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

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Mandatory inquiries: people treated for a mental disorder
1, 56, 2, 2A, 57, 3, 4, 5, 5A, 6, 58, 7

Mandatory inquiries: looked after children
52, 53, 54

Inquiries into deaths occurring abroad
8

Family liaison charter
59

Persons who may participate in inquiries into work-related deaths
9, 55

Availability of civil legal aid
60

Notice of inquiry proceedings
10, 11, 19, 20, 22, 23

Dissemination of sheriff’s determination
12, 13, 14

Responses to sheriff’s recommendations: publication
15, 16, 17, 31, 32

Responses to sheriff’s recommendations: admissibility in judicial proceedings
18
Responses to sheriff’s recommendations: annual report
61

Form of further inquiry proceedings
21, 24, 25, 26, 27, 28, 29, 30

Modification of enactments
33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51
Amendments in debating order

Mandatory inquiries: people treated for a mental disorder

Margaret Mitchell

1  In section 2, page 1, line 23, after (3) insert (3A)

Alison McInnes

56  In section 2, page 1, line 23, after (3) insert (3D)

Margaret Mitchell

2  In section 2, page 2, line 6, at end insert—

   (3A) The death of a person is within this subsection if, at the time of death, the person was—
   (a) detained in hospital by virtue of—
   (i) the Mental Health (Care and Treatment) (Scotland) Act 2003, or
   (ii) the Criminal Procedure (Scotland) Act 1995, or
   (b) admitted voluntarily to hospital for the purpose of receiving treatment for a mental disorder.

Alison McInnes

2A  As an amendment to amendment 2, line 5, leave out from or to end of line 7

Alison McInnes

57*  In section 2, page 2, line 6, at end insert—

   (3D) The death of a person is within this subsection if, at the time of death, the person was—
   (a) suffering from dementia,
   (b) receiving—
   (i) treatment in a hospital, or
   (ii) a care home service within the meaning given in paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010, and
   (c) for a period of at least 3 months immediately prior to the person’s death, being treated with psychotropic drugs.

   (3E) The Scottish Ministers may by regulations define “psychotropic drugs” for the purposes of subsection (3D).

   (3F) Regulations under subsection (3E) are subject to the negative procedure.

Margaret Mitchell

3  In section 2, page 2, line 19, at end insert—

   “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
Margaret Mitchell

4 In section 3, page 2, line 35, after <2(3)> insert <, (3A)>

Margaret Mitchell

5 In section 3, page 3, line 4, at end insert—

<(f) an investigation under section 11 of the Mental Health (Care and Treatment) (Scotland) Act 2003,

(g) an inquiry under section 12 of that Act.>

Alison McInnes

5A As an amendment to amendment 5, line 4, at end insert—

<(  ) But subsection (1) does not apply if, at the time of death, the person was subject to a compulsory treatment order under Part 7 of the Mental Health (Care and Treatment) (Scotland) Act 2003.>

Margaret Mitchell

6 In section 4, page 3, line 18, after <2(3)> insert <, (3A)>

Alison McInnes

58 In section 4, page 3, line 18, after <2(3)> insert <, (3D)>

Margaret Mitchell

7 In section 8, page 4, leave out lines 34 and 35 and insert—

<(1) The Lord Advocate must give reasons in writing to the persons mentioned in subsection (2) where it is decided that an inquiry is not to be held into the death of a person (“A”)—

(a) if the death is within section 2(3A),

(b) in all other cases, if requested to do so by a person so mentioned.

(2) The persons referred to in subsection (1) are—>

Mandatory inquiries: looked after children

Alison McInnes

52 In section 2, page 1, line 23, after <(3)> insert <, (3B)>

Alison McInnes

53 In section 2, page 2, line 6, at end insert—

<(3B) The death of a person is within this subsection if, at the time of death, the person was a child being looked after by a local authority.

(3C) For the purposes of subsection (3B), references to a child being “looked after” by a local authority are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.>
Inquiries into deaths occurring abroad

Paul Wheelhouse

8
In section 6, page 3, leave out line 34

Family liaison charter

Patricia Ferguson

59
After section 7, insert—

"Family liaison charter"

1. The Lord Advocate must prepare a family liaison charter.
2. A family liaison charter is a document setting out how the procurator fiscal will liaise with the family of a person in relation to whose death an inquiry may or is to be held.
3. In particular, the charter must set out—
   a. information to be made available to the family, and
   b. timescales for the giving of the information.
4. The Lord Advocate may from time to time revise the charter prepared under subsection (1).
5. The Lord Advocate must—
   a. consult such persons as the Lord Advocate considers appropriate before preparing the charter under subsection (1) or revising it under subsection (4),
   b. lay the charter or revised charter before the Scottish Parliament, and
   c. publish the charter or revised charter in such manner as the Lord Advocate considers appropriate."

Persons who may participate in inquiries into work-related deaths

Paul Wheelhouse

9
In section 10, page 5, line 31, leave out <an employee> and insert <acting in the course of the person’s employment>

Elaine Murray

55
In section 10, page 5, line 33, at end insert—
THIS IS NOT THE MARSHALLED LIST

<(  ) a representative of A’s trade union or staff association, if A was at the time of A’s death a member of a trade union or staff association in connection with the employment or occupation concerned,>

Availability of civil legal aid

Patricia Ferguson

60 After section 10, insert—

<Availability of civil legal aid>

Availability of civil legal aid

(1) The Legal Aid (Scotland) Act 1986 is amended in accordance with this section.

(2) After subsection (1) of section 14 (availability of civil legal aid), insert—

“(1ZA) The Board must, when considering an application in respect of proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015 made by a person mentioned in subsection (1ZB), treat paragraphs (a) and (b) of subsection (1) as being satisfied in relation to that applicant.

(1ZB) The persons are, in respect of 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.”.

(3) After subsection (2) of section 15 (financial conditions), insert—

“(2A) Subsections (1) and (2) do not apply to a person mentioned in section 14(1ZB) making an application in respect of proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015.

(2B) The Scottish Ministers must by regulations make provision for the financial conditions to apply to a person to whom subsection (2A) applies.

(2C) Regulations under subsection (2B) must ensure that civil legal aid is available to such extent and on such conditions as the Scottish Ministers consider will allow such persons to participate fully in the proceedings to which the application relates.”.

Notice of inquiry proceedings

Paul Wheelhouse

10 In section 14, page 7, line 17, at end insert—

<(  ) A notice under subsection (1) must include—->
Paul Wheelhouse  
11 In section 14, page 7, line 21, leave out <(1)(a)> and insert <(1)>

Paul Wheelhouse  
19 In section 30, page 15, line 9, after <held,> insert <and>

Paul Wheelhouse  
20 In section 30, page 15, line 11, at end insert—
   <( ) A notice under subsection (1)(a) must include—>

Paul Wheelhouse  
22 In section 30, page 15, line 15, after <notice> insert <and a copy of the original determination>

Paul Wheelhouse  
23 In section 30, page 15, line 15, leave out <(1)(a)> and insert <(1)>

Dissemination of sheriff’s determination

Paul Wheelhouse  
12 In section 26, page 12, line 34, leave out <the Scottish Ministers> and insert <an office-holder in the Scottish Administration>

Paul Wheelhouse  
13 In section 26, page 13, line 9, leave out from first <in> to <34(1)> in line 10

Paul Wheelhouse  
14 In section 26, page 13, line 11, leave out <this section> and insert <subsection (1)(b)(iii) or (iv)>

Responses to sheriff’s recommendations: publication

Paul Wheelhouse  
15 In section 27, page 13, line 34, after first <of> insert <all or>

Paul Wheelhouse  
16 In section 27, page 13, line 35, leave out <(5)> and insert <(5A)>

Paul Wheelhouse  
17 In section 27, page 13, line 36, leave out subsection (5) and insert—
   <(5A) Where a response is given to the SCTS under subsection (1), the SCTS must, after considering any representations made under subsection (4)—
   (a) publish the response in full,
(b) publish the response in part, together with a notice explaining that part of the response has been withheld from publication, or
(c) publish a notice explaining that the whole of the response is being withheld from publication.

(6) The SCTS may withhold the whole of a response given under subsection (1) from publication only if representations are made to that effect under subsection (4).

(7) If no response is given in accordance with subsection (1)(a) by the end of the 8 week period mentioned in subsection (3), the SCTS must publish notice of that fact.

(8) The SCTS must publish a response or notice under subsection (5A) or (7) in such manner as it considers appropriate.

Paul Wheelhouse

31 In section 33, page 17, line 1, leave out <27(5)(a)> and insert <27(5A)(a) or (b)>

Paul Wheelhouse

32 In section 33, page 17, line 2, leave out <27(5)(b)> and insert <27(5A)(c) or (7)>

Responses to sheriff’s recommendations: admissibility in judicial proceedings

Paul Wheelhouse

18 In section 27, page 13, line 40, at end insert—

< ( ) A response under subsection (1) is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature.>

Responses to sheriff’s recommendations: annual report

Patricia Ferguson

61 After section 27, insert—

<Reports

(1) The Scottish Ministers must, as soon as practicable after the end of each financial year, prepare a report setting out—

(a) the number of inquiries that ended during the financial year, and
(b) in relation to such inquiries—

(i) the number in which recommendations requiring a response were made,
(ii) the total number of such recommendations made,
(iii) the number of such recommendations in relation to which a response was received by the Scottish Courts and Tribunals Service under section 27(1) during that year,
(iv) the number of such recommendations in relation to which a notice was published under section 27(7) during that year.
(2) The Scottish Ministers must—
(a) lay a copy of a report under subsection (1) before the Scottish Parliament, and
(b) publish the report in such manner as they consider appropriate.

(3) In subsection (1), “recommendations requiring a response” means recommendations to which section 27(1)(a) applies.

Form of further inquiry proceedings

Paul Wheelhouse

21 In section 30, page 15, line 12, after <28(2)(a),> insert—
<(  ) the Lord Advocate’s view as to whether the further proceedings should consist of—
(i) the re-opening and continuation of the inquiry, or
(ii) the holding of a fresh inquiry,> 

Paul Wheelhouse

24 In section 30, page 15, line 15, after <order> insert <fixing a date and place for a hearing under subsection (2A).>

(2A) A hearing under this subsection is one at which the sheriff is to give the procurator fiscal and the participants in the inquiry to which the notice under subsection (1)(a) relates the opportunity to make representations about whether the further proceedings should consist of—
(a) the re-opening and continuation of the inquiry, or
(b) the holding of a fresh inquiry.

(2B) After the sheriff makes an order under subsection (2), the procurator fiscal must give notice to the participants in the inquiry to which the notice under subsection (1)(a) relates of the date and place fixed for the hearing.

(2C) After a hearing has been held under subsection (2A), the sheriff must make an order>

Paul Wheelhouse

25 In section 30, page 15, line 18, after <re-opening> insert <and continuing>

Paul Wheelhouse

26 In section 30, page 15, line 19, at end insert—
<(  ) The sheriff may make an order under subsection (2C)(b)(ii) only if the sheriff considers that it is in the public interest to do so,>

Paul Wheelhouse

27 In section 31, page 15, line 23, leave out <30(2)> and insert <30(2C)>

Paul Wheelhouse

28 In section 31, page 16, line 8, leave out <30(2)> and insert <30(2C)>
Paul Wheelhouse

29  In section 32, page 16, line 11, leave out <30(2)> and insert <30(2C)>

Paul Wheelhouse

30  In section 33, page 16, line 30, leave out <30(2)(a)> and insert <30(2C)(a)>

Modification of enactments

Paul Wheelhouse

33  In schedule 2, page 21, line 3, at end insert—

<Administration of Justice (Scotland) Act 1933

Section 38 of the Administration of Justice (Scotland) Act 1933 is repealed.>

Paul Wheelhouse

34  In schedule 2, page 21, line 7, leave out <In>

Paul Wheelhouse

35  In schedule 2, page 21, line 7, after <1974> insert <is amended in accordance with this paragraph.>

Paul Wheelhouse

36  In schedule 2, page 21, line 8, at end insert—

<( ) In section 34(1) (extension of time for bringing summary proceedings), for paragraph (d) substitute—

“(d) an inquiry into any death that may have been so caused is held under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015,”.>

Paul Wheelhouse

37  In schedule 2, page 21, line 8, at end insert—

<Oil and Gas (Enterprise) Act 1982

In schedule 3 of the Oil and Gas (Enterprise) Act 1982, paragraph 34 is repealed.>

Paul Wheelhouse

38  In schedule 2, page 21, line 8, at end insert—

<Anatomy Act 1984

In section 4(6) of the Anatomy Act 1984 (lawful examinations), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

39  In schedule 2, page 21, line 8, at end insert—
<Merchant Shipping Act 1995

(1) The Merchant Shipping Act 1995 is amended in accordance with this paragraph.

(2) In section 108(6)(a)(iii) (returns of births and deaths in ships, etc.), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

(3) In section 271(6)(c) (inquiries into deaths of crew members and others), for “enquiry is to be held under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “inquiry is to be held under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

40 In schedule 2, page 21, line 8, at end insert—

<Criminal Procedure (Consequential Provisions) (Scotland) Act 1995

In schedule 4 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, paragraph 10 is repealed.>

Paul Wheelhouse

41 In schedule 2, page 21, line 8, at end insert—

<Petroleum Act 1998

In schedule 4 of the Petroleum Act 1998, paragraph 9 is repealed.>

Paul Wheelhouse

42 In schedule 2, page 21, line 8, at end insert—

<Freedom of Information Act 2000

In section 31(1)(i) of the Freedom of Information Act 2000 (law enforcement), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

43 In schedule 2, page 21, line 8, at end insert—

<Scottish Public Services Ombudsman Act 2002

In schedule 4 of the Scottish Public Services Ombudsman Act 2002, in paragraph 2(2), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

44 In schedule 2, page 21, line 8, at end insert—

<Freedom of Information (Scotland) Act 2002

(1) The Freedom of Information (Scotland) Act 2002 is amended in accordance with this paragraph.

(2) In section 34(2)(a) (investigations by Scottish public authorities and proceedings arising out of such investigations), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.
(3) In section 37(3) (court records, etc.), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

45 In schedule 2, page 21, line 8, at end insert—

<Police, Public Order and Criminal Justice (Scotland) Act 2006

(1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended in accordance with this paragraph.

(2) In section 33A(b)(ii) (general functions of the Police and Investigations Review Commissioner), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

(3) In section 41B(2)(b)(ii) (serious incidents involving the police), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

(4) In section 41C(2)(b)(ii) (investigation of matters in the public interest), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

46 In schedule 2, page 21, line 8, at end insert—

<Scottish Commission for Human Rights Act 2006

In section 14(9) of the Scottish Commission for Human Rights Act 2006 (power to intervene), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”.

Paul Wheelhouse

47 In schedule 2, page 21, line 8, at end insert—

<Armed Forces Act 2006

In schedule 16 of the Armed Forces Act 2006, paragraph 72 is repealed.

Paul Wheelhouse

48 In schedule 2, page 21, line 8, at end insert—

<Coroners and Justice Act 2009

In the Coroners and Justice Act 2009, section 50 (amendments to the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976) is repealed.

Paul Wheelhouse

49 In schedule 2, page 21, line 9, at end insert—

<( ) The Energy Act 2013 is amended in accordance with this paragraph.
Paul Wheelhouse

50 In schedule 2, page 21, line 10, leave out <of the Energy Act 2013>

Paul Wheelhouse

51 In schedule 2, page 21, line 10, at end insert—

<(  ) In schedule 10 (provisions relating to offences), in paragraph 3(1)(d), for “a public inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2015”).>