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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>	Yes, Please see responses on specific issues below.
<i>Question 2: Should FAIs be held in some</i>	No, FAIs should continue to be held in Sheriff Courts. The Courts add gravity to the proceedings and ensure rules of evidence are followed appropriately. To remove FAIs from the Sheriff Court would dilute this, lead to difficulties in finding suitable local accommodation and could "down grade" the proceedings. Sheriffs are well used to interpreting difficult evidence and are able to deal with such matters. Complex medical evidence can be dealt with by specialists

<p><i>forum other than the sheriff court? If yes, what forum would you suggest?</i></p>	<p>explaining the complexities. The problems arise more commonly when the Procurators Fiscal do not understand matters (see below). Witnesses need the formality of the FAI to attend and answer well. The formality lends itself to the Inquiry. However we would disagree with the suggestion that Inquiries be dealt with in the Court of Session. The centralisation of such Inquiries in that Court would not add anything and indeed it may lead to difficulties particularly in long running Inquiries where the family wish to be present. .</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, Specialist procurators fiscal would be an appropriate way in which to deal with FAIs. Currently it would appear that many PFs put FAIs to the bottom of their workload. It is the understanding of many solicitors (whether true or not) that deutes each have their own targets to reach in terms of criminal matters. FAIs are not understood to form part of that target. As a result FAIs take low priority. In addition many deutes deal with FAIs as if they were criminal matters which is of course entirely inappropriate. A lack of experience does show, and in particular in those FAIs where interested parties are represented by specialists in their field – for example medical FAIs or those involving deaths in prison. It has been suggested elsewhere that the complicated nature of some FAIs suggests that they should not take place in the Sheriff Court. As expressed above, the Sheriff Court remains, in our submission, an appropriate place to have the Inquiry and that difficulty would be solved by having specially trained PFs. , Yes, We agree that specialist deutes should be part of a centralised team which would ensure consistency in the way in which FAIs are handled, ensure a consistency in the preparation and allow a degree of specialism to be built up by the team. It may be appropriate to consider joint working between the specialist FAI team and the specaillist health and safety team currently being set up - given the number of mandatory FAIs which arise as a result of deaths at work. Or simply to consider using PFs who are part of that new COPFS Specaillist Health and Safety Division. The centralised nature of the team as suggested would not mean that FAIs ought to be centralised. Whilst that would cut costs for the Crown (and most other interested parties given that insurers etc generally instruct central belt solicitors) it</p>

	would be most unfair to families of the deceased.
<i>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</i>	No, GB health and safety law does not extend to the deaths of British workers abroad. In the case of FAIs, it may be appropriate to consider such an alteration on a very restricted basis. But it could be difficult to differentiate cases for a FAI. For example, a if Scottish serving soldier, part of an English regiment dies in conflict, it is difficult to see what a Scottish Inquiry could add to any investigation.
<i>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</i>	Yes, It is only sensible that if there is to be an Inquiry in Scotland into one of a series of deaths then other related deaths should be looked at. It can be seen however that that may result in a tension with other jurisdictions eg the Coroner's Office in England.
<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>	Yes, both additions and removals should be made, Para 3.4 of the consultation paper says that "HSE may, with the consent of the SoS, direct an inquiry into a fatal accident at work". Just to correct any false impression, HSE does of course investigate all work-related fatal accidents at work without needing to refer to the SoS. Workplace deaths are indeed one type of death which may be made discretionary rather than mandatory. As is pointed out in the consultation paper it may be appropriate not to hold an Inquiry into a death at work if HSE's investigation for its statutory purposes has already fully established the facts. Clearly HSE would not want to be drawn into expanding its investigations beyond its statutory remit. However it is important to note that the results of such investigations must be passed on to the families of the deceased. The public nature of the FAI means that any interested person (such as a family member or colleague) can attend and can find out exactly how a person died and how that might be prevented in future. To extend the category of mandatory FAIs to cover those who die in police custody at any point would be sensible and would even out an anomaly in the current situation. Whilst many hospital deaths are investigated at FAI, and certain classes of death are reported under procedures adopted by Health Boards, it is agreed that those persons detained under the Mental Health (Care & Treatment) (Scotland) Act 2003 could appropriately be considered an addition. This would ensure that those caring

	for such patients were accountable publicly for their patients and it can be seen that this class of person is akin to prisoners held by the Scottish Prison Service. It is further agreed that the death of any child in care should be included as a mandatory class of Inquiry.
<i>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</i>	Yes, It is agreed that deaths falling into mandatory categories should be subject to exception, for example if a criminal prosecution has fully aired the facts, or if a Public Inquiry under the Public Inquiries Act 2005 is held.
<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>	No, This could complicate the process and result in delay.,
<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>	Yes, This is only fair and would formalise the current situation. Many families do receive a reasoned decision, often at a personal meeting with the Procurator Fiscal.
<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>	Yes, Three weeks is adequate notice. In practice, Procurators Fiscal do liaise with parties about the date and ensure parties are accommodated.
<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, These should be mandatory for the whole of Scotland. They ensure that parties address the issues and consider the evidence to be led in advance. If they are superfluous in some cases (eg a death by natural causes in custody) then there can be provision to apply in writing to discharge the hearing.
<i>Question 14: Should evidential material be provided to parties in advance of the FAI?</i>	Yes, Too often the Procurators Fiscal do not distribute material until after the Preliminary Hearing which leads parties to indicate to the court that they are not prepared, causing there to be another Preliminary Hearing. It also leads to Inquiries being set down for the wrong length of time, generally for too little time, and thus disrupts Court schedules on a number of occasions.

<p><i>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</i></p>	<p>Yes, There should be a relaxation of the conditions under which signed and sworn statements can be used. This must however be subject to parties being entitled to ask that a witness attend and answer certain questions if that is felt necessary. Such an application could be made to the Sheriff who would require to consider whether those questions raised are relevant and pertinent. This would mean papers and statements would need to be released in advance (see answer 14) of any Preliminary Hearing so that such an application could be made.</p>
<p><i>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</i></p>	<p>This is a matter for the Crown Office to determine.</p>
<p><i>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</i></p>	<p>No, A sheriff should continue to adjudicate. Expert assessors could be useful to assist the Sheriff in technical and complex issues. However, that advice would be given privately, the content of it being unknown to the public and the Court. For transparency, full and better use of Expert Witnesses should be made to avoid the use of expert assessors.</p>
<p><i>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</i></p>	<p>No, The position should not be changed. Evidence given in court must be capable of being used elsewhere. It will be relied on in any event and any change will not be properly observed.</p>
<p><i>Question 19: Should there be guidance as to matters which should be covered by determinations?</i></p>	<p>Yes, Yes, guidance for Sheriffs may be useful but it should remain guidance. Any individual Sheriff must be free to address the Determination in a way which is appropriate for a particular FAI.</p>
<p><i>Question 20: Would it be helpful to create an up to date public database of determinations?</i></p>	<p>Yes, A database would be useful and would lead to more consistency of approach to matters such as “reasonable” and “might”. Often parties at FAIs will produce and quote from Determinations they have but which have not been publicly available in an effort to persuade a Sheriff one way or another. If Determinations are available to all then this will give a precedent bank. In addition, it may encourage a company (such as a health and safety dutyholder in a work-related death FAI) to take a more responsible attitude in responding to the determination.</p>
	<p>No, This is a difficult one. HSE recognises the desire to set up a system to monitor responses</p>

<p><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></p>	<p>to recommendations, thus ensuring that recommendations are not simply ignored. We believe therefore that responses to the sheriff's recommendations - including any response from HSE - should be published. However, a monitoring system could be burdensome on bodies who may be asked to respond or to advise because of their remit or expertise. In addition, it is possible that recommendations may not be agreed with or by all interested parties. There is also the potential for recommendations to be made which relate to companies' duties under reserved health and safety law and HSE's responsibilities for enforcing compliance. , ,</p>
<p><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></p>	<p>Yes, There should be provision to allow for a further FAI if new evidence comes to light which could not reasonably have been ascertained at the time of the first FAI. , Yes, This should be in limited circumstances only to prevent disgruntled parties continuing a vendetta against any person or body they see as responsible for a death.</p>

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