

## Justice Committee

### Inquiries into Fatal Accidents and Sudden Death etc (Scotland) Bill

#### Written submission from Sheriff Principal L Murray WS

I am writing on behalf of the Sheriffs Principal in response to your request for comment on Inquiries into Fatal Accidents & Sudden Deaths etc (Scotland) Bill. As you will be aware the Sheriffs Principal responded to the Scottish Government consultation and the committee will have access to the response.

We should reiterate the purpose of a Fatal Accident Inquiry (FAI) which is a fact-finding forum held in the public interest, which does not attempt to apportion blame or guilt in a civil or criminal sense. We support the policy of the bill as narrated in paragraph 102 of the Explanatory Note that a FAI should have two purposes only. First to establish the circumstances of the death which is the subject of the inquiry including the time, place and cause or causes of death or the accident which caused the death and any recommendations on how that specific death might have been avoided and second to consider what further precautions or improvements might have been taken to prevent other deaths in similar circumstances in the future.

We note that the bill provides that a FAI may be held at the discretion of the Lord Advocate into the death of a Scot who happened to die or be killed abroad is restricted to circumstances where the body is repatriated - clause 6(3) (1) (c). We recognise that such discretionary inquiries may be the exception, but wonder whether the inquiry should only be an option where the body is repatriated, or whether on special cause shown an inquiry could be held in the absence of repatriation of the body.

In relation to the persons who may be participants in the inquiry we welcome the modifications proposed by the bill, likewise we support the proposals in relation to the places at which inquiries may be held. We consider that in most cases a FAI will be held in a court room, with the prospect following discussion of operational requirements for of an alternative venue adapted to best meet the needs of a particular FAI in those cases where that will best serve the interests of justice.

We consider it is important that the period between a death occurring and the issue of the determination to be as short as possible and while we are aware of the need for proper investigation of the circumstances by the Crown we do consider it essential that matters are progressed as efficiently as possible with minimum delay. We support the mandatory requirement for preliminary hearings (clause 15) and would hope that these together with effective use of technology in the courts will assist in the expeditious progress of fatal accident proceedings once they are brought to court by the Procurator Fiscal.

We note the Crown Office & Procurator Fiscal Service have indicated that they are maintaining statistics relating to FAI cases. The Sheriffs Principal welcome this development. We consider it is particularly important that statistics are maintained as to the period between the death and the application for a fatal accident inquiry. We would favour discussion with COPFS with a view to a target being set around the

period between the death and application for an inquiry. We believe that such a target will enhance the prospects of a reduction in time from the date of death to the issue of a determination, which we believe to be beneficial and in the wider public interest.

We should express some reservations about the proposal that rules might provide for a standard form of determination. We believe that the terms of clause 25(2) of the bill which substantially follow the provisions of section 6(2) of the Fatal Accident and Sudden Deaths Inquiries (Scotland) Act 1976 to be satisfactory. This makes clear the areas which the sheriff should and may address in his/her determination. The circumstances in which a FAI may be held are many and varied, and we do not see an additional benefit in being prescriptive in requiring a standard form of determination as suggested in the policy memorandum at page 6 (28). We do however see merit in the rules providing for an appendix listing parties to whom any recommendations are addressed as this would facilitate the monitoring of responses from these parties, supporting the policy objective of providing greater transparency in the monitoring of responses.

We do not envisage difficulty with the proposals regarding the publication and dissemination of the determination (clause 26). We see merit in the view taken by the Scottish Government that it would not be appropriate to make the sheriffs' recommendations legally binding. We do still have concerns on the operation of the proposals intended to foster accountability on the part of parties to whom sheriffs' recommendations are addressed. Clause 27 deals with compliance with the sheriff's recommendations. It is our view that SCTS is not best placed to monitor responses or to be the repository for responses. We would invite the committee to consider alternatives to SCTS fulfilling these roles. As we indicated in our response to the consultation we consider there are both issues of principle and practicality which make it inappropriate that these responsibilities become judicial duties and we consider that these same points also have application to SCTS.

We accept that there is merit in clause 28(2) to allow further proceedings where evidence comes to light which if heard at the FAI and accepted would have likely led to a different determination. We believe it is important that there is a sufficiently robust process and test to determine whether "new" evidence warrants further proceedings which will result in a different determination.

I trust these comments will be of assistance to the committee.

Duncan L. Murray WS  
Sheriff Principal of North Strathclyde  
29 April 2015