

# REPORTING DEATHS TO THE PROCURATOR FISCAL

## Information and Guidance for Medical Practitioners

Produced by Crown Office and  
Procurator Fiscal Service

2014



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## **1. Introduction**

1.1 The Scottish Fatalities Investigation Unit (SFIU) is a specialist unit of Crown Office and Procurator Fiscal Service (COPFS). SFIU has responsibility for receiving reports of deaths occurring in Scotland which are sudden, suspicious, accidental or unexplained and fall within the categories set out at [part 3](#) below and deaths which give rise to public anxiety.

1.2 This booklet is intended to provide a clear and concise guide to assist practitioners in deciding whether a death requires to be reported to the procurator fiscal and how to go about this.

## **2. Timing of report of death to the procurator fiscal and who should make the report**

2.1 The doctor with the most detailed knowledge of the circumstances of the death should report it. The reporting doctor must understand clearly why the death is being reported and must be able to answer any questions about the circumstances of death which the procurator fiscal may ask.

2.2 The procurator fiscal may require to discuss the circumstances of the death in the days following initial report. In the event that the reporting doctor is to be off duty, he or she must be prepared to provide details of a colleague who is aware of the circumstances of death and whom the procurator fiscal may contact if necessary.

2.3 All reportable deaths must be notified to the procurator fiscal as soon as possible after occurrence and before any steps are taken to issue a death certificate. If a death certificate has been issued to the family and the procurator fiscal declines to accept the cause of death, this will have to be retrieved from the family, a distressing process which must be avoided as far as possible.

2.4 In normal circumstances, death reports should be made to the procurator fiscal during office hours. In situations of urgency, particularly where the death is suspicious or there are religious rites which require to be observed, a death report may be made outside office hours to the on-call service, contactable through the police. This facility should be used in exceptional circumstances only where the matter cannot wait until the next working day.

### **3. Categories of death to be reported**

The following deaths must be reported to the procurator fiscal ('reportable deaths'):

#### **Unnatural cause of death**

Any death which cannot be entirely attributed to natural causes (whether the primary cause or a contributing factor) including:

- Suspicious deaths – i.e. where homicide cannot be ruled out
- Drug related deaths - including deaths due to adverse drug reactions reportable under the Medicines and Healthcare Products Regulatory Agency (MHRA) (Yellow Card Scheme)
- Accidental deaths (including those resulting from falls)
- Deaths resulting from an accident in the course of employment
- Deaths of children from overlaying or suffocation
- Deaths where the circumstances indicate the possibility of suicide

#### **Natural cause of death**

Deaths which may be due in whole or part to natural causes but occur in the following circumstances:

- (a) Any death due to natural causes where the cause of death cannot be identified by a medical practitioner to the best of his or her knowledge and belief
- (b) Deaths as a result of neglect/fault

Any death:

- which may be related to a suggestion of neglect (including self neglect) or exposure
- where there is an allegation or possibility of fault on the part of another person, body or organisation

- (c) Deaths of children

Any death of a child:

- which is a sudden, unexpected and unexplained perinatal death
- where the body of a newborn is found
- where the death may be categorised as a Sudden Unexpected Death in Infancy (SUDI)
- which arises following a concealed pregnancy

Any death of a child or young person under the age of eighteen years who is 'looked after' by a local authority, including:

- a child whose name is on the Child Protection Register
- a child who is subject to a supervision requirement made by a Children's Hearing
- a child who is subject to an order, authorisation or warrant made by a Court or Children's Hearing (e.g. a child being accommodated by a local authority in foster care, kinship care, residential accommodation or secure accommodation)
- a child who is otherwise being accommodated by a local authority

(d) Deaths from notifiable industrial/infectious diseases

Any death:

- due to a notifiable industrial disease or disease acquired as a consequence of the deceased's occupation in terms of column 1 of Part 1 of Schedule 3 to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (see <http://www.legislation.gov.uk/ukxi/1995/3163/schedule/3/made> and [Section 10](#) of this guidance)
- which poses an acute and serious risk to public health due to either a Notifiable Infectious Disease or Organism in terms of Schedule 1 of the Public Health (Scotland) Act 2008 (see <http://www.legislation.gov.uk/asp/2008/5/schedule/1>) or any other infectious disease or syndrome,

(e) Deaths under medical or dental care (see [Section 9](#) below)

Any death:

- the circumstances of which are the subject of concern to, or complaint by, the nearest relatives of the deceased about the medical treatment given to the deceased with a suggestion that the medical treatment may have contributed to the death of the patient.
- the circumstances of which might indicate fault or neglect on the part of medical staff or where medical staff have concerns regarding the circumstances of death
- the circumstances of which indicate that the failure of a piece of equipment may have caused or contributed to the death
- the circumstances of which are likely to be subject to an Adverse Event Review (as defined by Healthcare Improvement Scotland)
- where, at any time, a death certificate has been issued and a complaint is later received by a doctor or by the Health Board,

which suggests that an act or omission by medical staff caused or contributed to the death

- caused by the withdrawal of life sustaining treatment or other medical treatment to a patient in a permanent vegetative state (whether with or without the authority of the Court of Session). (See [Section 13](#) below)
  - which occurs in circumstances raising issues of public safety.
- (f) Any death not falling into any of the foregoing categories where the circumstances surrounding the death may cause public anxiety.

### **Deaths in legal custody**

Any death of a person subject to legal custody. This includes (but is not restricted to) all persons:

- detained in prison
- arrested or detained in police offices
- in the course of transportation to and from prisons, police offices or otherwise beyond custodial premises e.g. a prisoner who has been admitted to hospital or a prisoner on home leave

## **4. Common misconceptions**

4.1 Only deaths which fall into the categories set out above require to be reported. In circumstances where the death does not fall into one of the above categories, **the following are not reasons for rendering the death reportable:**

- That the death occurred within 24 hours (or any other timescale) of admission to hospital;
- That the death occurred within 24 hours (or any other timescale) of an operation;
- That the deceased, who had a terminal illness died earlier than expected;
- That the deceased had not been seen by a GP for some time; and
- That a consultant has instructed that the death be reported without specifying the reasons why.

4.2 A death certificate may be issued if a medical practitioner is able to identify a cause of death to the best of his or her knowledge and belief. **Certainty is not required.**

## **5. How to report a death to the procurator fiscal**

5.1 There are three SFIU teams in Scotland (North, East and West) which are made up of a number of legal and administrative staff.

5.2 The SFIU North team is based in the procurator fiscal's offices in Dundee, Aberdeen and Inverness. The SFIU East team is based in the procurator fiscal's office in Edinburgh and the SFIU West team is based in the procurator fiscal's office in Glasgow.

5.3 The death should be reported to the SFIU team in whose area the significant event leading to the death occurred. [Annex 1](#) contains a map showing each SFIU area and a list of contacts for each team.

5.4 Information for nearest bereaved relatives on [the role of the procurator fiscal in the investigation of deaths](#) is on the COPFS website. In order to help families to understand the process, the reporting doctor may wish to refer them to this booklet using the details at [Annex 2](#).

## **6. Information required by the procurator fiscal**

6.1 The reporting doctor should provide the procurator fiscal with all of the information required by the 'Notification of Death' form, a copy of which is contained in [Annex 3](#).

6.2 The procurator fiscal requires sufficient information regarding the deceased's medical history and circumstances of death to enable a decision to be made as to whether it is appropriate to accept a death certificate which may be offered, or to initiate further action (see section below).

6.3 The procurator fiscal is not medically qualified and in cases of particular difficulty may contact their local forensic pathology team for advice regarding certification issues. In such circumstances a Pathologist will review the Notification of Death form and the proffered cause of death and provide advice with regard to the best way to proceed.

## **7. Action which the procurator fiscal may take**

### **7.1 Accept the death certificate offered and take no further action**

This is likely to be the decision if the doctor reporting the death is prepared to issue a death certificate certifying the cause of death to the best of his or her knowledge and belief (certainty is not required) and the procurator fiscal is satisfied from the history and circumstances of death reported that the death occurred due to natural causes and does not require to be investigated.

### **7.2 Consent to a hospital (non-PF) post mortem examination**

Occasionally, where a reportable death in hospital is due to natural causes and has not been certified, a medical practitioner may seek a hospital post

mortem examination for the sole purpose of achieving more accurate certification. In these circumstances, the procurator fiscal and the reporting doctor may decide, after discussion, that it is appropriate for a hospital post mortem examination to proceed. Consent from the nearest relatives will be required. The cause of death must be intimated to the procurator fiscal following the hospital post mortem examination.

### **7.3 Request a police report**

Where the cause of death has not been ascertained or the procurator fiscal requires further information, a police report is likely to be requested. This does **not** indicate that the procurator fiscal regards the matter as criminal; rather it reflects the fact that the police act as agents on behalf of the procurator fiscal and gather information on his or her behalf. The procurator fiscal will invariably instruct a police report where he or she anticipates instructing a post mortem examination.

### **7.4 Instruct a post mortem examination**

If no medical practitioner is able to certify the cause of death or, rarely, if the procurator fiscal is not prepared to accept a certificate which is offered, a post mortem examination will usually be required to ascertain the cause of death. This may be a full post mortem or an external examination known as 'view and grant'. A 'view and grant' examination may be carried out where a pathologist examines the deceased's body, considers the medical history and the circumstances of death and is able to grant a death certificate certifying the cause of death without the need to undertake a full post mortem examination. Where a full post mortem examination is necessary for an effective investigation into the deceased's death, the procurator fiscal's right to instruct it may have to override any objection thereto.

### **7.5 Release of the body**

Once a death has been reported to the procurator fiscal, the procurator fiscal has legal responsibility for the body, usually until a death certificate is written. The procurator fiscal will usually surrender legal responsibility for the body once the death certificate has been issued. In most cases where a post mortem examination is carried out, the body will be released when the examination is complete and a death certificate has been issued.

## **8. Role of the procurator fiscal in the investigation of deaths**

8.1 On a death being brought to his or her attention, it is the duty of the procurator fiscal to make initial enquiry and decide whether and to what extent further investigation is required and to initiate that investigation.



8.2 In circumstances where the procurator fiscal accepts the death certificate being offered by the medical practitioner; or where a post mortem examination is carried out, death is certified as having occurred due to natural causes and there are no matters of concern, the procurator fiscal's investigation is complete.

8.3 In other cases, the procurator fiscal, acting in the public interest, may carry out further enquiries in relation to the circumstances of the death in order to achieve an effective investigation; whether to eliminate suspicion or establish criminality or to identify reasonable precautions whereby a death might have been avoided and identify any defects in a system of work which caused or contributed to the death.

8.4 At the conclusion of such investigations, consideration will be given as to whether it is in the public interest to hold a Fatal Accident Inquiry (FAI) into the death.

## **9. Deaths associated with medical or dental care**

9.1 Most deaths under medical care represent an unfortunate outcome where every reasonable care has been taken. However, some deaths associated with the provision of medical care may involve fault or negligence on the part of medical or paramedical staff and may give rise to questions of public safety and, in rare cases, may be associated with criminality.

9.2 Medical care includes surgical, anaesthetic, nursing or other care/treatment whether provided in a healthcare or non-healthcare setting.

9.3 The procurator fiscal may decide to instruct an independent expert in the relevant field to provide an opinion on the circumstances of the death. The expert may wish to discuss the circumstances of the death with the doctor/(s) involved in the treatment of the deceased.

9.4 Similar principles should apply to any death in the course of dental treatment.

## **10. Asbestosis, mesothelioma and asbestos-related lung cancer**

10.1 The acquisition of an industrial disease following asbestos exposure, such as asbestosis, mesothelioma and asbestos-related lung cancer may give rise to a civil claim for compensation.

10.2 A number of industrial diseases, including asbestosis, mesothelioma and asbestos-related lung cancer can be accurately diagnosed in life and it may be possible to accept the cause of death offered by the reporting doctor without the necessity of a post mortem examination.

10.3 If a conclusive diagnosis is not made during the patient's life, the procurator fiscal will require to instruct a post mortem examination to establish the cause of death and to preserve the necessary evidence in the event that the nearest relatives wish to pursue a claim in relation to the industrial disease caused by previous asbestos exposure.

10.4 The doctor who reports the death must complete Part 3 of the Mesothelioma Pro Forma. See Chief Medical Officer's letter dated 17 March 2014: [http://www.sehd.scot.nhs.uk/cmo/CMO\(2014\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2014)07.pdf)

## **11. Court proceedings**

11.1 Court proceedings may follow a death in a variety of circumstances. Medical personnel, particularly hospital medical staff, who were involved in the treatment of a patient whose death becomes the subject of criminal or FAI proceedings may require to be called as witnesses in a criminal trial or an FAI at Court.

## **12. Organ transplantation**

12.1 A [Protocol](#) has been agreed between COPFS and the Scottish Transplant Group with regard to organ and tissue donation. A summary of the important points are:

- where there is reason to believe that the death may be reported to the procurator fiscal, no body parts will be removed without his or her prior consent;
- the procurator fiscal may object to removal of organs in a case which is likely to result in a charge of homicide or where, in the time available, insufficient enquiry is able to be carried out to allow an informed decision. There are procedures available which will allow the procurator fiscal not to object to transplantation in cases of homicide but early discussion with the procurator fiscal is essential;
- the procurator fiscal will normally permit removal of organs subject to the need to ensure that any future post mortem examination to establish the medical cause of death is not prejudiced; and to ensure that sufficient evidence is available for any subsequent criminal proceedings or Fatal Accident Inquiry; and
- where possible, the procurator fiscal will provide consent.

## **13. Persistent vegetative state and withdrawal of life support facilities**

13.1 The case of *Law Hospital NHS Trust v Lord Advocate* 1996 SLT 848 establishes that when a hospital which has care of a patient who is in a persistent vegetative state, or any relative of that patient, seeks

withdrawal of treatment, there should be an application to the Court of Session for authority to discontinue treatment. After the decision, the Lord Advocate indicated that any qualified medical practitioner (or any person acting upon the instructions of such a practitioner) who, acting in good faith and with the authority of the Court of Session, withdraws or otherwise causes to be discontinued life sustaining treatment or other medical treatment from a patient in a persistent, or permanent, vegetative state, with the result that the patient dies, will not be prosecuted.

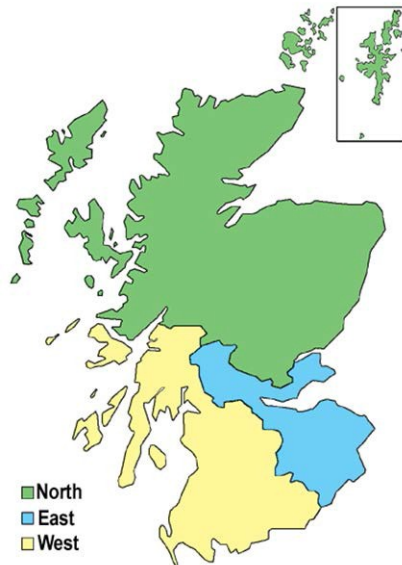
13.2 Immunity from prosecution does not automatically extend to medical practitioners who, without seeking the authority of the Court, withdraw life sustaining treatment in a persistent or permanent vegetative state with the result that the patient dies. The Lord Advocate has expressed the view, however, that if doctors and those acting on their instructions were acting in accordance with accepted medical practice and had exercised the proper degree of care expected of them, it would be very unlikely that any prosecution in the public interest would be brought against them.

13.3 Any death of a patient in a permanent vegetative state as a result of the withdrawal of life sustaining treatment or other medical treatment (whether with or without the authority of the Court of Session) must be reported to the procurator fiscal as soon as it occurs.

## Annex 1

### SCOTTISH FATALITIES INVESTIGATION UNIT TEAMS AND CONTACT DETAILS

Map showing each SFIU area:



#### **SFIU WEST**

Telephone: 0844 561 2470  
Fax: 0844 561 2440

#### **SFIU EAST**

Telephone: 0844 561 4110  
Fax: 0844 561 4179

#### **SFIU NORTH**

##### Grampian

Telephone: 0844 561 2669  
Fax: 0844 561 2637

##### Tayside

Telephone: 0844 561 2669  
Fax: 0844 561 2884

##### Highlands and Islands

Telephone: 0844 561 2669

## Annex 2

### Information for Nearest Relatives

# CROWN OFFICE AND PROCURATOR FISCAL SERVICE

## INFORMATION FOR BEREAVED RELATIVES

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## THE ROLE OF THE PROCURATOR FISCAL IN THE INVESTIGATION OF DEATHS

Can be found at:

[www.copfs.gov.uk/publications/deaths](http://www.copfs.gov.uk/publications/deaths)



INVESTORS  
IN PEOPLE



Annex 3		Form eF5 NOTIFICATION OF DEATH	
<b>Reported by</b>	«Next Record»		
<b>Contact details</b> (phone + page + mobile number)	«Next Record»		
<b>Date &amp; time of reporting</b>	«Next Record»		
<b>Please provide details of who to contact if doctor reporting death is unavailable</b> (name and telephone number)	«Next Record»		
<b>Supervising consultant and secretary <u>or</u> GP Practice Manager</b> (Name and telephone number)	«Next Record»		
<b>PARTICULARS OF DECEASED</b>			
<b>Full name</b>	«Next Record»		
<b>Age</b>	«Next Record»		
<b>Date of birth</b>	«Next Record»		
<b>Address</b>	«Next Record»		
<b>Locus of death</b>	«Next Record»		
<b>Date &amp; time of death</b>	«Next Record»		
<b>General Practitioner</b> (name + address + telephone number)	«Next Record»		
<b>Please highlight any religious/cultural requirements relating to the deceased of which you are aware</b>	«Next Record»		
<b>NEAREST RELATIVES</b>			
<b>Name</b>	«Next Record»		
<b>Relationship to deceased</b>	«Next Record»		
<b>Special Needs</b> eg Interpreter	«Next Record»		
<b>Address and telephone number including mobile number of nearest relatives</b>	«Next Record»		

HISTORY	
<b>Relevant past medical history and relevant medication</b> (include prescribed medication and any alcohol / illicit drug abuse history)	
<b>Summary of main events prior to death</b> (where available please include copies of discharge summary; operation notes; etc)	
<b>Reason for referring the death to the Procurator Fiscal?</b> (Are there specific clinical questions / concerns to be addressed?)	
<b>Have the circumstances of the death been discussed with nearest relatives?</b>	«Next Record»
<b>Name of person who discussed death with nearest relatives</b>	«Next Record»
<b>Date of discussion</b>	«Next Record»
<b>Have nearest relatives expressed any concerns about the circumstances surrounding the death?</b> (If yes, please specify)	«Next Record»
<b>Have nearest relatives been advised that the death has been reported to Procurator Fiscal?</b>	«Next Record»
<b>Have you any concerns?</b> (Please list)	«Next Record»
<b>Willing or unwilling to issue death certificate. If unwilling please explain why not</b>	«Next Record»
<b>Cause of death if certification being offered.</b>	1(a) «Next Record» 1 (b) «Next Record» 1 (c) «Next Record» II «Next Record»

<b>If certification is not being offered please provide the presumed cause of death in general terms, if known</b>	«Next Record»
<b>Has consideration been given to carrying out a hospital post mortem examination?</b>	«Next Record»
<b>Certifying doctor</b>	«Next Record»
<b>If this is a suspected asbestosis/ mesothelioma death please confirm whether a biopsy or other test has been taken in life which has confirmed this diagnosis. (Please provide details)</b>	«Next Record»

**For PF Office Use Only**

<b>PF to whom reported</b>	«Next Record»
<b>PF instructions</b> (remember to request medical records; admission/ pre-transfusion blood samples if applicable)	«Next Record»
<b>Date of PF instructions</b>	