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

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EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Specialist sheriffs and summary sheriffs

Section 37 – Judicial specialisation in inquiries

116.   Section 37 makes provision for sheriffs, part-time sheriffs, summary sheriffs and part-time summary sheriffs to be designated as specialist sheriffs in FAIs. Subsection (1) allows the sheriff principal to designate sheriffs and summary sheriffs within the sheriffdom, with section (3) allowing the Lord President of the Court of Session to designate part-time sheriffs and part-time summary sheriffs, who are not assigned to any particular sheriffdom, as specialists.

117.   Subsection (5) makes it clear that it is still competent for a sheriff, part-time sheriff, summary sheriff, or part-time summary sheriff who is not designated as a specialist in FAIs to conduct an FAI. This may be inevitable owing to pressure of other casework. Under subsection (7), however, the sheriff principal must have to have regard to the desirability of allocating an FAI to a specialist.

Section 38 – Summary sheriff: competence to conduct inquiries

118.   Section 38 gives summary sheriffs the same competence as sheriffs to conduct FAIs.

Section 39 – Repeal and modification of enactments

119.   Section 39(1) repeals the 1976 Act in consequence of its re-enactment in the form of the 2016 Act. For the most part the 1976 Act only extends to Scots law, however section 4(4) and (5) and section 9, which are the precursor provisions for, respectively, section 22 (publishing restrictions) and section 5 (certain deaths and accidents to be treated as occurring in Scotland), extend to the law of England and Wales and Northern Ireland. The Scottish Government proposes that the full repeal of these provisions be progressed via the Order under section 104 of the Scotland Act 1998, as a natural consequence of extending the effect of replacement sections 5 and 22 to those jurisdictions. Section 39(2) introduces schedule 2 which is more fully described below.