

Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No.

CONSTITUTIONAL LAW

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

Made - - - -

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1), 113(4) and (5) and 114(1) of the Scotland Act 1998(1).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016.

(2) This Order comes into force on the same day as section 1 (inquiries under this Act) of the Act comes into force.

(3) This article, articles 6(4) and (5) and 7 and Part 1 of the Schedule extend to England and Wales, Scotland and Northern Ireland.

(4) Articles 2 and 6(1) to (3) extend to Scotland only.

(5) Articles 3 to 5 and Part 2 of the Schedule extend to England and Wales and Northern Ireland only.

(6) Part 3 of the Schedule extends to England and Wales only.

(7) In this Order, “the Act” means the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016(2).

Inquiry under Inquiries Act 2005 in relation to death of person required to be detained in service custody premises

- 2.—(1) Section 3(1) of the Act (mandatory inquiries: exceptions) applies if—
- (a) at the time of death, the person was required to be detained in service custody premises within the meaning given by section 300(7) of the Armed Forces Act 2006⁽³⁾ (service custody etc. rules); and
 - (b) the proceedings referred to in section 3(1) are an inquiry under section 1 of the Inquiries Act 2005⁽⁴⁾ (power to establish inquiry).
- (2) Accordingly, section 3(3) of the Act is repealed.

Certain deaths and accidents to be treated as occurring in Scotland

- 3.—(1) For the purposes of sections 2 and 4 of the Act, the death of a person, or an accident, is to be treated as having occurred in Scotland if it occurred—
- (a) in connection with an activity falling within section 11(2) of the Petroleum Act 1998⁽⁵⁾ (application of civil law to offshore activities); and
 - (b) in a relevant area.
- (2) In paragraph (1)(b), “relevant area” means an area in respect of which it is provided by Order in Council under section 11(1) of the Petroleum Act 1998 that questions arising out of acts or omissions taking place in the area are to be determined in accordance with the law in force in Scotland⁽⁶⁾.

Publishing restrictions in relation to children

- 4.—(1) A person who fails to comply with an order under section 22(2) of the Act commits an offence.
- (2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) It is a defence for a person charged with an offence under paragraph (1) to show that the person did not know or have reason to believe that the publication of the material would identify the child in connection with the inquiry.

Offences by bodies corporate etc.

- 5.—(1) Paragraph (2) applies where—
- (a) an offence under article 4(1) has been committed by—
 - (i) a body corporate;
 - (ii) a Scottish partnership; or
 - (iii) an unincorporated association other than a Scottish partnership; and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual.

(3) 2006 c.52.

(4) 2005 c.12. Section 1 has been amended by the Government of Wales Act 2006 (c. 32), Schedule 10, paragraph 90 and Schedule 12.

(5) 1998 c.17.

(6) The prevailing Order in Council is the Civil Jurisdiction (Offshore Activities) Order 1987 (S.I. 1987/2197).

(2) The individual (as well as the body corporate, partnership or, as the case may be, association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In paragraph (1)(b), “relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a limited liability partnership, a member;
- (c) in relation to a Scottish partnership, a partner;
- (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

Mandatory inquiries: death in Scotland of service personnel

6.—(1) An inquiry is to be held under the Act into the death of a person if—

- (a) the death occurred in Scotland; and
- (b) the person is within section 12(2) of the Coroners and Justice Act 2009⁽⁷⁾ (investigation in Scotland).

(2) For the purposes of—

- (a) section 1 of the Act, an inquiry to be held by virtue of paragraph (1) is to be treated as if it were to be held in accordance with sections 2 to 7 of the Act;
- (b) sections 3(1), 4(2) and 11(1)(d)(ii) of the Act, the death is to be treated as if it were a death within section 2(3) or (4) of the Act.

(3) Where an inquiry is held by virtue of paragraph (1)—

- (a) the Secretary of State may participate in the inquiry proceedings, and the reference in section 17(2)(a) of the Act to a person appearing to the procurator fiscal to be entitled to participate in the inquiry under section 11(1)(a) to (d) includes a reference to the Secretary of State; and
- (b) if the Secretary of State does so participate, references in the Act to a participant in the inquiry include references to the Secretary of State.

(4) For the purposes of this article, the death of a person is to be treated as having occurred in Scotland if it occurred in a relevant area.

(5) In paragraph (4), “relevant area” means an area in respect of which it is provided by Order in Council under section 11(1) of the Petroleum Act 1998 that questions arising out of acts or omissions taking place in the area are to be determined in accordance with the law in force in Scotland.

Modification of enactments and saving provision

7.—(1) The Schedule has effect.

(2) The Schedule does not apply to inquiries to which the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976⁽⁸⁾ continues to apply by virtue of provision under section 42(2) and (3) of the Act.

(7) [2009 c.25](#). Section 12(2) defines the relevant activities which bring the death outside the United Kingdom of a person subject to service law within section 12.

(8) [1976 c.14](#) (“the 1976 Act”). There are amendments to the 1976 Act not relevant to this Order.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 No. 1142*

Dover House,
London
Date

Name
Secretary of State
Scotland Office

SCHEDULE

Article 7

Modification of enactments

PART 1

Modification of legislation extending to England and Wales, Scotland and Northern Ireland

Merchant Shipping Act 1995

1. In section 108(6) of the Merchant Shipping Act 1995⁽⁹⁾ (returns of births and deaths in ships, etc.), for paragraph (c) substitute—

“(c) in Scotland, no inquiry is to be held into the death under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.”.

The Merchant Shipping (Returns of Births and Deaths) Regulations 1979

2. In regulation 7(3) of the Merchant Shipping (Returns of Births and Deaths) Regulations 1979⁽¹⁰⁾ (records of deaths where master unable to act), for the words from “it does not appear” to “should be held” substitute “no inquiry is to be held into the death under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

PART 2

Modification of legislation extending to England and Wales and Northern Ireland only

Health and Safety at Work etc. Act 1974

3.—(1) The Health and Safety at Work etc. Act 1974⁽¹¹⁾ is amended in accordance with this paragraph.

(2) Section 14(7) (power of the Health and Safety Executive to direct investigations and inquiries)⁽¹²⁾ is repealed.

(3) In section 34(1) (extension of time for bringing summary proceedings), for paragraph (d) substitute—

“(d) an inquiry into any death that may have been so caused is held under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.”.

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

4. Sections 4(4) and (5) (reporting restrictions) and 9 (application to continental shelf) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 are repealed.

⁽⁹⁾ 1995 c.21.

⁽¹⁰⁾ S.I. 1979/1577. There are amendments to these Regulations not relevant to this Order.

⁽¹¹⁾ 1974 c.37.

⁽¹²⁾ Section 14 was relevantly amended by the 1976 Act, Schedule 1, Part 1, paragraph 4.

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Oil and Gas (Enterprise) Act 1982

5. In Schedule 3 to the Oil and Gas (Enterprise) Act 1982⁽¹³⁾ (minor and consequential amendments), paragraph 34 is repealed.

Merchant Shipping Act 1995

6.—(1) The Merchant Shipping Act 1995 is amended in accordance with this paragraph.

(2) In section 108(6)(a)(iii) (returns of births and deaths in ships, etc.), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

(3) In section 271(6)(c) (inquiries into deaths of crew members and others)⁽¹⁴⁾, for “enquiry is to be held under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “inquiry is to be held under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

Petroleum Act 1998

7. In Schedule 4 to the Petroleum Act 1998⁽¹⁵⁾ (consequential amendments), paragraph 9 is repealed.

Freedom of Information Act 2000

8. In section 31(1)(i) of the Freedom of Information Act 2000⁽¹⁶⁾ (law enforcement), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

Energy Act 2013

9.—(1) The Energy Act 2013⁽¹⁷⁾ is amended in accordance with this paragraph.

(2) In section 85 (inquiries), subsections (7) and (8) are repealed.

(3) In Schedule 10 (provisions relating to offences), in paragraph 3(1)(d), for “a public inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

The Merchant Shipping (Returns of Births and Deaths) Regulations 1979

10. In regulation 7(1) of the Merchant Shipping (Returns of Births and Deaths) Regulations 1979 (records of deaths where master unable to act), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

The Transfer of Functions (Lord Advocate and Secretary of State) Order 1999

11. In the Schedule to the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (functions transferred from the Lord Advocate to the Secretary of State)⁽¹⁸⁾, omit the entry relating to section 7 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

⁽¹³⁾ 1982 c.23.

⁽¹⁴⁾ Section 271 was relevantly amended by the Coroners and Justice Act 2009, Schedule 21, paragraph 34.

⁽¹⁵⁾ 1998 c.17.

⁽¹⁶⁾ 2000 c.36.

⁽¹⁷⁾ 2013 c.32.

⁽¹⁸⁾ S.I. 1999/678. There are amendments to S.I. 1999/678 not relevant to this Order.

PART 3

Modification of legislation extending to England and Wales only

Gas Act 1965

12. In the Gas Act 1965(19), section 17(4) (accidents) is repealed.

Coroners and Justice Act 2009

13.—(1) The Coroners and Justice Act 2009 is amended in accordance with this paragraph.

(2) In section 12(4)(b) (investigation in Scotland), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

(3) In section 13(1)(d) (investigation in England and Wales despite body being brought to Scotland), for “Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)” substitute “Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the Act”).

Article 2 has the effect that a fatal accident inquiry (“FAI”) which would be mandatory by virtue of section 2(4)(a) and (5)(d) of the Act (death of person required to be detained in service custody premises) is treated in the same way as other mandatory FAIs; therefore if the circumstances of a death have been sufficiently established in the course of an inquiry under section 1 of the Inquiries Act 2005 the Lord Advocate may decide that a FAI is not to be held.

Article 3 makes equivalent provision for section 5 of the Act (certain deaths and accidents to be treated as occurring in Scotland) for England and Wales and Northern Ireland. The predecessor provision, section 9 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (“the 1976 Act”), is repealed in England and Wales and Northern Ireland by paragraph 4 of the Schedule to this Order.

Articles 4 and 5 make equivalent provision for sections 22 and 23 of the Act (publishing restrictions in relation to children; offences by bodies corporate etc.) for England and Wales and Northern Ireland. The predecessor provisions, section 4(4) and (5) of the 1976 Act, are repealed in England and Wales and Northern Ireland by paragraph 4 of the Schedule to this Order.

Article 6 provides for a new category of mandatory FAIs where a death occurs in Scotland or the Scottish area of the continental shelf in the course of military service. That article modifies the Act so that these types of mandatory FAIs are treated in a similar fashion to other mandatory FAIs, for example so that where the circumstances of a death have been sufficiently established in the course of other proceedings the Lord Advocate may decide that a FAI is not to be held. Article 6(2) makes

(19) 1965 c.36. Section 17 was relevantly amended by the 1976 Act, Schedule 1, paragraph 1.

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provision so that the Act applies to a FAI in relation to a death in the course of military service but some modification of that application is required. Sections 3(1) and 4(2) of the Act identify deaths which give rise to a mandatory FAI by reference to sections 2(3) or (4) of the Act so that reference is expanded in Article 6(2)(b) to include deaths of service personnel. Section 11(1)(d) of the Act makes provision as to who may participate in a FAI into a death under section 2(3) of the Act (death in the course of employment). Only section 11(1)(d)(ii) is relevant in the military service context and this is supplemented by bespoke provision in article 6(3).

Article 7(1) introduces the Schedule which provides for modifications of primary and secondary legislation. The modifications to primary legislation include parallel modifications for England and Wales and Northern Ireland to those provided for in schedule 2 to the Act for Scots law. In the case of paragraph 4, the 1976 Act is entirely repealed in Scots law by section 39(1) of the Act. In the case of Part 1 of the Schedule – which concerns merchant shipping legislation – the modifications provided for are not made in the Act and therefore extend to the whole of the United Kingdom. Part 3 concerns the law of England and Wales only and therefore does not extend to Scotland or to Northern Ireland.

Article 7(2) is a saving provision to reflect that references in existing legislation to the 1976 Act should continue to have effect for cases where that Act continues to apply.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.