



Briefing for the Public Petitions Committee

Petition Number: [PE1501](#)

Main Petitioner: Stuart Graham

Subject: Public Inquiries into Self-Inflicted and Accidental Deaths following Suspicious Death Investigations

Calls on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations

Background

The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 provides for a form of public inquiry – the fatal accident inquiry (FAI).

In some circumstances the holding of an FAI is mandatory whilst in others it is discretionary. An FAI is generally mandatory in the case of a death: apparently resulting from an accident sustained at work; or occurring whilst the deceased was in legal custody. The Lord Advocate (head of the Crown Office & Procurator Fiscal Service) may waive the requirement for a mandatory FAI where satisfied that the circumstances of the death have been sufficiently established in the course of relevant criminal proceedings.

An FAI may also be held, on a discretionary basis, where a death is “sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern” and the Lord Advocate believes that the holding of an FAI is “expedient in the public interest” (section 1(1)(b) of the 1976 Act).

In either type of situation, a procurator fiscal investigates the circumstances of the death and applies to the sheriff for the holding of an FAI into those circumstances. The FAI itself is generally open to the public. During the FAI, the procurator fiscal produces evidence relating to the death. Others also have the right to put forward evidence, including the spouse or nearest known relative of the deceased. The Crown Office & Procurator Fiscal Service website provides some relevant information under the heading of '[Our Role in Investigating Deaths](#)'.

It would appear that the aims of the petitioner would, at least in part, be met if the circumstances under which the holding of an FAI is generally mandatory were expanded to cover all cases where investigations carried out by the

police and Crown Office & Procurator Fiscal Service suggest that a death was self-inflicted or accidental.

Scottish Government Action

In 2008, the Scottish Government appointed Lord Cullen to:

“review the operation of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, which governs the system of judicial investigation of sudden or unexplained deaths in Scotland, so as to ensure that Scotland has an effective and practical system of public inquiry into deaths which is fit for the 21st century”.

His report '[Review of Fatal Accident Inquiry Legislation](#)' was published in 2009. Paragraphs 4.1 to 4.31 of the report considered the types of case in which an FAI should generally be mandatory. It did recommend some expansion of the mandatory categories (eg extending the current death in legal custody category to cover other forms of compulsory detention). However, it did not recommend the type of expansion sought by the petitioner.

In 2011, the Scottish Government published a [response](#) to the recommendations set out in Lord Cullen's report. With regard to mandatory FAIs, it accepted some but not all of the recommendations. For example, in relation to the recommendation that FAIs should be mandatory for deaths during compulsory detention by a public authority, it stated:

“The Scottish Government accepts the principle of an independent investigation for all deaths where a person has been detained by a public authority. However, we have concluded that there should continue to be some discretion to determine whether an FAI is appropriate in a particular case. The crucial distinction is between an independent investigation and a full judicially led hearing in the form of an FAI.

Accepting this recommendation as it stands would lead inevitably to the conduct of unnecessary FAIs, in cases where there was no likelihood of either the state or the bereaved family learning anything useful from the circumstances of death. Such cases would include those where a detained person died from natural causes, including conditions associated with old age. Apart from the costs to the court system, unnecessary FAIs would put pressure on medical professionals and could increase distress to family members.” (p 8)

Parliamentary question [S4O-02014](#) (Patricia Ferguson MSP) sought information on Scottish Government plans to improve the system of FAIs. The response from Kenny MacAskill MSP (April 2013) noted that:

“I gave an undertaking to the Justice Committee in January 2012 that a Bill would be brought forward within the lifetime of this Parliament to implement the reforms suggested by Lord Cullen in his Review of the Legislation on Fatal Accident Inquiries. But reform of the wider civil

justice system recommended by the Scottish Civil Courts Review led by Lord Gill must take precedence.

Some of the principal recommendations of Lord Cullen's Review were addressed to the Crown Office and Procurator Fiscal Service (COPFS). These have largely been implemented already, in particular, the establishment of the Scottish Fatalities Investigation Unit which now investigates all non-criminal deaths which are reported to COPFS, liaises with Crown Counsel and conducts Fatal Accident Inquiries."

Scottish Parliament Action

Public petition [PE1280](#) (lodged September 2009) called on the:

"Scottish Parliament to urge the Scottish Government to give the same level of protection to the families of people from Scotland who die abroad as is currently in place for people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of a fatal accident inquiry when a person from Scotland dies abroad."

It was last considered by the Justice Committee on [25 September 2012](#) when the committee decided to keep the petition open pending the introduction of legislation on FAls.

Possible Members' Bills include a proposal from Patricia Ferguson MSP for an [Inquiries into Deaths \(Scotland\) 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](#) on her proposal runs until 31 January 2014.

Frazer McCallum

Senior Researcher
31 December 2013

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