



### Reform of Coroner's System – Executive Summary

- Expected to come into force April 2012
- Judge to be appointed as Chief Coroner to supervise the system
- New Coroner districts to be established
- New Appeal system to be created
- Mandatory inquests where patients die while detained under the Mental Health Act
- Increasing availability of public funding for advocacy

The Coroners and Justice Act 2009 (“the Act”) received Royal Assent on 12<sup>th</sup> November 2009. The Ministry of Justice has said that the aim of the Act is to **“deliver more effective, transparent and responsive justice and coroner services for victims, witnesses, bereaved families and the wider public”**.

The Act is divided into nine parts. Part 1 reforms the law in relation to coroners and the certification and registration of deaths, and replaces the framework in the Coroners Act 1988. This briefing note focuses on the changes brought about by Part 1 of the new Act.

#### Appointment of Chief Coroner and Deputy Chief Coroners

One of the main concepts introduced by the new Act is the appointment of a Chief Coroner, to lead the coroner service in England and Wales. Deputy Chief Coroners will also be appointed to assist in the functions of the Chief Coroner.[1]

The main functions of the Chief and Deputy Chief Coroners will be to establish and oversee national performance standards; inspect the operation of the coroner system and report their findings to the Lord Chancellor; and provide leadership to the service in general.

The new Act also provides for the appointment of a Medical Adviser to the Chief Coroner, who will advise and assist the Chief Coroner in relation to medical matters which are relevant to the coroner system.[2]

#### Establishment of coroner areas

The new Act provides for England and Wales to be divided into “coroner areas”, previously known as coroner districts. The Lord Chancellor will have the power to set and alter the boundaries of these areas. Each coroner area will cover either the whole of one local authority area or the whole of two or more local authority areas. Where the area includes two or more local authorities, one of them will be the lead authority for the area.

#### Appointment of senior, area and assistant coroners

The hierarchy of coroners under the 1988 Act consisted of (in descending order) coroners, deputy coroners and assistant deputy coroners. Under the new Act, there will be senior coroners, area coroners and assistant coroners (all headed by the Chief and Deputy Chief Coroners, as explained above).

Under the 1988 Act, the relevant local authority appointed coroners, and the Secretary of State subsequently approved their appointments. The coroners then appointed their own deputy and assistant deputy coroners. However, under the new Act, appointments of **all** coroners will be made by the relevant authority for each coroner area. There will also be a requirement for the Lord Chancellor and Chief Coroner to consent to the appointment of all senior coroners.

## Creation of an appeals system

Chapter 6 of the Act introduces an appeals system, and provides a right of appeal to “interested persons”<sup>[3]</sup> against certain decisions of coroners. For example, appeals can be made against a coroner’s decision to:

- conduct or not to conduct an inquest;
- discontinue an investigation; or
- resume or not to resume an investigation.

A coroner’s determination as to who the deceased was, and how, when and where the deceased came by his or her death can also be appealed.

The Chief Coroner will preside over the appeals system and will hear appeals, with the assistance of the Deputy Chief Coroners.

This appeals system is a completely new concept. Under the 1988 Act, an application could be made to the High Court, which in turn could compel a coroner to hold an inquest or to amend or quash a determination or finding. However, the new Act aims to improve the experience of those bereaved people coming into contact with the coroner system by providing them with a direct appeal route to the Chief Coroner.

## "Investigations" as opposed to "inquests"

The 1988 Act was drafted almost exclusively in terms of “inquests” to refer to coroners’ work. However, this did not reflect the entirety of what coroners do. In 2008, some 235,000 deaths were reported to a coroner, but there were only about 31,000 inquests.<sup>[4]</sup> Coroners undertake a significant amount of work that does not lead to court proceedings and that was largely unrecognised in the 1988 Act.

The new Act therefore introduces the concept of a “coroner’s investigation”, with the inquest being only the final part of that investigation.

The duty to hold an investigation and the duty to hold an inquest are distinguished, so that the duty to hold an inquest only arises where the investigation has not been discontinued for some reason.

An investigation may be discontinued, for example, where the post mortem reveals a natural cause of death, allowing a certificate of cause of death to be issued.<sup>[5]</sup>

Chapter 1 of the new Act imposes a duty on a senior coroner to conduct an “investigation” into the death of a person who has died in his area and sets out the circumstances when an investigation must be made. It mirrors the requirements of the 1988 Act, except that the requirement to investigate where the death is “sudden” or has occurred “in prison”<sup>[6]</sup> has been altered so that now investigations must take place where:

- (a) the deceased died a violent or unnatural death;
- (b) the cause of death is unknown, or
- (c) the deceased died while in custody or otherwise in state detention.<sup>[7]</sup>

“State detention” will include those detained under the Mental Health Act.

The purpose of the senior coroner’s investigation is contained within Section 5 of the new Act and reflects the purposes previously contained in rule 36(1) of the Coroners Rules 1984 and in section 11(5)(b) of the 1988 Act, i.e. the investigation must:

- (a) establish who the deceased was and how, when and where the deceased came to his or her death, and
- (b) establish the details needed to register the death.<sup>[8]</sup>

Subsection (2) requires the scope of the investigation to be widened to include an investigation of the broad circumstances of the death where such a wider investigation is necessary to ensure compliance with Article 2 of the European Convention of Human Rights. This provision gives statutory force to the principle previously embedded into the Coronial system by case law.

Although investigations will usually be carried out by the senior coroner, the Chief Coroner will have a power of intervention<sup>[9]</sup> and will be able personally to conduct investigations (or, with the permission of the Lord Chancellor, arrange for a judge to conduct an investigation) in specified circumstances, i.e. when a case has particularly complex legal or factual characteristics.

## Deaths not investigated by the coroner

The provisions set out in the Act will simplify and strengthen the process for death certification in England and Wales by introducing a unified system for both burials and cremations and by appointing medical examiners to provide an independent scrutiny of the medical certificates of cause of death.

In order to ensure that the scrutiny carried out by the medical examiner is robust, proportionate and consistent, there will be a protocol that recognises different levels of risk depending on the setting, stated cause and circumstances. The protocol will establish the minimum level of scrutiny for specific situations but will allow a medical examiner to use professional judgment to determine the degree to which the scrutiny is pursued.

## Public funding

Chapter 7 of the new Act amends the Access to Justice Act 1999 and states that public funding may be available for advocacy at certain inquests, including inquests into the deaths of British Service personnel who die whilst on active service and inquests into the deaths of persons who die while in custody of the State (including those detained under the Mental Health Act) or in the course of a police action/arrest.

## When does the Act come into force?

The vast majority of Part 1 of the new Act is not yet in force. The date of enforcement is still to be determined, but it is likely to be April 2012.

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January 2010

## Footnotes

1. Chapter 6 of the Act creates the offices of Chief and Deputy Chief Coroners
2. Section 38 and Schedule 9 Coroners and Justice Act 2009
3. A list of interested persons is contained within section 47 of the Act.
4. Explanatory Notes to the Coroners and Justice Act 2009, p.16
5. Section 4 of the Coroners and Justice Act 2009 deals with discontinuance of an investigation where the cause of death is revealed by a post-mortem examination.
6. Sections 8(1)(b) and (c) Coroners Act 1988
7. Sections (1)(2)(a) – (c) Coroners and Justice Act 2009
8. Sections 5(1)(a) and (b) Coroners and Justice Act 2009
9. Section 41 and Schedule 10 Coroners and Justice Act 2009

## Further Information

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