

# CORONERS AND JUSTICE ACT 2009

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 1 - Coroners etc**

#### *Chapter 1: Investigations into deaths*

#### *Section 11 and Schedule 1: Duty or power to suspend or resume investigations*

96. This section gives effect to Schedule 1 which contains provisions on suspending and resuming investigations in various situations. Schedule 1 sets out when a senior coroner can or must suspend and resume investigations.

#### **Paragraph 1: Suspension of investigation where certain criminal charges may be brought**

97. *Paragraph 1* of Schedule 1 contains provision for suspending the senior coroner's investigation in the event that it is likely that criminal proceedings will be brought in connection with the death. It is intended to avoid duplicate investigations. This is based on rules 26 and 27 of the 1984 Rules.
98. This will mean firstly, under *Paragraphs 1(2)* and *1(3)* that the senior coroner will suspend an investigation if asked to do so by a prosecuting authority, including the Provost Marshal or the Director of Service Prosecutions in relation to service equivalents, because someone may be charged with a homicide or other offence directly involving or indirectly related to the death of the deceased.
99. Secondly, under *paragraph 1(4)*, if the senior coroner has to suspend an investigation under paragraphs 1(2) or 1(3), the suspension must be for at least 28 days. The senior coroner has the power to extend (more than once if needed) the period of the suspension if asked to do so by the person who or authority which requested the original suspension (through *paragraph 1(5)*) or the Director of Service Prosecutions (in a *paragraph 1(4)* case).
100. Finally, *paragraph 1(6)* defines "homicide offence", "related offence" and the "service equivalent of a homicide offence" as used in this paragraph.

#### **Paragraph 2: Suspension where certain criminal proceedings are brought**

101. *Paragraph 2* of Schedule 1 sets out the arrangements for suspension of the senior coroner's investigation when criminal proceedings have been brought in connection with the death. It is developed from section 16 of the 1988 Act.
102. The effect of *paragraph 2(2)* is that a senior coroner must suspend an investigation into a death on becoming aware either that someone has appeared or been brought before a magistrates' court charged with a homicide offence involving the death of the deceased

or that they have been charged on indictment in the Crown Court with such an offence. Similarly, under *paragraph 2(4)*, when a coroner becomes aware that someone has been charged with an offence related to the death under investigation (whether it is before the magistrates' court or the Crown Court), the senior coroner is also required to suspend the investigation. As set out in *paragraphs 2(3) and 2(5)*, these duties also apply to the service equivalents of such offences.

103. The senior coroner need not suspend an investigation under *paragraph 2(2), (3) or (4)* where the prosecuting authority or the Director of Service Prosecutions (as the case may be) has no objection to the investigation continuing or where the senior coroner thinks that there is exceptional reason for not doing so (*paragraph 2(6)*).
104. *Paragraph 2(7)* makes provision for investigations which had been suspended under *paragraph 1*, and which are then subsequently suspended under *paragraph 2*.

### **Paragraphs 3 and 4: Suspension pending inquiry under Inquiries Act 2005**

105. *Paragraph 3* of Schedule 1 sets out the circumstances in which a senior coroner's investigation must be suspended where there is an inquiry under the Inquiries Act 2005. It is based on section 17A of the 1988 Act.
106. *Paragraph 3(1)* requires the senior coroner to suspend an investigation into a death if requested to do so by the Lord Chancellor on the basis that there will be an inquiry under the Inquiries Act 2005 in which the cause of death is likely to be adequately investigated; that a senior judge has been appointed to chair such an inquiry; and that the Lord Chief Justice has approved (for the purposes of *paragraph 3*) that appointment. The senior coroner does not have to suspend an investigation if he or she thinks there are exceptional reasons for continuing with it (*paragraph 3(2)*). *Paragraph 3(3)* makes provision for investigations which are already suspended under *paragraph 1*.
107. *Paragraph 4* further provides that in situations where an investigation has been suspended on the basis that the cause of death is likely to be adequately investigated by an inquiry set up under the Inquiries Act 2005, the terms of reference of that inquiry must include the purposes set out in section 5(1) of this Act – that is who the deceased was and how, when and where the deceased came by his or her death (read with section 5(2) where necessary to comply with Convention rights). As noted above, all such inquiries will be chaired by a senior member of the judiciary – in this case, a High Court judge, a Court of Appeal judge or a Justice of the Supreme Court.

### **Paragraph 5: General power to suspend**

108. *Paragraph 5* of Schedule 1 provides a general power for a senior coroner to suspend an investigation if he or she thinks that it would be appropriate to do so. This may be appropriate if another investigation is being conducted into the death, for example, by the Independent Police Complaints Commission, the Health and Safety Executive or an Accident Investigation Branch, or if an investigation is being conducted in another jurisdiction, for example, if the death occurred abroad.

### **Paragraph 6: Effect of suspension**

109. Where an investigation is suspended under *paragraphs 1, 2, 3 or 5*, any inquest being held as part of that investigation must also be adjourned and if it is being held with a jury, the senior coroner may discharge the jury.

### **Paragraph 7: Resumption of investigation suspended under paragraph 1**

110. If the senior coroner suspends an investigation because someone may be charged with an offence, the investigation must be resumed (subject to *paragraphs 2(7)(d) and 3(3)(b)*) once the relevant period has expired.

### **Paragraph 8: Resumption of investigation suspended under paragraph 2**

111. *Paragraph 8* of Schedule 1 sets out the arrangements for resuming investigations suspended because certain criminal proceedings have been brought.
112. Under *paragraph 8(1)* the senior coroner can resume an investigation only if he or she thinks there is sufficient reason to do so.
113. *Paragraph 8(2)* ensures that the investigation cannot be resumed until the criminal proceedings which triggered the suspension have come to an end in the court of trial.
114. This is qualified by *paragraph 8(3)*, under which the investigation can be resumed, even if the criminal proceedings are continuing, providing the relevant prosecuting authority (as defined in *paragraph 8(4)*) has confirmed it has no objection.
115. *Paragraph 8(5)* makes clear that the outcome of a coroner's investigation resumed under this paragraph must be consistent with the result of the criminal proceedings which triggered the suspension.
116. It could be that the senior coroner resumes the investigation because the criminal investigation did not find all the facts that the senior coroner is required to find or because it did not meet ECHR Article 2 obligations, for example because the defendant pleaded guilty. Indeed the effect of section 6(1) of the Human Rights Act 1998 (HRA) is that the senior coroner, as a public authority, would be legally obliged to resume the investigation if this was necessary in order to secure compliance with Article 2.

### **Paragraph 9: Resumption of investigation suspended under paragraph 3**

117. *Paragraph 9* of Schedule 1 sets out the arrangements for resuming investigations suspended because of an inquiry. Under *paragraph 9(1)* the senior coroner can resume an investigation only if he or she thinks that there is sufficient reason for resuming it. It cannot be resumed until after 28 days have passed since either the date that the Lord Chancellor has notified to the senior coroner as the date of conclusion of the inquiry or, where the senior coroner has received no such notification, the date of publication of the findings of the inquiry.
118. *Paragraphs 9(3), 9(5), 9(7) and 9(9)* are relevant where the senior coroner becomes aware during the course of the suspension of his investigation that criminal proceedings are under way of a type that would require a suspension under paragraph 2. Under *paragraphs 9(4), 9(6), 9(8) and 9(10)* the investigation may not be resumed before such criminal proceedings have ended unless a prosecuting authority or the Director of Service Prosecutions (as the case may be) has told the senior coroner that there is no objection to the investigation being resumed.
119. *Paragraph 9(11)* prevents the resumed senior coroner's investigation from reaching a conclusion which is inconsistent with the outcome of the inquiry which triggered the suspension or any criminal proceedings that had to be concluded before it could be resumed. For example, if the outcome of an inquiry was a finding that a particular individual had committed suicide, a senior coroner's investigation cannot conclude that the particular individual was unlawfully killed.

### **Paragraph 10: Resumption of investigation under paragraph 5**

120. *Paragraph 10* of Schedule 1 states that where an investigation is suspended under paragraph 5, it may be resumed at any time the senior coroner thinks there is sufficient reason for resuming the investigation.

**Paragraph 11: Supplemental**

121. *Paragraph 11(1)* of Schedule 1 requires that where a senior coroner resumes an investigation under Schedule 1, the senior coroner must resume any inquest that was adjourned under paragraph 6.
122. Where an inquest is resumed, by *paragraph 11(3)* the resumed inquest may be held with a jury if the senior coroner thinks there is sufficient reason for doing so.
123. Under *paragraph 11(4)*, if the inquest was started with a jury and then adjourned and the senior coroner decides to hold the resumed inquest with a jury, if at least seven members of the original jury are available to serve, then they will form the jury for the resumed inquest. If not, or the original jury was discharged, a new jury is required to be summoned.