

**2017 No.**

**SHERIFF COURT**

**Act of Sederunt (Fatal Accident Inquiry Rules) 2017**

*Made* - - - - - \*\*\*

*Laid before the Scottish Parliament* \*\*\*

*Coming into force* - - - \*\*\*

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In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council [with such modifications as it thinks appropriate].

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 36(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016(b), paragraph 1A of schedule 2 of the European Communities Act 1972 and all other powers enabling it to do so.

This Act of Sederunt makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(c) and it appears to the Court of Session that it is expedient for the references in this Act of Sederunt to Council Regulation (E.C.) No. 1206/2001 of 28<sup>th</sup> May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters and to Regulation (E.C.) No. 1393/2007 of the European Parliament and of the Council of 13<sup>th</sup> November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (E.C.) No. 1348/2000, be construed as references to those instruments as amended from time to time.

## PART 1

### CITATION, COMMENCEMENT AND INTERPRETATION, ETC.

#### **Citation and commencement, etc.**

**1.1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

(2) It comes into force on [date] 2017.

(3) A certified copy is to be inserted in the Books of Sederunt.

#### **Interpretation**

**1.2.** In this Act of Sederunt—

“apply” means apply in accordance with schedule 1, and cognate expressions are to be construed accordingly;

“CEHR” means the Commission for Equality and Human Rights;

“first notice” means notice that an inquiry is to be held under section 15;

“first order” means the order of the sheriff made under rule 3.2(1);

“intimate” means intimate in accordance with schedule 2, and cognate expressions are to be construed accordingly;

“participants” includes the procurator fiscal;

“SCHR” means the Scottish Commission for Human Rights;

“SCTS” means the Scottish Courts and Tribunals Service;

“the 2016 Act” means the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, and references to a section are references to a section in that Act;

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2016 asp 2.

(c) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by the European Union (Amendment) Act 2008 (c. 7), schedule, Part 1.

“the Council Regulation” means Council Regulation (EC) No. 1206/2001 of 28<sup>th</sup> May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, as amended from time to time;

“the deceased” means the person whose death the inquiry is concerned with;

“the inquiry principles” means the principles in rule 2.2(1) to (4);

“the purpose of the inquiry” means the purpose set out in section 1(3) and (4);

“witness statement” has the meaning given by rule 4.11(2).

### **Computation of periods of time**

**1.3.** If any period of time specified in this Act of Sederunt expires on a Saturday, Sunday or public or court holiday, it is extended to expire on the next day that the sheriff clerk’s office is open for civil business.

### **Forms**

**1.4.**—(1) A reference in this Act of Sederunt to a form is a reference to that form in schedule 3.

(2) Where these Rules require a form to be used, that form may be varied where the circumstances require it.

### **Miscellaneous and general matters**

**1.5.** Schedule 4 contains provision about—

- (a) lodging;
- (b) live links;
- (c) reporting restrictions;
- (d) the style of oath and affirmation;
- (e) intervention by the CEHR and SCHR;
- (f) lay representation and support.

## **PART 2 OVERVIEW**

### **The structure of an inquiry**

**2.1.** An inquiry has the following structure—

- (a) the procurator fiscal begins the procedure by sending the sheriff first notice of the inquiry (see rule 3.1);
- (b) the sheriff makes a first order and the participants become involved in the inquiry (see rules 3.2 to 3.5);
- (c) the sheriff normally holds one or more preliminary hearings, to make sure that the inquiry is ready to start (see rules 3.6 to 3.8);
- (d) the sheriff may make orders about evidence and the participants will notify each other and the sheriff of the evidence they intend to use (see part 4);
- (e) the inquiry is held, with the sheriff presiding (see part 5); and
- (f) the sheriff produces a determination (see part 6).

### **The inquiry principles**

**2.2.**—(1) An inquiry is inquisitorial not adversarial.

- (2) An inquiry is to be progressed expeditiously and efficiently, with as few delays as possible.
- (3) Taking into account the nature and complexity of the inquiry—
  - (a) the procedure at an inquiry is to be as flexible as appropriate; and
  - (b) the manner in which evidence is given is to be as efficient as possible.
- (4) All participants are to be able to participate effectively in furthering the purpose of the inquiry.
- (5) The sheriff must take into account the inquiry principles when giving effect to these rules.
- (6) Participants and their representatives must respect the inquiry principles.

### **Representation**

- 2.3.**—(1) A participant other than the procurator fiscal may—
- (a) appear on the participant’s own behalf;
  - (b) be represented by a solicitor, an advocate, or both;
  - (c) with the permission of the sheriff, be represented by a lay representative;
  - (d) with the permission of the sheriff, be supported by a lay supporter.
- (2) Where a solicitor or lay representative withdraws from acting on behalf of a participant, the solicitor or lay representative must lodge a notice of withdrawal.

### **Judicial continuity**

- 2.4.** Where possible, the same sheriff is to—
- (a) consider the first notice and make the first order;
  - (b) preside at all preliminary hearings; and
  - (c) preside at the inquiry.

### **The inquiry management powers**

- 2.5.**—(1) The sheriff may, taking into account the inquiry principles, make any order necessary to further the purpose of an inquiry, including—
- (a) an order made to assist the court to identify which issues are in dispute, such as an order—
    - (i) fixing a hearing and specifying a purpose for that hearing;
    - (ii) requiring participants to lodge particular documents or lead particular witnesses;
    - (iii) requiring participants to disclose the existence and nature of documents or other evidence relating to the inquiry;
    - (iv) granting authority to recover documents or other evidence relating to the inquiry;
  - (b) an order made to allow the court to manage time efficiently, such as an order—
    - (i) imposing a time limit on any step to be taken by a participant;
    - (ii) varying a deadline or time limit set out in a rule;
  - (c) an order about the manner in which any evidence is presented to the sheriff, such as an order—
    - (i) restricting evidence to particular issues;
    - (ii) determining the manner in which evidence on any particular issue is to be given, whether by oral evidence, the lodging of written statements, by production of documents, or otherwise;
    - (iii) requiring a participant to provide written notice of the topics for examination during oral evidence;

- (iv) granting warrant to officers of the law to take possession of anything connected with the deceased and which the sheriff considers necessary to produce at the inquiry and to hold any such thing in safe custody, subject to inspection by participants to the inquiry;
- (v) allowing the inspection of any land, premises, article or other thing, which the sheriff considers relevant to the inquiry, either by the sheriff or by another person;
- (vi) that a copy of any document is to be treated as an original;
- (d) dealing with a participant's non-compliance with a rule or order, such as an order—
  - (i) relieving the participant from the consequences of not complying with a rule or order;
  - (ii) imposing conditions on relief from non-compliance; and
  - (iii) where a participant has behaved in a vexatious manner, requiring that participant to make a payment to another participant to reflect the consequences of not complying with a rule or order.
- (2) The sheriff may give orders—
  - (a) of the sheriff's own accord; or
  - (b) on the application of a participant.

## PART 3

### PRE-INQUIRY PROCEDURE

#### **First notice**

- 3.1.**—(1) First notice is to be given in Form 3.1.
- (2) The first notice must set out—
- (a) the information required by section 15(2)(a) (that is, a brief account of the circumstances of the death, so far as known to the procurator fiscal);
  - (b) the identity of the deceased;
  - (c) any issues identified by the procurator fiscal which it is anticipated the inquiry should address;
  - (d) whether the procurator fiscal considers that a preliminary hearing is unnecessary and the reasons for that view;
  - (e) whether the inquiry is mandatory or discretionary and—
    - (i) if mandatory, the category of mandatory inquiry;
    - (ii) if discretionary, the reasons for the Lord Advocate's view that the inquiry falls within section 4;
  - (f) in the case of a discretionary inquiry under section 6 (inquiries into deaths occurring abroad: general), set out which condition in section 6(3) is met; and
  - (g) in the case of a discretionary inquiry under section 7 (inquiries into deaths occurring abroad: service personnel) of the Act, set out that the condition in section 7(1)(c) is met;
  - (h) the identity of any person who the procurator fiscal considers might have an interest in the inquiry.

#### **First order**

- 3.2.**—(1) The sheriff must make an order (a “first order”) under section 15(3) (initiating the inquiry) within 14 days of receiving first notice.

(2) If the sheriff orders that a preliminary hearing is to be held, it must be ordered to take place within 28 days after the date of the order.

(3) If the sheriff orders that a preliminary hearing is not to be held, the inquiry must be ordered to take place within 28 days after the date of the order.

### Notice of the inquiry

**3.3.**—(1) Notice under section 17(1) in relation to an inquiry is to be given in Form 3.3.

(2) Notice must be given at least 21 days before—

- (a) the preliminary hearing, or
- (b) if the sheriff has not ordered a preliminary hearing, the date fixed for the start of the inquiry.

(3) In addition to the persons mentioned in section 17(2)(a), notice must be given to—

- (a) a person named in the first order as a person who the sheriff is satisfied has an interest in the inquiry;
- (b) in a category of death listed in column 1 of the following table, the person specified in column 2.

<i>Column 1</i> <b>Circumstances of death</b>	<i>Column 2</i> <b>Specified person</b>
a death within section 2(3)(b) of the Act (death as a result of an accident which occurred while the person was acting in the course of the person's employment or occupation)	The Health and Safety Executive
a death within section 2(4)(b) (death of a child required to be kept or detained in secure accommodation)	The local authority or other provider of secure accommodation in whose care the child died, the Scottish Ministers and the Care Inspectorate
death within section 2(5)(a) (death of a person required to be imprisoned or detained in a penal institution)	The Scottish Ministers or Police Scotland, respectively
death within section 2(5)(b) (death in police custody)	Police Scotland
a death within section 2(5)(c) (death in custody on court premises)	The Scottish Courts and Tribunals Service
a death within section 2(5)(d) (death of a person detained in service custody premises)	The Secretary of State
a death within section 5 (certain deaths and accidents to be treated as occurring in Scotland)	The Secretary of State
a death within section 6 (inquiries into deaths occurring abroad: general)	The Secretary of State
a death within section 7 (inquiries into deaths occurring abroad: service personnel)	The Secretary of State
a death within article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions	The Secretary of State.

### **Public notice of the inquiry**

- 3.4.**—(1) Public notice under section 17(3) is to be given in Form 3.4.
- (2) Notice is to be given by intimating it to SCTS at least 14 days before—
- (a) the preliminary hearing; or
  - (b) if the sheriff has not ordered a preliminary hearing, the date fixed for the start of the inquiry.
- (3) SCTS must publish the notice on its website when it is received.

### **Other participation**

**3.5.**—(1) A person who is not a participant but who wishes to participate in an inquiry may apply to the sheriff to participate.

(2) That application must set out why their participation would further the purpose of the inquiry.

#### *Preliminary hearings*

### **Purpose of preliminary hearings**

- 3.6.**—(1) The purpose of a preliminary hearing is to—
- (a) ensure that the purpose of the inquiry is met when the inquiry takes place;
  - (b) consider the scope of the inquiry and identify issues which are in dispute;
  - (c) consider the evidence likely to be led at the inquiry and the manner in which it should be led.
- (2) The sheriff may order as many preliminary hearings to take place as is necessary to further that purpose.

### **Before the first preliminary hearing**

**3.7.** At least [7] days before the first preliminary hearing, all participants must lodge a brief note setting out—

- (a) the matters considered likely to be in dispute at the inquiry;
- (b) a list of any productions which it is considered might be used as evidence at the inquiry and a note of their relevance to the purpose of the inquiry;
- (c) a list of persons whom it is considered might be led as witnesses at the inquiry and a note of their relevance to the purpose of the inquiry;
- (d) the matters which they might invite the sheriff to address in the sheriff's determination.

### **Procedure**

- 3.8.**—(1) The procedure at a preliminary hearing is to be as ordered by the sheriff.
- (2) At a preliminary hearing the sheriff must—
- (a) consider whether there are any further persons who the sheriff is satisfied has an interest in the inquiry under section 11(1)(e);

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<sup>a</sup> [S.I. xxxx/xxxx]

- (b) establish the nature and complexity of the inquiry and its likely length;
  - (c) establish any matters which are likely to be in dispute at the inquiry;
  - (d) establish the state of preparedness of the participants;
  - (e) consider how evidence should be presented to the inquiry including—
    - (i) how evidence will be recovered (see rule 4.2);
    - (ii) the timetable for lodging productions and witness lists (see rules 4.4 and 4.5);
    - (iii) the arrangements for any vulnerable witnesses (see rule 4.7);
    - (iv) how participants are progressing with discharging their duty to agree evidence (see rule 4.9);
    - (v) the date by which any minutes of uncontroversial evidence must be lodged (see rule 4.10);
    - (vi) whether any evidence-in-chief should be given by witness statement (see rule 4.11);
    - (vii) how any expert witnesses should give evidence (see rules 4.12 to 4.16);
  - (f) consider any other preliminary matter raised by a participant;
  - (g) give orders to the participants to further the purpose of the inquiry;
  - (h) identify any legal aid applications which have been, or require to be, made or renewed by participants.
- (3) At the conclusion of a preliminary hearing the sheriff must—
- (a) fix a date for another preliminary hearing; or
  - (b) fix a date for the start of the inquiry.

## PART 4

### EVIDENCE

#### *Witnesses and productions*

#### **Citation of witnesses**

**4.1.**—(1) The order which fixes a date for the start of the inquiry is warrant for the citation of witnesses by participants.

(2) A participant only needs to cite a witness to appear at the inquiry if the participant is otherwise unable to arrange for that witness to appear.

(3) A participant may cite a witness by—

- (a) intimating a citation in Form 4.1A on that witness at least 7 days before the date fixed for the start of the inquiry; and
- (b) lodging a certificate of citation in Form 4.1B.

(4) Where a properly cited witness fails to answer that citation, the sheriff may—

- (a) grant warrant for the apprehension of the witness and for bringing the witness to court;
- (b) order the witness to make a payment to a participant.

(5) A solicitor who cites a witness is personally liable for that witness's fees and expenses.

(6) Where a participant is not represented by a solicitor, that participant must—

- (a) at least [x] days before the start of the inquiry, apply to the sheriff to fix caution in such sum as the sheriff considers reasonable having regard to the number of witnesses the participant proposes to cite and the period for which they may be required to attend the inquiry; and
- (b) before instructing a sheriff officer to cite a witness, find caution for such expenses as can reasonably be anticipated to be incurred by the witness in answering the citation.

(7) Where a participant who is not represented by a solicitor does not intend to cite all the witnesses referred to in the application to fix caution, that participant may apply to the sheriff for variation of the amount of caution.

### **Recovery of evidence**

**4.2.** Once the sheriff has made the first order, a participant may recover evidence for use in an inquiry in accordance with schedule 5.

### **Oral evidence**

**4.3.** The sheriff must administer either the oath or affirmation to a witness.

### **Lodging productions**

**4.4.—**(1) All productions which a participant intends to use at an inquiry must be lodged by a date ordered by the sheriff.

(2) A participant may only use a production which has not been lodged with the leave of the sheriff.

(3) Copies of every documentary production must be lodged for the use of the sheriff no later than 7 days before the start of the inquiry.

(4) Any productions which have been borrowed must be returned no later than 7 days before the start of the inquiry.

### **Witness lists**

**4.5.—**(1) A list of witnesses whom a participant intends to lead evidence from at an inquiry must be lodged by a date ordered by the sheriff.

(2) A participant may only lead evidence from a witness who is not listed with the leave of the sheriff.

### **Recording of evidence**

**4.6.—**(1) The evidence at the inquiry is to be recorded by any means ordered by the sheriff.

(2) Under section 27(3) (transcript of evidence at the inquiry), the SCTS must give a person a copy of any transcript of the evidence at an inquiry if that person makes the request within 28 days following the date of the sheriff's determination.

(3) The transcript will be provided to that person upon payment of a fee.

(4) The fee is: -

(i) [£x.xx]; and

(ii) [£x.xx per page of the transcript].

### **Vulnerable witnesses**

**4.7.** The evidence of a vulnerable witness must be taken in accordance with schedule 6.

### *Agreeing evidence*

### **Joint minutes of agreement**

**4.8.—**(1) It is not necessary for the participants to prove—

(a) any fact agreed by all participants;

- (b) any document, the terms and application of which are agreed between the participants.
- (2) An agreement is made by lodging with the clerk a joint minute of agreement.
- (3) A joint minute of agreement must be signed by each participant or by that participant's representative.
- (4) Facts or documents agreed under this rule are proved.

### **The duty to agree evidence**

**4.9.**—(1) Before the start of the inquiry, each participant must identify facts or documents which—

- (a) that participant would, apart from this rule, seek to prove at the inquiry; and
- (b) are considered by that participant unlikely to be disputed by other participants.
- (2) The participants must take all reasonable steps to agree such facts or documents.
- (3) In particular, the participants must take all reasonable steps to agree the following facts or documents—
  - (a) the name, age, address and occupation of the deceased;
  - (b) the location, date and time of the deceased's death;
  - (c) the circumstances in which the death was discovered;
  - (d) the identity of any person who witnessed the accident or discovered the deceased's body;
  - (e) the name of the doctor who pronounced the death of the deceased;
  - (f) in the case of a death falling within section 2(3)—
    - (i) the name and address of the deceased's employer;
    - (ii) the length of period of employment;
    - (iii) the nature of employment;
    - (iv) the deceased's employment duties at the time of death;
  - (g) in the case of a death falling within section 2(4)(a)—
    - (i) the offence committed, date of conviction and time spent in custody;
    - (ii) the offence alleged to have been committed, the date and place of remand and the reasons for that remand; or
    - (iii) the reasons for the deceased being in legal custody;
  - (h) in the case of a death within article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016( ) (death in Scotland of service personnel )—
    - (i) the length of period of service;
    - (ii) the nature of service;
    - (iii) the deceased's service duties at the time of death;
  - (i) the post-mortem report;
  - (j) the toxicology report.
- (4) Where any participant is not legally represented, a joint minute of agreement prepared under this rule must be approved by the sheriff before facts agreed are proved.

### **Notices of uncontroversial evidence**

**4.10.**—(1) This rule applies where the sheriff orders that notices of uncontroversial evidence must be lodged by a particular date.

(2) A participant ("the first participant") may prepare a notice of uncontroversial evidence in Form 4.10A.

(3) That notice must set out facts or documents which—

- (a) the first participant would, apart from this rule, seek to prove at the inquiry; and
- (b) are considered by the first participant unlikely to be disputed by other participants.

(4) The first participant must intimate a copy of the notice of uncontroversial evidence, along with a copy of any document referred to in the notice, on all other participants by the date ordered by the sheriff.

(5) Each other participant may object to any fact or document set out in the notice of uncontroversial evidence by intimating on the first participant a notice of objection in Form 4.10B within 7 days after the date on which the notice of uncontroversial evidence was intimated.

(6) A fact or document set out in the minute of uncontroversial evidence which has not been objected to by the end of that 7 days is proved.

(7) Each other participant may lead evidence relevant to, or in explanation of, a fact or document set out in the notice of uncontroversial evidence.

(8) On the application of any other participant, the court may, if satisfied that there are special circumstances justifying it, make an order that paragraph (6) does not apply to certain facts or documents in a minute of uncontroversial evidence.

### **Witness statements**

**4.11.**—(1) This rule applies where the sheriff orders that the witness statement of a particular witness must be lodged by a particular date. [*or* Participants must lodge a witness statement for each witness by a date ordered by the sheriff, unless the sheriff orders otherwise.]

(2) A “witness statement” is a written statement—

- (a) containing evidence which a person could give orally at an inquiry; and
- (b) signed by that person.

(3) The content of the witness statement is the evidence in chief of the person who signed it.

(4) With the permission of the sheriff, the participant relying on the witness statement may, at the inquiry—

- (a) ask questions of the witness to supplement the terms of the witness statement;
- (b) ask questions of the witness which relate to new matters which have arisen since the witness statement was lodged.

(5) The witness statement must be made available for inspection by the public during the inquiry.

### *Expert evidence*

### **Expert witnesses**

**4.12.**—(1) The duty of an expert witness—

- (a) is to the inquiry;
- (b) is to further the purpose of the inquiry.

(2) This duty overrides any obligation to the person who instructed or paid the expert witness.

(3) An expert witness may only give evidence on matters which are reasonably required to further the purpose of the inquiry.

(4) A participant who is considering instructing an expert witness must, as early as possible, lodge a note setting out—

- (a) the identity of the witness to be instructed, if known;
- (b) why that witness’s evidence is reasonably required to further the purpose of the inquiry;
- (c) the broad terms of the instruction; and
- (d) the expected completion date for any reports.

### **Witness statements by expert witnesses**

**4.13.**—(1) Unless the sheriff considers that to do so would not further the purpose of the inquiry, the sheriff must order that a witness statement of an expert witness must be lodged by a particular date (see rule 4.11).

- (2) The written statement of an expert witness must—
- (a) state that the expert witness understands the nature of their duty under rule 4.12(1) and (2);
  - (b) set out the basis of the expert witness’s instructions, oral and written.

### **Expert witnesses instructed by the procurator fiscal**

**4.14.**—(1) This rule applies where the procurator fiscal has lodged a witness statement of an expert witness.

- (2) Other participants may lodge a minute of questions to be put to that expert witness.
- (3) Except where the sheriff orders otherwise—
- (a) each participant may only lodge one minute of questions;
  - (b) the minute of questions must be lodged within 14 days of the witness statement being lodged;
  - (c) the minute of questions must be limited to clarification of the contents of the witness statement.
- (4) The procurator fiscal must lodge the expert witness’s answers to the minute of questions in the form of an annex to the written statement, by the date ordered by the sheriff.

### **Single [joint] expert witnesses**

**4.15.**—(1) Where the sheriff considers that, taking into account the inquiry principles, to do so would further the purpose of the inquiry, the sheriff must order expert evidence on a particular matter to be given by a single [joint] expert witness.

- (2) Where the sheriff orders evidence to be given by a single [joint] expert witness, participants must make reasonable efforts to agree joint instructions for the expert witness.
- (3) Where participants cannot agree joint instructions—
- (a) they must send a joint instruction about any matters they can agree;
  - (b) each participant may send separate instructions to the expert witness;
  - (c) any separate instructions sent must be intimated on all other participants.
- (4) Where participants cannot agree on the identity of a single [joint] expert witness, the sheriff may—
- (a) select an expert from a list prepared by the participants; or
  - (b) direct how an expert is to be selected.
- (5) The sheriff may make an order about the payment of the expert witness.

### **Concurrent presentation of expert witnesses**

**4.16.**—(1) Where the sheriff considers that, taking into account the inquiry principles, to do so would further the purpose of the inquiry, the sheriff must order expert evidence on a particular matter to be given by the concurrent presentation of expert witnesses.

- (2) Where the sheriff orders that expert evidence must be given by concurrent presentation—
- (a) the participants must prepare a note for the sheriff, setting out the areas of agreement and disagreement between the expert witnesses;
  - (b) that note must be lodged at least 7 days before the start of the inquiry.

- (3) At the hearing at which expert evidence is being given by concurrent presentation—
- (a) all expert witnesses will give oral evidence at the same time;
  - (b) the sheriff may direct how evidence is to be given by the expert witnesses, including by the sheriff questioning the witnesses directly, inviting the witnesses to discuss a particular matter between them, or allowing cross-examination by participants where necessary.

## PART 5 THE INQUIRY

### **Procedure**

**5.1.** The procedure at an inquiry is to be as ordered by the sheriff.

## PART 6 THE SHERIFF'S DETERMINATION

### **Form of determination**

**6.1.** A determination under section 26 (the sheriff's determination) is to be in Form 6.1.

### **Form of response**

**6.2.** A response under section 28(1)(a) (compliance with sheriff's recommendations: responses) is to be in Form 6.2.

### **Form of notice**

**6.3.** A notice under section 28(7) (compliance with sheriff's recommendations: notice where no response given) is to be in Form 6.3.

## PART 7 FURTHER INQUIRY PROCEEDINGS

### **Form of notice**

**7.1.**—(1) Notice under section 32 that further inquiry proceedings are to be held is to be given in Form 7.1.

(2) The notice must—

- (a) set out the identity of the deceased;
- (b) have appended to it a copy of the determination in the inquiry into the death of the deceased;
- (c) contain the information required by section 32(2)(a) and (b).

*CJM SUTHERLAND*  
Lord President  
I.P.D.

Edinburgh  
Date

## APPLICATIONS

**Interpretation**

1. In this Chapter—

“lodging participant” means the person lodging the application;

“receiving participant” means a participant receiving the intimation of the application from the lodging participant.

**Making of applications**

2. An application may be made—

(a) orally; or

(b) in writing, in accordance with paragraph 3.

**Written applications**

3.—(1) An application in writing is made by lodging it.

(2) An application in writing must set out the grounds on which it is made.

**Intimation of applications in writing**

4.—(1) The lodging participant must give intimation of an intention to lodge the application, and of the terms of the application, to every other participant in Form S1.4.

(2) That intimation must be accompanied by a copy of any document referred to in the application.

**Opposition to applications in writing**

5.—(1) A receiving participant may oppose an application by lodging a notice of opposition in Form S1.5.

(2) Any notice of opposition must be lodged within 7 days after the date of intimation of the application.

(3) The sheriff may, on the request of a participant—

(a) vary the period of 7 days mentioned in subparagraph (2); or

(b) dispense with intimation on any participant.

(4) A request mentioned in subparagraph (3) must—

(a) be included in the application;

(b) give reasons for varying the period or dispensing with intimation, as the case may be.

(5) The sheriff may allow a notice of opposition to be lodged late, on cause shown.

**Consent to applications in writing**

6. Where a receiving participant seeks to consent to an application, that participant may do so by lodging a notice to that effect.

### **Lodging of applications in writing**

7.—(1) The application must be lodged by the lodging participant within 5 days after the date of intimation of the application, unless paragraph (3) applies.

(2) The lodging participant must also lodge—

(a) a certificate of intimation in Form S1.7;

(b) so far as practicable, any document referred to in the application that has not already been lodged.

(3) Where the sheriff varies the period for lodging a notice of opposition to a period of 5 days or less, the application must be lodged no later than the day on which that period expires.

### **Joint applications in writing**

8.—(1) A joint application by all participants need not be intimated.

(2) Such an application is to be lodged by any of the participants.

### **Hearing of opposed applications in writing**

9.—(1) Where a notice of opposition is lodged, the application is to be heard by the sheriff on the first suitable court day after the lodging of the notice of opposition.

(2) The sheriff clerk must intimate the date and time of the hearing to the participants.

## SCHEDULE 2

Rule 1.2(1)

### INTIMATION

#### PART 1

##### Intimation within Scotland

#### **Interpretation**

1. In this schedule—

“first class post” means a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases;

“intimating participant” means any participant who has to give intimation in accordance with paragraph 2;

“receiving participant” means any participant to whom intimation is to be given in accordance with paragraph 2;

“recorded delivery” means a postal service which provides for the delivery of the document or other thing by post to be recorded.

#### **Intimation**

2.—(1) Unless the sheriff orders otherwise, intimation is to be given to every other participant where any provision in these Rules requires a participant to—

- (a) intimate something;
- (b) lodge something.

(2) The sheriff clerk must intimate an order of the sheriff when the sheriff makes an order other than at a hearing where all participants are present or represented.

#### **Methods of intimation**

3.—(1) Intimation may be given to a receiving participant by any of the methods specified in paragraphs 4 and 5.

(2) Where the receiving participant is represented by a solicitor, intimation may also be given by any of the methods specified in paragraph 6.

(3) Where the receiving participant is furth of Scotland, intimation must be given in accordance with part 2 of this schedule.

#### **Methods of intimation: intimation by recorded delivery**

4.—(1) An intimating participant may give intimation by recorded delivery to the receiving participant.

#### **Methods of intimation: intimation by sheriff officer**

5.—(1) A sheriff officer may give intimation on behalf of an intimating participant by—

- (a) delivering the intimation personally to the receiving participant; or

- (b) leaving the intimation in the hands of—
  - (i) a resident at the receiving participant’s dwelling place; or
  - (ii) an employee, agent or representative at the receiving participant’s place of business.
- (2) Where a sheriff officer has been unsuccessful in intimation in accordance with subparagraph (1), the sheriff officer may give intimation by—
  - (a) depositing it in the receiving participant’s dwelling place or place of business; or
  - (b) leaving it at the receiving participant’s dwelling place or place of business in such a way that it is likely to come to the attention of that participant.

**Additional methods of intimation where receiving participant represented by solicitor**

6.—(1) An intimating participant may give intimation to the solicitor for the receiving participant by—

- (a) delivering it personally to the solicitor;
- (b) delivering it to a document exchange of which the solicitor is a member;
- (c) first class post;
- (d) fax.

(2) Where intimation is given by the method in subparagraph (1)(a) or (d) not later than 1700 hours on any day, the date of intimation is that day.

(3) Where intimation is given by the method in—

- (a) subparagraph (1)(b) or (c); or
- (b) subparagraph (1)(a) or (d) after 1700 hours on any day,

the date of intimation is the next day.

**Form of certificate of intimation**

7.—(1) A certificate of intimation is to be in S2.7.

## PART 2

### Intimation furth of Scotland

**Interpretation of this part**

8. In this part—

“consular service” is to be construed in accordance with paragraph 15;

“EU member state” means a state which is a member of the European Union, within the meaning of Part II of Schedule 1 to the European Communities Act 1972(a);

“Hague Convention country” means a country in respect of which the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is in force, other than an EU member state(b);

“personal service” is to be construed in accordance with paragraph 16;

“postal service” is to be construed in accordance with paragraph 17;

“Service Regulation” means Regulation (E.C.) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and

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(a) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by the European Union (Amendment) Act 2008 (c. 7), schedule, Part 1.

(b) See the status table at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>.

extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (E.C.) No. 1348/2000, as amended from time to time.

### **Intimation furth of Scotland**

**9.**—(1) Intimation of a document furth of Scotland is to be effected in accordance with this paragraph.

(2) If the person's known residence or place of business is in England and Wales, Northern Ireland, the Isle of Man or the Channel Islands, see paragraph 10.

(3) If the person's known residence or place of business is in an EU member state (including Denmark), see paragraph 11.

(4) If the person's known residence or place of business is in a Hague Convention country (other than an EU member state), see paragraph 12.

(5) If the person's known residence or place of business in a country with which the United Kingdom has a convention about how to serve court documents (such as Algeria, Libya and the United Arab Emirates), see paragraph 13.

(6) If none of the above applies, see paragraph 14.

### **Service in England and Wales etc.**

**10.**—(1) A document may be intimated in England and Wales, Northern Ireland, the Isle of Man or the Channel Islands by—

- (a) postal service; or
- (b) personal service.

(2) Personal service may be effected by a person who is authorised to do so under the domestic law of the place where the document is to be served.

### **Service in an EU member state**

**11.**—(1) A document may be intimated in an EU member state (including Denmark) under the Service Regulation by—

- (a) postal service;
- (b) service by transmitting agency;
- (c) direct service, where the law of the member state permits it;
- (d) consular service.

(2) Service by transmitting agency may be effected by sending the document to a messenger-at-arms and instructing them to arrange for it to be served.

(3) Direct service may be effected by sending the document to a person who is entitled to serve court documents in that member state and asking them to arrange for it to be served.

(4) Where service is to be effected by transmitting agency, the participant must give the messenger-at-arms a translation of the document into a language which the recipient understands or an official language of the member state where the document is to be served.

### **Service in a Hague Convention country**

**12.**—(1) A document may be intimated in a Hague Convention country (other than an EU member state) by—

- (a) postal service, where the law of the country permits it;
- (b) service via central authority;
- (c) consular service;
- (d) service by competent person, where the law of the country permits it.

(2) Service via central authority may be effected by sending the document to the Scottish Ministers and asking them to arrange for it to be served.

(3) Service by competent person may be effected by sending the document to a person who is entitled to serve court documents in that country and asking them to arrange for it to be served.

(4) Any document must be accompanied by a translation into an official language of the country where it is to be served, unless English is an official language of that country.

### **Service in a country with which the United Kingdom has a convention about how to serve court documents**

**13.** A document may be intimated in a country with which the United Kingdom has a convention about how to serve court documents by any method that is permitted by the convention.

### **Service in any other country**

**14.—**(1) Where none of paragraphs 10 to 13 apply, a document may be intimated by—

- (a) postal service;
- (b) personal service.

(2) Where intimation is effected by personal service, the participant executing service must lodge a certificate stating that the method of service employed is in accordance with the law of the country where service was executed.

(3) That certificate is to be given by a person who—

- (a) practises or has practised law in that country; or
- (b) be an accredited representative of that country's government, conversant with the law of that country.

### **Consular service**

**15.—**(1) Consular service is service by a British consular authority.

(2) Consular service may be effected only if—

- (a) the law of the state where the document is to be served permits it; or
- (b) the document is being served on a British national.

(3) Consular service may be effected by sending the document to the Secretary of State for Foreign and Commonwealth Affairs and asking the Secretary of State to arrange for it to be served by a British consular authority.

### **Personal service**

**16.—**(1) Personal service is service using the rules for personal service under the domestic law of the place where the document is to be served.

(2) Personal service may be effected by a person who is authorised to do so under the domestic law of the place where the document is to be served.

### **Postal service**

**17.—**(1) Postal service is service by posting the document to the person's home or business address using a postal service which records delivery.

(2) Postal service may be effected by a solicitor or a sheriff officer.

(3) Where postal service is used, the envelope containing the document must have the following label printed or written on it—

**THIS ENVELOPE CONTAINS A *(name of document)* FROM *(name of sheriff court)*,  
SCOTLAND**

**IF DELIVERY CANNOT BE MADE, THE LETTER MUST BE RETURNED TO THE  
SHERIFF CLERK AT**

*(full address of sheriff court)*

(4) That label must be translated into an official language of the country where the document is to be served, unless English is an official language of that country.

**Certification of translations**

**18.**—(1) This paragraph applies where this schedule requires a document to be translated into a language other than English.

(2) The participant executing service must lodge a certificate stating that the translation is correct.

(3) That certificate—

- (a) is to be given by the person who made the translation;
- (b) must include the full name, address and qualifications of the translator.

## SCHEDULE 3

Rule 1.4

### FORMS

#### Form 3.1

### Notice of an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

*(name of procurator fiscal)*, PROCURATOR FISCAL FOR THE DISTRICT OF *(name of district)* GIVES NOTICE UNDER SECTION 15 OF THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016 THAT:

1. An inquiry into the death of *(name or names)* is to be held.
- [2. The inquiry is a mandatory inquiry under *(insert provisions of the 2016 Act which engage a mandatory inquiry and explain why the inquiry falls under those provisions).*]

[or

2. The inquiry is a mandatory inquiry under article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (death in Scotland of service personnel) *(explain why the inquiry falls under that provision)*]

[or

2. The inquiry is a discretionary inquiry under section 4 of the 2016 Act. *(explain the reasons for the Lord Advocate's view that the inquiry falls within section 4).*
3. The procurator fiscal considers that a preliminary hearing is necessary [or unnecessary because *(set out reasons)*].

#### The circumstances of the death

4. *(set out a brief account of the circumstances of the death).*

#### Issues for the inquiry

5. *(set out any issues identified by the procurator fiscal which it is anticipated the inquiry should address).*

SIGNED

*(signature of procurator fiscal)*

*(place and date)*

### Form 3.3

## Notice of an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

Court ref: *(ref)*

*(name of procurator fiscal)*, PROCURATOR FISCAL FOR THE DISTRICT OF *(name of district)* GIVES YOU NOTICE UNDER SECTION 17(1) OF THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016 THAT:

1. An inquiry into the death of *(name or names)* is to be held.
- [2. The inquiry is a mandatory inquiry under *(insert provisions of the 2016 Act which engage a mandatory inquiry and explain why the inquiry falls under those provisions)*.]

or

2. The inquiry is a mandatory inquiry under article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (death in Scotland of service personnel) *(explain why the inquiry falls under that provision)*

or

2. The inquiry is a discretionary inquiry under section 4 of the 2016 Act. *(explain the reasons for the Lord Advocate's view that the inquiry falls within section 4)*.]
3. You are being given notice of this inquiry because *(set out reason for notice being given)*.

- [4. A preliminary hearing has been fixed for *(date)*.]

[or

4. The date fixed for the start of the inquiry is *(date)*.]

#### **The circumstances of the death**

5. *(set out a brief account of the circumstances of the death)*.

#### **Issues for the inquiry**

6. *(set out any issues identified by the procurator fiscal which it is anticipated the inquiry should address)*.

SIGNED

*(signature of procurator fiscal)*

*(place and date)*

## Form 3.4

### Notice of an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

Court ref: *(ref)*

*(name of procurator fiscal)*, PROCURATOR FISCAL FOR THE DISTRICT OF *(name of district)* GIVES PUBLIC NOTICE UNDER SECTION 17(3) OF THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016 THAT:

1. An inquiry into the death of *(name or names)* is to be held.
- [2. The inquiry is a mandatory inquiry under *(insert provisions of the 2016 Act which engage a mandatory inquiry and explain why the inquiry falls under those provisions)*.]

[or

2. The inquiry is a mandatory inquiry under article 6 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (death in Scotland of service personnel) *(explain why the inquiry falls under that provision)*]

[or

2. The inquiry is a discretionary inquiry under section 4 of the 2016 Act. *(explain the reasons for the Lord Advocate's view that the inquiry falls within section 4)*.]

- [3. A preliminary hearing has been fixed for *(date)*.]

[or

3. The date fixed for the start of the inquiry is *(date)*.]

## Form 4.1A

### Witness Citation

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

WITNESS CITATION

by

*(participant)*

IN THE

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

#### To [A.B.] (design)

1. An inquiry into the death of *(name or names)* is to be held.
2. *(Name)* is at participant in the inquiry and has asked you to be a witness at the inquiry.
2. You must attend *(sheriff court and address)* on *(insert date)* at *(insert time)* for that purpose.

If you: -

- would like to know more about being a witness
- are a child under the age of 18
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (that is someone the sheriff considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the inquiry hearings)

you should contact the person who has asked you to attend court for further information.

If you are a vulnerable witness (including a child under the age of 16), then you should be able to use a special measure (such measures include the use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

#### Expenses

You may claim back money which you have to spend and any earnings you have lost within certain specified limits, because you have to come to court on the above date. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to court, you should apply for payment to the person who has asked you to attend court.

#### Failure to attend

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest.

If you have any questions about anything in this citation, please contact (*specify participant who has cited the witness, or their representative*) for further information.

SIGNED

(*signature*)

(*place and date*)

**Form 4.1B**

**Certificate of Citation**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

CERTIFICATE OF CITATION

by

*(participant)*

IN THE

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

I certify that on *(insert date of citation)* I duly cited *(name)*, *(design)* to attend at *(insert name of sheriff court)* Sheriff Court on *(insert date)* at *(insert time)* as a witness for the *(name of participant)* in the inquiry into the death of *(name of deceased)*.

This I did by *(state mode of citation)*.

SIGNED

*(signature)*

*(place and date)*

**Form 4.10A**

**Notice of uncontroversial evidence**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

Court ref: *(ref)*

NOTICE OF UNCONTROVERSIAL EVIDENCE

by

*(participant)*

IN THE

INQUIRY INTO THE DEATH OF *(deceased)*

1. Apart from rule 4.10, *(participant)* would seek to prove the following facts [or documents, or facts and documents] at the inquiry.
2. The following facts [or documents, or facts and documents] are considered unlikely to be disputed by the other participants in this inquiry.

**Uncontroversial evidence**

- 3.1 *(set out in numbered paragraphs all facts or list all documents. Attach any documents referred to to this notice.)*

SIGNED

*(signature)*

Participant [or solicitor, or advocate]  
*(place and date)*

**Form 4.10B**

**Notice of objection**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

Court ref: *(ref)*

NOTICE OF OBJECTION

by

*(participant)*

TO A NOTICE OF UNCONTROVERSIAL EVIDENCE

by

*(participant)*

IN THE

INQUIRY INTO THE DEATH OF *(deceased)*

1. *(participant)* objects to the following facts [or documents, or facts and documents] set out in the notice of uncontroversial evidence dated *(date)*.
2. *(specifically identify the facts or documents objected to, including by reference to numbered paragraphs in the notice of uncontroversial evidence)*

SIGNED

*(signature)*

*(place and date)*

## Form 6.1

### Determination

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

DETERMINATION OF SHERIFF *(name)*

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

IN THE

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

#### DETERMINATION

The Sheriff having considered the evidence presented, determines in terms of section 26 of the Act that: -

*(Set out the name of the deceased, date of birth, residence, date, place and time of death).*

*In terms of section 26(2)(a) (set out when and where the death occurred),*

*In terms of section 26(2)(b) (set out when and where any accident resulting in the death occurred).*

*In terms of section 26(2)(c) (set out the cause or causes of the death),*

*[In terms of section 26(2)(d) (set out the cause or causes of any accident resulting in the death),*

*In terms of section 26(2)(e) (set out any precautions which (i) could reasonably have been taken, and (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided),*

*In terms of section 26(2)(f) (if applicable, set out any defects in any system of working which contributed to the death or any accident resulting in the death),*

*In terms of section 26(2)(g) (set out any other facts which are relevant to the circumstances of the death).]*

#### RECOMMENDATIONS

*In terms of section 26(1)(b) (set out such recommendations (if any) as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances, as the sheriff considers appropriate.) (If there are no recommendations this should be narrated)(Set out clearly the persons to whom the recommendations are directed).*

#### NOTE

#### INTRODUCTION

*(The introduction should include the following information: -  
The fact that the inquiry was held under the Act into the death of the deceased, who should be named).  
The date that the death was reported to COPFS.  
The dates(s) of preliminary hearings and inquiry hearings.  
The details of the representatives of the participants at the inquiry.  
The details of the witnesses who gave evidence).*

## **THE LEGAL FRAMEWORK**

*(This section should: -  
Narrate that an inquiry was held under section 1 of the Act.  
Narrate that that the inquiry is governed by these Rules.  
State the purpose of an inquiry under section 1(3) of the Act.  
Set out the matters which should be covered in the determination under section 26.  
Explain that the procurator fiscal represents the public interest, that an inquiry is an inquisitorial process and it is not the purpose of an inquiry to establish civil or criminal liability.)*

## **SUMMARY OF EVIDENCE**

*(Set out the facts which have been agreed or proved.  
Refer to any joint minutes or notes of uncontroversial evidence which have been lodged.  
Set out the submissions made to the sheriff by the participants at the inquiry.)*

## **DISCUSSION AND FINDINGS IN FACT**

*(Discussion based upon the evidence and conclusions drawn.)*

## **[ANY OTHER INFORMATION, OBSERVATION OR COMMENT]**

*(Optional)*

SIGNED

*(signature)*

*(place and date)*

## Form 6.2

### Response

to the

DETERMINATION OF SHERIFF (*name*)

SHERIFFDOM OF (*name of sheriffdom*) AT (*name of sheriff court*)

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

IN THE

INQUIRY INTO THE DEATH OF (*deceased*)

Court ref: (*ref*)

To: the Scottish Courts and Tribunals Service

1. I [A.B (*design*)], being a person to whom a recommendation under section 26(1)(b) was addressed, do respond as follows.

[2. I was a participant in the inquiry.]

[or

2. I have an interest in the inquiry but was not a participant in the inquiry (*explain interest in inquiry*)]

3. (*Set out in full each recommendation in numbered paragraphs together with your corresponding response. Please respond as fully as possible*)

#### NOTES

*(Please refer to section 28 of the Act. A person to whom a recommendation has been addressed under section 26(1) of the Act, if they were also a participant in the injury, is under a legal duty to respond to those recommendations in writing. Persons who were not participants but to whom recommendations have been directed are encouraged to respond, though they are not obliged to.)*

*The response must set out –*

*(a) details of what the respondent has done or proposes to do in response to the recommendation, or*

*(b) if the respondent has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.*

*A response must be given to the Scottish Courts and Tribunals Service within the period of 8 weeks beginning with the day on which the respondent receives a copy of the determination in which the recommendation is made.*

*The response may be published, though you may make representations to SCTS as to the withholding of all or part of the response from publication.*

*A response made under section 28(1) is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature)*

## Form 6.3

### Notice

under section 28 of the

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

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

1. The determination of the sheriff in this inquiry addressed the following recommendations to [A.B. *(design)*]:

*(list recommendations)*

- [2. The Scottish Courts and Tribunals Service has received a response from [A.B. *(design)*] *(attach response in full)*.]

or

- [2. The Scottish Courts and Tribunals Service has received a response from [A.B. *(design)*] and has received representations as to the withholding of all or part of the response from publication under section 28(4).

In accordance with section 28(5) of the SCTS has decided to: -

[Publish the response in full]

[or

Publish the response in part and withhold part of the response from publication.]

[or

Withhold the whole of the response from publication.]

*(Attach response or part of response to be published)*

[or

2. The SCTS has not received a response to the from [A.B] within the time limit prescribed in the Act (being the period of 8 weeks beginning with the day on which the respondent received a copy of the determination in which the recommendation was made).]

## Form 7.1

### Notice of Further Inquiry Proceedings under of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

*(name of procurator fiscal)*, PROCURATOR FISCAL FOR THE DISTRICT OF *(name of district)* GIVES NOTICE UNDER SECTION 32(2) OF THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016 THAT:

1. Further proceedings are to be held in relation to the death of *(name or names)*.
2. A copy of the original determination is attached.
3. The Lord Advocate considers that there is new evidence in relation to the circumstances of death. That new evidence is as follows: -

*(Set out a brief account of the nature of the new evidence)*.

4. The Lord Advocate considers that it is highly likely that a finding or recommendation set out in the original determination would have been materially different if the evidence had been brought forward at the inquiry; and

Has decided that it is in the public interest for further inquiry proceedings to be held in relation to the circumstances of death.

5. The Lord Advocate is of the view that the further proceedings should consist of:

[the re-opening and continuing of the inquiry

OR

the holding of a fresh inquiry]

6. The sheriff is invited to make an order fixing a date and place for a hearing to give the procurator fiscal and participants the opportunity to make representations about whether the further proceedings should consist of the re-opening and continuation of the inquiry or the holding of a fresh inquiry.

SIGNED

*(signature of procurator fiscal)*

*(place and date)*

## **Form S1.4**

### **Application**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

APPLICATION

in the

INQUIRY INTO THE DEATH OF *(deceased)*

by

*(participant)*

Court ref: *(ref)*

Date: *(date of intimation)*

1. *(participant)* applies to the court to *(details of the application)*.
2. *(State briefly (in numbered paragraphs) the grounds for the application)*.
3. The last date for lodging opposition to the application is *(date)*.

SIGNED

*(signature)*

*(place and date)*

## Form S1.5

### Opposition to Application

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

OPPOSITION to APPLICATION

in the

INQUIRY INTO THE DEATH OF *(deceased)*

by

*(participant)*

Court ref: *(ref)*

Date of intimation of application: *(date)*

Date of intimation of opposition to application: *(date)*

1. *(participant)* opposes the application by *(participant)*.
2. *(State briefly (in numbered paragraphs) the grounds for opposing the application).*

SIGNED

*(signature)*

*(place and date)*

**Form S1.7**

**Certificate of Intimation**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

CERTIFICATE OF INTIMATION

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

1. I certify that I gave intimation of *(document or other matter to be intimated)* to *(insert name of receiving participant)*.
2. Intimation was given by *(method of intimation)*.
3. Intimation was given on *(date)*.

SIGNED

*(signature)*

*(place and date)*

## Form S2.7

### Certificate of Intimation

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

#### CERTIFICATE OF INTIMATION

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

1. I certify that I gave intimation of *(document or other matter to be intimated)* to *(insert name of receiving participant)*.
2. Intimation was given by *(method of intimation)*.
3. Intimation was given on *(date)*.

SIGNED

*(signature)*

*(place and date)*

## Form S4.5

### Reporting Restrictions: Representations

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

REPRESENTATIONS ON REPORTING RESTRICTIONS

by

*(participant)*

IN THE

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

1. On *(date)* the sheriff at *(place)* made an interim order under paragraph 4 of schedule 4 of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 in *(inquiry)*.

2. The applicant is a person who would be directly affected by an order restricting the reporting of proceedings because:

*(state briefly (in numbered paragraphs) the reasons.)*

3. The applicant wishes to make the following representations:

*(state briefly (in numbered paragraphs) the representations.)*

[4. The applicant seeks an urgent hearing on these representations because:

*(state briefly (in numbered paragraphs) why an urgent hearing is necessary.)]*

SIGNED

*(signature)*

*(place and date)*

**Form S4.7**

**Reporting Restrictions: Application for Variation or Revocation**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

APPLICATION FOR VARIATION OR REVOCATION

by

*(applicant)*

of an

ORDER RESTRICTING THE REPORTING

OF THE

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

1. On *(date)* the sheriff at *(place)* made an order restricting the reporting of proceedings in *(inquiry)*.
2. The applicant seeks variation [or revocation] of the order because:  
*(state briefly (in numbered paragraphs) the reasons for the application.)*
- [3. The applicant seeks to vary the order by:  
*(state briefly (in numbered paragraphs) the proposed variation(s).)]*

SIGNED

*(signature)*

*(place and date)*

## Form S4.21

### Application for a prospective lay representative to conduct inquiry proceedings on behalf of a non-natural person

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

Court ref: *(ref)*

1. *(Participant)* applies for permission for a lay representative to conduct these inquiry proceedings on its behalf.
2. The applicant is a company [or a limited liability partnership] [or a partnership] [or an unincorporated association].
3. The applicant is unable to pay for the services of a legal representative to conduct these inquiry proceedings because:  
  
*(State briefly in numbered paragraphs the reasons why the applicant is unable to pay).*
4. The prospective lay representative is (name and address of lay representative).
5. The prospective lay representative holds the following relevant position with the applicant: (specify the relevant position held by the lay representative).
6. The applicant has authorised the prospective lay representative to conduct these proceedings. An authorisation document is annexed to this application.

#### DECLARATIONS BY PROSPECTIVE LAY REPRESENTATIVE

The prospective lay representative declares that:

- (a) my responsibilities in my position as (specify relevant position) with the applicant do not consist wholly or mainly of conducting legal proceedings on behalf of the (specify participant) or another person.
- (b) I do not have a personal interest in the outcome of the inquiry.

SIGNED

*(signature)*

*(place and date)*

## Form S5.5A

### Form of note in optional procedure for commission and diligence

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

[FORM]

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

Date: *(date of intimation)*

To: *(insert name and address of participant or named third party haver, from whom the documents are sought to be recovered).*

You are hereby required to produce to *(insert name of participant or their representative)* within seven days of the service on you of this order—

- (a) this order which must be produced intact;
- (b) the certificate below duly dated and signed by you; and
- (c) all documents in your possession falling within the enclosed specification and a list or inventory of such documents signed by you relating to this Order and your certificate.

2. Subject to note (1) below, you may produce these documents either by sending them by [registered post or by the first class recorded delivery], or by hand to the address above.

*(Signed)*

*(Add designation and address of the participant or their representative in whose favour commission and diligence has been granted)*

#### NOTES

1. If you claim that any of the documents produced by you are confidential, you must still produce such documents but may place them in a separate sealed packet by themselves, marked “confidential”. In that event, they should NOT be sent to the address above. They must be [hand delivered or sent by registered post or by the first class recorded

delivery service or registered postal packet] to the sheriff clerk at (insert name and address of sheriff court).

2. The document will be considered by the participants to the inquiry and they may or may not be lodged with the sheriff clerk. A written receipt will be given or sent to you by the participant recovering the documents, who may thereafter allow them to be inspected by the other participants. The participant in whose possession the documents are will be responsible for their safekeeping.
3. Participants are obliged to return the documents to you when their purpose with the documents is finished. If they do not do so, you will be entitled to apply to the court for an order to have this done and you may apply for an award of the expenses incurred in doing so. Further information about this can be obtained from the sheriff clerk's office at (insert name and address of sheriff court).

### **Certificate**

I hereby certify with reference to the above order of the sheriff at (insert name of sheriff court) in the inquiry (*insert court reference number*) and the enclosed specification of documents, served on me and marked respectively X and Y:—

1. That the documents which are produced and which are listed in the enclosed inventory signed by me and marked Z, are all documents in my possession falling within the specification.

[or

That I have no documents in my possession falling within the specification.]

2. That, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession. These documents are as follows:— (*describe them by reference to the descriptions of documents in the specification*).
3. They were last seen by me on or about (*date*), at (*place*), in the hands of (*insert name and address of the person*).

or

That I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

SIGNED

(*signature*)

(*place and date*)

**Form S5.5B**

**Form of intimation to sheriff clerk and participants of documents  
recovered under optional procedure**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

1. The undernoted document[s] was [were] recovered from *(insert name and address of haver)* on *(insert date of receipt)* under order of the sheriff at *(insert name of sheriff court)* dated *(insert date of order authorising commission and diligence)* in so far as it relates to the specification of documents lodged with the court *(identify specification if more than one)*.
2. Document[s] received:- *(identify each document)*.

SIGNED

*(Add designation and address of the person in whose favour commission and diligence has been granted)*

*(signature)*

*(place and date)*

## Form S5.5C

### Form of receipt from party other than party who originally recovered documents

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

[FORM]

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

Date: *(date of intimation)*

I acknowledge receipt of the undernoted document[s] received from you and recovered under order of the sheriff at *(insert name of sheriff court)* dated *(insert date of interlocutor authorising commission and diligence)*.

2. Document[s] received:— *(identify each document)*

SIGNED

*(Add designation and address of the person receiving the documents)*

*(signature)*

*(place and date)*

## Form S5.6A

### Form of citation of witness or haver

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

TO: [A.B. (design)]

*(Name)* who is a participant in the inquiry has asked you to be a witness. You must attend the above sheriff court on *(date)* at *(time)* for that purpose, [and to bring with you (specify documents)].

- If you would like to know more about being a witness
- are a child under the age of 16
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (that is someone the court considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the court hearings)

you should contact *(specify the participant citing the witness or their agent)* for further information.

If you are a vulnerable witness (including a child under the age of 16), then you should be able to use a special measure (such measures include the use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

#### **Expenses**

You may claim back money which you have to spend and any earnings you have lost within certain specified limits, because you have to come to court on the above date. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to court, you should apply for payment to the person who has asked you to attend court.

#### **Failure to attend**

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest.

If you have any questions about anything in this citation, please contact (*specify the participant citing the witness or their agent*) for further information.

SIGNED

(*signature*)

(*place and date*)

**Form S5.6B**

**Form of certificate of citation of witness or haver**

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

[FORM]

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

I certify that on *(insert date of citation)* I duly cited [K.L.], *(design)* to attend at *(insert name of sheriff court)* Sheriff Court on *(date)* at *(time)* as a witness for *(participant)* in the inquiry [and I required him [or her] to bring with him [or her] *(specify documents)*].

This I did by *(state mode of citation)*.

SIGNED

*(signature)*

*(place and date)*

## Form S5.11A

### Form of application for letter of request

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

APPLICATION FOR LETTER OF REQUEST

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

*(Participant)* states that the evidence specified in the attached [letter of request] is required for the purpose of these inquiry proceedings and craves the court to issue [a letter of request] to *(specify in the case of a letter of request the central or other appropriate authority of the country or territory in which the evidence is to be obtained)* to obtain the evidence specified.

SIGNED

*(signature)*

*(place and date)*

## Form S5.11B

### Form of letter of request

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

LETTER OF REQUEST

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

Date: *(date of intimation)*

1. Sender *(insert name and address)*
2. Central authority of the requested state *(insert name and address)*
3. Person to whom the executed request is to be returned *(insert name and address)*
4. The undersigned applicant has the honour to submit the following request:
  5. a. Requesting judicial authority *(insert name and address)*
  5. b. To the competent authority *(insert name of requested state)*
6. Names and addresses of the participants and their representatives
7. Nature and purpose of the proceedings and summary of facts
8. Evidence to be obtained or other judicial act to be performed (items to be completed where applicable)
9. Identity and address of any person to be examined
10. Questions to be put to the persons to be examined or statement of the subject-matter about which they are to be examined (or see attached list)
11. Documents or other property to be inspected *(specify whether it is to be produced, copied, valued, etc.)*
12. Any requirement that the evidence be given on oath or affirmation and any special form to be used (in the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence)

13. Special methods or procedure to be followed

14. Request for notification of the time and place for the execution of the request and identity and address of any person to be notified

15. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of request

16. Specification of privilege or duty to refuse to give evidence under the law of the state of origin

17. The fees and expenses (costs) incurred will be borne by(insert name and address)(Items to be included in all letters of request)

SIGNED

*(signature)*

*(place and date)*

## Form S5.12

### Form of minute for the taking of evidence in the EU

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

MINUTE FOR THE TAKING OF EVIDENCE IN THE EU

by

*(participant)*

in the

INQUIRY INTO THE DEATH OF *(deceased)*

Court ref: *(ref)*

Date: *(date of intimation)*

The Minuter states that the evidence specified in the attached [Form A] [Form I]\* is required for the purpose of these proceedings and craves the court to issue [a letter of request] [that Form]\* to *(specify the applicable court, tribunal, central body or competent authority)* to obtain the evidence specified.

SIGNED

*(signature)*

*(place and date)*

## Form S6.2A

### Child Witness Notice

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

#### CHILD WITNESS NOTICE

under section 12 of the Vulnerable Witnesses (Scotland) Act 2004

in the

INQUIRY INTO THE DEATH OF *(deceased)*

by

*(participant)*

Court ref: *(ref)*

1. The applicant is *(participant)*.
2. The applicant has cited [or intends to cite] *(witness)*, *(date of birth)* as a witness.
3. *(witness)* is a child witness under section 11 of the Vulnerable Witnesses (Scotland) Act 2004 [and was under the age of 18 on the date of the commencement of proceedings.]
4. The applicant considers that the following special measure[s] is [or are] the most appropriate for the purpose of taking the evidence of *(witness)* [or that *(witness)* should give evidence without the benefit of any special measure]:  
  
*(specify any special measure(s) sought).*
5. The reason[s] this [or these] special measure[s] is [or are] considered the most appropriate is [or are] as follows:  
  
*(specify the reason(s) for the special measure(s) sought). [or*
5. The reason[s] it is considered that *(witness)* should give evidence without the benefit of any special measure is [or are]:  
  
*(explain why it is felt that no special measures are required).]*
6. *(witness)* and the parent[s] of [or [person[s] with parental responsibility for] *(witness)* has [or have] expressed the following view[s] on the special measure[s] that is [or are] considered most appropriate [or the appropriateness of *(witness)* giving evidence without the benefit of any special measure]:  
  
*(specify the view(s) expressed and how they were obtained).*

7. Other information considered relevant to this application is as follows:

*(state briefly any other information relevant to the child witness notice).*

8. The applicant asks the sheriff to—

- (a) consider this child witness notice; and
- (b) make an order authorising the special measure[s] sought; [or
- (b) make an order authorising the giving of evidence by *(witness)* without the benefit of special measures.]

SIGNED

*(signature)*

*(place and date)*

## Form S6.2B

### Vulnerable Witness Application

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

#### VULNERABLE WITNESS APPLICATION

under section 12 of the Vulnerable Witnesses (Scotland) Act 2004

in the

INQUIRY INTO THE DEATH OF *(deceased)*

by

*(participant)*

Court ref: *(ref)*

1. The applicant is *(participant)*.
2. The applicant has cited [or intends to cite] *(witness)*, *(date of birth)* as a witness.
3. The applicant considers that *(witness)* is a vulnerable witness under section 11(1)(b) of the Vulnerable Witnesses (Scotland) Act 2004 for the following reasons:

*(specify why the witness is considered to be a vulnerable witness.)*

4. The applicant considers that the following special measure[s] is [or are] the most appropriate for the purpose of taking the evidence of *(witness)*:

*(specify any special measure(s) sought.)*

5. The reason[s] this [or these] special measure[s] is [or are] considered the most appropriate is [or are] as follows:

*(specify the reason(s) for the special measure(s) sought.)*

6. *(witness)* has expressed the following view[s] on the special measure[s] that is [or are] considered most appropriate:

*(specify the view(s) expressed and how they were obtained.)*

7. Other information considered relevant to this application is as follows:

*(state briefly any other information relevant to the vulnerable witness application.)*

8. The applicant asks the sheriff to—
  - (a) consider this vulnerable witness application; and
  - (b) make an order authorising the special measure[s] sought.

SIGNED

*(signature)*

*(place and date)*

## Form S6.2C

### Vulnerable Witnesses: Arrangements Review Application

SHERIFFDOM OF *(name of sheriffdom)* AT *(name of sheriff court)*

APPLICATION FOR REVIEW OF ARRANGEMENTS FOR A VULNERABLE WITNESS

under section 13 of the Vulnerable Witnesses (Scotland) Act 2004

in the

INQUIRY INTO THE DEATH OF *(deceased)*

by

*(participant)*

Court ref: *(ref)*

1. The applicant is *(participant)*.
2. A hearing is fixed for *(date)* at *(time)*.
3. *(witness)* is a witness who is to give evidence at, [or for the purposes of the hearing *(witness)* is a child witness [or vulnerable witness] under section 11 of the Vulnerable Witnesses (Scotland) Act 2004.
4. The current arrangements for taking the evidence of *(witness)* are *(specify the current arrangements)*.
5. The current arrangements should be reviewed because *(specify reasons for review)*.
6. *(witness)* [and the parent[s] of [or person[s] with parental responsibility for] *(witness)*] has [or have] expressed the following view[s] on the special measure[s] that is [or are] considered most appropriate [or the appropriateness of *(witness)* giving evidence without the benefit of any special measure]:  
  
*(specify the view(s) expressed and how they were obtained.)*
7. The applicant seeks *(specify the order sought)*.

SIGNED

*(signature)*

*(place and date)*

## SCHEDULE 4

### MISCELLANEOUS AND GENERAL MATTERS

#### **Lodging**

1.—(1) Where these Rules require something to be lodged, or the sheriff orders something to be lodged, it must be lodged with the sheriff clerk.

(2) Something may be lodged by—

- (a) delivering it personally to the sheriff clerk's office;
- (b) delivering it to a document exchange of which the sheriff clerk is a member;
- (c) delivering it using a postal service which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases;
- (d) fax.

#### **Live links**

2.—(1) In this rule,

“live link” means—

- (a) a live television link; or
- (b) where the sheriff gives permission, an alternative arrangement;

“submission” means any oral submission which would otherwise be made to the sheriff by a participant or that participant's representative, including an oral submission in support of an application.

(2) A participant may apply to the sheriff to use a live link to make a submission or for evidence to be given.

(3) Where a participant seeks to use an alternative arrangement, the application must specify the proposed arrangement.

(4) The sheriff must not grant an application to use an alternative arrangement unless the person using the live link is able to—

- (a) be heard in the courtroom; and
- (b) hear the proceedings in the courtroom.

#### *Reporting restrictions*

#### **Reporting restrictions: interpretation and application**

3.—(1) Paragraphs 4 to 7 apply to orders which restrict the reporting of proceedings, whether under section 22(2) (publishing restrictions in relation to children) or otherwise.

(2) In those paragraphs, “interested person” means a person—

- (a) who has asked to see any order made by the sheriff which restricts the reporting of proceedings, including an interim order; and
- (b) whose name is included on a list kept by the Lord President for the purposes of paragraphs 4 to 7.

#### **Interim orders: notification to interested persons**

4.—(1) Where the sheriff is considering making an order, the sheriff may make an interim order.

(2) Where the sheriff makes an interim order, the sheriff clerk must immediately send a copy of the interim order to any interested person.

(3) The sheriff is to specify in the interim order why the sheriff is considering making an order.

### **Interim orders: representations**

**5.**—(1) Subparagraph (2) applies where the sheriff has made an interim order.

(2) An interested person who would be directly affected by the making of an order is to be given an opportunity to make representations to the sheriff before the order is made.

(3) Representations are to—

- (a) be made in Form S4.5;
- (b) include reasons why an urgent hearing is necessary, if an urgent hearing is sought;
- (c) be lodged no later than 2 days after the interim order is sent to interested persons.

(4) If representations are made—

- (a) the sheriff is to appoint a date and time for a hearing—
  - (i) on the first suitable court day; or
  - (ii) where the sheriff considers that an urgent hearing is necessary, at an earlier date and time;
- (b) the sheriff clerk must—
  - (i) notify the date and time of the hearing to the participants to the proceedings and any person who has made representations; and
  - (ii) send a copy of the representations to the participants.

(5) Where no interested person makes representations in accordance with paragraph (3), the sheriff clerk is to put the interim order before the sheriff in chambers in order that the sheriff may resume consideration of whether to make an order.

(6) Where the sheriff, having resumed consideration, makes no order, the sheriff must recall the interim order.

(7) Where the sheriff recalls an interim order, the sheriff clerk must immediately notify any interested person.

### **Notification of reporting restrictions**

**6.**—(1) Where the sheriff makes an order, the sheriff clerk must immediately—

- (a) send a copy of the order to any interested person;
- (b) arrange for the publication of the making of the order on the SCTS website.

### **Applications for variation or revocation**

**7.**—(1) A person aggrieved by an order may apply to the sheriff for its variation or revocation.

(2) An application is to be made in Form S4.7.

(3) When an application is made—

- (a) the sheriff is to appoint a date and time for a hearing;
- (b) the sheriff clerk must—
  - (i) notify the date and time of the hearing to the participants to the proceedings and the applicant; and
  - (ii) send a copy of the application to the participants.

(4) The hearing is, so far as reasonably practicable, to be before the sheriff who made the order.

## **Oaths**

**8.** The style of an oath is—

“I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth”.

## **Affirmations**

**9.** The style of an affirmation is—

“I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth”.

## *Interventions*

### **Interventions by the CEHR and SCHR**

**10.** Paragraphs 11 to 14 apply to—

- (a) interventions in legal proceedings by the Commission for Equality and Human Rights under section 30(1) of the Equality Act 2006**(a)**;
- (b) interventions in civil proceedings by the Scottish Commission for Human Rights under section 14(2) of the Scottish Commission for Human Rights Act 2006**(b)**.

### **Applications to intervene**

**11.**—(1) An application for leave to intervene is to be made in writing.

(2) The participants or the applicant may request a hearing on the application to intervene within 14 days after the application is lodged.

(3) Where a hearing is requested—

- (a) the sheriff is to appoint a date and time for a hearing;
- (b) the sheriff clerk must notify the date and time of the hearing to the participant and the applicant.

(4) Where no hearing is requested, the sheriff may appoint a date and time for a hearing of the sheriff’s own accord and the sheriff clerk must notify the date and time of the hearing to the participants and the applicant.

### **Determination of applications**

**12.**—(1) The sheriff may determine an application for leave to intervene without a hearing, unless a hearing is fixed under paragraph 11(3) or (4).

(2) In an application for leave to intervene under section 30(1) of the Equality Act 2006, the sheriff may grant leave only if satisfied that the proposed submissions are likely to assist the sheriff.

(3) Where the sheriff grants leave to intervene, the sheriff may impose any conditions that the sheriff considers desirable in the interests of the efficient administration of the inquiry.

(4) When an application is determined, the sheriff clerk must notify the participants and the applicant of the outcome.

---

(a) 2006 c. 3.

(b) 2006 asp 13. Section 14 was amended by S.S.I. 2013/211, schedule 1, paragraph 16 and by schedule 2, paragraph 12 of the Act.

### **Invitations to intervene**

**13.**—(1) An invitation to intervene under section 14(2)(b) of the Scottish Commission for Human Rights Act 2006(a) is to be in writing.

(2) The sheriff clerk must send a copy of the invitation to the participants and to and to the Scottish Commission for Human Rights together with: -

- (a) a copy of the first order; and
- (b) any other documents relating to the inquiry that the sheriff considers to be relevant.

(3) Where the sheriff invites the SCHR to intervene, the sheriff may impose any conditions that the sheriff considers desirable to further the purpose of the inquiry.

### **Form of intervention**

**14.**—(1) An intervention is to be by way of written submission.

(2) A written submission (including any appendices) must not exceed 5,000 words.

(3) The intervener must lodge the written submission within such time as the sheriff may direct.

(4) In exceptional circumstances, the sheriff may allow—

- (a) a written submission exceeding 5,000 words to be made;
- (b) an oral submission to be made.

(5) Where the sheriff allows an oral submission to be made, the sheriff is to appoint a date and time for the submission to be made.

(6) The sheriff clerk must notify that date and time to the participants and the intervener.

### *Lay representation and support*

#### **Lay representation: applications**

**15.**—(1) In paragraphs 15 to 18 a reference to a participant is a reference to a participant other than a procurator fiscal.

(2) A participant who is also a natural person may be represented by a lay representative.

(3) A participant is represented by a lay representative if that participant is represented by a person who is not a solicitor or an advocate.

(4) A participant may apply to the sheriff for permission to be represented by a lay representative.

(5) The sheriff may grant an application only if it is considered that it would assist the effective administration of the inquiry to do so.

(6) Where the sheriff grants permission, the sheriff may—

- (a) do so in respect of one or more specified hearings;
- (b) withdraw permission of the sheriff's own accord or on the application of any participant.

#### **Lay representation: functions, conditions and duties**

**16.**—(1) A participant must appear along with the lay representative at any hearing where the lay representative is to make oral submissions.

(2) A participant may show any document or communicate any information about the inquiry proceedings to that participant's lay representative without contravening any prohibition or restriction on disclosure of the document or information.

---

(a) 2006 asp [x].

(3) Where a document or information is disclosed under subparagraph (2), the lay representative is subject to any prohibition or restriction on disclosure in the same way that the participant is.

(4) A lay representative must not receive directly or indirectly from the party any remuneration or other reward for assisting the participant.

**Lay support: application**

**17.—**(1) A participant who is also a natural person may apply to the sheriff for permission for a named person to assist the participant in the conduct of inquiry proceedings, and such a person is to be known as a lay supporter.

(2) The sheriff may refuse an application only if in the sheriff’s opinion —

- (a) the named person is an unsuitable person to act as a lay supporter (whether generally or in the proceedings concerned); or
- (b) it would be contrary to the efficient administration of the inquiry to grant it.

(3) The sheriff, if satisfied that it would be contrary to the efficient administration of the inquiry for permission to continue, may withdraw permission—

- (a) of the sheriff’s own accord;
- (b) on the application of any party.

**Lay support: functions, conditions and duties**

**18.—**(1) A lay supporter may assist a participant by accompanying the participant at inquiry hearings.

(2) A lay supporter may, if authorised by the participant, assist the participant by—

- (a) providing moral support;
- (b) helping to manage inquiry documents and other papers;
- (c) taking notes of the inquiry proceedings;
- (d) quietly advising on—
  - (i) points of law and procedure;
  - (ii) issues which the participant might wish to raise with the sheriff.

(3) A participant may show any document or communicate any information about the inquiry proceedings to that participant’s lay supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under subparagraph (3), the lay supporter is subject to any prohibition or restriction on disclosure in the same way that the participant is.

(5) A lay supporter must not receive directly or indirectly from the party any remuneration or other reward for assisting the participant.

*Lay representation for non-natural persons*

**Interpretation**

**19.—**(1) In paragraphs 19 to 22—

“authorisation document” means a document executed by a non-natural person of a type mentioned in column 1 of the following table authorising an individual holding the relevant position mentioned in the corresponding column 2 to act as its lay representative—

Type of non-natural person	Relevant position
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<b>Type of non-natural person</b>	<b>Relevant position</b>
a company	a director or a secretary of the company
a limited liability partnership	a member of the limited liability partnership
any other partnership	a partner in the partnership
an unincorporated association of persons	a member or office holder of the association

“non-natural person” means—

- (a) a company (whether incorporated in the United Kingdom or elsewhere),
- (b) a limited liability partnership,
- (c) any other partnership,
- (d) an unincorporated association of persons;

“lay representative” means an individual who is not a legal representative;

“legal representative” means—

- (a) a solicitor,
- (b) an advocate, or
- (c) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(2) An individual holds a relevant position with a non-natural person if the individual—

- (a) in the case of a company, is a director or secretary of the company,
- (b) in the case of a limited liability partnership, is a member of the partnership,
- (c) in the case of any other partnership, is a partner in the partnership,
- (d) in the case of an unincorporated association, is a member or office holder of the association.

(3) References to conducting proceedings are references to exercising, in relation to the proceedings, a function or right (including a right of audience) that a legal representative could exercise in the proceedings.

### **Lay representation of non-natural persons at inquiries**

**20.**—(1) This section applies in inquiries in which a non-natural person is a participant.

(2) A lay representative may, if the sheriff grants permission, conduct the inquiry proceedings on behalf of the non-natural person.

(3) The sheriff may grant permission if satisfied that—

- (a) the non-natural person is unable to pay for the services of a legal representative to conduct the inquiry proceedings,
- (b) the lay representative is a suitable person to conduct the inquiry proceedings, and
- (c) it is in the interests of justice to grant permission.

(4) For the purposes of subparagraph (3)(b), a lay representative is a suitable person to conduct the proceedings if—

- (a) the lay representative holds a relevant position with the non-natural person,
- (b) the responsibilities of the lay representative in that position do not consist wholly or mainly of conducting legal proceedings on behalf of the non-natural person or another person,

- (c) the lay representative is authorised by the non-natural person to conduct the inquiry proceedings,
- (d) the lay representative does not have a personal interest in the subject matter of the inquiry proceedings, and
- (e) the lay representative is not the subject of an order of the sheriff preventing a lay representative from conducting any proceedings before any sheriff on behalf of non-natural persons.

(5) In subparagraph (4)(d), “personal interest” means an interest other than one that anyone holding the position that the lay representative holds with the non-natural person would have.

(6) For the purposes of subparagraph (3)(c), in deciding whether it is in the interests of justice to grant permission, the sheriff must have regard, in particular, to—

- (a) the non-natural person's interest in the inquiry proceedings, and
- (b) the likely complexity of the inquiry proceedings.

### **Applications for authorisation of lay representatives for non-natural persons**

**21.**—(1) An application for permission for a lay representative to conduct proceedings on behalf of a non-natural person is to be made in Form S4.21.

- (2) The application must be accompanied by an authorisation document.
- (3) An application may be considered in chambers and without hearing the participants.
- (4) Where the sheriff grants an application, the sheriff may—
  - (a) do so in respect of one or more specified hearings;
  - (b) withdraw permission of the sheriff’s own accord or on the application of a participant.

### **Lay representatives: functions, conditions and duties**

**22.**—(1) A lay representative may be shown any document (including a court document) or receive any information about the inquiry proceedings without the non-natural person, or any of its office holders or employees, contravening any prohibition or restriction on disclosure of the document or information.

(2) Where a document or information is disclosed under subparagraph (1), the lay representative is subject to any prohibition or restriction on disclosure in the same way that the non-natural person is.

(3) The sheriff, of the sheriff’s own accord or on the application of a participant, may impose conditions on the exercise of functions by a lay representative, where it is necessary to do so in the interests of justice.

## SCHEDULE 5

### RECOVERY OF EVIDENCE

#### **Interpretation and application of this schedule**

1. This schedule applies to the recovery of evidence by a participant in an inquiry.

#### **Confidentiality**

- 2.—(1) This paragraph applies to evidence recovered under—
  - (a) paragraph 5 (optional procedure);
  - (b) paragraph 6 (execution of commission and diligence).
- (2) Where confidentiality is claimed for any evidence sought to be recovered such evidence is to be, where practicable, enclosed in a sealed packet.
- (3) An application to have a sealed packet opened up may be made by—
  - (a) the participant who obtained the commission and diligence; or
  - (b) any other participant after the date of intimation by the sheriff clerk under paragraph 6(10) (intimation of failure to uplift documents).
- (4) Intimation of such an application must also be given to the haver by post by first class post.
- (5) The person claiming confidentiality may oppose the application.

#### **Warrants for production of original documents from public records**

- 3.—(1) Where a participant seeks to obtain from the keeper of any public record production of the original of any register or deed in his custody for the purposes of a cause, that participant must apply to the sheriff.
- (2) Intimation of an application under subparagraph (1) must be given to the keeper of the public record concerned at least 7 days before the application is lodged.
- (3) In relation to a public record kept by the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland, where it appears to the sheriff that it is necessary for the ends of justice that an application under this rule should be granted, the sheriff must make an order containing a certificate to that effect;
- (4) The participant applying for production may then request by letter (enclosing a copy of the order certified by the sheriff clerk), addressed to the Deputy Principal Clerk of Session, for an order from the Court of Session authorising the Keeper of the Registers or the Keeper of the Records, as the case may be, to exhibit the original of any register or deed to the sheriff.
- (5) The Deputy Principal Clerk of Session must submit the application sent under subparagraph (4) to the Lord Ordinary in chambers who, if satisfied, may grant a warrant for production or exhibition of the original register or deed sought.
- (6) A certified copy of the warrant granted under subparagraph (5) must be intimated to the keeper of the public record concerned.

#### **Applications for commission and diligence**

- 4.—(1) A participant may apply for a commission and diligence for the recovery of a document or other property.
- (2) That application must specify the document or other property sought to be inspected, photographed, preserved, taken, detained, produced recovered, sampled or experimented with or upon, as the case may be.

(3) Where the document or other property sought is in the possession of a public authority exercising functions in relation to reserved matters within the meaning of schedule 5 of the Scotland Act 1998, or a cross-border public authority within the meaning of section 88(5) of that Act, the application must be intimated on the Advocate General for Scotland.

(4) Where the document or other property sought is otherwise in the possession of a public authority, the application must be intimated on the Lord Advocate.

(5) The Advocate General for Scotland or the Lord Advocate (as the case may be) may appear at the hearing of that application.

### **Optional procedure before executing commission and diligence**

**5.**—(1) A participant who has obtained a commission and diligence may, before executing it, intimate on the haver an order in Form S5.5A.

(2) The haver must comply with the order in the manner and within the period set out in the order.

(3) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the participant who obtained the order, that participant—

- (a) must give written intimation of that fact in Form S5.5B to the sheriff clerk and every other participant ; and
- (b) must—
  - (i) if the document has been sent by post, send a written receipt for the document in Form S5.5B to the haver; or
  - (ii) if the document has been delivered by hand, give a written receipt in Form S5.5B to the person delivering the document.

(4) Where the participant who has recovered any such document does not lodge it within 14 days of receipt of it, that participant must—

- (a) give written intimation to every participant that they may borrow, inspect or copy the document within 14 days after the date of that intimation; and
- (b) in so doing, identify the document.

(5) Where a participant who has obtained any document wishes to lodge the document in process, that participant must—

- (a) lodge the document within 14 days after receipt of it; and
- (b) at the same time, send a written receipt for the document in Form S5.5C to the participant who obtained the order.

(6) Where—

- (a) no participant wishes to lodge or borrow any such document, the document is to be returned to the haver by the participant who obtained the order within 14 days after the expiry of the period specified in subparagraph (4)(a); or
- (b) any such document has been uplifted by another participant under subparagraph (4) and that participant does not wish to lodge it in process, the document must be returned to the haver by that participant within 21 days after the date of receipt.

(7) Any such document lodged is to be returned to the haver by the participant lodging it within 14 days after the date of the sheriff's determination.

(8) If any participant fails to return any such document as provided for in subparagraph (6) or (7), the haver may apply for an order—

- (a) that the document is to be returned to the haver; and
- (b) for that participant to make a payment to the have to reflect the consequences of the document not being returned.

(9) The participant holding any such document (being the participant who last issued a receipt for it) is responsible for its safekeeping during the period that the document is in his custody or control.

(10) If the participant who intimated the order is not satisfied that—

- (a) full compliance has been made with the order, or
- (b) adequate reasons for non-compliance have been given, that participant may execute the commission and diligence under paragraph 4.

(11) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the application of the participant who intimated the order, direct that that participant may inspect the book and take copies of any entries falling with the specification.

(12) Where any question of confidentiality arises in relation to a book directed to be inspected under subparagraph (11), the inspection must be made, and any copies taken, at the sight of the commissioner appointed in the order granting the commission and diligence.

(13) The sheriff may order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.

### **Execution of commission and diligence**

**6.—**(1) A participant executing a commission and diligence must—

- (a) provide the commissioner with—
  - (i) a copy of the specification;
  - (ii) a copy of the first notice;
  - (iii) a copy of the first order; and
  - (iv) and a certified copy of the order containing the commissioner's appointment; and
- (b) instruct the clerk and any shorthand writer considered necessary by the commissioner or any participant; and
- (c) be responsible for the fees of the commissioner and his clerk, and of any shorthand writer.

(2) The commissioner must, in consultation with the participants, fix a diet for the execution of the commission.

(3) The order granting such a commission and diligence is sufficient authority for citing a haver to appear before the commissioner.

(4) A citation in Form S5.6A must be intimated on the haver with a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the first notice; and the participant citing the haver must lodge a certificate of citation in Form S5.6B.

(5) The participants and the haver are entitled to be represented by a solicitor or person having a right of audience before the sheriff at the execution of the commission.

(6) At the commission, the commissioner must—

- (a) administer the oath *de fidei administratione* to any clerk and any shorthand writer appointed for the commission; and
- (b) administer to the haver the oath or affirmation.

(7) The report of the execution of the commission and diligence, any document recovered and an inventory of that document, must be sent by the commissioner to the sheriff clerk.

(8) The sheriff clerk must intimate receipt of the documents to the participants not later than the day after the date on which such a report, document and inventory, if any, are received.

(9) No participant, other than the participant who intimated the order, may uplift such a document until after the expiry of 7 days after the date of intimation under subparagraph (8).

(10) Where the participant who intimated the order fails to uplift such a document within 7 days after the date of intimation under subparagraph (8), the sheriff clerk must intimate that failure to every other participant.

(11) Where no participant has uplifted such a document within 14 days after the date of intimation under subparagraph (10), the sheriff clerk must return it to the haver.

(12) Where a participant who has uplifted such a document does not wish to lodge it, that participant must return it to the sheriff clerk who must—

- (a) intimate the return of the document to every other participant; and
- (b) if no other participant uplifts the document within 14 days of the date of intimation, return it to the haver.

### **Letters of request**

**7.—**(1) This rule—

- (a) applies to an application for a letter of request to a court or tribunal outside Scotland to obtain evidence of a kind specified in subparagraph (2);
- (b) does not apply to a request for the taking of evidence under the Council Regulation.

(2) An application may be made in relation to a request—

- (a) for the examination of a witness,
- (b) for the inspection, photographing, preservation, custody, detention, production or recovery of, or the taking of samples of, or the carrying out of any experiment on or with, a document or other property, as the case may be,
- (c) for the medical examination of any person,
- (d) for the taking and testing of samples of blood from any person, or
- (e) for any other order for obtaining evidence,

for which an order could be obtained from the sheriff.

(3) Such an application must be made by Form S5.11A together with a proposed letter of request in Form S5.11B.

(4) The sheriff may order the participant making the application to consign a sum with the sheriff clerk in respect of the costs payable relating to the letter of request.

(5) Unless the court or tribunal to which a letter of request is addressed is a court or tribunal in a country or territory—

- (a) where English is an official language, or
- (b) in relation to which the sheriff clerk certifies that no translation is required,

then the applicant must, before the issue of the letter of request, lodge in the official language of the court or tribunal—

- (c) a translation of that letter;
- (d) and any interrogatories and cross-interrogatories.

(6) The sheriff clerk must forward to the Scottish Ministers, or to such other person as the sheriff may direct—

- (a) the letter of request, when issued;
- (b) any interrogatories and cross-interrogatories as adjusted; and
- (c) the translations (if any).

### **Evidence taken on commission**

**8.—**(1) On cause shown, the sheriff may order that the evidence of a witness is to be taken by a commissioner.

- (2) The commission is to proceed without interrogatories unless the sheriff otherwise orders.
- (3) The order of the sheriff authorising the commission is sufficient authority for citing the witness to appear before the commissioner.
- (4) The participant who cited the witness—
  - (a) must give the commissioner—
    - (i) a certified copy of the order of the sheriff appointing the commissioner;
    - (ii) where paragraph 9 applies, the approved interrogatories and cross-interrogatories;
  - (b) must instruct the clerk to the commission;
  - (c) is responsible in the first instance for the fee of the commissioner and the clerk.
- (5) The commissioner is to fix a hearing at which the commission will be carried out.
- (6) The commissioner must consult the participants before fixing the hearing.
- (7) A participant may apply for leave to be present in the room where the commission is carried out.

**Taking of evidence by commissioner: interrogatories**

- 9.**—(1) This paragraph applies where the sheriff—
- (a) authorises the taking of evidence by a commissioner;
  - (b) orders that interrogatories are to be prepared.
- (2) When the sheriff makes an order for interrogatories to be prepared, the sheriff is to specify the periods within which participants must comply with the steps in this rule.
- (3) The participant who cited the witness must lodge draft interrogatories in process.
  - (4) Any other participant may lodge cross-interrogatories.
  - (5) The participants may adjust their interrogatories and cross-interrogatories.
  - (6) At the expiry of the adjustment period, the participants must lodge the interrogatories and cross-interrogatories as adjusted with the court.
  - (7) The sheriff is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.

**Taking of evidence by commissioner: conduct of commission**

- 10.**—(1) The commissioner is to administer the oath *de fidei administratione* to the clerk.
- (2) The commissioner is to administer the oath or affirmation to the witness.

**Taking of evidence by commissioner: lodging and custody of video record and documents**

- 11.**—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the sheriff clerk.
- (2) When the video record and any relevant document are lodged, the sheriff clerk is to notify every participant—
    - (a) that the video record has been lodged;
    - (b) whether any relevant documents have been lodged;
    - (c) of the date on which they were lodged.
  - (3) The video record and any relevant documents are to be kept by the sheriff clerk.
  - (4) Where the video record has been lodged—

- (a) the name and address of the witness and the record of the witness' evidence are to be treated as being in the knowledge of the participants;
- (b) the participants need not include—
  - (i) the name of the witness in any list of witnesses; or
  - (ii) the record of evidence in any list of productions.

**Taking of evidence in the EU**

**12.**—(1) This paragraph applies to any request—

- (a) for the competent court of another Member State to take evidence under Article 1.1(a) of the Council Regulation; or
- (b) that the court should take evidence directly in another Member State under Article 1.1(b) of the Council Regulation.

(2) An application is made by minute in Form S5.12, together with the proposed request in form A or I (as the case may be) in the Annex to the Council Regulation.

## SCHEDULE 6

### VULNERABLE WITNESSES

#### **Interpretation and application of this schedule**

- 1.**—(1) This schedule applies where the evidence of a witness is to be taken in proceedings.
- (2) In this schedule—
- “2004 Act” means the Vulnerable Witnesses (Scotland) Act 2004(a);
  - “child witness notice” has the meaning given by section 12(2) of the 2004 Act;
  - “review application” means an application under section 13 of the 2004 Act;
  - “vulnerable witness application” has the meaning given by section 12(6) of the 2004 Act.

#### **Form of notices and applications**

- 2.**—(1) A child witness notice is to be made in Form S6.2–A.
- (2) A vulnerable witness application is to be made in Form S6.2–B.
- (3) A review application is to be made—
- (a) in Form S6.2–C; or
  - (b) orally, with the leave of the sheriff.

#### **Determination of notices and applications**

- 3.**—(1) When a notice or application under this schedule is lodged, the sheriff may require any of the participants to provide further information before determining the notice or application.
- (2) The sheriff may—
- (a) determine the notice or application by making an order under section 12(1) or (6) or 13(2) of the 2004 Act without holding a hearing;
  - (b) fix a hearing at which participants are to be heard on the notice or application before determining it.
- (3) The sheriff may make an order altering the date of any hearing at which evidence is to be taken in order that the notice or application may be determined.

#### **Determination of notices and applications: supplementary orders**

- 4.** Where the sheriff determines a notice or application under this schedule and makes an order under section 12(1) or (6) or 13(2) of the 2004 Act, the sheriff may make further orders to further the purpose of the inquiry.

#### **Intimation of orders**

- 5.**—(1) Where the sheriff makes an order—
- (a) fixing a hearing under paragraph 3(2)(b);
  - (b) altering the date of a hearing under paragraph (3); or
  - (c) under section 12(1) or (6) or 13(2) of the 2004 Act,
- the sheriff clerk is to intimate the order in accordance with this rule.

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(a) 2004 asp 3.

- (2) Intimation is to be given to—
  - (a) every participant; and
  - (b) any other person named in the order.
- (3) Intimation is to be given—
  - (a) on the day that the hearing is fixed or the order is made;
  - (b) in the manner ordered by the sheriff.

#### **Taking of evidence by commissioner: preparatory steps**

- 6.**—(1) This paragraph applies where the sheriff authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act.
- (2) The commission is to proceed without interrogatories unless the sheriff otherwise orders.
  - (3) The order of the sheriff authorising the special measure is sufficient authority for citing the vulnerable witness to appear before the commissioner.
  - (4) The participant who cited the vulnerable witness—
    - (a) must give the commissioner—
      - (i) a certified copy of the order of the sheriff appointing the commissioner;
      - (ii) a copy of the first notice;
      - (iii) where paragraph 7 applies, the approved interrogatories and cross-interrogatories;
    - (b) must instruct the clerk to the commission;
    - (c) is responsible in the first instance for the fee of the commissioner and the clerk.
  - (5) The commissioner is to fix a hearing at which the commission will be carried out.
  - (6) The commissioner must consult the participants before fixing the hearing.
  - (7) An application by a participant for leave to be present in the room where the commission is carried out is to be made by application.

#### **Taking of evidence by commissioner: interrogatories**

- 7.**—(1) This paragraph applies where the sheriff—
- (a) authorises the special measure of taking evidence by a commissioner under section 19(1) of the 2004 Act; and
  - (b) orders that interrogatories are to be prepared.
- (2) When the sheriff makes an order for interrogatories to be prepared, the sheriff is to specify the periods within which participants must comply with the steps in this rule.
  - (3) The participant who cited the vulnerable witness must lodge draft interrogatories in process.
  - (4) Any other participant may lodge cross-interrogatories.
  - (5) The participants may adjust their interrogatories and cross-interrogatories.
  - (6) At the expiry of the adjustment period, the participants must lodge the interrogatories and cross-interrogatories as adjusted in process.
  - (7) The sheriff is to resolve any dispute as to the content of the interrogatories and cross-interrogatories, and approve them.

#### **Taking of evidence by commissioner: conduct of commission**

- 8.**—(1) The commissioner must administer the oath *de fidei administratione* to the clerk.
- (2) The commissioner must administer either the oath or affirmation to a witness.

**Taking of evidence by commissioner: lodging and custody of video record and documents**

**9.**—(1) The commissioner is to lodge the video record of the commission and any relevant documents with the sheriff clerk.

(2) When the video record and any relevant document are lodged, the sheriff clerk is to notify every participant —

- (a) that the video record has been lodged;
- (b) whether any relevant documents have been lodged;
- (c) of the date on which they were lodged.

(3) The video record and any relevant documents are to be kept by the sheriff clerk.

(4) Where the video record has been lodged—

- (a) the name and address of the vulnerable witness and the record of the witness's evidence are to be treated as being in the knowledge of the participants;
- (b) the participants need not include—
  - (i) the name of the witness in any list of witnesses; or
  - (ii) the record of evidence in any list of productions.

## **EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt makes provision about the procedure to be followed in inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the 2016 Act”).