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Review of Fatal Accident Inquiry Legislation

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Consultation Questions
 Review of Fatal Accident Inquiry Legislation

Question 1: Should there be any change in the purpose or the features of FAIs?

Yes, The legal environment in Scotland has changed beyond recognition since the introduction of this legislation in 1976. The purpose of establishing the cause of death and identifying reasonable precautions whereby the death might have been avoided , plus the defects in any system of working which contributed to the death remain laudable. However the lack of guidance (and thus inconsistency) as to whether recommendations should be made - and particularly the lack of any register of determinations , plus the lack of any monitoring or enforcement of any recommendations calls into question the

	<p>usefulness of the process in today's legal environment. There is also no process of redress for parties if they are excluded from the process, or are unhappy with the conduct of the process. Amendments require to be made in this regard also.</p>
<p><i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i></p>	<p>Yes, The Sheriff court is not the appropriate forum. It is suggested that a dedicated Fatal Accident and Sudden Deaths Tribunal - in more complex cases made up of a legally qualified chair with one or possibly two assessors - In more straightforward cases a legally qualified (and suitably trained) chairperson could sit alone. This would be a much more appropriate forum for the conduct of an inquisitorial investigation into fatal accidents and sudden deaths arising in a wide variety of circumstances. The present process is an unsatisfactory mix of the criminal and civil jurisdictions. The sheriff often has no particular experience in dealing with fatal accidents and arguably limited understanding of complex technical issues involved. The sheriff courts are already overburdened with criminal cases. Those participating in fatal accident enquiries are frequently unfamiliar with the court process and are likely to find the pomp associated (particularly with criminal courts) unnecessarily daunting. Given that the fatal accident enquiry has no power to attribute blame or enforce penalties against individuals or corporations there is no advantage to such a formal forum. That is not to say that the dedicated Tribunal could not sit in a modest court within the Sheriff court building - that would be a sensible use of existing facilities rather than out-sourcing the tribunal to another venue., A Tribunal made up of a legally qualified chair and one or two assessor members would be an efficient, cost effective way in which to conduct inquisitorial investigations into all sorts of fatal accidents and sudden deaths. Assessors should be recruited from a wide section of the professions and should be chosen for each case according to their respective specialisms. A simple set of rules should be drafted detailing how the process is to be conducted. Whether the FAI takes place before a tribunal or sheriff the parties should have a right of redress if they consider relevant evidence is being excluded or that any legitimate line of enquiry is being restricted. This of course introduces complexity</p>

	<p>into what has to date been a fairly simple process, and it would be unsatisfactory to introduce a right of appeal against determinations themselves. However provision could be made for interlocutory appeals to the court of session during the course of FAIs ,which could be fast-tracked.</p>
<p><i>Question 3: Should specialist procurators fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?</i></p>	<p>Yes, If this was incepted then the post would probably require to be peripatetic as some local PFs offices would not have sufficient FAIs annually to justify a full time specialist. What may be more effective is a central Crown office department which determines whether in each case there should be fatal accidents inquiries and providing specialist training to a few local PFs, who could continue to conduct other duties for most of the time. , Yes, see above</p>
<p><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>	
<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><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, certain deaths should be added, Serious consideration should be given to including all road traffic accident deaths - particularly if the power of FAIs is extended to specifically include recommendations which required to be implemented. This may of course require more dedicated , specialist PFs</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, but only in the most carefully scrutinised circumstanes. At the moment the Lord Advocate does not require to hold a FAI into a death within this category where criminal proceedings have been concluded against any person in respect of the death and the Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of the proceedings. Now that would appear to extend to cases where guilty pleas are recorded and in one recent case where there was a directed acquittal due to a lack of corroborative evidence. In such cases it is questionable whether the purpose of the FAI is met. Following criminal proceedings which conclude without a public trial no decision should be made against the holding of an FAI until the views of interested parties are obtained. If the interested parties do not accept the decision against holding an FAI</p>

	<p>consideration should be given as to whether they should be able to take this matter to a higher authority - for example granting a right of appeal to the Court of Session. Only after the time for such appeal has expired should the decision not to hold an FAI be made and this decision should be issued in a public statement, which statement should set out detailed reasons, which should in themselves be capable of explaining the cause of death.</p>
<p>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?</p>	<p>Yes, the legislation should be updated to reflect the relationships which are now recognised in our legal system. Also there should be provision in the new Rules to allow parties who are able to demonstrate an interest to be allowed to make representations to the Lord Advocate during the decision making process. Parties who may have an interest in a particular case, cannot necessarily be identified in advance - for example independent trade unions in work related accidents. Not only if the deceased is a member but also if the union can demonstrate an interest in the subject matter, for example representing many other workers in the workplace; having received complaints from workers and/or having made complaints to the HSE about practices in the work place. It is only in circumstances where the Lord Advocate can set out reasons why such a party has no legitimate interest that representations from that party should not be afforded same weight as other interested parties, explained above</p>
<p>Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?</p>	<p>Yes, Please see answer in Question 7 above. This should be a public statement and not be released until the process set out above in question 7 is concluded.</p>
<p>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.</p>	<p>No, 6 weeks would be more satisfactory with the preliminary hearing taking place 3-4 weeks before the inquiry itself.</p>
<p>Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?</p>	<p>No, In many instances this depends very much on the individual PF carrying out the enquiry. Information Booklets should be considered</p>
<p>Question 12: Is the current approach to the provision of legal aid to relatives appropriate?</p>	
	<p>Yes, This is a very important step to ensure that</p>

<p>Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?</p>	<p>parties understand what is to take place. Provision should be made in Rules that by the date of the Preliminary hearing the PF (and perhaps other parties) will have produced a witness list , and disclosed the documents to be produced. If the matter is to proceed by way of a Tribunal as set out above then the parties can be advised of who the Tribunal members are to be and if they have any legitimate objection to any assessor representations can be made.</p>
<p>Question 14: Should evidential material be provided to parties in advance of the FAI?</p>	<p>Yes, please see answer 13 above</p>
<p>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</p>	<p>Yes, although given that this is a public enquiry to be carried out in an inquisitorial fashion it is suggested that there is no place for agreed statements of fact between parties</p>
<p>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</p>	<p>Parties should be free to instruct whatever experts they wish to give evidence at FAIs. In addition once a decision has been made to conduct a FAI the PF should be obliged to intimate to parties the identity of those experts he intends to instruct. It is suggested that the PF put forward a panel from which the parties can elect to chose one. If all parties have access to proper legal representation (assuming proper provision of legal aid) then they can make representations to the PF about the quality of the experts that have been selected and ensure that an expert all parties are happy with is instructed.</p>
<p>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</p>	<p>Yes, Yes, They would not be required in the most straightforward of cases; but in many cases involving technical issues they would be invaluable and assure the public of the quality of the decision making process.</p>
<p>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</p>	<p>Yes,</p>
<p>Question 19: Should there be guidance as to matters which should be covered by determinations?</p>	<p>Yes, Rules should specifically provide that the Tribunal or Sheriff can make recommendations and that such should be made if appropriate from the evidence.</p>
<p>Question 20: Would it be helpful to create an up to date public database of determinations?</p>	<p>Yes, otherwise the FA determination has little practical effect .</p>
<p>Question 21: (a) Should responses to recommendations be monitored? If yes, should this be done centrally and by whom? If yes, to</p>	<p>Yes, It is very important to monitor whether the FAI has served any useful purpose , Yes, Scottish Ministers, The specialist department</p>

<i>whom should any report be made?</i>	within the Crown Office
<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>	Yes, , Yes, If it would be in the interests of justice such as new evidence coming to light

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