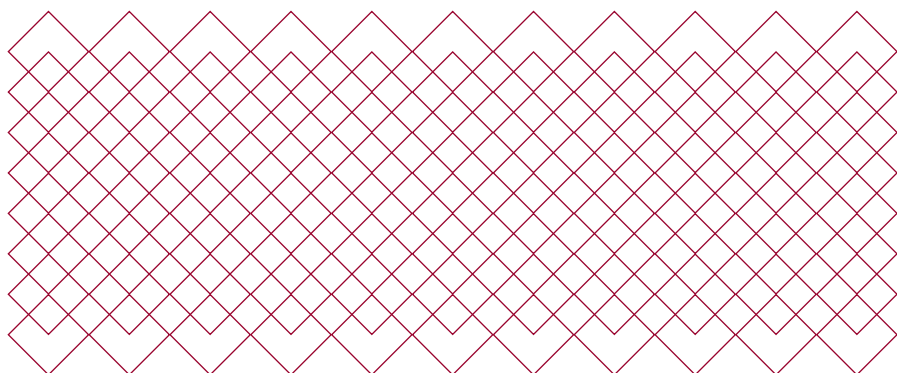




Ministry of
JUSTICE

Guidance for coroners
on changes to Rule 43:
Coroner reports to prevent
future deaths



Guidance for coroners on changes to Rule 43: Coroner reports to prevent future deaths

This information is also available on the Ministry of Justice
website: www.justice.gov.uk

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Section 1: Introduction

Changes to rule 43

1.1. Rule 43 of the Coroners Rules 1984 has been amended. The following changes take effect from 17 July 2008:

- coroners have a wider remit to make reports to prevent future deaths. It does not have to be a similar death;
- a person who receives a report must send the coroner a written response;
- coroners must provide interested persons to the inquest and the Lord Chancellor with a copy of the report and the response;
- coroners may send a copy of the report and the response to any other person or organisation with an interest;
- the Lord Chancellor may publish the report and response, or a summary of them; and
- the Lord Chancellor may send a copy of the report and the response to any other person or organisation with an interest.

1.2 The statutory instrument that amends rule 43 is attached at *Annex A*.

Why rule 43 has been amended

- 1.3. Rule 43 has been amended to give greater prominence and importance to coroner reports to improve public health and safety.
- 1.4. While most organisations previously responded to reports, they were under no obligation to do so and some did not. The amended rule introduces a new statutory duty for organisations to respond.
- 1.5. Previously there was no unequivocal statutory authority for coroners to share the full report with properly interested persons and other organisations. Some coroners have shared reports and others have not. Therefore, some families have not seen how it is intended that lessons should be learned to prevent a death similar to the death of their family member – an often stated important consolation for them.
- 1.6. Additionally, information has never been collected centrally, so issues which were subject to reports in one coroner district which may have relevance to other coroner districts were not identified and disseminated nationally. Potentially, an important opportunity to save lives was missed.
- 1.7. The Lord Chancellor will receive therefore copies of all reports and responses. This will enable emerging trends to be identified and lessons that could be applied at a national level to be highlighted.

Background

- 1.8. Rule 43 provides coroners with the power to make reports to a person or organisation where the coroner believes that action should be taken to prevent future deaths.
- 1.9. Coroners' powers to make reports were brought into primary legislation and enhanced in the draft Coroners Bill, which was published for consultation in 2006. There was strong support for further strengthening the power from a number of stakeholders and the Constitutional Affairs Select Committee (now the Justice Select Committee). The Government agreed to strengthen the power and to introduce the changes ahead of Bill implementation through an amendment to rule 43.
- 1.10. It is still the Government's intention to bring the strengthened powers into primary legislation. The Coroners and Death Certification Bill will include clauses mirroring the requirements in the amended rule 43 and the rule will no longer be required in its revised form when the Bill is implemented.

Section 2: Writing reports

When to write a report

2.1. Coroners should consider making reports where:

- an inquest is being held into a person's death (but see section 2.3);
- the evidence gives rise to a concern that circumstances creating a risk of other deaths will occur or continue to exist in the future; and
- in the coroner's opinion, action should be taken to prevent this from occurring.

2.2. Previously rule 43 limited coroners to writing reports where they believed that action should be taken to prevent the recurrence of similar fatalities. The amended rule has been widened so that coroners may now make reports to prevent any other deaths based on the evidence heard at an inquest (rule 43(1)(b)). This will allow the coroner to report issues that may be peripheral to the current case but nevertheless prevent death(s) in the future.

2.3. Coroners may not make reports until all the evidence has been heard. There is an exception – a coroner may make a report where an inquest is adjourned under section 16 or 17A of the Coroners Act 1988 and not resumed (rule 43(2)).

- 2.4. It is not intended that inquests should be lengthened or increased in scope to hear representations from interested persons as to whether a coroner should make a rule 43 report, and it will be for the coroner to determine what weight he or she gives to such representations if they should be made during the course of proceedings.

Announcing intention to write a report

- 2.5. A coroner who intends to make a report must announce this intention before the end of the inquest. However, the amended rule allows coroners to make reports even when they do not announce their intention to do so at inquest (rule 43(3)). This allows for cases where, for example, a coroner has begun an investigation but adjourned and not resumed it because a criminal prosecution has taken place. Or it could include cases where no report was originally made at the end of the inquest but then a similar case emerges later which prompts the coroner to make a report based on the facts of the two or more deaths.

Suggested information to include in rule 43 reports

- 2.6. The amended rule does not specify the information that coroners must include in reports. This is for the discretion of the coroner and the information included in a report will depend on the circumstances of the individual case.

- 2.7. However, it would be helpful for coroners to set out certain information relevant to the new duty that the amended rule imposes on the person or organisation receiving a report, including the requirement to respond within 56 days, the possibility of extensions (see section 4.4 – 4.7), and the release and publication of the response (see section 5).
- 2.8. Coroners may wish to use the following paragraphs (or parts of the paragraphs as appropriate) or something similar in reports in order to provide the relevant person or organisation with information about the amended rule. Equally, this information could be provided as an annex to the main letter (which sets out the detail of the report).

“I am reporting this matter to you in accordance with rule 43 Coroners Rules 1984 (as amended by the Coroners (Amendment) Rules 2008). This rule provides that where the evidence at an inquest gives rise to a concern that circumstances creating a risk of other deaths will occur or will continue to exist in the future, and in the coroner’s opinion, action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances, the coroner may report the circumstances to a person who may have power to take such action.”

“In accordance with rule 43, a copy of this report is being sent to the Lord Chancellor and all the other properly interested persons identified at the inquest

[together with other people I believe may find it useful or of interest]. A list of copy recipients can be found at the end of this report. Your response to this report will also be shared with those listed.”

“The Lord Chancellor may send a copy of the report and response to any person who the Lord Chancellor believes may find it useful or of interest. In addition, the Lord Chancellor may publish a full copy or a summary of the report and response (unless I have decided otherwise in response to a written representation about the release and publication of your response).”

“Rule 43A requires that you give a written response within 56 days of the day the report is sent. If you are unable to respond within that time, you may apply to me for an extension. The response is to contain details of any action that has been taken or which it is proposed will be taken whether in response to this report or otherwise, or an explanation as to why no action is proposed.”

“If there are circumstances where you do not want your full response to be shared with the copy recipients listed at the end of this report, or for a copy of it to be published, you may make a written representation to me at the time of giving your response. Instead of releasing or publishing your full response it may be possible to share or publish a summary in accordance with rule 43A.”

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Information that should not be included in reports

- 2.9.** The amended rule does not make provision for withholding reports. Therefore, coroners should take care not to draft reports in a way that might prejudice further related legal proceedings, affect national security issues, put anyone's personal safety at risk, breach medical confidentiality or apportion blame.

Section 3: Sharing reports

Who reports must be shared with

- 3.1. Copies of rule 43 reports must be provided to interested persons (any person who has been served with a notice under rule 19) and to the Lord Chancellor (rule 43(4)(a)). The Lord Chancellor will acknowledge the receipt of any reports and responses.
- 3.2. Copies of reports for the Lord Chancellor should be sent by post to:
Rule 43 Reports
Coroners Unit
102 Petty France
London SW1H 9AJ
Or by email to: rule43reports@justice.gsi.gov.uk

Who reports may be shared with

- 3.3. Copies of rule 43 reports may be shared with any person who the coroner believes may find it useful or of interest (rule 43(4)(b)).
- 3.4. The coroner should consider sharing the report with other organisations that might find the report of interest or use to them – in particular, regulatory bodies or organisations with an interest in the subject matter of the report should be considered.

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3.5. The Lord Chancellor may share a copy of the report, and the response to it, with any person or organisation he chooses, although he will usually inform the coroner of his intention to do so. For example, the Department for Transport Road User Safety Division has asked to receive copies of any reports and responses relating to deaths on the road, and the Ministry of Justice will do so automatically unless the coroner indicates that he or she has done so already.

Section 4: Responses

Contents of the response

- 4.1. The relevant person or organisation is not under any obligation to act upon reports. However, the amended rule imposes a new duty on the person to whom the matter is reported to respond in writing to the coroner.
- 4.2. The response must contain (rule 43A(1)):
 - details of any actions that have been taken or which it proposes will be taken whether in response to the report or otherwise; or
 - an explanation as to why no action is proposed.

Responses within 56 days

- 4.3. The response must be given within 56 days (eight weeks) beginning with the day on which the report is sent.

Extensions

- 4.4. Depending on the nature of the report, there may be some cases where the relevant person or organisation is unable to respond within the required 56 day timeframe. In these cases, the rule makes provision for an extension of time (rule 43B).
- 4.5. Coroners have discretion to grant extensions upon receiving an application. An extension may be granted even if an application is made after the initial 56 day period for compliance has expired (rule 43B).

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- 4.6. Some examples of reasonable requests for extension include, but are not limited to:
- the report is sent to the incorrect person or division in an organisation, especially a large organisation and is not promptly received; or
 - the report requires significant policy work to be undertaken before a response may be sent detailing the action that the organisation will take.
- 4.7. Extensions should not be refused without good reason. The length of the extension is at the discretion of the coroner.

Failure to respond

- 4.8. Where the relevant person or organisation fails to respond to a rule 43 report, the coroner should ensure that reasonable attempts are made to follow up the matter with the person or organisation. Where a response remains outstanding after reasonable attempts, then the coroner may inform the Lord Chancellor (see the contact details at section 3.2). The amended rule does not impose a sanction on organisations that fail to respond. However, the failure of a specific organisation to respond may be recorded in any document the Lord Chancellor publishes about rule 43 reports.

Section 5: Sharing responses

Who responses must be shared with

- 5.1. Copies of rule 43 responses must be provided to properly interested persons (any person who has been served with a notice under rule 19) and to the Lord Chancellor (rule 43A(2)(a)).
- 5.2. There is an exception where organisations have made representations to the coroner regarding the release of the response. Please see sections 5.5 – 5.10 for more information.
- 5.3. Copies of reports for the Lord Chancellor should be sent by post to:
Rule 43 Reports
Coroners Unit
102 Petty France
London SW1H 9AJ
Or by email to: rule43reports@justice.gsi.gov.uk

Who responses may be shared with

- 5.4. Copies of rule 43 responses may be shared with any person who the coroner believes may find it useful or of interest (rule 43A(2)(b)). Again, an exception applies where organisations have made representations to the coroner regarding the release of the response. Please see sections 5.5 – 5.10 for more information.

Representations regarding the release and publication of responses

- 5.5. There may be circumstances when the relevant person or organisation replying to a rule 43 report does not want a full response to the coroner to be shared with properly interested persons and any other organisations. In these circumstances the respondent may make a written representation to the coroner about the release and publication of the response (rule 43A(4)).
- 5.6. On receipt of representations the coroner may decide that the full response should not be released or published. The rule does not specify circumstances in which coroners are to accept representations. This is for the discretion of the coroner.
- 5.7. Some examples of circumstances in which representations could be made include, but are not limited to:
- where the response contains confidential or classified information;
 - where the release of the response might have a prejudicial effect on ongoing or upcoming legal proceedings; or
 - where regulatory enforcement action is being carried out under confidentiality rules.

- 5.8. Where a representation is received and the coroner decides that the full response should not be released or published, then the coroner must prepare a summary of the response for release and publication (rule 43A(7)). In preparing the summary the coroner should remove any part(s) of the response that are not to be released or published. In some cases the respondent might provide the coroner with a summarised version for release.
- 5.9. The summarised version is to be shared with interested parties, other organisations with an interest and the Lord Chancellor. The Lord Chancellor will not have power to overrule the coroner's decision that a summarised response only may be published.
- 5.10. Note that the rule does not allow for representations to be made regarding sharing the response with the Lord Chancellor. In all cases, a full copy of the response is to be provided to the Lord Chancellor in addition to any summarised version.

Section 6: Publication of reports and responses

Ministry of Justice bulletin

- 6.1. The Lord Chancellor may publish a copy of reports and responses, in full or in summary (rule 43(5)(a)).
- 6.2. If the coroner has received a written representation about the publication of the full report, and has prepared a summary of the response for release and publication, then the Lord Chancellor may not publish the full copy, but may publish the summary (rule 43A(3)(a) and (7)). Please see sections 5.5 – 5.10 for more information on written representations.
- 6.3. On behalf of the Lord Chancellor, the Ministry of Justice intends to produce a regular bulletin on coroner reports and responses. One of the objectives of the bulletin is to identify trends emerging from the reports and to highlight lessons learned that could be applied at a national level. The bulletin will be made publicly available on the Ministry of Justice website. The first bulletin will be produced in 2009.

Annex A: The Coroners (Amendment) Rules 2008

Note: separate guidance has been produced for coroners on the supply of information concerning the death of children to Local Safeguarding Children Boards (rule 3).

STATUTORY INSTRUMENTS

2008 No. 1652

CORONERS, ENGLAND AND WALES

The Coroners (Amendment) Rules 2008

Made - - - *16th June 2008*

Laid before Parliament *26th June 2008*

Coming into force - *17th July 2008*

The Lord Chief Justice, with the agreement of the Lord Chancellor, makes the following Rules in exercise of the powers conferred by section 32 of the Coroners Act 1988¹.

These Rules may be cited as the Coroners (Amendment) Rules 2008.

¹ 1988 c.13. Section 32 was amended by paragraph 19 of Schedule 1 to the Constitutional Reform Act 2005 (c.4).

1. The Coroners Rules 1984² are amended in accordance with rules 2 and 3.
2. For rule 43 substitute—

“Prevention of future deaths

43.—(1) Where—

- (a) a coroner is holding an inquest into a person’s death;
- (b) the evidence gives rise to a concern that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future; and
- (c) in the coroner’s opinion, action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances,

the coroner may report the circumstances to a person who the coroner believes may have power to take such action.

(2) A report under paragraph (1) may not be made until all the evidence has been heard except where a coroner, having adjourned an inquest under section 16 or 17A of the 1988 Act, does not resume it.

(3) A coroner who intends to make a report under paragraph (1) must announce this intention before the end of the inquest, but failure to do so will not prevent a report being made.

² S.I. 1984/552, to which there are amendments not relevant to these Rules.

- (4) The coroner making the report under paragraph (1)—
- (a) must send a copy of the report to—
 - (i) the Lord Chancellor; and
 - (ii) any person who has been served with a notice under rule 19; and
 - (b) may send a copy of the report to any person who the coroner believes may find it useful or of interest.
- (5) On receipt of a report under paragraph (4)(a)(i), the Lord Chancellor may—
- (a) publish a copy of the report, or a summary of it, in such manner as the Lord Chancellor thinks fit; and
 - (b) send a copy of the report to any person who the Lord Chancellor believes may find it useful or of interest (other than a person who has been sent a copy of the report under paragraph (4)(b)).

Response to report under rule 43

- 43A.—**(1) A person to whom a coroner sends a report under rule 43(1) must give the coroner a written response to the report containing—
- (a) details of any action that has been taken or which it is proposed will be taken whether in response to the report or otherwise; or
 - (b) an explanation as to why no action is proposed within the period of 56 days beginning with the day on which the report is sent.

(2) On receipt of a response under paragraph (1), the coroner—

- (a) must send a copy of the response to—
 - (i) the Lord Chancellor; and
 - (ii) except where paragraph (6) applies, any person who has been served with a notice under rule 19; and
- (b) except where paragraph (6) applies, may send a copy of the response to any person who the coroner believes may find it useful or of interest.

(3) Except where paragraph (6) applies, on receipt of a response under paragraph (2)(a)(i), the Lord Chancellor may—

- (a) publish a copy of the response, or a summary of it, in such manner as the Lord Chancellor thinks fit; and
- (b) send a copy of the response to any person who the Lord Chancellor believes may find it useful or of interest (other than a person who has been sent a copy of the report under paragraph (2)(b)).

(4) A person giving a response under paragraph (1) may make written representations to the coroner about—

- (a) the release, under paragraphs (2)(a)(ii) or (b) or (3)(b), of a copy of the response; or
- (b) the publication, under paragraph (3)(a), of the response.

(5) Representations under paragraph (4) must be made to the coroner no later than the time when the response is given under paragraph (1).

- (6) On receipt of representations under paragraph (4), the coroner may decide that the response should not—
 - (a) be released in full under paragraphs (2)(a)(ii) or (b) or (3)(b); or
 - (b) be published in full under paragraph (3)(a).
- (7) If paragraph (6) applies—
 - (a) the coroner must prepare a summary of the response; and
 - (b) paragraphs (2) and (3) apply to the summary of the response prepared by the coroner as they apply to the response received under paragraph (1).

Extension of time

43B. A coroner may extend the period of 56 days mentioned in rule 43A(1) (even if an application for extension is made after the time for compliance has expired).”.

- 3. After rule 57 insert—

“Supply of information concerning the death of children to Local Safeguarding Children Boards

57A.—(1) Paragraph (2) applies if an inquest is to be held into the death of a deceased person or a post-mortem examination of the deceased’s body is to be made under section 19 of the 1988 Act and the coroner has reason to believe that the deceased was or may have been under the age of 18 at the time of death.

(2) The coroner must, within 3 working days beginning with the date on which the coroner makes a decision to hold an inquest into the death of the deceased or to direct or request a post-mortem examination of the body under section 19 of the 1988 Act, secure that the appropriate Local Safeguarding Children Board is notified of the death.

(3) A coroner may supply information to a Local Safeguarding Children Board for use for the purposes of its functions.

(4) In this rule—

“the appropriate Local Safeguarding Children Board” means the Board established under section 13(1) of the Children Act 2004³ within whose area the body of the deceased is lying;

“information” means any information that is—

(a) held by a coroner for the purposes of an inquest or a post-mortem examination under section 19 of the 1988 Act; and

(b) relates to the death of a person who was or may have been under the age of 18 at the time of death;

“working day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971⁴, in England and Wales.

³ 2004 c. 31.

⁴ 1971 c. 80.

- (5) The requirements of paragraph (2) do not apply to a death—
- (a) which occurred before 1 April 2008; or
 - (b) in relation to which a coroner decides to hold an inquest or direct or request a post-mortem examination under section 19 of the 1988 Act before 17th July 2008.”
4. The provisions of rule 2 do not apply, and rule 43 of the Coroners Rules 1984 shall continue to apply, to a report under that rule made before 17th July 2008 as if it had not been amended by rule 2.

10th June 2008

Phillips of Worth Matravers, CJ

I agree these Rules, which shall come into force on 17th July 2008

16th June 2008

Bridget Prentice
Parliamentary Under-Secretary of State,
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Coroners Rules 1984 (S.I. 1984/552).

Rule 2 amends rule 43 of the 1984 Rules to clarify when a coroner may report the circumstances of a death to a person who the coroner believes will have power to take action in relation to future deaths. The coroner will have power to give a copy of the report to the Lord Chancellor (who may publish it) and to interested persons and to any other person who may have an interest. The person to whom the report is made is required to give the coroner a written response to it. Provision is also made for a copy of the report, or a summary of it, to be given to the Lord Chancellor, interested persons and any other person who may have an interest.

Rule 3 inserts new rule 57A which requires a coroner to ensure that the appropriate Local Safeguarding Children Board (as defined in rule 57A(4)) is notified of a death if the coroner believes that the deceased was or may have been under 18 at the time of death. By rule 57A(3), a coroner may supply information to a Local Safeguarding Children Board for use for the purposes of its functions.

An impact assessment has not been produced for this instrument as no impact on business, the private or voluntary sectors is foreseen.

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from coroners@justice.gsi.gov.uk or 020 3334 6400.