Inquiries into Deaths (Scotland) Bill

“A proposal for a Bill to re-enact with amendments the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976:

(a) to extend the scope of inquiries to cover work-related deaths not resulting from accidents, such as deaths from industrial diseases and deaths resulting from exposure at work to certain substances

(b) to make the process of investigating deaths quicker and more transparent, to refer appropriate cases to specialist sheriff courts, and to give the families of the deceased person a more central role in the process”

A consultation by Patricia Ferguson MSP
Member for Glasgow Maryhill and Springburn
July 2013
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Foreword

In my capacity as an elected representative I have seen at first hand how fatal accidents and sudden deaths can devastate families and, in many cases, entire communities. There is, in my experience, a fundamental misconception about what families require and demand when they lose a loved one to a fatal accident or sudden death. They, of course, expect justice to be done which can involve criminal proceedings or just recompense but these issues are often secondary to the families’ most fundamental requirement: families need to understand what happened to their loved one, why it happened and, most important of all, to know that lessons have been learned from their loss to ensure that no other family will suffer as they have. Such an approach would provide the possibility of closure, and the opportunity for future tragedies to be avoided.

The legal vehicle for all of this is the Fatal Accident Inquiry (FAI). The rules governing FAIs are found in the Fatal Accident and Sudden Deaths Inquiries (Scotland) Act 1976. They are outdated and need to be modernised. The rules require to be re-focussed to place the families of the victims of fatal accidents at the heart of the process; and to be recalibrated in order that the two roles that FAIs serve - to find out what happened and to ensure that lessons are learned for the future - are given equal importance. Currently, these two elements are not afforded equal prominence. The lessons to be learned from deaths, and therefore the very important role that FAIs ought to have in relation to our future safety, seem to play second fiddle. The Lord Advocate may decide not to hold a FAI if the circumstances of the death have been clearly established despite the fact that this is where lessons can and should be learned. However, even where a FAI is held a Sheriff’s recommendations can be ignored. The recommendations of FAIs must be given due weight and such provision must be enshrined in legislation.

I believe even if the circumstances of the death are known, an inquiry may still be held to ensure that vital lessons are learned to protect all of us and all of our families. I also believe it is essential we have a robust system to ensure clear recommendations made in light of the lessons learned at an inquiry are capable of being enforced.

It also seems odd that the present system creates a false, and illogical distinction between different types of workplace deaths. At the moment, a fatal workplace accident falls into the category where there must be a FAI but a death resulting from an industrial disease, exposure to chemicals or similar non-accidents are treated differently. This is incoherent.

I worked very closely with the families of the ICL Plastics / Stockline disaster in their fight for a public inquiry. I am proud to say that we achieved our goal. Such a course was necessary, given that the existing FAI system was incapable of providing the answers required and ensuring lessons were learned. There has been much discussion in the press recently about the cost of public inquiries. Looking back, if a robust system of inquiries into deaths, such as I propose in this consultation document, had been in place, I have little doubt that the families would not have felt the same need to fight for a public inquiry.

I therefore hope that my Bill will not only dramatically improve the system of inquiries into deaths in Scotland but will also deliver a saving to the public purse insofar as there will be less need for families to demand public inquiries.
The former Lord Justice Clerk, Lord Cullen, published a report on the review of fatal accident legislation in 2009. The Scottish Government has not done anything to implement Lord Cullen’s recommendations and the Cabinet Secretary for Justice has indicated in answers to parliamentary questions that the Scottish Government has no current intention to introduce legislation in relation to inquiries into deaths\(^1\). On the contrary I believe the time has come for new legislation in relation to the system of inquiries into deaths in Scotland.

It is crucial that an important proposal such as this is consulted upon as widely as possible. I am, after all, proposing changes that go wider than Lord Cullen’s recommendations, although my proposals do incorporate the majority of those recommendations. I am anxious to gather views regarding my proposal in respect of its effects and practical implications for employers, trades unions and the citizens of Scotland.

I hope that you will be able to respond to this consultation and I would, of course, be happy to meet with organisations or individuals with a particular interest in its subject matter.

Patricia Ferguson MSP

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\(^1\) Response from the Cabinet Secretary for Justice to Parliamentary Question S40-02014
How the consultation process works

1. This consultation is being launched in conjunction with a draft Bill proposal which has been lodged as the first stage of the process of introducing a Members’ Bill. The process is governed by Chapter 9 of the Parliament’s Standing Orders and can be found on the Scottish Parliament website at:

http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx

2. A minimum 12 week consultation period is required, but for this consultation we have extended the consultation period to 16 weeks (extended again in November 2013, by a further 10 weeks), following which responses will be analysed. Thereafter, I will lodge a summary of consultation responses in the Parliament. If the final proposal secures the support of at least 18 other members from three or more political parties or groups, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Members’ Bill. A Members’ Bill follows a 3-stage scrutiny process during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act of Parliament.

3. At this stage there is a draft Bill for consideration with the consultation document.

4. The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements and, in general, assisting in ensuring that the resulting legislation is fit for purpose.

5. Details of how to respond to the consultation are provided at the end of the document.

6. Additional copies of the document can be requested by contacting me at 43 Atlas Road, Glasgow G21 4TA; telephoning 0141 558 9483 or by emailing patricia.ferguson.msp@scottish.parliament.uk. Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me. An on-line copy is available on the Scottish Parliament’s website under Parliamentary Business / Bills / Proposals for Members’ Bills / Session 4 Proposals.
Background

The current legislation

7. The rules that govern every aspect of FAIs are found in the Fatal Accident and Sudden Deaths Inquiries Act 1976.

8. In the broadest sense, an FAI serves two purposes:
   • To find out what happened
   • To ensure that lessons are learned from the death

9. Under Section 6 of the Act, the Sheriff who hears the FAI is required to make a determination, setting out the following circumstances so far as they have been established at the inquiry:

   • Where and when the death and any accident resulting in the death took place
   • The cause or causes of the death and any accident resulting in the death
   • The reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided
   • The defects, if any, in systems of working which contributed to the death or any accident resulting in the death
   • Any other facts which are relevant to the circumstances of the death

10. Under the Act, deaths fall into two categories:
    • Deaths where there must be an FAI (mandatory FAI)
    • Deaths where there may be an FAI if the Lord Advocate considers certain conditions are met (discretionary FAI)

11. There are two categories of mandatory FAIs where, under the legislation, an FAI must be held. They are:
    • The death has resulted from an accident that was in the course of the deceased’s employment
    • The person who has died was, at the time of his death, in legal custody.

12. There are however circumstances where there is no need for an FAI to be held despite, on first blush, the death falling into the mandatory category in respect that the death occurred as a result of a workplace incident or a death in legal custody. Under the legislation, the Lord Advocate has the power in relation to such deaths to decide that there will be no FAI if two conditions are met:
• There have been criminal proceedings
• The Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of the criminal proceedings

13. If the Lord Advocate takes that view, then the matter is at an end. The Lord Advocate does not require to issue a written judgement or to, in any other way, explain the view he has taken. In terms of the legislation, the families have no right to question the Lord Advocate’s decision, to influence it or to challenge it if they think that he is wrong.

14. The Lord Advocate need only be satisfied that the circumstances of the death have been established (which is to say what happened and, perhaps, why it happened) to exercise his discretion to determine that there shall be not be an FAI. The Lord Advocate does not require to consider whether an FAI should be convened to consider what lessons should be learned from the death. Under the current legislation, it would therefore seem that very little importance is placed upon the lessons to be learned from a death. Similarly there is little emphasis on ensuring that a judicial investigation takes place into the death in order that things will be safer for everyone.

Why is new legislation necessary?

15. Thus, despite the fact that the current legislation sets out two important functions for an FAI to serve: finding out what happened and what lessons are to be learned from the death; it would seem as if the current legislation places a significantly greater emphasis on what happened than on the lessons to be learned. This seems highly questionable and it is a key purpose of this Bill to address that issue.

16. The current legislation distinguishes between workplace accidents and other employment related incidents which result in the death of an employee. Workplace accidents fall into the mandatory category of FAIs. Industrial diseases and other employment issues (such as exposure to chemicals, biohazards etc) which lead to death are not included within the legislation at all. This seems iniquitous and I would propose to change the legislation to ensure that all workplace deaths are treated the same. I take this view because the impact on the families of the deceased are the same and because the importance of lessons being learned are identical.

17. There are currently no rules in relation to the speed of the process. There have been many examples over the years of families waiting two, three, four, and, on occasion, more years for an FAI to be held. This is a glaring omission in the current procedures. Those affected by the loss of a loved one require answers as quickly as possible. Families cannot move on with their lives until they have the answers they need. It therefore seems to me to be essential that any new set of rules have
procedures designed to speed up the process as much as possible as one of its key objectives.

18. The Scottish Government has recently recognised in their consultation in relation to the restructuring of the civil courts in Scotland\(^2\), that it is essential that certain types of cases are handled by Sheriffs with a specialist knowledge and experience in relation to the subject matter of the case. The Scottish Government’s proposals include the recommendation that Sheriffs in different sheriffdoms be recognised as specialists in personal injury matters. There is also the proposal to create a specialist personal injury court with jurisdiction to hear all personal injury related cases throughout Scotland. This is another example where the legislation and court process dealing with inquiries into deaths is entirely out of touch with current thinking. If it is appropriate for personal injury cases to be heard by specialist Sheriffs then it seems entirely clear that those specialist Sheriffs should also preside over inquiries into deaths resulting from work related incidents.

19. There will be occasions where the appropriate forum is the proposed specialist personal injury court with the ability to hear cases from all over Scotland. It is proposed that there will be two circumstances where inquiries go to the specialist personal injury court. Firstly, where the Lord Advocate considers it appropriate because he takes the view that the case has special features which justify it being heard at the specialist court; and secondly, where the family of the deceased believe that the specialist court should hear the inquiry and where the Lord Advocate is unable to show special cause to the contrary.

20. While currently Sheriffs do make the recommendations about the changes that require to be implemented because of the death under Section 6 of the Act, those recommendations are not enforceable in any way. They can be completely ignored. There are examples where a Sheriff’s recommendations being ignored have had tragic consequences in respect that there have been subsequent deaths in circumstances where there would have been no accident if the original recommendations were followed. The most stark examples of this is found in the Bellgrove and Newton rail disasters as fully set out within the case studies at Appendix 1 of this consultation.

21. Lord Cullen undertook a review of the legislation in relation to FAIs. He published his report with his recommendations in 2009. Lord Cullen’s report and recommendations can be found at [http://www.scotland.gov.uk/Publications/2009/11/02113726/0](http://www.scotland.gov.uk/Publications/2009/11/02113726/0). His recommendations have been adopted by the Scottish Government. While they represent a vast improvement on the current system, they may not be considered to go far enough and

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\(^2\) Courts Reform (Scotland) Bill Consultation, 2013
[http://www.scotland.gov.uk/Publications/2013/05/6753](http://www.scotland.gov.uk/Publications/2013/05/6753)
there may be a case for introducing wider and more far reaching proposals such as those contained in this consultation.

Case Studies

22. There have been examples in the press over the years which highlight the deficiencies in the current system. Case studies are provided at Appendix 1 to this consultation.
Aims of the proposed Bill

A draft Bill is produced at Appendix 2 and draft Explanatory Notes are at Appendix 3.

The main objective of the proposed legislation

23. The main objective of the proposed Bill is to improve and replace the current system of inquiries into deaths occurring in Scotland. This consultation seeks views on proposals which aim to consolidate the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 and give effect to almost all of the recommendations of the report of the Review of Fatal Accident Legislation by Lord Cullen in 2009. Through the consultation opinions are also invited on proposals to extend the scope of investigations and inquiries into work related deaths to include industrial disease or exposure to certain substances due to the nature of employment and to place on a statutory footing the fact that discovering the lessons to be learned from the death is at least as important as discovering the cause of the death.

Q1: Do you support the general aims of the proposed Bill as outlined above? Please indicate yes / no / undecided and outline your reasons for your response.

Lessons to be learned as important as what happened

24. Currently, the rules place a greater importance upon finding out what happened and why it happened after a death than on the lessons that can be learned from the death. It is at least equally important that we have a system that ensures, by judicial inquiry, that the lessons from the death are learned to, in turn, ensure that we are all safer.

25. The Bill proposes various changes which ensure that the lessons to be learned from a death are equally as important as finding out what happened. Accordingly, among other proposals, providing that an inquiry can, and should, be held where the circumstances of the death have been established but where an inquiry may ascertain circumstances which will lead to clear recommendations in relation to lessons to be learned and future safety.

26. An essential element of ensuring that lessons are learned through a judicial inquiry is to give the inquiry teeth. Under the current system of fatal accident inquiries, Sheriffs can and often do make recommendations as to changes in systems which ought to be considered in light of the evidence heard at the inquiry. The recommendations however can be ignored. They are not enforceable. The Bill proposes to firstly specifically empower a Sheriff to make “recommendations”. The Bill sets out the circumstances when the Sheriff may make the recommendations and empowers the Sheriff to make recommendations to any person or body who appears, to the Sheriff,
to be concerned with the safety and the other interest in the lessons which may be
drawn from the death. The importance of making recommendations is also
highlighted in the fact that the Bill requires the Lord Advocate (through the
Procurator Fiscal who will be present at the inquiry hearing) to adduce evidence not
only with regard to the circumstances of the death and the lessons to be learned but
also in relation to issues which may form the Sheriffs recommendations. Finally, the
Bill contains specific provisions about the enforcement of the Sheriffs recommendations. The enforcement provisions include the Sheriff being able to call
before him any party to whom recommendations have been made after a certain
period of time to ascertain if those recommendations have been implemented and, in
certain circumstances where they have not, they will be guilty of an offence under the
Bill.

Q2: Do you agree that equal emphasis should be placed on a) identifying how the death
occurred and b) ensuring lessons are learned following the death? Do you accordingly
agree that there will be occasions where an inquiry should be held to only consider what
lessons are learned from a death because the circumstances of the death are well
established? Please indicate yes / no / undecided and explain the reasons for your
response.

Q3: Do you agree that it is important that the Sheriff be given the fullest power to make
and enforce recommendations for change in light of the lessons learned from the death,
including the creation of the statutory offence proposed in the Bill and do you think that
the proposals within the Bill satisfy that purpose? Please fully explain the reasons for
your answer.

Q4: Do you agree that strict, and short, time limits require to be introduced into the
system both in relation to the time frame within which the Lord Advocate must make a
decision about whether a judicial inquiry shall be held and thereafter the timeframe for
holding certain procedural hearings and the hearing of evidence itself? Please indicate
yes / no / undecided and explain the reasons for your response

Details of the proposed Bill

Delays

27. The current system is full of unacceptable delays. There are many examples
including the case studies relating to Ewan Williamson, Ronald McAllister and the
Flying Phantom which are set out in Appendix 1 to this consultation document. This
requires to be addressed as a matter of urgency. The Bill contains various proposals
aimed to ensure that the Lord Advocate will make a decision within a short time
frame as to whether or not an inquiry shall be held and, after that decision, for the
inquiry process to be driven forward quickly, efficiently and by way of judicial
management. Those provisions include the obligation on the Lord Advocate to apply
for the holding of an inquiry within 6 months of becoming aware of the death or one
month after any criminal proceedings are concluded (section 9 (2)); and the requirement for the preliminary hearing to be held within 2 months after the Lord Advocate has applied for the holding of an inquiry (section 12 (2)). The provisions giving the sheriff the power of judicial management are contained in section 12 (6), which specifies a number of issues to be determined at the preliminary hearing. These include the issues to be addressed at the inquiry, the procedure and timetable to be followed, the evidence to be disclosed or recovered and any question of remitting the inquiry to another court.

Q5: Do you think that the timeframes and the means of judicial management proposed within the draft Bill are sufficient and the best way to achieve a speedy and efficient means of driving the inquiry process forward? Please indicate yes / no / undecided and explain the reasons for your response

Transparency

28. The current system lacks transparency. The Lord Advocate has many powers under the current legislation which he is able to exercise without any clear or transparent decision making process being undertaken. The proposals shall require the Lord Advocate to produce clear written decisions when certain powers are exercised. This will place power into the hands of the families of the deceased in certain circumstances to question the Lord Advocate and, where appropriate, challenge his decision by way of a judicial review.

Q6: Do you agree that the Lord Advocate should produce clear written decisions when certain powers are exercised in relation to inquiries into deaths as proposed in the draft Bill? Please indicate yes / no / undecided and explain the reason for your response?

Equal treatment of all work related incidents

29. Currently, the legislation discriminates between workplace accidents and other types of workplace incidents which lead to the death of a worker. There is no justification for such a distinction and the Bill proposes to look at all deaths resulting from workplace circumstances in the same way. All work related deaths, whether caused by disease or exposure to other substances, shall fall into the mandatory category where an inquiry into the death shall take place.

Q7: In what circumstances do you think an inquiry should be carried out following an accident or incident leading to a work related death? Please fully explain the reasons for you answer.
Taking advantage of specialist sheriffs and specialist courts

30. The Scottish Government has brought forward proposals to create specialist personal injury Sheriffs and a specialist personal injury court. It seems entirely clear that inquiries into deaths resulting from work related incidents should go before those Sheriffs and that specialist court. The Bill contains proposals to do so.

Q8: Do you agree that an inquiry into a workplace death should be heard by either a specialist personal injury Sheriff or the specialist personal injury Sheriff Court with jurisdiction to hear cases throughout all of Scotland as currently being proposed in the Courts Reform (Scotland) Bill Consultation 2013? Please indicate yes / no / undecided and explain the reasons for your response.

Placing the families of the deceased at the heart of the process

31. This is, in many ways, the most important set of proposals. Currently, the families of the deceased feel marginalised by the inquiry process. They are peripheral, feel out of touch and have no statutory right in terms of the inquiry process. This requires to be addressed extensively in terms of changes to the law. I therefore propose the following changes within the attached Bill:

- Providing circumstances within which the family of the deceased may influence the court where the inquiry is heard
- Be provided with full and transparent reasons for any decision made by the Lord Advocate which, in turn, may allow them to question and challenge the Lord Advocate’s decision
- The right to obtain access to evidence held by other parties and to request that the court require other parties to produce certain evidence
- The right to influence and shape the nature and extent of the inquiry undertaken into the death of their family member.

Q9: Do you agree that the family of the deceased ought to have a special role within the inquiry process guaranteed by the rules governing inquiries into deaths and do you think that the proposed Bill, annexed to this consultation, is sufficient for that purpose? Please indicate yes / no / undecided and explain the reasons for your response.

Q10: In particular, do you agree that the family of the deceased should be entitled to determine that an inquiry take place in the proposed specialist Sheriff Court unless the Lord Advocate is able to show special cause to the contrary; and should have the right to influence and shape the nature and extent of the inquiry into the death of their family member by the means proposed in the draft Bill? Please indicate yes / no / undecided and explain the reasons for your response.

Q11: Do you have any experience of the current FAI system either positive of negative which you think is relevant to this consultation? Please answer as fully as possible.
Wider impacts of the proposed Bill

Anticipated costs of implementing the proposed legislation

Q12: What, if any, are the wider implications of the proposed Bill? Can you see any unforeseen consequences? Do you estimate that the proposed legislation will have financial implications for you or your organisation? Please indicate yes / no / undecided and explain the reasons for your response.

Summary of questions

Q1: Do you support the general aims of the proposed Bill as outlined above? Please indicate yes / no / undecided and outline your reasons for your response.

Q2: Do you agree that equal emphasis should be placed on a) identifying how the death occurred and b) ensuring lessons are learned following the death? Do you accordingly agree that there will be occasions where an inquiry should be held to only consider what lessons are learned from a death because the circumstances of the death are well established? Please indicate yes / no / undecided and explain the reasons for your response.

Q3: Do you agree that it is important that the Sheriff be given the fullest power to make and enforce recommendations for change in light of the lessons learned from the death, including the creation of the statutory offence proposed in the Bill and do you think that the proposals within the Bill satisfy that purpose? Please fully explain the reasons for your answer.

Q4: Do you agree that strict, and short, time limits require to be introduced into the system both in relation to the time frame within which the Lord Advocate must make a decision about whether a judicial inquiry shall be held and thereafter the timeframe for holding certain procedural hearings and the hearing of evidence itself? Please indicate yes / no / undecided and explain the reasons for your response.

Q5: Do you think that the timeframes and the means of judicial management proposed within the draft Bill are sufficient and the best way to achieve a speedy and efficient means of driving the inquiry process forward? Please indicate yes / no / undecided and explain the reasons for your response.

Q6: Do you agree that the Lord Advocate should produce clear written decisions when certain powers are exercised in relation to inquiries into deaths as proposed in the draft Bill? Please indicate yes / no / undecided and explain the reason for your response?

Q7: In what circumstances do you think an inquiry should be carried out following an accident or incident leading to a work related death? Please fully explain the reasons for you answer.

Q8: Do you agree that an inquiry into a workplace death should be heard by either a specialist personal injury Sheriff or the specialist personal injury Sheriff Court with jurisdiction to hear cases throughout all of Scotland as currently being proposed in the
Courts Reform (Scotland) Bill Consultation 2013? Please indicate yes / no / undecided and explain the reasons for your response.

Q9: Do you agree that the family of the deceased ought to have a special role within the inquiry process guaranteed by the rules governing inquiries into deaths and do you think that the proposed Bill, annexed to this consultation, is sufficient for that purpose? Please indicate yes / no / undecided and explain the reasons for your response.

Q10: In particular, do you agree that the family of the deceased should be entitled to determine that an inquiry take place in the proposed specialist Sheriff Court unless the Lord Advocate is able to show special cause to the contrary; and should have the right to influence and shape the nature and extent of the inquiry into the death of their family member by the means proposed in the draft Bill? Please indicate yes / no / undecided and explain the reasons for your response.

Q11: Do you have any experience of the current FAI system either positive of negative which you think is relevant to this consultation? Please answer as fully as possible.

Q12: What, if any, are the wider implications of the proposed Bill? Can you see any unforeseen consequences? Do you estimate that the proposed legislation will have financial implications for you or your organisation? Please indicate yes / no / undecided and explain the reasons for your response.
How to respond to this consultation

32. You are invited to respond to this consultation by answering the questions laid out in the consultation and by adding any other comments you consider to be appropriate.

33. Responses should be submitted by 31 January 2014 (NB: deadline extended from 22nd November 2013) and sent to:

Patricia Ferguson MSP
43 Atlas Road
Glasgow
G20 4TA

Tel: 0141 558 9483
Fax: 0131 348 5925
E-mail: patricia.ferguson.msp@scottish.parliament.uk

34. Please indicate whether you are a private individual or an organisation.

35. Respondents are also encouraged to begin their submission with a short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the view expressed was consulted on with their members).

36. To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website http://www.patriciaferguson.labour.co.uk/ and in hard copy in the Scottish Parliament’s Information Centre (SPICe).

37. Therefore, if you wish your response, or any part of it to be treated as anonymous, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as ‘anonymous response’. If I do not accept the reasons, I will let you know and give you the option of withdrawing it or resubmitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content does not allow you to be identified.

38. If you wish your response, or any part of it, to be treated as confidential, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a full copy of the responses to the Parliament’s Information Centre when lodging my final proposal. As
the Parliament is subject to the freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release this information. Further details of the FIOSA are provided below.

39. In addition, there may be a few situations where I may choose not to publish your evidence or have to edit it before publication for legal reasons. This will include any submissions which contain defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances if the response is returned to me and it still contains material which I consider to be defamatory, it may not be considered and it may have to be destroyed.

**Data Protection Act 1998**

40. As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature, or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data.

41. I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included, in writing, with your submission.

42. If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

43. Further information about the Data Protection Act can be found at:

   [www.ico.gov.uk](http://www.ico.gov.uk)

**Freedom of Information (Scotland) Act 2002**

44. As indicated above, once your response is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of
Information (Scotland) Act 2002. So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence and to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FoI.

45. Further information about Freedom of Information can be found at:

www.itsspublicknowledge.info
Appendix 1
FAI case studies

Annex A: Ewan Williamson – four years and no FAI

Ewan Williamson was just 35 when he became the first fire fighter ever to die in the line of duty for Lothian and Borders Fire and Rescue Service. Ewan died on 12 July 2009 while tackling a fire at the Balmoral Bar in Edinburgh’s Dalry Road.

Ewan was part of two breathing apparatus teams which were sent into the pub shortly before 1am on the night of the fire. The crews were unable to find the fire and exited the bar to change breathing canisters. When they went back in a second time Ewan failed to return. His body was later found in the toilet of the bar having suffered burns and exposure to extreme heat.

Now almost four years on from the night he died his family are still waiting for answers to explain the circumstances around his death. His mother and two sisters have grave concerns about how he died and believe that mistakes were made on the night of his death which contributed to the fatal accident. They raised an action against Lothian and Borders Fire and Rescue Service at the Court of Session in an attempt to find out the truth about Ewan’s death and to enable justice to be served.

The Scottish Fire Service, which is the new national force and takes responsibility for breaches against Lothian and Borders Fire and rescue Service, has been charged with two breaches of health and safety regulations. Despite the criminal charges being brought the lack of an FAI into the events leading up to Ewan’s death remain unexplained. The family have met with a wall of silence while trying to ascertain basic information about the death of a much loved family member and have had to fight a system which has denied them the truth which would allow them to grieve properly for their loss and seek closure.

Annex B: Ronald McAllister – Six and a half years for FAI

On the 10th October 2006 Ronald McAllister arrived at Glasgow Royal Infirmary for routine dialysis for treatment for renal failure following myeloma. However, due to chest pains as the result of a recent accident it was decided Mr McAllister should receive the dialysis in a bed rather than a chair to allow him to also receive pain relief at the same time. He was admitted as an in-patient and administered with morphine before his dialysis started.

45 minutes into the treatment an alarm sounded alerting hospital staff to a problem. Mr McAllister was found to be unconscious and lying in a pool of blood as a result of the venous needle dislodging. He was resuscitated and taken to the intensive care unit at Glasgow’s Stobhill Hospital but had suffered extensive neurological damage from which he failed to recover. Mr McAllister died from hypoxic brain damage as a result of being deprived of blood and oxygen for a period of time following a cardiac arrest on 13th October 2006.

Mr McAllister’s daughters have waited more than six years for the FAI into their father’s death to be heard. The FAI determination highlighted an unacceptable delay in bringing the inquiry to a conclusion. It also raised concerns over training and procedures of the Health Board.
The family of Ronald McAllister have had their lives turned upside down through the loss of Mr McAllister but have also had to cope with the additional stress and trauma of not knowing the full extent of what caused his death. At a time when they should have been grieving and rebuilding their lives they were instead fighting for an FAI to establish to truth. The poor system we have in this country made the process extremely lengthy and arduous and prevented his family having access to information which should have been made available far more quickly.

Annex C: Kaylee McIntosh – Unsatisfactory FAI

Fourteen year old Kaylee McIntosh died in a tragic accident while attending a cadet training exercise in the Outer Hebrides in 2007. She was pinned under a boat that sank in Loch Carnan in South Uist. A number of safety failings were identified including the fact that no one actually realised Kaylee was missing after the accident.

Although an FAI was carried out into Kaylee’s death her family have been left infuriated and angered by the system which does not include a mechanism to ensure recommendations made by the inquiry are implemented. Kaylee’s parents have described the process as ‘daunting’ and said they felt ‘alienated’ throughout it.

Kaylee’s family believe that the FAI did not probe hard enough into their daughter’s death and that they felt excluded from the process which in turn has not given them any closure on the tragic events. They are now having to deal with the fact they endured the trauma of going through an FAI which has subsequently done nothing to ensure lessons will be learned or to bring any justice for their loss.

The army major in charge of the boating exercise was last year charged £5,000 for breaches of the Health and Safety at Work Act and the MOD has been given crown immunity on behalf of the army meaning no further charges will be brought.

Annex D: Flying Phantom – Five and a half years and no FAI

On the 19th December 2007 three crew men of a tugboat went to work and never returned. Stephen Humphreys, Robert Cameron and Eric Blackley died when the Flying Phantom sank in thick fog on the Clyde. The Flying Phantom was guiding a cargo vessel into dock when the accident happened.

Despite numerous requests from the widows of the three men an FAI has never been granted. Investigations by the Marine Accident Investment Branch found there to be a problem with the boat’s towing wench being released which meant the vessel it was towing caused the tug to capsize.

The widows have become increasingly angry by the delay in making a decision as to whether an FAI will be carried out.
Annex E: ICL Plastic / Stockline

In May 2004, an explosion occurred at the ICL Plastics factory, known as Stockline, in Glasgow killing nine people. Around 60 people worked in the factory and about a dozen were trapped in the rubble. Hundreds of search and rescue emergency crew attended the scene and following extensive searching were able to pull seven people from the rubble alive. Seven people died at the scene and a further two died in hospital.

The deceased were named as Annette Doyle (32), Peter Ferguson (52), Thomas McAulay (41), Tracy McErlane (27), Ann Trench (34), Stewart McColl (60) and Margaret Brownlie (49), Kenneth Ronald Murray, (45), and Timothy Smith (31).

The explosion was caused by a leak in a pressurised petroleum gas pipe which led to an ignition of gas.

ICL Plastics Ltd were prosecuted under the Health and Safety at Work Act for failing to maintain pipes carrying hazardous gas, failing to ensure the safety of all staff and visitors and failing to carry out suitable and sufficient risk assessments.

Following the criminal proceedings a public inquiry was carried out in 2008. This is perhaps the most shocking example of how woefully inefficient the current FAI legislation is. It was clear from the outset in the Stockline disaster that the mechanism in place through the FAI system would not serve the families of the victims and adequately answer the questions which needed to be answered. In this instance they turned their back on the FAI system and chose to pursue a public inquiry instead.

Annex F: Caroline McIntyre – Two years to grant an FAI

In January 2008 a Scottish cycling champion and British Olympic hopeful died after being hit by a van while on a training run near to his home in Fort William. 34 year-old Jason McIntyre left behind a wife and eleven year-old twin girls.

Jason’s wife Caroline believed the police investigation into his death was inadequate and rather than establish what happened on the day her husband died it simply raised more questions about the circumstances. Following the fatal collision the police didn’t close the road to investigate the accident scene and then they examined the wrong section of road. Despite this it took two years of fighting before the decision to carry out an FAI was granted.

During the two years following Jason’s death, his wife had to prove that Jason had been killed in the course of his work and had to convince officials that he spent so much of his time cycling that he was effectively engaged in his occupation when he died and therefore legally entitled to an inquiry.

Despite grieving for her late husband and caring for their two children Caroline was forced to produce accurate evidence to support her argument. When she was able to do this, the FAI was mandatory. However, in the course of establishing this Caroline was forced to undertake the extremely emotional and harrowing task of establishing facts which would finally allow her some answers as to how her husband died.
This process took two years and caused considerable upset for a family which should by rights have been afforded a proper investigation and subsequent FAI to enable them to grieve their loss properly.

Annex G: Bellgrove and Newton Rail Disasters

The Glasgow Bellgrove rail disaster occurred on 6 March 1989. Two class 303 commuter trains crashed in the Springburn branch of the North Clyde line, just east of Bellgrove station. Two people died as a result of the accident.

The trains collided on a single track at a point where two lines converged into one. The principal cause of the accident was that one of the trains entered single track section when they did not have a right to do so. The train entered the single track because the driver of the train did not react to the signal before the single track indicating stop/danger. This phenomenon is known as a Signal Passed At Danger (SPAD).

There was much evidence at the fatal accident inquiry about the occurrence of SPADs and techniques that can be adopted to avoid them. The Sheriff recommended introducing a system of “double blocking”. This system would involve the train being stopped at the penultimate signal before the single track rather than the final signal. The idea behind the proposal was that if the driver passed the first (penultimate) signal at danger, he is likely to spot the second and final signal at danger before the single track and stop in time. In other words, the train would require to pass two signals at danger to enter the single track. The evidence was that passing two single tracks at danger was extremely unlikely and the measure would therefore be very likely to reduce further accidents of the type that had occurred.

The recommendations were not implemented.

On 21 July 1991, the Newton rail disaster occurred. The accident involved a collision between a class 303 train and class 314 unit. Four people were killed and twenty two others injured. The accident occurred in very similar circumstances to the Bellgrove train disaster with the principal cause of the accident being a Signal Passed At Danger.

If the Sheriff’s recommendations from the FAI into the Bellgrove train disaster had been followed the system of double blocking introduced, there is every reason to believe that the Newton rail disaster would not have happened.
Appendix 2
Draft Bill

Inquiries into Deaths (Scotland) Bill

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Schedule 1 - Minor and consequential amendments.
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Inquiries into Deaths (Scotland) Bill

An Act to re-enact, with amendments, the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

Part 1
Investigation of deaths etc

1 Investigation of deaths etc
(1) Where a person has died in Scotland, the Lord Advocate shall, in any of the cases mentioned in sections 2 to 4, investigate the circumstances of the death of that person and may do so in any other case.
(2) For the purposes of this Act, “the circumstances of a death” include
   (a) the matters upon which the sheriff is required to make a determination under section 17(1); and
   (b) what lessons can be learnt from that death which may be the subject of recommendations by the sheriff under section 18.

2 Work related deaths
(1) If it appears to the Lord Advocate that the death of the person has, or may have, resulted from
   (a) personal injuries caused by an accident occurring in Scotland in the course of that person’s employment or occupation, while that person was, at the time of the accident,
      (i) an employee or
      (ii) an employer or self-employed person and engaged in that person’s occupation as such.
   (b) any other personal injury (not being a personal injury caused by an accident as mentioned in (a)) or industrial disease or exposure to any substance hazardous to health due to the nature of that person’s employment or occupation.

(2) For the purposes of subsection (1)-

   “an industrial disease” includes any disease or injury prescribed for the purposes of section 76 of the Social Security Act 1975 (c. 14); and

   “a substance hazardous to health” includes:
   (a) any “substance hazardous to health” within the meaning of regulation 2(1) of the Control of Substances Hazardous Health Regulations 2002 (SI 2002/2677); and
   (b) “ionising radiation” with the meaning of the regulation 2(1) of the Ionising Radiations Regulations 1999 (SI 1999/3232).

3 Deaths while in legal custody etc
(1) If it appears to the Lord Advocate that the person was, at the time of that person’s death,
   (a) in legal custody;
(b) subject to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act 1998 (c.42); or
(c) a child subject to a child protection order or supervision requirement or any other order or requirement requiring that child to be kept in, or to be taken to or from, a place of safety, residential establishment or secure accommodation, all within the meaning of Part 11 of the Children (Scotland) Act 1995 (c.36).

(2) For the purposes of subsection (1) (a), a person is in legal custody if that person is-
(a) deemed to be in legal custody within the meaning of section 13 of the Prisons (Scotland) Act 1989 (c. 45);
(b) detained in, or is subject to detention in, or is being taken to or from, a legalised police cell, remand centre, [detention centre] or young offenders institution, all within the meaning of that 1989 Act; or
(c) under arrest, or subject to detention, by a police officer

(3) For the purposes of subsection (1) (b), a person, who is subject to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act 1998, includes a person who is-
(a) subject to compulsory detention in a hospital under any of the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
(b) on offender subject to a compulsion order authorising the detention of that offender in a hospital under section 57A of the Criminal Procedure (Scotland) Act 1995 (c 46 ); or
(c) subject to a quarantine order, a short term detention order or exceptional detention order or other order authorising that person to be taken and detained in a hospital or other place, all within the meaning of the Public Health etc (Scotland) Act 2008 (asp 5).

4 Sudden deaths etc
If it appears to the Lord Advocate to be expedient in the public interest that an inquiry should be held into the circumstances of the death of that person on the ground that it
(a) was sudden, suspicious or unexplained, or
(b) occurred in circumstances such as to give rise to serious public concern.

5 Citation of witnesses for Precognition.
(1) The Lord Advocate may, for the purpose of carrying out the investigation under section 1, cite witnesses for precognition by the Lord Advocate, and this section shall be sufficient warrant for such citation.

(2) If any witness cited under subsection (1) above-
(a) fails without reasonable excuse and after receiving reasonable notice to attend for precognition at the time and place mentioned in the citation served on that witness; or
(b) refuses when so cited to give information within the knowledge of the witness regarding any matter relevant to the investigation in relation to which such precognition is taken,
the Lord Advocate may apply to the sheriff for an order requiring the witness to attend for such precognition or to give such information at a time and place specified in the order and the sheriff shall, if the sheriff considers it expedient to do so, make such an order.

(3) If the witness fails to comply with the order of the sheriff under subsection (2) above, that witness shall be liable to be summarily punished forthwith by a fine not exceeding level 3 on the standard scale or by imprisonment for any period not exceeding 20 days.

6 Notification to certain persons

(1) The Lord Advocate shall, as soon as practicable, and, in any event, within 2 months, after becoming aware of the death of a person, notify the relevant persons whether -
   (a) it is intended to investigate the death under section 1; and
   (b) it is intended to apply for the holding of an inquiry under section 7(1) and, if so, when it is intended to do so; or
   (c) it is not possible for the Lord Advocate to determine the matters in (b) because criminal or inquiry proceedings as mentioned in section 8(1) have commenced and have not yet been concluded,

(2) The Lord Advocate may notify those persons of any of the matters mentioned in subsection (1) at different times provided all the matters are notified within that 2 month period.

(3) Any notification given by the Lord Advocate under subsection (1) shall give reasons for those decisions.

(4) The persons to be notified are-
   (a) if the deceased was a member of a couple, the other member of that couple;
   (b) if (a) does not apply, the nearest known relative of the deceased;
   (c) any relative of the deceased or other person or persons who have informed the Lord Advocate that they wish to be kept informed of such matters and who appears to the Lord Advocate to have an interest in them;
   (d) if section 2 applies-
      (i) the employer, if any, of the deceased and
      (ii) an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974;
   (e) any person or body who has notified the Lord Advocate that they wish to be kept informed of the investigation and who appears to the Lord Advocate to have an interest in the lessons which might be drawn from the death; and
(f) any other person who falls within such class of persons as may be provided for in rules made under section 34.

(5) For the purposes of this Act-
“couple” means two persons who—
(a) are married or are civil partners, or
(b) live together as husband and wife or, where they are of the same sex, in an equivalent relationship;
“the nearest known relative” means the relative who appears to the Lord Advocate to have the closest connection with the deceased; and
“relative” means, in relation to the deceased, the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece and, for the purposes of this definition, -
(a) a relationship by the half-blood is to be treated as a relationship of the whole blood,
(b) the stepchild of a person is to be treated as that person's child, and
(c) a person brought up or treated by another person as if the person were that other person's child (including any person placed with that other person, or with that other person's family, under section 26(1)(a) of the Children (Scotland) Act 1995 (c. 36)) is to be treated as that other person's child; and
“the relevant persons” means, in relation to any particular deceased, the persons who are notified by the Lord Advocate under section 6(4).

Part 2
Application for an inquiry

7 Duty to apply for an inquiry
(1) If, after the investigation under section 1, the Lord Advocate remains of the view as mentioned in any of the sections 2 to 4, the Lord Advocate shall, in accordance with sections 9 to 11, apply for the holding of an inquiry into the circumstances of the death.

(2) Subsection (1) is subject to section 8.

8 Exception to duty to apply for an inquiry
(1) This section applies where -
(a) criminal proceedings have been concluded against any person in respect of the death or accident or any of the other circumstances mentioned in any of the sections 2 to 4, or
(b) an inquiry has been held under the Inquiries Act 2005 or under any of the enactments specified in Schedule 1 into the accident or any of those other circumstances.

(2) Section 7(1) does not apply if, in either of the cases mentioned in subsection (1), the Lord Advocate is satisfied
(a) that the circumstances of the death have been sufficiently established in the course of such criminal or inquiry proceedings; and
(b) that no further lessons can be drawn from the death which might be the subject of recommendations by the sheriff under section 18.

(3) Where the Lord Advocate is satisfied as mentioned in subsection (2), the Lord Advocate shall notify the relevant persons giving reasons for that opinion and informing them that this means that section 7(1) does not apply.

(4) Where the Lord Advocate is only partially satisfied of the matters mentioned in subsection (2), the Lord Advocate shall notify the relevant persons giving reasons for that opinion and informing them that this means that section 7(1) continues to apply but that subsection (5) shall also apply.

(5) Where subsection (4) applies, at any preliminary hearing under section 13(1),

(a) the Lord Advocate shall narrate such of the matters as the Lord Advocate is satisfied as having been established by any criminal prosecution or inquiry proceedings; and

(b) the sheriff may take account of such matters when determining the issues to be addressed at the inquiry in terms of section 13(1)(a).

(6) For the purposes of this Act, criminal proceedings are concluded—

(a) by acquittal or, as the case may be, by sentence; or

(b) by any other verdict, finding, order or decision which puts an end to the proceedings; or

(c) by discontinuance or by operation of law;

and, in any of the above cases, where any appeal or review is competent,

(d) when any time limit for appealing or reviewing has expired without any appeal or review being made or

(e) if any appeal or review is made, when that appeal or review has been disposed of or abandoned, discontinued or withdrawn

9 Time limit for applying for an inquiry

(1) This section and sections 10 and 11 apply where the Lord Advocate is required by section 7(1) to apply for the holding of an inquiry into the circumstances of the death of a person.

(2) The Lord Advocate shall, subject to section (3), apply for such an inquiry -

(a) within 6 months after becoming aware of the death or,

(b) if, at that time, criminal or inquiry proceedings are being taken as mentioned in section 8, within 1 month after those proceedings have been concluded.

(3) If it is not possible for the Lord Advocate to apply for such an inquiry within the relevant period mentioned in subsection (2), the Lord Advocate shall determine a later date which shall be as soon as practicable thereafter.

(4) Where the Lord Advocate has determined a later date under subsection (3), the Lord Advocate shall notify the relevant persons, giving reasons as to why it was not possible to hold the inquiry at any earlier date.
10 Application to hold an inquiry: general provisions

(1) The Lord Advocate shall, subject to section 11, apply for the holding of the inquiry to the sheriff principal of
   (a) the sheriffdom which appears to be most closely connected with the death or,
   (b) in such other sheriffdom as appears to the Lord Advocate to be appropriate.

(2) The application shall narrate briefly the circumstances of the death so far as known to the Lord Advocate.

(3) The application may, if it appears to the Lord Advocate that more deaths than one have occurred as a result of the same or similar circumstances as mentioned in any of the sections 2 to 4, relate to all such deaths.

(4) Where subsection (3) applies, references in this Act to a death shall include references to all the deaths or to each death as the case may require.

(5) The Lord Advocate shall send a copy of the application to the relevant persons.

11 Application for an inquiry into a work related death

(1) This section applies where-
   (a) the Lord Advocate is required by section 7(1) to apply for the holding of an inquiry into the death of a person in circumstances mentioned in section 2;
   (b) the Lord President of the Court of Session has, by direction under section 33(1) of the Civil Court Reform (Scotland) Act 2013, determined that personal injury cases is a category of sheriff court case which is suitable to being dealt with by sheriffs who specialise in that category of case;
   (c) the sheriff principal of a sheriffdom has, under section 34(2)(a) of that Act designated one or more sheriffs as specialists in personal injury cases;
   (d) the Scottish Ministers have, by order under section 40(1) of that Act, provided that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court extends territorially throughout Scotland for the purposes of dealing with personal injury cases ( referred to in this Act as “the Scotland personal injury court”).

(2) Where his section applies section 10(1) shall not apply and the Lord Advocate shall, subject to subsection (3), apply for the holding of the inquiry before either-
   (a) a sheriff designated, as mentioned in subsection (1)(c), by the sheriff principal as a specialist in personal injury cases within
      (i) the sheriffdom which appears to the Lord Advocate to be most closely connected with the death or
(ii) such other sheriffdom as appears to the Lord Advocate to be appropriate; or

(b) the Scotland personal injury court.

(3) The Lord Advocate shall apply for the holding of the inquiry in the Scotland personal injury court in any case where
   (a) it appears to the Lord Advocate that the significance and importance of the inquiry in the public interest merit the inquiry being held in that court,
   (b) the person mentioned in section 6(4)(a) or (b) requests that the inquiry be held in that court and there is no special cause for the inquiry not to be held in that court and may do so in any other case.

Part 3
Holding of the inquiry

12 Preliminary hearing

(1) The sheriff shall, subject to subsection (2), make an order appointing a time, date and place for the holding of a preliminary hearing in connection with the inquiry, in such premises as appear to the sheriff to be, appropriate, having regard to subsection (3) and the apparent circumstances of the death.

(2) The date appointed by the sheriff for the holding of the preliminary hearing shall be no later than 2 months after an application has been made to the sheriff under section 10 or 11 for the holding of an inquiry

(3) So far as may be reasonably practicable, the preliminary hearing and the rest of the inquiry is to be held in premises -
   (a) which are not a courtroom and, except in the case where the person died outside Scotland,
   (b) which are in a locality which is closely connected with the circumstances of the death.

(4) On the making of an order under subsection (1) above, the Lord Advocate shall give notice of the holding of the preliminary hearing and the time and place fixed for it to
   (a) the relevant persons; and
   (b) the public.

(5) At the preliminary hearing, the sheriff shall, after hearing any representations and submissions from the persons entitled to appear at the inquiry, determine any preliminary issues, such as those mentioned in subsection (6).

(6) The preliminary issues to be determined include –
   (a) the issues to be addressed at the inquiry;
   (b) the procedure to be followed at the inquiry;
   (c) the timetable of the inquiry;
   (d) whether any other person who may have an interest in the inquiry should be invited to become a party at the inquiry;
   (e) what evidence should be disclosed or recovered;
whether, and to what extent, the parties entitled to appear at the inquiry and the
witnesses are entitled to be funded or refunded their expenses, and
any question of remitting the inquiry to another court, such as another sheriff
court, the Scotland personal injury court or the Court of Session.

For the purposes of this Act, the persons entitled to appear at the inquiry are-
(a) the Lord Advocate,
(b) the relevant persons and
(c) any other person who the sheriff is satisfied has an interest in the inquiry.

13 Conduct of the inquiry

(1) At the inquiry –
   (a) it is the duty of the Lord Advocate to adduce evidence with regard to the
circumstances of the death and the lessons to be learnt from that death; and
   (b) any other party to the inquiry may adduce evidence with regard to those
matters.

(2) Subject to subsections (3), the inquiry shall be open to the public.

(3) The sheriff may, at his own instance or on application made to him by any party to the
inquiry, make an order -
   (a) providing that such specified part of the inquiry as the sheriff considers appropriate
shall not be open to the public;
   (b) prohibiting the identification of any specified person, who is a party to, or a witness
at, the inquiry; and
   (c) prohibiting the publication of any information, in any form or manner whatsoever,
including in pictorial or in electronic form, relating to the specified part of the inquiry
or the participation of the specified person or any particulars calculated to lead to the
identification of that person.

(4) The sheriff may, either at the sheriff’s own instance or at the request of the Lord Advocate
or of any party to the inquiry, summon any person having special knowledge and being
willing to do so, to act as an assessor at the inquiry.

(5) For the purposes of this Act, “a party to the inquiry” means any person who is entitled
to appear at the inquiry and who does appear at the inquiry.

14 Powers of the sheriff

(1) Subject to the provisions of this Act and any rules made under section 24, the rules of
evidence, the procedure and the powers of the sheriff to deal with contempt of court and to
enforce the attendance of witnesses at the inquiry and to recover documents shall be as nearly
as possible those applicable in an ordinary civil cause brought before the sheriff sitting alone.
The sheriff may, either at the sheriff’s own instance or at the request of the Lord Advocate or of any party to the inquiry, by notice require a person to attend at a time and place stated in the notice—

(a) to give evidence at the inquiry;
(b) to produce any documents in that person’s custody or under that person’s control that relate to any of the issues to be determined at the inquiry;
(c) to produce any other thing in that person’s custody or under that person’s control for inspection, examination or testing by or on behalf of the Lord Advocate or any party entitled to appear at the inquiry.

15 Criminal proceedings and the adjournment of the inquiry

(1) The fact that criminal proceedings may be taken against any person in respect of the death or any accident or any of the other circumstances mentioned in any of the sections 2 to 4 does not, by itself, mean that the inquiry cannot be commenced.

(2) However, if the Lord Advocate requests that the inquiry should be adjourned until after the conclusion of the criminal proceedings, the sheriff shall consider whether, and to what extent, the inquiry can effectively continue without causing prejudice to those proceedings and, to the extent that the sheriff considers that it cannot, the sheriff shall adjourn the inquiry.

(3) Where the inquiry has been adjourned under subsection (2), the sheriff shall, after the conclusion of the criminal proceedings, resume the inquiry unless the Lord Advocate is satisfied
   (a) that the circumstances of the death have been sufficiently established in the course of such criminal proceedings and notifies the sheriff to that effect; and
   (b) that no further lessons can be drawn from the death which might be the subject of recommendations by the sheriff under section 18.

(4) Where the Lord Advocate is only partially satisfied of the matters mentioned in subsection (3), the sheriff shall resume the inquiry but
   (a) the Lord Advocate shall narrate such of the matters as the Lord Advocate is satisfied as having been established by any criminal proceedings; and
   (b) the sheriff may take account of such matters when determining the issues to be addressed at the resumed inquiry.

(5) Where the Lord Advocate is satisfied, or partially satisfied of the matters mentioned in subsection (3), the Lord Advocate shall give reasons for that opinion to the sheriff and to the parties to the inquiry.

16 Criminal proceedings and compellability of witnesses

(1) The examination of a witness or haver at the inquiry shall not be a bar to criminal proceedings being taken against that person.
(2) No witness at the inquiry shall be compellable to answer any question tending to show that that person is guilty of any crime or offence.

Part 4
Sheriff’s determination and recommendations

17 Sheriff’s determination

(1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the sheriff shall make a determination setting out the following circumstances of the death so far as they have been established to the sheriff’s satisfaction-

(a) where and when the death, and any of the circumstances mentioned in section 2 to 4, took place;
(b) the cause or causes of such death and any of those circumstances;
(c) the precautions, if any, which might with hindsight have been taken which might have avoided the death and any of those circumstances;
(d) the absence of any system of working or the defects, if any, in any system of working, which contributed to the death or ; and
(e) any other facts which are relevant to the circumstances of the death and any of those circumstances.

(2) The sheriff shall be entitled to be satisfied that any circumstances referred to in subsection (1) have been established by evidence, notwithstanding that that evidence is not corroborated.

(4) Subject to sections 20 and 24, the determination of the sheriff shall not be admissible in evidence or be founded on in any judicial proceedings, of whatever nature, arising out of the death or out of any of the circumstances mentioned in section 2 to 4.

18 Recommendations

Where, in the light of the circumstances of the death which have been established to the sheriff’s satisfaction, the sheriff is satisfied that there are lessons can be learnt from that death as to what action requires to be taken, or not to be taken, in order to prevent further deaths in similar circumstances in the future, the sheriff may make recommendations for this purpose to –

(a) a party to the inquiry and
(b) any other person or body who appears to the sheriff to be concerned with safety and to have an interest in the lessons which might be drawn from the death.

19 Conclusion of the inquiry

(1) On the conclusion of the inquiry -

(a) the sheriff clerk shall send a copy of the determination and of any recommendations made by the sheriff to-

(i) the Lord Advocate;
(ii) any other party to the inquiry; and
(iii) any other person or body to whom the recommendation was addressed;

(b) the sheriff clerk shall, on a request made to him by the Lord Advocate, send to any of the following persons or bodies mentioned in subsection (2) a copy of -

(i) the application made under section 8 or 9;
(ii) the transcript of the evidence at the inquiry;
(iii) any report or documentary production used in the inquiry;
(iv) the determination and any recommendations made by the sheriff, and

(c) the Lord Advocate shall send to the Registrar General of Births, Deaths and Marriages for Scotland the name and last known address of the person who has died and the date, place and cause of that person’s death.

(2) For the purposes of subsection (1)(b), the persons or bodies mentioned are-

(a) any relevant Minister of the Crown or Department in the United Kingdom Government;
(b) the Scottish Ministers;
(c) the Health and Safety Commission,

(3) Upon payment of such fee as may be provided for in rules made under section 34 and within such period as may also be so provided for, any person may obtain from the sheriff clerk a copy of-

(a) the determination and any recommendation made by the sheriff;
(b) the transcript of the evidence at the inquiry.

20 Enforcement of any recommendation

(1) Where the sheriff makes any recommendation under section 18, the person or body to whom the recommendation is addressed shall, within the time specified by the sheriff,

(a) comply with that recommendation; and
(b) notify the sheriff, the Lord Advocate and any party to the inquiry-
   (i) that the recommendation has been fully implemented or
   (ii) that the recommendation has not been fully implemented and
      ▪ the reasons why it has not been;
      ▪ the steps, if any, which have been taken to do so and
      ▪ the time within which it is expected that the recommendation will be fully implemented.

(2) If the person or body to whom the recommendation is addressed fails to notify the sheriff and others as required by subsection (1)(b), the Lord Advocate shall-

(a) report the failure to the sheriff and
(b)send a copy to the person or body concerned and to any other party to the inquiry,
and the sheriff may make an order requiring that person or body to appear at a hearing

(3) In any case where the person or body to whom the recommendation is addressed notifies the sheriff either

   (a) under subsection (1)(b) or
   (b) at the hearing called under subsection (2)

that the recommendation has not been fully implemented, the sheriff may, after hearing representations from that person or body and any other party to the inquiry, make an order requiring that person or body to implement the recommendation in full within such time as is specified in the order.

Part 5
General

21 Re-opening of the inquiry

(1) This section applies where, after an inquiry has been concluded, the Lord Advocate is satisfied that

   (a) evidence (in this section referred to as “new evidence”) exists, or may exist, which
      (i) was not reasonably available at the time of the inquiry; and
      (ii) if it had been available and accepted the sheriff, would have been likely to affect any of the determinations or recommendation made by the sheriff under section 17 or 18; and

   (b) it is in the public interest that such evidence should be considered at any re-opened inquiry.

(2) Where this section applies, the Lord Advocate shall -

   (a) apply to the sheriff, who held the original inquiry, to re-open the inquiry, giving reasons why it is considered that the inquiry should be re-opened; and

   (b) send a copy of the application to the parties to the inquiry and any person or body to whom any recommendation under section 18 has been addressed.

(3) Where the sheriff who held the original inquiry is, for any reason, unavailable, the Lord Advocate shall apply to re-open the inquiry to the sheriff under section 10 or 11 whichever applied to the original inquiry.

(4) The sheriff shall make an order appointing a time, date and place to consider whether to re-open the inquiry to hear the new evidence or to order a new inquiry to be held.
(5) On the making of an order under subsection (4) above, the Lord Advocate shall give notice of that order to

(a) the parties to the inquiry and any person or body to whom any recommendation under section 18 was addressed; and
(b) the public.

(6) At the date appointed by the sheriff under subsection (4), the sheriff shall, after considering any submissions and representations by

(a) any of the parties to the inquiry,
(b) any person or body to whom any recommendation under section 18 has been addressed, and
(c) any other person who the sheriff is satisfied has an interest in the matter,

decide whether to re-open the inquiry to hear the new evidence or to order a new inquiry to be held.

(7) If the sheriff decides that it would be more appropriate to have a new inquiry, the sheriff shall order the Lord Advocate to apply to a sheriff, under section 10 or 11, for a new inquiry to be held.

(8) If the sheriff decides to re-open the inquiry, the sheriff shall hear the new evidence and, after considering any submissions and representations made by the persons referred to in subsection (6), may confirm, delete or amend any of the determinations and recommendations made under section 17 or 18.

(9) The provisions of this Act, and of the rules made under section 24, shall apply to the re-opened inquiry or, as the case may be, any new inquiry, as they apply to the inquiry when originally held.

22 Offences

(1) Any person who contravenes an order made under section 13(3) shall be guilty of an offence.

(2) A person or body is guilty of an offence if that person or body fails without reasonable excuse to do anything that that person is required to do by an order under section 20(3).

(3) A person is guilty of an offence if during the course of an inquiry that person does anything that is intended to have the effect of—

(a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the sheriff, or
(b) preventing any evidence, document or other thing from being given, produced or provided to the sheriff, or anything that that person knows or believes is likely to have that effect.
(4) A person is guilty of an offence if during the course of an inquiry—

(a) that person intentionally suppresses or conceals a document that is, and that person knows or believes to be, a relevant document, or
(b) that person intentionally alters or destroys any such document.

For the purposes of this subsection a document is a “relevant document” if it is likely that the sheriff would (if aware of its existence) wish to be provided with it.

(5) A person or body who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding six months, or to both.

23 Offences by bodies corporate etc

(1) Where an offence under section 22 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or is attributable to, any neglect on the part of—

(a) a director, manager or secretary, member or other similar officer of the body corporate; or
(b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under section 22 which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a partner; or
(b) any person who was purporting to act in any such capacity,

that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where an offence under this Part of this Act which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a person who is concerned in the management or control of the association; or
(b) any person who was purporting to act in any such capacity,

that person, as well as the unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.
24 Rules

(1) The Lord Advocate may, by rules, regulate and prescribe the procedure and practice to be followed in any proceedings at and in relation to inquiries under this Act (including any matters incidental, or relating, to any such procedure or practice).

(2) Without prejudice to the generality of subsection (1), the power conferred on the Lord Advocate by subsection (1) shall include the power to make provision as to -

(a) the form (including any online form) of any document to be used in, or in relation to, or for the purposes of, such inquiries, including the form of any notification under section 3(3) or the form of any determination under section 17(1);
(b) how any such document is to be sent or given, including by electronic means;
(c) the class of persons who are to be notified under section 6(4)(e);
(d) the representation, on such conditions as may be specified in the rules, of any person who is entitled to appear at the inquiry;
(e) the financial assistance which may be given, on such conditions as may be specified in the rules, to enable such representation to be given;
(f) the authorisation by the sheriff of the taking, and holding, in safe custody of anything which it may be considered necessary to produce;
(g) the inspection by the sheriff, or any person authorised by the sheriff, of any land, premises, article, or other thing;
(h) when, and on what conditions, written statements and reports may be admissible in lieu of parole evidence;
(i) the management of the conduct of the inquiry by the sheriff;
(j) the duties, remuneration and other conditions of appointment of any assessor summoned under section 12(7), and for keeping of lists of persons willing to act as such assessors;
(k) the payment of, fees to solicitors and expenses to witnesses and havers;
(l) the fees payable, and the period within which, a person may obtain a copy of the documents mentioned in section 19(3);
(m) the procedure to be followed under section 20 or in connection with the reopening of the inquiry under section 21; and
(n) such other matters relating to procedure as the Lord Advocate thinks appropriate.

25 Minor and consequential amendments and repeals.

(1) Schedule 1 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column in Schedule 2 are repealed to the extent set out in the second column 3.

26 Ancillary provision

(1) The Lord Advocate may by order make such supplementary, incidental or consequential provision as the Lord Advocate considers appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.
(2) An order under this section may modify this or any other enactment.

27 Transitional provision etc

(1) The Lord Advocate may by order make such transitional, transitory or saving provision, as the Lord Advocate considers appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.

(2) An order under this section may modify this or any other enactment.

28 Subordinate legislation

(1) Any power of the Lord Advocate to make rules or an order under this Act includes power to make—

   (a) different provision for different purposes, and
   (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as the Lord Advocate considers appropriate.

(2) An order made under section 26 or 27 containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(3) All other orders, or rules, made under this Act are subject to the negative procedure.

(5) This section does not apply to an order made under section 32.

29 Scotland

(1) For the purposes of this Act, a death or any accident from which death has resulted which has occurred—

   (a) in connection with any activity falling within subsection (2) of section 11 of the Petroleum Act 1998; and
   (b) in that area, or any part of that area, in respect of which it is provided by Order in Council under subsection (1) of that section that questions arising out of acts or omissions taking place therein shall be determined in accordance with the law in force in Scotland

shall be taken to have occurred in Scotland.

(2) This Act applies where the Lord Advocate—

   (a) is notified of the death of a person under section 12(4) or (5) of the 2009 Act (death of service personnel outside the United Kingdom) or
(b) otherwise becomes aware that the body of a person, who is normally resident in Scotland but who has died outside Scotland, has been brought to Scotland as if that person had died in Scotland.

(3) Where this Act applies by virtue of subsection (2)(a), it ceases to apply when the Lord Advocate notifies the Chief Coroner as mentioned in section 13(1) of the 2009 Act.

30 Interpretation

(1) In this Act, any reference to-

“the 1976 Act” means the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 c. 14; and

“the 2009 Act” means the Coroners and Justice Act 2009 c.25.

(2) In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<table>
<thead>
<tr>
<th>Expression</th>
<th>Provision of this Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Scotland personal injury court</td>
<td>Section 11(1)(d)</td>
</tr>
<tr>
<td>The circumstances of a death</td>
<td>Section 1(2)</td>
</tr>
<tr>
<td>The conclusion of criminal proceedings</td>
<td>Section 8(6)</td>
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<tr>
<td>A party to an inquiry</td>
<td>Section 13(5)</td>
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<tr>
<td>The persons entitled to appear at the inquiry</td>
<td>Section 12(7)</td>
</tr>
<tr>
<td>The relevant persons</td>
<td>Section 6(5)</td>
</tr>
</tbody>
</table>

(3) Any reference in this Act to a death or an accident occurring in Scotland shall be deemed to include a death or an accident which is deemed to have taken place in Scotland under section 29.
31 Application of this Act

(1) Subject to subsection (2), this Act applies in any case where the death or accident or any of the other circumstances mentioned in sections 2 to 4 occurs before or after the date of coming into force of this section.

(2) This Act does not apply in any case where an inquiry under the 1976 Act has been commenced or concluded before the date of coming into force of this section.

32 Commencement

(1) This section and section 32 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Lord Advocate may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision

33 Short title

The short title of this Act is the Inquiries into Deaths (Scotland) Act 2013.
INQUIRIES INTO DEATHS (SCOTLAND) BILL
EXPLANATORY NOTES

INTRODUCTION

1.1 These Explanatory Notes have been prepared in order to assist the reader of the Act. They do not form part of the Bill and have not been endorsed by the Parliament.

1.2 The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, none is given.

PURPOSE OF THE ACT

The purpose of the Act is to consolidate the Fatal Accidents and Sudden Death Inquiry (Scotland) Act 1976 (“the 1976 Act”) but with amendments to give effect to almost all of the recommendations of Report on the Review of Fatal Accident Legislation by Lord Cullen 2009 ("the Cullen Report") and certain other amendments.

The two main amendments which have been made, in addition to those recommended by the Cullen Report, are –

- to extend the scope of the investigations and inquiries into deaths to cover work-related deaths resulting from any personal injury (not caused by an accident), industrial disease or exposure to certain substances due to the nature of the employment; and
- to make it clear that the inquiry is not only into the causes of the death but the lessons to be learnt from the death in order to prevent further deaths arising from similar circumstances in the future.

PART 1
INVESTIGATION OF DEATHS etc

This Part is intended to re-enact, with amendments, sections 1(1) and 2 of the 1976 Act. It sets out in sections 2 to 4 what are the cases in which the Lord Advocate is required to carry out an investigation into the circumstances of the death of any person. It defines what is meant by such an investigation (section 1(2)). It empowers the Lord Advocate to cite witness for precognition (section 5) and requires certain persons to be notified of what the Lord Advocate intends to do (section 6).

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3 Fatal Accidents and Sudden Death Inquiry (Scotland) Act 1976 (c 14)
Section 1 Investigation of Deaths etc

Subsection (1) provides that, where a person has died in Scotland, Lord Advocate is required to investigate the circumstances of that death in any of the cases mentioned in sections 2 to 4 and may do so in any other case. The 1976 Act conferred the function of investigating these deaths upon “the procurator fiscal for the district with which the circumstances of the death appear to be most closely connected”. However, as the procurator fiscals act on behalf of the Lord Advocate, it is more appropriate that this statutory function should be conferred directly upon the Lord Advocate who is responsible for its exercise and who then can decide which procurator fiscal should carry out this function on his behalf.

The reference to a death occurring in Scotland is, in effect, extended by section 29 which provides that, in certain circumstances, deaths which have occurred outwith Scotland are deemed to have occurred in Scotland.

Subsection (2) defines what is meant by “the circumstances of a death” for the purposes of the Act. It makes it clear that the investigation has to be not only into such matters as where and when the death took place and the causes of the death but also into the lessons to be learnt to avoid future deaths. These are matters upon which the sheriff is required to make a determination under section 17(1) and may make recommendations under section 18.

Subsection (2) is new. However, it expresses the principle which is considered to be implicit in the 1976 Act that what is meant by the circumstances of a death must be the same as what the sheriff can determine or make recommendations about at the inquiry.

Section 2 Work related deaths

Section 2 requires the Lord Advocate to investigate work related deaths. Paragraphs 4.7 and 10.4 of the Cullen Report recommended that inquiries into such deaths should continue to be mandatory\(^5\) but this section extends the scope of what is meant by those deaths.

Subsection (1)(a) re-enacts section 1(1)(a)(i) of the 1976 Act by providing that the Lord Advocate must investigate the death where it appears to the Lord Advocate that the death has resulted from personal injuries caused by an accident occurring in Scotland\(^6\) in the course of that person’s employment or occupation. It extends that provision to cover the case where it is not clear that the death has resulted from such an accident but may have done so.

Subsection (1)(b) is new. It covers the case where death has, or may have, resulted from any other personal injury (other than a personal injury caused by an accident as mentioned in (a)) or industrial disease or exposure to any substance hazardous to health which is due to the nature of that person’s employment or occupation.

Subsection (2) defines what is meant by “industrial disease” and “a substance hazardous to health.”

Section 3 Deaths while in legal custody etc

This section requires the Lord Advocate to investigate the death of a person while a person is in legal custody or in certain other forms of compulsory detention. It re-enacts sections 1(1)(a)(ii) and (4) of the 1976 Act but with amendments to give effect the recommendations in paragraphs 4.14, 4.20, 4.27, 10.5 and 10.6 of the Cullen Report.

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\(^5\) An inquiry is not strictly mandatory because it is subject to section 8.

\(^6\) The reference to an accident occurring in Scotland is, in effect, extended by section 22(1) which provides that an accident which has occurred on the UK continental shelf outwith Scotland is deemed to have occurred in Scotland.
Subsections (1)(a) and (2) cover deaths in legal custody and defines what is meant by legal custody. The definition has been updated to refer to the Prisons (Scotland) Act 1989. Subsection (1)(b) is new. It covers a death while that person is subject to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act 1998. Subsection (3) makes it clear that this includes the 3 kinds of cases mentioned in paragraphs 4.15 to 4.20 of the Cullen Report. Subsection (1)(c) is also new. As recommended in paragraphs 4.21 to 4.27 and 10.7 of the Cullen Report, it covers the case of a death of a child subject to a child protection order or supervision requirement or any other order or requirement requiring that child to be kept in, or to be taken to or from, a place of safety, residential establishment or secure accommodation, all within the meaning of Part 11 of the Children (Scotland) Act 1995.

Section 4 Sudden deaths etc

This section re-enacts section 1(1)(b) of the 1976 Act. It is self explanatory.

Section 5 Citation of witnesses for Precognition

This section re-enacts section 2 of the 1976 Act. It is self explanatory.

Section 6 Notification to certain persons

This section is new.

Subsection (1) requires the Lord Advocate to notify certain persons, as soon as practicable and in any event within 2 months after being notified of the death, whether it is intended to investigate the death and to apply for the holding of an inquiry under the Act and when it is intended to do so or whether it is not possible for the Lord Advocate to determine such matters because criminal or inquiry proceedings as mentioned in section 8(1) have commenced and have not been concluded.

Subsection (2) provides that these matters may be notified at different times but they all require to be notified within the 2 month period.

Subsection (3) requires the Lord Advocate to give reasons for his decisions. Subsection (4) specifies the persons to be notified, such as the other member of the couple (if the deceased was a member of a couple) or the nearest relative of the deceased and certain other persons. They are similar to the persons who are, under section 4(2) of the 1976 Act, are entitled to appear at the inquiry but amended, as the Cullen report recommended, to

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7 1989 c. 45
8 1998 c. 42
9 1995 c. 36
10 Paragraph 5.11 of the Cullen Report recommended that reasons should be given where the Lord Advocate decided not to hold an inquiry. Section 6(3) goes further than this by requiring reasons in every case.
11 Paragraph 3.50
include civil partners and co-habitants and with amendments to include any person or body who has an interest in the lessons which might be drawn from the death.

Subsection (5) defines various expressions, including “the relevant persons mentioned in section 6(4)”, for the purposes of the Act.

**PART 2**

**APPLICATION FOR AN INQUIRY**

**Section 7**  **Duty to apply for an inquiry**

This section is a paving section. Subsection (1) requires the Lord Advocate to apply for the holding of an inquiry, in accordance with section 9 or 10, into the circumstances of the death if, after investigation, he remains of the view as mentioned in any of the section 2 to 4. Subsection (2) makes it clear that this is subject to section 8.

**Section 8**  **Exception to duty to apply for an inquiry**

This section confers a power upon the Lord Advocate to make an exception from the duty to apply for an inquiry under section 7.

Subsection (1) provides that section 8 applies where

(a) criminal proceedings have been concluded against any person in respect of the death or accident or any of the other circumstances mentioned in any of the sections 2 to 4. This partly re-enacts the exception made in section 1(2) of the 1976 Act; and

(b) an inquiry has been held under the Inquiries Act 2005 or under any of the enactments specified in Schedule 1 into the accident or any of those other circumstances. This gives effect to the recommendation in paragraphs 4.31 and 10.8 of the Cullen Report.

Subsection (2) provides that section 7(1) does not apply if the Lord Advocate is satisfied

(a) that the circumstances of the death have been sufficiently established in the course of such criminal or inquiry proceedings;

(b) that the Lord Advocate is also satisfied that no further lessons can be drawn from the death which might be the subject of recommendations by the sheriff under section 18.

Subsections (3), (4) and (5) are new. Subsection (3) provides that, where the Lord Advocate is satisfied as mentioned in subsection (1), the Lord Advocate shall notify the persons in section 6(4) giving reasons for his opinion and informing them that this means that it is not section 7(1) does not apply.

Subsection (4) provides that, where the Lord Advocate is only partially satisfied of the matters mentioned in subsection (1), the Lord Advocate shall notify the persons in section
6(4) giving reasons for his opinion and informing them that this means that section 7(1) continues to apply but that subsection (5) shall also apply.

Subsection (5) makes provision for a partial inquiry. It provides that, at the preliminary hearing under section 13, the Lord Advocate shall narrate the circumstances about which the Lord Advocate is satisfied and the sheriff may take account of such matters when determining the issues to be determined at the inquiry.

Subsection (4) defines when criminal proceedings are concluded.

Section 9  Time limit for applying for an inquiry

This section is new. It gives effect, with amendments, to the recommendation of paragraphs 6.22 and 10.18 of the Cullen Report that an application for an inquiry should be made at an early stage after the death.

Subsection (1) provides that sections 9 to 11 apply where the Lord Advocate is required to apply to hold an inquiry under section 7(1).

Subsection (2) provides that the Lord Advocate is required to apply for such an inquiry -
   (a) within 6 months after becoming aware of the death or,
   (b) if, at that time, criminal or inquiry proceedings are being taken as mentioned in section 8, within 1 month after those proceedings have been concluded.

Subsection (3) provides that, if this is not possible, the Lord Advocate shall determine a later date which shall be as soon as practicable thereafter.

Subsection (4) provides that, where the Lord Advocate has determined a later date under subsection (3), the Lord Advocate shall notify the persons mentioned in section 6(4), giving reasons as to why it was not possible to hold the inquiry at any earlier date.

Section 10 Application to hold an inquiry: general provisions

This section re-enacts sections 1(3) and 3(3) of the 1976 Act with amendments to give effect to paragraphs 4.35 and 10.9 of the Cullen Report and other amendments. It makes general provisions concerning the application to hold an inquiry.

Subsection (1) makes provision as to where the Lord Advocate is to apply for the holding of an inquiry. This is to the sheriff principal of the sheriffdom which appears to be most closely connected with the death or in such other sheriffdom as appears to the Lord Advocate to be appropriate. This provision is subject to section 11.

Subsection (2) requires the application to narrate briefly the circumstances of the death so far as known to the Lord Advocate.

Subsection (3) provides that, if more than one death has occurred as a result of the same or similar circumstances as mentioned in any of the sections 2 to 4, the application may relate to all such deaths. Subsection (4) makes a consequential provision adapting reference to a death in the Act.

Subsection (5) requires a copy of the application to be sent to the relevant persons mentioned in section 6(4).

11 Application for an inquiry into work related deaths

This section is new. It makes provision as to where the Lord Advocate is to apply for the holding of an inquiry into a work related death when the Civil Court Reform (Scotland Act
2013\textsuperscript{12} has been enacted and provision has been under it for specialised sheriffs to deal with personal injury cases and an all Scotland personal injury court. Subsection (1) makes provision as to when this section applies. Subsection (2) provides that, in such a case, the Lord Advocate is required to apply for the holding of an inquiry by either such a specialised sheriff or by the all Scotland personal injury court. Subsection (3) provides that the Lord Advocate must apply for the holding of an inquiry by the all Scotland personal injury court in two kinds of cases and may do so in other cases.

\textbf{PART 3}

\textbf{HOLDING OF THE INQUIRY}

\textbf{12 Preliminary hearing}

This section re-enacts section 3 of the 1976 Act but makes provision for a preliminary hearing at recommendations in paragraphs 6.29 to 6.32 and 10.19 to 10.22 of the Cullen Report but with further amendments. Subsection (1) requires the sheriff to make an order appointing a time, date and place for the holding of a preliminary hearing in connection with the inquiry. This is subject to subsections (2) and (3). Subsection (2) requires the date for the preliminary hearing to be within 2 months of the application for an inquiry being made to the sheriff. Subsection (3) requires the preliminary hearing and the rest of the inquiry to be held in premises which are not a courtroom and which are in a locality which is closely connected with the circumstances of the death. This also gives effect to the recommendations of paragraphs 3.13 and 10.1 of the Cullen Report. Subsection (4) requires the Lord Advocate to give notice of the holding of the preliminary hearing and the time and place fixed for it to the relevant persons mentioned in section 6(4) and to the public. Subsection (5) requires the sheriff at the preliminary hearing, after hearing any representations and submissions from the persons entitled to appear at the inquiry, to determine any preliminary issues, such as those mentioned in subsection (6). Subsection (6) specifies a number of preliminary issues to be determined. These include the issues to be addressed at the inquiry, the procedure and timetable to be followed, the evidence to be disclosed or recovered and any question of remitting the inquiry to another court. Subsection (7) defines what is meant by the persons entitled to appear at the inquiry.

\textbf{Section 13 Conduct of the inquiry}

Section 13 makes provision as to the conduct of the inquiry. It substantially re-enacts parts of section 4 of the 1976 Act, with amendments.

Subsection (1) requires the Lord Advocate, and any other party, to adduce evidence with regard to the circumstances of the death and the lessons to be learnt from that death.

\textsuperscript{12} This assumes that the Act is enacted in similar terms as the Consultation on the Courts Reform (Scotland) Bill http://www.scotland.gov.uk/Publications/2013/05/6753
Subsections (2) and (3) re-enact section 4(3)-(4) of the 1976 Act, but with amendments to give effect to the recommendations of paragraphs 7.24 and 10.27 of the Cullen Report and other amendments.

Subsection (2) provides that the inquiry shall be open to the public but subject to subsection (3).

Subsection (3) empowers the sheriff to make an order providing that a specified part of the inquiry shall not be open to the public, prohibiting the identification of any specified person and prohibiting the publication of any information relating thereto.

Subsection (4) makes provision for the appointment of an assessor. This re-enacts section 4(6) of the 1976 Act.

Subsection (5) defines what is meant by a “party to the inquiry”.

**Section 14 Powers of the sheriff**

This section makes provision about the powers of the sheriff at the inquiry.

Subsection (1) makes provision as to the procedure and the powers of the sheriff to deal with contempt of court and to enforce the attendance of witnesses at the inquiry and to recover documents. It provides that they shall be as nearly as possible those applicable in an ordinary civil cause brought before the sheriff sitting alone. This subsection re-enacts section 4(7) of the 1976 Act.

Subsection (2) empowers the sheriff to require a person to attend at a specified place and time to give evidence or to produce documents or other thing in the person’s custody.

**Section 15 Criminal proceedings and the adjournment of the inquiry**

Section 15 is new. It makes provision as to what happens to an inquiry if criminal proceedings are taken against any person in respect of the death or any accident or any of the other circumstances mentioned in section sections 2 to 4.

Subsection (1) provides that the fact that such criminal proceedings may be taken does not, by itself, mean that the inquiry cannot be commenced.

Subsection (2) makes provision as to what happens if the Lord Advocate requests the sheriff to adjourn the inquiry until after the conclusion of the criminal proceedings. It requires the sheriff to consider whether, and to what extent, the inquiry can effectively continue without causing prejudice to those proceedings. It is only, to the extent that the sheriff considers that the inquiry cannot continue, that the sheriff is required to adjourn the inquiry.

Subsection (3) makes provision as to what happens to the adjourned inquiry after the conclusion of criminal proceedings. It requires the sheriff to resume the inquiry unless the Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of such criminal proceedings and that no further lessons can be drawn from the death.
Subsection (4) makes provision where the Lord Advocate is only partially satisfied of the matters mentioned in subsection (3). It requires the sheriff to resume the inquiry and provides that the sheriff may take into account the matters about which the Lord Advocate is satisfied when determining the issues to be addressed at the resumed inquiry. Subsection (5) requires the Lord Advocate to give reasons as to why the Lord Advocate is satisfied or partially satisfied of the matters mentioned in subsection (3).

Section 16 Criminal proceedings and compellability of witnesses

This section re-enacts section 5 of the 1976 Act.

PART 4
SHERIFF’S DETERMINATION AND RECOMMENDATION

17 Sheriff’s determination

This section re-enacts s.6 (1) to (3) of the 1976 Act, with amendments to give effect to the recommendations in paragraphs 8.8 – 8.13 and 10.29 of the Cullen Report and other amendments.

18 Recommendations

This section gives effect to the recommendation in paragraphs 3.32 and 10.30 of the Cullen Report. It empowers the sheriff to make recommendations where the sheriff is satisfied that there are lessons can be learnt from that death as to what action requires to be taken, or not to be taken, in order to prevent further deaths in similar circumstances in the future. The recommendations may be made to any other person or body who appears to the sheriff to be concerned with safety and to have an interest in the lessons which might be drawn from the death.

19 Conclusion of the inquiry

This section re-enacts section 6(4) and (5) of the 1976 Act, with some amendments which are self explanatory.

20 Enforcement of any recommendation

This section is new. It makes provision for the enforcement of the recommendations made by the sheriff under section 18. Subsection (1) requires the person or body to whom the recommendation is addressed within the time specified by the sheriff, to comply with that recommendation and to notify the sheriff that the recommendation has been fully implemented or that it has not been fully
implemented and the reasons why it has not been, the steps, if any, which have been taken to do so and the time within which it is expected that the recommendation will be fully implemented.

Where that person or body fails to notify the sheriff and the others as required by subsection (1)(b), subsection (2) requires the Lord Advocate to report that failure to the sheriff and to send a copy to the person or body concerned and to any other party to the inquiry. The sheriff may make an order requiring that person or body to appear at a hearing.

Subsection (3) applies in any case where the person or body to whom the recommendation is addressed notifies the sheriff either under subsection (1)(b) or at the hearing called under subsection (2) that the recommendation has not been fully implemented. The sheriff is then empowered, after hearing representations from that person or body and any other party to the inquiry, to make an order requiring that person or body to implement the recommendation in full within such time as is specified in the order.

PART 5
GENERAL

21 Re-opening of the inquiry

This section is new. It gives effect to paragraphs 9.8, 9.9, 10.35 and 10.36 of the Cullen Report, with amendments.

It makes provision for the Lord Advocate to apply for the inquiry to be re-opened where the Lord Advocate is satisfied that new evidence exists, or may exist, which would have been likely to affect any of the determinations or recommendation made by the sheriff under section 17 or 18.

Subsection (2) provides that the application should be made to the sheriff who held the original inquiry with reasons as to why the inquiry should be re-opened. A copy of the application is to be sent to the parties to the inquiry and any person or body to whom any of the recommendations under section 18 has been addressed.

Subsection (3) makes provision where the sheriff who held the original inquiry is unavailable. In this case, the Lord Advocate is to apply to the sheriff under section 10 or 11 whichever applied to the original inquiry.

Subsection (4) provides that the sheriff shall make an order appointing a time, date and place to consider whether the inquiry should be re-opened and, if so, the hearing of the new evidence. Subsection (5) requires the Lord Advocate to give notice of that order to the parties to the inquiry and any person or body to whom any of the recommendations under section 18 has been addressed and to the public.

Subsection (6) provides that, after hearing submissions and representations, the sheriff shall decide whether to re-open the inquiry or to order a new inquiry to be held.

Subsection (7) provides that, if the sheriff decides that it would be more appropriate to have a new inquiry, the sheriff shall order the Lord Advocate to apply to a sheriff, under section 10 or 11, for a new inquiry to be held.
Subsection (8) provides that, if the sheriff decides to re-open the inquiry, the sheriff shall hear the new evidence and, after considering any submissions and representations made by the persons referred to in subsection (6), may confirm, delete or amend any of the determinations and recommendations made under section 17 or 18.

Subsection (9) provides that the provisions of this Act, and of the rules made under section 23, shall apply to the re-opened inquiry or, as the case may be, any new inquiry, as they apply to the inquiry when originally held.

22 Offences

This section makes provision for offences under the Act.

Subsection (1) provides that any person who contravenes an order made under section 13(3) shall be guilty of an offence. This re-enacts section 4(4) of the 1976 Act.

Subsection (2) A person or body is guilty of an offence if that person or body fails without reasonable excuse to do anything that that person is required to do by an order under section 20(3).

Subsections (3) and (4) are based upon section 35 of the Inquiries Act 2005.

Subsection (5) provides for the penalties if a person or body is guilty of an offence under this section.

23 Offences by bodies corporate etc

This section makes the standard provision about offences committed by bodies corporate, Scottish partnerships and Scottish unincorporated bodies. This is required because an offence under section 22(2) could be committed by such a body.

24 Rules

This section re-enacts section 7 of the 1976 Act, with amendments. Subsection (1) provides that the Lord Advocate may, by rules, regulate and prescribe the procedure and practice to be followed in any proceedings at and in relation to inquiries under the Act (including any matters incidental, or relating, to any such procedure or practice).

Subsection (2) gives a list of matters which the rules may make provision for but this list is not exhaustive.

Section 28 makes provision for the parliamentary procedure relating to the making of these rules.
25 Minor and consequential amendments and repeals.

This section provides that Schedules 1 and 2 make provision for minor amendments and amendments, and repeals, consequential on the provisions of this Act.

26 Ancillary provision

This section empowers the Lord Advocate by order to make such supplementary, incidental or consequential provision as the Lord Advocate considers appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.

Subsection (2) provides that such an order may modify the Act or any other enactment.

27 Transitional provision etc

This section empowers the Lord Advocate by order to make such transitional, transitory or saving provision, as the Lord Advocate considers appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.

Subsection (2) provides that such an order may modify the Act or any other enactment.

28 Subordinate legislation

This section makes provision about the power of the Lord Advocate to make subordinate legislation under the Act.

Subsection (1) provides that any power of the Lord Advocate to make rules or an order includes the power to make different provision for different purposes and such supplementary, incidental, consequential, transitional, transitory or saving provision as the Lord Advocate considers appropriate.

Subsection (2) provides that an order made under section 26 (ancillary provision) or 27 (transitional provision) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

Subsection (3) provides that all other orders, or rules, made under this Act are subject to the negative procedure.

Subsection (4) provides that this section does not apply to a commencement order under section 32.

29 Scotland

This section makes provision for deeming certain deaths or accidents which have occurred outside Scotland to have taken place in Scotland.
Subsection (1) re-enacts section 9 of the 1976 as amended. It provides, in effect, that any death or any accident from which death has occurred in connection with any offshore activity in that part of the UK continental shelf where the law of Scotland applies for the determination of certain questions shall be taken to have occurred in Scotland.

Subsections (2)(a) and (3) re-enact, in effect, section 1A of the 1976 Act as inserted by sections 50(2) and 182(4) of the Coroners and Justice Act 2009 (c.25). This was consequential upon sections 12 and 13 of the 2009 Act which deals with the death of service personnel outside the UK.

Subsection (2)(b) gives effect to the recommendations in paragraphs 4.43 and 10.10 of the Cullen Report.

**Section 30 Interpretation**

This section defines expressions for the purposes of the Act and provides an index of expressions defined elsewhere in the Act for the purposes of the Act.

**31 Application of this Act**

Subsection (1) provides that the Act applies in any case where the death or accident or any of the other circumstances mentioned in sections 2 to 4 occurs before or after the date of coming into force of this section.

This is subject to subsection (2) which provides that the Act does not apply in any case where an inquiry under the 1976 Act has been commenced or concluded before the date of coming into force of this section.

**32 Commencement**

This section makes provision for the commencement of the Act.

Subsection (1) provides that this section and section 33 come into force on the day after Royal Assent.

Subsection (2) provides that the other provisions of this Act come into force on such day as the Lord Advocate may by order appoint.

Subsection (3) provides that an order under this section may include transitional, transitory or saving provision.

**33 Short title**

This section provides that the short title of the Act is the Inquiries into Deaths (Scotland) Act 2013.