



Ministry of JUSTICE

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Dear Mr Mackenzie

REVIEW OF FATAL ACCIDENT INQUIRY LEGISLATION – CONSULTATION PAPER

The UK Government is grateful to Lord Cullen for the invitation to respond to the consultation paper.

In view of the number of Departments represented, the range of issues covered, and the importance of setting out the background context, I hope you will accept this letter as the UK Government's formal response, rather than a completed questionnaire.

The principal interest of the UK Government in the issue of Fatal Accident Inquiries relates to the deaths abroad of service personnel whose families are based in Scotland, but there is also an interest in the way sheriffs' recommendations might be followed up in future. This response is therefore limited to questions 4, 6 and 21 in the consultation paper. As we have discussed, we have missed the deadline for responding, but we thought it important to defer our response pending further discussions at Ministerial level between the UK and Scottish Governments about using the Coroners and Justice Bill, which is currently going through our Parliament, to facilitate investigation in Scotland into service personnel deaths abroad.

The UK Government is committed to ensuring that the death of every serviceman or woman on operations overseas is subject to an independent inquiry. It is also committed to ensuring that the needs of bereaved service families are attended to sensitively, and that where possible families do not have to travel excessive distances to attend inquests, including families based in Scotland.

Current arrangements enable investigations to be held into deaths of Scottish-based personnel killed on operations, because fatalities from Iraq and Afghanistan are repatriated via either RAF Brize Norton or RAF Lyneham, and the inquests have been retained by either the Oxfordshire or the Wiltshire and Swindon coroner. It has been the UK Government's view that in order to achieve greater consistency with the position in England and Wales, there should be Fatal Accident Inquiries in Scotland on the same basis.

UK and Scottish Government Ministers have now agreed on measures to enable Fatal Accident Inquiries for:

- all service and associated (e.g. contractors, civil servants, journalists) deaths in operational theatres;

- service personnel embarked on RN and RFA (Royal Fleet Auxiliary) ships; and
- service personnel on military exercises overseas.

The process by which this will be done is that if the body is still outside the UK, the Secretary of State for Defence may seek the agreement of the Lord Advocate to hold a Fatal Accident Inquiry into the death (this will be done following consultation with the next-of-kin). If the Lord Advocate agrees to hold the Fatal Accident Inquiry, the body will if possible be repatriated directly to Scotland. If the body has already been repatriated to England or Wales, the Chief Coroner may - following consultation with the next-of-kin - seek the agreement of the Lord Advocate to hold a Fatal Accident Inquiry into the death. If the Lord Advocate agrees, the Chief Coroner will direct the relevant coroner to suspend their investigation and release the body.

Discussions between UK and Scottish have addressed the question of whether Service personnel and related deaths overseas should constitute a new mandatory category of Fatal Accident Inquiries. This clearly would meet the UK Government requirement that bereaved Service families are guaranteed an independent inquiry. However, the agreement now reached preserves the discretion of the Lord Advocate. It is anticipated that it will only be in exceptional circumstances that the Lord Advocate refuses to hold a Fatal Accident Inquiry, and in such cases arrangements would be made to hold an Inquest in England or Wales.

Subject to Cabinet approval, a Government amendment to the Coroners and Justice Bill will be tabled at report stage in the Commons. Scottish Ministers will seek similar agreement from their Ministerial colleagues to amend the legislation in Scotland to facilitate Fatal Accident Inquiries for service personnel.

It has also been agreed between UK and Scottish Ministers that they will consider further the position on non-operational violent deaths overseas in a second stage of discussions, after Lord Cullen has delivered his report on the Fatal Accident Inquiry system.

Finally, we note the suggestion that sheriffs' recommendations and responses to recommendations should be published annually in Scotland by a central body and that such reports should be published and presented to the Scottish Parliament for consideration. Sheriffs' recommendations may, however, go wider than areas of devolved competence. Therefore, if sheriffs' recommendations and responses are to be published and presented to the Scottish Parliament, we take the view that they should also be presented to the UK Parliament.

We would also like to take this opportunity to stress to Lord Cullen the importance that we attach to the need for good communication links and agreed protocols for information exchange between the Chief Coroner and the Lord Advocate on cross-border issues generally, e.g. in relation to deaths in Scotland where the body is brought into England or Wales, and vice versa.

I hope this information is helpful to Lord Cullen's deliberations. Finally, I would just add that the UK Government has no objection to this response being made public.

Yours sincerely

JUDITH BERNSTEIN
Head of Current Coroner Policy