

**Review of Fatal Accident Inquiry Legislation
Respondent Information Form**

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

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1. Are you responding (please tick one of the following boxes)

- (a) as an individual? (go to Q2)
(b) on behalf of a group or organisation? (go to Q4)

2. Do you agree to your response being made available to the public on the Review of Fatal Accident Inquiry Legislation website? (please tick one of the boxes)

- Yes (go to Q3)
No We will treat your response as confidential

3. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

- Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

4. The name and address of your organisation will be made available to the public on the Review of Fatal Accident Inquiry Legislation website. Are you also content for your response to be made available? (please tick one of the following boxes)

- Yes
No We will treat your response as confidential

Questions

Section 2- General

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

No

We do not believe that there is evidence to support a change.

2. Should FAIs be held in some forum other than the sheriff court?

No

If FAIs continue to be held in approximately the same number of cases, it is unlikely to be viable to create a dedicated tribunal, and such a structure would incur both set-up and additional running costs.

We would resist the suggestion that FAIs should be transferred to the Court of Session for the reasons outlined in the consultation paper, and on the basis of the cost to public purse of such a move.

We are concerned at the suggestion that there should be greater insistence on holding FAIs as soon as is reasonably practicable. Sheriff Clerks already seek to fix diets as early as possible, subject to the date being convenient to witnesses, parties, and parties' representatives. Where multiple parties are involved, it can be difficult to find dates which are suitable for all counsel. Parties' representatives invariably require preparation time. In some courts there is a further constraint in the involvement of the procurator fiscal, which means that the diet must be at the expense of criminal business which would otherwise demand the attendance of the procurator fiscal.

3. Should specialist procurators fiscal handle FAIs?

No comment

4. Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?

Such additional cases will generate demand for additional court sitting time, and if they occur in significant numbers they may require the provision of additional equipment to provide remote TV links to witnesses abroad. It should be noted that the costs associated with providing such links are approximately £600 per day where the link is within Europe, and £800 per day elsewhere.

If FAIs are retained within the sheriff court, consideration would require to be given to jurisdiction. Assuming that no local jurisdiction is linked to the event leading to the death, our preference would be for the court which had jurisdiction over the place where the deceased died domiciled. We would be anxious to avoid a provision such as they had in England and Wales for servicemen who died abroad, which gave jurisdiction to the coroner at the point of repatriation, as this would place a disproportionately heavy burden on particular courts.

5. Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?

Yes

We welcome the proposal to hold one FAI for multiple deaths arising out of a single cause, irrespective of the sheriffdom. This appears an effective use of resources, and avoids the necessity for witnesses to give evidence on numerous occasions.

Section 3- The decision that an FAI should be held

6. Should the deaths which fall within the mandatory category be changed?

Yes, certain deaths should be removed

There should be no requirement to hold a formal FAI when there has already been a Public Inquiry into the death(s) e.g. death during employment – Dunblane and Stockline.

7. Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?

Yes

As at 6 above.

8. Should other interested parties be able to make representations to the Lord Advocate during the decision making process?

No comment

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

Section 4- Holding an FAI

10. Is adequate notice given to interested parties in advance of an application being made?

No comment

11. Is adequate advice, information and support provided to the relatives of the deceased?

No comment

12. Is the current approach to the provision of legal aid to relatives appropriate?

No comment

Section 5: Evidence and procedure

13. Should provision for preliminary hearings be made in respect of the whole of Scotland?

Yes

Preliminary hearings can be an effective use of court time, in that they focus the issues and can reduce the probability of the full hearing having to be adjourned, saving court resources, cost and inconvenience to witnesses. For those cases in which such a hearing might be superfluous, provision could be made for a motion, with consent, to dispense with the preliminary hearing.

14. Should evidential material be provided to parties in advance of the FAI?

Yes

Yes, applying the principle of fair notice. This will help focus issues and may shorten the proceedings to the relief of relatives and witnesses.

15. Should there be relaxation of the conditions under which signed and sworn statements can be used?

Yes

Statements can be an effective use of court time, in that they can reduce the length of the full hearing, saving court resources, costs and inconvenience to witnesses.

16. What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?

No comment

17. Is there a place for expert assessors in FAIs?

No comment

18. Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?

No comment

Section 6- Determinations

19. Should there be guidance as to matters which should be covered by determinations?

No comment

20. Would it be helpful to create an up to date public database of determinations?

No

When the sheriff considers it appropriate, the determination in the FAI is published in full on the Scottish Courts website, and thus readily available for reference. This tends to happen in cases which have attracted public interest, or determinations which consider novel points. It should be noted that in some of the more straightforward FAIs, e.g. road traffic accidents, the determination will only deal with the points referred to at para.6.2 of the consultation paper, and may only run to a few lines. Further, care must be taken not to breach data protection legislation, or other provisions, e.g. protecting the identity of children. Parties to FAIs are provided with a copy of the sheriff's determination, as are the local press.

The database maintained by Scottish Government was created in response to demand for accountability of individuals and/or organisations named in determination recommendations. However, only in limited circumstances does the Scottish Government have any authority in securing implementation. Parties and interest groups are likely to know the circumstances and details of the case, and it is difficult to see that the database adds significantly to the knowledge already in the public domain.

Subject to the agreement of the judiciary, the Scottish Court Service could make the full text of all FAI judgments available on an internal database, if this was considered to be of benefit.

The Scottish Court Service would also be prepared to reconfigure the web site to make FAI determinations more easily retrievable, if this was felt to be useful.

21. Should responses to recommendations be monitored? (Please tick one box)

No

Making FAI recommendations mandatory would require a significant change to the current provisions. It seems unlikely that the inquisitorial nature of the FAI could be retained, and, particularly where implementation might carry significant financial implications, an adversarial approach would be adopted to the detriment of the relatives. The length of FAIs would increase as a result of this, and as a result of the need to lead evidence to inform the recommendations. Appeal provisions would also have to be created, and a mechanism for dealing with those who fail to implement the orders. These would have resource implications for the courts, and there would also be costs associated with the central monitoring body.

However, we wondered whether there might be scope to include in statute a requirement for the relevant organisation to have regard to the sheriff's recommendations, with a failure to do so being open to judicial review.

22. Should the Lord Advocate be able to apply for a further FAI or the reopening of an FAI?

No comment

