
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 103

Act of Sederunt (Fatal Accident Inquiry Rules) 2017

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION, ETC.

Citation and commencement, etc.

1.1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

(2) It comes into force on 15th June 2017.

(3) A certified copy is to be inserted in the Books of Sederunt.

Interpretation

1.2.—(1) In these Rules—

“apply” means apply in accordance with schedule 1, and related expressions are to be construed accordingly;

“the Council Regulation” means Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, as amended from time to time;

“the deceased” means the person whose death the inquiry is concerned with;

“first notice” means notice that an inquiry is to be held under section 15(1);

“first order” means the order of the sheriff made under rule 3.2(1);

“the inquiry principles” means the principles in rule 2.2;

“intimate” means intimate in accordance with schedule 2, and related expressions are to be construed accordingly;

“participants” includes the procurator fiscal;

“the purpose of the inquiry” means the purpose set out in section 1(3) and (4);

“SCTS” means the Scottish Courts and Tribunals Service; and

“witness statement” has the meaning given by rule 4.13(2).

(2) In these Rules, references to a section are to that section of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

Periods of time

1.3. If any period of time specified in these Rules expires on a Saturday, Sunday or public or court holiday, it is extended to expire on the next day that the sheriff clerk’s office is open for civil business.

Forms

- 1.4.**—(1) A reference in these Rules to a form is a reference to that form in schedule 3.
(2) Those forms may be varied where the circumstances require it.

Miscellaneous and general matters

- 1.5.** Schedule 4 makes provision about—
- (a) lodging;
 - (b) live links;
 - (c) reporting restrictions;
 - (d) the style of oath and affirmation;
 - (e) interventions; and
 - (f) lay representation and support.

PART 2

OVERVIEW

The structure of an inquiry

- 2.1.** An inquiry proceeds as follows—
- (a) the procurator fiscal begins the procedure by sending the sheriff first notice of the inquiry (see rule 3.1);
 - (b) the sheriff makes a first order and other participants become involved in the inquiry (see rules 3.2 to 3.5);
 - (c) the sheriff normally holds one or more preliminary hearings, to make sure that the inquiry is ready to start (see rules 3.6 to 3.8);
 - (d) the sheriff may make orders about the presentation of information and the participants will notify each other and the sheriff of the information they intend to present at the inquiry (see Part 4);
 - (e) the inquiry is held, with the sheriff presiding (see Part 5); and
 - (f) the sheriff produces a determination (see Part 6).

The inquiry principles

- 2.2.**—(1) An inquiry is inquisitorial not adversarial.
(2) An inquiry is to be progressed expeditiously and efficiently, with as few delays as possible.
(3) Taking into account the nature and complexity of the inquiry—
 - (a) the procedure at an inquiry is to be as flexible as appropriate; and
 - (b) the manner in which information is presented is to be as efficient as possible.
(4) All participants are to be able to participate effectively in furthering the purpose of the inquiry.

Taking into account the inquiry principles

- 2.3.**—(1) The sheriff must take into account the inquiry principles when—
 - (a) interpreting these Rules; and

- (b) making any orders.
- (2) Participants and representatives must respect the inquiry principles by—
 - (a) taking into account the inquiry principles when seeking an order; and
 - (b) assisting the sheriff with the duty in paragraph (1).

Representation and support

- 2.4.**—(1) A participant other than the procurator fiscal may—
- (a) appear on the participant’s own behalf;
 - (b) be represented by a solicitor, an advocate, or both;
 - (c) with the permission of the sheriff, be represented by a lay representative;
 - (d) with the permission of the sheriff, be supported by a lay supporter.
- (2) Where a solicitor or lay representative withdraws from acting on behalf of a participant, the solicitor or lay representative must lodge a notice of withdrawal.

Judicial continuity

- 2.5.** Where possible, the same sheriff is to—
- (a) consider the first notice and make the first order;
 - (b) preside at all preliminary hearings; and
 - (c) preside at the inquiry.

The inquiry management powers

- 2.6.**—(1) The sheriff may make any order necessary to further the purpose of an inquiry, including—
- (a) an order made to assist the sheriff to identify which issues are in dispute, such as an order—
 - (i) fixing a hearing and specifying a purpose for that hearing;
 - (ii) requiring participants to disclose the existence and nature of any information they hold relating to the inquiry;
 - (iii) requiring participants to lodge particular documents or other items, or to lead particular witnesses;
 - (iv) restricting the documents or other items which a participant may present, or the witnesses a participant may lead;
 - (v) granting authority to recover documents or other items relating to the inquiry;
 - (b) an order made to allow the sheriff to manage time efficiently, such as an order—
 - (i) imposing a time limit on any step to be taken by a participant;
 - (ii) varying a deadline or time limit set out in these Rules;
 - (c) dealing with a participant’s non-compliance with a rule or order, such as an order—
 - (i) requiring that participant to take a step as a consequence of not complying with a rule or order;
 - (ii) relieving the participant from the consequences of not complying with a rule or order;
 - (iii) imposing conditions on any relief from non-compliance.
- (2) The sheriff may make orders—
- (a) of the sheriff’s own accord; or

- (b) on the application of a participant.

PART 3

PRE-INQUIRY PROCEDURE

First notice

- 3.1.**—(1) First notice is to be given in Form 3.1.
- (2) First notice must set out—
- (a) the information required by section 15(2)(a) (that is, a brief account of the circumstances of the death, so far as known to the procurator fiscal);
 - (b) the identity of the deceased;
 - (c) any issues identified by the procurator fiscal which it is anticipated the inquiry should address;
 - (d) whether the procurator fiscal considers that a preliminary hearing is unnecessary and, if so, the reasons for that view;
 - (e) whether the inquiry is mandatory or discretionary and—
 - (i) if mandatory, the category of mandatory inquiry;
 - (ii) if discretionary, whether the Lord Advocate considers that the death fell within section 4(1)(a)(i) or (ii);
 - (f) in the case of a discretionary inquiry under section 6 (inquiries into deaths occurring abroad: general), which condition in section 6(3)(a) is met;
 - (g) in the case of a discretionary inquiry under section 7 (inquiries into deaths occurring abroad: service personnel) that the conditions in section 7(1)(c) are met; and
 - (h) the identity of any person who the procurator fiscal considers might have an interest in the inquiry.

First order

- 3.2.**—(1) The sheriff must make an order (a “first order”) under section 15(3) (initiating the inquiry) within 14 days of receiving first notice.
- (2) The sheriff may order the procurator fiscal to appear in chambers to discuss the first order.
- (3) If the sheriff orders that a preliminary hearing is to be held, it must be ordered to take place within 56 days after the date of the first order.
- (4) If the sheriff orders that a preliminary hearing is not to be held, the inquiry must be ordered to take place within 56 days after the date of the first order.

Notice of the inquiry

- 3.3.**—(1) Notice under section 17(1) in relation to an inquiry is to be given in Form 3.3A.
- (2) Notice must be given at least 42 days before—
- (a) the preliminary hearing; or
 - (b) if the sheriff has not ordered a preliminary hearing, the date fixed for the start of the inquiry.
- (3) In addition to the persons mentioned in section 17(2)(a), notice must be given to—

- (a) a person named in the first order as a person the sheriff is satisfied has an interest in the inquiry;
- (b) in a category of death listed in column 1 of the following table, the person specified in column 2.

<i>Column 1</i> Circumstances of death	<i>Column 2</i> Specified person
a death within section 2(3)(b) of the Act (death as a result of an accident which occurred while the person was acting in the course of the person's employment or occupation)	The Health and Safety Executive
a death within section 2(4)(b) (death of a child required to be kept or detained in secure accommodation)	The local authority or other provider of secure accommodation in whose care the child died, the Scottish Ministers and Social Care and Social Work Improvement Scotland
death within section 2(5)(a) (death of a person required to be imprisoned or detained in a penal institution)	The Scottish Ministers or the Chief Constable of the relevant police force, respectively
death within section 2(5)(b) (death in police custody)	The Chief Constable of the relevant police force
a death within section 2(5)(c) (death in custody on court premises)	The Scottish Courts and Tribunals Service
a death within section 2(5)(d) (death of a person detained in service custody premises)	The Secretary of State
a death within section 5 (certain deaths and accidents to be treated as occurring in Scotland)	The Secretary of State
a death within section 6 (inquiries into deaths occurring abroad: general)	The Secretary of State
a death within section 7 (inquiries into deaths occurring abroad: service personnel)	The Secretary of State
a death within article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016(1) (death in Scotland of service personnel)	The Secretary of State.

(4) A person given notice under this rule who intends to participate must indicate that intention by lodging a notification in Form 3.3B at least 14 days before the start of the inquiry.

Public notice of the inquiry

3.4.—(1) Public notice under section 17(3) is to be given in Form 3.4.

- (2) Notice is to be given by intimating it to SCTS at least 42 days before—
 - (a) the preliminary hearing; or
 - (b) if the sheriff has not ordered a preliminary hearing, the date fixed for the start of the inquiry.
- (3) SCTS must publish the notice on its website when it is received.
- (4) In addition to publication under paragraph (3), the sheriff may order public notice to be given by other methods.

Other participation

3.5.—(1) A person who is not given notice under section 17(1) but who wishes to participate in an inquiry may apply to the sheriff to participate.

- (2) That application must—
 - (a) set out why that person's participation would further the purpose of the inquiry; and
 - (b) be made at least 14 days before the start of the inquiry.

Preliminary hearings

Purpose of preliminary hearings

- 3.6.**—(1) The purpose of a preliminary hearing is to—
- (a) ensure that the purpose of the inquiry is achieved when the inquiry takes place;
 - (b) consider the scope of the inquiry and identify the issues which are in dispute; and
 - (c) consider the information likely to be presented at the inquiry and the manner in which it should be presented.
- (2) The sheriff may order as many preliminary hearings to take place as is necessary to achieve that purpose.

Before the first preliminary hearing

3.7. Unless the sheriff orders otherwise, at least 7 days before the first preliminary hearing each participant must lodge a brief note setting out, where known—

- (a) the matters considered likely to be in dispute at the inquiry;
- (b) a list of any productions which it is considered might be used at the inquiry and a note of their relevance to the purpose of the inquiry;
- (c) a list of persons whom it is considered might be led as witnesses at the inquiry and a note of their relevance to the purpose of the inquiry; and
- (d) the matters which the sheriff might be invited to address in the sheriff's determination.

Procedure

- 3.8.**—(1) The procedure at a preliminary hearing is to be as ordered by the sheriff.
- (2) At the preliminary hearing (or by the last preliminary hearing) the sheriff must—
- (a) consider whether there are any further persons who the sheriff is satisfied have an interest in the inquiry under section 11(1)(e);
 - (b) establish who is to participate in the inquiry;
 - (c) establish the nature and complexity of the inquiry;
 - (d) consider the likely length, timetable and date for the start of the inquiry;

- (e) establish any matters which are likely to be in dispute at the inquiry;
 - (f) establish the state of preparedness of the participants;
 - (g) consider how information should be presented to the inquiry including—
 - (i) how information will be gathered (see rule 4.4);
 - (ii) the timetable for lodging productions and witness lists (see rules 4.6 and 4.7);
 - (iii) the arrangements for any vulnerable witnesses (see rule 4.9);
 - (iv) how participants are progressing with discharging their duty to agree information (see rule 4.11);
 - (v) whether notices to admit information are required (see rule 4.12);
 - (vi) whether any witness statements will be required (see rule 4.13);
 - (vii) whether any video recordings will be required (see rule 4.14);
 - (viii) how any expert witnesses should present information (see rules 4.15 to 4.19); and
 - (ix) what other technology (for example, live links) will be used;
 - (h) consider any other preliminary matter raised by a participant; and
 - (i) identify any legal aid applications which have been, or require to be, made or renewed by participants.
- (3) At the conclusion of a preliminary hearing the sheriff must—
- (a) fix a date for another preliminary hearing; or
 - (b) fix a date for the start of the inquiry.
- (4) Where the sheriff fixes a date for another preliminary hearing, the sheriff must specify—
- (a) the reason for fixing another preliminary hearing; and
 - (b) the matters which will be considered at that preliminary hearing.
- (5) Where the sheriff fixes a date for the start of the inquiry, SCTS must publish a notice of that date on its website.

PART 4

INFORMATION

The law of evidence

4.1.—(1) Any rule of law or enactment that prevents evidence being led on grounds of inadmissibility does not apply in an inquiry.

(2) Where a person would be entitled to withhold information on the grounds of legal professional privilege, nothing in this rule affects that person's ability to refuse to produce that document or present it at an inquiry.

(3) Any rule of law that restricts the manner in which evidence must be presented does not apply in an inquiry.

(4) Subject to any orders made by the sheriff—

- (a) information may be presented to the inquiry in any manner; and
- (b) the sheriff may reach conclusions based on that information.

The information management powers

4.2. The sheriff may make orders about the manner in which information is presented to the inquiry or about how the sheriff will reach conclusions, such as an order—

- (a) restricting the information presented to particular issues or particular sources;
- (b) determining the manner in which information is to be presented, whether by oral presentation, written statement, the production of documents or other items, live link, video recording, or otherwise;
- (c) determining the manner in which the sheriff is to reach conclusions.

Witnesses and productions

Citation of witnesses

4.3.—(1) The order which fixes a date for the start of the inquiry is warrant for the citation of witnesses by participants.

(2) A participant only needs to cite a witness to appear at the inquiry if the participant is otherwise unable to ensure that witness's appearance.

(3) A participant may cite a witness by—

- (a) intimating a citation in Form 4.1A on that witness at least 7 days before the date fixed for the start of the inquiry; and
- (b) lodging a certificate of citation in Form 4.1B.

(4) Where a properly cited witness fails to answer that citation, the sheriff may—

- (a) grant warrant for the apprehension of the witness and for bringing the witness to the inquiry;
- (b) order the witness to make a payment to a participant.

(5) A solicitor who cites a witness is liable for that witness's fees and expenses.

(6) Where a participant is not represented by a solicitor, that participant must—

- (a) apply to the sheriff to fix caution in such sum as the sheriff considers reasonable having regard to the number of witnesses the participant proposes to cite and the period for which they may be required to attend the inquiry; and
- (b) before citing a witness, find caution for such expenses as can reasonably be anticipated to be incurred by the witness in answering the citation.

(7) Where a participant who is not represented by a solicitor does not intend to cite all the witnesses referred to in the application to fix caution, that participant may apply to the sheriff for variation of the amount of caution.

Gathering information

4.4. Once the sheriff has made the first order, a participant may gather information for use in an inquiry in accordance with schedule 5.

Oath and affirmation

4.5. The sheriff may administer either the oath or affirmation to a witness.

Lodging productions

4.6.—(1) All productions which a participant intends to present to an inquiry must be lodged by the date ordered by the sheriff.

(2) A participant may only present a production which has not been lodged with the leave of the sheriff.

(3) A copy of every documentary production must be lodged for the use of the sheriff no later than 7 days before the start of the inquiry.

(4) Any productions which have been borrowed must be returned no later than 2 days before the start of the inquiry.

Witness lists

4.7.—(1) A list of witnesses must be lodged by the date ordered by the sheriff.

(2) A participant may only present a witness who is not listed with the leave of the sheriff.

Recording of the inquiry

4.8.—(1) The information presented at the inquiry is to be recorded by any means ordered by the sheriff.

(2) Under section 27(3) (transcript of evidence at the inquiry), SCTS must give a person a copy of any transcript if that person makes the request within 28 days following the date of the sheriff's determination.

(3) The transcript will be provided to that person upon payment of a fee of—

(a) where a transcript has to be made, £1.61 for each minute that has to be transcribed; or

(b) where a transcript has already been made—

(i) £6.00 for a photocopy of a transcript up to 10 pages; and

(ii) £0.50 for each page in excess of 10 pages.

(4) Where more than one person makes a request within 28 days following the date of the sheriff's determination, the sheriff may make an order about how the fee payable under paragraph (2) is to be divided between them.

Vulnerable witnesses

4.9. Schedule 6 makes provision about vulnerable witnesses.

Agreeing information

Joint minutes of agreement

4.10.—(1) It is not necessary for the participants to present information to the inquiry concerning—

(a) a fact agreed by all participants;

(b) a production, the terms and application of which are agreed by all participants.

(2) An agreement is made by lodging a joint minute of agreement.

(3) A joint minute of agreement must be signed by each participant or by that participant's representative.

(4) Where any participant is not legally represented, a joint minute of agreement must be approved by the sheriff.

The duty to agree information

- 4.11.**—(1) Before the start of the inquiry, each participant must identify information which—
- (a) that participant would, apart from this rule, present at the inquiry; and
 - (b) is considered by that participant unlikely to be disputed by other participants.
- (2) The participants must take all reasonable steps to agree such information.
- (3) In particular, the participants must take all reasonable steps to agree the following—
- (a) the name, age, address and occupation of the deceased;
 - (b) the location, date and time of the deceased’s death;
 - (c) the circumstances in which the death was discovered;
 - (d) the identity of any person who witnessed the accident or discovered the deceased’s body;
 - (e) the name of the doctor who pronounced the death of the deceased;
 - (f) in the case of a death falling within section 2(3) (death in the course of employment in Scotland)—
 - (i) the name and address of the deceased’s employer;
 - (ii) the length of period of employment;
 - (iii) the nature of employment; and
 - (iv) the deceased’s employment duties at the time of death;
 - (g) in the case of a death falling within section 2(4)(a) (death in legal custody)—
 - (i) the offence committed, date of conviction and time spent in custody;
 - (ii) the offence alleged to have been committed, the date and place of remand and the reasons for that remand; or
 - (iii) the reasons for the deceased being in legal custody;
 - (h) in the case of a death within article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016(2) (death in Scotland of service personnel)—
 - (i) the length of period of service;
 - (ii) the nature of service; and
 - (iii) the deceased’s service duties at the time of death;
 - (i) any post-mortem report; and
 - (j) any toxicology report.

Notices to admit information

4.12.—(1) This rule applies where the sheriff orders that notices to admit information must be intimated by a particular date.

(2) A participant (referred to in this rule as “the first participant”) may prepare a notice to admit information in Form 4.12A.

(3) The notice must set out facts or productions which—

- (a) the first participant would, apart from this rule, seek to present at the inquiry; and
 - (b) are considered by the first participant unlikely to be disputed or the terms and application of which are unlikely to be disputed by other participants.
- (4) The first participant must intimate a copy of the notice, along with a copy of any production referred to in the notice, to all other participants by the date ordered by the sheriff.
- (5) Each other participant may object to any fact or production set out in the notice by intimating to the first participant an objection in Form 4.12B within 7 days after the date on which the notice was intimated.
- (6) It is not necessary for the participants to present information to the inquiry concerning a fact or production which no other participant objects to.
- (7) Each other participant may present information relevant to, or in explanation of, a fact or document set out in a notice.
- (8) On the application of any other participant, the sheriff may, if satisfied that there are circumstances justifying it, make an order that paragraph (6) does not apply to certain facts or productions in a notice.

Witness statements

- 4.13.—**(1) This rule applies where the sheriff orders that the witness statement of a witness must be lodged by a particular date.
- (2) A “witness statement” is a written statement—
- (a) containing information which a person could present orally at an inquiry; and
 - (b) signed by that person.
- (3) With the permission of the sheriff, the participant relying on the witness statement may, at the inquiry—
- (a) ask questions of the witness which introduce, clarify or supplement the witness statement;
 - (b) ask questions of the witness which relate to new matters which have arisen since the witness statement was lodged.
- (4) The witness statement must be made available for inspection by the public during the inquiry.
- (5) Other participants may question the witness.

Video recordings

- 4.14.—**(1) This rule applies where the sheriff orders that a witness is to present information at the inquiry by video recording, whether the video recording has already been made or not.
- (2) The video recording must be lodged by a date ordered by the sheriff.
- (3) The sheriff must make an order about—
- (a) the format of the video recording and how it is to be played at the inquiry;
 - (b) if the video recording has not already been made, the right of participants to participate in its production;
 - (c) whether the witness also needs to attend the inquiry, to provide further information.

Expert witnesses

Instructing expert witnesses

4.15.—(1) An expert witness may only present information about matters which are necessary to further the purpose of the inquiry.

(2) A participant who has decided to instruct an expert witness must, as early as possible, lodge a note setting out—

- (a) the identity of the witness to be instructed, if known;
- (b) why the information to be presented by that witness is necessary to further the purpose of the inquiry;
- (c) the broad terms of the instruction; and
- (d) the expected completion date of any report.

Information presented by expert witnesses

4.16.—(1) This rule applies where the sheriff orders that an expert witness is to present information at the inquiry by—

- (a) witness statement (see rule 4.13); or
- (b) video recording (see rule 4.14).

(2) The witness statement of an expert witness—

- (a) may consist of that witness's report; or
- (b) must incorporate that witness's report.

Minute of questions

4.17.—(1) This rule applies where a participant has lodged a witness statement or video recording of an expert witness.

(2) Other participants may lodge a minute of questions to be put to that expert witness.

(3) Each participant may only lodge one minute of questions and the minute of questions must be lodged within 14 days of the witness statement or video recording being lodged.

(4) The sheriff may approve the minute, with such modifications as the sheriff considers appropriate, and order answers to be lodged by a particular date.

Single expert witnesses

4.18.—(1) The sheriff may order information to be presented on a particular matter by a single expert witness.

(2) Where the sheriff makes such an order, participants must make reasonable efforts to agree joint instructions for the expert witness.

(3) Where participants cannot agree joint instructions—

- (a) they must send a joint instruction about any matters they can agree;
- (b) they must lodge separate instructions about other matters; and
- (c) the sheriff must approve the terms of those separate instructions before they are sent to the single expert witness.

(4) Where participants cannot agree on the identity of a single expert witness, the sheriff may—

- (a) select an expert from a list prepared by the participants; or

(b) order how an expert is to be selected.

(5) Unless the sheriff orders otherwise, the cost of instructing the single expert witness is to be shared equally between the participants.

Concurrent presentation of expert witnesses

4.19.—(1) The sheriff may order expert witnesses to present information concurrently.

(2) Where the sheriff makes such an order—

(a) the participants must jointly prepare a note for the sheriff, setting out the areas of agreement and disagreement between the expert witnesses; and

(b) that note must be lodged at least 7 days before the start of the inquiry.

(3) At the hearing at which information is presented by concurrent presentation—

(a) all expert witnesses will present information at the same time; and

(b) the sheriff may direct how information is to be presented by the expert witnesses, including by the sheriff questioning the witnesses directly, inviting the witnesses to discuss a particular matter between them, or allowing questioning by participants where necessary.

PART 5

THE INQUIRY

Procedure

5.1. The procedure at an inquiry is to be as ordered by the sheriff.

PART 6

THE SHERIFF'S DETERMINATION

Form of determination

6.1. A determination under section 26 is to be in Form 6.1.

Form of response

6.2. A response under section 28(1)(a) (compliance with sheriff's recommendations: responses) is to be in Form 6.2.

Form of notice

6.3. A notice under section 28(5) (compliance with sheriff's recommendations: notice where response given) is to be in Form 6.3.

PART 7

FURTHER INQUIRY PROCEEDINGS

Form of notice

7.1.—(1) Notice under section 32 that further inquiry proceedings are to be held is to be given in Form 7.1.

(2) The notice must—

- (a) set out the identity of the deceased;
- (b) have appended to it a copy of the determination in the inquiry into the death of the deceased; and
- (c) contain the information required by section 32(2)(a) and (b).

Edinburgh
31st March 2017

CJM SUTHERLAND
Lord President
I.P.D.