



# Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

## 2016 asp 2

### *Inquiries into deaths occurring in Scotland*

#### **2 Mandatory inquiries**

- (1) An inquiry is to be held into the death of a person which—
  - (a) occurred in Scotland, and
  - (b) is within subsection (3) or (4).
- (2) Subsection (1) is subject to section 3.
- (3) The death of a person is within this subsection if the death was the result of an accident which occurred—
  - (a) in Scotland, and
  - (b) while the person was acting in the course of the person's employment or occupation.
- (4) The death of a person is within this subsection if, at the time of death, the person was—
  - (a) in legal custody, or
  - (b) a child required to be kept or detained in secure accommodation.
- (5) For the purposes of subsection (4)(a), a person is in legal custody if the person is—
  - (a) required to be imprisoned or detained in a penal institution,
  - (b) in police custody, within the meaning of section 64 of the Criminal Justice (Scotland) Act 2016,
  - (c) otherwise held in custody on court premises,
  - (d) required to be detained in service custody premises.
- (6) For the purposes of subsections (4)(b) and (5)(a) and (d), it does not matter whether the death occurred in secure accommodation, a penal institution or, as the case may be, service custody premises.
- (7) In this section—

“penal institution” means any—

- (a) prison (including a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989), other than a naval, military or air force prison,
- (b) remand centre, within the meaning of section 19(1)(a) of that Act,
- (c) young offenders institution, within the meaning of section 19(1)(b) of that Act,

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

“service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.

### **3 Mandatory inquiries: exceptions**

- (1) The Lord Advocate may decide that an inquiry is not to be held into the death of a person within section 2(3) or (4) if satisfied that the circumstances of the death have been sufficiently established during the course of proceedings of a kind mentioned in subsection (2).
- (2) The proceedings referred to in subsection (1) are—
  - (a) criminal proceedings,
  - (b) an inquiry under section 17(2) of the Gas Act 1965 (accidents),
  - (c) an inquiry under section 14(2A) of the Health and Safety at Work etc. Act 1974 (power of the Health and Safety Executive to direct investigations and inquiries),
  - (d) an inquiry under section 1 of the Inquiries Act 2005 (power to establish inquiry),
  - (e) an inquiry under section 85(1) of the Energy Act 2013 (inquiries).
- (3) But subsection (1) does not apply if—
  - (a) at the time of death, the person was required to be detained in service custody premises, and
  - (b) the proceedings referred to in that subsection are an inquiry under section 1 of the Inquiries Act 2005.

### **4 Discretionary inquiries**

- (1) An inquiry is to be held into the death of a person which occurred in Scotland if the Lord Advocate—
  - (a) considers that the death—
    - (i) was sudden, suspicious or unexplained, or
    - (ii) occurred in circumstances giving rise to serious public concern, and
  - (b) decides that it is in the public interest for an inquiry to be held into the circumstances of the death.
- (2) Subsection (1) does not apply to a death within section 2(3) or (4).

## **5 Certain deaths and accidents to be treated as occurring in Scotland**

- (1) For the purposes of sections 2 and 4, 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 (application of civil law to offshore activities), and
  - (b) in a relevant area.
- (2) In subsection (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.