

POLICY NOTE

THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016 (COMMENCEMENT No. 3, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2017

SSI 2017/155 (C. 13)

The above instrument (the “Commencement Regulations”) is made in exercise of the powers conferred by section 42(2) and (3) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (the “2016 Act”) and is not subject to any parliamentary procedure.

Background

The 2016 Act received Royal Assent on 14 January 2016. It provides a framework for the implementation of most of the recommendations of the Review of Fatal Accident Inquiry (“FAI”) Legislation carried out by Lord Cullen of Whitekirk. The overarching aim of the 2016 Act is to reform and modernise the law governing the holding of FAIs in Scotland. The 2016 Act entirely replaces the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (the “1976 Act”).

While the 2016 Act therefore provides the framework for FAIs in Scotland, the detail of procedure will be provided in rules of court set out in an act of sederunt. The full commencement of the 2016 Act is being brought into force to coincide with the coming into force of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 which can be found here:

<http://www.legislation.gov.uk/ssi/2017/103/contents/made>

Day appointed

Regulation 2 of the Commencement Regulations specifies 15 June 2017 as the appointed day on which the remaining provisions of the 2016 Act come into force. An Order under section 104 of the Scotland Act 1998 – the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 – will come into force at the same time by virtue of article 1(2) of that Order. A copy of that Order can be found here:

<http://www.legislation.gov.uk/uksi/2016/1142/contents/made>

Policy objectives

The policy objectives relating to the 2016 Act are fully described in the Policy Memorandum which accompanied the Bill for the 2016 Act (“the Bill”). The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.parliament.scot/parliamentarybusiness/Bills/87332.aspx>

The policy for the section 104 Order (including new provision for a mandatory FAI into deaths of service personnel in the course of military service Scotland) is fully described in the Explanatory Memorandum published together with the Order.

Transitional and Saving Provisions

The Commencement Regulations require to provide for the transition from the 1976 Act to the 2016 Act. The policy is that a FAI which begins under the 1976 Act should continue and complete under that Act, even where the process extends beyond 15 June 2017. There is therefore no policy that any 1976 Act FAIs should convert to 2016 Act inquiries mid-way through. The Scottish Government considers that that would be confusing to parties and bereaved families and could give rise to practical difficulties. This will mean that there will be a transitional period when both 1976 Act and 2016 Act FAIs are running. This policy is delivered by regulation 4 of the Commencement Regulations and applies equally to discretionary and mandatory FAIs.

The Scottish Government is conscious however that the benefits of the 2016 Act and the new Fatal Accident Inquiry Rules ought to apply to as many FAIs as possible. Therefore the policy for a death occurring before 15 June 2017 where a discretionary or mandatory FAI has not begun by that date is that the FAI should be held under the 2016 Act. This policy is delivered by regulation 5 of the commencement regulations. This means that no FAI which would have been held but for the legislative transition will cease to be held; but equally no FAI into a death occurring before 15 June 2017 will be held under the 2016 Act that would not have been held under the 1976 Act.

The following tables describe the transitional arrangements in full:

Types of death intended to be caught by regulation 5 of the Commencement Regulations

Type of death	Mandatory/discretionary	Relevant date range	Legislation
Death that is “sudden, suspicious or unexplained, or has occurred in circumstances such as to give rise to serious public concern”	Discretionary	1 March 1974 to 14 June 2017	Section 1(1)(b) of the 1976 Act read with subsection (2)
Death in the course of employment (not covering military service)	Mandatory	1 March 1977 to 14 June 2017	Section (1)(1)(a)(i) of the 1976 Act read with subsection (2)

Death in the course of oil and gas-related employment in the continental shelf area	Mandatory	1 March 1977 to 14 June 2017	Section (1)(1)(a)(i) of the 1976 Act read with subsection (2) and section 9
Death in legal custody	Mandatory	1 March 1977 to 14 June 2017	Section (1)(1)(a)(ii) of the 1976 Act read with subsection (2)
Death in [military] service custody	Mandatory	31 October 2009 to 14 June 2017	Section (1)(1)(a)(ii) of the 1976 Act read with subsection (4)(ba) [as inserted by paragraph 72 of schedule 16 of the Armed Forces Act 2006]
Death of service personnel abroad	Discretionary	24 September 2012 to 14 June 2017	Section 1A of the 1976 Act [as inserted by section 50(2) of the Coroners and Justice Act 2009]

New FAI provisions that will not be retrospective

Type of death	Mandatory/discretionary	Relevant date range	Legislation
Death in legal custody or secure accommodation where definitions have extended coverage beyond 1976 Act	Mandatory (although discretionary FAI could always have been applied for)	15 June 2017 onwards	Section 2(4) to (7) of the 2016 Act
Death of civilian abroad	Discretionary	15 June 2017 onwards	Section 6 of the 2016 Act
Death in the course of military service	Mandatory (although discretionary FAI could always have been applied for)	15 June 2017 onwards	Article 6 of the section 104 Order

Death in the course of military service in the continental shelf area	Mandatory	15 June 2017 onwards	Article 6 of the section 104 Order
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Bereaved families can expect the same service from their Crown Office and Procurator Fiscal Service contacts irrespective of whether the 1976 Act or 2016 Act applies to a FAI¹.

Previous commencement regulations

Provisions of the 2016 Act were commenced on 1 September 2016 (by S.S.I 2016/196 (C.17)) and by S.S.I 2016/370 (C.34) on 1 December 2016. The Note as to earlier Commencement Regulations within the Explanatory Note to the Commencement Regulations provides more detail on these commencements.

Consultation

The Crown Office and Procurator Fiscal Service have been consulted. No formal consultation has taken place on the Commencement Regulations as they are being made as a consequence of the 2016 Act which has already been the subject of a consultation exercise.

The Government consulted on the Bill in the summer of 2014. The consultation can be viewed on the Scottish Government website at:

<http://www.gov.scot/Publications/2014/07/6772>

The analysis of consultation responses can be viewed on the Scottish Government website at:

<http://www.gov.scot/Publications/2014/11/2861>

Impact Assessments

An Equality Impact Assessment (EQIA) for the Bill was published on the Scottish Government website at <http://www.gov.scot/Publications/2015/04/6163> and the Bill was found to have no significant effects in relation to the protected characteristics.

No other impact assessments are required in respect of these Regulations.

Financial Effects

Responses to the consultation and meetings with stakeholders indicated that the Bill would have only a minimal financial impact on organisations. Business or consumer groups did not respond to the consultation despite being sent a notification. It is assumed that they consider that they will not be affected by the Bill.

¹ See the family liaison charter under section 8 of the 2016 Act <http://www.copfs.gov.uk/images/Documents/Deaths/COPFS%20Family%20Liaison%20Charter%20September%202016.pdf>.

A Business and Regulatory Impact Assessment (BRIA) was not considered necessary because changes in the Bill to the current system will not affect business except in the very exceptional circumstances that they may be obliged to respond to a sheriff's recommendation. Any additional costs for public sector organisations will also only relate to responding to sheriffs' recommendations

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