

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Location

Section 12 – Places at which inquiries may be held

42. The Scottish Ministers may make regulations under section 12 to designate places at which a sheriff court may be held for the purposes of holding an FAI. Subsection (1) makes it clear that these places are additional to the places already designated for the holding of sheriff courts under the Courts Reform (Scotland) Act 2014. “Places” in this sense means the towns and cities where sheriff courts are held – it does not mean specific sheriff court buildings as FAIs have already been held in other buildings.
43. An FAI may be held at a sheriff court building, but it may also be held in another building in a place designated under the 2014 Act or section 12 of the 2016 Act. This allows the current practice of holding FAIs in buildings not usually used for court purposes (e.g. locations such as the Council Chamber in, for example, Aberdeen City Chambers and the Maryhill Community Centre in Glasgow, or in places where there is no sheriff court (e.g. Motherwell)).
44. Since the SCTS has the statutory responsibility for providing property for the Scottish courts under section 61(1) of the Judiciary and Courts (Scotland) Act 2008, the Scottish Ministers will only make regulations under subsection (1) following the submission of a proposal by the SCTS – with the agreement of the Lord President – for the designation of a place for the holding of FAIs under subsections (2) and (3). However, this procedure is subject to consultation with appropriate persons under subsection (4).
45. In making the regulations, the Scottish Ministers are to have regard to the SCTS proposal under subsection (5). Given the statutory responsibility which the Lord President has for the efficient disposal of business in Scotland’s courts under section 2(2) of the 2008 Act, and the equivalent responsibility of the SCTS set out above, the Scottish Ministers must obtain the consent of both the Lord President and the SCTS under subsection (6) before making those regulations. This power is subject to affirmative procedure.

Section 13 – Jurisdiction in relation to inquiries

46. **Section 13(1)** provides that an FAI may be held in any sheriffdom in Scotland regardless of the place of the death or (if applicable) any accident causing the death. This removes the requirement of a close connection between the place most closely connected with the circumstances of the death and the procurator fiscal for the sheriff court district relating to that place that is provided by section 1 of the 1976 Act. This allows greater flexibility in the system of FAIs which may allow inquiries to be held more quickly if they can be accommodated in alternative accommodation. This flexibility still permits

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

an FAI to be heard locally in relation to the circumstances of the death, however, and indeed it is expected that the majority of FAIs will be held in the same sheriffdom as the place of death.

47. Subsection (2) allows the Lord Advocate to choose in which sheriffdom the FAI is to be held, after consulting with the SCTS. It does not allow the Lord Advocate to choose the place or building within the sheriffdom where the FAI will be held, which will be a matter for discussion between the Lord Advocate (who will have been in contact with any relatives of the deceased), the sheriff principal and the SCTS. Ultimately the decision is for the sheriff principal under his or her powers relative to the efficient disposal of business contained in the Courts Reform (Scotland) Act 2014.
48. Subsections (3) and (5) allow the sheriff to transfer the FAI to another sheriffdom, but only after the procurator fiscal and the participants have been given an opportunity to make representations about such a transfer and only with the consent of the sheriff principal for that sheriffdom and the sheriffdom to which the FAI is to transfer. The transfer order may be made at the sheriff's own initiative or at the instigation of the procurator fiscal or one of the participants at the FAI.