

## **Justice Committee**

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

#### **Written submission from the Lord President of the Court of Session**

1. Thank you for inviting me to submit evidence to your committee. I welcome the Bill. It is essential that the process for investigating sudden and unexplained deaths operates in an efficient way and meets the needs of those who have lost a family member. I consider that the provisions of this Bill will update the Fatal Accident Inquiry process in a way that is appropriate for a modern legal system.

2. I offer some comments on certain sections of the bill which I trust the committee will find helpful.

#### **Section 10: Persons who may participate in an inquiry**

3. Section 10 allows a range of persons to participate in an inquiry. This could be the subject of abuse if not properly regulated. Unless the sheriff has power to curtail the extent of the participation of any of the parties to the inquiry, the length and cost of a FAI may simply escalate out of control. In my view, this Bill offers an opportunity to deal with this risk. I therefore suggest:

(i) A further subsection should be added to section 10, conferring discretion on the sheriff as to the extent to which any person should participate. That subsection should be so drafted as to allow the sheriff to limit, in advance, the issues in a FAI upon which any participant should be entitled to adduce evidence and the issues that such a participant should address in making submissions.

(ii) Section 10(1)(e), which entitles “any other person” to participate in an inquiry, should be so framed as to make it clear that the sheriff has a broad measure of discretion as to who should participate in a FAI. This could be done, for example, by providing that the sheriff must be satisfied that such a person has “sufficient interest” to make it appropriate that that person should be permitted to participate in the inquiry.

#### **Section 17: Agreement of facts before an inquiry**

4. In my view this provision, which allows provision to be made by Act of Sederunt for the agreement of evidence, is important. There has been uncertainty under the current regime as to whether evidence may be agreed by the parties. Rules made under section 17 can place the matter beyond doubt.

5. I suggest also that there should be added to section 17 a provision making it clear that a sheriff is entitled to require evidence to be lodged in written form where in his discretion he considers that to be appropriate. That would, for example, allow uncontroversial evidence to be lodged in the form of a report or an affidavit, with a significant saving in cost and time. It would also, where appropriate, allow a witness’

written evidence to be treated as his evidence in chief for the purposes of oral examination.

### **Section 18: The powers of the sheriff**

6. Section 18 is in general terms and will no doubt be supported by rules contained in an Act of Sederunt. I suggest that a specific provision be added to the rules to the effect that in cases where oral evidence is to be taken, the sheriff has power require a participant to provide written notice of the topics upon which he wishes to examine or cross-examine any witness.

### **Section 26: Compliance with sheriff's recommendations**

7. Scottish Courts and Tribunal Service ("SCTS") has continuing concerns about the requirements which would be placed on SCTS by these provisions. I share these concerns. There is a question of principle whether SCTS staff, whose primary role is to support the judiciary, should take on this task. However, I accept that there appears to be no alternative option. I therefore regard this as an exceptional situation and do not expect it to constitute a precedent. There is likely in most cases to be a requirement for legal advice about the content of such responses before publication on the SCTS website. In the event that these requirements are placed on SCTS the costs (which are unbudgeted) associated with these requirements should, in my view, be met by the Scottish Government.

### **Section 34: Powers to make Rules to regulate procedure**

8. I strongly support making rules to modernise and update the procedures and practice of Fatal Accident Inquiries.

### **Section 35 (Judicial specialisation in inquiries) and Section 36 (Summary sheriff: competence to conduct inquiries)**

9. I am content to support these provisions.

Brian Gill  
Lord President of the Court of Session  
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