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

Bill Number: SP Bill 63
Introduced on: 19 March 2015
Introduced by: Michael Matheson MSP (Government Bill)
Passed: 10 December 2015
Royal Assent: 14 January 2016

Passage of the Bill

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill (“the Bill”) was introduced in the Scottish Parliament on 19 March 2015. It was a Scottish Government bill. The Bill as introduced was accompanied by Explanatory Notes and a Policy Memorandum.

The Justice Committee conducted Stage 1 Scrutiny at meetings in May 2015. The Delegated Powers and Law Reform Committee reported on the delegated powers contained in the Bill (31st Report, 2015 (Session 4)).

Further information about Stage 1 scrutiny is available from the Justice Committee’s dedicated Bill webpage.

The Justice Committee published its Stage 1 Report on 1 July 2015 (13th Report, 2015 (Session 4)). The Scottish Government responded by way of a letter from Paul Wheelhouse, Minister for Community Safety, on 17 September 2015.

The Stage 1 debate took place on 24 September 2015.

The Justice Committee considered Stage 2 amendments at its meeting on 3 November 2015.

The Stage 3 debate took place on 10 December 2015, where the Bill as amended was passed. The Bill received Royal Assent on 14 January 2016 to become the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2).
Purpose and objectives of the Bill

The purpose of the Bill was to “reform and modernise the law governing the holding of fatal accident inquiries (FAIs) in Scotland” (Policy Memorandum, paragraph 2). To do so, the Scottish Government took forward most of the recommendations from the Review of Fatal Accident Inquiry Legislation (also known as the “Cullen Review”).

FAIs are held to establish the circumstances surrounding certain deaths. They are presided over by sheriffs. The sheriff may make recommendations intended to prevent future deaths in similar circumstances.

Mandatory FAIs must be held where someone dies in legal custody, or in an accident relating to their work. An FAI can also be held where a death is sudden, suspicious, unexplained, or gives rise to serious public concern.

Procurators Fiscal lead evidence about the death at an FAI. The Lord Advocate (through the Crown Office and Procurator Fiscal Service) exercises decision-making powers in the FAI process. In particular, he decides if an FAI should be held in circumstances where this is not mandatory.

Provisions of the Bill

The main changes made by the Bill were:

- **Mandatory FAIs** – updating the definition of legal custody, and requiring a mandatory FAI where a child dies while living in secure accommodation.

- **Discretionary FAIs** – enabling discretionary FAIs to be held were a Scottish resident dies outside the UK.

- **Written reasons** – requiring the Lord Advocate to give written reasons for a decision not to hold an FAI. It is intended that this will make the basis of the decision clearer to the deceased’s family.

- **Delay** – introducing a requirement to hold a preliminary hearing, as well as encouraging the sharing and agreeing of evidence in advance, with the intention of speeding up the process.

- **Sheriffs’ recommendations** – creating an obligation on any person or body to whom a sheriff’s recommendation is addressed to respond.

- **Procedural** – creating more flexibility in relation to FAI administration, including greater choice of venue.

Parliamentary consideration

At the same time as it scrutinised the Scottish Government Bill, the Scottish Parliament was also considering a Member’s Bill on the subject of FAIs.
Patricia Ferguson’s Inquiries into Deaths (Scotland) Bill was introduced in the Scottish Parliament on 1 June 2015.

The Scottish Government Bill and Ms Ferguson’s bill covered similar ground, although with different policy intentions. For example, Ms Ferguson’s bill would have extended the mandatory categories for death inquiries to include deaths from industrial diseases and exposure to hazardous substances. It would also have set time scales for holding FAIs and made sheriffs’ recommendations legally binding in some circumstances.

Patricia Ferguson withdrew her bill on 24 September 2015.

The main issues to emerge during parliamentary consideration of the Scottish Government Bill are discussed below.

*Mandatory FAIs*

Various proposals to extend the categories of death requiring a mandatory FAI were discussed during parliamentary scrutiny of the Bill. Proposals to include those detained under mental health legislation were agreed at Stage 2 but overturned at Stage 3.

*The role of the deceased’s family in the process*

Issues around communications between the deceased’s family and the Crown Office, and access to legal aid were debated during the Bill’s progress. A proposal for a more generous legal aid scheme was agreed at Stage 2 but overturned at Stage 3.

During parliamentary scrutiny, the Solicitor General announced that the Crown Office would produce a “family liaison charter”. This would set out clear stages and timescales in relation to communications with the family.

The Justice Committee welcomed this commitment. A Stage 2 amendment put it on a statutory footing.

*Delays*

A key concern during parliamentary scrutiny was the potential for lengthy delays between a death occurring and an FAI being held. Patricia Ferguson’s Bill proposed statutory timescales. However, members were ultimately persuaded that this would be impractical.

*Sheriffs’ recommendations*

There was concern to ensure that sheriffs’ recommendations were implemented. The Bill would require those to whom a recommendation is made to respond to the Scottish Courts and Tribunals Service (SCTS) outlining how it had been implemented or why it had not. Responses would be published on the SCTS website.