

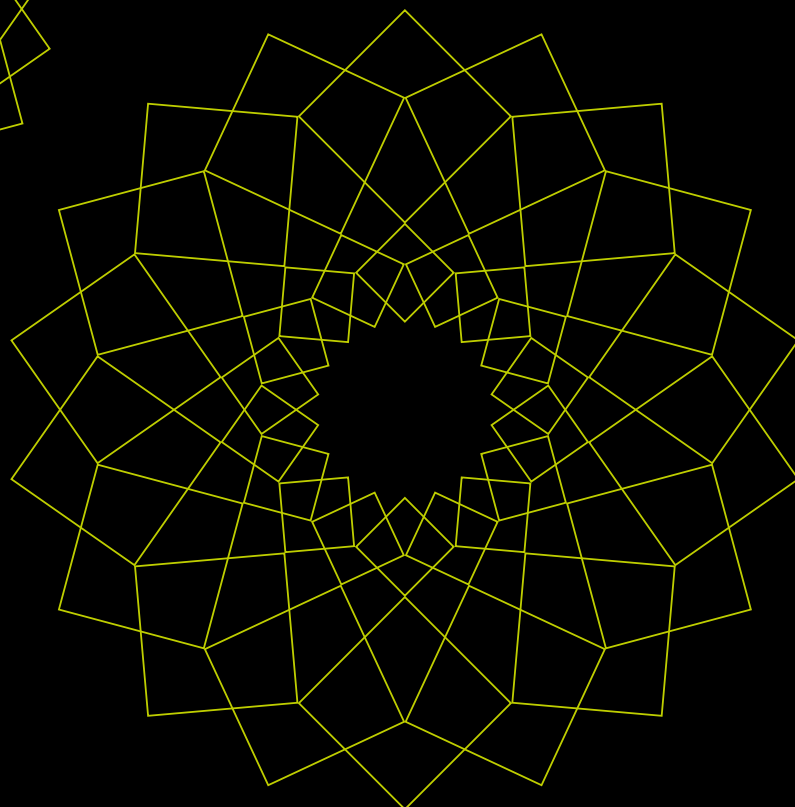
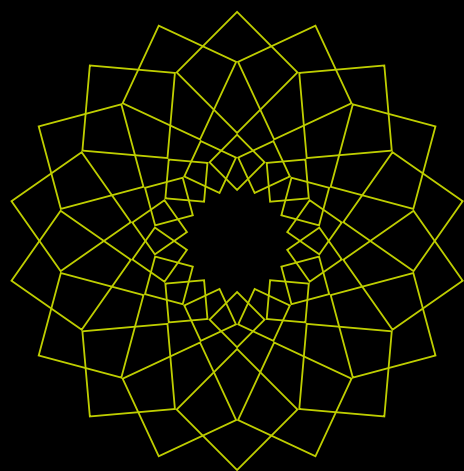


Ministry of
JUSTICE

CORONERS BILL -

Changes made resulting
from consultation

27 March 2008



Foreword

The Government's plans to reform the coroner system were set out in the draft Coroners Bill, which was published in June 2006. Extensive consultation since then has helped to refine several policy areas. This briefing note explains the changes which have been made, and compares the revised policy with that set out in the draft Bill. It also refers to some new areas of policy which were not included in the draft Bill, such as inspection and the interim arrangements to support the transition from the current system to a reformed one.

Some of the changes have been announced already, such as the addition of provisions to strengthen the public protection role of coroners, and a return to the current position on the reporting of inquests. Other changes, such as the scope of the appeals system, are announced for the first time in this briefing note.

The overall aims of reform remain the same – to deliver a better service for bereaved people and others who interact with the coroner service; to introduce national leadership through the Chief Coroner and improvements to enhance the local delivery of the service; and to ensure more effective coroners' investigations and inquests. These aims will underpin the measures I intend to introduce ahead of legislation, such as strengthening coroners' public protection role.

I am very grateful for the thought which so many people have put into their comments and ideas, and for the abundant commitment which I have seen since taking over responsibility for the Coroners Bill last July. The passion to improve the system for the benefit of families who will come into contact with it in the future has been very evident to me in the many discussions I have had with those who work within the service, and those whose professional responsibilities or personal experiences have brought them into contact with it.



Bridget Prentice MP
Parliamentary Under Secretary of State for Justice

Contents

Introduction	1
Deaths abroad	2
Action to prevent other deaths	3
Juries	4
Reporting restrictions	5
Accommodation for coroners	6
Privileged information	7
Appeals – who can appeal?	8
Appeals – what can be appealed?	9
Coroners' officers	11
Statutory reporting of deaths	12
Inspection of the coroner system	13
Transitional arrangements	14

Introduction

A number of policy areas in the Coroners Bill have been revised since the draft Bill was published for consultation in June 2006. This briefing note compares the proposals in the draft Bill and the revised Bill where significant policy changes have been made, and briefly describes the reasons behind the changes.

A draft Coroners Bill ("the draft Bill") was published in June 2006 and gave the first full details of the Government's proposals for coroner reform following the recommendations of the Fundamental Review of Death Certification and Investigation (2003), the Shipman Inquiry Third Report (2003), and the 2004 Home Office Position Paper which responded to these reports.

This was immediately followed by pre-legislative scrutiny conducted by the Constitutional Affairs Select Committee (CASC) which published its report on the draft Bill in August 2006. In the Government's response to the CASC report we indicated our intention to consider further a number of the Committee's recommendations.

The general consultation on the draft Bill lasted until autumn 2006 and over 150 responses were received from stakeholders including coroners, local authorities, medical organisations, the legal profession, the media, voluntary organisations and members of the public. During the consultation period four regional seminars were held across the country, with those who work in and fund the service, to explain and discuss key proposals in the draft Bill. The report summarising responses to the general consultation was published in February 2007 and identified areas of policy in the Bill that would be changed and those that would be subject to further discussion.

In addition to the general consultation, thirteen members of the public with recent experience of the coroner service due to bereavement were invited to Parliament in November 2006 to discuss aspects of the Bill most relevant to them.

Feedback received from all different strands of consultation as well as feedback from a large number of meetings with representative bodies, groups from the voluntary sector and individuals has been taken into account in a revised version of the Bill ("the revised Bill"). The Bill will be introduced in Parliament as soon as Parliamentary time allows.

Deaths abroad

Draft Bill – clauses 5 and 6	Revised Bill
The draft Bill limited the circumstances in which coroners would need to investigate deaths abroad.	The limitations have been removed from the revised Bill. The same duty to investigate deaths will apply where a death occurs abroad - and the body is returned to the coroner's jurisdiction - as when a death occurs in England or Wales. The Chief Coroner has a new obligation to assist in obtaining evidence abroad where a coroner requests assistance.

Stakeholders expressed some concerns that the proposals regarding deaths outside the United Kingdom in the draft Bill could lead to some deaths abroad not being subject to an inquest in England or Wales which, in turn, could reduce the opportunity for families to get answers to important questions.

The limitations on investigations into deaths abroad have been removed from the revised Bill. This means that coroners will be under a duty to investigate deaths abroad where a body or remains are returned to their jurisdiction, and they have information or reasonable suspicion that the circumstances of the death would have required them to carry out an investigation if the death had occurred in England or Wales.

Where the coroner decides that there are no grounds for conducting an investigation, and the family disagrees, the family will have the same right of appeal to the Chief Coroner as the families of those who have died in England and Wales.

Many stakeholders commented that coroners' investigatory powers needed to be strengthened when dealing with deaths abroad. The revised Bill now provides coroners with the statutory authority to request information from outside the United Kingdom to assist investigations. When a coroner requests assistance in obtaining information abroad, the Chief Coroner – to whom the request will be copied – must take whatever steps he or she considers appropriate to help to ensure that the request is granted.

Action to prevent other deaths

Draft Bill – clause 12	Revised Bill
The draft Bill made provision for coroners to make reports to organisations which may have the power to take action to prevent deaths in the future, and to copy the reports to the Chief Coroner.	The revised Bill strengthens the provisions by requiring an organisation that receives a report from a coroner to respond. The Chief Coroner will monitor the reports and the responses received and will provide a summary of them in his or her annual report to the Lord Chancellor, who will lay the annual report before Parliament.

Families often express their wish that something positive might come out of a coroner's inquiry and hope that relevant agencies will take preventative action so that the death of their family member is not in vain.

Coroners already have the authority to make reports to authorities which may have the power to take action to prevent future deaths. The provisions are strengthened considerably in the revised Bill. The increased focus on the ability to learn lessons and to share information and best practice will reassure families, as well as prevent future deaths and address public interest issues about health and safety. These new powers will also assist organisations to identify and remedy problems.

As an interim measure, we have signalled our intention to amend the existing Coroners Rules during 2008 in order to strengthen coroners' powers to take action to prevent deaths in advance of legislation.

Juries

Draft Bill – clauses 13 and 14	Revised Bill
<p>The draft Bill set out the circumstances in which a coroner must hold an inquest with a jury. The Bill proposed to change the status quo by not requiring a jury for an inquest into a work place death.</p> <p>The draft Bill reduced the number of people serving on a jury at an inquest to 5, 6 or 7 people.</p>	<p>The revised Bill returns for the most part to the status quo regarding which inquests must be determined by a jury – including work place death inquests.</p> <p>The number of people serving on a jury at an inquest has been changed to 7, 8 or 9 people.</p>

The Bill sets out the circumstances in which a coroner must hold an inquest into a death with a jury. It also gives the coroner the power to decide to hold an inquest with a jury in any case where he or she thinks that there is sufficient reason for doing so.

Following feedback from stakeholders, we have decided to retain the current position for workplace death inquests, which must be held with a jury. While many coroners supported the draft Bill’s proposal to give the coroner discretion to call a jury, a number of stakeholders objected to the removal of workplace deaths from the category of inquests that must be held with a jury. They felt that it would take away some of the transparency and accountability from the process. The requirement to summon a jury in cases where the death occurred in circumstances the continuance of which could be prejudicial to the health or safety of the public remains excluded. The coroner’s role in this respect has instead been significantly strengthened by enhancing his powers to make reports to organisations which have the power to prevent future deaths.

Stakeholder views on the proposals in the draft Bill relating to the number of jurors were mixed. While there was general agreement that the number of jurors required in an inquisitorial coroner’s inquest was less than an adversarial criminal trial, some stakeholders felt that a minimum of five jurors was too low. Amongst other things this did not take account of jurors being taken ill during an inquest.

Reporting restrictions

Draft Bill – clause 30	Revised Bill
<p>The draft Bill gave coroners a new power to prevent the publication of the name of the deceased or any information that might lead to his or her identification. The expectation was that this would be applied in exceptionally sensitive cases, such as suicide and child deaths where there was no public interest in the case, and where distress might be caused to the bereaved if those details were reported in the media.</p>	<p>This power to impose reporting restrictions has been removed from the revised Bill.</p>

The proposal to introduce reporting restrictions polarised opinion in responses to the public consultation on the draft Bill. The media expressed strong views against the proposal while some voluntary groups were in favour of it as a means to protect the privacy of bereaved families.

A workshop was held specifically on reporting restrictions in July 2007 in order to try to reach consensus on the best way forward. The initial support expressed by some stakeholders in favour of introducing reporting restrictions had diminished. An almost unanimous view emerged at the workshop that the most appropriate way forward would be to remove the reporting restriction provisions from the Bill, and to work on an alternative administrative solution.

We have reconsidered the provisions in the Bill and have decided not to introduce reporting restrictions. As an alternative, to improve the service for bereaved families, consideration is being given to how current codes of conduct for the media might be refined to ensure there is appropriate emphasis on the need for sensitive reporting. We will also consider how families can be made better aware of the relevant provisions in the code and how they can complain if they feel any provisions have been breached. A short discussion paper on these issues was also published today.

Accommodation for coroners

Draft Bill – clause 33	Revised Bill
The draft Bill placed a responsibility on the appropriate authority for a coroner area to provide and maintain accommodation for investigations and inquests.	The revised Bill places a responsibility on the relevant authority to provide and maintain whatever accommodation it thinks appropriate to enable the coroner to carry out his or her functions.

The relevant authority is obliged to provide, or secure the provision of, accommodation to enable coroners to carry out their functions. This recognises that, at present, not all coroners have a dedicated court to hold inquests and that there will continue to be a need to hire such facilities in the future, including court accommodation where the existing court room is insufficient for the purposes of a particular inquest. The relevant authority is required to take into account the views of the coroner when providing and, where relevant, maintaining accommodation.

Privileged information

Draft Bill – clause 43	Revised Bill
<p>The draft Bill set out that the coroner did not have the power to require any information to be provided to him or her that a person could not be required to provide a civil court.</p> <p>The Lord Chancellor would be able to make regulations excluding specified information – so the coroner could not require someone to give evidence about such matters or provide documents.</p>	<p>The clause enabling the Lord Chancellor to make regulations excluding specified information has been removed from the Bill.</p> <p>Otherwise the provisions about privileged information remain the same.</p>

The Bill enables a coroner to require a person to give evidence or provide documents for the purposes on an investigation. This makes it possible for coroners to conduct effective investigations.

The clause in the draft Bill that would have enabled the Lord Chancellor to make regulations limiting coroners' powers to require specified evidence or documents has been removed. On reflection, it may have affected the ability of coroners to carry out effective investigations and would not have been compatible with the European Convention on Human Rights.

Coroners will not have the power to require anything to be provided to them that a person could not be required to provide to a civil court in England or Wales. This mirrors restrictions on many information gathering powers contained in existing legislation.

Appeals – who can appeal?

Draft Bill – clauses 60 and 61	Revised Bill
The draft Bill set out a route of appeal to the new Chief Coroner against decisions and determinations made in connection with investigations and inquests. This right was open to “interested persons” who were defined in the Bill and included, but was not limited to, bereaved family members.	These provisions are unchanged in the revised Bill.

The Bill establishes a new appeal route, giving “interested persons” the right to appeal to the Chief Coroner against certain decisions made during the course of investigations. When CASC scrutinised the draft Bill, it recommended the class of “interested persons” defined in the Bill be substantially restricted. In response, the Government indicated its intention to limit the scope of interested persons who could appeal by introducing a hierarchy ranking the order in which family members were entitled to appeal, along the lines of the hierarchy listed in the Human Tissue Act 2004.

Having given this matter further consideration we have decided against introducing such a hierarchy for appeals in the revised Bill. This is because there is not such a direct read across from the Human Tissue Act 2004 as first thought given that the hierarchy in that Act is for the single purpose of consenting to the removal, storage and use of human tissue or organs where the deceased person has not already indicated their consent or appointed a representative. We have concluded also that having an appeals hierarchy in legislation would potentially create rigidity and unfairness in the appeals system as well as raising practical problems. For example, the ranking would always decide in favour of a spouse over a parent, without taking full account of the actual personal relationships at the time of the death.

As an alternative to introducing a hierarchy, the detail of the appeals system will be dealt with in Rules which will be drafted and subject to public consultation after the Bill has received Royal Assent. As part of the appeals process, the Rules would require the coroner dealing with the case to comment, as far as he or she was able and when relevant, on the status of those family members who choose to make an appeal, and those who have chosen not to make an appeal. This will provide a fairer assessment of the position with regard to the family’s perception of the appeal as a whole, which the Chief Coroner can take into account when making his or her decision.

Appeals – what can be appealed?

Draft Bill – clauses 60 and 61	Revised Bill
<p>The draft Bill did not limit the types of decisions taken by coroners that could be appealed.</p>	<p>The revised Bill now lists the decisions that can be appealed. These are:</p> <ul style="list-style-type: none"> • a decision to conduct or not conduct an investigation; • a decision to discontinue an investigation; • a decision to resume or not resume an investigation once criminal proceedings or an inquiry have concluded; • a decision not to request a post-mortem; • a decision to hold a second post-mortem where a post-mortem of the same type has already been carried out; • a decision to give a notice requiring a person to give evidence; • a decision about whether an inquest is held with a jury; and • a determination at the end of an inquest.

While the proposals for the new appeals system were generally welcomed, some stakeholders expressed concerns about the wide scope, the number of appeals this would generate, and the effect on the operation of the coroner service. CASC also commented on the scope of the appeals system and recommended that limits be placed on the decisions of the coroner which could be subject to appeal.

The revised Bill takes these reservations into account. Unlike the draft Bill, it lists the decisions that can be appealed. This means that certain types of decisions are outside the scope of the appeals system, including a decision that a post-mortem is needed, and a decision made during an inquest.

In spite of the anxiety that post-mortem examinations cause to bereaved people (in particular those from some faith backgrounds where there are concerns about the body being disturbed after death and/or delays to the funeral), we

have concluded that there would be extensive practical difficulties which could overwhelm the appeal system if post-mortems remained within scope. We might also be accused of misleading families if they made an appeal on faith grounds alone, which would have little realistic prospect of success. There is a need for rapid decision making after a person's death as to whether an examination is required, and the need for the examination to be then carried out quickly to ensure the most informative results.

Only appeals against a decision not to hold a post-mortem, or a decision to order a full second post-mortem, will be subject to appeal. Retaining this aspect of the current policy will ensure a safety net in those cases where family members or other interested parties believe a death should be investigated further by the coroner, and in those especially distressing cases where second full post-mortems are commissioned, which is most usual in criminal cases. As far as the latter is concerned, the secondary victims of homicide will have an avenue to challenge those suspects or their lawyers who insist, sometimes spuriously, that a body is retained for the possibility of re-examination in the future to procure evidence that may support their defence case.

Where a family is unhappy with the coroner's decision about an initial post mortem, they will be able to discuss their concerns directly with him or her. Guidance emphasising the requirement for dialogue with families on this matter will be issued to coroners through the Charter for Bereaved People, which will set out the level of service the bereaved will receive in the reformed service.

Decisions made about the detailed conduct of an inquest (such as whether or not a particular witness should be called) are not included within the scope of the appeals system following representations that this could lead to considerable delays in inquests being listed. Where interested persons have concerns that particular evidence was or was not heard, they will be able to raise this in the context of an appeal against the final determination.

Coroners' officers

Draft Bill	Revised Bill
There was no explicit provision about coroners' officers in the draft Bill.	The revised Bill now places a responsibility on the relevant authority to secure the provision of whatever coroners' officers (and other staff) are needed by the coroner to carry out his or her functions. The Chief Coroner has responsibility for ensuring appropriate arrangements are in place for providing coroners' officers with training and guidance.

The existing responsibility for the provision of coroners' officers is given a statutory footing in the revised Bill. This reflects the important work that coroners' officers carry out, which was highlighted in both the CASC report and in responses to public consultation. The relevant authority will be expected to work together with the coroner to secure appropriate staffing levels. When, locally, the police authority is responsible for providing coroners' officers, then they will be expected to continue to do so and in such a case the obligation will not fall on the relevant authority.

The training of coroners' officers (as well as that training of support staff and coroners themselves) is considered to be an important function of the Chief Coroner. This is intended to help to ensure that service delivery is similar across all coroner areas. The intention is that the Chief Coroner will have a strategic overview of the training programme, and a coherent programme of relevant courses will be organised to ensure good induction programmes and ongoing professional development.

Statutory reporting of deaths

Draft Bill	Revised Bill
There was no statutory duty in the draft Bill to report deaths to the coroner.	The revised Bill makes provision for registered medical practitioners to notify the coroner of relevant deaths.

The majority of deaths are currently referred to coroners by doctors, although there is no statutory requirement for doctors to do so. Neither is there a list of particular types of death that should be referred. CASC recommended that the Government introduce a positive statutory duty for doctors to refer certain categories of death to the coroner.

A consultation exercise on statutory reporting of deaths was undertaken between July and September 2007 and a total of 74 responses were received. Responses came from those involved in the coroner service, voluntary groups who work with the bereaved, registrars, medical practitioners from general practice and those working in NHS Trusts and individuals with experience of the coroner service. While a number of stakeholders felt that the duty to report should be expanded to other public service personnel (such as the police, fire service and ambulance personnel) in addition to medical practitioners, others disagreed highlighting the risks with taking a broad approach. Imposing further bureaucracy on those agencies could cause distress to bereaved families if funeral arrangements had to be delayed.

We have decided that only registered medical practitioners will have a duty to report relevant deaths to the coroner. The cases or circumstances where deaths should be reported and the mechanisms for doing so will be dealt with in secondary legislation, which will be drafted and subject to consultation after the Bill has received Royal Assent. The aim will be to ensure that appropriate deaths are reported to the coroner so that the bereaved are guaranteed an opportunity to learn the facts about the death of a loved one. It will also ensure that the coroner's public protection role – where lessons to be learned are communicated to the appropriate authority or organisation to prevent further deaths – can be discharged.

The introduction of a statutory duty will not prevent deaths being reported to the coroner as they are at present by, for example, police officers or prison governors, nor will it prevent bereaved relatives from asking the coroner to investigate a death if they have suspicions about the circumstances.

We will be publishing a full account of the consultation on this issue shortly, alongside the Department of Health's proposals, also following consultation, to reform the death certification system. These two areas of policy are closely linked.

Inspection of the coroner system

Draft Bill	Revised Bill
<p>There was no provision regarding inspection of the coroner system in the draft Bill.</p>	<p>The revised Bill now provides for Her Majesty's Inspectors of Court Administration (HMICA) to carry out inspections of the coroner system, and report their findings to the Lord Chancellor. Inspectors are expressly prevented from commenting on any judicial decisions taken by the coroner. The Lord Chancellor may direct that action must be taken to implement inspectors' recommendations within a certain timeframe.</p>

The Fundamental Review of Death Certification and Investigation (2003) recommended an inspectorate for the coroner service. Although the exact recommendation is not being implemented (as the coroner service is not large enough to justify its own inspectorate), we agree with the principle that inspection of the coroner service is necessary.

An inspection regime, coupled with other reforms, should assure greater accountability, help to drive up service standards for the public, and help to assure better value for money within the system. It would also assist the Chief Coroner in sharing good practice across the system as a whole.

Transitional arrangements

Draft Bill	Revised Bill
The draft Bill did not specify the transitional arrangements.	A schedule has been added to the revised Bill, which sets out that the new appointments procedure and coroners' areas will take effect on the retirement or resignation of the current office holder. Provision has been added for the Lord Chancellor to pay compensation in some circumstances to a person who ceases to hold office because he or she is over 70 when the Bill is implemented.

Transitional arrangements have been added to the revised Bill that will ensure that the coroner service continues to operate in every part of England and Wales while the reforms take effect and that the wealth of experience currently within the system is retained during the transitional phase.

Existing coroners under 70 will be treated as appointed under this legislation and existing coroner areas will remain unchanged at the point of implementation. The appointment procedures in the Bill will apply to new coroner appointments only. Changes to coroner area boundaries will be made over time as existing coroners retire or resign.

Produced by the Ministry of Justice

Copies of this document are available on the Ministry of Justice website: www.justice.gov.uk.

Other alternative formats will be considered on request from:

Coroners Unit
Ministry of Justice
5th Floor, Steel House
11 Tothill Street
London SW1H 9LH

Tel: 020 7210 0021

Email: coroners@justice.gsi.gov.uk

© Crown Copyright 2008