Justice Committee

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

Written submission from Police Scotland

1. Police Scotland has been invited by the Scottish Parliament Justice Committee to provide comments to specific questions in relation to the Inquiries into Fatal Accidents and Sudden Death etc. (Scotland) Bill.

2. Initially, a review of the current legislation was undertaken by the Rt Hon Lord Cullen of Whitekirk KT, who provide recommendations, most of which have been implemented through the proposed Bill. Police Scotland recognise that the remit of the review was to improve on the existing law governing the holding of Fatal Accident Inquiries (FAIs) in Scotland and the system by which this was undertaken, and that the recommendations were therefore addressed to the Crown Office and Procurator Fiscals Service (COPFS) and the Scottish Court System (SCS).

3. Police Scotland acknowledge that the suggested changes to the mandatory category and the extension to the definition of legal custody within the proposed Bill are likely to be of benefit in modernising the existing legislation and analogous to the current practices of the Coroner's Office in England and Wales. This is also likely to be the case when looking at death abroad and the introduction of pre-inquiry procedures, where both are already part of the current Coroners remit.

4. The policy intent, within the legislation, of providing a consistent approach throughout Scotland is welcomed by Police Scotland. As a recently formed national organisation it is much more effective and efficient to work within consistent processes and practice where there is benefit in doing so, and FAIs would appear to be one such area.

5. Pre-inquiry procedures proposed may provide an extra layer of procedure but if implemented correctly could also preclude the need for an FAI as the evidence can be considered early to make such an assertion. Police Scotland is aware the requirement of such a provision would benefit the process in determining the need for FAIs.

6. In considering the discretionary inquiries and the proposal to provide discretion to the Lord Advocate to require an inquiry to be held when certain conditions are met, Police Scotland agrees this provision is adequate and proportionate.

7. The investigation of death abroad of both civilian and service personnel is an area of potential concern for Police Scotland. Whilst we support the intention of the Bill to ensure that FAIs can be held in a range of circumstances not currently catered for, and which from time to time have been issues of public concern, there is a lack of clarity about the police role in such cases. It is suggested these investigations will rely on information and reports provided from the investigating country and dealt with by the COPFS, however, there is a concern that Police Scotland may be required to have a more active involvement in gathering evidence, in partnership with
international Law Enforcement agencies. It should be noted that the level of investigation will differ from country to country and there is a possibility that problems could arise in the accessibility of material required. It may be that this type of investigation should be considered in not all, but some circumstances where there is dubiety in the determination received from the originating country and in these circumstances it is perhaps most likely that Police Scotland would be expected to perform a more active role.

8. Police Scotland has a concern that such investigations may require more than the proposed model of a paper exercise and should this be requested the burden of investigation may lie with Police Scotland as agents for the COPFS. Police Scotland has neither the range of capabilities nor the capacity to undertake a significant level of investigation abroad, within other jurisdictions. The cost of undertaking just one such enquiry would be substantial and are at this time not allowed for within ever constrained budget plans.

9. What is unclear and very difficult to determine, prior to the Bill being enacted, is the effect the Bill would have on the method of investigation and how much the proposals would impact on the nature of Police Scotland’s involvement in the investigation of FAIs.

10. Police Scotland is aware that it is stated within the Bill that the purpose of such an inquiry is not to establish civil or criminal liability; however experience suggests that some form of investigation is often instigated by Police Scotland, through COPFS, to determine the facts, which sometimes are not immediately apparent.

11. There are no alternative approaches that Police Scotland can provide for consideration to the committee, without explicitly amending the Bill to include more detail on circumstances in which Police Scotland would be, or would not be, expected to conduct investigations into circumstances abroad, and indeed travel abroad for those purposes, which at this time remains unclear.

12. The impact of the changes outlined is likely to be much more apparent when the Bill is implemented. Police Scotland are aware that certain aspects of the recommendations outlined by Lord Cullen have been implemented by the COPFS and have had a positive impact on the system of dealing with such inquiries to date.

Police Scotland
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