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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 103**

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

**PART 4**

**INFORMATION**

*Expert witnesses*

**Instructing expert witnesses**

**4.15.**—(1) An expert witness may only present information about matters which are necessary to further the purpose of the inquiry.

(2) A participant who has decided to instruct 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 the information to be presented by that witness is necessary to further the purpose of the inquiry;
- (c) the broad terms of the instruction; and
- (d) the expected completion date of any report.

**Information presented by expert witnesses**

**4.16.**—(1) This rule applies where the sheriff orders that an expert witness is to present information at the inquiry by—

- (a) witness statement (see rule 4.13); or
- (b) video recording (see rule 4.14).

(2) The witness statement of an expert witness—

- (a) may consist of that witness's report; or
- (b) must incorporate that witness's report.

**Minute of questions**

**4.17.**—(1) This rule applies where a participant has lodged a witness statement or video recording of an expert witness.

(2) Other participants may lodge a minute of questions to be put to that expert witness.

(3) Each participant may only lodge one minute of questions and the minute of questions must be lodged within 14 days of the witness statement or video recording being lodged.

(4) The sheriff may approve the minute, with such modifications as the sheriff considers appropriate, and order answers to be lodged by a particular date.

### **Single expert witnesses**

**4.18.**—(1) The sheriff may order information to be presented on a particular matter by a single expert witness.

(2) Where the sheriff makes such an order, 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) they must lodge separate instructions about other matters; and
- (c) the sheriff must approve the terms of those separate instructions before they are sent to the single expert witness.

(4) Where participants cannot agree on the identity of a single expert witness, the sheriff may—

- (a) select an expert from a list prepared by the participants; or
- (b) order how an expert is to be selected.

(5) Unless the sheriff orders otherwise, the cost of instructing the single expert witness is to be shared equally between the participants.

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

**4.19.**—(1) The sheriff may order expert witnesses to present information concurrently.

(2) Where the sheriff makes such an order—

- (a) the participants must jointly prepare a note for the sheriff, setting out the areas of agreement and disagreement between the expert witnesses; and
- (b) that note must be lodged at least 7 days before the start of the inquiry.

(3) At the hearing at which information is presented by concurrent presentation—

- (a) all expert witnesses will present information at the same time; and
- (b) the sheriff may direct how information is to be presented by the expert witnesses, including by the sheriff questioning the witnesses directly, inviting the witnesses to discuss a particular matter between them, or allowing questioning by participants where necessary.