

# **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.

##### ***Section 16 – Preliminary hearings***

54. **Section 16** requires a preliminary hearing to be held before every FAI unless the sheriff dispenses with that requirement in accordance with FAI rules. The sheriff is given further power to reverse a decision not to hold a preliminary inquiry.
55. Further provision is to be made with regard to the content and purpose of preliminary hearings in FAI rules. The purpose of a preliminary hearing for an FAI is to consider the likely length of the proceedings, the state of preparedness of participants and the procurator fiscal, the amount of evidence and any areas for agreement of uncontroversial facts, and anything else that needs to be addressed before the inquiry can begin.

**Section 17 – Notice of the inquiry**

56. Once the date and location of the preliminary hearing and/or FAI hearing is fixed (in accordance with the sheriff's powers under section 15), then section 17 places a duty on the procurator fiscal to notify those persons who the procurator fiscal considers to be persons who are entitled to participate in the FAI. Those who are entitled to be participants are set out in section 11. In addition, the procurator fiscal is also required to notify any person specified in, or in a category of person specified in, FAI rules. Subsection (3) provides that the procurator fiscal will also have to provide public notice of the FAI, the date and place of any preliminary hearing, and the date and place of the FAI.
57. The procurator fiscal is under a continuing duty to notify and publicise changes to the place or date of these matters, including notification of a preliminary hearing where the sheriff has reversed his or her decision not to hold one. For the avoidance of doubt, the procurator fiscal only has to notify directly those who appear to the procurator fiscal to be entitled to participate or whom he or she has to notify under FAI rules.

**Section 18 – Agreement of facts before an inquiry**

58. **Section 18** provides that FAI rules must make provision about the agreement, before the start of the inquiry, by the procurator fiscal and the participants in an inquiry of uncontroversial facts which are unlikely to be disputed. This is to avoid the need for evidence to be led at the FAI about issues which are not in doubt and thus contribute to shortening the FAI. FAI rules are likely to set out the process by which agreement is to be reached, and include a duty to seek agreement.