

ANNEX C

Consultation Questionnaire

Structure and chronology

Consultation Question 1: Do you have any comments about the approach taken to the structure and layout of the rules?

The rules are clearly set out and easy to follow.

Part 2 – Overview

The inquiry principles

Consultation Question 2: do you have any comment on the content of the inquiry principles?

We consider that the inquiry principles set out simply reflect the manner in which inquiries are generally dealt with. This perhaps raises questions as to whether it is necessary to have these incorporated into legislation. It may, however, be helpful to participants and family members of the deceased to have these clearly set out.

Representation and judicial continuity

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?

Do you foresee any practical difficulties with this?

We consider that it would be helpful from a case management perspective for the same sheriff to deal with the inquiry throughout. This may, however, require some additional administrative arrangements being made by court staff.

The inquiry management powers

Consultation question 4: are you content with the approach to the sheriff's inquiry management powers? Are there specific illustrative powers which you think should be included in addition to those already listed?

Yes.

Part 3 – pre-inquiry procedure

The first order and notices

Consultation question 5: Is there any further information which you think would be useful to include in the form of first notice?

No. This appears to be comprehensive.

Consultation question 6: Do you think that imposing a deadline of 14 days within which the sheriff must make the first order is reasonable and practical?

Yes

Consultation question 7: should we provide a timeframe within which the preliminary hearing and inquiry must start after the first order? If so, what should those timescales be? Do you think that the 28 day timescales provided for in the draft are achievable?

We consider that a timeframe should be provided in order to ensure uniformity. The 28 day timescale appears achievable, although there will require to be continued preliminary hearings in inquiries which are more complex in nature.

Preliminary hearings

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

We consider that 3 days prior to the hearing would be sufficient to allow preparation to be carried out by the Sheriff in advance of the hearing and for fair notice to be given to all parties.

Consultation question 9 – are there any other matters you consider should be dealt with at the preliminary hearing?

No.

Part 4 – evidence

Agreeing evidence

Consultation question 10: are you content with the provisions on agreement of evidence?

Yes. These appear to be sensible provisions to reduce unnecessary court time.

Consultation question 11: with regard to the lodging of witness statements, what do you think the default position should be? Should the default position be that a witnesses statement should be lodged for every witness who is to give evidence at an inquiry, or should the converse presumption apply?

We consider that the default position should apply but that agents should be encouraged to consider the use of written witness statements, particularly for witnesses whose evidence is not particularly controversial.

Expert evidence

Consultation question 12: are you content with the provisions on expert witnesses?

Yes, although we consider that the word “must” in Rule 4.15 (1) should be replaced by “may.”

Consultation question 13: do you have any comments on how the provisions on single joint experts would work in practice?

Consultation question 14: do you have any comments on how the provisions on concurrent expert evidence would work in practice?

We are conscious of the fact that it may be difficult in practical terms for experts to give evidence concurrently. It may be helpful if provision could be made for experts to give evidence by way of video link.

Part 5 – the inquiry

Consultation question 15: do you agree with the approach to Part 5? If not, please provide comments.

This allows a great deal of flexibility. It does, however, appear to be so flexible that it could well lead to uncertainty. It may be helpful for provision to be made for an order or note to be issued to all parties in advance of the inquiry which sets out the general procedure to be followed. The rule appears so general in its terms that it is almost redundant.

Part 6 – the sheriff’s determination

Consultation question 16: do you have any comments or suggestions regarding the sheriff’s style determination, Form 6.1?

No

Schedule 3 – forms

Consultation question 17: do you have any comments on the content of any of the forms?

These seem clear.

Schedules 1, 2, 4, 5, 6

Consultation question 18: do you have any comments on the technical provisions contained in schedules 1, 2, 4, 5 or 6?

No