Justice Committee
Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill
Written submission from the Scottish Trades Union Congress

Introduction

The STUC is Scotland’s trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 627,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

As an organisation, the STUC believes that where individuals lose loved ones through work related injury or occupational disease our justice system is woefully inadequate in delivering the answers they deserve within a reasonable timescale, denying them the opportunity to reach a position where they can perhaps begin to move on.

The STUC welcomes the opportunity to provide this written submission and would wish to make the following comment:

1. Timescales

1.1. The STUC believes more needs to be done to ensure that decisions to hold Fatal Accident Inquiries are taken at the earliest opportunity and with transparency. The length of time from a fatal injury occurring, potential criminal prosecution and a Fatal Accident Inquiry being held neither serves the interest of bereaved families nor the need for lessons to be learned to prevent similar tragedies in future.

1.2. In our experience of working with bereaved families including the majority of families who lost loved ones in the ICL factory explosion in Maryhill their sole priority is to be provided with answers in relation to the circumstances of their loss and, commendably, to try to ensure that others do not suffer similar tragedies.

1.3. While we accept that delivering decisions whether to prosecute or not at an earlier stage was not the main driver for the COPFS Health and Safety Prosecution Division being set up we had hoped closer working between the COPFS and the HSE would have resulted in such decisions, criminal proceedings and inquiries taking place within shorter timeframes than previously. The STUC does not believe there has been any noticeable change in this regard.

1.4. Current timescales lead to increased anxiety for those families and frustration for trade unions seeking to support loved ones of a deceased member. The STUC is
disappointed that the Scottish Government Bill does not adequately address the issue of delays.

1.5. The STUC believes that providing timescales would help to provide families of the deceased with a reasonable expectation of when an inquiry is likely to be held in both circumstances, where no criminal or other investigation is taking place and where such investigations are necessary.

1.6. We believe that the timescales proposed by Patricia Ferguson MSP in her Inquiries into Deaths (Scotland) are necessary in order to address one of the most significant failures in the current system.

2. Families’ role in fatal accident inquiries

2.1. The STUC supported moves to set up the COPFS Health and Safety Prosecution Division in order to provide a more consistent and effective approach to prosecuting health and safety offences.

2.2. Notwithstanding the comments in para 1.4 above we believe the new prosecution division has improved communication between the COPFS and bereaved families during the investigation stage through a dedicated Victim Information and Advice Officer.

2.3. However, in our experience, families have no opportunity to make submissions or representations on the scope of any inquiry into the loss of their loved ones.

2.4. Therefore the STUC believes that prior to the full hearing taking place should have the right to make representations to the Sheriff for his or her consideration. This is not in any way detrimental to the integrity of the inquiry or the independence of the judiciary but would provide greater transparency and confidence in the system by giving bereaved families the right to make submissions on matters important to them.

2.5. We also believe that the role of trade unions when supporting the families of deceased members should be taken into account and provision should be made for trade unions to make similar representations.

3. Sheriff’s recommendations

3.1. The STUC believes that recommendations arising from Fatal Accident Inquiries could play an important role in improving workplace health and safety but this can only be done by making such recommendations legally binding.

3.2. We are not convinced that proposals to ensure that any participant in an inquiry to whom a recommendation is addressed responds to the Scottish Courts and Tribunals Service outlining compliance, or otherwise, with recommendations will make any significant change in changing behaviour or preventing similar tragedies in future.
3.3. Widespread dissemination of findings and recommendations through appropriate industry bodies is welcome although we would doubt whether this alone will encourage change in the absence of legally binding recommendations.

4. Extending the range of mandatory fatal accident inquiries

4.1. The STUC supports the extension of mandatory inquiries to include deaths resulting from occupational disease subject to appropriate safeguards being in place to avoid overloading the system.

4.2. We continue to believe that deaths resulting from disease or exposure from substances hazardous to health should be treated in the same way as other work related deaths and to continue to ignore the potential effects of emerging technologies and the chemicals involved in new manufacturing processes is wrong.

4.3. Inclusion of occupational disease within the mandatory inquiry could allow essential lessons to be learned and, as a result of proper examination as part of an improved inquiry process, potentially identify risks to health and life at the earliest possible stage.

4.4. The STUC believes that appropriate tests have been put in place in the proposals being put forward by Patricia Ferguson MSP to ensure the Lord Advocate has adequate powers to rule such an inquiry unnecessary where no further lessons can be drawn from the death. This would ensure that in the case of long latency disease where the nature of the disease and material exposed to are known and, in the absence of any further lessons to be learned, then an inquiry could be ruled out by the Lord Advocate.

5. Deaths occurring abroad

5.1. We would support the Lord Advocate having discretionary powers to instruct inquiries where sudden unexplained deaths occur abroad and the body is repatriated to Scotland.

5.2. Of particular interest to the STUC and our affiliated trade unions would be where such a death is related to an individual’s work.

5.3. Many workers have to look abroad for work as evidenced by the recent downturn in the offshore industry. In such cases workers are often going to countries with less established occupational health and safety legislative or enforcement regimes.

5.4. Holding inquiries into fatal accidents, with or without the co-operation of the state in which the death occurred would provide answers for the bereaved family and, at the same time, inform the wider public including employers of potential dangers of working in particular jurisdictions.
6. Funding

6.1. The STUC believes that families of those who lose loved ones in a sudden and unexplained nature should have the right to independent legal representation and should not have to have the procurator fiscal imposed upon them as the sole inquisitor in the Fatal Accident Inquiry process.

6.2. We support the view of Lord Cullen that legal aid should be available for families wishing to be represented at inquiries and we also agree that it should not be incumbent on them to justify the reasonableness of any such request.

STUC
5 May 2015