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**From:** Cambell1944@aol.com  
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**To:** Review of Fatal Accident Inquiry Legislation  
**Subject:** Consultation Response

**Review of Fatal Accident Inquiry Legislation**

## RESPONDENT INFORMATION DETAILS

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**Individual Permission:** Yes  
**Confidentiality:** Yes, make my response, name and address all available  
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Consultation Questions  
 Review of Fatal Accident Inquiry Legislation

	<p>Yes, The changes I propose/discuss here are based on my experience of the 2006 FAI into deaths on the Brent Bravo (BB) held before Sheriff Harris with evidence led for the Crown by the PF Depute in Grampian earnest Barbour. (a) Notification that a FAI is to be held and the justification for same The FAI for BB was held after a prosecution of Shell at Stonehaven where they pled guilty to the unlawful killing of two persons. The then Lord Advocate (L.A) Boyd made a public statement that such an Inquiry was necessary because it was in the wider public interest. However, with respect to</p>
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the rules and guidance issued by the Crown the only justification for holding an Inquiry after a prosecution was where there were matters which needed public ventilation which were not covered in the prosecution proceedings. When I wrote to the LA asking him to explain therefore what were the matters to be aired at the FAI that were not covered in the prosecution proceedings he failed to elucidate. Change (a) The change I think necessary is therefore related to the need to be more open and forthcoming in giving explanations of specifically why an Inquiry should be held in the public interest and in this specific case what exactly was to be covered by the FAI that was not covered in the prosecution proceedings. Why did this cause you concern? For example, the deaths were caused by a defective pipe repair that was not approved by a technical authority but on BB alone there were 30 other such repairs and on another 16 installations there were some 500 other repairs over 200 of which were not approved and thus had the potential of being materially defective. The FAI report by the Sheriff and the determinations therefrom made no mention of these repairs the only repair being mentioned being the specific repair on the single pipe which caused the loss of containment. Thus the Sheriff was not able to make a general recommendation re the loss of essential management controls wrt pipework repairs being carried out without prior authorisation. (b) Need to make available all relevant evidence to a Sheriff conducting a FAI, and the need for the Sheriff to demonstrate objectivity Both the Health and Safety Executive (HSE) and the PF Depute leading evidence at the FAI were aware of the situation re repairs and also that other failure modes causing the deaths on BB namely, operating equipment whilst in a dangerous condition, violation of the permit system, falsification of performance tests on ESD valves and operating with ESD valves known to be impaired, and gross neglect of maintenance of safety critical equipment was common on at least 16 other offshore installations but they failed to put this evidence before the Sheriff. Note this is all subject to review currently by the CPS and evidence has been passed to the CPS by Grampian Police alleging that the HSE officials purposefully withheld this evidence in their vested self interest etc. Change (b) If an interested party7

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

passed information to the Crown and the enforcing authority prior to a FAI that evidence should be formally assessed as to its relevance and the interested part should be informed that the evidence is to be led (or otherwise) and the interested party should again in the public interest be allowed to lead that evidence if competent to do so eg if he or she are technical specialists or otherwise expert witnesses. Why does all this cause you concern? Apart from the efficacy of the process, and the lack of openness and clarity of the decision making process from writing statements provided to me by the LA office in Edinburgh, Sheriff Harris opened to FAI with a pre-warning that there was to be a strict control on what evidence was to be heard at his Inquiry. This to me indicates a lack of objectivity from the judge. His Inquiry after all and according to CPS guidance should have been a public ventilation of ALL the relevant facts, not a closed shop. (c) The sequence of the FAI wrt to prosecution proceedings My understanding is that no person is obliged to incriminate themselves in giving evidence to a FAI. But with respect to BB the prosecution was held before the FAI and Shell had already incriminated themselves by pleading guilty. As a lay person it appears that it would be in the public interest for an FAI to be heard before a prosecution as such an Inquiry may in itself provide a better basis for obtaining grounds for prosecution particularly taking account of concern (b) above in that if all the evidence available to the sheriff had been heard it would have led to more general recommendations to prevent a recurrence and better and wider grounds for prosecution. (d) Justification for holding a FAI must be related to added value Despite Sheriff Harris hearing evidence over a prolonged period of time, at public expense, and in relation to a major accident event (MAE) which had the potential (if the huge release of gas into an enclosed space had ignited) and which had led to the Duty Holdwer pleading guilty to amongst other things the criminal neglect of maintenance of safety critical equipment over a prolonged period of time no recommendations were forthcoming to prevent a recurrence. No backward look was forthcoming as to why essential controls had declined over a prolonged period of time and as to why these controls had failed. All of which as I understand it is a key requirement of an Inquiry in Scotland. If there is no attempt to get

	<p>to the root cause of such accidents then in my opinion they are of little value other than establishing who died, where and when. If an experienced eye was cast over the report by Sheriff Harris you can clearly see that for such matters eg ESD valves, he specifically bypasses this issue more or less indicating that its beyond his remit. Since failure of an ESD valve to operate (this fact being known to installation Production staff peior to the MAE) led to the significant quantities of gas released and thus the deaths, this failure by the Sheriff seems to me to border on neglect. Change (d) In relation to offshore installations with fatalities caused in that MAE subsequent FAI's must provide recommendations to prevent a recurrence of the MAE causing the fatalities</p>
<p><b>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</b></p>	<p>Yes, For MAE which cause multiple fatalities or had the potential for such including loss of assets and environmental damage. The forum should include technical experts to help the Sheriff understand the complexities in the evidence led before him</p>
<p><b>Question 3: Should specialist procurators fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?</b></p>	<p>Yes, But only if they are not singularly responsible (as was the case with earnest Barbour) so that there is collective responsibility for decisions., Yes, As explained above, understand this may already be in hand from the statements made by Judith Hackitt on behalf of the HSE</p>
<p><b>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</b></p>	<p>No,</p>
<p><b>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</b></p>	
<p><b>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.</b></p>	
<p><b>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</b></p>	
<p><b>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?</b></p>	<p>Yes, Covered above,</p>

<b>Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?</b>	Yes, And made public
<b>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.</b>	
<b>Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?</b>	
<b>Question 12: Is the current approach to the provision of legal aid to relatives appropriate?</b>	
<b>Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?</b>	
<b>Question 14: Should evidential material be provided to parties in advance of the FAI?</b>	
<b>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</b>	
<b>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</b>	
<b>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</b>	Yes, Yes. As explained above for MAE offshore
<b>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</b>	
<b>Question 19: Should there be guidance as to matters which should be covered by determinations?</b>	
<b>Question 20: Would it be helpful to create an up to date public database of determinations?</b>	Yes. Als recommendations and related enforcement notices applicable to the follow up of the MAE
<b>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?</b>	Yes, By the enforcing authority, Yes, As above, and held on a database available to the public eg HSE website.
<b>Question 22: Should the Lord Advocate be able to apply for a further FAI or the re-</b>	Yes, I believe for example the BB inquiry should have been re run in the public interest.

<i>opening of an FAI? If yes, should this only be in limited circumstances?</i>	Yes,
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