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Review of Fatal Accident Inquiry Legislation

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Consultation Questions
 Review of Fatal Accident Inquiry Legislation

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

Yes, 1. F A Is are too infrequent and they are carried out too many months after the death had occurred. 2. The wishes of families to have FAIs in individual cases should be more carefully and transparently considered. If an F A I is turned down, the individual family should be given a detailed account of the reasons why, and a route of appeal against this decision made available. 3. careful consideration should be given to holding F A Is in all maternal death, fatal fires, road traffic collisions, in deaths in nursing homes and similar institutions, and in unexpected sudden deaths of young persons. 4. the conduct of an F

	A I should much less formal and less legally-orientated.
Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?	Yes, The Sheriff Court is much too formal a locus and somewhat intimidating not lesat given its 'criminal' connotations. Community centres or other suitably a/v equipped halls should be chosen provided they have good general visibility and audibility of proceedings.,
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, The evidence that has to be put in front of an F A I in relation to the mode and cause of death - primary and contributory - may be quite technical and complex, and it is therefore essential that the person marshalling the evidence undertstands fully the nuances of the medical and patholgical findings. Specialist experts need to be instructed in relation to aspects of the case from a number of medical and surgical subspecialities and the person who will be presenting the evidence needs to know whom to instruct and what the relevance and importance of the various reports are. The experts may need to be precognosed in the preparation of the case by someone who knows what is being sought from the particular expert., Yes, The medical expertise required can only be accrued with time and experience; a national centralised team,perhaps similar in its constitution and remit to the Central Legal Office of the N H S in Scotland, would be best placed to achieve a degree of excellence.
Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?	Yes, The current arrangements for disposal of bodies from abroad are totally unsatisfactory. Bodies from abroad are cremated reguarly even when no actual cause of death is known and suspicions of foul play excluded satisfactorily. Even the fact than an autopsy may have been carried out abroad, will not always allay fully the need for further enquiry given the lack of international standardistaion in the carrying out of postmortem examinations.
Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?	Yes, This would perhaps decrease the requirements for families to travel.
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, a. medical mishaps b. unexpected deaths of young people. c. road traffic fatalities d. maternal deaths e. fatal fires

<p>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</p>	<p>No, Even natural details in custody and at work raise issues which could be in the public interest and may allow changes in practice and the avoidance of similar future deaths. Accountability and transparency issues are also thus addressed.</p>
<p>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?</p>	<p>Yes, - relatives of the deceased - public bodies e.g. Mental Health Commission, child protection bodies, Objections to the conduct of an F A I should be heard and taken into full consideration; similarly requests for an F A I when one is not being considered should be given due weight and attention.</p>
<p>Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?</p>	<p>Yes, This is in the interest of fair play and common decency, public accountability and transparency.</p>
<p>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.</p>	<p>Yes,</p>
<p>Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?</p>	<p>No, There should be a full mutual disclosure to all the parties who will be represented at the F A I of all reports and other documentary material in advance of the F A I and at least 4 weeks beforehand.</p>
<p>Question 12: Is the current approach to the provision of legal aid to relatives appropriate?</p>	<p>Yes,</p>
<p>Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?</p>	<p>Yes, If these are intended a. to ensure that everyone has in their possession all the documents etc which will be provided in the actual inquiry by all parties concerned. b. to ensure that all the matters in dispute among the various parties are known in advance. c. to expedite and streamline the actual hearing by dispensing with mutual agreement of certain witnesses and documents.</p>
<p>Question 14: Should evidential material be provided to parties in advance of the FAI?</p>	<p>Yes,</p>
<p>Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?</p>	<p>Yes, with the agreement of all parties concerned.</p>
	<p>This should be initially discussed with the pathologist who carried out the autopsy and with other members of the forensic pathology departments; later, mutual discussion with the</p>

<p>Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?</p>	<p>relatives may further alert the P F to the requirement for other expert involvement. The views of the medical Royal Colleges in Scotland should also be sought on specific issues and they should be able to nominate experts with the specific expertise required.</p>
<p>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</p>	<p>Yes, Yes, in very specialised matters, there may be a need for assessors with specialist expertise in the matters under scrutiny.</p>
<p>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</p>	<p>No, Evidence has been given on oath or affirmation, teased out by cross examination and should therefore be admissible.</p>
<p>Question 19: Should there be guidance as to matters which should be covered by determinations?</p>	<p>Yes, 1. the when, the who, the where and the why the death has occurred should be the fundamental issues. 2. was the death avoidable? how? and why? 3. what changes in procedures should be considered in order to avoid similar future deaths?</p>
<p>Question 20: Would it be helpful to create an up to date public database of determinations?</p>	<p>Yes, This would assist those with managerial responsibilities to ensure that procedures which they are responsible for cover the matters which have been scrutinised.</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, an F A I can be considered as a form of audit and closing 'the audit loop' is essential if lessons are to be learnt and no repeat of such deaths avoided. , Yes, Scottish Parliament through the appropriate national secretariats, mainly the Health and Social Welfare ones.,</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, Although it may be difficult to envisage any reason other than the acquisition of vital new evidence not available at the original inquiry., Yes,</p>

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