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Subject: Consultation Response

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, Whilst most of the features of the FAI are still very relevant we suggest that they would benefit from not being held in the sheriff courts.
<i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i>	Yes, we think that a specialist tribunal system with a panel of appropriate persons as opposed to a Sheriff presiding would be of benefit. Low priority can be given to FAIs particularly relating to people with learning disabilities. Within the current system criminal hearings take priority. The new system would allow for less chance of delay in the FAI taking place, for less interruption to the process, more ability to have it held over consecutive days and be less

	intimidating for witnesses and families.
Question 3: Should specialist procurators fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?	Yes, FAI's don't happen very often which doesn't give procurators fiscal enough opportunity to build up their knowledge. , Yes, This would allow for a "pool" of procurators iscal to build their knowledge becoming more familiar with the process of FAI's. It might also lead to more indepth investigation prior to the FAI beginning.
Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?	
Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?	
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.	Yes, certain deaths should be added.
Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?	
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?	Yes, Families as well as those with a particular interest should be able to make representation. , For lots of people with profound and multiple learning disabilities their families and close friends are their voice. However, not all have a family member that could make representation. That's why the category should be extended.
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, There needs to be a detailed explanation for families why this decision has been made. It is also important that families know they can apply for judicial review and the implications of this.
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.	No, Given the position of a lot of families caring for people with profound and multiple learning disabilities 21 days is not enough time to make arrangements allowing attendance. It would be beneficial for contact to be made at an early stage (preliminary hearing?)in the process which could look at how long the FAI may take or whether the family want to have legal representation therefore requiring longer than 21 days. We do however want to highlight that one problem with the current system is the delay in FAI's taking place and would not want any extension of the 21 days to cause further delay. The time taken in holding the FAI

	following the death is often too lengthy elongating distress for families
Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?	No, FAI's are extremely stressful for families. They need to be provided with a better support system. It might be beneficial for learning disability organisations or carer organisations to be given the means to offer support to families going through the FAI process. VIA could direct families to relevant organisations of this sort.
Question 12: Is the current approach to the provision of legal aid to relatives appropriate?	No, Families can think that it is the procurator fiscal that is acting on their behalf as opposed to being an independent party. They don't know that they can pursue legal representation. This could be explained at an early stage allowing time to put legal representation in place if this is felt appropriate.
Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?	Yes, This would help to standardise the current system. The preliminary hearing would address some of the issues raised already ie exploring legal representation. It would also help to eradicate the problem with the FAI happening over non-consecutive days and the delays involved.
Question 14: Should evidential material be provided to parties in advance of the FAI?	Yes, Unless this is opposed by the family evidential material should be available. This has many benefits as stated in 5.7 and 5.8.
Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?	
Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?	
Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?	Yes, Yes, Particularly in relation to people with learning disabilities there can be complex medical evidence given. Expert assessors play a key role. As mentioned earlier if a tribunal system were to be in place a panel could contain someone with this medical experience (along with other appropriate people). This would also be relevant for assessors from other fields.
Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?	
	Yes, There is a need for consistency which standardisation on certain matters could bring.

<p>Question 19: Should there be guidance as to matters which should be covered by determinations?</p>	<p>Families can then be prepared for what will be covered by determinations and what information they might need to specifically ask for a response.</p>
<p>Question 20: Would it be helpful to create an up to date public database of determinations?</p>	<p>Yes, This would make it easier to locate information relating to FAI'S. The database itself would need to be easy to locate and search.</p>
<p>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?</p>	<p>Yes, The current system is unhelpful with family members trying to push the recommendations forward as noone else takes responsibility for this. It is essential that these are circulated to those it concerns as well as being followed up. The FAI is put in place to stop the same mistakes that led to the death happening again. If the recommendations are not adhered to then the process has been in vain., Yes, The Justice Department should take on this responsibility., The relevant government minister should report to the Scottish Government.</p>
<p>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?</p>	<p>Yes, , Yes, It would only be beneficial to reopen the FAI if new evidence was available that would make a significant difference to the determinations and any recommendations made.</p>

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