

Justice Committee

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

Written submission from Pinsent Masons LLP

1. Introduction

1.1 On 19th March 2015 the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill was introduced to the Scottish Parliament. The Scottish Parliament's Justice Committee has issued a call for evidence in respect of that Bill in terms of which it seeks views on the Bill's general principles and on certain matters in particular. The submission on behalf of Pinsent Masons LLP is set out in this paper.

1.2 By way of background, Pinsent Masons is a global law firm with offices throughout the UK, in Europe, Asia and the Middle East. In Scotland, we have a litigation & regulatory practice in Glasgow, Edinburgh and Aberdeen and have several solicitor advocates, one of whom is a QC. The majority of our litigation & regulatory clients are business entities (of various sizes) or individuals engaged in business - we rarely act for private individuals. We have a large health & safety practice and regularly appear at Fatal Accident Inquiries ("FAIs") in Scotland and Coroner's Inquests in England and Wales.

1.3 As we have indicated previously, we welcome the broad approach taken by the Scottish Government in its review of legislation in relation to FAIs and see this as an opportunity to modernise the system, making it more efficient, accountable and transparent, better able to meet the expectations and demands of a deceased's family and of the wider society in the 21st century.

2. **Question 1 - whether the circumstances for mandatory FAIs provided for in the Bill are sufficient?**

2.1 We consider that the circumstances set out in the Bill for mandatory FAIs are sufficient. We have previously advocated an extension to the exceptions for mandatory FAIs to make it clear that where there is no purpose to be served by holding a FAI, such as where the circumstances of death have already been established in relevant proceedings, the Lord Advocate should have a discretion to decide that one is not to be held. This is now contained in the Bill.

3. **Question 2 - whether the circumstances provided for in the Bill in respect of discretionary inquiries are appropriate?**

3.1 Section 4 of the Bill largely reproduces the effect of the previous provisions contained in the 1976 Act and there is no issue with that.

4. **Question 3 - whether there are alternative approaches that should be considered?**

4.1 Much of the criticism of the current system relates to the delay in the decision making process. Unfortunately the Bill does not address this. We

understand that there is often a need for extensive investigative steps to be taken before a decision on whether an FAI should be conducted can be taken. It is also understood that this process regularly and necessarily involves a third party Regulator such as the HSE, AAIB or the MAIB. We accept that criminal proceedings ought to be concluded before any decision is reached. That said, we remain of the view that, in the interests of all concerned, a time limit for a decision to be made in mandatory FAIs should be introduced. As a safeguard we would propose that the Lord Advocate has the ability to apply to the Sheriff Principal for an extension of that time limit on cause shown (such as ongoing criminal proceedings). This will allow for better case management of the FAI proceedings. Further consultation on the length of the proposed time limit ought to be undertaken.

5. Question 4 - whether the provisions in relation to FAIs into deaths abroad are appropriate

5.1 Whilst we can see benefits in these provisions, we remain concerned about practical difficulties in their operation. Witnesses and documentary productions will be abroad and powers to compel their attendance/production may be required. Interpreters may be needed to assist with translation issues. The Lord Advocate will need to rely heavily on the Regulator/Enforcing Authority of the country involved to secure this evidence. As we indicated in our response to the original consultation, clear guidance on the exercise of the Lord Advocate's discretion will require to be produced if families are not to be given an expectation that an inquiry should be held here into the death of their loved one abroad.

Much of the publicity which accompanied the proposed extension of jurisdiction to deaths abroad was focussed on military deaths, where it may be that the assistance of MOD and other agencies is capable of ameliorating some of the issues we have highlighted. However the Bill is not restricted to such cases and we have a concern that it may raise in the public mind an expectation of an exhaustive investigation into other deaths abroad, where consideration has not been given to many of the practical difficulties which such an investigation may face. Quite apart from case-specific recommendations – which would have to be made against the background of a foreign jurisdiction, the need to focus on precautions and improvements is likely to mean that only in rare events would it be appropriate to have such an inquiry.

6. Question 5 - whether the provisions in relation to pre-inquiry procedure are appropriate?

6.1 We remain of the view that it would be in the interests of all concerned in a fatal accident for a time limit to be placed on the making of a decision to hold a FAI. See para 4.1 above.

6.2 We have previously indicated that we consider it should be made clear that topics such as the issues to be explored by the inquiry, the availability of witnesses, the exchange of productions and the order of questioning are fully covered at any preliminary hearing. The preliminary hearing should take place well in advance of the FAI. The Bill makes provision for such matters to be dealt with by act of sederunt.

7. **Question 6 - what are the practical implications of the bill's provisions?**

7.1 We have outlined concerns about the practical implications of deaths abroad in para 5.1 above. One of the key concerns about the current system is the delays involved in it. The Bill makes provision for procedure to be regulated by act of sederunt. Without knowing the details of those provisions it is difficult to assess the impact of the Bill and indeed if it is able to meet expectations. We believe it would be beneficial to have judicial involvement from an early stage and that rules are set out with the aim of ensuring transparency, efficiency and accountability at each step of the process.

Pinsent Masons LLP
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