

Scottish Government

Fatal Accident Inquiry Review

Review of Fatal Accident Inquiry Legislation

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.

Respondant Information Form

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

Name: Henry Palin * Required

Organisation: (if applicable) The Billy Wright Inquiry

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* Required

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REVIEW OF FATAL ACCIDENT LEGISLATION

RESPONSE FROM HENRY PALIN, BILLY WRIGHT INQUIRY

1. The purpose/features set out at paragraph 2.3 appear to cover the main requirements.
2. (in the second box) With regard to the potential difficulty of technical complexity etc (paragraph 2.4) the suggestion of using assessors or suitably qualified sheriffs is a sensible and practical one. Suggestions that FAIs do not always follow an inquisitorial process can be addressed by training and stronger guidance.
3. Whilst it may be possible in large areas of population to have more specialist staff to deal with FAIs, that would be difficult in outlying or rural areas. Once again, this is something that should be capable of being addressed by training and guidance. It is likely that there will be some procurators fiscal who find talking to relatives/families difficult and others who generally do not always devote the time they should to a particular case. All of this however, can be addressed through training and then ensuring that the system is working and achieving the desired results.
- 4.
5. Common sense and practicality dictates that this should be possible.
6. There seems to be no obvious justification for a distinction between a death in legal custody as defined and those other categories of person named in paragraph 3.5. Similarly, people detained under the Mental Health Act legislation or the death of children in care should be included. These are all categories of people whose liberty has been removed. Whilst this might lead to an increase in the number of FAIs, that does not mean an unnecessarily lengthy or costly process if the reasons for the death are obvious and acceptable. By adding such deaths to the category of mandatory FAI the benefit is the transparency of public scrutiny.

The consultation paper refers to a number of other groups of people in paragraph 3.8 and there is an argument for these to be included. Against that, many of them in a proper system can probably be adequately dealt with as part of the discretionary category.
7. Mandatory should mean what it says.
8. (type in the second box) If the procurators fiscal has carried out his duties thoroughly, no difficulty should arise here. If there is a risk that the views of some interested parties might be overlooked or missed, this could be addressed by imposing a requirement on the fiscal to ensure that the views of all interested parties have been canvassed (i.e. beyond the family/relatives).
- 9.

10. Any system must operate to reasonable timescales and this should not be influenced by pressure on procurators fiscal in other areas (e.g. criminal work). Once again, all of this should be capable of being addressed through training and guidance, the implementation of which is then monitored.

11. Guidance should ensure that relatives of the deceased are given appropriate support and this is often achieved by speedy contact following the death.

12.

13. Ad hoc arrangements should be capable of dealing with this problem.

14. The provision of evidential material is helpful and such disclosure demonstrates the openness of a public system.

15. In the interests of efficiency oral evidence should only be called where it is necessary or where there is some clear dispute as to the facts.

16. Cost should not be a factor in determining which experts will be selected. The safest way would be to have a panel of experts (all of whom are paid on an approved fee scale) and a requirement that procurators fiscal select from the panel.

17. From the explanations in paragraphs 5.14-5.16 it would appear there is a misunderstanding of the purpose of using assessors. However, they do have a function in complex cases where the evidence is of a technical or specialist nature.

18. The difficulty here is the balance between getting at the truth in relation to the circumstances of the death through the process of the FAI and the use of any admission that might come out of those proceedings in other proceedings, criminal or civil. On balance, my view would be that admissions in sworn testimony should be admissible in other proceedings.

19. As far as possible, there should be consistency amongst the content and quality of determinations. Guidance and a monitored system should be the best way of achieving this.