for defence reports which in most instances means a second physical examination is not required, this proposal of a time limit is generally achievable and should allow a significant improvement in the process for families.

Q2. Which of the following best expresses your view of when any time-limit should begin?

On the day after the Crown PME is completed, or when defence counsel is appointed for an accused person, whichever is the later

Please explain the reasons for your response.

With the current practice the pathologist for the defence is not approached until defence counsel/solicitor is appointed and this could be some time after the Crown PME. Thereafter the time limits should in most circumstances be achievable, as what is required is a draft Crown post mortem report and the photographs.

Q3. How long a time-period do you think should be available to the defence in which to instruct a second PME?

21 days (3 weeks)

Q3. How long a time-period do you think should be available to the defence in which to instruct a second PME?

Please explain the reasons for your response.

Whilst the opinion on papers examination should be achievable in less than three weeks there can be instances of e.g. leave/illness that affect the time necessary. Also, the constraints of few Forensic Pathologists undertaking these examinations/reports remain (3 in Glasgow & similar no. in rest of country) & high volume workload remain, the hopefully few instances when a second physical post mortem is required this may allow time for this to be undertaken, however this may also be an instance when an extension is required.

Q4. The proposed Bill would allow the defence to apply to the courts for the time limit to be extended by up to the same amount as originally allowed, and on more than one occasion. Which of the following best expresses your view of this element of the proposal?

there should be scope for only a single extension (no longer than the original period)

Please explain the reasons for your response.

As noted above the main instances where 21 days would not be achievable would be where the Crown and/or defence pathologist were absent for a significant part of this period or where, as was a significant problem before the new protocol, a second examination is required and there are difficulties in finding capacity/time to do so with travel to other parts of the country required. Neither of these should require longer than this period.

Page 12: Financial Implications

Q5. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) prosecuting authorities (COPFS)			X			
(b) the courts (SCTS)			X			
(c) victims' families			X			
(d) the accused/defence			X			

Please explain the reasons for your response.

There would undoubtedly be some costs inherent in the process if an application had to go to Court but one would hope that this process could be devised to minimise these. On the other hand the new protocol and decrease in number of physical second PME should be leading to some, albeit small, reduction in costs to Police Scotland, and the defence solicitor who would no longer need to attend at the mortuary.

Q6. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

No Response

Page 14: Equalities

Q7. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?

Neutral (neither positive nor negative)

Q8. In what ways could any negative impact of the Bill on equality be minimised or avoided?

No Response

Page 16: Sustainability

Q9. Do you consider that the proposed Bill can be delivered sustainably i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Yes

Please explain the reasons for your response.

This bill, in conjunction with the new protocol, would make the system more robust and sustainable as well as providing a much improved and more sensitive system for the families.

Q10. Do you have any other comments or suggestions on the proposal?

The cases where the delays for families are longest are those in which no accused has been identified. Whilst it would not be without its difficulties, consideration could also be given to e.g. a Court appointed Forensic Pathologist undertaking an examination in these deaths. Whilst this removes any choice from a subsequent accused, as the number of Forensic Pathologists who agree to undertake this work is very limited in any case this may not be a major issue.