

CORONERS AND JUSTICE ACT 2009

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1 - Coroners etc

Chapter 6: Governance etc

Section 35 and Schedule 8: Chief Coroner and Deputy Chief Coroners

270. The Act creates the offices of Chief Coroner and Deputy Chief Coroners, who will be responsible for hearing appeals against decisions of coroners, for establishing and overseeing national performance standards, and for providing leadership to the service in general. They may also conduct investigations. The Government intends to have one full time Chief Coroner and one full time Deputy Chief Coroner, and to appoint others as Deputy Chief Coroners to assist, if required, in particular to hear appeals.
271. *Section 35* also gives effect to Schedule 8, which makes provision for the appointment of the Chief Coroner and Deputy Chief Coroners and their respective terms of office, and specifies further functions.
272. Under *paragraph 1* of Schedule 8, a person has to be a High Court or Circuit judge under the age of 70 to be eligible for appointment as Chief Coroner.
273. *Paragraph 2* of Schedule 8 sets out the eligibility criteria and appointment process for Deputy Chief Coroners; it requires appointees to be under the age of 70 and be a High Court or Circuit judge, the Coroner for Treasure or a senior coroner. It also specifies that the Lord Chief Justice will consult the Lord Chancellor as to the number of Deputy Chief Coroners that are needed, and how many of these should be judges, and how many should be senior coroners.
274. *Paragraph 2(4)* of Schedule 8 states that the Lord Chief Justice will (after consulting the Lord Chancellor) appoint Circuit or High Court judges as Deputy Chief Coroners. By *paragraph 2(5)* the term of appointment will be decided by the Lord Chief Justice after consulting the Lord Chancellor. *Paragraph 2(6)* provides that the Lord Chancellor, at the invitation of the Lord Chief Justice, will be responsible for appointing senior coroners as Deputy Chief Coroners. The Lord Chancellor will make appointments following a Judicial Appointments Commission process and will decide the term after consulting the Lord Chief Justice.
275. There is a retirement age of 70 for the Chief and Deputy Chief Coroners. This Schedule also sets out the arrangements for vacation of the office, resignation, removal from office and remuneration. It also provides for the Chief Coroner and Deputy Chief Coroners to be indemnified for costs they incur in connection with legal proceedings arising from the carrying out of their duties and exercise of their powers, damages awarded against them, and in costs ordered to be paid by them in connection with such proceedings.

276. **Schedule 8** also provides for a Deputy Chief Coroner to perform the functions of the Chief Coroner if the latter is absent or unavailable, the office is vacant or otherwise with the Chief Coroner's consent, and allows the Lord Chancellor to appoint staff to assist the Chief and Deputy Chief Coroners.

Section 36: Reports and advice to the Lord Chancellor from the Chief Coroner

277. *Subsection (1)* requires the Chief Coroners to give an annual report to the Lord Chancellor.
278. The Chief Coroner's annual report must cover any matters he or she wishes to bring to the attention of the Lord Chancellor, and any matters the Lord Chancellor has asked the Chief Coroner to cover in the report. The report must also contain an assessment of consistency of standards between coroner areas; information about investigations that have taken over 12 months to complete; authorisations given under Schedule 5 for coroners to enter and search land and seize items; the number, nature and outcomes of appeals made to the Chief Coroner; and a summary of matters reported by coroners under paragraph 7 of Schedule 5 to prevent future deaths, and the responses to those reports under sub-paragraph (2) of that paragraph.
279. The annual report must be published by the Lord Chancellor, and a copy would be laid before each House of Parliament.
280. As well as producing an annual report from the Chief Coroner to the Lord Chancellor, it is also intended that the Chief Coroner will be able to publish occasional summaries of the reports made by coroners to prevent future deaths and the responses to them.
281. If requested to do so by the Lord Chancellor, the Chief Coroner must by virtue of *subsection (7)* give advice to the Lord Chancellor about particular matters relating to the operation of the coroner system.

Section 37: Regulations about training

282. This section provides that the Chief Coroner may, with the agreement of the Lord Chancellor, make regulations about the training of all levels of coroners, coroners' officers and other staff who support coroners. This is designed to ensure that all those working within the coroners' service are aware of and apply best practice, relevant guidelines and standards issued under section 42 (for example) and other developments in legislation.

Section 38 and Schedule 9: Medical Adviser to the Chief Coroner

283. This section and Schedule provide for the appointment of a person as Medical Adviser to the Chief Coroner (MACC), and a person (or persons) to be appointed as Deputy Medical Adviser (or Advisers) to the Chief Coroner (DMACC). These persons will be appointed formally by the Lord Chancellor, following consultation with the Chief Coroner, and Welsh Ministers, as responsibility for health matters is devolved to the Welsh Assembly Government. Terms and conditions will be set by the Lord Chancellor as he or she considers appropriate.
284. The MACC will advise and assist the Chief Coroner in relation to medical matters which are relevant to the coroner system. The DMACC will perform the MACC's functions when the MACC is absent or unavailable or if the post is vacant; or at any other time with the MACC's consent.
285. *Paragraph 3* of the Schedule specifies that, in order to be eligible for the role of MACC or DMACC, a person must be a registered medical practitioner and have been so throughout the previous five years, and have practised within the previous five years.

Section 39: Inspection of coroner system

286. This section sets out that Her Majesty's Inspectorate of Courts Administration will carry out inspections of the operation of the coroner system, and report their findings to the Lord Chancellor. The Chief Coroner and Deputy Chief Coroners (or a person acting as a senior coroner under Schedule 10) will not be inspected in relation to any functions they carry out as such.
287. Under *subsection (2)*, inspectors will not be able to inspect persons making judicial decisions or exercising judicial discretion. This would include decisions taken about whether or not to order a post-mortem examination or matters relating to the scope or conduct of inquests.
288. Under *subsection (3)*, the Chief Inspector must report to the Lord Chancellor on any matter related to the operation of the coroner system that the Lord Chancellor refers to the Chief Inspector. There is also provision (in section 60(5) of the Courts Act 2003) enabling an inspector to carry out the Chief Inspector's functions in the event that he or she is unable to do so.
289. Under *subsection (4)*, the section provides for inspectors to enter coroners' work premises and to take copies of any relevant records. Although they will be entitled to be present at inquests, under *subsection (5)* they will not be able to attend private deliberations, such as jury meetings, or inquests where there has been a direction to exclude persons under Coroners rules (see section 45(3)).
290. Where a report under *subsection (1)* or *(3)* recommends that action is taken by a senior coroner, there is power in *subsection (8)* for the Lord Chancellor to direct the senior coroner to take the action within a specified period.

Section 40: Appeals to the Chief Coroner

291. This section provides a right of appeal to the Chief Coroner against decisions that fall within *subsection (2)*. This right is only open to interested persons (as defined in section 47) although *subsection (5)* enables a person who the senior coroner decides is not classed as an interested person to appeal against the decision that he or she is not an interested person. If such an appeal is upheld by the Chief Coroner, then that person would also be entitled to appeal against the decisions listed in *subsection (2)*.
292. *Subsection (2)* sets out the decisions that can be appealed. Appeals can for example be made against a decision to conduct or not conduct an investigation, a decision to discontinue an investigation and a decision to resume or not resume an investigation, for example, once criminal proceedings or an inquiry under the Inquiries Act 2005 have concluded. It will be possible to appeal a coroner's decision not to request a post-mortem examination. A coroner's decision that a post-mortem examination is needed will not be subject to appeal however, except where a post-mortem of the same type has already been carried out. It will be possible to appeal against a decision as to whether an inquest is held with a jury.
293. A coroner's determination as to who the deceased was, and how, when and where the deceased came by his or her death (and, where relevant, the circumstances of the death) can also be appealed, as can his or her finding of details required for registration of the death.
294. *Subsection (3)* provides for interested persons to appeal decisions of the Coroner for Treasure (or Assistant Coroner for Treasure) in relation to treasure investigations.
295. *Subsection (6)* enables the Lord Chancellor to change the list of decisions in *subsection (2)* by making an order.
296. Rules under section 45 will set out the procedure for appeals to be made to the Chief Coroner.

297. This route of appeal is new. Under the previous law, there was no appeal as such against a coroner's decisions. An application could be made to the High Court under section 13 of the 1988 Act if a coroner refused to hold an inquest or where a fresh inquest is required. The High Court could compel a coroner to hold an inquest or quash the determination of a previous inquest and order a fresh inquest. Persons with sufficient interest could also apply for judicial review of a coroner's decision. However, there was no simple appeal route for bereaved people and other interested persons. This section provides a route of appeal to the Chief Coroner. It also replaces the statutory procedure of application to the High Court by giving the Chief Coroner power to compel a coroner to hold an inquest, or to amend or quash a determination or finding.
298. *Subsection (7)* allows the Chief Coroner to consider any evidence which he or she thinks is relevant to the substance of the decision, determination or finding against which an appeal has been brought. This can include considering evidence which relates to issues that arose after the decision, determination or finding was made.
299. If the Chief Coroner allows an appeal that is not an appeal against a finding or determination, he or she can substitute his or her own decision or quash the decision and refer it back to the senior coroner for a fresh decision. If the appeal is against a finding or determination, the Chief Coroner can amend it, or quash it and order a fresh investigation. If the appeal is against a failure to make a decision – for example, to conduct an investigation – the Chief Coroner can make the decision that could have been made or, again, refer the matter back to the senior coroner for him or her to make a decision. The Chief Coroner may also make any order he or she sees fit, including an order in relation to costs, although he or she has no authority in relation to the award of legal aid.
300. A decision of the Chief Coroner or a Deputy Chief Coroner may be appealed to the Court of Appeal, on a point of law only. The Court of Appeal can either confirm the decision made by the Chief Coroner, substitute its own decision or quash the decision and ask the Chief Coroner to make a fresh decision.
301. Different appeal arrangements apply when the person acting as coroner is a High Court or Circuit Judge, in which case the appeal is to the Court of Appeal or a High Court judge, respectively (see paragraph 4 of Schedule 10).

Section 41 and Schedule 10: Investigation by Chief Coroner or Coroner for Treasure or by judge, former judge or former coroner

302. This section gives effect to Schedule 10 which provides for the arrangements when an investigation into a death is to be conducted by the Chief Coroner or the Coroner for Treasure, or by a judge, former judge or former coroner, by invitation of the Chief Coroner.
303. The Chief Coroner can by virtue of *paragraph 1* personally conduct investigations. He or she can also arrange, with the permission of the Lord Chief Justice, for a judge (including a retired judge who has not reached the age of 70) to conduct an investigation. This will be appropriate when a case has particularly complex legal or factual characteristics, but it is envisaged that the power will be used sparingly. Arrangements can also be made for a retired or former senior coroner to conduct an investigation and this might be appropriate where backlogs have built up in a particular area or in an emergency situation.

Section 42: Guidance by the Lord Chancellor

304. This section enables the Lord Chancellor to issue guidance about how the coroner system is expected to operate for interested persons. It is intended that the first such guidance will be in relation to bereaved people, in the form of a Charter for the Bereaved, a draft of which was published on 14 January 2009. Further non-statutory guidance may be introduced for other classes of interested persons in the future.

*These notes refer to the Coroners and Justice Act 2009
(c.25) which received Royal Assent on 12 November 2009*

305. *Subsection (4)* specifies that the Lord Chancellor must consult the Chief Coroner before issuing, changing or withdrawing any such guidance.