

# **INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***The inquiry***

#### ***Section 20 – Evidence and witnesses***

60. **Section 20** sets out that the procurator fiscal must bring forward evidence relating to the circumstances of the death at the inquiry and that participants may also bring forward such evidence. The 2016 Act does not regulate the procedure to be followed or the way in which evidence is led and further details on that may be provided in rules. In addition, subsection (2) enables the sheriff to instruct a participant in the FAI or the procurator fiscal to lead evidence on any matter relating to the circumstances of the death. The sheriff is not, therefore, dependent upon the procurator fiscal nor the participants with regard to what evidence is led. An FAI is an inquisitorial judicial inquiry held in the public interest and empowering the sheriff in this way is in keeping with the aims of the process.
61. Subsection (3) applies the rules of evidence that apply in civil proceedings to FAIs. This continues the approach in section 4(7) of the 1976 Act and, accordingly, evidence that has not been corroborated and hearsay evidence are both admissible in inquiry proceedings (as set out in sections 1, 2, and 9(c) of the Civil Evidence (Scotland) Act 1988). It follows that the evidential standard for facts to be proven for FAIs is the civil standard of proof – the balance of probabilities.
62. Subsection (4) makes it clear that subsection (3) is subject to any provision made in FAI rules.
63. Subsections (5) and (6) restate section 5 of the 1976 Act. These subsections make clear that, where a witness is questioned, that does not mean that subsequent criminal proceedings may not then be taken against that person. Further, if a question is put to a witness the answer to which could show the witness was guilty of an offence, that witness is not required to answer that question.