



# Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

## 2016 asp 2

### *Findings and recommendations*

#### **26 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,

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- (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.

#### Commencement Information

**II** S. 26 in force at 15.6.2017 by [S.S.I. 2017/155](#), **reg. 2** (with [reg. 5](#))

## 27 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 26(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 an office-holder in the Scottish administration, 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 26(1),
  - (b) the notice given under section 15(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 any transcript of the evidence at an inquiry, if the person—
- (a) makes a request for it within the specified period, and
  - (b) has an interest in the inquiry.
- (4) In subsection (3), “specified” means specified in an act of sederunt under section 36(1).
- (5) The sheriff may decide that part of a determination—
- (a) is not to be given to a person under subsection (1)(b)(iii) or (iv),
  - (b) is to be withheld from publication under this section.

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- (6) After the sheriff has made a determination under section 26(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.

#### Commencement Information

- I2** S. 27(1)-(3)(5)(6) in force at 15.6.2017 by [S.S.I. 2017/155](#), [reg. 2](#) (with [reg. 5](#))  
**I3** S. 27(4) in force at 1.9.2016 by [S.S.I. 2016/196](#), [reg. 2\(e\)](#)

## 28 Compliance with sheriff's recommendations

- (1) A person to whom a recommendation under section 26(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 all or part of the response from publication under subsection (5).
- (5) 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 (5) or (7) in such manner as it considers appropriate.

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

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**Commencement Information**

**I4** S. 28 in force at 15.6.2017 by S.S.I. 2017/155, reg. 2 (with reg. 5)

## 29 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 28(1),
    - (iv) the number of such recommendations in relation to which a notice was published under section 28(7).
- (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 28(1)(a) applies.

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**Commencement Information**

**I5** S. 29 in force at 15.6.2017 by S.S.I. 2017/155, reg. 2 (with reg. 5)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7A and cross-heading inserted by [2023 c. 41 Sch. 11 para. 3\(1\)](#)
- Sch. A1 inserted by [2023 c. 41 Sch. 11 para. 3\(2\)](#)