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Subject: Consultation Response

Review of Fatal Accident Inquiry Legislation

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Consultation Questions
 Review of Fatal Accident Inquiry Legislation

<i>Question 1: Should there be any change in the purpose or the features of FAIs?</i>	No,
<i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i>	Yes, ,
<i>Question 3: Should specialist procurator fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?</i>	Yes, , No, These specially selected procurator fiscals should be networked across the Scottish Sheriffdoms, responsible to the respective Area Procurator Fiscals.
<i>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</i>	

<p><i>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</i></p>	<p>Yes, It is felt that such a move would be firmly in the public interest.</p>
<p><i>Question 6: Should the deaths which fall within the mandatory category be changed? If you answered yes, that deaths should be added or removed, please explain your answer.</i></p>	<p>Yes, both additions and removals should be made, The present definition of legal custody is limited under the act to a person detained in a police station, police cell, or other similar place, and includes when the person is in the process of being transferred to such a place. The definition does not cover persons detained by the police other than in a police station, such as hospital, football ground etc. and, it is suggested that the definition is extended to include the following: 1. The death occurs in a police station including temporary accommodation (e.g. football ground) 2. The death occurs in hospital, the deceased having been taken there from a police station because of apparent injury or illness. 3. The deceased was taken to hospital because of apparent injury or illness after having been arrested. 4. The deceased was in police custody at court. In respect of extending the mandatory category to include all drug deaths, suicides and deaths on roads, this would require a substantial increase in COPFS resources as well as having financial implications. In 2007 there were 838 deaths as a result of suicide, and 372 Drug related deaths. It should be noted that all deaths are comprehensively investigated by the police and a report outlining the circumstances is forwarded on all occasions to the Procurator Fiscal. It is unclear whether an FAI on every occasion would be justified, necessary and in the public interest. This may also be applicable to those employment related deaths which currently form part of the mandatory category, particularly where similar inquiry may be conducted by the Health and Safety Executive. Consultation between the HSE and the Lord Advocate on such occasions may preclude the requirement for an FAI into each employment related death.</p>
<p><i>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</i></p>	<p>Yes,</p>
<p><i>Question 8: Should other interested parties be able to make representations to the Lord Advocate during the decision making process? If yes, which parties should be able to make representations?</i></p>	<p>,</p>

<i>Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?</i>	
<i>Question 10: Is adequate notice given to interested parties in advance of an application being made? If no, please explain your answer and outline what you feel would be adequate notice.</i>	
<i>Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?</i>	
<i>Question 12: Is the current approach to the provision of legal aid to relatives appropriate?</i>	
<i>Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?</i>	Yes, The use of preliminary hearings should be expanded across Scotland to assist Sheriffs taking an inquisitorial role. Sheriff's discretion should be observed when to hold a preliminary hearing or not.
<i>Question 14: Should evidential material be provided to parties in advance of the FAI?</i>	Yes, All parties may benefit from a summary of evidential material to be submitted to the FAI in order to demonstrate fairness, openness and transparency. This may in fact help to speed up the process and indeed focus on the main issues under investigation.
<i>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</i>	Yes, There is scope for the expansion of FAIs to include sworn statements in circumstances where witnesses cannot attend for genuine reasons. Such statements could be professionally obtained, for example, by a solicitor or precognition agent.
<i>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</i>	Independent technical experts should be appointed as assessors to assist the Sheriff in situations which demand specialist knowledge.
<i>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</i>	Yes, Yes,
<i>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</i>	No, However, in the event of further judicial proceedings or subsequent judicial hearings the Sheriff's findings should be inadmissible to prevent influencing the outcome of other proceedings which may consider the death from a different perspective, i.e. criminal activity.
<i>Question 19: Should there be guidance as to</i>	

<i>matters which should be covered by determinations?</i>	
<i>Question 20: Would it be helpful to create an up to date public database of determinations?</i>	
<i>Question 21: (a) Should responses to recommendations be monitored? If yes, should this be done centrally and by whom? If yes, to whom should any report be made?</i>	
<i>Question 22: Should the Lord Advocate be able to apply for a further FAI or the re-opening of an FAI? If yes, should this only be in limited circumstances?</i>	

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