

Consultation Questionnaire

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.

Additional pages are also provided at the end of the document in case further space is required for your response to any of the questions.

Please send this completed consultation questionnaire and your respondent information form (see the information on “handling your response” in the consultation paper) to:

Andrew.Mackenzie@FAIreview.org

or

Andrew P. Mackenzie
Secretary to the Review of Fatal Accident Inquiry Legislation
50 Frederick Street
Edinburgh
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If you have any queries please contact Andrew Mackenzie on 0131 225 5972.

The consultation document can also be viewed online at
<http://www.scotland.gov.uk/FAIreview>.

Questions

Section 1- Introduction

There are no questions within this section of the consultation paper

Section 2- General

The questions from section 2 of the consultation paper are presented below.

1. Should there be any change in the purpose or the features of FAIs? (Please tick one box)

Yes

No

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

2. Should FAIs be held in some forum other than the sheriff court? (Please tick one box)

Yes

No

If yes, what forum would you suggest?

Why have you suggested this forum?

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

Yes

No

Please explain your answer.

IT WOULD ALLOW FOR P.F.'S TO BECOME SPECIALISTS AND WOULD LEAD TO IMPROVED PRACTICE PARTICULARLY IN TERMS OF RATES + PROCEDURES. IT WOULD ALSO BE BENEFICIAL GIVEN THE TECHNICAL + COMPLEX EVIDENCE THAT REQUIRES TO BE LED IN SOME FAIS. IT WOULD ALSO BE USEFUL IN TERMS OF TEST P.F.'S. BUILDING UP GOOD WORKING RELATIONSHIPS WITH EXPERTS.

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.

THEY WOULD BE ABLE TO BUILD POSITIVE WORKING RELATIONSHIPS WITH TECHNICAL SPECIALISTS.
WOULD ALSO ALLOW FOR A CENTRALISED BASE WHERE A POOL OF SPECIALIST RESOURCES COULD BE CREATED.
THERE WOULD REQUIRE TO BE LINKS WITH LOCAL PRACTICES WHEN CONDUCTING & PREPARING FOR FAI'S AS LOCAL KNOWLEDGE MAY BE IMPORTANT TO BEST PRACTICES

4. Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad? (Please tick one box)

Yes

No

Please explain your answer.

5. Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction? (Please tick one box)

Yes

No

Please explain your answer.

There would appear to be occasions where multiple deaths may be connected and it would be desirable to have the FAI consider the same facts.

Section 3- The decision that an FAI should be held

The questions from section 3 of the consultation paper are presented below.

6. Should the deaths which fall within the mandatory category be changed? (Please tick one box)

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.

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

(Please tick one box)

Yes

No

Please explain your answer.

8. Should other interested parties be able to make representations to the Lord Advocate during the decision making process? (Please tick one box)

Yes

No

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

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

9. Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased? (Please tick one box)

Yes

No

Please explain your answer.

TO PROVIDE AN EXPLANATION THAT THE
DECISION WAS ARRIVED AT IN A CONSISTANT
MANNER WITH OTHER SIMILAR INDUSTRIES

Section 4- Holding an FAI

The questions from section 4 of the consultation paper are presented below.

10. Is adequate notice given to interested parties in advance of an application being made? (Please tick one box)

Yes

No

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

11. Is adequate advice, information and support provided to the relatives of the deceased? (Please tick one box)

- Yes
- No

If no, what improvements could be made?

12. Is the current approach to the provision of legal aid to relatives appropriate? (Please tick one box)

- Yes
- No

Please explain your answer.

FAL IS A FACT FINDING, INQUIRY; THE CURRENT LEGAL AID PROVISION IS ACCEPTABLE

Section 5: Evidence and procedure

The questions from section 5 of the consultation paper are presented below.

13. Should provision for preliminary hearings be made in respect of the whole of Scotland? (Please tick one box)

Yes

No

Please explain your answer.

TO ALLOW AN OPTION FOR A PRELIMINARY HEARING TO TAKE PLACE IN WHICHEVER VHL'S.

14. Should evidential material be provided to parties in advance of the FAI? (Please tick one box)

Yes

No

Please explain your answer.

EVIDENTIAL MATERIAL SHOULD BE MADE AVAILABLE BUT ONLY TO AN INTERESTED PARTY WHO HAS SPECIFICALLY REQUESTED IT.

15. Should there be relaxation of the conditions under which signed and sworn statements can be used? (Please tick one box)

Yes

No

Please explain your answer.

THERE ARE ALREADY RULES GOVERNING THE USE OF WRITTEN STATEMENTS. GIVEN THAT EVIDENCE IN PERSON IS BEST EVIDENCE DO NOT CONSIDER THAT RULES SHOULD BE FURTHER RELAXED.

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

MAINTAIN & REVIEW CURRENT LISTS

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.

PROVISIONAL USE OF INDEPENDANT ASSESSORS
SHOULD BENEFIT THE FACT-FINDING ROLE OF
SHERIFF.

18. Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings? (Please tick one box)

Yes

No

Please explain your answer.

Section 6- Determinations

The questions from section 6 of the consultation paper are presented below.

19. Should there be guidance as to matters which should be covered by determinations? (Please tick one box)

Yes

No

Please explain your answer.

BELIEVE THAT IT SHOULD BE LEFT FOR SHERIFF TO DETERMINE WHAT SHOULD BE COVERED IN DETERMINATIONS. BUT BELIEVE IT SHOULD BE ALLOWED FOR SHERIFF TO HAVE ACCESS TO DATA BASE OF PRIOR DETERMINATIONS.

20. Would it be helpful to create an up to date public database of determinations? (Please tick one box)

Yes

No

Please explain your answer.

ASSIST ROLE OF SHERIFF.
WILL ALSO LEAD TO IMPROVEMENTS IN PRIVATE APPEALS FROM POINTS MADE IN DETERMINATIONS

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

Yes

No

Please explain your answer.

SHOULD LEAVE IT UP TO THE PARTICIPANTS
TRUSTEES TO IMPLEMENT ANY MATTERS
RAISED IN DETERMINATION

If yes, should this be done centrally and by whom?

Yes

No

If yes, to whom should any report be made?

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.

LIMITS SHOULD INCLUDE CONSIDERATION AS TO TIMING, MATERIALITY & RELEVANCE OF NEW EVIDENCE & IMPACT IT WOULD HAVE ON EVIDENCE PREVIOUSLY PRESENTED.

End of questions

Additional space for responses

If using these pages, please ensure that you give the number of the question that your response refers to.