

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Inquiries into deaths occurring in Scotland

Section 3 – Mandatory inquiries: exceptions

25. This section allows the Lord Advocate to decide that an FAI is not to be held into a death which falls within the categories of death set out in section 2 (mandatory inquiries). The Lord Advocate can exercise this discretion only if satisfied that the circumstances of the death have been sufficiently established in the course of certain other proceedings.
26. The other proceedings which the Lord Advocate is permitted to rely upon are criminal proceedings, an inquiry under section 17(2) of the Gas Act 1965, an inquiry under section 14(2A) of the Health and Safety at Work etc. Act 1974, an inquiry under section 85(1) of the Energy Act 2013 and, except in the case of a death of a person required to be detained in service custody premises, an inquiry under section 1 of the Inquiries Act 2005. Inquiries under the 2005 Act are public inquiries into events that have caused or have potential to cause public concern, examples include inquiries into a particular event (eg Dunblane inquiry 1996) or a series of events (eg BSE inquiry 1997). They are held at the instigation of UK or Scottish Government Ministers with the aim of helping to restore public confidence in systems or services by investigating the facts, which may include why matters may have been dealt with in a particular way over the course of many years and making recommendations to prevent recurrence, not to establish liability or to punish anyone. By comparison, FAIs provide a local inquiry into the circumstances of a particular death and consider what steps might be taken to prevent deaths in similar circumstances.
27. Currently, section 1(2) of the 1976 Act makes provision for the interaction between deaths that are subject to a mandatory FAI and criminal proceedings. In relation to other inquiries, currently separate provision is made in section 17(4) of the Gas Act 1965, section 14(7) of the Health and Safety at Work etc. Act 1974 and section 85(7) and (8) of the Energy Act 2013, which state that an FAI is not be held where a death has already been investigated in an inquiry under those Acts, unless the Lord Advocate directs otherwise. In relation to the Inquiries Act 2005, there is currently no provision which allows the Lord Advocate to take into account that the circumstances of the death requiring a mandatory FAI have been established during the course of an inquiry under the 2005 Act. For inquiries under the various statutory provisions noted above, the 2016 Act therefore shifts the emphasis from there being no FAI unless the Lord Advocate directs, to the Lord Advocate having discretion to direct that there will be no FAI. So if the discretion is not exercised the result under the 2016 Act is that (if the circumstances are within section 2(3) or (4)) there will be an FAI. The 2016 Act also brings the relevant interactions with mandatory inquiries and other inquiries within fatal accident legislation, making it easier to access (see also the Explanatory Note to schedule 2).

These notes relate to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2) which received Royal Assent on 14 January 2016

28. In summary, this section permits the Lord Advocate to decide that the circumstances of the death have been sufficiently established in certain specified proceedings and therefore no FAI is necessary. If the circumstances have not been established then an inquiry must be held. But the 2016 Act also permits the Lord Advocate to decide that even where the circumstances have been established, an FAI could still be held. There may be deaths where the Lord Advocate may conclude that even though the circumstances have been established, the public interest demands that a sheriff should consider whether recommendations should be made in the public interest as to how deaths in similar circumstances might be avoided in the future.