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Sent: 20 February 2009 09:37
To: Review of Fatal Accident Inquiry Legislation
Subject: Consultation Response

Review of Fatal Accident Inquiry Legislation

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Confidentiality: Not Supplied
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Share Response Permission: No

Consultation Questions
 Review of Fatal Accident Inquiry Legislation

	<p>Yes, We believe that Fatal Accident Inquiries over the years have served a meaningful purpose to the extent of better understanding the circumstances surrounding the death and appropriate lessons to be learned. We do not consider that a wholesale review of the Inquiry procedure is called for, however there would be considerable benefit in improving upon the management and process of Inquiries. In our experience, Inquiries occur some considerable time after the death. Whilst inevitable that there is a sufficient period of time post the death to enquire into the circumstances, on many occasions the Inquiry takes place 2 or 3 years</p>
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<p><i>Question 1: Should there be any change in the purpose or the features of FAIs?</i></p>	<p>after the death. It is our view that this is unacceptable for all involved, both in terms of the unnecessary anxiety caused as well as the difficulty in everyone's recollections. This time delay also has a bearing upon what lessons can be learned from an Inquiry. We are also concerned that Inquiries are by their very nature often more adversarial. This can be as counter productive for families as for those representing other interests. The steps that we recommend should be considered as a means of tightening up the process of Inquiries and ensuring a less adversarial process are as follows: · better exchange of written statements and relevant material well in advance of the Inquiry to restrict and reduce the amount of oral evidence led; · more effective use of preliminary hearings so that relevant parties can exchange documentation as well as providing the parameters around the issues to be investigated; · ensuring that the Fiscal who conducts the Inquiry is appropriately briefed and experienced in conducting such Inquiries; · Effective management of Inquiries by the Sheriff, recognising that where this has occurred Inquiries are less prolonged and more directed towards the critical issues determined by the Act; · use of agreed written statements either to excuse witnesses or to confine their evidence to matters supplementary to those written statements.</p>
<p><i>Question 2: Should FAIs be held in some forum other than the sheriff court? If yes, what forum would you suggest?</i></p>	<p>No, We do not believe that it is necessary to identify some other forum provided the appropriate steps identified in response to Question 1 are addressed..</p>
<p><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></p>	<p>No, In answering this, we would highlight our response to Question 1 to the effect that the Fiscal who conducts the Inquiry does need to be appropriately briefed and experienced. In our view this does not necessarily require specialist Procurator Fiscals..</p>
<p><i>Question 4: Should the scope of the Act be altered so as to cover FAIs into the death of a Scot abroad?</i></p>	<p>No,</p>
<p><i>Question 5: Should it be possible for FAIs to be held, where appropriate, into multiple deaths in more than one jurisdiction?</i></p>	<p>Yes, To ensure a co-ordinated approach is taken to the Inquiry assuming a common interest arises from the deaths.</p>
<p><i>Question 6: Should the deaths which fall within the mandatory category be changed? If you answered yes, that deaths should be added</i></p>	<p>No, no change should be made to the mandatory category,</p>

<i>or removed, please explain your answer.</i>	
Question 7: Should the requirement to hold an FAI into a death which falls into the mandatory category be subject to exception?	No, This could create greater uncertainty.
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?	No, The decision must rest with the Lord Advocate properly informed and taken objectively. ,
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, Whilst questioning the necessity of a formal decision, clearly it is very important that a family are clearly aware why the decision has been taken.
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, We would refer to our answer to question 1.
Question 11: Is adequate advice, information and support provided to the relatives of the deceased? If no, what improvements could be made?	Yes, On the whole we believe that Procurator Fiscals are very aware of the concerns and needs of the family and seek to offer appropriate support, particularly when the family are unrepresented.
Question 12: Is the current approach to the provision of legal aid to relatives appropriate?	Yes,
Question 13: Should provision for preliminary hearings be made in respect of the whole of Scotland?	Yes, We would refer to our answer to question 1.
Question 14: Should evidential material be provided to parties in advance of the FAI?	Yes, We would refer to our answer to question 1.
Question 15: Should there be relaxation of the conditions under which signed and sworn statements can be used?	No, Though we encourage more effective use of such statements.
Question 16: What can be done to ensure that the most authoritative independent experts are selected to give evidence at FAIs?	It is undoubtedly essential that appropriately instructed and authoritative independent experts are available to give evidence at Inquiries. It is critically important to ensure that the right individual is instructed and that they are clear as to their role. Particularly in the context of Inquiries into medical mishaps, there can be a number of experts called to give evidence, resulting in a more overtly adversarial Inquiry. As with clinical negligence claims in England where there is a protocol for permitting discussion amongst experts, consideration might be given to ensuring

	appropriate dialogue between experts in advance of an Inquiry, even if simply to determine what is capable of agreement and where there may be differences.
<i>Question 17: Is there a place for expert assessors in FAIs? If yes, should more use be made of them?</i>	Yes, No, Appropriately instructed and authoritative experts should fulfil the need for the required opinion to be expressed at an Inquiry. An expert assessor can undoubtedly offer assistance to the Sheriff conducting the Inquiry but obviously his/her views are unknown and not capable of examination.
<i>Question 18: Should the evidence of a witness at an FAI be inadmissible in other judicial proceedings?</i>	No, The evidence of a witness at an Inquiry should be seen in no different context from evidence in any other form of judicial proceedings. It is expected that a witness honours the oath given at the commencement of their evidence.
<i>Question 19: Should there be guidance as to matters which should be covered by determinations?</i>	Yes, It would certainly be of benefit for there to be some greater clarity as to the matters to be covered by Determinations with appropriate guidance offered.
<i>Question 20: Would it be helpful to create an up to date public database of determinations?</i>	Yes,
<i>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?</i>	Yes, The challenge which exists with any recommendation made at an Inquiry is to ensure that someone or somebody has responsibility to act upon the recommendation. The obvious question to be asked is whether, if the recommendation is not fulfilled, what steps should be taken., ,
<i>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?</i>	No, ,

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