

Work-related deaths

A protocol for liaison

Foreword

This protocol has been developed through the representative bodies of the undersigned organisations to emphasise the importance of working together to investigate thoroughly work-related deaths in Scotland, and where appropriate, to prosecute.

This is the first version of the protocol and we intend to review its operation and revise it as necessary in the light of experience. The protocol is available to the public and interested organisations and their views and experience of its operation are sought to aid that process. We are conscious of the strength of public feeling about workplace fatalities and of how these tragic incidents devastate peoples' lives.

All four signatory organisations recognise the need for investigatory authorities to talk to each other and to share information and best practice. We appreciate that people want to be confident that we are doing all that we can to co-ordinate our efforts and to co-operate with each other in the best interests of public safety and of those affected by work-related deaths.

We endorse this protocol. We believe that it provides an enhanced framework for liaison, and that its introduction will help ensure that all four signatory organisations work in partnership to deliver the high standard of professionalism that the public requires and deserves.



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Introduction

1 This protocol has been agreed among the Health and Safety Executive (HSE), the Association of Chief Police Officers (Scotland) (ACPOS), the British Transport Police (BTP), and the Crown Office and Procurator Fiscal Service (COPFS). It sets out the principles for effective liaison among the parties in relation to work-related deaths in Scotland and is available to the public. In particular, it deals with incidents where, following a death, evidence indicates that a serious criminal offence other than a health and safety offence may have been committed. The protocol addresses issues concerning general liaison and is not intended to cover the operational practices of the signatory organisations.

2 HSE, the police and COPFS have different roles and responsibilities in relation to a work-related death.

3 When a crime is committed or where there has been a sudden, suspicious or unexpected death, it is the responsibility of the Procurator Fiscal to investigate it, although this will usually be done (for crimes other than health and safety ones) in the first instance by the police, who will report the result of their investigation to the Procurator Fiscal. Decisions on whether there should be prosecutions or Fatal Accident Inquiries are taken by COPFS.

4 HSE is responsible, under Section 18 of the Health and Safety at Work etc Act 1974 (HSW Act), for making adequate arrangements for the enforcement of health and safety legislation with a view to securing the health, safety and welfare of workers and protecting others, principally the public.

5 Other enforcing authorities may investigate work-related deaths and use either the HSW Act or other more specific legislation that may be relevant to the circumstances and hence need to be involved. There are ministerial and inter-government department agreements about relative responsibilities for regulatory regimes and the boundaries that will be applied to the HSW Act. These other enforcing authorities (see the Annex for the main bodies) will be involved to investigate and report on their regimes and legislation as appropriate.

6 The HSW Act is not devolved legislation and the Health and Safety Commission (HSC) has overall responsibility to ministers for securing the aims of the HSW Act through health and safety enforcement policy. Health and safety offences are investigated by HSE, the local authority or other enforcing authority in accordance with HSC's *Enforcement Policy Statement* and other policies, and are subject to direction by ministers and HSC. HSC's *Enforcement Policy Statement* has been accepted by COPFS as part of the 'public interest' test and HSC policies in respect of work-related risks to others will be communicated to COPFS.

7 All decisions on whether to prosecute health and safety offences, whether or not a fatality is involved, are made by COPFS.

8 The underlying principles of this protocol are:

- an appropriate decision concerning prosecution will be made based on a sound investigation of the circumstances surrounding work-related deaths;
- where there is an indication of the commission of a serious criminal offence (other than a health and safety offence) the police will conduct an investigation (subject to any guidance or instruction from the Procurator Fiscal) jointly with HSE (or other enforcing agency). On the rare occasions where joint investigation would not be appropriate, there will still be effective liaison and co-operation among the investigating parties;
- where health and safety offences only are involved, HSE (or other enforcing authority) will conduct an investigation, again in liaison with the police and COPFS;
- the decision to prosecute will be made without unreasonable delay;
- the bereaved and witnesses will be kept suitably informed; and
- parties to the protocol will maintain effective mechanisms for liaison.

Application

9 For the purpose of this protocol, a work-related death is a fatality resulting from an incident arising out of or in connection with work. The principles set out in this protocol also apply to cases where the victim suffers injuries in such an incident that are so serious that there is a clear indication, according to medical opinion, that death is likely.

10 There will be cases in which it is difficult to determine whether a death is work-related or not in the early stages of an investigation. The Procurator Fiscal will determine whether or not a death is work-related and thus subject to this protocol after consultation with the police and investigating agencies.

Statement of intent

11 In the early stages of an investigation, it is not always apparent whether any serious criminal offence has been committed. The parties to the protocol are committed to ensuring that any investigation into a work-related death is thorough and appropriate, and agree to work closely together in order to achieve this. Decisions in relation to who will lead the investigation, and the direction it will take, should be timely, informed by the best available evidence and technical expertise, and should take account of the wider public interest. Should there be any issue as to who is to be involved in investigating any work-related death, then the enforcing authorities and the Procurator Fiscal will work together to reach a conclusion. Where the Procurator Fiscal decides that a work-related death may be a serious criminal offence (other than a health and safety offence), then they have authority to direct the police to lead the investigation until such time as such serious crime is excluded. The Procurator Fiscal has no authority to issue instructions to HSE or other investigating authorities other than the police, as these have their own investigatory needs, but will assist the Procurator Fiscal and police where they have the skills, competencies and resources to do so.

Initial action

12 A police officer attending an incident involving a work-related death should treat the locus as a crime scene and arrange, according to the officer's own force procedures governing unexplained deaths, to:

- identify, secure, preserve and take control of the scene, and any other relevant place;
- supervise and record all activity;
- inform a senior supervisory officer;
- enquire whether the employer or other responsible person in control of the premises or activity has informed HSE (or other investigating or enforcing authority); and
- contact and discuss the incident with HSE (or other enforcing authority) and agree arrangements for controlling the scene for considering access to others, and for other local handling and procedures to ensure the safety of the public.

13 A police officer of supervisory rank should attend the scene and any other relevant place to assess the situation, review actions taken to date and assume responsibility for the investigation. Should any other investigating or enforcing authority have staff in attendance before the police arrive, it should ensure that the police have been called, and preserve the scene in accordance with the initial actions (above) until the police get there.

14 The police officer of supervisory rank should, when they have assessed the situation and reviewed actions taken, contact the Procurator Fiscal, or if out of hours, the duty Procurator Fiscal, and appraise them of the full circumstances of the death. They should comply with any instructions issued by the Procurator Fiscal who may decide to attend the scene of the death and/or to instruct a pathologist to attend. Other specialists should attend the locus in accordance with local arrangements for the investigation of a serious crime to ensure a complete and thorough investigation.

15 Although the HSE *Investigators guide* is at present only available in an 'England and Wales' form, it nevertheless contains helpful practical guidance on initial scene attendance. A 'Scotland' form will be prepared to complement this Protocol.

Management of the investigation

16 Investigations should always be managed professionally, with communications among the signatory organisations continually maintained. Investigations should generally be jointly conducted, with one of the parties taking the lead, or primacy, subject to the authority or guidance of the Procurator Fiscal, as appropriate. An investigation may also require liaison with any other enforcing authority which may have an interest.

17 Throughout the investigation period, the police and HSE (or other enforcing authority) should keep the progress of the investigation under review. Milestones should be agreed and monitored, and policy and key decisions made after discussion with the Procurator Fiscal if necessary. All policy and key decisions are to be recorded.

18 The Procurator Fiscal, police and HSE (or other enforcing authority) should agree on:

- how resources are to be specifically used;
- how evidence is to be shared among the parties;
- how the interviewing of witnesses, the instruction of experts and the forensic examination of productions are to be co-ordinated;
- how, and to what extent, corporate or organisational failures should be investigated;
- a strategy for keeping the bereaved, witnesses, and other interested parties informed of developments in the investigation; and
- a media strategy to take account of the sensitivities of the bereaved and those involved in the incident, and to encourage consistency of approach in reporting;
- whether general warnings need to be given to industry or other classes of duty holder if the investigation reveals risks which may not be generally understood. The wording of such general warnings will need to be agreed with the Procurator Fiscal to minimise jeopardising any later proceedings.

19 In certain large-scale investigations it may be beneficial to form a strategic liaison group to ensure effective inter-organisational communication, and to share relevant information and experiences.

Decision making

20 This protocol formalises the arrangements for work-related deaths to be subject to joint initial investigation by the police and by HSE (or other enforcing authority responsible for health and safety legislation). Both parties will discuss their initial findings and views with the Procurator Fiscal as soon as possible after the initial site visit, with a view to enabling the Procurator Fiscal to make an early decision as to whether a serious criminal offence (other than a health and safety offence) can be excluded.

21 Where the investigation gives rise to a suspicion that a serious criminal offence (other than a health and safety offence) may have caused the death, the police will assume primacy for the investigation and will work subject to the authority of the Procurator Fiscal in partnership with HSE (or other enforcing authority). Where it becomes apparent during the investigation that there is insufficient evidence to establish that a serious criminal offence (other than a health and safety offence) caused the death, the investigation should, by agreement, be taken over by HSE (or other enforcing authority). Parties should record such a decision and therefore the reason in writing.

22 Information obtained and evidence gathered will continue to be exchanged as needed between the parties after any decision has been made on handover of the investigation.

23 Where HSE (or other enforcing authority) is investigating the death, and new information is discovered that may assist the Procurator Fiscal in considering whether a serious criminal offence (other than a health and safety offence) has been committed, then the enforcing authority will pass that new information to the Procurator Fiscal who will decide whether to involve the police in the enquiry. The decision and reasons should be recorded in writing.

Disclosure of material

24 Disclosure must always follow the established law and procedure and all decisions or disclosure, outwith the signatories, will be made by COPFS.

25 Where there has been an investigation, all reports of the investigation will be submitted to the Procurator Fiscal and shared, subject to any legal restrictions among the Procurator Fiscal, the police and HSE (or other enforcing authority). Special handling procedures may be necessary in certain cases. The organisation responsible for retaining the productions, documents and other relevant material should also be agreed upon.

Special inquiries

26 In the case of some incidents, particularly those involving multiple fatalities, the Health and Safety Commission may, with the consent of the Secretary of State, direct that a public inquiry be held. Alternatively, the Commission may authorise HSE, or any other person, to investigate and produce a special report.

27 In such circumstances, all signatories will provide any necessary support and evidence to the person appointed to conduct the public inquiry or to the special investigation, subject to the relevant regulations.

28 Complex legal issues may arise when there are parallel public inquiries and criminal investigations or prosecutions. The signatories will aim to keep the Procurator Fiscal and the Chairs of any inquiries informed of the progress of the investigation and the Procurator Fiscal will advise the inquiry as necessary.

29 Sometimes the report of a public inquiry may be delayed to await the conclusion of criminal proceedings, and on other occasions, there may be no such delay because of strong public interest in publishing the report and the recommendations of a public inquiry quickly. In either event, the signatories to the protocol will work together to ensure that the decision to prosecute can be made as expeditiously as possible and any criminal proceedings commenced without unreasonable delay.

Advice prior to charge

30 Early and regular liaison among the Procurator Fiscal, police, HSE or other investigating agency is essential in the best interests of the investigation and prosecution process as a whole.

31 The police must consult the Procurator Fiscal before charging an individual or the representatives of a company or corporate body with any serious criminal offence arising out of a work-related death.

The decision to prosecute

32 The decision to prosecute any serious criminal offence, including a health and safety one, will be taken by COPFS in accordance with the Prosecution Code. Following discussion among the Procurator Fiscal, the police and HSE (or another enforcing authority) the Procurator Fiscal will submit a full precognition to Crown Counsel who will make the decision and have it communicated to the Procurator Fiscal.

33 A serious criminal offence, other than a health and safety one, may be prosecuted with or without related health and safety offences. In respect of potential health and safety offences, HSE (or other enforcing authority) will submit a report to the Procurator Fiscal with recommendations on how to proceed made in accordance with the HSC Enforcement Policy Statement and the HSE Enforcement Handbook (Scotland), which incorporates the appropriate provisions of the COPFS Prosecution Code.

34 There should be no unreasonable delay in reaching the prosecution decision. If there is a delay then COPFS should notify the police and HSE (or other enforcing authority), explain the reasons for the delay, and keep them informed of the decision making progress.

35 COPFS should always take into account the consequences for the bereaved of the decision whether or not to prosecute, and of any views expressed by them.

36 When Crown Counsel have made their decision, it will be communicated to the police and HSE (or other enforcing authority) as soon as practicable by the Procurator Fiscal.

37 No prosecution decision will be made public until the accused and the bereaved have been advised.

38 The public announcement of the decision will be made according to the agreed media strategy.

The prosecution

39 COPFS will arrange all aspects of the prosecution and will:

- deal with the retention and disclosure of material;
- make arrangements for keeping the bereaved and witnesses informed of developments;
- make the announcement of the decision in consultation with the police and HSE, the local authority or other investigating agencies;
- make arrangements for maintaining contact during the prosecution.

Fatal accident inquiries

40 Where a death occurs as the result of an accident in the course of employment, it is mandatory for the Procurator Fiscal to hold a Fatal Accident Inquiry. An exception to this is where a prosecution has taken place in which the circumstances of the death are fully explored. In that case the Lord Advocate may dispense with the need for a Fatal Accident Inquiry. Where there has been a prosecution, the Procurator Fiscal will consult with the police and HSE (or other reporting agency) before reporting to the Lord Advocate for instructions on whether a Fatal Accident Inquiry should take place.

41 Where there is to be no prosecution, a Fatal Accident Inquiry will take place. The Procurator Fiscal will manage all aspects of the inquiry and will:

- deal with retention and disclosure of material;
- make arrangements for keeping the bereaved and witnesses informed of developments;
- make the announcement of the decision in consultation with the police and HSE (or other investigating agency);
- make arrangements for maintaining contact during the inquiry.

42 Inspectors appointed under the HSW Act have a statutory right to attend Fatal Accident Inquiries and ask questions.

43 Following the Fatal Accident Inquiry, the Sheriff will issue a determination which will be copied to the police and HSE (or other investigating agency) by the Procurator Fiscal.

National liaison

44 The National Liaison Committee comprises representatives from COPFS, HSE, ACPO(S) and BTP. It will meet at least once a year to review the operation of the protocol and consider the need for changes to the arrangements.

Annex: A general guide to the Enforcement of the Health and Safety at Work Act 1974 (HSW Act) and related legislation

Enforcement

1 Enforcement of the HSW Act and related legislation is generally shared between HSE and local authorities. A general guide to the allocation of the main activities is detailed below. For more detailed guidance on allocation of specific activities or premises refer to HSE's website: www.hse.gov.uk/lau/lacs/23-15.htm.

The Health and Safety Executive

2 HSE is responsible for enforcing work-related health and safety legislation in:

- factories and other manufacturing premises, including motor vehicle repair;
- chemical plants and refineries;
- construction;
- railways, tram and underground systems;
- mines, quarries and landfill sites;
- farms, agriculture and forestry;
- hospitals, including nursing homes;
- local government, including their offices and facilities run by them;
- schools, colleges and universities;
- domestic gas installation, maintenance or repair;
- utilities, including power generation, water and waste;
- fairgrounds (travelling or fixed);
- airports (except terminal buildings, car parks and office buildings);
- police and fire authorities;
- Crown bodies, including the Ministry of Defence;
- prisons;
- docks;
- nuclear installations;
- offshore gas and oil installations and associated activities, including pipe-laying barges, and diving support vessels;
- onshore major hazards, including pipelines, gas transmission and distribution;
- transport of dangerous goods by road and rail;
- manufacture, transport, handling and security of explosives;
- common parts of domestic premises.

Local authorities

3 Local authorities enforce the HSW Act in respect of certain non-domestic premises, including:

- shops and retailing, including market stalls, coin-operated launderettes and mobile vendors;
- most office-based activities;
- some wholesale and retail warehouses;
- hotels, guest houses, hostels, caravan and camping sites, restaurants, public houses and other licensed premises;
- leisure and entertainment, including night clubs, cinemas, social clubs, circuses, sports facilities, health clubs, gyms, riding schools, racecourses, pleasure boat hire, motor-racing circuits, museums, theatres, art galleries and exhibition centres;

- places of worship and undertakers;
- animal care, including zoos, livery stables and kennels;
- therapeutic and beauty services, including massage, saunas, solariums, tattooing, skin and body piercing, and hairdressing;
- residential care homes;
- privately run pre-school child care, eg nurseries.

4 There are other authorities and agencies with responsibilities for the investigation and enforcement of the HSW Act and other similar legislation. These include:

- the fire authorities;
- the Maritime and Coastguard Agency (on board ships);
- Scottish Environmental Protection Agency;
- the Civil Aviation Authority;
- Trading Standards;
- the Department of Trade and Industry (DTI);
- the Marine Accident Investigation Branch;
- the Building Control Departments of local authorities.

Contacting the Procurator Fiscal out of hours

5 The duty Procurator Fiscal can be contacted through Police HQ Force Control.

Contacting HSE out of hours

6 HSE is not an emergency service. It has produced guidance for police and other emergency service control rooms describing how to contact HSE inspectors out of hours.

Further information

HSE produces a wide range of documents. Some are available as printed publications, both priced and free, and others are only accessible via the HSE website, www.hse.gov.uk.

HSE priced and free publications are available by mail order from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA Tel: 01787 881165 Fax: 01787 313995 Website: www.hsebooks.co.uk (HSE priced publications are also available from bookshops and free leaflets can be downloaded from HSE's website: www.hse.gov.uk.)

For information about health and safety ring HSE's Infoline Tel: 0845 345 0055 Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

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