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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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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>	No,
<i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i>	Yes, The forum for the FAI may not be as important as the atmosphere set by the process. , We believe that the forum in which FAIs are held should be consistent creating a need for the body holding the FAI to be capable of inquiring into evidence over the breadth encountered amongst the FAIs. It is important that they retain their inquisitorial nature. To that end the judge must ensure avoidance of any attempt to introduce adversarial behaviour. The forum should seek to achieve a balance

	between putting witnesses at ease to allow a full presentation of evidence and the formality which conveys the significance of the proceedings.
<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>	Yes, FAIs are a highly specialised procedure yet they are infrequent. Medical and scientific experience has suggested that a specialist team should deal with 50 cases of an expert nature per year to ensure the maintenance of clinical and scientific expertise. Evidence from other expert areas support the view that a significant case load is required to sustain and develop experience and specialist knowledge. Therefore to ensure the development of appropriate expertise there may be advantage in dedicating a specialist team to FAIs., Yes, See comment above.
<i>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</i>	Yes, There are several circumstances relevant to health and safety in Scotland which may be informed by deaths of Scots abroad.
<i>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</i>	Yes,
<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, certain deaths should be added, The definition of deaths in legal custody should be reviewed and consideration given to deaths of individuals held in other than police cells and prison. Deaths of children in care should be considered as a mandatory category. The current position with deaths from road traffic accidents is inconsistent and a review of the inclusion of RTA deaths may be useful.
<i>Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?</i>	No,
<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 comment,
<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,
<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</i>	No comment

<i>notice.</i>	
Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?	No comment
Question 12: Is the current approach to the provision of legal aid to relatives appropriate?	No comment
Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?	Yes, It is our view that this should be consistent across the country and that it strengthens the inquisitorial nature of the FAI
Question 14: Should evidential material be provided to parties in advance of the FAI?	Yes, This again would further the inquisitorial basis of the FAI.
Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?	No comment
Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?	It is essential that the most authoritative independent experts are selected to give evidence. There is a need to ensure information on experts is up to date, there are a variety of public bodies such as Medical Royal Colleges and Scientific and Engineering Learned Societies able to advise. There may be occasion when the authoritative expert is from Scotland and even from the same health board area. In these circumstances a judgement will be required balancing authority with independence. It would be our view that the expertise of the witness should be paramount.
Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?	No, We believe the expert role of an assessor should, where possible, be delivered in public by an expert witness.
Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?	No, There should be no barriers obstructing the fullness of the enquiry.
Question 19: Should there be guidance as to matters which should be covered by determinations?	No comment
Question 20: Would it be helpful to create an up to date public database of determinations?	No comment
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?	Yes, The value of any recommendations resides solely in their implementation, so it is essential that this is monitored., An appropriate central mechanism should be set for the monitoring of recommendations and their public reporting., Lord Advocate

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?

Yes, , Yes, In the inquisitorial spirit of the FAI it should be possible to re-open these in the light of new evidence or new interpretation of complex medical or scientific evidence.

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