



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

2016 asp 2

## *Further inquiry proceedings*

### **30 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).
- (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—
    - (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.
- (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 31 and 32 references to the holding of further inquiry proceedings in relation to a death are references to—
  - (a) the re-opening and continuation of an inquiry into the death, or
  - (b) the holding of a fresh inquiry into the death.

### **31 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.

- (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)—
  - (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.
- (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 32, references to the sheriff are references to a sheriff of the sheriffdom in which the inquiry into the person's death was held.

## **32 Initiating further proceedings**

- (1) Where further inquiry proceedings are to be held in relation to the death of a person in accordance with section 30(2), the procurator fiscal must give the sheriff—
  - (a) notice that such proceedings are to be held, and
  - (b) a copy of the determination made in relation to the death ("the original determination").
- (2) A notice under subsection (1)(a) must include—
  - (a) a brief account of the nature of the new evidence mentioned in section 30(2) (a),
  - (b) 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, and
  - (c) any other information required by an act of sederunt under section 36(1).
- (3) On receiving notice and a copy of the original determination under subsection (1), the sheriff must make an order fixing a date and place for a hearing under subsection (4).
- (4) 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.

- (5) After the sheriff makes an order under subsection (3), 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.
- (6) After a hearing has been held under subsection (4), the sheriff must make an order—
  - (a) setting aside the original determination, and
  - (b) either—
    - (i) re-opening and continuing the inquiry into the death, or
    - (ii) requiring a fresh inquiry to be held into the death.
- (7) The sheriff may make an order under subsection (6)(b)(ii) only if the sheriff considers that it is in the public interest to do so.
- (8) Where the sheriff makes an order under subsection (6)(a), the Scottish Courts and Tribunals Service must publish, in such manner as it considers appropriate, a notice stating that the original determination has been set aside.

### **33 Re-opened inquiries**

- (1) Sections 15 to 18 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 32(6) re-opening the inquiry, also make an order under section 15(3) in relation to the re-opened inquiry (and section 15(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 17(1), in addition to the persons mentioned in section 17(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 26(5)(b).
- (4) The notice required by section 17(1) and (3) must include notice of—
  - (a) the fact that the inquiry has been re-opened (and section 17(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.
- (7) In this section—
  - “new evidence” means the new evidence mentioned in section 30(2)(a),
  - “original inquiry proceedings” means the part of an inquiry held before it is re-opened under section 32(6),
  - “re-opened inquiry” means the part of an inquiry held after it is so re-opened.

### **34 Fresh inquiries**

- (1) This section applies where the sheriff makes an order under section 32(6) setting aside the determination in an inquiry (“the original inquiry”) and requiring a fresh inquiry to be held.
- (2) The sheriff must, when making the order, also make an order under section 15(3) in relation to the fresh inquiry (and section 15(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 17(1), in addition to the persons mentioned in section 17(2), to any person not mentioned in that section—
  - (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 26(5)(b).
- (4) The fresh inquiry is to be held in the sheriffdom in which the original inquiry was held (and section 13(2) (which requires the Lord Advocate to choose where the inquiry is to be held) does not apply).
- (5) Subsection (4) is subject to section 13(3).

### **35 Further inquiry proceedings: compliance with recommendations**

- (1) This section applies where—
  - (a) a determination (“the original determination”) made in an inquiry into the death of a person has been set aside under section 32(6)(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 28(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.
- (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.
- (4) The Scottish Courts and Tribunals Service must withdraw from publication—
  - (a) a response to the recommendation published under section 28(5)(a) or (b),
  - (b) a notice published under section 28(5)(b) or (c) or (7) in relation to the recommendation.