STATUTORY INSTRUMENTS

2016 No. 1142

CONSTITUTIONAL LAW

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

Made - - - - 23rd November 2016

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1), 113(4) and (5) and 114(1) of the Scotland Act 1998(**1**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016.

(2) This Order comes into force on the same day as section 1 (inquiries under this Act) of 2016 Act comes into force.

(3) This article, articles 6(4) and (5) and 7 and Part 1 of the Schedule extend to England and Wales, Scotland and Northern Ireland.

(4) Articles 2 and 6(1) to (3) extend to Scotland only.

(5) Articles 3 to 5 and Part 2 of the Schedule extend to England and Wales and Northern Ireland only.

(6) Part 3 of the Schedule extends to England and Wales only.

(7) In this Order, "2016 Act" means the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016(**2**).

Inquiry under Inquiries Act 2005 in relation to death of person required to be detained in service custody premises

2.—(1) Section 3(1) of 2016 Act (mandatory inquiries: exceptions) applies if—

(**1**) 1998 c.46.
(**2**) 2016 asp 2.

(a) at the time of death, the person was required to be detained in service custody premises within the meaning given by section 300(7) of the Armed Forces Act 2006(**3**) (service custody etc. rules); and

(b) the proceedings referred to in section 3(1) are an inquiry under section 1 of the Inquiries Act 2005(**4**) (power to establish inquiry).

(2) Accordingly, section 3(3) of 2016 Act is repealed.

Certain deaths and accidents to be treated as occurring in Scotland

3.—(1) For the purposes of sections 2 and 4 of 2016 Act, the death of a person, or an accident, is to be treated as having occurred in Scotland if it occurred—

(a) in connection with an activity falling within section 11(2) of the Petroleum Act 1998(**5**) (application of civil law to offshore activities); and

(b) in a relevant area.

(2) In paragraph (1)(b), "relevant area" means an area in respect of which it is provided by Order in Council under section 11(1) of the Petroleum Act 1998 that questions arising out of acts or omissions taking place in the area are to be determined in accordance with the law in force in Scotland(**6**).

Publishing restrictions in relation to children

4.—(1) A person who fails to comply with an order under section 22(2) of 2016 Act commits an offence.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) It is a defence for a person charged with an offence under paragraph (1) to show that the person did not know or have reason to believe that the publication of the material would identify the child in connection with the inquiry.

Offences by bodies corporate etc.

5.—(1) Paragraph (2) applies where—

(a) an offence under article 4(1) has been committed by—

(i) a body corporate;

(ii) a Scottish partnership; or

(iii) an unincorporated association other than a Scottish partnership; and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual; or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or, as the case may be, association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In paragraph (1)(b), "relevant individual" means—

(**3**) 2006 c.52.
(**4**) 2005 c.12. Section 1 has been amended by the Government of Wales Act 2006 (c. 32), Schedule 10, paragraph 90 and Schedule 12.
(**5**) 1998 c.17.
(**6**) The prevailing Order in Council is the Civil Jurisdiction (Offshore Activities) Order 1987 (S.I. 1987/2197).

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body;

(ii) where the affairs of the body are managed by its members, a member;

(b) in relation to a limited liability partnership, a member;

(c) in relation to a Scottish partnership, a partner;

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

Mandatory inquiries: death in Scotland of service personnel

6.—(1) An inquiry is to be held under 2016 Act into the death of a person if—

(a) the death occurred in Scotland; and

(b) the person is within section 12(2) of the Coroners and Justice Act 2009(**7**) (investigation in Scotland).

(2) For the purposes of—

(a) section 1 of 2016 Act, an inquiry to be held by virtue of paragraph (1) is to be treated as if it were to be held in accordance with sections 2 to 7 of 2016 Act;

(b) sections 3(1), 4(2) and 11(1)(d)(ii) of 2016 Act, the death is to be treated as if it were a death within section 2(3) or (4) of 2016 Act.

(3) Where an inquiry is held by virtue of paragraph (1)—

(a) the Secretary of State may participate in the inquiry proceedings, and the reference in section 17(2)(a) of 2016 Act to a person appearing to the procurator fiscal to be entitled to participate in the inquiry under section 11(1)(a) to (d) includes a reference to the Secretary of State; and

(b) if the Secretary of State does so participate, references in 2016 Act to a participant in the inquiry include references to the Secretary of State.

(4) For the purposes of this article, the death of a person is to be treated as having occurred in Scotland if it occurred in a relevant area.

(5) In paragraph (4), "relevant area" means an area in respect of which it is provided by Order in Council under section 11(1) of the Petroleum Act 1998 that questions arising out of acts or omissions taking place in the area are to be determined in accordance with the law in force in Scotland.

Modification of enactments and saving provision

7.—(1) The Schedule has effect.

(2) The Schedule does not apply to inquiries to which the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976(**8**) continues to apply by virtue of provision under section 42(2) and (3) of 2016 Act.

(**7**) 2009 c.25. Section 12(2) defines the relevant activities which bring the death outside the United Kingdom of a person subject to service law within section 12.

(**8**) 1976 c.14 ("the 1976 Act"). There are amendments to the 1976 Act not relevant to this Order.

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Secretary of State
Scotland Office

Dover House,London
23rd November 2016