
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 103

Act of Sederunt (Fatal Accident Inquiry Rules) 2017

PART 4

INFORMATION

The law of evidence

4.1.—(1) Any rule of law or enactment that prevents evidence being led on grounds of inadmissibility does not apply in an inquiry.

(2) Where a person would be entitled to withhold information on the grounds of legal professional privilege, nothing in this rule affects that person's ability to refuse to produce that document or present it at an inquiry.

(3) Any rule of law that restricts the manner in which evidence must be presented does not apply in an inquiry.

(4) Subject to any orders made by the sheriff—

- (a) information may be presented to the inquiry in any manner; and
- (b) the sheriff may reach conclusions based on that information.

The information management powers

4.2. The sheriff may make orders about the manner in which information is presented to the inquiry or about how the sheriff will reach conclusions, such as an order—

- (a) restricting the information presented to particular issues or particular sources;
- (b) determining the manner in which information is to be presented, whether by oral presentation, written statement, the production of documents or other items, live link, video recording, or otherwise;
- (c) determining the manner in which the sheriff is to reach conclusions.

Witnesses and productions

Citation of witnesses

4.3.—(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 ensure that witness's appearance.

(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 the inquiry;
 - (b) order the witness to make a payment to a participant.
- (5) A solicitor who cites a witness is liable for that witness's fees and expenses.
- (6) Where a participant is not represented by a solicitor, that participant must—
 - (a) 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 citing 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.

Gathering information

4.4. Once the sheriff has made the first order, a participant may gather information for use in an inquiry in accordance with schedule 5.

Oath and affirmation

4.5. The sheriff may administer either the oath or affirmation to a witness.

Lodging productions

4.6.—(1) All productions which a participant intends to present to an inquiry must be lodged by the date ordered by the sheriff.

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

(3) A copy 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 2 days before the start of the inquiry.

Witness lists

4.7.—(1) A list of witnesses must be lodged by the date ordered by the sheriff.

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

Recording of the inquiry

4.8.—(1) The information presented 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), SCTS must give a person a copy of any transcript 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 of—

- (a) where a transcript has to be made, £1.61 for each minute that has to be transcribed; or
- (b) where a transcript has already been made—
 - (i) £6.00 for a photocopy of a transcript up to 10 pages; and
 - (ii) £0.50 for each page in excess of 10 pages.

(4) Where more than one person makes a request within 28 days following the date of the sheriff's determination, the sheriff may make an order about how the fee payable under paragraph (2) is to be divided between them.

Vulnerable witnesses

4.9. Schedule 6 makes provision about vulnerable witnesses.

Agreeing information

Joint minutes of agreement

4.10.—(1) It is not necessary for the participants to present information to the inquiry concerning—

- (a) a fact agreed by all participants;
- (b) a production, the terms and application of which are agreed by all participants.

(2) An agreement is made by lodging a joint minute of agreement.

(3) A joint minute of agreement must be signed by each participant or by that participant's representative.

(4) Where any participant is not legally represented, a joint minute of agreement must be approved by the sheriff.

The duty to agree information

4.11.—(1) Before the start of the inquiry, each participant must identify information which—

- (a) that participant would, apart from this rule, present at the inquiry; and
- (b) is considered by that participant unlikely to be disputed by other participants.

(2) The participants must take all reasonable steps to agree such information.

(3) In particular, the participants must take all reasonable steps to agree the following—

- (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) (death in the course of employment in Scotland)—

- (i) the name and address of the deceased's employer;
 - (ii) the length of period of employment;
 - (iii) the nature of employment; and
 - (iv) the deceased's employment duties at the time of death;
- (g) in the case of a death falling within section 2(4)(a) (death in legal custody)—

- (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(1) (death in Scotland of service personnel)—
 - (i) the length of period of service;
 - (ii) the nature of service; and
 - (iii) the deceased’s service duties at the time of death;
- (i) any post-mortem report; and
- (j) any toxicology report.

Notices to admit information

4.12.—(1) This rule applies where the sheriff orders that notices to admit information must be intimated by a particular date.

(2) A participant (referred to in this rule as “the first participant”) may prepare a notice to admit information in Form 4.12A.

(3) The notice must set out facts or productions which—

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

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

(5) Each other participant may object to any fact or production set out in the notice by intimating to the first participant an objection in Form 4.12B within 7 days after the date on which the notice was intimated.

(6) It is not necessary for the participants to present information to the inquiry concerning a fact or production which no other participant objects to.

(7) Each other participant may present information relevant to, or in explanation of, a fact or document set out in a notice.

(8) On the application of any other participant, the sheriff may, if satisfied that there are circumstances justifying it, make an order that paragraph (6) does not apply to certain facts or productions in a notice.

Witness statements

4.13.—(1) This rule applies where the sheriff orders that the witness statement of a witness must be lodged by a particular date.

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

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

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

- (a) ask questions of the witness which introduce, clarify or supplement the witness statement;
 - (b) ask questions of the witness which relate to new matters which have arisen since the witness statement was lodged.
- (4) The witness statement must be made available for inspection by the public during the inquiry.
- (5) Other participants may question the witness.

Video recordings

4.14.—(1) This rule applies where the sheriff orders that a witness is to present information at the inquiry by video recording, whether the video recording has already been made or not.

- (2) The video recording must be lodged by a date ordered by the sheriff.
- (3) The sheriff must make an order about—
- (a) the format of the video recording and how it is to be played at the inquiry;
 - (b) if the video recording has not already been made, the right of participants to participate in its production;
 - (c) whether the witness also needs to attend the inquiry, to provide further 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.