



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

**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**

**Consultation by  
Gil Paterson, MSP for Clydebank and Milngavie**

January 2019

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## FOREWORD

While the Scottish legal system has ancient roots, it is constantly evolving and improving. An area of our system which I believe requires attention is the procedure governing post-mortem examinations in some cases of a suspicious death. Specifically, cases where a suspect has been charged in connection with that death and a defence counsel has been appointed.

Recently we have seen a number of high-profile cases where relatives, bereaved in the most distressing of circumstances, have waited for what they consider to be an extended period of time for the victim's remains to be returned for burial while a second post mortem examination is carried out. While there is often good reason for any perceived delay, in some instances no reason is obvious, which can result in relatives wondering if the process could have been quicker. My proposed Bill would give greater certainty as to when a decision on the release of the remains will be taken.

While few people are touched by this issue – there were 64 homicide victims in 2016-17<sup>1</sup> – its effect on those people who are, when they are at their most vulnerable, can be immense and it is the experience of one of my constituents which has motivated me to propose this Bill.

Paige Doherty, the daughter of one of my constituents, was murdered on 19 March 2016; her body was discovered two days later and the man who was later found guilty of her murder was charged on 26 March. Despite the suspect being charged, Paige's family had no certainty about when a decision would be made about her body and when it would be released for burial. The second post mortem wasn't held until 15 April and her body was released to her family on 18 April, 30 days after her murder. There was no transparency in the procedure and this caused a great deal of distress to her family. I hope my proposals will lessen the distress caused for others in similar circumstances.

The present procedure lacks clarity as the steps which need to be taken before the body is returned to relatives are not clearly defined. There is no definitive structure which would make it possible for the family of the victim, or the public, to understand what stage in the process has been reached at any given time. The changes which I wish to introduce would make the procedure more transparent and give greater clarity and a higher degree of certainty for everyone involved. I believe that my proposals would provide that degree of certainty about when a decision must be taken while also protecting the rights of the defendant to a fair trial.

I believe it is possible to retain a criminal justice system based on the fundamental principle of a right to a fair trial whilst, at the same time, giving victims' families greater certainty about when they will be able to hold a funeral for their loved ones.

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<sup>1</sup> Available at: <https://beta.gov.scot/publications/homicide-scotland-2016-17-9781788512367/>

In order to arrive at the present proposal, I carried out extensive research and spoke to numerous experts, including Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS), the Faculty of Advocates, the Law Society of Scotland and a consultant forensic pathologist. I also met with the First Minister to discuss this issue. I would like to take this opportunity to thank them for their time.

I welcome views from all stakeholders and look forward to working together constructively to secure the solution to this problem.

Gil Paterson MSP

## HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at Suite 1-6, Titan Business Enterprise Centre, 1 Aurora Avenue, Clydebank G81 1BF.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website ([www.parliament.scot](http://www.parliament.scot)) under Parliamentary Business / Bills / Proposals for Members' Bills.

## AIM OF THE PROPOSED BILL

### BACKGROUND

#### What is a post-mortem examination?

A post-mortem examination (PME) is a medical investigation of a dead body to establish the cause of death or investigate further an illness or condition suffered by the deceased. PME's are carried out by forensic pathologists, of whom there are only a limited number available in Scotland.

#### The instruction of post-mortem examinations following a suspicious death in Scotland

Guidance issued by the Crown Office and Procurator Fiscal Service (COPFS) states that a PME will always be required where a death has occurred in suspicious circumstances in order to ensure all available evidence is gathered to assist with any criminal investigation, including identifying those persons responsible for the death.<sup>2</sup> The guidance goes on to state that the PME should take place as soon as possible after the report of a death to the Procurator Fiscal (PF) and will often take place within a few days of the date of death. The examination is carried out by two pathologists (a "double-doctor PME") in order to ensure evidence is corroborated. Once the PME has been undertaken, a final report must be made to the PF within whatever timescale has been agreed. The PF is then under an obligation to share the results with counsel for the defence.

The guidance also states that a further PME may be subsequently required. This is often referred to as a defence PME as it is requested on behalf of the individual(s) accused of that crime.<sup>3</sup>

In an answer to a written parliamentary question, the Lord Advocate, James Wolffe QC, stated that—

"In law, the Defence has a right to instruct a defence PME to properly test the evidence against an accused person. Failure to recognise this right would potentially jeopardise any subsequent criminal proceedings against an accused person in relation to the death."<sup>4</sup>

Unlike the PME instructed by the PF, however, there is no timescale by which a defence PME should be instructed. This means that, where an individual has been charged in

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<sup>2</sup> COPFS, *Information for bereaved relatives – the role of the Procurator Fiscal in the investigation of deaths*. Available at:

<http://www.copfs.gov.uk/images/Documents/Publications/Information%20following%20a%20death/October%202017%20Information%20for%20nearest%20relatives.pdf>

<sup>3</sup> The defence PME may be referred to as the second PME in this document, depending on the context.

<sup>4</sup> Question S5W-14316 lodged by Kezia Dugdale MSP and answered on 26 February 2018.

relation with a suspicious death, there is no deadline for a decision to be taken as to whether a second PME should be instructed. Where an arrest has not been made, there is no time limit by which a decision must be taken as to whether the body can be released to the family.

There may be circumstances, therefore, where a bereaved family has to wait indefinitely for the body of their relative to be returned.

Defining the procedural steps which need to be taken before the body is released, and setting a timeframe within which these steps need to happen, would introduce more transparency into the system and reduce the likelihood of extended and unnecessary delay.

### **The instruction of post-mortem examinations following a suspicious death in England and Wales**

In England and Wales, a coroner investigates where there is reasonable suspicion that the deceased has died a violent or unnatural death. The coroner instructs a PME, which is usually carried out by a single pathologist and with police present, as soon as possible after the body is discovered.

Where someone is charged in relation to the death, the coroner, at the request of the defence, will usually agree to a second PME being conducted by a second pathologist.<sup>5</sup> Whilst there is no set deadline within which the defence must instruct a second PME, guidance states—

“The coroner will not usually object to a further post mortem examination being conducted for family members or other persons charged with having caused or contributed to the death, provided that such further examinations are conducted in the interests of justice and without undue delay, with proper notice being given to the coroner. The coroner may request that multiple requests for further post mortem examinations be conducted jointly.”

Where no suspect has been identified or arrested within 28 days of the death (and where the police do not expect to arrest anyone in the near future), a second independent PME may be conducted so as to allow, where appropriate, the release of the body.

The guidance also states that, subject to the interests of the criminal justice system, it is the responsibility of all agencies to treat the early release of the body as a priority.

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<sup>5</sup> Practice Advice for Dealing with Sudden Unexpected Death and the Medical Investigation. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/654728/Practice\\_Advice\\_Dealing\\_with\\_Sudden\\_and\\_Unexpected\\_Death\\_5\\_7\\_2017\\_v20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/654728/Practice_Advice_Dealing_with_Sudden_and_Unexpected_Death_5_7_2017_v20.pdf)

## Recent review of PME protocols

In an answer to a written parliamentary question, Michael Matheson, then Cabinet Secretary for Justice, announced on 31 January 2018 that COPFS was “working with forensic pathologists on a revised PME protocol that may help reduce the number of further PMEs instructed by the defence”.<sup>6</sup>

In response to another written parliamentary question, the Lord Advocate provided further information about the review. He stated that—

“In consultation with the Law Society of Scotland, the Faculty of Advocates, and Forensic Pathologists, the COPFS is reviewing PME protocols to enable more effective consultation between pathologists instructed by the Crown and Defence. Effective consultation would support an informed defence decision as to whether a second physical post mortem examination was required and may reduce not only the number of required defence examinations but also delays in the return of deceased persons to their families, reflecting the views of families.”<sup>7</sup>

On 31 October 2018, COPFS announced the publication of a new protocol to speed up the release of the bodies of murder victims that have been retained for post-mortem examinations.<sup>8</sup> The COPFS argued that—

“Effective consultation between pathologists instructed by the Crown and defence supports an informed decision as to whether a second post-mortem examination is required. This may deliver a reduction in the number of defence examinations and minimise delays in the return of loved ones to their families.”

The protocol, which supplements a code of practice and performance standards for forensic pathologists published by the Royal College of Pathologists and the COPFS<sup>9</sup>, commits pathologists instructed by the Crown and the Defence to consult more effectively in order to better inform the decision of the Defence pathologist about whether a second PME is required.<sup>10</sup>

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<sup>6</sup> Question S5W-14044 lodged by Kezia Dugdale MSP and answered on 31 January 2018.

<sup>7</sup> Question S5W-14316 lodged by Kezia Dugdale MSP and answered on 26 February 2018.

<sup>8</sup> COPFS, *Bid to reduce impact of murder post-mortems* (news release). Available at: <http://www.copfs.gov.uk/media-site/media-releases/1806-bid-to-reduce-impact-of-murder-post-mortems>.

<sup>9</sup> Code of practice and performance standards, issued jointly by COPFS and the Royal College of Pathologists (updated in January 2016):

[http://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Protocols\\_and\\_Memorandum\\_of\\_Understanding/code%20of%20practice%20and%20performance%20standards%20for%20forensic%20pathologists.pdf](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Protocols_and_Memorandum_of_Understanding/code%20of%20practice%20and%20performance%20standards%20for%20forensic%20pathologists.pdf).

<sup>10</sup> COPFS, *Forensic pathologist consultation protocol*. Available at:

[http://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Protocols\\_and\\_Memorandum\\_of\\_Understanding/Forensic%20Pathologist%20Consultation%20Protocol.pdf](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Protocols_and_Memorandum_of_Understanding/Forensic%20Pathologist%20Consultation%20Protocol.pdf).



## DETAIL OF THE PROPOSED BILL

I want to introduce a Member's Bill which would place a time limit on the existing right of the defence to instruct a second PME. The defence would have the right to apply to the court for the time-period to be extended.

The opportunity to collect evidence from a PME can be a fundamental element in the accused's case for the defence and it is vital that someone accused in relation to a suspicious death has the appropriate length of time and facilities to prepare their defence. A person's right to a fair trial is a fundamental cornerstone of the legal system and I am confident that this Bill would not compromise this right.

At the end of the set time-period, unless a successful application had been made to a court for the deadline to be extended, the body would be returned to the family.

I don't yet have a fixed view on what an appropriate time-period would be but, as a starting-point for discussion, I would suggest a period of 14 days. I would envisage the same period being set as the maximum amount of any extension to the deadline.

I currently envisage the time-period beginning from the point at which the Crown PME has been completed, rather than when the final report of the examination is made to the procurator fiscal and shared with defence counsel. There will be variability in how long it takes for the pathologists to write up the results, and starting the time-period only after this has happened would further increase delay and uncertainty. If it takes longer than usual to write up the results, that could no doubt be cited by defence counsel as a reason to seek an extension.

### **How the Bill would work**

On this model, this is how the process would work in a case where a suspect has been charged (and defence counsel appointed) from the outset—

- As soon as the PME instructed by the PF has been completed, there would be a specific time-period within which the defence PME must be instructed.
- Defence counsel could apply to the court, during that time-period, for the deadline to be extended, by up to the same time-period as was originally allowed. The defence would have to provide reasons to support the application, and the court would decide whether to grant the application and, if so, whether to extend the deadline by the amount sought or by a lesser amount.
- If the court agrees to an extension, the defence has until that (extended) deadline to instruct a second PME or to apply for a further extension to the deadline.
- There would be no limit on the number of times the time-limit could be extended in this way – but each extension would require an application to the court, with reasons given.
- At the end of the time-period, the body would be returned to the family as soon as possible.

Where a suspect has not been charged in relation to the death (or where a suspect has been charged but a defence counsel has not yet been appointed) at the time the initial PME is completed, the same time-limit would apply but with the period beginning from when defence counsel is appointed.

I envisage that applications for an extension would be made in writing and would normally be considered by the sheriff or trial judge on that basis. However, if the sheriff or judge needed more information, he or she would have the option of inviting oral submissions from the parties “in chambers” (i.e. in the sheriff or judge’s rooms). I recognise, however, that it would not be appropriate for these procedural issues to be dealt with in the Bill itself, and that they would need to be provided for separately in “rules of court”.

### **Advantages of this approach**

The main advantage of the Bill would be to create a clear presumption that any defence PME is to be instructed quickly, with the onus on the defence to explain why any longer period is needed. This is likely to reduce the average period that families have to wait and, in particular, should make the longest delays less frequent. In addition, the Bill would make the process clearer and more transparent, giving the family of a victim a greater level of certainty about when the body is likely to be returned to them. Where an application for an extension had been successful, this would be based on a case having been made in court.

Thus, the lengthy delays experienced by some bereaved families would, in many cases, be avoided or at least reduced; and families would avoid some of the additional distress that is caused by not knowing how long they may have to wait to bury their loved one.

The proposed Bill does not seek to interfere with the right of the defence to take the time required, in the particular circumstances, to prepare its case. The proposed Bill would not prevent a second PME being conducted on behalf of the defence, nor would it force every case to meet a single, pre-determined timescale (which might not be sufficient, in some complex or difficult cases). Extensions would always be possible so long as good reasons could be given. The Bill gives more recognition to the needs and interests of victims’ families, but without undermining the proper role of the courts in determining what time is needed to secure a fair trial.

### **Anticipated costs and savings**

The Bill would be expected to incur some costs but, due to the low number of suspicious deaths per year in Scotland, it is not anticipated any costs arising from the Bill would be substantial.

Where a defence counsel applies to the courts for an extension to the time-period, there would be some additional costs for the COPFS, the SCTS and the accused. Where

legal aid has been awarded to the accused, some costs may also fall to the Scottish Legal Aid Board (SLAB).

Some small savings may be achieved because victims' bodies may be returned to their families sooner than they are at present.

The greatest savings, however, arising from this proposed Bill – in terms of reducing the grief and pain felt by bereaved families waiting indefinitely for the return of their relatives' bodies – cannot be quantified in financial terms.

### **Sustainability considerations**

The impact of all proposed member's Bills on the sustainable development of the economy, society, environment and governance are also considered.

It may be the Bill would impact on the sustainable development of an equitable and just society. In particular, the proposed Bill is intended to be fairer to the victim's family by preventing a delay in the defence taking a decision in relation to instructing a second PME.

It is not anticipated the Bill would have any impact on the sustainability of the environment, economy and governance.

## QUESTIONS

### ABOUT YOU

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
  - an individual – in which case go to Q2A
  - on behalf of an organisation? – in which case go to Q2B
  
- 2A. 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”.)
  - Politician (MSP/MP/peer/MEP/Councillor)
  - Professional with experience in a relevant subject
  - Academic with expertise in a relevant subject
  - Member of the public

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

- 2B. Please select the category which best describes your organisation:
  - Public sector body (Scottish/UK Government or agency, local authority, NDPB)
  - Commercial organisation (company, business)
  - Representative organisation (trade union, professional association)
  - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
  - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
  - I am content for this response to be published and attributed to me or my organisation
  - I would like this response to be published anonymously
  - I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. 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

Name:

Please provide 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. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

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

### **YOUR VIEWS ON THE PROPOSAL**

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

#### **Aim and approach**

1. The proposed Bill would set a time-limit for the instruction of a second post-mortem examination, by the defence, in relation to a suspicious death. Which of the following best expresses your view of this proposal?
- Fully supportive
  - Partially supportive
  - Neutral (neither support nor oppose)
  - Partially opposed
  - Fully opposed
  - Unsure

Please explain the reasons for your response.

2. Which of the following best expresses your view of when any time-limit should begin?
- On the day after the Crown PME is completed – and with no time-limit in a situation where, at that time, there is no accused person
  - On the day after the Crown PME is completed, or when defence counsel is appointed for an accused person, whichever is the later
  - On the day after the results of the Crown PME are provided to defence counsel, or when defence counsel is appointed for an accused person, whichever is the later
  - Other (please specify)
  - Unsure

Please explain the reasons for your response.

3. How long a time-period do you think should be available to the defence in which to instruct a second PME?
- 7 days (1 week)
  - 14 days (2 weeks)
  - 21 days (3 weeks)
  - 28 days (4 weeks)
  - Other (please specify)

Please explain the reasons for your response.

4. 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 no scope for extension of the time-limit
  - There should be scope for only a single extension (shorter than the original period – please specify)
  - There should be scope for only a single extension (no longer than the original period)
  - There should be scope for repeated extensions (each shorter than the original period – please specify)
  - There should be scope for repeated extensions (each no longer than the original period)
  - There should be no time-limit (and so no need for any extension)
  - Other (please specify)

Please explain the reasons for your response.

## **Financial implications**

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

(a) prosecuting authorities (COPFS)

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) the courts (SCTS)

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) victims' families

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(d) the accused/defence

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

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

### **Equalities**

7. 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?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

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

### **Sustainability**

9. 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
- No
- Unsure

Please explain the reasons for your response.

### **General**

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



## HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

### Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

#### *Online survey*

To respond via online survey, please follow this link:

<http://www.smartsurvey.co.uk/s/PostMortemExaminations/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

#### *Electronic or hard copy submissions*

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to: [Gil.Paterson.msp@parliament.scot](mailto:Gil.Paterson.msp@parliament.scot)

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Gil Paterson MSP  
Suite 1-6  
Titan Business Enterprise Centre  
1 Aurora Avenue  
Clydebank G81 1BF

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on 0141 952 9677.

### **Deadline for responses**

All responses should be received no later than **Thursday 4 April 2019**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

### **How responses are handled**

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website:

[www.postmortemtimelimit.com](http://www.postmortemtimelimit.com)

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

### **Requests for anonymity or for responses not to be published**

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

## **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## **Data Protection**

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## **Freedom of Information (Scotland) Act 2002**

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

[www.itspubliknowledge.info](http://www.itspubliknowledge.info).

## **Privacy Notice**

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data including special categories of personal data (formerly referred to as sensitive personal data) that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into normal category data.

### **Collecting and holding Personal Data**

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and the Data Protection Act 2018 (the DPA) Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

### **Sharing Personal Data**

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

### **Publishing Personal Data**

"Not for publication" responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of "not for publication" responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing "not for publication" status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP's office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP's office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament's legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is "not for publication" or anonymous).

### **Use of Smart Survey software**

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member's Bill may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on SmartSurvey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

## **Access to, retention and deletion of personal data**

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then the information that we would normally publish – including all your answers to questions about the proposal (unless your response is “not for publication”) and your name (unless you requested anonymity), but not your contact details – may be downloaded from Smart Survey to SPCB servers and retained until the end of the session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was “not for publication”), together with your name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

## **Purpose of the data processing**

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

## **The legal basis**

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest, or in the substantial public interest, in accordance with Art 6(1)(e) GDPR, s8(d) DPA, or Art 9(1)(g) GDPR, s10 of and paragraph 6 of Schedule 1 of the DPA. The task is the support of Members seeking to introduce Members’ Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

## **Your rights**

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of

personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

***Access to your information*** – You have the right to request a copy of the personal information about you that we hold.

***Correcting your information*** – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

***Objecting to how we may use your information*** – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

***Restricting how we may use your information*** – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so.

Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

## **Changes to our privacy notice**

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 28 June 2018.

## **Contact information and further advice**

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance  
The Scottish Parliament  
Edinburgh  
EH99 1SP  
Telephone: 0131 348 6913 (Text Relay calls welcome)  
Textphone: 0800 092 7100  
Email: [dataprotection@parliament.scot](mailto:dataprotection@parliament.scot)

### **Complaints**

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113