

MS(PH)

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## **Penrose Inquiry in Scotland (Contaminated Blood) – Release of Documents**

### **Issue**

To advise of you of the Scottish Government's intention to release in unredacted form all relevant documents it holds from the period 1974-1991 in relation to contamination of the blood supply.

### **Timing**

Lord Penrose was appointed on 12 January and the Scottish Government currently plans to begin release of documents in early May.

### **Recommendation**

That you note the Scottish Government's intention.

We do not have any strong grounds on which to object, for the following reasons:

- Legal advice is that under FoI a public body has to consider all the information it holds, whatever the source of the documents.
- Further, we consider it would be counterproductive in the current climate following Lord Archer's inquiry report to obstruct the process,
- It is likely a proportion of the documents will have either been previously disclosed during legal proceedings in 1990 (settled out of court), or released by DH in 2006 and 2007 in redacted form.

### **Background**

The SNP had a manifesto commitment to set up a public inquiry if elected to the Scottish Government. A judicial review also concluded in 2008 that an

inquiry should be convened into the deaths of two patients in Scotland in order to comply with Article 2 of the European Convention on Human Rights. The Inquiry under Lord Penrose was announced in January.

The Department has released over 5000 documents held in relation to contamination of the blood supply with HIV and hepatitis C for the period from the early 1970's until 1985, when heat-treatment of blood products was introduced. (Heat-treatment is effective against both HIV and hepatitis C.) These documents were redacted to remove the names of officials, experts and other involved as it is personal data.

DH received a request from the Inquiry team in February to release documents in unredacted form. Following legal advice, we had to decline to release large quantities of documents in this form, as it would reveal personal data, but said we could consider more focused requests for particular documents, with a case to show why they were important to the Inquiry.

Penrose has powers to require documents from the Scottish Executive that do not apply to DH. Penrose cannot require documents from DH, but it would arouse considerable public suspicion if DH were to withhold any significant information from his Inquiry without very strong grounds for doing so.