

Justice Committee

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill

Letter from the Scottish Government to the Convener

When I gave evidence on the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill on 26 May, I undertook to provide some further information to the Committee and also some further clarification on issues which were raised during the session about fatal accident inquiries (FAIs).

Mandatory Fatal Accident Inquiries

I understand that a number of respondents to the Committee's call for evidence have proposed expanding the circumstances in which a mandatory FAI should be held. This was specifically suggested in the areas of industrial disease deaths, those of mental health patients and of children who are compulsorily detained by the State. The Committee has also heard views on the proposals consulted on by the Scottish Government for dealing with deaths of those detained by a public authority and the application of the European Convention on Human Rights (ECHR). I undertook to provide clarity on these matters.

European Convention on Human Rights

Let me deal with ECHR first. As stated in paragraph 255 of the Policy Memorandum, the Bill makes a significant positive contribution to realising in Scotland the procedural element of Article 2 of the ECHR (right to life), by continuing to provide for mandatory FAIs in certain cases and discretionary FAIs in others. The Scottish Government and the Presiding Officer have both certified the Bill as being compliant with the ECHR. The longstanding authority of the procurator fiscal to investigate deaths in Scotland as well as investigations by other public authorities (such as the Health and Safety Executive, the Mental Welfare Commission Scotland (MWCS) or the Air Accident Investigation Branch) plus the discretionary power of the Lord Advocate to hold an FAI meet the requirements of Article 2.

As the Solicitor General told the Committee, the "final safeguard" under the Scottish system is the Lord Advocate's discretionary power to hold an FAI where article 2 compliance has not been secured by another authority's investigation. The Solicitor General emphasised in this regard the independence of investigations by the Crown Office and Procurator Fiscal Service (COPFS) from those that may be carried out by other public authorities. There is also the additional safeguard that the Scottish Ministers may establish an inquiry under the Inquiries Act 2005, and that possibility is explicitly recognised in section 3(2)(d) of the Bill.

Industrial diseases

The Scottish Trades Union Congress have proposed that the mandatory category of deaths as a result of an accident in the course of employment should be extended to cover deaths caused by industrial disease.

It is not clear what purpose would be served in the public interest by an FAI when the exposure causing the fatality from industrial disease may have been decades ago, at a work place that no longer exists, and where in any event the risks and dangers of that exposure are now fully known and understood. Further, the exposure may have occurred wholly or partly outside Scotland.

Deaths caused by industrial diseases are unlikely to be sudden or unexplained and it is likely that in most cases the victim will be pursuing civil redress against the employer (before death occurs) or the family will do so after the death.

Any deaths arising in any new industry, which do not fall within the current types of death which require a mandatory FAI, could, however, rightly raise issues of public concern and would be addressed by the holding of a discretionary FAI. This was confirmed by the Solicitor General who said:

“[New industrial processes or diseases are] exactly the type of situation where discretion would be exercised on whether to have an inquiry because, irrespective of whether it was a new type of industrial process or a new disease, there would be public concern about the issues surrounding its not having been aired before. Our holding an inquiry would fall into the category of erring on the side of caution because there had not been previous public scrutiny, especially if there were serious concerns about a new industrial process. I do not feel that it would be necessary to have such cases in the mandatory category because there are all sorts of difficulties around definition, but those are exactly the types of situation that would lead to discretionary FAIs.”

Neither Lord Cullen nor the Health and Safety Executive supported mandatory FAIs into deaths caused by industrial diseases. Lord Cullen said that “it is quite difficult to find a form of words that would bring in what we want to bring in without bringing in things that we do not want to bring in”.

Tom Marshall, of Thompsons, Solicitors, and President of the Society of Solicitor Advocates, said: *“It is unrealistic to have a mandatory inquiry in every case of industrial disease”*.

Detained mental health patients

The Scottish Government specifically consulted on Lord Cullen’s recommendation that provision be made for the investigation into the death of any person who is subject at the time of death to compulsory detention by a public authority within the meaning of the Human Rights Act 1998.

As I have explained above, a full FAI is not required in all cases to meet the requirements of Article 2 of ECHR and it is not the only means to have a death investigated. Sudden, suspicious or unexplained deaths are the subject of investigation by the procurator fiscal (and/or by other public authorities) and the Lord Advocate has discretionary power to hold an FAI into mental health-related deaths when it is considered to be in the public interest.

In relation to the Government’s question on Lord Cullen’s proposal, some 74% of respondents to consultation favoured the retention of the investigation by the

procurator fiscal and the exercise of discretion by the Lord Advocate on completion of the investigation to instruct an FAI.

Investigations are already carried out by the independent MWCS (in the case of mental health patients) who liaise with COPFS in cases which they feel may merit an FAI. Neither the MWCS nor the Royal College of Psychiatrists support having mandatory FAIs for detained mental health patients for the reasons set out in their submissions and consultation responses.

Many families of detained mental health patients may not want an FAI in the event that their loved one dies in compulsory detention. Many deaths of mental health patients will be from natural causes, which are nothing to do with their mental health condition, and it is difficult to see what would be achieved by an FAI in such cases.

Some witnesses drew attention to the fact that mandatory FAIs are held into all deaths in legal custody in prison or police custody and compared this with other forms of compulsory detention by the State. But prisoners are detained securely by the State for reasons of punishment and rehabilitation. Mental health patients are detained by the State – for the safety of the patient and of society – in a caring, healthcare environment. The Scottish Government would submit that this is fundamentally different from legal custody in prison or police custody. As the Solicitor General said:

“The balance in the legislation is appropriate. The purpose of mental health detentions is care of individuals. There would therefore not be the same public concern about, for example, people who are in police custody or prison, for whom there is an element of punishment as well as care.”

Further, the Lord President said in his evidence: *“I think that we can rely on the good judgement of the Crown to identify exactly the cases in which such issues arise and cases in which they plainly do not”*. He went on: *“I think that we are in danger of imposing unnecessary rigidity on the system. The system by which the Crown makes investigations and forms judgements is, I think, the best model”*.

To the extent there is any perception of “gaps” or lack of clarity in terms of practical working arrangements, I repeat my call for the relevant authorities to collaborate to produce any flow diagrams, protocols or Charters that might set out the optimal working practices in this field and secure greater confidence that everything is in order.

Looked after children

I note that Glasgow City Council recommended against widening the circumstances for mandatory FAIs for all deaths of looked after children and was content with the provision in the Bill which provides for mandatory FAIs for deaths of children in secure accommodation.

I would add to their view, however, that FAIs can be held in wider circumstances if it considered to be in the public interest by the Lord Advocate.

The law already provides for the investigation of deaths of looked after children through the reporting requirements of the Looked After Children (Scotland) Regulations 2009, (which require local authorities to notify the Scottish Ministers and the Care Inspectorate of a death within 1 working day).

Deaths of children in residential establishments are investigated and reviewed by the Care Inspectorate and many (half) are as a result of health issues. It is difficult to see how the public interest would be served by having a FAI for every such case.

The Care Inspectorate identifies any lessons to be learned and makes recommendations for review of legislation, policy or guidance.

The Centre for Excellence for Looked After Children in Scotland did not recommend making this a mandatory category because it said there was no certainty it would lead to improvements in services for looked after children and those leaving care.

COPFS liaise with and refer to Care Inspectorate reports to inform its decisions on whether to hold an FAI.

The legal definition of “looked after” children includes some who remain living at home with parents, or live with relatives, foster or adoptive parents. Lord Cullen specifically advised against bringing all looked after children within the mandatory grounds.

Finally, I would suggest that a mandatory FAI into the death of a child in wider circumstances than those specified in the Bill may cause the bereaved family unnecessary distress. As with mental health-related deaths I invite the relevant stakeholders to reflect on whether they might produce flow diagrams or other materials to make clearer the proper working practices in this field and more clearly demonstrate circumstances and decision making process as to when an FAI might be considered.

Military deaths in Scotland

The Committee has received concerns that currently the deaths of service personnel in Scotland are not investigated through mandatory FAIs because they are not considered to be employees, though the Lord Advocate may exercise his discretion to hold an FAI. I undertook to provide further information on this.

The Coroners and Justice Act 2009 introduced arrangements for FAIs to be held into deaths of Scottish military service personnel abroad. The 2009 Act amended the terms of the previous Coroners legislation and the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to allow an FAI to be carried out in Scotland where appropriate into deaths of service personnel abroad. The spirit of the legislative change was to give a choice to affected nearest relatives as to whether a coroner’s inquest or an FAI be held if the deceased had links to Scotland. The provisions of the 1976 Act are proposed to be re-enacted without policy modification.

As the Committee will be aware, there was no FAI into the deaths of three RAF airmen following the collision between Tornado jets over the Moray Firth in 2012. I

am aware that COPFS has provided a detailed letter of legal reasoning to the Committee on why service personnel are not in the same legal position as civilian employees, in terms of mandatory FAIs under the 1976 Act.

No discretionary FAI was held in relation to the 2012 Tornado collision because *“all the relevant issues have been comprehensively examined in the course of the Military Aviation Authority report and could not have been better considered in any FAI.”* COPFS also said an FAI *“would only duplicate the months of thorough work undertaken by the Military Air Accident Investigation Branch and the Military Aviation Authority in preparing the service inquiry”*.

The Bill has been introduced on the basis that FAIs will be mandatory in cases of death as a result of an accident in the course of employment – a restatement of the 1976 Act.

The position of deaths of service personnel in Scotland was not raised in Lord Cullen’s review or by any respondents to the Government’s consultation on its legislative proposals. This issue only came to light during evidence given to the Committee by former Flight Lieutenant James Jones.

Mr Jones seeks to have mandatory FAIs into military deaths in Scotland. He and other campaigners have criticised the apparent inconsistency between how FAI legislation is applied and the system in England and Wales under the 2009 Act. For example, an FAI was held into the RAF Chinook helicopter crash in the Mull of Kintyre because civilian staff were also on board, which triggered a mandatory employment FAI. A coroner’s inquest would be held for any death resulting from a military accident that occurred in England and Wales.

Having reflected on the evidence at Stage 1, the Government believe that it is inconsistent to have discretionary FAIs into military deaths abroad (but only if the death is notified to the Lord Advocate) and coroners’ inquests into such deaths in England and Wales, but not when the death occurs in Scotland. Crown Office have confirmed to the Committee that they would not have difficulty with a change to the law which would permit FAIs to be held into deaths of military personnel in Scotland. This issue clearly involves the reservation of the naval, military or air forces of the Crown to Westminster. Any legislative action would have to be in the Westminster order which is proposed under section 104 of the Scotland Act 1998.

The latest position is that the Scottish Government is seeking the view of the Ministry of Defence on having mandatory FAIs into service employment deaths in Scotland. I will update the Committee on the response from the UK Government, when a response is received.

FAIs into deaths abroad

I am aware that COPFS has indicated that it is prepared to accept that death investigations may in exceptional circumstances have to be carried out without the body being repatriated to Scotland. The Government will consider a Stage 2 amendment to remove the need for the repatriation of the body. Death

investigations and FAIs into deaths abroad would remain at the discretion of the Lord Advocate.

Representation of the family and legal aid

The Committee has suggested that the Scottish Government was not implementing Lord Cullen's recommendations regarding legal aid on cost grounds. That is not the only reason why the Scottish Government is not proposing that Lord Cullen's recommendations should be implemented, though it is a significant one.

In his Review, Lord Cullen recommended that (i) relatives of the deceased should not have to justify the reasonableness of the granting of legal aid for their representation at an FAI; (ii) the Scottish Ministers should consider increasing the limit for legal aid in FAIs and the extent to which legal aid is available within that limit; and (iii) legal aid should, as a matter of course, be granted in any case where the participation of the relatives is necessary in order to comply with Article 2 of ECHR.

In its response to Lord Cullen's Review, the Scottish Government responded as follows:

"The Scottish Government does not agree with this recommendation, and believes that existing statutory tests should continue to apply. While we regard it as important that relatives should be able to participate appropriately in FAIs, we do not accept that this requires automatic legal representation in every case."

This view is reinforced by the fact that, in the current financial climate, it has been necessary to manage legal aid expenditure more effectively. Ministers are determined to do this in a way which maintains access to justice as far as possible, and do not believe that removing a test of reasonableness specifically for FAIs would contribute to this aim. All civil legal aid applications need to meet the statutory tests of probable cause and reasonableness.

Since it is for the procurator fiscal to investigate the circumstances of a sudden death, there must be a clear basis for a relative of the deceased requiring their own publicly funded legal representation. The basis of this approach is rooted in the function of the inquiry itself, namely that it is a fact finding exercise, and not one which seeks to apportion blame or fault.

Notwithstanding, the reasonableness test is likely to be met if a relative can demonstrate that they have a discernible interest that is unlikely to be subject to investigation by the procurator fiscal, necessitating that they have their own legal representation.

When an inquiry is investigating a potentially unlawful killing by agents of the State, or as outlined above, a death in legal custody, then we accept that it will be generally appropriate for relatives of the deceased to secure independent legal representation.

Accordingly, the tests of probable cause and reasonableness should be easy for an applicant to satisfy.”¹

The Scottish Legal Aid Board (SLAB) has published guidance explaining the current approach taken when assessing reasonableness in these applications. Where a death occurs in legal custody, SLAB accept that it would be generally reasonable for relatives of the deceased to have independent representation, given that the investigation is being conducted by an agent of the State. This is the practice for legal aid applications. The Scottish Human Rights Commission indicated that there was no ECHR issue with the current provision of legal aid.

The Scottish Government does not believe that there have been any changes in circumstances which would cause it to revisit its attitude to the provision of legal aid for FAIs. In particular, the severe restraints on public expenditure imposed by the UK Government largely remain in place, and could indeed get worse in the forthcoming July 8th Budget Statement and in these circumstances it would be inappropriate to extend legal aid availability for FAIs as this would reduce the amount available for other proceedings.

Notwithstanding that the function of an FAI is not to seek to apportion blame or guilt in civil or criminal sense, it is clear that some firms of solicitors continue to try to use FAIs as a method of trying to establish grounds for subsequent civil action. My officials have previously drawn the attention of the Committee to the website below which clearly sets out how some solicitors view FAIs as an opportunity to glean information which may support a civil claim.

[http://www.lemac.co.uk/resources/guides/The Fatal Accidents and Sudden Deaths Inquiry.htm](http://www.lemac.co.uk/resources/guides/The_Fatal_Accidents_and_Sudden_Deaths_Inquiry.htm)

In particular this site suggests that “any gaps or inadequacy in your civil claim should become clear or be capable of being dealt with”.

This is not the purpose of FAIs, which are inquisitorial judicial inquiries held in the public interest and not preliminary hearings for adversarial actions for civil reparation. Section 1(4) of the Bill makes it clear that the purpose of an inquiry is not to establish civil or criminal liability. I must emphasise this point robustly.

When I gave evidence to the Committee, I undertook to provide to the Committee the costs to the legal aid fund of supporting families at FAIs in the past three years, which totals £2,472,600 between 2011 and 2014.

¹ <http://www.gov.scot/Publications/2011/03/18150120/3>

FAI - Total Legal Assistance Paid inc VAT

	2011-12	2012-13	2013-14	2014-15**
A&A	£10,700	£7,300	£3,900	£8,900
Legal Aid	£1,801,100	£539,600	£146,000	£259,000
Contributions*	£12,000	£12,000	£12,000	£12,000
Net Legal Aid Fund	£1,799,800	£534,900	£137,900	£255,900

* estimated figures for 11-12 & 14-15

** provisional figures

These are the annual report figures for FAI costs, including Advice & Assistance (A&A), which was not included in the breakdown for the Financial Memorandum. The annual report figures are the summed effect of accounts from many FAI cases from the past few years. They represent what FAI cost as a subject area in any particular year. The figure for 2011-12 is higher as that includes representation for the Rosepark Care Home FAI that concluded in 2010.

The figures provided in the Financial Memorandum² were constructed differently in that lifetime costs of cases were summed back on to the year the FAI case started. This allowed more detailed analysis of FAI case cost to demonstrate what the potential impact could be of a small increase in case numbers.

Please note that the figures for the last financial year are provisional. Legal aid costs for FAI cases may be payable over a number of financial years. SLAB emphasise that case numbers for FAIs are typically few, but case costs are potentially high and also very variable. Therefore any change to the provision of legal aid or the number of FAIs could have a disproportional affect on the Legal Aid Fund.

Location of Fatal Accident Inquiry

I understand that the Committee heard concerns that the best location for an FAI was usually the sheriffdom in which the accident occurred. The Committee has asked whether the Scottish Government would consider including in the Bill an assumption that an FAI should be held in the local sheriffdom in which the accident occurred unless there was a good reason not to.

The Scottish Government agrees that FAIs should normally be held in the sheriffdom in which the death or deaths occurred (or the accident which caused the death(s)) and it is expected that this will continue to be the case in the vast majority of cases. Particularly in remote and rural parts of the country, it is right that an FAI should be held in the local sheriff court so that the bereaved family and/or witnesses do not have to travel significant distances. Section 12(3) of the Bill does, however, permit a sheriff to transfer proceedings to another sheriff of another sheriffdom, as recommended by Lord Cullen.

² Pages 25 and 26 of the Financial Memorandum
[http://www.scottish.parliament.uk/S4_Bills/Fatal%20Accidents%20\(Scotland\)%20Bill/b63s4-intro-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Fatal%20Accidents%20(Scotland)%20Bill/b63s4-intro-en.pdf)

The Bill removes the link between the location of a death and the local sheriff court district. This will provide more flexibility in the system and should mean that court capacity will not delay FAIs being held since it will be possible to hold the inquiry where there is capacity. This may mean that the FAI is held in another sheriff court district within the sheriffdom or in another sheriffdom.

Lord Cullen recommended that FAIs should, where possible, not be held in a sheriff courtroom but elsewhere in other appropriate premises. The greater use of ad hoc premises as well as sheriff courts will provide maximum flexibility for accommodating FAIs as well as providing alternative accommodation as envisaged by Lord Cullen. The FAI into the 2009 North Sea Super Puma crash was held in the Council Chambers in Aberdeen City Chambers. Other FAIs have been held in Maryhill Community Centre, which was originally adapted for inquiry use for the ICL Stockline Inquiry headed by Lord Gill, and in a gospel hall in Motherwell.

The use of such premises may well permit FAIs to be held quicker than might be the case if capacity had to be found in a local sheriff court.

The Lord President gave evidence to the Committee in the following terms: *"I think that in most cases it will be pretty obvious that the inquiry should take place in the jurisdiction in which the accident happened, but there will be cases in which it is more appropriate that inquiries take place where the families are. That gives us the necessary degree of flexibility"*. He specifically disagreed that there should be a presumption on the face of the Bill that the inquiry be held locally. The Scottish Government agrees that the appropriate authorities can be entrusted to exercise their discretion sensibly on a case-by-case basis.

The ability to choose to hold an FAI in a different sheriffdom would permit, for example, an FAI in relation to a death in Glasgow to be held in, say Paisley or Dumbarton Sheriff Courts, rather than the very busy Glasgow Sheriff Court within the geographically small sheriffdom of Glasgow and Strathkelvin.

There is, however, no intention or expectation that an FAI into a death most closely connected to the sheriffdom of South Strathclyde, Dumfries and Galloway would be held in the sheriffdom of Grampian, Highlands and Islands, for example.

Centralisation of FAIs

The Committee asked what assurances could be given that the proposals in the Bill to enable FAIs to be held outside courts and away from the local sheriffdom would not be used by the Scottish Courts and Tribunals Service (SCTS) to centralise FAI hearings at some point in the future.

The Government consulted on the proposal that all FAIs would be held only in bespoke, dedicated centres, with specialist sheriffs, with one in the North of Scotland, one in the East and one in the West. This option was, however, rejected by 72% of consultees who responded to the questions on FAI accommodation who mostly cited the expense of providing such centres, the likelihood that they would be under-employed (since there are only around 50-60 FAIs per annum) and the cost and inconvenience to bereaved families who would have to travel to such centres.

The Lord President, to whom SCTS are responsible and who is statutorily responsible for the efficient disposal of business in the Scottish courts, specifically disagreed with a suggestion that the creation of specialist sheriffs for FAIs could lead to a possible centralisation of the FAI process. Lord Gill said in evidence to the Committee: *“I do not think that that will happen. There is no immediate prospect of there being a centralised FAI system with a national FAI venue. It is not being contemplated at the moment and it is not even on the far horizon. I do not see any need for it, either”*.

He went on: *“The Courts Reform (Scotland) Act 2014....broke down the rigid barriers in sheriffdoms; sheriffs now have the flexibility to sit wherever they are sent. If a small group of specialist FAI sheriffs were to emerge, they could be deployed anywhere in Scotland as need arose. That would be a much better solution than a centralised venue”*.

The Government does not therefore envisage any possibility of the centralisation of FAIs in the foreseeable future.

Expenses

Section 24 of the Bill expressly removes any power of the court to award legal expenses at an FAI. The Committee asked if I believed these should be retained as a tool to prevent abuse of process by parties to an FAI.

The Scottish Government does not believe that the award of legal expenses in FAIs is appropriate or necessary to prevent abuse of process by participants at an FAI. This is unconnected with the payment of the expenses of any witnesses etc.

FAIs are inquisitorial judicial inquiries held in the public interest. They are not civil proceedings which typically end with an award of expenses for or against one party. The policy of the Bill is that no expenses should be capable of being awarded against either the Crown or another participant at a judicial inquiry

In relation to awarding expenses against the Crown, the issue of allowing such expenses to be awarded was considered in the case of *Global Santa Fe Drilling (North Sea) Ltd v. Lord Advocate* (2009 CSIH 43) where, in proceedings for judicial review, an award of expenses made by the sheriff at Aberdeen Sheriff Court was upheld in the absence of statutory direction on the point. If permitted, awards of expenses against the Crown would undermine the principle of the Bill that the decision to hold an FAI is for the Lord Advocate alone acting in the public interest. Section 14(1) of the Bill provides that an FAI is initiated by the procurator fiscal simply notifying the sheriff that an inquiry is to be held.

In relation to other participants at an inquiry, if a participant behaves veraciously, then the sheriff has case management powers to deal with that. The rule making power in the Bill will permit rules to be made to give sheriffs sufficient case management powers to be able to deal with vexatious behaviour as it arises without the need to award expenses. For example, FAI rules will greatly empower the sheriff to control proceedings through the use of minutes of agreed evidence, powers to regulate the conduct and management of proceedings and the regulation of witnesses and evidence. This approach is in line with the reforms introduced by the

Courts Reform (Scotland) Act 2014 to permit greater judicial control of the pace and direction of court proceedings.

Sheriffs' recommendations

Having read the official report for the 26 May session, I would like to take this opportunity to clarify one point.

The Committee asked if I would expect SCTS to monitor compliance with sheriffs' recommendations. When responding I said it would probably give more credibility to the process if responses are made to the sheriff. As you are aware, the provision in the Bill is for the response to be made to SCTS and not the sheriff, but I was keen to emphasise that this would strengthen the authority of the inquiry process and the sheriff's recommendations in that responses would be sent to SCTS rather than Scottish Government or another body. The Government's consultation sought views on responses going directly to the sheriff, however the Lord President, SCTS, the Sheriffs Principal and the Sheriffs' Association raised serious concerns as the sheriff's role in the FAI is ended (*functus officio*) once the determination has been issued.

I understand that Patricia Ferguson has proposed a continuing involvement in the enforcement of recommendations by the sheriff. Presumably a sheriff would be required to call a party back to court if another party complained that the recommendation had not been implemented. This causes us significant concern, in that this would have major implications for shrieval and court resources if such a proposal were to be adopted, since FAI proceedings would effectively continue, possibly indefinitely, while interested parties complained to the sheriff – with justification or not – that recommendations had not been implemented.

Section 26 of the Bill provides for the dissemination of the sheriff's determination to (a) each person to whom a recommendation is addressed and (b) any other person whom the sheriff considers has an interest in the recommendation. This was a point discussed during my evidence to the committee and dissemination could clearly include any regulatory body with power to implement change, possibly on a UK basis. This is how lessons from FAIs will be disseminated and learned. The Health and Safety Executive's evidence was that the relevant authorities review determinations carefully and take recommendations very seriously indeed.

It would be inappropriate for the Scottish Government, SCTS or the Lord Advocate to actively monitor compliance because this would place them in a quasi-judicial role. Recommendations, made for a specific set of circumstances, often refer to working practices which require interpretation on the ground and it is hard to see how the Scottish Government could assess compliance in such circumstances. Many recommendations, particularly in for example medical and aviation FAIs, are technically complex and it might be a matter of opinion as to whether the recommendation had been implemented. There may also be very legitimate reasons not to implement a sheriff's recommendation such as unintended consequences. There may be better ways to achieve the desired result. Moreover, it would be highly undesirable to expect devolved authorities to action changes to reserved

areas of regulation – health and safety at work being the most obvious one – where under current devolved responsibilities they would have no power to do so.

The Bill therefore proposes that SCTS would be the most appropriate body to receive and publish responses to sheriffs' recommendations, particularly as the sheriff's determination is published on the SCTS website. This was agreed by as being logical by the Chief Executive of SCTS. In this way, as stated earlier, the Bill will foster accountability on the part of those to whom sheriffs' recommendations are addressed and responses to them will become more transparent by providing a public record.

What is proposed in the Bill broadly replicates what happens under the system of coroners' inquests and the Ministry of Justice believe that this is a proportionate response which fosters compliance by those to whom coroners' reports are sent.

The Committee also asked about consideration of legal sanctions against those who fail to respond, such as contempt of court. The Scottish Government does not believe that this is necessary as COPFS have indicated that parties to whom recommendations are addressed usually take them very seriously and there will be an incentive to respond in that the fact that a party has not responded will be noted next to the determination on the SCTS website. The Chief Coroner's Office has indicated that there was a 100% response rate in the first six months of 2014 under regulation 29 of the Coroners (Investigations) Regulations 2013 (which mirrors what is proposed in the Bill) with no threat of legal sanction. I would expect that the media and public interest groups would seek to expose respondents who fail to produce a response, or an adequate response. Thus, in the words of the Health and Safety Executive, there will be a "strong steer" towards compliance in the Bill as it stands.

I hope the Committee finds this further clarification helpful. I will be replying separately about Patricia Ferguson's Inquiries into Deaths (Scotland) Bill which was introduced on 1 June.

Paul Wheelhouse
Minister for Community Safety and Legal Affairs
4 June 2015