
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 103

Act of Sederunt (Fatal Accident Inquiry Rules) 2017

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	The Secretary of State.

<i>Column 1</i> Circumstances of death	<i>Column 2</i> Specified person
2016(1) (death in Scotland of service personnel)	

(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.