



Law Society
of Scotland

Consultation Response

Scottish Civil Justice Council: Consultation on the
draft Fatal Accident Inquiry Rules

January 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Civil Justice Committee welcomes the opportunity to consider and respond to the Scottish Civil Justice Council consultation: Draft Fatal Accident Inquiry Rules. The Committee has the following comments to put forward for consideration.

General Comments

By way of background, in June 2014 the Society's Criminal Law Committee commented on PE1501 before the Scottish Parliament and provided evidence to the Scottish Parliament's Public Petitions Committee¹. Petition PE1501 sought to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations.

In September 2014, the Society responded to the Scottish Government Consultation on Scottish Government's consultation entitled "Consultation on Proposals to Reform Fatal Accident Inquiries Legislation"². During the Bill passage of the Inquiries into Fatal Accidents and Sudden Deaths Etc. (Scotland) Act 2016 ("the 2016 Act"), the Society provided written and oral evidence to the Justice Committee, and written briefings to all MSPs³.

¹ http://www.lawscot.org.uk/media/229620/crim_public_petition_pe1501_law_society_of_scotland_response.pdf

² <http://www.lawscot.org.uk/media/365433/crim-proposals-to-reform-fatal-accident-inquiries-legislation-september-final.pdf>

³ [http://www.lawscot.org.uk/for-the-public/law-reform-consultations-and-bills/bills-201415/inquiries-into-fatal-accidents-and-sudden-deaths-etc-\(scotland\)-bill/](http://www.lawscot.org.uk/for-the-public/law-reform-consultations-and-bills/bills-201415/inquiries-into-fatal-accidents-and-sudden-deaths-etc-(scotland)-bill/)

We make specific reference to the policy objectives of the consultation and, as previously stated the Society welcomes the policy objective of the 2016 Act which is to reform and modernise the law governing the holding of Fatal Accident Inquiries (FAIs) in Scotland.

The Society notes that the Scottish Civil Justice Council is considering the secondary legislation required to facilitate implementation of the 2016 Act. The consultation document states that currently the inquiry rules are to be found in three places: the Sudden Deaths Inquiry (Scotland) Act 1976, the Fatal Accidents and Sudden Deaths Inquiry Procedure (Scotland) Rules 1977 and the Sheriff Court Ordinary Cause Rules 1993 also apply⁴. The Society welcomes measures aimed at creating a self-contained set of rules setting out the procedure to apply at an inquiry.

Specific comments on the proposals

We have not responded to all of the questions included in the consultation but should like to make the following specific comments.

Consultation question 2: Do you have any comment on the content of the inquiry principles?

In terms of judicial continuity, the Committee is supportive of the provision that wherever possible the same sheriff should deal with the Inquiry from the point that the Procurator Fiscal gives notice of when the Inquiry is to take place until determination. This is in effect a judicial docket system. Although there may be diary difficulties from time to time we do not see any real reason why this proposal cannot be accommodated.

Consultation question 3: Do you agree that wherever possible the same sheriff should deal with the inquiry from the point that the procurator fiscal gives notice that an inquiry is to take place, until final determination?

The Society refers to its answer at question 2.

Consultation question 4: are you content with the approach to the sheriff's inquiry management powers?

⁴ [Scottish Civil Justice Council - CONSULTATION ON DRAFT FATAL ACCIDENT INQUIRY RULES - paragraph 18 at page 6](#)

Some of our civil practitioner members noted that it is important for them to know what evidence is going to be put forward by the Crown at the earliest opportunity. We note that under the draft rule 2.5, the Sheriff is provided with wide ranging general inquiry management powers, however we query whether there ought to be a specific rule that allowed the sheriff to order the Crown to lodge its productions or list of witnesses at an earlier date than the other participants. This could facilitate the early agreement of evidence and avoiding duplication of productions.

Consultation question 8: Do you have any comments on the duty and timeframe set out in Rule 3.7?

The Society had previously stated that a focused preliminary hearing would be of benefit to all parties and that that Rules for the conduct of preliminary hearings is appropriate. During the parliamentary passage of the 2016 Act, we noted that while these rules will be published on the Scottish Court and Tribunal Service website, we believe that there may be some merit in liaison with the publishers of volumes of Criminal and Civil Court Statutes and Rules to ensure that these Rules are published in both volumes⁵.

The Committee has reservations about the timings stipulated in rule 3.7. Under the current draft rules, any number of preliminary hearings may be held until the issues are finely honed. We are concerned that Rule 3.7 is too widely expressed. The Society is supportive of a system which allows an initial preliminary hearing, with possibly a further preliminary hearing or hearings, and then a final pre-Inquiry hearing say, for example, 42 days before the commencement of the Fatal Accident Inquiry.

By virtue of draft rules 3.5-3.8, where a preliminary hearing takes place, the sheriff is invested with wide ranging powers to set the timetable, he is then invested with wide ranging powers to seek the compliance of the agents, and indeed the Crown participants. These powers could be exercised at first preliminary hearing, the Committee expresses concern on the basis that it may not be possible to comply with those orders at the first preliminary hearing. We suggest that the requirements should be applicable only at a subsequent preliminary hearing, or the final pre-Inquiry preliminary hearing.

⁵ [The Law Society of Scotland's written evidence to the Justice Committee on the Inquiries into Fatal Accidents and Sudden Deaths Etc. \(Scotland\) Bill, April 2015 at page 5](#)



For further information, please contact:

Samantha Røre
Policy Team, External Relations
Law Society of Scotland
DD: 0131 476 8187
samantharore@lawscot.org.uk