

PE2085/C: Introduce a statutory definition of residency for Fatal Accident Inquiries into the deaths of Scots abroad

Law Society of Scotland submission of 27 June 2024

You have asked whether the Law Society of Scotland is concerned that 'ordinarily resident' is not defined in legislation and whether it is clear how this term should be applied in practice. You have also asked whether the Law Society of Scotland is aware of circumstances where the test of 'ordinarily resident' has prevented investigations from taking place.

Having now had an opportunity to seek the views of our relevant committees, we would note the following:

- The term 'ordinarily resident' is a term which is widely used and which, in other legislation, is given its ordinary meaning.
- We consider that the concept of 'ordinary residence' is generally widely recognised and accepted. We do not consider that it would be necessary or desirable to develop a bespoke legislative definition for the purposes of Fatal Accident Inquiries (FAIs).
- We do not hold any data on whether the test of 'ordinarily resident' has prevented FAIs from taking place.

We have the upmost sympathy anyone who has lost a loved one in tragic circumstances. We do consider that there may be circumstances where it is appropriate for a discretionary FAI to be held in relation to the death abroad of someone ordinarily resident in Scotland. We note that the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 allows for such FAIs to take place.

More generally, we note that there are currently lengthy delays in FAIs. This is a matter of significant concern, and we recognise that delays can be distressing for families. The system should be properly resourced to ensure that the situation improves. Any changes to the law which might lead to an increase in the number of FAIs taking place would have to be based on robust evidence, careful consideration of the likely impact on COPFS, and suitable additional resourcing.

I hope that the above is helpful. We would be happy to assist the committee with any other information that is relevant.