Scottish Government Response to the Recommendations from the Review of Fatal Accident Inquiry Legislation

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MINISTERIAL FOREWORD

In 2008, the Scottish Government appointed Lord Cullen of Whitekirk to review the operation of the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976, which governs the system of judicial investigation of sudden or unexpected deaths in Scotland.

The review sought to ensure that Scotland had an effective and practical system of public inquiry into deaths which was fit for the 21st century. Lord Cullen completed his review in November 2009. Since then, we have been carefully considering each of Lord Cullen’s 36 recommendations in consultation with colleagues in the Scottish Court Service and the Crown Office and Procurator Fiscal Service, as a number of the recommendations had implications for them.

I am pleased to say we have been able to agree with the majority of Lord Cullen’s recommendations and, where we have been unable to do so, we have given our reasons for that.

I am very grateful to Lord Cullen for his careful analysis of the issues and for delivering a comprehensive list of recommendations that aims to modernise the way we handle fatal accident inquiries in Scotland.
INTRODUCTION

The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976\(^1\) sets out the law on Fatal Accident Inquiries (FAIs) in Scotland. Since 2003, between 35 and 73 Fatal Accident Inquiries (FAIs) have been concluded each year. This is about an average of 55 annually.

FAIs are public inquiries held in respect of fatal accidents, such as deaths of persons in the course of employment, in legal custody or sudden, suspicious and unexplained deaths in circumstances giving rise to serious public concern.

In Scotland, the procurator fiscal investigates all sudden, suspicious, accidental and unexplained deaths to establish the cause of death and the circumstances which gave rise to the death. Approximately 13,500 sudden, unexplained and unexpected deaths are reported annually to the Procurator Fiscal. The procurator fiscal will decide whether any criminal proceedings are necessary or whether it would be appropriate to instruct an FAI. Only the procurator fiscal, under the authority of the Lord Advocate, can instruct an FAI which is a public examination of the circumstances of the death (though inquiries are mandatory in the case of deaths which occur as a result of an accident in the course of employment or in legal custody).

The purpose of an FAI is to establish the time, place and cause of a death. It is not to attribute blame or guilt in either the civil or criminal sense. The procurator fiscal leads evidence at the inquiry, which is held in the sheriff court. At the conclusion of the inquiry, the sheriff will issue a determination which will contain findings about the circumstances of the death. The sheriff may also make recommendations as to how such deaths may be avoided in future. These recommendations are not legally binding. Sheriffs make recommendations in around a third of all FAIs.

Lord Cullen’s review\(^2\) related solely to the system of judicial investigation, it was concerned with the work of the procurator fiscal only in so far as an FAI is, or may be, required.

Many of Lord Cullen’s 36 recommendations nonetheless had practical implications for the Crown Office and Procurator Fiscal Service (COPFS), as well as the judicially-led Scottish Court Service (SCS). Since the report was published in November 2009, the COPFS in particular has taken forward practical measures which respond to the issues identified by Lord Cullen.

Other measures will require primary legislation. The Government is already preparing proposals for primary legislation in response to the report of the


Scottish Civil Courts Review\textsuperscript{3} \textsuperscript{4}, and this work can be taken forward in parallel. The development of a set of free-standing and comprehensive rules and procedures for FAIs will be a matter for the Lord President, the Scottish Courts Service, and the Sheriff Court Rules Council together with the Government.

\textsuperscript{3} Scottish Civil Courts Review. Lord Justice Clerk, the Rt Hon Lord Gill (Sept 2009): http://www.scotcourts.gov.uk/civilcourtsreview/

SCOTTISH GOVERNMENT RESPONSE TO THE RECOMMENDATIONS FROM THE REVIEW OF FATAL ACCIDENT INQUIRY LEGISLATION

Sheriff Court and Sheriffs

**Recommendation 1:** An FAI should, where possible, not be held in a sheriff courtroom but elsewhere in other appropriate premises; and, where it is unavoidable that the FAI should be held in a courtroom, care should be taken to select one which, along with its ancillary facilities, such as waiting rooms, has the least connection with criminal proceedings. I also recommend that in FAIs sheriffs and practitioners dispense with the wearing of wigs and gowns, and that sheriffs discourage the hostile questioning of witnesses save where it is essential for ascertaining the true circumstances of the death (paragraph 3.13).

This recommendation is primarily directed at the Scottish Court Service (SCS), who have the statutory responsibility for making arrangements for court cases, including FAIs. The Government and SCS understand the reasons for this recommendation, but it raises significant issues of practicality and affordability.

The nature of business is taken into account when allocating court accommodation; however there are limitations on the accommodation within some courthouses. The routine hiring of additional accommodation in which to hold FAIs would add significantly to SCS costs, at a time when its budget is under significant pressure, and would require resources to be redirected from other important activity. In addition to hire charges, and the charges associated with equipping premises with IT and the other necessary facilities to render it suitable as a place for a formal public inquiry, the staffing of additional premises would add to the cost incurred by the SCS. It is also noted that in smaller locations suitable alternative accommodation may not be available.

The Scottish Government recognises the pressure on the resources available to the SCS. However, we would encourage SCS to explore on a local basis whether alternative accommodation, such as that operated by the Scottish Tribunals Service, might be suitable for FAIs at a cost which is acceptable to SCS.

We also note the recent recommendation of the Civil Justice Advisory Group (CJAG) that there be a greater separation between civil and criminal business\(^5\). Lord Cullen’s recommendation was, in large part, directed at ensuring that there was a clear distinction between FAIs and criminal cases. (See Para 3.11).

The Government and SCS will take account of FAIs in considering plans for implementing the Civil Courts Review and responding to the CJAG recommendations.

The second point in this recommendation refers to the wearing of wigs and gowns at an inquiry. It is already within the discretion of the presiding sheriff to dispense with wigs and gowns if he or she considers that appropriate in any particular case. The Scottish Government agrees that less formal dress would be more comfortable for relatives and friends of the deceased and that the presiding sheriff should take that into consideration on a case by case basis. A more general directive on the appropriate court dress in FAIs would be a matter for the judiciary and we will invite the Lord President of the Court of Session to consider this further.

**Recommendation 2:** Where an FAI is likely to involve matters of some complexity, a sheriff who has adequate experience is assigned to it, and, where necessary, is enabled to sit in the sheriffdom in which the FAI is to be held (paragraph 3.17).

The Scottish Government agrees with this recommendation. Sheriffs Principal have a statutory duty to ensure the efficient disposal of the business in their sheriffdom and in discharging that duty they will have regard to the need to ensure that the sheriff assigned to preside at an FAI has the skills and experience consistent with the complexity of the case. If there is a need to obtain those skills from a sheriff assigned to a different sheriffdom, the Lord President (who has an overriding duty to ensure the efficient disposal of business in all the Scottish Courts), has the power to make such a direction, and would do so.

**Recommendation 3:** The Judicial Studies Committee should include the law and practice of FAIs in their seminars, and sheriffs should be encouraged to take advantage of attending them (paragraph 3.18).

The Scottish Government agrees with this recommendation in principle. However, sections 2(2)(d) and 2(4) of the Judiciary and Courts (Scotland) Act 2008 confers on the Lord President the statutory responsibility for determining the training that should be provided to members of the judiciary generally and to individual judicial office holders. With that in mind we will ask the Lord President to consider including this training in the work of the Judicial Studies Committee.

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Mandatory Fatal Accident Inquiries

**Recommendation 4:** It should continue to be mandatory that an FAI should be held into work-related deaths (paragraph 4.7).

The Scottish Government agrees that it should remain compulsory for an FAI to be held into work-related deaths.

**Recommendation 5:** The legislation in regard to "lawful custody" (i) should be updated so as to refer to the Prisons (Scotland) Act 1989⁷; and omit reference to borstal institutions; and (ii) should be extended to cover the death of a child while being kept in "secure accommodation"; and the death of any person who is under arrest, or subject to detention by, a police officer at the time of death (paragraph 4.14).

The Scottish Government agrees with this recommendation. The term ‘borstal institution’ is obsolete as Lord Cullen points out in his review. This should be replaced by ‘secure accommodation’ as recommended. We also agree that in any situation where a person is ‘detained by police’ at the time of death they are effectively in ‘police care’ and in those circumstances an FAI should be carried out.

**Recommendation 6:** The category of cases in which an FAI is mandatory should include the death of any person who is subject at the time of death to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act⁸ (paragraph 4.20).

The Scottish Government accepts the principle of an independent investigation for all deaths where a person has been detained by a public authority. However, we have concluded that there should continue to be some discretion to determine whether an FAI is appropriate in a particular case. The crucial distinction is between an independent investigation and a full judicially led hearing in the form of an FAI.

Accepting this recommendation as it stands would lead inevitably to the conduct of unnecessary FAs, in cases where there was no likelihood of either the state or the bereaved family learning anything useful from the circumstances of death. Such cases would include those where a detained person died from natural causes, including conditions associated with old age. Apart from the costs to the court system, unnecessary FAs would put pressure on medical professionals and could increase distress to family members.

We have identified a range of options which would meet the desired aim of an independent investigation in all cases, and build on the existing system of

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Crown investigation of deaths, while avoiding some of the problems of mandatory FAIs in every such case. These include:

- An investigation by the procurator fiscal and exercise of discretion by the Lord Advocate on completion of that investigation to instruct a FAI this option is arguably not greatly different from the current arrangements; or,

- A case review investigation by a public authority, such as the Mental Welfare Commission or a different health board, combined with the continuation of the Lord Advocate’s duty to investigate the death and a discretionary power to initiate an FAI.

We intend to undertake further analysis of the options available and to consult on detailed proposals before bringing forward primary legislation.

**Recommendation 7:** The category should also include the case of the death of a child who at the time of death was being maintained in a “residential establishment” (including secure accommodation) for the purposes of the Children (Scotland) Act 1995\(^9\) or the Social Work (Scotland) Act 1968\(^{10}\) (paragraph 4.27).

The Scottish Government agrees that the legislation should be amended to include the death of a child whilst maintained in a residential establishment (including secure accommodation). We do not feel this needs to be extended further than Lord Cullen suggests and accept his reasons for that.

**Recommendation 8:** The Lord Advocate's power to make an exception under the Act should be extended to cases in which the Lord Advocate is satisfied that the circumstance of the death have been sufficiently established in a public inquiry under the 2005 Act\(^{11}\) (paragraph 4.31).

The Scottish Government agrees with this recommendation and that the legislation should be amended to account for this.


The Scope for Fatal Accident Inquiries

**Recommendation 9:** The Lord Advocate should be enabled to apply for a single FAI into multiple deaths in more than one sheriffdom; to direct which procurator fiscal will lead the investigation of the deaths, and in which sheriffdom the FAI is to be held (paragraph 4.35).

The Scottish Government agrees with this recommendation. There should be a mechanism, perhaps including consultation with the relevant sheriffs principal, to ensure account is taken of all relevant factors, such as court capacity, before decisions are taken as to the sheriffdom in which the FAI is to be held.

The COPFS can already conjoin investigations into deaths, as was done in the outbreak of anthrax related deaths in Glasgow and Dundee in 2009. However, joint FAs can only be held meantime for multiple deaths in a single sheriffdom, and full implementation will require primary legislation.

**Recommendation 10:** There should be an extension to the Act to make provision for the Lord Advocate to have a power to apply for an FAI into the deaths of persons normally resident in Scotland where the body is repatriated to Scotland, excluding cases for which provision is to be made in the Coroners and Justice Bill. The power of the procurator fiscal to investigate such deaths should be clarified, if necessary by legislation (paragraph 4.43).

The Scottish Government agrees in principle with this recommendation. However, we believe there will need to be strict criteria about the circumstances in which an FAI would be carried out by Scottish authorities.

As Lord Cullen recognised (para 4.41), such discretion might be exercised rarely, and there are significant practical and resource implications.

There would need to be consideration of the potential limitations on access to local resources, witnesses, languages and authorities, as well as the potentially contaminating effects on evidence of any locally conducted prior investigations. For these reasons, it is generally likely to be better for the investigation into a death to be held by the authorities in the country where the death occurred. For example, in contrast to deaths occurring in Scotland, Scottish investigating authorities would be unable to compel the attendance of relevant witnesses or the production of crucial evidence, and a locally conducted post-mortem may render fruitless any further investigations. Indeed, in many, if not most, cases a supplementary Scottish investigation would be unlikely to discover more facts or matters of substance than were discovered by an initial, local investigation, and may even extend the period of a grieving family’s frustration and distress.

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Nevertheless, we accept that, in the rare case where the Lord Advocate is satisfied that an FAI might be of value, it should be possible for it to be held.

**Decisions against the holding of a Fatal Accident Inquiry**

**Recommendation 11:** Where the Lord Advocate decides not to apply for an FAI, written reasons for the decision should be provided to relatives of the deceased when requested by them (paragraph 5.11).

This recommendation is already in effect as the COPFS already does this in its decision letters. In addition to issuing a decision letter the COPFS will often meet with relatives to explain the position face to face.

**The Crown Office and Procurator Fiscal Service (COPFS)**

**Recommendation 12:** There should be a central FAI team, led by an Advocate depute or a senior prosecutor, for ensuring that the knowledge, skills and experience of procurators fiscal for FAI work are adequate; for overseeing the training of procurators fiscal in such work; and for the setting of performance standards (paragraph 3.44).

The COPFS have carried out a robust review of the FAI system with a view to implementing many of the recommendations in Lord Cullen’s report. The Scottish Fatalities Investigation Unit (SFIU) has been established and began operations in October 2010. The Unit is based in Glasgow.

The investigation of deaths will primarily remain with Procurator Fiscal areas. SFIU will provide the necessary links with Crown Counsel and the Law Officers and will also provide guidance based on experience elsewhere. The aim is for a consistent approach and to prevent death inquiries becoming protracted. For example, in a major fatality with multiple deaths SFIU will take the lead in the investigation working with the local area.

Within the provisions of the Coroners and Justice Act 2009 are arrangements for FAIs to be held into deaths of military service personnel abroad. The Act will amend the terms of Coroners legislation and the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to allow a Fatal Accident Inquiry to be carried out in Scotland where appropriate into deaths of service personnel abroad. When the legislation comes into force to deal with military deaths abroad, SFIU will investigate those deaths and conduct FAIs for relevant cases.
Recommendation 13: The central FAI team should also have the responsibility for overseeing progress from the outset in all cases for which an FAI is mandatory or is likely to be recommended for exercise of the Lord Advocate's discretion. The main functions of the team should be to (i) track cases and record their history, with details such as the dates of death, the report to the procurator fiscal, any report by a specialist agency, any prosecution, the completion of investigation, and any report to Crown Office; (ii) ensure that the investigation and preparation by the procurator fiscal of each case is supported by adequate resources (including advice, staff and expertise), supplementing them where appropriate; (iii) give guidance to the procurator fiscal in the light of previous FAIs, including as to the choice of expert witnesses; and (iv) ensure that preparation proceeds as expeditiously as possible (paragraph 6.15).

The SFIU have begun building a database of cases. The database differentiates between mandatory and discretionary FAIs. Relevant dates and detail are included and case related material can also be accessed by cross-reference to the COPFS database on which documents are stored.

SFIU is confident they have the right mixture of expertise to deliver a first class service and can call on assistance from colleagues within the COPFS as necessary and if required. The Unit is working to ensure that cases that have been awaiting resolution for sometime are given priority in order to expedite the process. New timescales have been developed and in future, SFIU aim to have cases reported in an abbreviated form within six weeks of receipt.

SFIU have also begun compiling details of suitable experts to whom Procurators Fiscal can be referred. They are also accessing other lists of experts held by others such as the Law Society for Scotland. The list of expert witnesses will be updated on a regular basis.

Recommendation 14: The central FAI team should also be responsible for maintaining statistics relating the different types of case, their progress and timing (paragraph 6.17).

See response to Recommendation 13. The SFIU database is for internal use and will collect details on all current FAIs and their progress.

Recommendation 15: One of the duties of the central FAI team should be to confirm that a contact point with the COPFS has been established and maintained (paragraph 6.56).

Contact will be maintained as the SFIU is a branch of the COPFS. This will ensure consistency and access to information on deaths.
Recommendation 16: (i) VIA officers should be trained in FAIs and that at least one officer should be a member of the proposed central FAI team, and liaise with the family and the local VIA officer; and (ii) VIA officers and procurators fiscal dealing with deaths should receive training on dealing with bereavement (paragraph 6.57).

There is not a requirement for a permanent VIA officer to be part of the SFIU team. VIA officers operate locally whereas the SFIU has national coverage. During investigation of deaths the SFIU will liaise closely with local VIA officers in each individual case.

Recommendation 17: The COPFS should review its application of resources and expertise in order to ensure that FAIs are held as promptly as possible after the death (paragraph 6.14).

SFIU is committed to investigating deaths more promptly without compromising thoroughness. The introduction of new timescales for reporting and the monitoring role of SFIU are designed to prevent undue delay. An investigation is an absolute prerequisite to FAI proceedings and the timing of an FAI must always be viewed in light of the investigation. The timing also depends in some cases on available court time and COPFS and SCS will be jointly responsible for ensuring that delays are minimised.

The Proceedings

Recommendation 18: In cases in which an FAI is mandatory, the procurator fiscal should be required to apply for an FAI at an early stage after the death, so that the sheriff, the relatives and other interested parties can be informed as to the state of investigation, the expected timescale for the FAI and any factors likely to affect progress (paragraph 6.22).

The Scottish Government agrees with this recommendation with the proviso that enough time is allocated to gathering the information required to determine whether an FAI will be held or not. Relatives should be kept informed of progress at regular intervals to avoid further stress to them.

Recommendation 19: A preliminary hearing should be held in every case, save where the sheriff, on cause shown, dispenses with it. Its purpose is to ensure that the FAI is effective in achieving the object of determining the circumstances, and doing so in a manner which is fair, expeditious and efficient (paragraph 6.29).

The Scottish Government agrees that engaging early with other parties is helpful and could establish how long the FAI is going to take. The recommendation is also consistent with the general thrust of the Civil Courts

Review, towards greater judicial management of business. We are therefore supportive of a greater and more consistent use of preliminary hearings, although we believe the detailed procedural requirements should be set out in procedural rules or rules of court rather than primary legislation. We will invite the Sheriff Court Rules Council to consider this alongside consideration of the changes needed to introduce the Gill reforms.

**Recommendation 20:** At the preliminary hearing the sheriff should fix the date for the commencement of the hearing of evidence, approve and settle the issues, and identify the extent to which any issues or matters are capable of being resolved (paragraph 6.30).

The Scottish Government agrees with this recommendation, in principle, although the detail will be a matter for the procedural rules or rules of court. The recommendation has the potential of increasing the length of the preliminary hearing, but also has the prospect of reducing the time taken in the FAI itself.

**Recommendation 21:** Prior to the preliminary hearing the procurator fiscal should circulate copies of the documents to which he or she intends to refer at the FAI, a list of the persons whom he or she intends to lead as witnesses, and copies of the reports and police statements made by them. Leaving aside police statements, the same should apply to the interested parties. At the preliminary hearing the sheriff should deal with any questions relating to disclosure of, and access to, documentary evidence (paragraph 6.31).

The Government agrees with the general approach of early and detailed disclosure wherever possible although, as with earlier recommendations, the detail will be for procedural rules or rules of court.

**Recommendation 22:** The sheriff should be empowered, on cause shown and after hearing the procurator fiscal and the interested parties, to transfer the case to a different sheriff court in the same or a different sheriffdom (paragraph 6.32).

The Scottish Government agrees with this recommendation.

**Recommendation 23:** In regard to legal aid, relatives of the deceased should not have to justify the reasonableness of the granting of legal aid for their representation at the FAI and the Scottish Ministers should consider increasing the limit for legal aid in FAIs and the extent to which legal aid is available within that limit. Legal aid should, as a matter of course, be granted in any case where the participation of the relatives is necessary in order to comply with article 2 of the ECHR (paragraph 6.46).

The Scottish Government does not agree with this recommendation, and believes that existing statutory tests should continue to apply. While we regard it as important that relatives should be able to participate appropriately
in FAIs, we do not accept that this requires automatic legal representation in every case.

This view is reinforced by the fact that, in the current financial climate, it has been necessary to reduce overall legal aid expenditure significantly. Ministers are determined to do this in a way which maintains access to justice as far as possible, and do not believe that removing a test of reasonableness specifically for FAIs would contribute to this aim. All civil legal aid applications need to meet the statutory tests of probable cause and reasonableness.

The Scottish Legal Aid Board has published guidance explaining the current approach taken when assessing reasonableness in these applications.

Since it is for the Procurator Fiscal to investigate the circumstances of a sudden death, there must be a clear basis for a relative of the deceased requiring their own publicly funded legal representation. The basis of this approach is rooted in the function of the Inquiry itself, namely that it is a fact finding exercise, and not one which seeks to apportion blame or fault.

Notwithstanding, the reasonableness test is likely to be met if a relative can demonstrate that they have a discernible interest that is unlikely to be subject to investigation by the Procurator Fiscal, necessitating that they have their own legal representation.

Where a death occurs in legal custody, we accept that it would be generally reasonable for relatives of the deceased to have independent representation, given that the investigation is being conducted by an agent of the State.

In respect of financial limits, the government has already significantly extended eligibility by increasing the disposable income limit to £25,000 in 2009. It is estimated that this has increased the availability of civil legal aid to about 75% of the population, albeit in some cases with a contribution. Extending assistance to those of greater means would reduce the amount available to those who have less.

Turning to legal aid in respect of relatives under article 2 of the European Convention on Human Rights (ECHR)\(^\text{14}\), when an Inquiry is investigating a potentially unlawful killing by agents of the State, or as outlined above, a death in legal custody, then we accept that it will be generally appropriate for relatives of the deceased to secure independent legal representation. Accordingly, the tests of probable cause and reasonableness should be easy for an applicant to satisfy.

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**Recommendation 24:** The recognised participants who have the right to appear and adduce evidence at an FAI should be extended to include civil partners and cohabitants (paragraph 3.50).

The Scottish Government agrees with this recommendation.

**Recommendation 25:** Rule 10 of the Rules should be replaced by a general provision for the receipt in evidence at an FAI of a written statement (including an affidavit) admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988\(^ {15}\), and that such provision should be the same as that in an ordinary cause in the sheriff court (paragraph 7.10).

The Scottish Government agrees in principle with this recommendation which will be for the Lord President and Rules Council to consider together with the Government.

**Recommendation 26:** There should be a comprehensive self-contained set of rules for FAIs (paragraph 7.22).

The Scottish Government agrees in principle with this recommendation. Currently, there are rules made by Government under section 7 of the 1976 Act, together with a provision at section 4(7) that the rules ‘shall be as nearly as possible those applicable in an ordinary civil cause brought before the sheriff sitting alone’. The ordinary cause court rules are made by the Court of Session by act of sederunt, following recommendations by the Sheriff Court Rules Council. In order to maintain a comprehensive set of rules which is consistent where appropriate with other procedures, we believe the rule making power for FAIs should operate under the same procedure as other court rules, and should be regulated by the Court of Session. We will consider this further with the Lord President and Rules Council.

**Recommendation 27:** The sheriff should have power to order that such part of the FAI as he or she considers appropriate should not be open to the public (paragraph 7.24).

There already exists a common law power to close the court. There is also the option to use a section 11 contempt of court order\(^ {16}\). The Scottish Government agrees that the legislation should be amended to give a specific express power to the sheriff in the case of an FAI.


Determinations

**Recommendation 28:** Sheriffs should use a standard form of determination, incorporating, according to the nature of the case, findings in fact, findings related to section 6(1) of the Act, a note on the evidence and issues, and such recommendations, if any as he or she considers appropriate (paragraph 8.7).

The Scottish Government agrees with this recommendation. As Lord Cullen observes (see paras 8.5 and 8.6) the form of interlocutor issued by sheriffs following proof in ordinary civil matters offers a potential structure that might be adopted for FAIs and we will consider with the judiciary how this could be taken forward.

**Recommendation 29:** Consideration should be given to the clarifying of the meaning of section 6(1)(c), if necessary by amendment to the legislation (paragraph 8.13).

The Scottish Government agrees with this recommendation and will consider revising the legislation to make section 6(1)(c) clearer.

**Recommendation 30:** Where, in the light of the circumstances of the death, the sheriff is satisfied of the need to take action to prevent other deaths, the sheriff should have the power to make recommendations for this purpose to (i) a party to the FAI; and (ii) any body concerned with safety which appears to the sheriff to have an interest in those circumstances (paragraph 3.32).

The Scottish Government agrees with this recommendation.

**Recommendation 31:** Subject to such redaction as may be appropriate, the Scottish Courts website should contain all determinations; and that the website should be fully searchable (paragraph 8.21).

The Scottish Government agrees in principle with this recommendation. The SCS website has a searchable database of judicial decisions which includes those FAI determinations which are put forward for reporting by sheriffs. In principle, this could be extended to all FAI determinations. SCS would need to develop additional search facilities and increased data storage capacity, and in order to maximise the efficient use of resources, this will be taken forward as part of the wider development of the SCS website, and subject to any future constraints on capital funding.
Recommendation 32: When a recommendation is made by a sheriff, the entity or body to whom it is directed should be under a duty to make a written response to an appropriate department of the Scottish Government within a period set by the sheriff, stating whether and to what extent it has implemented, or intends to implement, the recommendation, or, if not, for what reason or reasons. Where implementation is stated as intended, there should be a further duty thereafter to confirm its implementation (paragraph 8.25).

The Scottish Government agrees that lessons from FAIs should be learnt and acted upon, but does not believe that this recommendation as drafted is the best way to achieve this aim. We feel that this approach might prove to be overly bureaucratic, and would not always have the desired impact. In particular, the Scottish Government is not best placed to receive reports from and monitor the activities of bodies whose functions relate to legislation reserved to Westminster. We believe that Ministers should have a duty to disseminate FAI findings to relevant public authorities for consideration and action as necessary, and intend that this should form part of legislation to implement reforms to the 1976 Act.

Recommendation 33: The Scottish Government webpage should be revived and upgraded. It should show, under reference to the sheriff's determination, the text of the recommendation, to whom it was directed and its reasons, with a link to the full text of the determination on the Scottish Courts website. It should also show the text and date of the response or responses. The relevant department should also be responsible for publishing an annual report of the recommendations and the responses to them. The report should also be laid before the Scottish Parliament and the United Kingdom Parliament (paragraph 8.26).

The Scottish Government does not agree with this recommendation. We consider the findings are better disseminated through the SCS website, and are not persuaded of the value of an annual report covering the diverse range of matters which may be considered by FAIs in any particular year.

Recommendation 34: When issuing the determination the sheriff should have power to direct to whom a copy of the determination should be sent for the dissemination of the lessons of the FAI (paragraph 8.28).

The Scottish Government agrees with this recommendation.
Fresh Proceedings

**Recommendation 35:** It should be open to the Lord Advocate to apply for fresh FAI proceedings in regard to a fatality where he or she is satisfied that (a) as to the existence of evidence (i) which was not reasonably available at the time of the original FAI; and (ii) which, if available and accepted, would have been likely to affect the determination of the sheriff in regard to one or more of paragraphs (a) to (e) of section 6(1) of the Act; and (b) it is in the public interest that such evidence should be considered in such proceedings (paragraph 9.8).

The Scottish Government agrees with this recommendation.

**Recommendation 36:** The fresh proceedings should take the form of a re-opening of the original FAI, save where the sheriff is satisfied that it is more appropriate that there should a further FAI (paragraph 9.9).

The Scottish Government agrees with this recommendation.