

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2085](#): Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad, lodged by David Cornock

Brief overview of issues raised by the petition

The petitioner wants the Scottish Government to introduce a statutory definition for Fatal Accident Inquiries (FAIs) into deaths abroad. The key concern is that FAIs can only be held into deaths which occur abroad when the deceased was “ordinarily resident” in Scotland.

The petitioner argues that the fact that the term “ordinarily resident” is not further defined in law undermines the effectiveness of the FAI system. The petitioner also argues that more support is available under the coroner system in England and Wales, meaning families should choose to repatriate bodies there instead of to Scotland.

- The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 contains the current law in relation to FAIs. This legislation took forward most of the recommendations of a review into FAIs carried out by Lord Cullen, which reported in 2009.
- One of the recommendations of the Cullen Review was that it should be possible to hold FAIs where someone “normally resident” in Scotland dies abroad and the body is repatriated to Scotland. Before the 2016 Act came into force, it was only possible to hold FAIs where someone died in Scotland.
- Lord Cullen recommended that FAIs into deaths abroad should be discretionary, and he expected them to happen rarely. This was in recognition of the fact that, in many circumstances, there would be nothing additional to gain by holding an FAI. For example, the courts in Scotland cannot compel a witness based abroad to attend an FAI¹.
- The 2016 Act creates a power to hold an FAI where a death occurs outwith the UK and, at the time of death, the deceased was “ordinarily resident” in Scotland. In addition, the Lord Advocate must consider that:
 - the death was sudden, suspicious, unexplained or gives rise to serious public concern
 - the circumstances of the death have not been sufficiently established in the course of other investigations (e.g. by the country in which the death occurred)

¹ Lord Cullen of Whitekirk. (2009) [Review of Fatal Accident Inquiry Legislation – the Report](#). See paragraphs 4.36 to 4.43.

- there is a real prospect that an FAI could sufficiently establish the circumstances of the death (e.g. evidence about the circumstances of the death is available); and
 - it is in the public interest to hold an FAI.
- The term “ordinarily resident” is not further defined in the 2016 Act. However, it is a commonly used and well-understood legal concept. Disputes about whether someone is ordinarily resident in Scotland in a particular context can be taken to court.
 - The term is intended to be flexible to cover a wide range of circumstances. For example, if someone moved to Scotland yesterday, they may be ordinarily resident if they intend to stay here permanently. However, someone who has spent significant time in Scotland over many years may not be ordinarily resident here if they mainly live and work in another country.
 - The system of coroner’s inquests used in England and Wales is significantly different to the Scottish system of death investigations. Coroner’s inquests mainly determine how, where and when someone died. They rarely make wider recommendations in relation to the circumstances of the death. In 2022, 36,300 coroner’s inquests were opened. However, only 403 Prevention of Future Deaths reports were issued².
 - Coroners have duties to investigate where a body is within their area. This includes bodies which have been repatriated to England or Wales from another country. Thus, coroners will investigate where:
 - a death was violent or unnatural
 - the cause of death is unknown
 - the deceased died in state detention (e.g. in police custody).
 - In practice, this will generally mean that a coroner will investigate deaths meeting these criteria, even in relation to someone who is ordinarily resident in Scotland, if their body is repatriated to England or Wales.

Background information

FAIs are held before a sheriff to establish the circumstances surrounding certain deaths. The sheriff is able to make recommendations to prevent future deaths where appropriate. The Lord Advocate, supported by the Crown Office and Procurator Fiscal Service, makes decisions in relation to FAIs. The Lord Advocate is the senior law officer for the Scottish Government but acts independently in relation to FAIs.

FAIs are usually mandatory where a death occurs in the course of someone’s work or in legal custody. The Lord Advocate also has discretion to hold an FAI

² Ministry of Justice. (2023) [Coroners statistics 2022: England and Wales](#).

where a death was sudden, suspicious, unexplained or gives rise to serious public concern, and she considers it is in the public interest to do so.

FAIs are the most public form of death investigation in Scotland and are carried out where the Lord Advocate believes wider scrutiny of a death is necessary. However, the Crown Office and Procurator Fiscal Service investigates all sudden, unexplained or suspicious deaths. There were 43 FAIs between April 2022 and March 2023. In 2016, the Scottish Government estimated that around 5,500 death investigations were carried out per year.

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23 April 2024

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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