

Scottish Government



Fatal Accident Inquiry Review

Introduction

Review of Fatal Accident Inquiry Legislation

This questionnaire document accompanies the consultation paper and is intended for you to record your responses to the questions raised within the paper. The questions which appear in the consultation paper are presented in full below and are numbered and are ordered as they appear in the consultation paper.

You should read through the consultation paper and then record your answer to each question in the space provided. Please answer as many questions as you wish; you do not need to answer all of the questions if you do not wish to do so.

If you have any queries please contact Andrew Mackenzie on 0131 225 5972.

Respondent Information Form

Please complete the details on the Respondent Information Form below. This will help ensure we handle your response appropriately.

Name:

Fiona J Robb

* Required

Organisation: (if applicable)

Civil Justice Committee -The Law Society of

Postal Address:

26 Drumsheugh Gardens
Edinburgh

Required

Post Code:

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E-mail:

fjrobb@lawscot.org.uk

Telephone Number:

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1. Are you
responding as:
(please tick one box)
* Required

- An individual (go to Q2a/b and then Q4)
- on behalf of a group or organisation (go to Q3 and then Q4)

2a. INDIVIDUALS

Do you agree to your
response being
made available to the
public on the Review
of Fatal Inquiry
Legislation website?

- Yes (go to 2b below)
- No, not at all (We will treat your response as confidential)

2b. Where

- Yes, make my response, name and address all

confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

available

- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

3. ON BEHALF OF GROUPS OR ORGANISATIONS

The name and address of your organisation *will be* made available to the public on the Review of Fatal Inquiry Legislation website. Are you also content for your response to be made available?

- Yes
- No we will treat your response as confidential

Consultation Questions

QUESTION 1

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

- Yes
- No

If yes, please outline the changes that you think should be introduced.

The fundamental purpose or the features of FAIs need not be changed however there may be some practical improvements which could be made to facilitate the smoother running of the process.

QUESTION 2

Should FAIs be held in some forum other than the sheriff court?

- Yes
- No

If yes, what forum would you suggest?

Why have you suggested this forum?

QUESTION 3

Should specialist procurators fiscal handle FAIs? (Please tick one box)

- Yes
- No

Please explain your answer

There is a move within the solicitors profession for specialisation and practical experience has demonstrated that the ability of fiscals to appear and prepare for an FAI varies widely. The Committee believes that efficiency will be improved if specialist Fiscals are given proper training and resouces.

If you answered yes, above, should they be part of a centralised team dedicated to FAIs? (Please tick one box)

- Yes
- No

Please explain your answer

see previous answer

QUESTION 4

Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?

- Yes
- No

Please explain your answer

The Committee are aware that this has been the subject of a recent announcement by the Scottish Government and has no strong view on whether the scope of the Act should be altered.

QUESTION 5

Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?

- Yes
- No

Please explain your answer

Ideally a single Sheriff Court should deal with deaths arising from a common cause in all jurisdictions. This would avoid hearings being held in a number of different Sheriff Courts. The Committee considers that it would be in the public interest to overcome the legal and practical issues so that a single FAI can be held following a cluster of deaths in different Sheriffdoms.

QUESTION 6

Should the deaths which fall within the mandatory category be changed?

- Yes, certain deaths should be added
- Yes, certain deaths should be removed
- Yes, both additions and removals should be made
- No, no change should be made to the mandatory category

If you answered yes, that deaths should be added or removed, please explain your answer.

An FAI may result in distress to relatives therefore in certain circumstances when a death has occurred in employment it may be unnecessary to hold an FAI, as has been commented on in a recent case in Haddington Sheriff Court.* The public interest is only served if the cause of the death is uncertain therefore some deaths in employment ought not to be part of an inquiry. The Committee agrees that the mandatory category should be extended to include deaths of patients under the Mental Health Acts and the deaths of children in care.

QUESTION 7

Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?

- Yes
- No

Please explain your answer

See previous answer

QUESTION 8

Should other interested parties be able to make representations to the Lord Advocate during the decision making process?

- Yes
- No

* Sheriff Peter Gillam made his observations at Haddington Sheriff Court after an inquiry into the death of Stephen Paton in 2006.

If yes, which parties should be able to make representations?

The Committee are not aware of any bar to interested parties making representations to the Lord Advocate at present and agree that no such bar should be introduced.

Please explain why you feel that these parties should be able to make representations.

It is in the public interest that parties should be able to make representations to the Lord Advocate.

It is important for the Lord Advocate to have all competing views in order to make an informed decision on whether or not to hold an FAI.

QUESTION 9

Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?

- Yes
- No

Please explain your answer

The Committee trust that a decision making process will be followed and that it will not be unduly onerous to produce a formal reasoned decision, in writing, for the benefit of relatives.

QUESTION 10

Is adequate notice given to interested parties in advance of an application being made?

- Yes
- No

If no, please explain your answer and outline what you feel would be adequate notice.

<p>More notice should be given to parties of the intention to hold an FAI.</p> <p>As suggested elsewhere in this response the process could be greatly improved were a preliminary hearing to take place.</p> <p>Consideration should also be given to using additional methods including the internet, to advertise the holding of an FAI.</p>

QUESTION 11

Is adequate advice, information and support provided to the relatives of the deceased?

- Yes
- No

If no, what improvements could be made?

<p>Relatives who have the benefit of their own legal representation receive adequate advice, information and support. As stated later if the Sheriff accepts that additional issues need to be raised by the relatives , and they are financially eligible, then Legal Aid should be granted.</p> <p>The Committee cannot comment on the information given to unrepresented relatives.</p>
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QUESTION 12

Is the current approach to the provision of legal aid to relatives appropriate?

- Yes
- No

Please explain your answer.

There is an argument that the Fiscal represents the interests of the relatives. There may however be cases where relatives have additional points which will not be covered by the Fiscal. In these circumstances it would be appropriate for the Sheriff to consider, at a preliminary hearing, whether or not there is a need for relatives to be separately represented so that additional issues can be raised on their behalf. If the Sheriff accepts that additional issues need to be raised by the relatives, and they are financially eligible, Legal Aid should be granted.

QUESTION 13

Should provision for preliminary hearings be made in respect of the whole of Scotland?

- Yes
- No

Please explain your answer.

The Committee agree that one of the main problems with the current system is the elapse of time between the date of death and the hearing/ ultimate determination. A practical way to deal with this is the appropriate use of preliminary hearings. In order to make these meaningful all parties should appear and advise the Sheriff of issues to be raised at the inquiry. As a way of dealing with timescales parties should be asked to advise in relation to preparation time and the number of witnesses to be led. It would be beneficial if the preliminary hearing took place within 6 months of the death.

QUESTION 14

Should evidential material be provided to parties in advance of the FAI?

- Yes
- No

Please explain your answer.

It is in the interests of justice for fair notice to be given as this gives all parties time to prepare properly. Evidential material could be made available quickly and cheaply with greater use of IT.

QUESTION 15

Should there be relaxation of the conditions under which signed and sworn statements can be used?

- Yes
- No

Please explain your answer.

Sworn statements are currently used for non contentious issues and this should continue.

If however the issue is contentious the best evidence, to assist the Sheriff in making a determination, is oral evidence.

QUESTION 16

What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?

It is for Crown Office to ensure that authoritative independent experts give evidence at FAIs.

QUESTION 17

Is there a place for expert assessors in FAIs? (Please tick one box)

Yes

No

If yes, should more use be made of them? (Please tick one box)

Yes

No

Please explain your answer.

An Advocate or Solicitor can lead evidence as necessary and in addition a Sheriff can put questions directly to an expert.

In certain circumstances an expert assessor may be beneficial and there is no policy objection to their employment.

QUESTION 18

Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?

Yes

No

Please explain your answer.

Evidence at an FAI is given under oath.

If evidence was inadmissible at another hearing it could detract from the expectation that the evidence given was the truth. The purpose of an FAI is to allow a Sheriff to make a determination setting out the circumstances of the death.

QUESTION 19

Should there be guidance as to matters which should be covered by determinations?

- Yes
- No

Please explain your answer.

The Act is clear on the requirements on what a Sheriff should do.

Inevitably there may be benefits if additional guidance is given on the format of the determination.

QUESTION 20

Would it be helpful to create an up to date public database of determinations?

- Yes
- No

Please explain your answer.

A database does not need to be created however the existing public database on the Scottish Courts Website should be current, easily searchable and user friendly.

QUESTION 21

Should responses to recommendations be monitored? (Please tick one box)

Yes

No

Please explain your answer.

One purpose of an FAI is to determine the reasonable precautions, if any, whereby the death might have been avoided.

If yes, should this be done centrally and by whom? (Please tick one box)

Yes

No

It is for the Scottish Government to say how findings will be monitored however the HSE could be considered as a monitoring unit.

If yes, to whom should any report be made?

The report should be made to the Scottish Parliament.

QUESTION 22

Should the Lord Advocate be able to apply for a further FAI or the re-opening of an FAI? (Please tick one box)

Yes

No

If no, why not?

If yes, should this only be in limited circumstances? (Please tick one box)

Yes

No

Please explain your answer.

It should be left to the discretion of the Lord Advocate. Holding a further FAI or the re-opening of a previous FAI should only take place if this is in the public interest.
