

CONSULTATION ON PROPOSALS TO REFORM FATAL ACCIDENT INQUIRIES LEGISLATION



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately. This consultation closes on Tuesday 9 September 2014.

1. Name/Organisation

Organisation Name

Forum of Scottish Claims Managers

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

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3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONNAIRE

Mandatory categories of FAIs

Question 1:

Do you think that the current mandatory provision for work-related deaths is sufficient?

Yes No

We believe that if the scope were to be widened as was proposed in Patricia Ferguson's consultation on 'Inquiries into Deaths (Scotland) Bill' this would result in a higher number of Fatal Accident Inquiries, leading to greater utilisation of finite resources of the Scottish Court Service, Crown Office Procurator Fiscal Service and Scottish Legal Aid Board.

Many of the additional FAIs generated by the aims would involve cases where the employer who caused the harm no longer exists or the cause could emanate from any one of a number of employers.

Whilst the circumstances of the death are undoubtedly distressing and traumatic for the family, we question whether holding a Fatal Accident Inquiry in such circumstances would help the family or assist the path of justice in any way.

For example, tragic as deaths caused by exposure to asbestos are, the dangers of asbestos exposure and related injuries are very well known and extensively documented. Conducting a FAI into deaths caused by asbestos will in our opinion, add little or no value by way of new learnings.

We continue to support the Lord Advocate retaining the power to choose where an FAI is equitable to the ends of ascertaining the cause of death and lessons which can be learned.

The FAI is not a vehicle to repeat evidence from a previous Criminal trial or a mechanism to forward evidence which would come out as part of a later Civil trial. We therefore recommend that there should be extreme caution in taking steps which alter FAIs to effectively cross over into these areas. This in our opinion would create confusion and uncertainty.

Question 2:

Do you agree that a death which occurs when a person is 'arrested or detained by police' should be subject to a mandatory FAI?

Yes No

This is outwith our area of expertise

Question 3:

Should the death of a child in 'secure care' be subject to a mandatory FAI?

Yes No

This is outwith our area of expertise

Question 4:

Do you agree that any other categories of residential childcare, which are not defined as 'secure care', should not result in a mandatory FAI?

Yes No

This is outwith our area of expertise

Question 5a:

Do you think the aim of an independent investigation into the death of a person subject to compulsory detention by a public authority, that retains the traditional role of the Lord Advocate, should be met by an investigation by the procurator fiscal and exercise of the Lord Advocate's discretion on completion of that investigation?

Yes No

This is outwith our area of expertise

Or

Question 5b:

Alternatively, do you think the option of a case review by a public authority such as the Mental Welfare Commission could be combined with a discretionary power to hold an FAI?

Yes No

This is outwith our area of expertise

Question 6:

What impact do you think that the proposals in relation to the mandatory categories of FAIs will have on you, your organisation or community?

The proposals will have little impact on our members if the current mandatory provision for work-related deaths are preserved and not widened as was suggested in Patricia Ferguson's consultation on 'Inquiries into Deaths (Scotland) Bill'.

Deaths abroad

Question 7:

Should the Lord Advocate have discretion to hold an FAI into the death of a person domiciled in Scotland who dies abroad where the body is repatriated to Scotland?

Yes No

This is outwith our area of expertise

Question 7a:

If you answered 'yes' to question 7, should the criteria to consider include:

- (i) Whether there had been circumstances which called for investigation
Yes No
- (ii) Whether there had been a satisfactory investigation (in the country where the death took place)
Yes No
- (iii) Whether there was a prospect of an FAI yielding significant findings
Yes No

Question 7b:

If you answered 'no' to any of the criteria in question 7a, please provide reasons for your answer

This is outwith our area of expertise

Question 8:

What impact do you think this proposal will have on you, your organisation or community?

This is outwith our area of expertise

Delays

Question 9:

Do you agree with Lord Cullen's view that "it is plainly not practical or realistic to make it mandatory that an FAI must open within a certain period of the date of the death of the deceased... because of the diversity and potential complexity of the cases" which may mean that an incident is not properly investigated?

Yes No

The FAI simply cannot be heard before any potential Criminal Trial for fear of prejudicing an accused's right to a fair trial.

We therefore find it difficult to envisage how a time frame for the opening of a FAI could be implemented in practical terms unless the time frame starts to run from the conclusion of a Criminal Trial (or when the Procurator Fiscal decides not to bring Criminal charges).

A proposal for a time frame to run from the conclusion of a Criminal Trial (or when the Procurator Fiscal decides not to bring Criminal Charges) is one we would support.

Question 10:

Do you agree that preliminary hearings should be held to help speed up the process of FAIs?

Yes No

In our view, this would be a useful progressive step if the aim is to agree non-contentious issues and evidence at an early stage, allowing focus on the issues that matter most.

Question 11:

Will having pre-hearing meetings of experts speed up FAIs?

Yes No

We agree for the same reasons as in 10.

Question 12:

Will hearing some business in sheriffs' chambers help speed up FAIs?

Yes No

It may be useful if this were simply to agree non-contentious issues, however it may appear to the family that this not an open and transparent process.

Question 13:

Do you agree the proposal of permitting the submission of statements to the sheriff in advance of the FAI?

Yes No

Comments

Question 14:

Should the sheriff principal be able to transfer the case to a different sheriffdom (area) if this is thought appropriate and if it may speed up the holding of the FAI?

Yes No

Anything that assists speed and efficiency in these proceedings should be welcomed

Question 15:

What impact do you think that the proposals to speed up FAIs will have on you, your organisation or community?

This would allow earlier access to the evidence and a quicker outcome for the parties involved.

Fatal Accident Inquiry accommodation

Question 16:

Do you agree with the proposal that the majority of FAIs should be dealt with in ad hoc locations, but FAIs which relate to deaths in rural or remote areas should still be dealt with in local sheriff courts?

Yes No

We believe that ad hoc locations would be best where it would be beneficial to the smooth running of the Inquiry and/or availability or locality of the witnesses, locus and family

Question 17:

Do you think that all FAIs in Scotland should be held in three bespoke, dedicated centres?

Yes No

We believe this would be unnecessary given that the HSE data suggests that the number of fatalities in the workplace are declining, (<http://www.hse.gov.uk/statistics/fatals.htm>) as is evidenced that there were only 38 FAIs held in 2012.

Question 18:

What impact do you think that the use of FAI centres, or taking FAIs out of sheriff courts, will have on those attending FAIs?

The family and witnesses may have difficulty if the nearest FAI centre is remote to them and the locus. Therefore, we would refer back to our answer 16.

Taking the FAI out of the Sheriff Court to a more appropriate location or venue would undoubtedly assist those attending and the smooth running of the Inquiry – as occurred in the Super Puma Inquiry.

We would support Lord Cullen's view that there should be less formality where appropriate.

Sheriffs' recommendations

Question 19:

Should it be mandatory for all FAI determinations, subject to redaction, to appear on the SCS website and be fully searchable?

Yes No

This would be in keeping with an open and transparent process

Question 20:

Do you think that sheriffs should instruct the dissemination of their recommendations (if any) to the parties to whom they are addressed and any appropriate regulatory bodies?

Yes No

This would be in keeping with an open and transparent process

Question 21:

Do you agree that parties to whom sheriffs' recommendations are addressed should be obliged to respond to the sheriff who presided over the FAI indicating what action had been taken? This would be on the basis that those parties would not be obliged to comply with the sheriff's recommendations, but if they have not complied they would be obliged to explain why not.

Yes No

This would be in keeping with an open and transparent process

Question 22:

What impact do you think that the proposals regarding sheriffs' recommendations will have on you, your organisation or community?

These proposals will have little or no impact

Legal aid for bereaved relatives

Question 23:

Do you agree that the existing arrangements for legal aid for bereaved families at FAIs should remain?

Yes No

Comments

Question 23a:

If you answered 'no' to question 23, in what ways would you change the arrangements for legal aid for bereaved families?

N/A

Question 24:

What impact do you think this proposal will have on you, your organisation or community?

These proposals will have little or no impact

End of Questionnaire

EQUALITY IMPACT ASSESSMENT

The purpose of carrying out an Equality Impact Assessment is to aid the Scottish Government in discharging its Public Sector Equality Duty under section 149 of the Equality Act 2010. The Scottish Government is required to assess the impact of applying a new or revised policy or practice against the needs in the public sector equality duty - to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations.

The protected characteristics that must be profiled against the policies are:

- Age
- Sex
- Pregnancy and maternity
- Disability
- Race
- Religion or belief
- Gender Reassignment
- Sexual Orientation

To help inform our Equality Impact Assessment of the policy proposals to reform FAI legislation, it would be helpful if you could answer the following question.

Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

We do not believe there will be any positive or negative impacts