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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

<p><i>Question 1: Should there be any change in the purpose or the features of FAIs?</i></p>	<p>Yes, We do not think there should be any substantial change in the purpose of Fatal Accident Inquiries. However, with regard to the features, what follows in our response may constitute a change in that regard.</p>
	<p>Yes, The court provides the necessary physical structure supported by the due process of the inquiry. We would not wish to see any increase in the formality of an FAI such as the suggestion that the inquiries could be taken to the court of session but, if they were held in "a local tribunal setting", the necessary due process and formality should be preserved. The other benefits of recommending a forum other</p>

<p>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</p>	<p>than the sheriff court is that through introducing the options in accommodation, alternative venues may allow a shorter time interval before the hearing can be held. In the medical context, recall is an important element, whilst documentation may or may not support that recall, the shorter the time interval between the event and a formal hearing, the greater the likelihood of recall being more accurate and more contributory to the hearing. Moreover, the emotional burden of reliving a traumatic episode may be relieved to some extent by a less formal environment with better facilities for the support of the relatives involved. Additionally, it may encourage better disclosure. , Increasing the flexibility around the venue may increase access for presentational material which supports the understanding of the medical context of those cases.</p>
<p>Question 3: Should specialist procurator fiscal handle FAIs? If you answered yes, above, should they be part of a centralised team dedicated to FAIs?</p>	<p>Yes, These individuals will build up a body of expertise and could anticipate the implications of the recommendations for other agencies. We are aware that there have been a number of public inquiries in recent years (particularly in England), where the commissioned recommendations have either been improperly implemented or have failed to be implemented. Thus the advantage of having focussed expertise to ensure delivery post recommendation. We recognise the potential disadvantages of centralisation with a panel of expert procurator fiscals but the benefits of a specialist cadre potentially outweigh the disadvantages. ,</p>
<p>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</p>	<p>No, No comment</p>
<p>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</p>	<p>Yes, This is a complex area but there appear to be advantages in this recommendation when considering deaths from a particular infective source across different sheriffdoms and in cases that relate to potential terrorist activity. This centralised focus could produce a more powerful outcome when the review is carried out under a single jurisdiction.</p>
<p>Question 6: Should the deaths which fall within the mandatory category be changed? If</p>	<p>No, no change should be made to the mandatory category, We would not support a view which recommended an FAI in every death under surgery or anaesthesia but support the current practice where deaths which occur under certain categories are reported to the</p>

<i>you answered yes, that deaths should be added or removed, please explain your answer.</i>	procurator fiscal by the consultant involved and a decision regarding further action lies with the fiscal. This is where a more consistent fiscal service would be advantageous with a better understanding of such surgical deaths.
Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?	No, This is likely to be a contentious issue which may be best remaining within the current legislation.
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, While the current system appears to work reasonably well, consideration should be given to a mechanism by which other interested parties have the provision for making a representation and it is then at the Lord Advocate's discretion as to whether or not he requires that information to assist the decision making. ,
Question 9: Where the Lord Advocate decides not to hold an FAI, should a formal, reasoned decision be provided to relatives of the deceased?	no comment
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 comment
Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?	It would be good practice to ensure that the current system provides a high level of support.
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, If this provision has been successful in two of the larger sheriffdoms, it would appear that the preliminary hearings may have an advantage in the process. We would not wish to see a variance of postal code justice emerging. This would be unacceptable.
Question 14: Should evidential material be provided to parties in advance of the FAI?	Yes, We would support this as it is the current practice in civil and criminal medico-legal cases.
Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?	No, The outcomes of FAIs are critically important to all parties and in medical cases can have a serious impact on individuals professional positions and clinical systems. We would therefore support the continuation of a need to provide oral evidence. There may, however, be exceptional circumstances where

	written statements can provide the same strength of opinion but there must be absolutely no doubt as to the fidelity and varacity of these statements.
Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?	There is currently a system of identifying local experts through the Colleges and through the lists held by the Law Society of Scotland. The Scottish Medical Advisory and Scientific Committee (SMASC) which reports to the CMO, could be in a position to advise within the legal system.
Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?	No, The current system encourages sheriffs to understand the evidence produced by the expert witnesses. Rather than the development of expert assessors, we would support the proposal for specialist procurator fiscals as in question 3.
Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?	No, We see no reason why evidence given in a FAI should be inadmissible for other purposes and we would support as much openness as possible and allow this evidence to be used when required.
Question 19: Should there be guidance as to matters which should be covered by determinations?	Yes,
Question 20: Would it be helpful to create an up to date public database of determinations?	Yes, This would allow the gathering of a body of expertise which would allow auditing of practice.
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 Clinbie report and recent failings in the social services in London are the classic examples of English inquiries making recommendations that have failed to resolve serious issues. Likewise, in the Allitt and Kennedy reports. There is little point in having an expensive, high cost and high stakes public inquiry if the recommendations are not followed through to fruition. We recognise that FAIs are different from a public inquiry but the principles should still apply that there is not only a need for the recommendations to be implemented but there must be a mechanism that ensures implementation. , ,
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, ,

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