

SHERIFFDOM OF LoTHIAN AND BORDERS

PRACTICE NOTE NO 1, 2004

FATAL ACCIDENT INQUIRIES: PRELIMINARY HEARINGS

Commencement

1. This Practice Note shall apply to any inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ('the Act') for the holding of which an application is lodged after 29 February 2004.

Holding of preliminary hearing

2. (1) The Sheriff, when making an order in terms of section 3(1)(a) of the Act fixing a time and place for the holding of an inquiry under the Act ('the inquiry'), may also make, on the application of the Procurator Fiscal, an order fixing a time and place for the holding of a preliminary hearing.

(2) The preliminary hearing should normally be held some four weeks before the date fixed for the inquiry.

(3) The Sheriff who presides at the preliminary hearing shall be the Sheriff who is to preside at the inquiry, except in special circumstances.

Notice of holding of preliminary hearing

3. Not less than 21 days before the date of the preliminary hearing, -

(1) intimation of the holding of the preliminary hearing and the time and place fixed for it shall be made at the same time, in the same manner and to the same persons as intimation of the holding of the inquiry and the time and place fixed for it in terms of section 3(2)(a) of the Act and rule 4(1) and (2) of the Fatal

Accidents and Sudden Deaths Inquiry Procedure (Scotland) Rules 1977 ('the Rules'); and

(2) public notice of the holding of the preliminary hearing and the time and place fixed for it shall be given at the same time and in the same manner as public notice of the holding of the inquiry and the time and place fixed for it in terms of section 3(2)(b) of the Act and rule 4(3) of the Rules.

Representation

4. Rule 7 of the Rules shall apply to the preliminary hearing.

Conduct of the preliminary hearing

5. At the preliminary hearing the Sheriff –

(1) shall ascertain from the parties or their representatives, so far as is reasonably practicable –

- (a) whether the inquiry is likely to proceed on the date assigned;
- (b) the issues which are likely to be raised at the inquiry;
- (c) whether there are any other parties on whom intimation of the proceedings should be made;
- (d) the likely length of the inquiry and whether it can be concluded within the time allocated;
- (e) the state of preparation of the parties or their representatives;
- (f) the availability of witnesses and productions;
- (g) whether there is any evidence that may be admitted in the form of a written statement in terms of rule 10 of the Rules;
- (h) whether there is any evidence that is capable of agreement;
- (i) whether any special arrangements are needed for bulky or voluminous productions;
- (j) whether there is any other matter which any party wishes to raise;

(2) may, after hearing the parties or their representatives,

- (a) direct the order in which the parties are to cross-examine the witnesses;

- (b) make an order in terms of section 4(4) of the Act;
- (c) summon a person to act as an assessor at the inquiry in terms of section 4(6) of the Act;

(3) may raise with the parties or their representatives any other matter which could in his opinion with advantage be discussed and, if appropriate, resolved, before the inquiry.

6. (1) At the conclusion of the preliminary hearing the Sheriff may –

- (a) continue the preliminary hearing to a date prior to the diet fixed for the inquiry;
- (b) continue the case to the diet fixed for the inquiry; or
- (c) discharge the diet fixed for the inquiry and fix a new diet therefor.

(2) If the Sheriff fixes a new diet for the inquiry in terms of paragraph 6(1)(c) above, he may assign a further preliminary hearing.

Iain Macphail

Sheriff Principal of Lothian and Borders

11 February 2004