

These notes relate to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2) which received Royal Assent on 14 January 2016

INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016

EXPLANATORY NOTES

THE 2016 ACT

3. The 2016 Act seeks to modernise the legislative framework for Fatal Accident Inquiries (FAIs) in Scotland. The provisions in the 2016 Act take forward many of the recommendations requiring primary legislation from Lord Cullen’s Review of the operation of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (“the 1976 Act”), which reported in 2009¹. The Scottish Government issued its response to the review in 2011², accepting the majority of Lord Cullen’s 36 recommendations.
4. The recommendations from Lord Cullen which were addressed to the Crown Office and Procurator Fiscal Service (COPFS) have already been taken forward by the establishment of the Scottish Fatalities Investigation Unit (SFIU).
5. The 2016 Act implements the remaining recommendations that the Government accepted in its response in 2011. A public consultation³ on the proposals was carried out from 1 July to 9 September 2014 and responses published⁴ on 15 October 2014.
6. The 2016 Act repeals the 1976 Act and enacts new provisions to govern the system of FAIs in Scotland. The 2016 Act does not attempt to legislate for all of the recommendations made by Lord Cullen that were accepted by the Government. Some of the changes recommended will be implemented by the Lord President and the Scottish Courts and Tribunals Service (SCTS). Other changes will be implemented through FAI rules to govern the procedure. The 2016 Act seeks to set out the framework within which the rules will add the necessary detail.
7. For the purposes of this document, the term ‘FAI’ is used to describe an inquiry under this Act or the 1976 Act.
8. The 2016 Act is in 43 sections and 2 schedules.
9. [Section 1](#) sets out the nature and purpose of an inquiry under the 2016 Act, with sections 2 to 7 describing the situations where an inquiry must or may be held.
10. [Section 8](#) provides for a family liaison charter to be published by the Lord Advocate and section 9 provides for the Lord Advocate to explain to partners or close relatives why an inquiry is not to be held.

1 Lord Cullen, Report of findings of Review of Fatal Accident Inquiry Legislation: <http://www.scotland.gov.uk/Publications/2009/11/02113726/0>

2 Scottish Government, Response to the Recommendations from the Review of Fatal Accident Inquiry Legislation: <http://www.scotland.gov.uk/Publications/2011/03/18150120/0>

3 Consultation on proposals to reform Fatal Accident Inquiries legislation: <http://www.scotland.gov.uk/Publications/2014/07/6772>

4 Responses to the consultation on proposals to reform Fatal Accident Inquiries legislation: <http://www.scotland.gov.uk/Publications/2014/10/8764>

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11. [Sections 10 to 14](#) make general provision, firstly, relative to the procurator fiscal's investigation (section 10), then for who may participate in an inquiry (section 11), for the location of the inquiry and the jurisdiction of the sheriff (sections 12 and 13), and lastly for inquiries into multiple deaths (section 14).
12. [Sections 15 to 18](#) provide for the procedure that precedes the inquiry. This includes the procedure for initiating the inquiry (section 15) and for giving notice of it (section 17), provision for preliminary hearings (section 16), and provision for the agreement of undisputed facts between the procurator fiscal and the participants (section 18).
13. [Sections 19 to 25](#) provide for the inquiry itself. This includes provision relating to the powers of the sheriff (section 19), provision about evidence and witnesses (section 20), a requirement that the inquiry be held in public (section 21), publishing restrictions in relation to the identification of children and offences relating to those restrictions (section 22) and offences by bodies corporate (section 23). Section 24 permits a sheriff to appoint a person (known as an assessor) to assist him/her. Finally, section 25 prohibits the sheriff from awarding expenses in relation to the proceedings.
14. [Sections 26 to 29](#) provide for the sheriff's findings, dissemination of his/her determination, compliance with any recommendations, and annual reporting on compliance.
15. [Sections 30 to 35](#) make provision for the circumstances in which there might be further inquiry proceedings and the procedures for those. Section 33 makes provision where these further proceedings are to be a re-opening and continuation of the original inquiry and section 34 where they are to be a fresh inquiry.
16. [Section 36](#) provides for the Court of Session to make rules relating to procedure ("FAI rules") and schedule 1 (which is introduced by subsection (6)) makes provision in relation to the functions of the Scottish Civil Justice Council. Section 37 makes provision for the designation of specialist judicial officers in relation to FAIs, while section 38 makes it clear that summary sheriffs have jurisdiction to conduct FAIs.
17. Finally, sections 39 to 43 make general provision in relation to the 2016 Act and schedule 2 makes consequential modifications of existing legislation.