

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

Petitioner written submission, 15 January 2025

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. It 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."