

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

COMMENTARY ON SECTIONS

Pre-inquiry procedure

Section 15 – Initiating the inquiry

50. An inquiry is only to be held where the Lord Advocate makes a decision to that effect or where the 2016 Act requires one to be held on a mandatory basis. Section 15 provides that where an inquiry is to be held, the procurator fiscal is to give notice to the sheriff of that fact. The notice must include a brief account of the circumstances of the death so far as they are then known to the procurator fiscal and any other information which may be set out as required in FAI rules. Under subsection (3), the sheriff will set out in an order the date and place for the preliminary hearing to the FAI if one is to be held, and for the FAI itself, which need not be held at the same place. The sheriff will also grant warrant for the procurator fiscal and participants to cite witnesses.
51. Subsection (4) provides flexibility for the sheriff to not fix a date and place for the hearing, but only if a preliminary hearing is to be held and the sheriff considers it appropriate not to fix such a date. It is left to the discretion of the sheriff as to the circumstances in which it is not appropriate to fix a date; it may be that at this early stage the sheriff is unsure as to the scope of the FAI and may wish to hear submissions prior to fixing the date.
52. Subsection (5) allows the sheriff to vary a date and place fixed for the holding of a preliminary hearing or inquiry.
53. Subsection (6) makes it clear that, in deciding the date for the holding of the FAI, the sheriff must have regard to the desirability of holding the inquiry as soon as is reasonably practicable. This means that the sheriff must bear in mind the need to hold the inquiry soon, and while the inquiry need not be held immediately, that only practical aspects which require a delay be taken into account (such as available accommodation and reasonable time for participants to prepare) when choosing a date.