Inquiries into Deaths (Scotland) Bill
[AS INTRODUCED]

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Inquiries into Deaths (Scotland) Bill
[AS INTRODUCED]

An Act to re-enact, with amendments, the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

PART 1
INVESTIGATION OF DEATHS ETC.

Investigation of deaths occurring in Scotland

1 Investigation of deaths etc.

(1) Where a person has died in Scotland, or where the death is treated as occurring in Scotland, the Lord Advocate must, in any of the cases mentioned in sections 2 to 4, investigate the circumstances of the death of that person and may do so in any other case.

(2) For the purposes of this Act, “the circumstances of a death” include—
    (a) the matters upon which the sheriff is required to make a determination under section 21, and
    (b) the lessons which may be drawn from that death and which may be the subject of recommendations by the sheriff under section 22.

2 Work related deaths

(1) The case mentioned in this section is where it appears to the Lord Advocate that the death of the person has, or may have, resulted from—
    (a) personal injuries caused by an accident occurring in Scotland in the course of that person’s employment or occupation, while that person was, at the time of the accident—
        (i) an employee, or
        (ii) an employer or self-employed person and engaged in that person’s occupation as such,
    (b) industrial disease or exposure to any substance hazardous to health due to the nature of that person’s employment or occupation.
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Part I—Investigation of deaths etc.

(2) For the purposes of subsection (1)—

“an industrial disease” includes any disease or injury prescribed for the purposes of section 76 of the Social Security Act 1975, and

“a substance hazardous to health” includes—

(a) any “substance hazardous to health” within the meaning of regulation 2(1) of the Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677), and

(b) “ionising radiation” with the meaning of the regulation 2(1) of the Ionising Radiations Regulations 1999 (SI 1999/3232).

3 Deaths while in legal custody etc.

(1) The case mentioned in this section is where it appears to the Lord Advocate that the person was, at the time of that person’s death—

(a) in legal custody,

(b) subject to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act 1998,

(c) subject to a compulsory treatment order, or an interim compulsory treatment order, under Part 7 of the 2003 Act, whether or not detained in a hospital,

(d) a voluntary patient in a hospital for treatment of mental disorder,

(e) a child required to be kept or detained in secure accommodation.

(2) For the purposes of subsection (1)(a), a person is in legal custody if that 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, or

(d) required to be detained in service custody premises.

(3) For the purposes of subsection (1)(b), a person, who is subject to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act 1998, includes a person who is—

(a) subject to any form of compulsory detention in a hospital under any of the provisions of the 2003 Act,

(b) an offender subject to a compulsion order authorising the detention of that offender in a hospital under section 57A of the Criminal Procedure (Scotland) Act 1995, or

(c) subject to a quarantine order, a short term detention order or exceptional detention order or other order authorising that person to be taken and detained in a hospital or other place, all within the meaning of the Public Health etc. (Scotland) Act 2008,

but does not include a person who is detained or required to be detained under the Immigration Acts.
(4) For the purposes of subsections (1)(e) and (2)(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.

(5) In this section—

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003,

“the Immigration Acts” has the meaning given by section 61 of the UK Borders Act 2007,

“hospital” has, unless the context otherwise requires, the same meaning as in section 239(1) of the 2003 Act,

“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, and

“service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.

4 Sudden deaths etc.

(1) The case mentioned in this section is where the Lord Advocate considers that—

(a) the death of a person—

(i) was sudden, suspicious or unexplained, or

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

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

(2) Subsection (1) does not apply if the death falls within section 2 or 3.

Investigation of deaths treated as occurring in Scotland

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

(1) The death of a person, or an accident, is to be treated as having occurred in Scotland for the purposes of this Act if it occurred in any of the circumstances mentioned in subsection (2), (4) or (6).

(2) 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.

(3) In subsection (2)(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.

(4) The death of a person is to be treated as having occurred in Scotland if—

(a) the death occurred outwith the United Kingdom,

(b) at the time of death, the person was ordinarily resident in Scotland,

(c) the person’s body has been brought to Scotland, and

(d) the Lord Advocate considers that the death of the person falls within the case mentioned in section 4.

(5) Subsection (4) 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).

(6) The death of a person is to be treated as having occurred in Scotland if—

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

(b) the Lord Advocate considers that—

(i) the person was, at the time of death, in custody in circumstances analogous to legal custody (as construed by reference to section 3(2)), or

(ii) the death of the person falls within the case mentioned in section 4.

Citation of witnesses for precognition

6 Citation of witnesses for precognition

(1) The Lord Advocate may cite witnesses for precognition in connection with an investigation under section 1.

(2) This section is sufficient warrant for such citation.

(3) Subsection (4) applies where a person cited under subsection (1)—

(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.

(4) The sheriff may, on the application of the Lord Advocate, 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.
(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.

Relevant persons to be notified

7 Notification to relevant persons

(1) The Lord Advocate must, as soon as practicable, and, in any event, within 6 months, after becoming aware of the death of a person, notify the relevant persons—

(a) that the Lord Advocate intends—

(i) to investigate the death under section 1, and

(ii) to apply for the holding of an inquiry under section 8 and, if so, when it is intended to do so,

(b) that it is not possible for the Lord Advocate to decide the matters mentioned in paragraph (a)(ii) because proceedings of a kind referred to in section 9(3) have commenced and have not yet been concluded, or

(c) that, in the case where the death has resulted from industrial disease or exposure to any substance hazardous to health,

(i) the Lord Advocate is satisfied as mentioned in section 9(5) and has decided not to apply for the holding of an inquiry under section 8, or

(ii) that the Lord Advocate is partially satisfied of those matters but intends to apply for the holding of such an inquiry subject to section 10(3) and, if so, when it is intended to do so.

(2) The Lord Advocate may notify those persons of any of the matters mentioned in subsection (1) at different times provided all the matters are notified within that 6 month period.

(3) Any notification given under subsection (1) must be in writing and give reasons for the decision of the Lord Advocate.

(4) The persons to be notified in relation to the death of a person (“A”) are—

(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 (a) or (b) do not apply,

(d) where section 2 applies—

(i) A’s employer, if A was employed, and

(ii) an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 (appointment of inspectors),

(e) any relatives of A who have informed the Lord Advocate that they wish to be kept informed of the investigation and who appear to the Lord Advocate to have an interest in them,

(f) any other persons who have notified the Lord Advocate that they wish to be kept informed of the investigation and who appear to the Lord Advocate to have an interest in the lessons which might be drawn from the death, and
Part 2

APPLICATION TO HOLD AN INQUIRY

Duty to apply to hold an inquiry

If, after the investigation under section 1, the Lord Advocate remains of the view as mentioned in any of the cases in sections 2 to 4 the Lord Advocate must, in accordance with sections 11 to 13, apply for the holding of an inquiry into the circumstances of the death.

Exceptions to the duty to apply to hold an inquiry

(1) Section 8 does not apply in the case of the death of a person within section 2 or 3 where the Lord Advocate is satisfied of the matters mentioned in subsection (2) or (5) and decides not to apply for the holding of an inquiry.

(2) This subsection applies if the Lord Advocate is satisfied—

(a) that the circumstances of the death have been sufficiently established during the course of proceedings of a kind referred to in subsection (3), and

(b) that no further lessons can be drawn from the death which might be the subject of recommendations by the sheriff under section 22.

(3) The proceedings referred to in this subsection are—

(a) criminal proceedings,

(b) an inquiry under section 17(2) of the Gas Act 1965 (accidents),
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(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).

(4) But subsection (2) 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 subsection (3) are an inquiry under section 1 of the Inquiries Act 2005.

(5) This subsection applies if the death has resulted from industrial disease or exposure to any substance hazardous to health and the Lord Advocate is satisfied—

(a) that the method and circumstances of exposure to the disease or substance hazardous to health is well known within the industry within which the exposure took place, and
(b) that no further lessons can be drawn from the death which might be the subject of recommendations by the sheriff under section 22.

Notification where exceptions apply

(1) The Lord Advocate must, as soon as reasonably practicable and in any event within 3 months after the conclusion of the proceedings referred to in section 9(3), notify the relevant persons of one of the following matters—

(a) that the Lord Advocate is satisfied of the matters mentioned in section 9(2) and has decided not to apply for the holding of an inquiry under section 8,
(b) that the Lord Advocate is partially satisfied of the matters mentioned in section 9(2) but intends to apply for the holding of such an inquiry subject to subsection (3) and, if so, when it is intended to do so,
(c) that the Lord Advocate intends to apply for the holding of such an inquiry and, if so, when it is intended to do so.

(2) Any notification under subsection (1) must be in writing and must give reasons for the decision of the Lord Advocate.

(3) Where this subsection applies, at any preliminary hearing under section 15(1)—

(a) the Lord Advocate must narrate what are the matters which the Lord Advocate is satisfied have been established by the proceedings referred to in section 9(3), and
(b) the sheriff may take account of such matters when determining the issues to be addressed at the inquiry in terms of section 15(6).

(4) Section 7(1)(c) applies with regard to any notification where the Lord Advocate is satisfied, or partially satisfied, of the matters mentioned in section 9(5).

(5) For the purposes of this section, proceedings are concluded—

(a) in the case of criminal proceedings—

(i) by acquittal or, as the case may be, by sentence,
(ii) by any other verdict, finding, order or decision which puts an end to the proceedings,

(iii) by discontinuance or by operation of law,

(iv) in any of the above cases, where any appeal or review is competent,

(A) when any time limit for appealing or reviewing has expired without any appeal or review being made, or

(B) if any appeal or review is made, when that appeal or review has been disposed of or abandoned, discontinued or withdrawn,

(b) in the case of inquiry proceedings, by the publication of the inquiry report.

Time limit for applying to hold an inquiry

11 Time limit for applying to hold an inquiry

(1) This section and sections 12 and 13 apply where the Lord Advocate is required by section 8 to apply for the holding of an inquiry into the circumstances of the death of a person.

(2) The Lord Advocate must, subject to subsection (3), apply for such an inquiry within 3 months of notifying, under section 7 (1) or 10(1), the relevant persons of the intention to apply for the holding of an inquiry.

(3) If it is not possible for the Lord Advocate to apply for such an inquiry within the period mentioned in subsection (2), the Lord Advocate must determine a later date which is to be as soon as practicable thereafter.

(4) Where the Lord Advocate has determined a later date under subsection (3), the Lord Advocate must notify the relevant persons, giving reasons as to why it was not possible to apply to hold the inquiry at any earlier date.

Application to hold an inquiry

12 Application to hold an inquiry: general provisions

(1) The Lord Advocate must, subject to section 13, apply to hold the inquiry to the sheriff principal of—

(a) the sheriffdom which appears to be most closely connected with the death, or

(b) such other sheriffdom as appears to the Lord Advocate to be appropriate.

(2) The application must narrate briefly the circumstances of the death so far as known to the Lord Advocate.

(3) The application may, if it appears to the Lord Advocate that more deaths than one have occurred as a result of the same or similar circumstances as mentioned in any of the cases in sections 2 to 4 relate to all such deaths.

(4) Where subsection (3) applies, references in this Act to a death include references to all the deaths or to each death as the case may require.

(5) The Lord Advocate must send a copy of the application to the relevant persons.

13 Application to hold an inquiry into a work related death

(1) This section applies where—
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(a) the Lord Advocate is required by section 8 to apply for the holding of an inquiry into the death of a person in the circumstances mentioned in section 2,

(b) the Lord President of the Court of Session has made a direction under section 34(1) of the 2014 Act determining that personal injury cases is a category of sheriff court case suited to being dealt with by sheriffs that specialise in that category of case,

(c) the sheriff principal of a sheriffdom has, under section 35(2)(a) of that Act, designated one or more sheriffs as specialists in that category of case, and

(d) the Scottish Ministers have, by order under section 41(1) of that Act, provided that the jurisdiction of a sheriff of a specified sheriffdom sitting at a specified sheriff court extends territorially throughout Scotland for the purposes of dealing with personal injury cases.

(2) In this Act, the sheriff court mentioned in subsection (1)(d) is referred to as “the all-Scotland personal injury court”.

(3) Where this section applies section 12(1) does not apply and the Lord Advocate must, subject to subsection (4), apply for the holding of the inquiry before either—

(a) a sheriff designated, as mentioned in subsection (1)(c), by the sheriff principal as a specialist in personal injury cases within—

(i) the sheriffdom which appears to the Lord Advocate to be most closely connected with the death, or

(ii) such other sheriffdom as appears to the Lord Advocate to be appropriate, or

(b) the all-Scotland personal injury court.

(4) The Lord Advocate must apply for the holding of the inquiry in the all-Scotland personal injury court in any case where—

(a) it appears to the Lord Advocate that the significance and importance of the inquiry in the public interest merit the inquiry being held in that court, or

(b) a person mentioned in section 7(4)(a), (b) or (c) requests that the inquiry be held in that court and there is no special cause for the inquiry not to be held in that court,

and may do so in any other case.

PART 3

HOLDING OF AN INQUIRY

Participants at the inquiry

14 Persons who may participate in the inquiry

(1) The following persons may participate in the inquiry proceedings—

(a) the Lord Advocate,

(b) the relevant persons, and

(c) any other person who, in the view of the sheriff, has an interest in the inquiry (including any person to whom a recommendation may be addressed under section 22).
(2) In this Act—

“inquiry proceedings” means any proceedings under this Act in relation to an inquiry,

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

Preliminary hearing

15 Preliminary hearing

(1) The sheriff must, subject to subsection (2), make an order appointing a time, date and place for the holding of a preliminary hearing in connection with the inquiry, in such premises as appear to the sheriff to be, appropriate, having regard to subsection (3) and the apparent circumstances of the death.

(2) The date appointed by the sheriff for the holding of the preliminary hearing must be as soon as is reasonably practicable and no later than 3 months after an application has been made to the sheriff under section 12 or 13 for the holding of an inquiry.

(3) So far as may be reasonably practicable, the preliminary hearing and the rest of the inquiry is to be held in premises—

(a) which are not a courtroom and, except in the case where the person died outside Scotland,

(b) which are in a locality which is closely connected with the circumstances of the death.

(4) On the making of an order under subsection (1) above, the Lord Advocate must—

(a) give notice of the holding of the preliminary hearing and the time and place fixed for it to the persons appearing to the Lord Advocate to be participants in the inquiry, and

(b) give public notice of those matters.

(5) At the preliminary hearing, the sheriff must, after hearing any representations and submissions from the participants in the inquiry, determine any preliminary issues, such as those mentioned in subsection (6).

(6) The preliminary issues which may be determined at the preliminary hearing include—

(a) the issues to be addressed at the inquiry,

(b) the procedure to be followed at the inquiry,

(c) the timetable and location of the inquiry,

(d) whether any other person who may have an interest in the inquiry should be invited to participate in the inquiry proceedings,

(e) whether and to what extent, it is possible for the participants in the inquiry to agree any relevant facts before the inquiry,

(f) what evidence should be disclosed or recovered,

(g) whether, and to what extent, the participants in the inquiry and the witnesses are entitled to be funded or refunded their expenses,

(h) whether the inquiry should be remitted to another court, such as another sheriff court, the all-Scotland personal injury court or the Court of Session.
16 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.

(2) Subsection (1) is subject to—
   (a) the other provisions of this Act,
   (b) provision made by act of sederunt under section 34.

17 Evidence and witnesses

(1) At the inquiry—
   (a) the Lord Advocate must bring forward evidence with regard to the circumstances of the death, and
   (b) any other participant in the inquiry may bring forward evidence with regard to those matters.

(2) The sheriff may require the Lord Advocate or a participant in the inquiry to bring forward evidence about any matter relating to the circumstances of the death.

(3) The sheriff may make an order requiring a person to attend at a time and place stated in the order—
   (a) to give evidence at the inquiry,
   (b) to produce any documents in that person’s custody or under that person’s control that relate to any of the issues to be determined at the inquiry,
   (c) to produce any other thing in that person’s custody or under that person’s control for inspection, examination or testing by or on behalf of the Lord Advocate or other participant in the inquiry.

(4) An order under subsection (3) may be made—
   (a) on the sheriff’s own initiative, or
   (b) on the application of the Lord Advocate or other participant in the inquiry.

(5) The rules of evidence which apply in relation to civil proceedings in the sheriff court (other than a simple procedure case within the meaning of section 72(9) of the 2014 Act) apply in relation to an inquiry.

(6) Subsection (5) is subject to provision made by act of sederunt under section 34.

(7) The examination of a person at an inquiry does not prevent criminal proceedings being taken against the person.

(8) A person is not required at an inquiry to answer a question tending to show that the person is guilty of an offence.

(9) A person, who fails to comply with an order under subsection (3), commits an offence.
(10) A person who commits an offence under subsection (9) 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.

(11) A person commits an offence if during the course of an inquiry that person does anything that is intended to have the effect of—

(a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the sheriff, or

(b) preventing any evidence, document or other thing from being given, produced or provided to the sheriff, or anything that that person knows or believes is likely to have that effect.

(12) A person commits an offence if during the course of an inquiry—

(a) that person intentionally suppresses or conceals a document that is, and that that person knows or believes to be, a relevant document, or

(b) that person intentionally alters or destroys any such document.

(13) For the purposes of subsection (12), a document is a “relevant document” if it is likely that the sheriff would (if aware of its existence) wish to be provided with it.

(14) A person, who commits an offence under subsection (11) or (12) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both.

18 Inquiry to be conducted in public

(1) The inquiry proceedings must be open to the public.

(2) But the sheriff may make an order—

(a) providing that such specified part of the inquiry proceedings as the sheriff considers appropriate is to be conducted in private,

(b) prohibiting the identification of any specified person, who is a participant in, or a witness at, the inquiry, and

(c) prohibiting the publication of any information, in any form or manner whatsoever, including in pictorial or in electronic form, relating to the specified part of the inquiry or the participation of the specified person or any particulars calculated to lead to the identification of that person.

(3) An order under subsection (2) may be made—

(a) on the sheriff’s own initiative, or

(b) on the application of the Lord Advocate or other participant in the inquiry.

(4) Any person, who fails to comply with an order made under subsection (2), commits an offence.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
19  Appointment of an assessor
(1) The sheriff may appoint a person to assist the sheriff at the inquiry by acting as an assessor if the sheriff considers that such a person has knowledge and expertise in matters that are relevant to the inquiry.
(2) An order under subsection (1) may be made—
(a) on the sheriff’s own initiative, or
(b) on the application of the Lord Advocate or other participant in the inquiry.

20  Criminal proceedings and the adjournment of the inquiry
(1) The fact that criminal proceedings may be taken against any person in respect of the death or any accident or any of the other circumstances mentioned in any of the cases in sections 2 to 4 does not, by itself, mean that the inquiry cannot be commenced.
(2) However, if the Lord Advocate requests that the inquiry should be adjourned until after the conclusion of the criminal proceedings, the sheriff must consider whether, and to what extent, the inquiry can effectively continue without causing prejudice to those proceedings and, to the extent that the sheriff considers that it cannot, the sheriff must adjourn the inquiry.
(3) Where the inquiry has been adjourned under subsection (2), the sheriff must, after the conclusion of the criminal proceedings, resume the inquiry unless the Lord Advocate is satisfied—
(a) that the circumstances of the death have been sufficiently established in the course of such criminal proceedings and notifies the sheriff to that effect, and
(b) that no further lessons can be drawn from the death which might be the subject of recommendations by the sheriff under section 22.
(4) Where the Lord Advocate is only partially satisfied of the matters mentioned in subsection (3), the sheriff must resume the inquiry but—
(a) the Lord Advocate must narrate such of the matters as the Lord Advocate is satisfied as having been established by any criminal proceedings, and
(b) the sheriff may take account of such matters when determining the issues to be addressed at the resumed inquiry.
(5) Where the Lord Advocate is satisfied, or partially satisfied of the matters mentioned in subsection (3), the Lord Advocate must give reasons for that opinion to the sheriff and to the parties to the inquiry.

PART 4
SHERIFF’S DETERMINATION AND RECOMMENDATIONS

21  Sheriff’s determination
(1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the sheriff must make a determination setting out the following circumstances of the death so far as they have been established to the sheriff’s satisfaction—
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(a) where and when the death, and any of the other circumstances mentioned in the
cases in section 2 to 4, took place,

(b) the cause or causes of such death and any of those other circumstances,

(c) the reasonable precautions, if any, which might with hindsight have been taken
which might have avoided the death and any of those other circumstances,

(d) the absence of any system of working or the defects, if any, in any system of
working, which contributed to the death, and

(e) any other facts which are relevant to the circumstances of the death and any of
those other circumstances.

(2) The sheriff is entitled to be satisfied that any of the circumstances referred to in
subsection (1) have been established by evidence, notwithstanding that that evidence is
not corroborated.

(3) Subject to sections 26 to 31, the determination of the sheriff is not admissible in
evidence and cannot be founded on in any judicial proceedings, of whatever nature,
arising out of the death or out of any of the other circumstances mentioned in the cases
in section 2 to 4.

Sheriff’s recommendations

22 Sheriff’s recommendations

(1) This section applies where, in the light of the circumstances of the death which have
been established to the sheriff’s satisfaction, the sheriff is satisfied that there are lessons
that can be drawn from that death as to what action might reasonably prevent further
deaths in similar circumstances in the future.

(2) The sheriff may make recommendations specifying what action is to be taken, or not to
taken, for this purpose by the person to whom it is addressed.

(3) Subject to subsection (4), the sheriff may address any such recommendation to—

(a) a participant in the inquiry, and

(b) any other person who appears to the sheriff to be concerned with safety and to
have an interest in the lessons which might be drawn from the death.

(4) Before making any recommendation to any person in terms of subsection (3), the sheriff
must—

(a) send to that person a copy of—

(i) the determination or proposed determination under section 21, and

(ii) the recommendation which it is proposed to address to that person,

(b) give that person an opportunity of being heard or being represented or of making a
written statement, and

(c) only thereafter make the recommendation where the sheriff considers it
appropriate to do so after considering any representations made by that person.
Warning notices

23 Warning notices

(1) Before making a determination under section 21 or a recommendation under section 22, the sheriff must send a warning notice to any person where the sheriff considers that—

(a) such a person might be, or has been, criticised during the proceedings at the inquiry,
(b) criticism of that person may be inferred from evidence given during the proceedings at the inquiry, or
(c) that person may be criticised in, or criticism of that person may be inferred from, the determination or the recommendation.

(2) The warning notice must—

(a) state what the criticism or proposed criticism is,
(b) contain a statement of any facts that the sheriff considers may substantiate the criticism or proposed criticism,
(c) refer to any evidence or documents which may support those facts,
(d) invite the person to make a written statement if the person wishes, and
(e) state that the information is subject to confidentiality restrictions.

(3) The sheriff may send copies of any evidence or documents referred to with the warning notice, if the sheriff considers it appropriate to do so.

(4) Where the warning notice is sent to a person by virtue of subsection (1)(b)—

(a) subsection (3) does not apply, but
(b) the notice must refer to the evidence or documents from which the sheriff considers criticism could be inferred.

Conclusion of the inquiry

24 Conclusion of the inquiry

(1) On the conclusion of the inquiry—

(a) the Scottish Courts and Tribunals Service (“the SCTS”) must send a copy of the determination and of any recommendations made by the sheriff to—

(i) the Lord Advocate,
(ii) any other participant in the inquiry, and
(iii) any other person to whom the recommendation is addressed,
(b) the SCTS must, when requested by the Lord Advocate, send to any of the following persons mentioned in subsection (2) a copy of—

(i) the application made under section 12 or 13,
(ii) the transcript of the evidence at the inquiry,
(iii) any report or documentary production used in the inquiry,
(iv) the determination and any recommendations made by the sheriff, and
(c) the Lord Advocate must send to the Registrar General of Births, Deaths and Marriages for Scotland the name and last known address of the person who has died and the date, place and cause of that person’s death.

(2) For the purposes of subsection (1)(b), the persons mentioned are—

(a) any relevant Minister of the Crown or Department in the United Kingdom Government,

(b) the Scottish Ministers, and

(c) the Health and Safety Executive,

(3) Upon payment of such fee as may be provided for by act of sederunt under section 34 and within such period as may also be so provided for, any person may obtain from the SCTS a copy of—

(a) the determination and any recommendation made by the sheriff,

(b) the transcript of the evidence at the inquiry.

**Enforcement of any recommendation**

15 **Enforcement of any recommendation**

(1) Subject to subsection (2) and (5) where the sheriff makes any recommendation under section 22, the person to whom the recommendation is addressed must, within the time specified by the sheriff or by the Sheriff Appeal Court or Court of Session on an appeal under Part 5—

(a) comply with that recommendation, and

(b) notify the sheriff, the Lord Advocate and any other participant in the inquiry—

(i) that the recommendation has been fully implemented, or

(ii) that the recommendation has not been fully implemented and, if so—

(A) the reasons why it has not been fully implemented,

(B) the steps, if any, which have been taken to implement it, and

(C) the time within which it is expected that the recommendation will be fully implemented,

but the time specified by the Sheriff or by Sheriff Appeal Court or Court of Session is not to be before the end of the period specified in sections 26 or 29 for an appeal to be brought.

(2) Where an appeal is brought under section 26 or 29, subsection (1) does not apply until the conclusion of the appeal.

(3) If the person to whom the recommendation is addressed fails to notify the sheriff as required by subsection (1)(b), the Lord Advocate must—

(a) report the failure to the sheriff, and

(b) send a copy of the report to the person concerned and to any other party to the inquiry,

and the sheriff may make an order requiring that person to appear at a hearing.

(4) In any case where the person to whom the recommendation is addressed notifies the sheriff either—
(a) under subsection (1)(b), or
(b) at the hearing called under subsection (3).

that the recommendation has not been fully implemented, the sheriff may, after hearing representations from that person and any other party to the inquiry, make an order requiring that person to implement the recommendation in full within such time as is specified in the order.

(5) This section does not apply to any recommendation—
(a) which relates to reserved matters within the meaning of section 29(2)(b) of the Scotland Act 1998,
(b) which is addressed to a reserved body to which paragraph 3 of Part III of Schedule 5 to that Act applies, or
(c) in which the action which the sheriff considers should be taken or not taken concerns the exercise of a function otherwise than in or as regards Scotland.

(6) A person commits an offence if that person fails without reasonable excuse to do anything that that person is required to do by an order under subsection (4).

(7) A person who commits an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both.

PART 5
Appeals

Appeals to the Sheriff Appeal Court

26 Appeal from a sheriff to the Sheriff Appeal Court

(1) Any person to whom a recommendation is addressed by the sheriff under section 22 may appeal to the Sheriff Appeal Court against that recommendation but only—
(a) with the permission of the sheriff, or
(b) if the sheriff has refused permission, with the permission of the Sheriff Appeal Court.

(2) An application to the sheriff for permission to appeal must be made within 21 days after the date on which the sheriff makes a recommendation under section 22.

(3) Where the sheriff has refused permission, an application to the Sheriff Appeal Court for permission to appeal must be made within 21 days after the date on which the sheriff refused permission.

(4) Where permission to appeal has been granted, an appeal must be brought within 21 days after the date on which permission was granted.

(5) Any appeal against a recommendation may include an appeal against the recommendation being addressed to the appellant.

(6) In any appeal, the Sheriff Appeal Court may allow further proof.

27 Sheriff Appeal Court’s powers of disposal in appeals

In determining any appeal under section 26, the Sheriff Appeal Court has power to—
Inquiries into Deaths (Scotland) Bill
Part 5—Appeals

(a) grant such disposal as the Court thinks fit, including by (in whole or in part)—
   (i) adhering to the recommendation which is the subject of the appeal,
   (ii) recalling the recommendation or recalling the recommendation being addressed to the appellant,
   (iii) varying the recommendation or the person to whom it is addressed,
   (iv) remitting the case back to the sheriff,
   (v) dismissing the appeal,
(b) make such incidental or interim orders as may be necessary, and
(c) determine any incidental or other issue that needs to be determined for the purpose of doing justice in the appeal.

28 Remit of appeal from the Sheriff Appeal Court to the Court of Session

(1) This section applies in relation to an appeal to the Sheriff Appeal Court under section 26.
(2) The Sheriff Appeal Court may—
   (a) on the application of a party to the appeal, and
   (b) if satisfied that the appeal raises a complex or novel point of law, remit the appeal to the Court of Session.
(3) Where an appeal is remitted to the Court of Session under subsection (2), the Court of Session may deal with and dispose of the appeal as if it had originally been made to that Court.

Appeals to the Court of Session

29 Appeal from the Sheriff Appeal Court to the Court of Session

(1) An appeal may be taken to the Court of Session against a decision of the Sheriff Appeal Court under section 27 but only—
   (a) with the permission of the Sheriff Appeal Court, or
   (b) if that Court has refused permission, with the permission of the Court of Session.
(2) An application to the Sheriff Appeal Court for permission to appeal must be made within 21 days after the date on which the decision of the Sheriff Appeal Court was given.
(3) Where the Sheriff Appeal Court has refused permission to appeal, an application to the Court of Session for permission to appeal must be made within 21 days after the date on which the Sheriff Appeal Court refused permission.
(4) Where permission to appeal has been granted, an appeal must be brought within 21 days after the date when permission was granted.
(5) The Sheriff Appeal Court or Court of Session may grant permission under subsection (1) only if—
   (a) the appeal would raise an important point of principle or practice, or
   (b) there is some other compelling reason for the Court of Session to hear the appeal.
Section 30: Appeals: granting of leave or permission and assessment of grounds of appeal

(1) This section applies to any application under section 29 to the Court of Session for permission to appeal against any decision of the Sheriff Appeal Court under section 27.

(2) Section 31A of the Court of Session Act 1988 (power to provide for single judge of Inner House to determine leave or permission and assess grounds of appeal) applies to an application to which this section applies as it applies to an appeal from the Sheriff Appeal Court under section 113 of the 2014 Act.

Section 31: Effect of appeal

(1) This section applies to—

(a) an appeal to the Sheriff Appeal Court under section 26 (including such an appeal remitted to the Court of Session under section 28), and

(b) an appeal to the Court of Session under section 29.

(2) In the appeal, all of the decisions pronounced in the original proceedings are open to review.

(3) Any party to the original proceedings may insist in the appeal even though the party is not the one who initiated the appeal.

(4) In this section, the “original proceedings” means the proceedings in which the decision that is the subject of the appeal was pronounced.

PART 6
GENERAL
Re-opening of the inquiry

Section 32: Re-opening of the inquiry

(1) This section applies where, after an inquiry has been concluded, the Lord Advocate is satisfied that—

(a) evidence (in this section referred to as “new evidence”) exists, or may exist, which—

(i) was not reasonably available at the time of the inquiry, and

(ii) if it had been available and accepted by the sheriff, would have been likely to affect the determination or any of the recommendations made by the sheriff under section 21 or 22, and

(b) it is in the public interest that such evidence should be considered at any re-opened inquiry.

(2) Where this section applies, the Lord Advocate must—

(a) apply to the sheriff, who held the original inquiry, to re-open the inquiry, giving reasons why it is considered that the inquiry should be re-opened, and

(b) send a copy of the application to the participants in the inquiry and any person to whom any recommendation under section 22 has been addressed.
Where the sheriff who held the original inquiry is, for any reason, unavailable, the Lord Advocate must apply to re-open the inquiry to the sheriff under section 12 or 13.

The sheriff is to make an order appointing a time, date and place to consider whether to re-open the inquiry to hear the new evidence or to order a new inquiry to be held.

On the making of an order under subsection (4) above, the Lord Advocate must—

(a) give notice of that order to the participants in the inquiry and any person to whom any recommendation under section 22 was addressed, and

(b) give public notice of that order.

At the date appointed by the sheriff under subsection (4), the sheriff must, after considering any submissions and representations by—

(a) any of the participants in the inquiry,

(b) any person to whom any recommendation under section 22 has been addressed, and

(c) any other person who the sheriff is satisfied has an interest in the matter,

decide whether to re-open the inquiry to hear the new evidence or to order a new inquiry to be held.

If the sheriff decides that it would be more appropriate to have a new inquiry, the sheriff must order the Lord Advocate to apply to a sheriff, under section 12 or 13, for a new inquiry to be held.

If the sheriff decides to re-open the inquiry, the sheriff must hear the new evidence and, after considering any submissions and representations made by the persons referred to in subsection (6), may confirm, delete or amend the determination made under section 21 or any of the recommendations made under section 22.

The provisions of this Act, and of an act of sederunt made under section 34, apply to the re-opened inquiry or, as the case may be, any new inquiry, as they apply to the inquiry when originally held.

Offences by bodies corporate etc.

Subsection (2) applies where—

(a) an offence under section 6(5), 17(9),(11),(12), 18(4) or 25(6) has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(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.

Inquiry procedure rules

34 Power to regulate procedure etc.

(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—

(a) the giving of notices,
(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,
(d) the process by which a person becomes a participant in an inquiry,
(e) the representation of the Lord Advocate and other 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,
(f) witnesses and evidence, including modifying the rules of evidence as they apply to an inquiry,
(g) the class of persons who are to be notified under section 7(4)(e) or (f),
(h) action to be taken by the procurator fiscal and the other participants in the inquiry before the start of an inquiry or a re-opened inquiry,
(i) the fees payable to solicitors and advocates in relation to inquiry proceedings,
(j) the financial assistance which may be given, on such conditions as may be specified in the rules, to enable such representation to be given,
(k) the expenses payable to persons attending inquiry proceedings,
(l) the appointment of assessors under section 19(1) (including their functions and the terms on which they may be appointed),

(m) the authorisation by the sheriff of the taking, and holding, in safe custody of anything which it may be considered necessary to produce,

(n) the inspection by the sheriff, or any person authorised by the sheriff, of any land, premises, article, or other thing,

(o) the management of the conduct of the inquiry by the sheriff,

(p) the fees payable, and the period within which, a person may obtain a copy of the documents mentioned in section 24(3),

(q) the procedure to be followed under section 24 in connection with the re-opening of the inquiry under section 32,

(r) the form of any appeal under section 26 against a recommendation of the sheriff or any appeal under section 29 against a decision of the Sheriff Appeal Court, and

(s) 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.

(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,

(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

(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.

(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.

General

Repeal of enactments

(1) The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is repealed.

(2) Schedule 2 contains other repeals of enactments.
36 Ancillary provision

(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,
      (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.

37 Interpretation

(1) In this Act, any reference to—
   “the 2009 Act” means the Coroners and Justice Act 2009,
   “the 2014 Act” means the Courts Reform (Scotland) Act 2014.

(2) In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

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38 Application of this Act

This Act applies in any case where a death or accident as mentioned in sections 2 to 4 occurs on or after the day appointed for the coming into force of Part 1.

39 Commencement

(1) This section and sections 34, 36 and 38 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—
(a) include transitional, transitory or saving provision,
(b) make different provision for different purposes.

40 **Short title**

The short title of this Act is the Inquiries into Deaths (Scotland) Act 2015.
Role of the Scottish Civil Justice Council

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 under the Inquiries into Deaths (Scotland) Act 2015,”,

(b) after paragraph (c)(ii) insert—

“(iii) draft inquiry procedure rules,”.

(3) After subsection (7) of that section insert—

“(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 Deaths (Scotland) Act 2015.”.

(4) In section 4 (Court of Session to consider rules)—

(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 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 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).

(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 35(2))

MODIFICATION OF ENACTMENTS

Gas Act 1965

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

3. In section 85 of the Energy Act 2013 (inquiries), subsections (7) and (8) are repealed.
Inquiries into Deaths (Scotland) Bill
[AS INTRODUCED]

An Act to re-enact, with amendments, the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

Introduced by: Patricia Ferguson
On: 1 June 2015
Bill type: Member’s Bill