



The Scottish
Parliament
MARGARET SMITH MSP
EDINBURGH WEST

Andrew P. Mackenzie
Secretary to the Review of Fatal Accident Inquiry Legislation
50 Frederick Street
Edinburgh
EH2 1NG

February 26th 2009
JB/MS/FAI/09

Dear Mr Mackenzie,

Consultation: Review of Fatal Accident Inquiry Legislation

I welcome the review into the operation of the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976, and this associated consultation, and would like to respond to aspects of this consultation. I am content for this response to be made available to the public on the Review of Fatal Accident Inquiry Legislation website.

One of my main issues with the operation of the current system of Fatal Accident Inquiries relates to the deaths of Scottish service personnel overseas, though I understand that specific provision to this effect is outwith the competence of the Scottish Parliament and the remit of the current review. However, I do feel that there is action which could be taken by the Scottish Parliament to this end and would therefore like to comment on this.

At present, there is no provision in the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to investigate the deaths of anyone who dies outside Scotland. This means that service personnel who die serving their country abroad are brought home via England, and the investigation into their death will take place there too.

Families who are trying to cope with the sudden death of a loved one on the battlefield must then travel down to England if they wish to be present at the Inquiry. As these inquests can only be heard in the counties around Brize Norton and Lyneham, the two air bases where casualties are received back into the UK, there is now a backlog. Some families have been forced to wait up to four years for answers about the death of their loved ones.

In my opinion, these families have been through enough, and we should be doing all we can to ease their suffering.

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I think that there is scope to amend the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. There is a historical precedence for this, as the Act has already been altered to include those working on the continental shelf.

I welcome the progress being made by Scottish and UK Governments to rectify the unacceptable situation of Fatal Accident Inquiries. Until now, bereaved Scots service families have had to travel hundreds of miles to attend a coroner's inquest. I understand that UK Ministers want to see these changes go ahead within this parliamentary session.

I do not believe that Fatal Accident Inquiries should be extended to every Scot who dies abroad as I believe, at present, that this would overwhelm the judicial system in Scotland. I do, however, feel that we have a duty to the families of service personnel who have died serving their country to minimise delays to this painful process.

Like many other MSPs, I represent a number of service personnel and their families, having Craighiehall Camp and the surrounding armed forces accommodation in my constituency of Edinburgh West. These individuals, like others across Scotland and the UK, sign up to the Armed Forces, prepared to risk their lives for their country. I believe that we should do all we can to ensure that they can do so with a certainty that their Governments will treat them and their families with respect and compassion.

In certain cases FAIs are mandatory while in other cases they are held where it appears to the Lord Advocate to be expedient in the public interest that an inquiry should be held. Service families need to be certain that an investigation will be held.

The answer is for the Government to make a commitment to amend Scots law in a way that can guarantee that Scottish based service families can be assured of mandatory inquiries into overseas operational deaths. If that were to happen then it would be entirely appropriate to repatriate deceased service personnel to Scottish bases once the law has been changed.

More generally, I welcome this review because I am aware of concerns which have been raised over the operation of the FAI system, many with the Scottish Parliament's Public Petitions Committee.

A key concern surrounds the fact that the recommendations of FAIs are not legally binding. This means that they are not always implemented. I can imagine nothing worse than seeing one's own painful experience recreated for another family because lessons have not been learned properly from a fatal accident inquiry. I feel that the Government must do all that it can to ensure that lessons are learned where they could save lives.

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It seems reasonable to make use of outside experts to deal with technical issues and of regulatory bodies, when they are available, to enforce recommendations. Setting up a statutory duty to report the matter to the relevant person, who might have the power to take the required action—if such a person can be identified—with statutory duties to follow up that report within a prescribed period of time appears to be a reasonable way forward. That is surely one of the key issues for the review if the public are to have confidence in the inquiry system.

Clarity is vital at times of distress, and families must be properly informed of how the FAI process works so that they do not feel misled or let down by the system. The Procurator Fiscal's role as a representative of the public interest has to be made clear, so that families can decide whether they require their own representation; if they do, access to that representation and to legal aid needs to be considered.

Some families may never be consoled by a system that does not apportion blame or guilt in a civil or criminal sense, but which seeks only to find out the facts surrounding a death. Others are often disappointed at the discretionary decisions that are taken regarding whether an FAI should be held in the first place. As there are approximately 14,000 sudden deaths each year and only 50 or so FAIs, this is perhaps not surprising. It is incumbent on the Crown Office to explain its decisions to families, and I believe the Crown Office has instituted changes in this procedure. However, I know of one constituency case in which a family was keen for an FAI to go ahead, despite the fact that a court case had already taken place and facts had been established.

Sometimes we read about these disappointments in the news, such as the decisions that were taken about individuals who had contracted hepatitis C from blood products, or where someone is killed in a road accident. More often than not, however, the families remain anonymous in their grief. I therefore believe that there is merit in the suggestion that a formal, reasoned decision be provided to relatives of the deceased where the Lord Advocate decides not to hold an FAI.

There are also concerns about delays in the current FAI system, and many people are being caused further anxiety by having long waits for answers from FAIs. By November 2007, 30 FAI reports had been made, 13 of which related to people who had died in 2006, 10 to people who had died in 2005, and seven to people who had died before 2005, including two cases in which the person had died six years earlier, in 2001. I hope that the review will consider whether there should be a set period during which an inquiry can be held.

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Clearly there is a need for the FAI system to be properly resourced, and the issue of scarce resources is highlighted in relation to a number of issues in the consultation document. In 2007, sheriffs in Glasgow and Dundee called on the Crown Office to devote more resources to the preparation and conduct of FAIs. I therefore feel that it is crucial that the financial implications of any recommendations for the future of FAIs are properly considered.

Yours sincerely,

Margaret Smith MSP
Edinburgh West

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