

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Further inquiry proceedings

Section 32 – Initiating further proceedings

96. **Section 32(1)** requires the procurator fiscal to notify the sheriff that there are to be further proceedings in relation to the death and to provide a copy of the original determination. The notice must include a brief account of the new evidence which has come to light together with the Lord Advocate's view as to whether the further proceedings should consist of re-opening and continuation of the original inquiry or a fresh inquiry, and also any other information required by FAI rules. The sheriff to be notified is a sheriff of the sheriffdom within which the original proceedings were held (section 31(8)). Under subsection (3), the sheriff must order a hearing under subsection (4) to hear representations about the form of the further proceedings.
97. Following that hearing the sheriff must set aside the determination made at the original inquiry and order whether there is to be a fresh FAI or whether the original FAI is to be re-opened, having regard to the public interest test in subsection (7). A fresh FAI should be held only if it is in the public interest to have a new inquiry rather than re-opening the original one. The location of the fresh or re-opened FAI is not a matter for the Lord Advocate.
98. Irrespective of whether the sheriff decides to re-open or hold a fresh FAI, the whole determination in the original proceedings must be set aside. This is because, even if the only change to a determination is to record the new evidence led at a re-opened FAI, there will be another determination at the end of the further proceedings. The original determination is not to be withdrawn from publication but the SCTS must publish a notice stating that it has been set aside (subsection (8)).