

These notes relate to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2) which received Royal Assent on 14 January 2016

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Further inquiry proceedings

Section 30 – Circumstances in which there may be further proceedings

90. **Section 30** makes provision for the circumstances in which there may be further proceedings under the 2016 Act in relation to a death. This is a new power conferred on the Lord Advocate, which was not provided for in the 1976 Act.
91. Subsection (1) provides that, after an inquiry has ended, there may only be further inquiry proceedings in accordance with subsection (2).
92. Subsection (2) sets out the test for holding further inquiry proceedings. The Lord Advocate may decide that there are to be further proceedings if there is new evidence in relation to the circumstances of the death, and the Lord Advocate considers that it is highly likely that any of the sheriff’s findings and/or recommendations would have been materially different if the new evidence had been available at the original FAI (rather than the determination as a whole being materially different), and the Lord Advocate decides that it is in the public interest for further proceedings to be held.
93. The definition of “new evidence” in subsection (3) is based on section 4(7)(b) of the Double Jeopardy (Scotland) Act 2011. It means evidence which was not available, and could not reasonably have been made available, at the original inquiry into the death.
94. Further inquiry proceedings can take one of two forms, either the re-opening and continuation of the original inquiry, or a completely new (fresh) inquiry being held into a death which was the subject of the original inquiry. The making of a determination by the sheriff is treated as the end of the original FAI in subsection (4). The sheriff will decide if further proceedings should be in the form of re-opening the original FAI or in the form of holding a fresh FAI (see section 32).