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Dear Roseanna,

HUMAN TISSUE (SCOTLAND) BILL

Thank you for your letter of 3 October 2005 inviting me to attend a meeting of the Health Committee on 25 October to give oral evidence in respect of the Human Tissue (Scotland) Bill.

The Committee requested a written submission prior to my evidence session. I hope this briefing is helpful to the Committee. If you require any further information or clarification I will be happy to provide this during my oral evidence.

Yours sincerely,

ELISH ANGIOLINI
HUMAN TISSUE (SCOTLAND) BILL

Introduction

The Crown Office and Procurator Fiscal Service ("COPFS") welcomes the Human Tissue (Scotland) Bill.

As committee members will be aware, the investigation of deaths forms a significant part of the role of the Procurator Fiscal. Some background on the role of the Procurator Fiscal in this context may be helpful, however, and this is set out below.

The role of the Procurator Fiscal

It is the duty of the Procurator Fiscal to enquire into all sudden, suspicious, accidental, unexpected and unexplained deaths, and also under the Fatal Accident and Sudden Deaths Inquiries Act 1976 to enquire into deaths resulting from an accident in the course of employment or occupation, deaths which occur while in legal custody and deaths which occur in circumstances such as to give rise to serious public concern. The Procurator Fiscal undertakes this role in the public interest and enquiries into these deaths are designed: to minimise the risk of undetected homicide or other crime; to eradicate dangers to health and life; to allay public anxiety; to allow the gathering of full and accurate statistics on deaths in Scotland and to secure and to preserve evidence.

Procurators Fiscal investigate not only to minimise the risk of undetected homicide but also to assist in the diagnosis of disease in life by accurately identifying the causes of death so that trends and patterns are highlighted. These can inform medical research and thus lead to benefits to the public as a whole.

The procurator fiscal has both a long recognised right and a duty to control the disposal of a body while enquiries are made into the death. The Procurator Fiscal will decide whether further investigation is required to establish the cause of death, and in some instances that may include a post-mortem examination. Procurators Fiscal instruct post-mortem dissections in around one third of all cases reported – about 8 per cent of all deaths.

The right of the Procurator Fiscal to authorise a post-mortem examination when a death has resulted in suspicious circumstances is crucial in ensuring that crimes are detected and the integrity of criminal enquiries and investigations by the police and other investigating authorities preserved.

The Crown Office and Procurator Fiscal Service recognizes the sensitivities involved in this area of work and we are committed to doing whatever we can to ensure that bereaved relatives receive relevant and appropriate information about our role in the investigation of the death of their family member. We realise that in every case in which a sudden or unexplained death is reported to the Procurator Fiscal, there is likely to be a bereaved relative trying to come to terms with the death and wondering what will happen next. These are
traumatic and highly emotional times for bereaved relatives and we wish to serve them well and ensure that they are treated with respect and empathy.

The Human Tissue (Scotland) Bill is a very positive piece of proposed legislation that seeks to modernise the law, to recognise the public support for transplantation and to allow next-of-kin to make active decisions from a position of control about what should happen to organs which have been retained following a post-mortem. We support all of these central aims.

The Bill provides bereaved relatives with the possibility of participating, should they so wish, in the decision making process as to what use organs taken from their loved ones should be put – where their loved ones had not indicated any preference.

We are committed to timely and sensitive communication with bereaved relatives about post-mortem procedures and what they are likely to encounter. Clear, consistent and sympathetic communication is mandatory in all deaths investigations but is even more necessary when the Procurator Fiscal requires to authorise a post-mortem and when there is the possibility of organ retention.

**Liaison with bereaved relatives**

**Policy Review and Guidance issued in 2002**

We have endeavoured to radically improve the nature and consistency of our liaison and communication with bereaved relatives. As Committee members will be aware our Victim Information and Advice Office is now well established as a service which provides case progress information to both victims of crime and bereaved relatives in cases where a death has resulted from a criminal act.

In 2002, after a review of existing practice, we issued national guidelines for staff on communication with bereaved relatives and organ retention. This review was informed by our membership of the Independent Review Group on Retention of Organs at Post-Mortem chaired by Professor Sheila McLean. A summary of this guidance is included in Annex A. While our aim is consistency across our 49 offices throughout Scotland we recognize that there is a need for flexibility in our approach to allow us to respect the differing needs and wishes of bereaved relatives. Our guidance is currently contained in the Book of Regulations for Procurators Fiscal and is available to all staff on our departmental intranet. Since commencement of the guidance issued in 2002 we continued our participation in the Independent Review Group and welcomed the Group’s recommendations as outlined in the Phase 3 report. We have since carried out a detailed review of our guidance against the background of experience and the recommendations in the Phase 3 report. This review is almost complete and the new guidance will be issued to staff before the end of the year.

The new consolidated guidance will include a new and updated information brochure which will be made available to all bereaved relatives. This expands upon the current leaflet which came into use in 2002. The brochure explains the role of the Procurator Fiscal and outlines the different possible investigations that the Procurator Fiscal may need to instruct in order to
properly ascertain the cause of death. It also explains that a post-mortem may be required
and that in a very small number of cases it may be necessary to remove organs or tissue
samples for examination. The brochure also explains the difference between hospital and
Procurator Fiscal post-mortems.

Consistency and Monitoring of Guidance

This new guidance will be strengthened by a national training programme which will
commence in early 2006. This will cover all of our guidance on the investigation of deaths
including the important elements regarding liaison with bereaved relatives in the context of
organ retention. This new training will be aimed at legal staff of differing levels of
experience. One course will focus on staff who have only recently joined COPFS or who
have thus far had little experience of deaths cases. The second course will be aimed at more
experienced legal staff and will cover the presentation of Fatal Accident Inquiries. Both
courses will cover liaison issues including those relating to organ retention. We intend to
seek input from Bereavement counsellors and relatives’ support groups in developing this
training.

We are committed to effective and consistent monitoring of our policy and practice in this
area. While Area Procurators Fiscal remain responsible to the Lord Advocate and Crown
Agent for the implementation of our standing guidance, Crown Office officials will conduct
monitoring exercises to ensure that both consistent and appropriate practices are in place
across our 11 Areas. We will also keep our new guidance under review in light of experience
and feedback received from bereaved relatives.

In addition however there will be a comprehensive inspection of our practices in liaising with
bereaved relatives in deaths cases by the independent Inspectorate of Prosecution in Scotland.
This inspection will cover our liaison in the context of organ retention and the effectiveness
of our policy in general in this area. This will commence early in 2006 and a report will be
presented to the Lord Advocate within 6 months. This is a significant step forward and will
place our policy and practice under close scrutiny allowing us to learn from the
recommendations and to progress thereafter to further improve the ways in which we seek to
assist and serve bereaved relatives at an acutely difficult time. The inspection also represents
our acceptance of Recommendation 12 (paragraphs 102 and 108) in the Phase 3 report of the
Independent Review Group.

Conclusion

We understand that public support in Scotland for organ transplantation is somewhere around
90 per cent. This Bill recognises this expression by the people of Scotland and seeks to
provide a system that is positively geared towards supporting organ transplantation but at the
same time empowers bereaved relatives to authorise this. Although the Bill is not primarily
aimed at the COPFS we welcome its terms and support its ethos and the positive way forward
it represents for Scotland.
Annex A

Summary of Guidance issued to Procurators Fiscal in 2002

- That bereaved families should be notified of the Procurator Fiscal’s involvement in all deaths where the Procurator Fiscal has decided to make some inquiry.

- That bereaved families should be told as soon as possible where an autopsy has been instructed.

- That, unless the family has indicated that they do not want to be notified about organ retention, there should be further contact where organs have been retained.

The guidance stressed the need for sensitive communication and emphasised the importance of:

- Liaison with the police or other reporting agency.
- Respecting the religious and cultural concerns of the bereaved family.
- Respecting the wishes of those families who do not want to receive detailed information about the circumstances of the death and the subsequent investigation.
- Committing informal contact to writing.