

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill [AS INTRODUCED]

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**Inquiries into Fatal Accidents and Sudden
Deaths etc. (Scotland) Bill**
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the holding of public inquiries in respect of certain deaths.

Inquiries into certain deaths

1 Inquiries under this Act

- 5 (1) Where an inquiry is to be held into the death of a person in accordance with sections 2 to 7, the procurator fiscal must—
- (a) investigate the circumstances of the death, and
 - (b) arrange for the inquiry to be held.
- (2) An inquiry is to be conducted by a sheriff.
- 10 (3) The purpose of an inquiry is to—
- (a) establish the circumstances of the death, and
 - (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances.
- (4) But it is not the purpose of an inquiry to establish civil or criminal liability.
- 15 (5) In this Act, unless the context requires otherwise—
- (a) “inquiry” means an inquiry held, or to be held, under this Act,
 - (b) references to a “sheriff” in relation to an inquiry are to a sheriff of the sheriffdom in which the inquiry is, or is to be, held.

Inquiries into deaths occurring in Scotland

20 **2 Mandatory inquiries**

- (1) An inquiry is to be held into the death of a person which—
- (a) occurred in Scotland, and
 - (b) is within subsection (3) or (4).

- (2) Subsection (1) is subject to section 3.
- (3) The death of a person is within this subsection if the death was the result of an accident which occurred—
- (a) in Scotland, and
- (b) while the person was acting in the course of the person’s employment or occupation.
- (4) The death of a person is within this subsection if, at the time of death, the person was—
- (a) in legal custody, or
- (b) a child required to be kept or detained in secure accommodation.
- (5) For the purposes of subsection (4)(a), a person is in legal custody if the person is—
- (a) required to be imprisoned or detained in a penal institution,
- (b) in police custody, within the meaning of section 56 of the Criminal Justice (Scotland) Act 2015,
- (c) otherwise held in custody on court premises,
- (d) required to be detained in service custody premises.
- (6) For the purposes of subsections (4)(b) and (5)(a) and (d), it does not matter whether the death occurred in secure accommodation, a penal institution or, as the case may be, service custody premises.
- (7) In this section—
- “penal institution” means any—
- (a) prison (including a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989), other than a naval, military or air force prison,
- (b) remand centre, within the meaning of section 19(1)(a) of that Act,
- (c) young offenders institution, within the meaning of section 19(1)(b) of that Act,
- “secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,
- “service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.

3 Mandatory inquiries: exceptions

- (1) The Lord Advocate may decide that an inquiry is not to be held into the death of a person within section 2(3) or (4) if satisfied that the circumstances of the death have been sufficiently established during the course of proceedings of a kind mentioned in subsection (2).
- (2) The proceedings referred to in subsection (1) are—
- (a) criminal proceedings,
- (b) an inquiry under section 17(2) of the Gas Act 1965 (accidents),

- (c) an inquiry under section 14(2A) of the Health and Safety at Work etc. Act 1974 (power of the Health and Safety Executive to direct investigations and inquiries),
- (d) an inquiry under section 1 of the Inquiries Act 2005 (power to establish inquiry),
- (e) an inquiry under section 85(1) of the Energy Act 2013 (inquiries).

- 5 (3) But subsection (1) does not apply if—
- (a) at the time of death, the person was required to be detained in service custody premises, and
 - (b) the proceedings referred to in that subsection are an inquiry under section 1 of the Inquiries Act 2005.

10 **4 Discretionary inquiries**

- (1) An inquiry is to be held into the death of a person which occurred in Scotland if the Lord Advocate—
- (a) considers that the death—
 - (i) was sudden, suspicious or unexplained, or
 - 15 (ii) occurred in circumstances giving rise to serious public concern, and
 - (b) decides that it is in the public interest for an inquiry to be held into the circumstances of the death.
- (2) Subsection (1) does not apply to a death within section 2(3) or (4).

5 Certain deaths and accidents to be treated as occurring in Scotland

- 20 (1) For the purposes of sections 2 and 4, the death of a person, or an accident, is to be treated as having occurred in Scotland if it occurred—
- (a) in connection with an activity falling within section 11(2) of the Petroleum Act 1998 (application of civil law to offshore activities), and
 - (b) in a relevant area.
- 25 (2) In subsection (1)(b), “relevant area” means an area in respect of which it is provided by Order in Council under section 11(1) of the Petroleum Act 1998 that questions arising out of acts or omissions taking place in the area are to be determined in accordance with the law in force in Scotland.

Inquiries into deaths occurring abroad

30 **6 Inquiries into deaths occurring abroad: general**

- (1) Subsection (3) applies to the death of a person if—
- (a) the death occurred outwith the United Kingdom,
 - (b) at the time of death, the person was ordinarily resident in Scotland, and
 - (c) the person’s body has been brought to Scotland.
- 35 (2) But that subsection does not apply to the death of a person within section 12(2) or (3) of the Coroners and Justice Act 2009 (investigation in Scotland of deaths of service personnel abroad).

(3) An inquiry is to be held into a death to which this subsection applies if the Lord Advocate—

(a) considers that the death—

(i) was sudden, suspicious or unexplained, or

(ii) occurred in circumstances giving rise to serious public concern,

(b) considers that the circumstances of the death have not been sufficiently established in the course of an investigation in relation to the death,

(c) considers that there is a real prospect that those circumstances would be sufficiently established in an inquiry, and

(d) decides that it is in the public interest for an inquiry to be held into the circumstances of the death.

7 Inquiries into deaths occurring abroad: service personnel

(1) An inquiry is to be held into the death of a person if—

(a) the Lord Advocate is notified in relation to the death under section 12(4) or (5) of the Coroners and Justice Act 2009 (investigation in Scotland of deaths of service personnel abroad),

(b) the death is within subsection (2) or (3), and

(c) the Lord Advocate—

(i) decides that it is in the public interest for an inquiry to be held into the circumstances of the death, and

(ii) does not reverse that decision.

(2) The death of a person is within this subsection if the person was, at the time of death, in custody in circumstances analogous to legal custody (as construed by reference to section 2(5)).

(3) The death of a person is within this subsection if the Lord Advocate considers that the death—

(a) was sudden, suspicious or unexplained, or

(b) occurred in circumstances giving rise to serious public concern.

(4) But this section does not apply to a death within subsection (2) if the Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of any criminal proceedings against any person in respect of the death.

Reasons where inquiry not held

8 Reasons for decision not to hold an inquiry

Where it is decided that an inquiry is not to be held into the death of a person (“A”), the Lord Advocate must give reasons in writing if requested to do so by—

(a) A’s spouse or civil partner at the time of A’s death,

(b) a person living with A as if married to A at the time of A’s death, or

(c) A’s nearest known relative if, at the time of A’s death, A—

(i) did not have a spouse or civil partner, and

- (ii) was not living with a person as if married to the person.

Procurator fiscal's investigation

9 Citation of witnesses for precognition

- 5 (1) The procurator fiscal may cite a person to attend for precognition in connection with an investigation under section 1(1)(a).
- (2) This section is sufficient warrant for such citation.
- (3) Subsection (4) applies where a person cited under subsection (1)—
 - 10 (a) having been given reasonable notice in the citation, and without reasonable excuse, fails to attend for precognition at the time and place mentioned in the citation, or
 - (b) does so attend but refuses to give information which is—
 - (i) within the person's knowledge, and
 - (ii) relevant to the investigation.
- 15 (4) The sheriff may, on the application of the procurator fiscal, make an order requiring the person to attend for precognition or, as the case may be, give the information at a time and place specified in the order.
- (5) A person who fails to comply with an order under subsection (4) commits an offence.
- 20 (6) A person who commits an offence under subsection (5) is liable on summary conviction to imprisonment for a term not exceeding 21 days or a fine not exceeding level 3 on the standard scale (or both).

Participants

10 Persons who may participate in the inquiry

- 25 (1) The following persons may participate in inquiry proceedings in relation to the death of a person ("A")—
 - (a) A's spouse or civil partner at the time of A's death,
 - (b) a person living with A as if married to A at the time of A's death,
 - (c) A's nearest known relative if, at the time of A's death, A—
 - (i) did not have a spouse or civil partner, and
 - (ii) was not living with a person as if married to the person,
 - 30 (d) where the death is within section 2(3)—
 - (i) A's employer, if A was an employee,
 - (ii) an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 (appointment of inspectors),
 - (e) any other person who the sheriff is satisfied has an interest in the inquiry.
- 35 (2) In this Act—
 - (a) "inquiry proceedings" means any proceedings under this Act in relation to an inquiry,

- (b) references to a participant in an inquiry are references to a person who participates in the inquiry proceedings by virtue of subsection (1).

Location

11 Places at which inquiries may be held

- 5 (1) The Scottish Ministers may by regulations designate places at which a sheriff court may be held for the purposes of this Act (in addition to the places designated by virtue of the Courts Reform (Scotland) Act 2014 for the holding of sheriff courts).
- (2) The Scottish Ministers may make regulations under subsection (1) only following the submission of a proposal under subsection (3).
- 10 (3) The Scottish Courts and Tribunals Service (“the SCTS”) may, with the agreement of the Lord President of the Court of Session, submit a proposal to the Scottish Ministers for the making of regulations under subsection (1).
- (4) Before submitting a proposal to the Scottish Ministers, the SCTS must consult such persons as it considers appropriate.
- 15 (5) If, following the submission of a proposal, the Scottish Ministers decide to make regulations, they must have regard to the proposal in deciding what provision to make in the regulations.
- (6) The Scottish Ministers may make regulations under subsection (1) only with the consent of—
- 20 (a) the Lord President, and
- (b) the SCTS.
- (7) Regulations under subsection (1)—
- (a) may make transitional, transitory or saving provision,
- (b) are subject to the affirmative procedure.

12 Jurisdiction in relation to inquiries

- 25 (1) Inquiry proceedings may be held in a sheriffdom whether or not there is a connection between the death, or any accident resulting in the death, to which the inquiry relates and the sheriffdom, and a sheriff of the sheriffdom accordingly has jurisdiction in relation to the proceedings.
- 30 (2) The Lord Advocate is, after consulting the Scottish Courts and Tribunals Service, to choose the sheriffdom in which proceedings are to be held.
- (3) But the sheriff may make an order transferring the proceedings to a sheriff of another sheriffdom.
- (4) The sheriff may make an order under subsection (3) only—
- 35 (a) after giving the procurator fiscal and the participants in the inquiry an opportunity to make representations about the proposed transfer, and
- (b) with the consent of—
- (i) the sheriff principal of the sheriffdom of which the sheriff is a sheriff, and
- (ii) the sheriff principal of the sheriffdom to which the sheriff proposes to transfer the proceedings.
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- (5) The sheriff may make such an order—
 - (a) on the sheriff's own initiative, or
 - (b) on the application of the procurator fiscal or a participant in the inquiry.

Inquiries into multiple deaths

5 **13 Inquiry into more than one death**

- (1) A single inquiry may be held into the deaths of more than one person if it appears to the Lord Advocate that the deaths occurred—
 - (a) as a result of the same accident, or
 - (b) otherwise in the same or similar circumstances.
- 10 (2) Where an inquiry is held in relation to the deaths of more than one person, references in this Act to the death to which, or person to whom, the inquiry relates are references to each death to which, or person to whom, the inquiry relates.

Pre-inquiry procedure

14 Initiating the inquiry

- 15 (1) Where an inquiry is to be held into the death of a person, the procurator fiscal must give the sheriff—
 - (a) notice that the inquiry is to be held,
 - (b) a brief account of the circumstances of the death so far as known to the procurator fiscal, and
 - 20 (c) any other information required by an act of sederunt under section 34(1).
- (2) On receiving notice under subsection (1)(a), the sheriff must make an order—
 - (a) fixing—
 - 25 (i) a date and place for the holding of a preliminary hearing in accordance with section 15 (if one is to be held), and
 - (ii) a date for the start of the inquiry and the place at which it is to be held, and
 - (b) granting warrant for the procurator fiscal and the participants in the inquiry to cite persons to attend and give evidence at the inquiry.
- (3) But the sheriff need not fix a date for the start of the inquiry (and the place at which it is to be held) in the order if—
 - 30 (a) a preliminary hearing is to be held, and
 - (b) the sheriff considers that it is not appropriate to fix the date before that hearing.
- (4) The sheriff may make an order varying a date or place fixed in an order under subsection (2).
- 35 (5) The sheriff must, when fixing a date for the start of the inquiry, have regard to the desirability of holding the inquiry as soon as is reasonably practicable.

15 Preliminary hearings

- (1) At least one preliminary hearing is to be held before the start of an inquiry unless the sheriff dispenses with that requirement in accordance with provision made in an act of sederunt under section 34(1).
- 5 (2) Subsection (3) applies where the sheriff dispenses with the requirement to hold a preliminary hearing.
- (3) The sheriff may subsequently make an order—
- (a) for the holding of such a hearing, and
 - (b) fixing the date and place for it to be held.
- 10 (4) Provision is to be made in an act of sederunt under section 34(1) about—
- (a) matters to be dealt with at a preliminary hearing under this Act,
 - (b) things that the procurator fiscal and the participants in the inquiry must do before such a hearing.

16 Notice of the inquiry

- 15 (1) After the sheriff makes an order under section 14(2) in relation to an inquiry, the procurator fiscal must give notice to the persons mentioned in subsection (2) of the following matters—
- (a) the fact that the inquiry is to be held, and
 - (b) if fixed in the order—
- 20 (i) the date and place for the holding of the preliminary hearing,
- (ii) the date for the start of the inquiry and the place at which it is to be held.
- (2) The persons referred to in subsection (1) are—
- (a) a person appearing to the procurator fiscal to be entitled to participate in the inquiry under section 10(1)(a) to (d), and
 - 25 (b) any other person specified, or in a category of persons specified, in an act of sederunt under section 34(1).
- (3) The procurator fiscal must also give public notice of the matters specified in subsection (1)(a) and (b).
- (4) Subsection (5) applies where the sheriff makes an order under section 14(4).
- 30 (5) The procurator fiscal must—
- (a) give notice to the persons mentioned in subsection (2) of the new date or, as the case may be, place fixed in the order, and
 - (b) give public notice of that fact.
- (6) Subsection (7) applies where the sheriff makes an order under section 15(3).
- 35 (7) The procurator fiscal must—
- (a) give notice to the persons mentioned in subsection (2) of the following matters—
- (i) the fact that a preliminary hearing is to be held, and
 - (ii) the date and place fixed for the holding of the hearing, and
- (b) give public notice of those matters.

17 Agreement of facts before an inquiry

- (1) Provision is to be made in an act of sederunt under section 34(1) about the agreement, by the procurator fiscal and the participants in an inquiry, of any facts of a kind mentioned in subsection (2) before the start of the inquiry.
- 5 (2) The facts referred to in subsection (1) are facts—
- (a) in relation to which the procurator fiscal or a participant intends to bring forward evidence at the inquiry, and
 - (b) which the procurator fiscal or, as the case may be, participant considers are unlikely to be disputed at the inquiry.

*The inquiry***18 The powers of the sheriff**

- (1) The sheriff has all such powers in relation to inquiry proceedings as a sheriff, under the law of Scotland, inherently possesses for the purposes of the discharge of the sheriff's jurisdiction and competence and giving full effect to the sheriff's decisions in civil proceedings.
- 15 (2) Subsection (1) is subject to—
- (a) the other provisions of this Act,
 - (b) provision made in an act of sederunt under section 34(1).

19 Evidence and witnesses

- 20 (1) At an inquiry—
- (a) the procurator fiscal must bring forward evidence relating to the circumstances of the death to which the inquiry relates,
 - (b) a participant in the inquiry may bring forward such evidence.
- (2) Without limiting subsection (1), the sheriff may require the procurator fiscal or a participant in the inquiry to bring forward evidence about any matter relating to the circumstances of the death.
- 25 (3) The rules of evidence which apply in relation to civil proceedings in the sheriff court (other than a simple procedure case) apply in relation to an inquiry.
- (4) Subsection (3) is subject to provision made in an act of sederunt under section 34(1).
- 30 (5) The examination of a person at an inquiry does not prevent criminal proceedings being taken against the person.
- (6) A person is not required at an inquiry to answer a question tending to show that the person is guilty of an offence.
- (7) In subsection (3), "simple procedure case" has the same meaning as in section 72(9) of the Courts Reform (Scotland) Act 2014.
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20 Inquiry to be conducted in public

- (1) Inquiry proceedings are to be conducted in public.

- (2) But the sheriff may order that such proceedings (or any part of them) are to be conducted in private.
- (3) The sheriff may make an order under subsection (2)—
- (a) on the sheriff’s own initiative, or
- 5 (b) on the application of the procurator fiscal or a participant in the inquiry.

21 Publishing restrictions in relation to children

- (1) Subsection (2) applies where a child is involved in an inquiry.
- (2) The sheriff may order that no person may publish any material by which the child may be identified in connection with the inquiry.
- 10 (3) Such material includes (but is not limited to)—
- (a) the child’s name or address,
- (b) the name of a school attended by the child,
- (c) a picture of the child.
- (4) The sheriff may make an order under subsection (2)—
- 15 (a) on the sheriff’s own initiative, or
- (b) on the application of the procurator fiscal or a participant in the inquiry.
- (5) A person who fails to comply with an order under subsection (2) commits an offence.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- 20 (7) It is a defence for a person charged with an offence under subsection (5) to show that the person did not know or have reason to believe that the publication of the material would identify the child in connection with the inquiry.
- (8) In this section—
- 25 “material” means anything that is capable of being read, looked at, watched or listened to, either directly or after conversion from data stored in another form,
- “publish” includes in particular—
- (a) to publish in a programme service, as defined by section 201 of the Broadcasting Act 1990,
- (b) to cause to be published.

22 Offences by bodies corporate etc.

- (1) Subsection (2) applies where—
- (a) an offence under section 21(5) has been committed by—
- (i) a body corporate,
- (ii) a Scottish partnership, or
- 35 (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

- (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or, as the case may be, association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In subsection (1)(b), “relevant individual” means—
 - (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a limited liability partnership, a member,
 - (c) in relation to a Scottish partnership, a partner,
 - (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

23 Assessors

- (1) The sheriff may appoint a person (an “assessor”) to assist the sheriff in an inquiry.
- (2) The sheriff may appoint a person as an assessor if the sheriff considers that the person has knowledge and expertise in matters that are relevant to the inquiry.
- (3) The sheriff may make an appointment under subsection (1)—
 - (a) on the sheriff’s own initiative, or
 - (b) on the application of the procurator fiscal or a participant in the inquiry.

24 Expenses

The sheriff may not make any award of expenses in relation to inquiry proceedings.

Findings and recommendations

25 The sheriff’s determination

- (1) As soon as possible after the conclusion of the evidence and submissions in an inquiry, the sheriff must make a determination setting out—
 - (a) in relation to the death to which the inquiry relates, the sheriff’s findings as to the circumstances mentioned in subsection (2), and
 - (b) such recommendations (if any) as to any of the matters mentioned in subsection (4) as the sheriff considers appropriate.
- (2) The circumstances referred to in subsection (1)(a) are—
 - (a) when and where the death occurred,
 - (b) when and where any accident resulting in the death occurred,
 - (c) the cause or causes of the death,
 - (d) the cause or causes of any accident resulting in the death,
 - (e) any precautions which—

- (i) could reasonably have been taken, and
 - (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided,
 - (f) any defects in any system of working which contributed to the death or any accident resulting in the death,
 - (g) any other facts which are relevant to the circumstances of the death.
- (3) For the purposes of subsection (2)(e) and (f), it does not matter whether it was foreseeable before the death or accident that the death or accident might occur—
- (a) if the precautions were not taken, or
 - (b) as the case may be, as a result of the defects.
- (4) The matters referred to in subsection (1)(b) are—
- (a) the taking of reasonable precautions,
 - (b) the making of improvements to any system of working,
 - (c) the introduction of a system of working,
 - (d) the taking of any other steps,
- which might realistically prevent other deaths in similar circumstances.
- (5) A recommendation under subsection (1)(b) may (but need not) be addressed to—
- (a) a participant in the inquiry,
 - (b) a body or office-holder appearing to the sheriff to have an interest in the prevention of deaths in similar circumstances.
- (6) A determination is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature.

26 Dissemination of the sheriff's determination

- (1) The Scottish Courts and Tribunals Service (“the SCTS”) must—
- (a) publish, in such manner as it considers appropriate, each determination made under section 25(1),
 - (b) give a copy of each such determination to—
 - (i) the Lord Advocate,
 - (ii) each participant in the inquiry,
 - (iii) each person to whom a recommendation made in the determination is addressed, and
 - (iv) any other person who the sheriff considers has an interest in a recommendation made in the determination.
- (2) The SCTS must, on request, give the Scottish Ministers, a Minister of the Crown, a department of the Government of the United Kingdom or the Health and Safety Executive a copy of—
- (a) a determination made under section 25(1),
 - (b) the notice given under section 14(1) in relation to the inquiry to which the determination relates,

- (c) any transcript of the evidence at the inquiry,
 - (d) any report or documentary production used in the inquiry.
- (3) The SCTS must, on payment of the specified fee, give any other person a copy of —
- (a) a determination made under section 25(1),
 - (b) any transcript of the evidence at an inquiry, if the person—
 - (i) makes a request for it within the specified period, and
 - (ii) has an interest in the inquiry.
- (4) In subsection (3), “specified” means specified in an act of sederunt under section 34(1).
- (5) The sheriff may decide in accordance with provision made in an act of sederunt under section 34(1) that part of a determination—
- (a) is not to be given to a person under this section,
 - (b) is to be withheld from publication under this section.
- (6) After the sheriff has made a determination under section 25(1), the procurator fiscal must give the following information to the Registrar General of Births, Deaths and Marriages for Scotland—
- (a) the name and last known address of the person to whose death the determination relates, and
 - (b) the date, place and cause of the death.

27 Compliance with sheriff’s recommendations

- (1) A person to whom a recommendation under section 25(1)(b) is addressed—
- (a) must, if the person was a participant in the inquiry to which the recommendation relates, give the Scottish Courts and Tribunals Service (“the SCTS”) a response in writing,
 - (b) may do so in any other case.
- (2) A response under subsection (1) must set out—
- (a) details of what the respondent has done or proposes to do in response to the recommendation, or
 - (b) if the respondent has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.
- (3) A response under subsection (1)(a) must be given to the SCTS within the period of 8 weeks beginning with the day on which the respondent receives a copy of the determination in which the recommendation is made.
- (4) A person who gives a response to the SCTS under subsection (1) may, at the same time, make representations to the SCTS as to the withholding of part of the response from publication under subsection (5).
- (5) The SCTS must, after considering any representations made under subsection (4), publish, in such manner as it considers appropriate—
- (a) a response, or part of a response, given in accordance with subsection (1),
 - (b) if no response is given in accordance with subsection (1)(a) by the end of the 8 week period mentioned in subsection (3), notice of that fact.

*Further inquiry proceedings***28 Circumstances in which there may be further proceedings**

- (1) Where an inquiry into the death of a person has ended, further inquiry proceedings may be held in relation to the death only in accordance with subsection (2).
- 5 (2) Further inquiry proceedings are to be held in relation to the death if—
- (a) there is new evidence in relation to the circumstances of the death, and
- (b) the Lord Advocate—
- 10 (i) considers that it is highly likely that a finding or recommendation set out in the determination would have been materially different if the evidence had been brought forward at the inquiry, and
- (ii) decides that it is in the public interest for further inquiry proceedings to be held in relation to the circumstances of the death.
- (3) For the purposes of subsection (2)(a), “new evidence” is evidence which was not available, and could not with the exercise of reasonable diligence have been made available, at the inquiry.
- 15 (4) For the purposes of subsection (1), an inquiry ends when the sheriff makes a determination in the inquiry.
- (5) In this section and sections 29 and 30, references to the holding of further inquiry proceedings in relation to a death are references to—
- 20 (a) the re-opening and continuation of an inquiry into the death, or
- (b) the holding of a fresh inquiry into the death.

29 Precognition of witnesses

- (1) Subsection (2) applies where the Lord Advocate is considering whether further inquiry proceedings should be held in relation to the death of a person.
- 25 (2) The procurator fiscal may cite a person to attend for precognition in connection with that consideration.
- (3) This section is sufficient warrant for such citation.
- (4) Subsection (5) applies where a person cited under subsection (2)—
- 30 (a) having been given reasonable notice in the citation, and without reasonable excuse, fails to attend for precognition at the time and place mentioned in the citation, or
- (b) does so attend but refuses to give information which is—
- (i) within the person’s knowledge, and
- (ii) relevant to the Lord Advocate’s consideration.
- 35 (5) The sheriff may, on the application of the procurator fiscal, make an order requiring the person to attend for precognition or, as the case may be, give the information at a time and place specified in the order.
- (6) A person who fails to comply with an order under subsection (5) commits an offence.

- (7) A person who commits an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 21 days or a fine not exceeding level 3 on the standard scale or both.
- (8) In this section and section 30, references to the sheriff are references to a sheriff of the sheriffdom in which the inquiry into the person's death was held.

30 Initiating further proceedings

- (1) Where further inquiry proceedings are to be held in relation to the death of a person in accordance with section 28(2), the procurator fiscal must give the sheriff—
- (a) notice that such proceedings are to be held,
 - (b) a copy of the determination made in relation to the death (“the original determination”),
 - (c) a brief account of the nature of the new evidence mentioned in section 28(2)(a), and
 - (d) any other information required by an act of sederunt under section 34(1).
- (2) On receiving notice under subsection (1)(a), the sheriff must make an order—
- (a) setting aside the original determination, and
 - (b) either—
 - (i) re-opening the inquiry into the death, or
 - (ii) requiring a fresh inquiry to be held into the death.

31 Re-opened inquiries

- (1) Sections 14 to 17 apply in relation to a re-opened inquiry into the death of a person as they apply in relation to any other inquiry, subject to subsections (2) to (4).
- (2) The sheriff must, when making the order under section 30(2) re-opening the inquiry, also make an order under section 14(2) in relation to the re-opened inquiry (and section 14(1) (which requires the procurator fiscal to notify the sheriff that an inquiry is to be held) does not apply).
- (3) The procurator fiscal must give notice of the re-opened inquiry under section 16(1), in addition to the persons mentioned in section 16(2), to any person not mentioned in that section—
- (a) who was a participant in the original inquiry proceedings, or
 - (b) to whom a recommendation in the determination in those proceedings was addressed by virtue of section 25(5)(b).
- (4) The notice required by section 16(1) and (3) must include notice of—
- (a) the fact that the inquiry has been re-opened (and section 16(1)(a) does not apply), and
 - (b) the matters to which the new evidence relates.
- (5) Evidence may be brought forward at a re-opened inquiry only if it relates to a matter to which the new evidence relates.
- (6) But the sheriff may—

- (a) require evidence to be brought forward about any other matter relating to the circumstances of the death, or
- (b) on the application of the procurator fiscal or a participant in the inquiry, allow such evidence to be brought forward.

5 (7) In this section—

“new evidence” means the new evidence mentioned in section 28(2)(a),

“original inquiry proceedings” means the part of an inquiry held before it is re-opened under section 30(2),

“re-opened inquiry” means the part of an inquiry held after it is so re-opened.

10 **32 Fresh inquiries**

(1) This section applies where the sheriff makes an order under section 30(2) setting aside the determination in an inquiry (“the original inquiry”) and requiring a fresh inquiry to be held.

15 (2) The sheriff must, when making the order, also make an order under section 14(2) in relation to the fresh inquiry (and section 14(1) (which requires the procurator fiscal to notify the sheriff that an inquiry is to be held) does not apply).

(3) The procurator fiscal must give notice of the fresh inquiry under section 16(1), in addition to the persons mentioned in section 16(2), to any person not mentioned in that section—

20 (a) who was a participant in the original inquiry, or

(b) to whom a recommendation in the determination in that inquiry was addressed by virtue of section 25(5)(b).

(4) The fresh inquiry is to be held in the sheriffdom in which the original inquiry was held (and section 12(2) (which requires the Lord Advocate to choose where the inquiry is to be held) does not apply).

25 (5) Subsection (4) is subject to section 12(3).

33 Further inquiry proceedings: compliance with recommendations

(1) This section applies where—

30 (a) a determination (“the original determination”) made in an inquiry into the death of a person has been set aside under section 30(2)(a), and

(b) the sheriff makes a determination (“the new determination”) in the re-opened inquiry or, as the case may be, the fresh inquiry into the death.

(2) Section 27(1) does not apply in relation to a person to whom a recommendation is addressed in the new determination if a recommendation in the same terms was addressed to the person in the original determination.

35 (3) Subsection (4) applies where—

(a) a recommendation was addressed to a person in the original determination, but

(b) a recommendation in the same terms is not addressed to the person in the new determination.

40 (4) The Scottish Courts and Tribunals Service must withdraw from publication—

- (a) a response to the recommendation published under section 27(5)(a), or
- (b) a notice published under section 27(5)(b) in relation to the recommendation.

Inquiry procedure rules

34 Power to regulate procedure etc.

- 5 (1) The Court of Session may by act of sederunt make provision for or about—
- (a) the practice and procedure to be followed in inquiry proceedings,
 - (b) any matter incidental or ancillary to an inquiry.
- (2) Without limiting the generality of subsection (1), the power in that subsection includes power to make provision for or about—
- 10 (a) the giving of notice under section 16,
- (b) the conduct and management of inquiry proceedings, including the use of technology,
- (c) the form of any document to be used in, or in connection with, inquiry proceedings,
- 15 (d) the process by which a person becomes a participant in an inquiry,
- (e) the representation of the procurator fiscal and participants in inquiry proceedings, including representation of participants by persons who—
- (i) are neither solicitors nor advocates, or
 - (ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
- 20 (f) witnesses and evidence, including modifying the rules of evidence as they apply to an inquiry,
- (g) action to be taken by the procurator fiscal and the participants before the start of an inquiry or a re-opened inquiry,
- 25 (h) the fees payable to solicitors and advocates in relation to inquiry proceedings,
- (i) the expenses payable to persons attending inquiry proceedings,
- (j) the appointment of assessors under section 23(1) (including their functions and the terms on which they may be appointed),
- 30 (k) the giving and publication of responses under section 27,
- (l) such other matters as the Court thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to inquiry proceedings or matters incidental or ancillary to such proceedings.
- 35 (3) An act of sederunt under subsection (1) may make—
- (a) incidental, supplemental, consequential, transitional, transitory or saving provision,
 - (b) provision amending, repealing, or revoking any enactment (including any provision of this Act) relating to matters with respect to which an act of sederunt may be made,
- 40

- (c) different provision for different purposes.
- (4) Before making an act of sederunt under subsection (1) with respect to any matter, the Court of Session must—
- (a) consult the Scottish Civil Justice Council, and
- 5 (b) take into consideration any views expressed by the Council with respect to that matter.
- (5) Subsection (4) does not apply in relation to an act of sederunt that embodies, with or without modifications, draft rules submitted by the Scottish Civil Justice Council to the Court of Session.
- 10 (6) Schedule 1 makes further provision (including transitional provision) in relation to the regulation of the practice and procedure to be followed in inquiry proceedings.

Specialist sheriffs and summary sheriffs

35 Judicial specialisation in inquiries

- 15 (1) The sheriff principal of a sheriffdom may designate one or more sheriffs or summary sheriffs of that sheriffdom as specialists in inquiries for the purposes of this Act.
- (2) The sheriff principal may at any time withdraw a designation made under subsection (1).
- (3) The Lord President of the Court of Session may designate one or more part-time sheriffs or part-time summary sheriffs as specialists in inquiries for the purposes of this Act.
- (4) The Lord President may at any time withdraw a designation made under subsection (3).
- 20 (5) The designation of a sheriff, summary sheriff, part-time sheriff or part-time summary sheriff (a “designated judicial officer”) under subsection (1) or (3) does not affect the competence of any other member of the judiciary of the sheriffdom to conduct inquiry proceedings.
- (6) Subsection (7) applies where the sheriff principal is exercising any function relating to the allocation of inquiry proceedings.
- 25 (7) The sheriff principal must have regard to the desirability of ensuring that inquiry proceedings are conducted by a designated judicial officer.
- (8) In subsection (5), the reference to a member of the judiciary of the sheriffdom is to be construed in accordance with section 136(2) of the Courts Reform (Scotland) Act 2014.

36 Summary sheriff: competence to conduct inquiries

A summary sheriff may, in relation to inquiry proceedings, exercise the jurisdiction and powers that attach to the office of sheriff.

General

37 Repeal and modification of enactments

- 35 (1) The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is repealed.
- (2) Schedule 2 modifies other enactments.

38 Interpretation

In this Act, unless the context requires otherwise—

“advocate” means a member of the Faculty of Advocates,

“child” means a person who has not yet reached the age of 18 years,

“inquiry” has the meaning given by section 1(5),

“inquiry proceedings” has the meaning given by section 10(2)(a),

5 “participant” is to be construed in accordance with section 10(2)(b),

“procurator fiscal” means any procurator fiscal, assistant procurator fiscal, procurator fiscal depute or person duly authorised to execute the duties of a procurator fiscal,

“re-opened inquiry” has the meaning given by section 31(7),

10 “solicitor” means a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980.

39 Ancillary provision

15 (1) The Scottish Ministers may by regulations make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) Regulations under subsection (1)—

(a) may—

(i) make different provision for different purposes,

20 (ii) modify any enactment (including this Act),

(b) are subject to—

(i) the affirmative procedure if they add to, replace or omit any part of the text of an Act,

(ii) otherwise, the negative procedure.

40 Commencement

(1) This section and sections 38, 39 and 41 come into force on the day after Royal Assent.

(2) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—

30 (a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

41 Short title

The short title of this Act is the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015.

SCHEDULE 1
(introduced by section 34(6))

PROCEDURE RULES

Role of the Scottish Civil Justice Council

- 5 1 (1) The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 is amended in accordance with this paragraph.
- (2) In subsection (1) of section 2 (functions of the Council)—
- (a) after paragraph (ba) insert—
- “(bb) to review the practice and procedure followed in inquiry proceedings
 10 under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015,”
- (b) after paragraph (c)(ii) insert—
- “(iii) draft inquiry procedure rules,”
- (3) After subsection (7) of that section insert—
- 15 “(8) For the purposes of this Part, “draft inquiry procedure rules” are draft rules prepared with a view to the making by the Court of Session of an act of sederunt under section 34(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015.”
- (4) In section 4 (Court of Session to consider rules)—
- 20 (a) in subsection (1), for “or draft tribunal procedure rules” substitute “, draft tribunal procedure rules or draft inquiry procedure rules”,
- (b) in subsection (2), for “or draft tribunal procedure rules” substitute “, draft tribunal procedure rules or draft inquiry procedure rules”.
- (5) In subsection (1) of section 16 (interpretation of Part 1), after the entry relating to draft
 25 civil procedure rules insert—
- ““draft inquiry procedure rules” has the meaning given in section 2(8),”.

Transitional arrangements

- 2 (1) Until paragraph 1 comes into force, section 34 applies as if, instead of conferring power on the Court of Session to make provision by act of sederunt for or about the matters
 30 mentioned in paragraphs (a) and (b) of subsection (1), that subsection conferred power on the Scottish Ministers to make such provision by regulations (and subsection (3) of that section is to be read accordingly).
- (2) Section 34(4) does not apply in relation to regulations made by virtue of sub-paragraph (1).
- 35 (3) Before making regulations by virtue of sub-paragraph (1), the Scottish Ministers must consult—
- (a) the Lord President of the Court of Session,
- (b) such other persons as they consider appropriate.
- (4) Regulations by virtue of sub-paragraph (1) are subject to the negative procedure.

SCHEDULE 2
(introduced by section 37(2))

MODIFICATION OF ENACTMENTS

Gas Act 1965

- 5 1 In the Gas Act 1965, section 17(4) (accidents) is repealed.

Health and Safety at Work etc. Act 1974

- 2 In the Health and Safety at Work etc. Act 1974, section 14(7) (power of the Health and Safety Executive to direct investigations and inquiries) is repealed.

Energy Act 2013

- 10 3 In section 85 of the Energy Act 2013 (inquiries), subsections (7) and (8) are repealed.

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the holding of public inquiries in respect of certain deaths.

Introduced by: Michael Matheson
Supported by: Paul Wheelhouse
On: 19 March 2015
Bill type: Government Bill

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