

INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Further inquiry proceedings

Section 33 – Re-opened inquiries

99. Subsection (1) applies sections 15 to 18 of the 2016 Act (which provide for pre-inquiry procedure) to a re-opened inquiry in the same way as to the original inquiry. Subsections (2) to (4) modify the application of those sections to take into account that this is a re-opening of the original inquiry. Accordingly, as the procurator fiscal has already notified the sheriff that there are to be further proceedings, the notification procedure on the procurator fiscal in section 15(1) is disapplied by subsection (2). This subsection also provides that the sheriff is to make an order under section 15(3) at the same time as he or she makes the order under section 32(6). An order under section 15(3) is one fixing a date and place for the holding of a preliminary hearing and the inquiry.
100. Subsection (3) requires notice of the re-opened FAI under section 17 to be given to the participants at the original FAI and persons to whom recommendations were originally addressed.
101. Subsection (4)(b) requires notice to include the nature of the new evidence which was provided to the sheriff by the procurator fiscal. The purpose of this is to focus the minds of participants as to why the FAI has been re-opened and help them to prepare the relevant submissions and evidence they may wish to lead and any relevant background evidence which was led at the original FAI and which is required in order to set the context of the new evidence.
102. Subsection (5) restricts the evidence that is to be led to evidence about the matters to which the new evidence relates. However subsection (6) permits any evidence to be led if the sheriff either requires or allows it to be led. Taken together, the intention is that there is to be strong presumption that the re-opened FAI will consider only those matters related to the new evidence. However, there is a recognition that it may not be foreseeable where that new evidence will lead, permitting the sheriff to widen the scope of the inquiry as required.
103. As a continuation of the original proceedings, the re-opened FAI is to be held in the same sheriffdom as the original proceedings (but may be transferred by the sheriff to a different sheriffdom under section 13(3)).
104. Continued inquiries will follow the procedure set out in sections 19 to 28.