

Members' Library Service Request Form

Date of Document	02/09/14
Originator	Chief Executive
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Document Title	Response to Scottish Government consultation on Proposals to Reform Fatal Accident Inquiries Legislation

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East Lothian Council

Additional information:

The attached is an officer-level response to a Scottish Government consultation on Fatal Accident Inquiry legislation. The consultation can be found at:
<http://www.scotland.gov.uk/Publications/2014/07/6772>

Authorised By	Angela Leitch
Designation	Chief Executive
Date	02/09/14

For Office Use Only:	
Library Reference	171/14
Date Received	02/09/14
Bulletin	Sept14

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

East Lothian Council

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 have comments only for questions 2, 3 and 4 of this consultation.

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 X No

Relevant officers agree that this is an appropriate requirement.

Question 3:

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

Yes X No

Officers agree with the Government's acceptance of Lord Cullen's recommendation in this respect, where liberty has been restricted.

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 X No

Officers agree with the Government's rejection of Lord Cullen's recommendation to extend mandatory FAIs to all residential childcare. They do not think Lord Cullen's recommendation would be appropriate as it would widen the scope of mandatory FAIs beyond those where liberty was restricted.

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

No further comments.

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

Comments

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?

Comments

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

Comments

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

Comments

Question 8:

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

Comments

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

Comments

Question 10:

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

Yes No

Comments

Question 11:

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

Yes No

Comments

Question 12:

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

Yes No

Comments

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

Comments

Question 15:

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

Comments

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

Comments

Question 17:

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

Yes No

Comments

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?

Comments

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

Comments

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

Comments

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

Comments

Question 22:

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

Comments

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?

Comments

Question 24:

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

Comments

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.

Comments