duty to inquire arises under the *previous* legislation, as continued for this case by the interpretation legislation, and not under s.1 of the 2009 Act. It is to be hoped that no one challenges these provisions in the transitional period.

1–50 The statutory rules of the new system are supplemented by guidance from various sources. The Home Office previously wrote, and the Ministry of Justice now sends, circular letters and newsletters to coroners and other concerning developments in the coroner system, including new legislation. The Coroners' Society of England and Wales provides guidance to coroners. The newly appointed Chief Coroner has provided detailed guidance to coroners and local authorities on various matters relating to the new system, and also on legal matters. But it is clear that the principle that public authorities should follow principles that they have issued and not depart from them without giving clear reasons for doing so to persons affected[108] does not apply to such guidance.[108a]

Human Rights

1–51 Finally, an important dimension of the law of coroners' inquiries is the law of human rights. The Human Rights Act 1998 enables UK judges to measure domestic laws against an international standard, namely, the European Convention on Human Rights, 1950. The rights conferred by this convention are now, by virtue of the Act, mirrored by equivalent rights in English domestic law. Some of the provisions of this Convention impact on inquiries into death (not necessarily inquests), and have provided a legal basis upon which the law relating to coroners has been significantly developed. The subject is dealt with throughout this work where relevant, and in detail in a later chapter.[109]

[108] See *Gransden & Co Ltd v Secretary of State for the Environment* [1987] P. & C.R. 86. Also *R (McLeish) v North London Coroner* [2010] EWHC 3624 (Admin).
[108a] Cf. *R (McLeish) v North London Coroner* [2010] EWHC 3624 (Admin).
[109] Chapter 21 below.

Chapter 2

THE OFFICE OF CORONER

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Appointment 2–19
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Classification Of Coroners

Until 2013

2–01 Until 2013, coroners were of three kinds, namely:

(1) coroners ex officio, i.e. persons who were coroners by virtue of their office;

(2) franchise coroners;

(3) district (formerly called "county") coroners, each of which had a deputy, and might also have one or more assistant deputies, to cover for absence or unavailability.

Coroners ex officio

2–02 Coroners ex officio included the Lord Chief Justice and all the judges of the High Court.[1] Such coroners were said to have jurisdiction unlimited in England and Wales,[2] although in modern times there was no case of such jurisdiction being exercised. The Coroners Act 1988 contained a saving for "the jurisdiction of a judge exercising the jurisdiction of a coroner by virtue of his office",[3] but this has now been repealed,[4] and the only coroners who may in future exercise jurisdiction as such are those appointed (or treated as appointed) under the Coroners and Justice Act 2009 ("the 2009 Act").

[1] *Wardens and Commonalty of Sadlers' Case* (1588) 4 Co.Rep. 54b at 57b; *Barclee's Case* (1658) 2 Sid. 101; 4 Co.Inst. 73; 1 Bl.Comm. 355; Supreme Court of Judicature Act 1873 s.12; Coroners Act 1887 s.34; Senior Courts Act 1981 s.44; Coroners Act 1988 s.33(1). See also Short and Mellor, *Practice of the Crown Office* (1890), p.4.
[2] *Barclee's Case* (1658) 2 Sid. 101; *Halsbury's Laws of England*, 4th edn reissue, Vol.9(2), para.804.
[3] Section 33(1).
[4] Coroners and Justice Act 2009 s.178, Sch.23.

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Franchise coroners

2–03 By 2013 franchise coroners were almost entirely extinct. These were coroners who were not elected by the freeholders of a county, but who were appointed by a lord or other person having the right to appoint a coroner for "any town corporate, liberty, lordship, manor, university or other place".[5] The right of any person to appoint a franchise coroner was extinguished by a combination of the Coroners (Amendment) Act 1926[6] and the Local Government Act 1972,[7] save for three special cases, namely the Queen's coroner and attorney, the coroner of the Queen's Household,[8] and the coroner of the Scilly Isles.

The Queen's coroner and attorney

2–04 The office of the Queen's coroner and attorney survives, but no longer exercises any coronial function. It is said that the origins of the office may be traced back to the ancient office of Clerk to the Crown: at some time unknown it became a separate and distinct office,[9] appointed by letters patent.[10] Among his other duties, the holder took inquisitions on the bodies of all persons dying in the King's Bench Prison.[11] On the abolition of the Fleet and Marshalsea Prisons,[12] it was provided that the coroner for the City of London should hold inquests upon persons dying in the King's Bench Prison. Since then the Queen's coroner and attorney has had no place over which to exercise coronial jurisdiction.

2–05 In 1879 the Queen's coroner and attorney and the Master of the Crown Office were both transferred, with the then Crown Office of the Queen's Bench Division, to the Central Office of the Supreme Court.[13] In 1892 it was proposed to abolish the office, but apparently Lord Halsbury and Lord Coleridge CJ defeated the proposal "on account of the great antiquity of the office".[14]

2–06 In recent times the person appointed to this office has also been the Master of the Crown Office and the Registrar of Criminal Appeals.[15] As to the former office, in the first edition of this work in 1829, it was stated[16] that the Master of the Crown Office was coroner of the King's Bench, and this may be the origin of the close connection between the two offices. As to the latter, the office of Registrar of Criminal Appeals is now by statute combined with the office of Queen's coroner and attorney and Master of the Crown Office.[17] The Queen's coroner and attorney and Master of the Crown Office is by virtue of his appointment a Master of the Queen's Bench Division.[18]

2–07 To be qualified for the appointment, a candidate must be a barrister or solicitor of not less than 10 years' standing,[19] and the appointment is made by the Lord Chancellor, with the concurrence of the Minister for the Civil Service (usually the Prime Minister) as to salary.[20] A full-time holder of this office may not provide advocacy, litigation, conveyancing or probate services, practise (or be involved in practice) as a UK lawyer, nor act as a remunerated arbitrator or umpire.[21]

Coroner of the Queen's Household

2–08 The coroner of the Queen's Household was originally called the coroner of the verge. He had exclusive jurisdiction within a circuit of 12 miles ("the verge") around the residence of the monarch's (movable) court. Although exclusive jurisdiction was given to him in respect of deaths within the precincts of the palace or house where the King was actually resident,[22] at an early date the jurisdiction of the coroner of the verge outside those precincts and within the verge became concurrent with that of the county coroner.[23]

2–09 Then in 1887 that part of his jurisdiction was completely transferred to the relevant county or borough coroner,[24] leaving him with exclusive jurisdiction in respect of inquests[25] on persons whose bodies were lying within the limits of any of the Queen's palaces or within the limits of any other house where Her Majesty was then residing.[26] The inquests into the deaths of Diana, Princess of Wales, and Dodi Fayed led to considerable litigation concerning aspects of the office of coroner of the Queen's Household.[27] But in 2013 the office was abolished,[28] as part of the general reform of the coroner system.

Coroner for the Scilly Isles

2–10 The coroner for the Scilly Isles was formerly a franchise coroner appointed by the Prince of Wales as Duke of Cornwall. As a result of the Local Government Act 1972, which applied to the Scilly Isles only in 1978,[29] the council of the Scilly Isles obtained power to appoint its coroner in the same way as any county council,[30] and

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[5] See the definition of "franchise coroner" in s.43 of the Coroners Act 1887 (repealed), and the discussion in the 7th edn (1927), of this work, at 101–104.
[6] Section 4.
[7] Section 220(1).
[8] Local Government Act 1972 s.220(2).
[9] See Hunnisett, *The Medieval Coroner* (1961) p.149.
[10] *Vyntners'* case (1558) 2 Dyer 150b.
[11] Originally in Borough High Street and later in St George's Fields, Southwark. Notable prisoners included John Wilkes, Tobias Smollett, Lord Cochrane and the King of Corsica.
[12] Queen's Prison Act 1849 s.19; Prison Act 1865 s.48.
[13] Supreme Court of Judicature (Officers) Act 1879 ss.5, 6.
[14] See the 7th edn (1927), of this work, at p.102 (repeated in the 8th and 9th editions).
[15] See *Halsbury's Laws of England*, 5th edn, Vol.24 at [745].
[16] At p.4.
[17] Courts and Legal Services Act 1990 s.78(1).
[18] Senior Courts Act 1981 s.89(2).
[19] Senior Courts Act 1981 Sch.2 Pt II para.2.
[20] Supreme Court Act 1981 s.89(1).
[21] Courts and Legal Services Act 1990 s.75 Sch.11.
[22] Offences within the Court Act 1541 s.3; Coroners Act 1887 s.29(2).
[23] Inquests within Verge, etc. Act 1399 ("*Articuli super cartas*").
[24] Coroners Act 1887 s.29(4) Sch.3, repealing the Inquests within Verge, etc. Act 1300; see now Coroners Act 1988 s.29(3).
[25] And, presumably, inquiries which did not lead to inquests: Coroners Act 1988 Sch. 2 para.5.
[26] Coroners Act 1988 s.29(2). The Queen's palaces included Buckingham Palace, St James's Palace, Windsor Castle, Kensington Palace, Hampton Court Palace, and Sandringham House. The Palace of Westminster, however, was not a royal palace, and came within the jurisdiction of the Westminster coroner. The 1988 Act applied to England and Wales only (s.37(3)), and hence palaces in Scotland or elsewhere were not included.
[27] See, e.g. *Paul v Deputy Coroner of The Queen's Household* [2007] EWHC 408 (Admin).
[28] Coroners and Justice Act 2009 s.46.
[29] Local Government Act 1972 s.265(2); the Isles of Scilly Order 1978 (SI 1978/1944), Sch., inserting a new subs.(3A) into s.220 of the 1972 Act for the purposes of the Act's application to the Isles of Scilly.
[30] Local Government Act 1972 s.34(1), but subject to s.34(2).

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the coroner thereafter could no longer properly be regarded as a franchise coroner.

District coroners

2–11 Except for the dwindling number of special cases previously mentioned, all coroners in 2013 were ordinary coroners, and there was no hierarchy among them. (Their deputies and assistant deputies did not hold separate offices, but were merely persons who could deputise for them in their office.) Formerly coroners were elected by the freeholders of the county or the burgesses of the borough (as the case might be). Such election was subsequently replaced by appointment by the county or borough council.[31]

2–12 Borough coroners were abolished on April 1, 1974, consequent upon the reorganisation of local government,[32] although since 1985 certain coroners had been appointed by metropolitan district or London borough councils as if they were non-metropolitan county councils.[33] The legislation in force before 1988 referred to all these remaining non-franchise coroners as "county coroners", but the Coroners Act 1988 did not, so the preferable course was to refer to them as "district" coroners.

From 2013

2–13 From 2013, the classification is completely changed. The ex officio and franchise coroners are gone, and there is a new and distinct hierarchy of coroners:

(1) the Chief Coroner;

(2) the Coroner for Treasure;

(3) senior coroners;

(4) area coroners;

(5) assistant coroners, and assistant coroners for treasure.

The Chief Coroner

2–14 For the first time, the coroner system in England and Wales has a national head, the Chief Coroner, who must be a serving judge. He is given many powers and duties under the 2009 Act, but in general terms his responsibilities include providing leadership and guidance[33a], setting standards, and developing training for coroners and their staff, directing investigations to be undertaken, monitoring certain investigations and also coroners' reports, overseeing the transfer of cases between coroners, keeping registers of lengthy investigations, and reporting to the Lord Chancellor. He may also conduct investigations and inquests himself. The 2009

[31] Local Government Act 1888 s.5(1). See 1–12 above.
[32] Local Government Act 1972 s.220(1).
[33] Local Government Act 1985 s.13(2); Coroners Act 1988 s.1.
[33a] See *www.judiciary.gov.uk/related-offices-and-bodies/office-chief-coroner/guidance-law-sheets/*.

Act also confers power to appoint deputy chief coroners to assist the Chief Coroner.[34]

The Coroner for Treasure

2–15 The Coroner for Treasure is a further innovation of the 2009 Act. It is a national post, and not local or territorial. All cases of treasure in England and Wales will be reported to him, and he or his assistants will deal with any necessary investigations or inquests. However, the provisions of the 2009 Act concerning the Coroner for Treasure have not been brought into force with the remainder of Pt I, because of a lack of resources, and for the moment the provisions relating to treasure in the 1988 Act continue to apply.[35]

Senior coroners

2–16 Under the 2009 Act, pre-existing coroner "districts" have become coroner "areas".[36] Each such area has a senior coroner.[37] The first such senior coroners were the coroners in office under the old system when the new one came into force.[38] The intention is that, through amalgamation of existing areas over time, each area will have a caseload such that the senior coroner will be a full-time appointment. Although coroner areas are based on local government districts, most of them will ultimately cover several local government districts. The functions of senior coroners may be performed by area and assistant coroners when the senior coroner is absent or unavailable, or the senior coroner consents, and hence references in the legislation to a senior coroner include references to an area or assistant coroner.[38a]

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Area coroners

2–17 The area coroner is also an innovation of the 2009 Act, although in limited respects the office resembles that of the deputy coroner under the old system. An area coroner is a coroner for a particular coroner area,[39] appointed by the local authority, and in effect takes a part of the coroner workload.[39a] The introduction of this post (which may be full- or part-time) facilitates the creation of a team of coroners for busy coroner areas. If a vacancy occurs in the office of senior coroner, the area coroner (or one of them, if there is more than one) steps in to perform that role until the vacancy is filled.[40] However, it is not clear whether an area coroner can be appointed without an order having been made by the Lord Chancellor so to require.[41]

[34] See 2–20.
[35] See 16–20.
[36] See 2–30, 4–01.
[37] Coroners and Justice Act 2009 s.23 Sch.3 para.1.
[38] Coroners and Justice Act 2009 s.177 Sch.22 para.3. See 2–40.
[38a] Coroners and Justice Act 2009 s.23 Sch.3 para.8.
[39] See 2–30, 4–01.
[39a] Coroners and Justice Act 2009 s.23 Sch.3 para.8; see 2–16, 2–25.
[40] See 2–24.
[41] See 2–26.

Assistant coroners, and assistant coroners for treasure

2–18 Each coroner area[42] has at least one assistant coroner, to cover for the absence or unavailability of the senior coroner, or simply to assist in the workload.[43] This post is the functional equivalent of the old deputy and assistant deputy coroners. The main difference is that assistant coroners are appointed by the local authority and not the coroner himself. Assistant coroners for treasure are designated by the Chief Coroner from among assistant coroners,[44] and fulfil similar functions in relation to the Coroner for Treasure.[45]

APPOINTMENT[46]

The Chief Coroner

2–19 There is no requirement by law to appoint a Chief Coroner, even though the statutory scheme contemplates the existence of one. The 2009 Act in fact provides that the Lord Chief Justice *may* appoint a person as the Chief Coroner,[47] for a term decided by him, but which must expire before the appointee's 70th birthday.[48] The Lord Chief Justice must consult the Lord Chancellor over both the appointment and the term.[49] To be eligible for appointment, a person must be a High Court or circuit judge, and under the age of 70.[50] Provided he remains eligible, the Chief Coroner can be reappointed at the end of a term of office.[51] Because there is no requirement for an appointment at all, there is no statutory machinery for dealing with a vacancy in the office. The Lord Chief Justice *may* appoint another person, using the same procedure.

2–20 There is provision for the appointment of one or more deputy chief coroners,[52] although the Lord Chief Justice must first consult the Lord Chancellor as to how many deputy chief coroners should be appointed, and according to which criteria of eligibility.[53] There are in fact two separate levels of eligibility for appointment. The first is the same as for the Chief Coroner (i.e. High Court or circuit judge), and the appointment process is identical to that for the Chief Coroner.[54]

2–21 The second is that a person must be a senior coroner or the Coroner for Treasure, and under the age of 70. In this case the appointment is made by the Lord Chancellor after consulting the Lord Chief Justice, but otherwise the process is the

[42] See 2–30, 4–01.
[43] Coroners and Justice Act 2009 s.23 Sch.3 para.8. See 2–16, 2–27.
[44] See 2–29.
[45] Coroners and Justice Act 2009 s.25 Sch.4 para.11.
[46] See the Chief Coroner's Guidance, *How to become a coroner.*
[47] Coroners and Justice Act 2009 s.35 Sch.8 para.1(1).
[48] Coroners and Justice Act 2009 s.35 Sch.8 para.1(4).
[49] Coroners and Justice Act 2009 s.35 Sch.8 para.1(3), (4).
[50] Coroners and Justice Act 2009 s.35 Sch.8 para.1(2).
[51] Coroners and Justice Act 2009 s.35 Sch.8 para.1(5).
[52] Coroners and Justice Act 2009 s.35 Sch.8 para.2(1).
[53] Coroners and Justice Act 2009 s.35 Sch.8 para.2(3).
[54] Coroners and Justice Act 2009 s.35 Sch.8 para.2(2), (4), (5), (8)).

same as for the Chief Coroner.[55] Again, because there is no *requirement* for an appointment of deputy chief coroners at all, there is no statutory machinery for dealing with a vacancy in the office. However, no deputy chief coroners have so far been appointed, and there are no current plans to appoint any.

The Coroner for Treasure

2–22 Once the relevant provision has come into force, the Lord Chancellor may appoint a person as the Coroner for Treasure in relation to England and Wales.[56] To be eligible, a person must be under the age of 70, and satisfy the judicial-appointment eligibility condition[57] on a five-year basis.[58] Once again, because there is no requirement for an appointment at all, there is no statutory machinery for dealing with a vacancy in the office. The Lord Chancellor may appoint another person, using the same procedure. However, as mentioned above,[59] lack of resources means that there are no plans at present to bring the relevant provision into force.

Senior coroners

2–23 The relevant authority[60] for each coroner area,[61] after consulting other local authorities whose areas fall within the coroner area in question,[62] must appoint a senior coroner for that area,[63] but only with the consent of the Lord Chancellor and the Chief Coroner.[64] The Chief Coroner has issued guidance for local authorities on the appointment process.[65] To be eligible, a person must be under the age of 70, and satisfy the judicial-appointment eligibility condition[66] on a five-year basis,[67] but must not be (or within the last six months have been) a councillor[68] for any local authority whose area falls within the coroner area in question.[69]

2–24 If a vacancy occurs in the office of senior coroner, the relevant authority must notify the Lord Chancellor and the Chief Coroner in writing as soon as practicable,[70] must appoint a successor within three months (extendable by the Lord Chancellor) of the vacancy occurring,[71] and must notify the Lord Chancellor and the Chief Coroner in writing of the appointment as soon as practicable.[72]

[55] Coroners and Justice Act 2009 s.35 Sch.8 para.2(2), (6)–(8).
[56] Coroners and Justice Act 2009 s.25 Sch.4 para.1.
[57] See 2–34.
[58] Coroners and Justice Act 2009 s.25 Sch.4 para.2.
[59] See 2–15.
[60] See 2–32.
[61] See 2–15, 2–30, 4–01.
[62] Coroners and Justice Act 2009 s.23 Sch.3 para.1(2).
[63] Coroners and Justice Act 2009 s.23 Sch.3 para.1(1).
[64] Coroners and Justice Act 2009 s.23 Sch.3 para.1(3).
[65] *Chief Coroner Guidance No. 6*, 24 July 2013.
[66] See 2–34.
[67] Coroners and Justice Act 2009 s.23 Sch.3 para.3.
[68] In relation to the Common Council of the City of London, the term "councillor" includes both an alderman of the City and a common councillor: Coroners and Justice Act 2009 s.23 Sch.3 para.4(2).
[69] Coroners and Justice Act 2009 s.23 Sch.3 para.4(1).
[70] Coroners and Justice Act 2009 s.23 Sch.3 para.5(2)(a).
[71] Coroners and Justice Act 2009 s.23 Sch.3 para.5(2)(b).
[72] Coroners and Justice Act 2009 s.23 Sch.3 para.5(2)(c).

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Chapter 10

THE INQUEST: PRELIMINARIES

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Status of the Court

10–01 The coroner's court today is an (inferior) court of record.[1] A court of record is one of which the acts and judicial proceedings are enrolled in its archives and are conclusive evidence of what is recorded. Amongst the incidents pertaining to a court of record are the power to commit a person to prison for contempt of court,[2] and immunity for the judge for acts done by him in the execution of his duty as a judge.[3] However, the coroner's court is a court of a peculiar kind, being *inquisitorial* in function rather than accusatorial.[4]

10–02 This gives rise to certain important differences in procedure, compared with the ordinary civil and criminal courts, some of which have already been referred to,[5] or which will be adverted to in due course.[6] There is also the consequence that the inquest verdict is not binding on any person raising the same issue in subsequent litigation.[7] A court endowed with a particular jurisdiction inherently has powers "which are necessary to enable it to act effectively within such jurisdiction".[8] This

[1] 1 Britton c. 2, ss.1, 17; 4 Co. Ins. 271; Com. Digest., *Officer*, G.5; *Garnett v Ferrand* (1827) 6 B. & C. 611; 108 E.R. 576; *Thomas v Churton* (1862) 2 B. & S. 475 at 478; *Chippett v Thompson* (1868) 7 N.S.W. S.C.R. 349; *R. v Hammond* (1899) 29 Ont. 211, 215; *Davidson v Garrett* (1900) 30 Ont. 653 at 656; *Halsbury's Laws of England* 4th edn, Vol.9(2) (reissue), para.802 at 917; *Faber v The Queen* (1975) 65 D.L.R. (3d) 423 (Sup.Ct. (Can.)); *Attorney General v BBC* [1981] A.C. 303 at 342, 355–356; *R. v West Yorkshire Coroner Ex p. Smith (No. 2)* [1985] Q.B. 1096, DC; cf. *Jewison v Dyson* (1842) 9 M. & W. 540, 586, 152 E.R. 288 at 247, per Lord Abinger CB.

[2] See 11–89 ff below.

[3] See 2–120 ff above.

[4] See 1–18 ff above.

[5] See 8–21 ff below.

[6] See 10–25, 10–64, 11–21, 12–61, 12–71, 12–106 below.

[7] See 20–02 below. The Irish Supreme Court has suggested that a coroner's court in holding an inquest is not exercising the judicial power of the state: *Morris v Dublin City Coroner* [2000] 3 I.R. 602 and [11], Irish Sup.Ct. But this seems wrong in principle.

[8] *Connelly v DPP* [1964] A.C. 1264 at 1301 per Lord Morris.

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notion of inherent jurisdiction applies to inferior courts, such as the county court,[9] so there is no reason for it not to apply to the coroner's court.[10]

10–03 One important procedural difference is that there are no parties to an inquest, as there are to criminal or civil litigation. Instead, there are only "interested persons", who have greater rights at the inquest than do ordinary members of the public. In particular, they have the right to examine witnesses at an inquest, either in person or through a representative.[11] There is no definition of "representative", and it does not appear to be confined to a qualified lawyer, but the coroner is the master of his own procedure[12] and it will be for him to decide whether to hear a particular person as a representative of an interested person. The concept of the "interested person" has already been discussed.[13]

OPENING AND ADJOURNING THE INQUEST

10–04 Under the old system until 2013, the whole of the coroner's investigation was referred to as the "inquest". Once he had come under a duty to inquire, the first step taken by a coroner was to "open" the inquest, and then, in practice, immediately to adjourn it.[14] But it is different under the new system. The coroner who comes under a duty to inquire must as soon as practicable conduct an investigation,[15] which may or may not lead to a court hearing or hearings. It is that part of the investigation comprising the court hearing or hearings that is henceforward to be known as "the inquest".[16]

10–05 A senior coroner who conducts an investigation must as part of that investigation hold an inquest,[17] unless the investigation is discontinued,[18] or the investigation is transferred to another coroner[19] (but in the latter case, if there is to be an inquest, the other coroner will have to hold it). An inquest must be opened as soon as reasonably practicable after the date on which the coroner considers that the duty to hold one applies.[20]

10–06 In practice there are three classes of case. In the first class, the coroner is informed of a death in custody, or of certain kinds of violent death (e.g. from gunshot wounds, or a fall from a height). In such a case the coroner knows right from the beginning both that there is a duty to investigate, and also that the

[9] *Langley v North West Water Authority* [1991] 1 W.L.R. 697, CA.

[10] See e.g. *R. v North Humberside Coroner Ex p. Jamieson* [1995] Q.B. 1: the coroner "must set the bounds of the inquiry. He must rule on the procedure to be followed". And in *R. v Lincoln Coroner Ex p. Hay* [2000] Lloyd's Rep. Med. 264, the Divisional Court said: "it is for each coroner to decide how best he should perform his onerous duties in a way that is as fair as possible to everyone concerned".

[11] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.19(1).

[12] See e.g. *R. v North Humberside Coroner Ex p. Jamieson* [1995] Q.B. 1, CA.

[13] See 8–21.

[14] See 12th ed, 10–01.

[15] See 5–01, 8–18.

[16] See 10–05.

[17] Coroners and Justice Act 2009 s.6. See Chs 11, 12.

[18] Coroners and Justice Act 2009 s.4. See 8–36.

[19] Coroners and Justice Act 2009, ss 2,3. See 4–22.

[20] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.5(1).

investigation will not be capable of being discontinued. There will have to be an inquest, and the coroner must open one as soon as practicable.

10–07 In the second class, the coroner is informed of a possible violent or unnatural death (e.g. a potential suicide or a road traffic accident). In some such cases the coroner will need to make further enquiries to establish that it was indeed a violent or unnatural death and not for example one with a natural cause (e.g. a stroke or heart attack at the wheel). So in such a case the coroner does not necessarily know that there will not be a discontinuance. He does not open an inquest until he knows that that will not happen, because after opening an inquest he loses the power to discontinue.[21] After a post-mortem examination and any other tests have been completed, he will usually know whether discontinuance will occur, and if it will not he must open an inquest as soon as practicable.

10–08 In the third class of case, the coroner is informed of a death of at present unknown cause. This may be because no medical certificate of the cause of death is available, but certainly there will be no reason to suspect that the death occurred in custody or was violent or unnatural. Again, after post-mortem examination and other tests the coroner may discontinue, and there will be no inquest.[22] But if he does not discontinue, he will know that there must be an inquest, and must open one as soon as practicable thereafter.

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10–09 The opening of the inquest is an important milestone. Proceedings are then "live" for contempt purposes.[23] The coroner must open the inquest in public,[24] unless he does not have immediate access to a court room or other appropriate premises, in which case he may open it privately and then announce that it has been opened at the next inquest hearing held in public.[25] There is no requirement that the coroner notify anyone of his intention to open the inquest. Although the coroner must notify certain persons,[26] and keep a recording,[27] of every "inquest hearing", in the latter case including any pre-inquest review hearing, these rules do not apply to inquest *openings* which do not go on to deal with the substance of the case, because they are not "inquest hearings" within the rules.[28] If they did, it would be impractical, at least for those inquests permitted to be opened in private, because the court recording equipment is usually not easily transportable.

10–10 At the opening, the coroner must where possible set the dates for subsequent hearings to take place.[29] In practice, where a coroner considers that the preparation for the inquest will (or may) be completed by a certain time he simply sets a date for the inquest to take place. This will usually be within the six-month time limit for the completion of inquests.[30] Where matters are too uncertain to do that (e.g.

[21] Coroners and Justice Act 2009 s.4(1)(a). See 8–36.

[22] Coroners and Justice Act 2009 s.4(3)(a). See 8–38.

[23] See 11–92 below.

[24] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.11(1).

[25] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.11(2).

[26] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.9. See 10–22.

[27] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.26. See 12–104.

[28] If they were, r.11(1) and (2) would be otiose. Also, r.26 specifically refers to pre-inquest review hearings, but not openings. The *Chief Coroner's Guide to the Coroners and Justice Act 2009*, November 2013 para.145, takes the same view. The Chief Coroner's Guidance No. 4, on *Recordings* para.1, however advises that recordings should be kept of openings as well, "where practicable".

[29] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.5(2).

[30] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.8. See 10–14.

because there may be criminal proceedings first, or because it is not clear who will be interested persons or what the issues are likely to be) he may at least fix a date or dates to review the case in court. This serves to focus minds on what needs to be done.

10–11 Apart from that, the further purposes of the opening will depend to some extent on the coroner. At its simplest, it is just to take evidence of identification of the deceased (including information needed for registration of the death), and to deal with any outstanding applications for the release of the body, if not already given.[31] If it is a homicide case[32] a police officer may attend to tell the coroner formally of the progress of the police enquiry, and may have something to say in relation to the question of release of the body.[33] Sometimes preliminary evidence of the medical cause of death is given as well, where it is desirable that this be made public at this stage.[34] Some coroners require more than this to be given in evidence, for example details of the original report of the death, details of the autopsy and of any tissue retention, and wishes for tissue disposal and funeral. But it is hard to see that it is appropriate either to admit some of this information as evidence at this stage (or in some cases at all),[35] or to make it public.[36]

10–12 A relative or other identifying witness may attend the opening to give the relevant evidence on oath, although usually the coroner's officer gives hearsay evidence[37]—oral or in statement form—of the identification to him by the identifying witness and the other information required by the coroner. It is not normally a lengthy or contentious hearing, and there is normally no need for representation. Once the relevant business has been transacted, the inquest hearing is adjourned to the next hearing date, or a date to be fixed. It is a convenient moment for the next of kin or personal representative to ask for and be given a certificate of the fact of death.[38]

10–13 The coroner's power to adjourn the inquest from time to time is considered in detail later[39]. But there are a number of cases where, whether an inquest has been opened or not, the coroner is obliged to suspend the investigation, and to adjourn any inquest being held as part of that investigation. For convenience, these cases are briefly mentioned now, and fully dealt with later in this chapter, since chronologically this is the point in time at which they are most likely to fall to be considered. They are (i) cases involving visiting forces,[40] (ii) cases where any criminal proceedings arising out of the death are pending or envisaged,[41] and (iii) cases where a public inquiry is to be held into the events surrounding the death.[42]

[31] See 9–11, 9–17, 14–18. But often these have already been dealt with.
[32] See Ch.14.
[33] See 14–18 below.
[34] See 7–02 ff.
[35] Since not relevant to the inquiry into who, how, when and where: cf. Coroners (Inquest) Rules 2013 (SI 2013/1616) r.19(2). The coroner does of course need to know all this, but not as part of the inquest.
[36] cf. 7–02 ff.
[37] See 12–79.
[38] See 8–20.
[39] See 11–36 ff.
[40] See 10–74.
[41] See 10–75—10–80.
[42] See 10–81.

The other cases of compulsory adjournment of the inquest[43] are likely to occur at or during the resumed inquest hearing itself, and are dealt with elsewhere.[44]

TIME OF INQUEST

10–14 Early cases held that a coroner must not permit a body to putrefy by delaying the holding of an inquest.[45] Nowadays, where the right to life[46] is engaged, the investigation and any inquest must "commence promptly and [be] pursued with reasonable expedition".[47] The statutory rule is that a coroner must complete an **inquest** within six months of the date on which he is made aware of the death, or as soon as reasonably practicable after that date.[48] It is an aspirational rather than an absolute obligation, and there will be cases where it is not possible to complete an inquest within six months, or even longer. However, if the **investigation** has not been completed or discontinued within a year, the coroner must notify the Chief Coroner of the fact, and then also notify him when it is completed or discontinued.[49]

10–15 An inquest must be held[50] on a working day, unless the coroner considers that there is an urgent reason for holding it on another day.[51] Circumstances that might justify such a decision are, for example, that one of the witnesses proposed to leave the country the following day. An inquest should not be held late in the evening or at any hour that may cause inconvenience to any of those such as jurors or witnesses who will have to attend.[52] It is a matter for the coroner as to how much time is set aside for the inquest.[53]

PLACE OF INQUEST

10–16 Formerly, the inquest had to be held within the district of the coroner originally having jurisdiction,[54] except where jurisdiction had been transferred from one coroner to another pursuant to statute,[55] when it had to be held within the district

[43] See 11–36 ff.
[44] See 11–36 ff.
[45] *Re Hull* (1882) 9 Q.B.D. 689.
[46] Under the European Convention on Human Rights art.2 (deaths through state agency or in state custody); see 21–15 ff below.
[47] *Jordan v United Kingdom* (2001) 11 B.H.R.C.1, ECtHR; *McShane v United Kingdom* Unreported May 28, 2002, ECtHR; *Re Morgan's Application for Judicial Review* [2006] NIQB 82.
[48] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.8.
[49] Coroners and Justice Act 2009 s.16(1). See Coroners (Investigations) Regulations 2013, SI 2013, No. 1629, reg.26. See 2–51.
[50] It is assumed that "held" includes any part of the proceedings, including the opening (as to which see 10–01).
[51] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.7, formerly Coroners Rules 1984 r.18. This rule does not apply to a coroner's ministerial acts: *Mackalley's Case* (1611) 9 Co. Rep. 650; so a burial or cremation order, or out of England order, can be given.
[52] See 13–11 below.
[53] *Re Chaudhari's Application* Unreported, September 10, 2001, Elias J.
[54] Coroners Act 1988 s.5(2); as to territorial jurisdiction, see Ch.4.
[55] Coroners Act 1988 s.14.

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of the latter and not the former coroner.[56] This restriction was abolished on February 12, 2013,[57] and has not been repeated in the new coroner system. So a coroner for a particular area can hold an inquest anywhere in England and Wales. The choice of the particular place where the inquest is to be held is in principle at the discretion of the coroner,[58] and not, for example, at that of his funding local authority.[59] Even so, the coroner must "exercise his discretion judicially, bearing in mind that the inquest is to be held in public and the purpose of the inquest".[60] Thus, a decision infringing this principle would be liable to be quashed on an application for judicial review.[61]

Council provision of accommodation

10–17 Funding local authorities must provide or secure the provision of accommodation appropriate to the needs of coroners carrying out their functions.[62] This will include the holding of inquests. Even before 2013, however, it was usual in practice for the council also to provide the accommodation for the inquest.[63] However, this does not give the authority any power to determine where inquests should be held.[64]

Convenience of witnesses, and interested persons[65]

10–18 As stated above, the coroner may sit anywhere in England and Wales. In practice, the occasions on which he will sit outside his area will be rare,[66] unless he has his regular accommodation in a nearby area. Where the coroner's area is very large, the coroner may be able to sit conveniently near the witnesses and interested persons concerned, so as to save them expense and time in attending the inquest. In exceptional cases, however, where local feelings are running high, it may be desirable for the inquest to be held in some other part of the coroner's area.[67] Where the inquest is to be held with a jury,[68] and perhaps even where it is not, it may be undesirable to hold it in premises with excessive public accommodation, in

[56] Coroners Act 1988 ss.14(7), 5(2).
[57] Coroners and Justice Act 2009 s.178 Sch.23 Pt I, and Coroners and Justice Act 2009 (Commencement No. 11) Order 2013 (SI 2013/250) art.2, repealing Coroners Act 1988 s.5(2)(a); Chief Coroner's Guidance No. 2, *Location of Inquests*.
[58] Historically, in the case of a judicial execution it appears to have been the invariable practice to hold the inquest within the prison where the execution took place: cf. the Capital Punishment Amendment Act 1868 s.5.
[59] *R. v Inner London Coroner Ex p. Chambers*, *The Times*, April 30, 1983, Woolf J.
[60] *R. v Inner London Coroner Ex p. Chambers*, *The Times*, April 30, 1983, Woolf J.
[61] *R. v Inner London Coroner Ex p. Chambers*, *The Times*, April 30, 1983, Woolf J, and see Ch.19. See also *Aplin v McIntyre* [2002] Q.S.C. 288.
[62] Coroners and Justice Act 2009 s.24(1)(b), replacing Coroners Act 1988 s.31, itself replacing Local Government Act 1985 s.13(7), and before that London Government Act 1963 s.78(3).
[63] See the Home Office's *Coroner Service Survey* (Research Study 118) (1998), p.17.
[64] *R. v Inner London Coroner Ex p. Chambers*, *The Times*, April 30, 1983.
[65] As for jurors, see 10–42.
[66] cf., e.g. *St Edmundsbury & Ipswich Diocesan Board of Finance v Clark* [1973] Ch. 323 (whether the High Court Chancery Division should sit in a village hall outside London to hear the evidence of a frail witness).
[67] *R. v Inner London Coroner Ex p. Chambers*, *The Times*, April 30, 1983.
[68] For these cases, see 10–34 below.

case the atmosphere becomes emotionally charged or even oppressive to the jury (or coroner).[69]

Where no regular court room available

10–19 In areas where no regular courtroom is available, it has been usual in the past to utilise schoolrooms, council offices, or a room in a hospital or other public institution, a hotel or even a private house.[70] Theoretically, an inquest can even be held in the open air. The sole constraint used to be that it could not be held in any licensed premises or in a room in a building part of which is licensed premises, if any other suitable place was provided,[71] but this rule was repealed in 2005.[72]

Change in location of proceedings

10–20 It is not necessary that all the proceedings of an inquest should occur at the same place. Thus some part of the proceedings may occur in one place and the rest in another.[73]

NOTICE OF INQUEST[74]

10–21 Where an inquest hearing is to be held, the coroner must make details of the date, time and place of the inquest hearing[75] *publicly available* before the hearing commences,[76] and must make the details of any alteration in those arrangements *publicly available* within one week of the decision to alter.[77] But making "publicly available" does not mean taking positive steps to notify anyone. The coroner may exhibit beforehand a public notice at the place of inquest or elsewhere, or post a notice on an internet website. In each case, it is possible that no one might pass by the building, or visit the website, and thus see the notice, though if anyone did so they should be able to find it. Similarly the coroner might simply arrange for his officer to give out the details in response to enquiries from the media, if any are made.[78] The details are just as "publicly available".

[69] See *R v Inner North London Coroner Ex p. Chambers*, above.
[70] See the Home Office's *Coroner Service Survey* (Research Study 118) (1998), p.17.
[71] Licensing Act 1964 s.190(3).
[72] Licensing Act 2003 Sch.7 para.1 (SI 2005/3056) (as from November 24, 2005).
[73] 2 Hawk. P.C. 19 s.25; cf. *R. v Hinde* (1844) 5 Q.B. 944.
[74] *Chief Coroner's Guide to the Coroners and Justice Act 2009* at [110]–[112].
[75] This does not apply to a pre-inquest hearing: cf. Coroners (Inquests) Rules 2013 (SI 2013/1616) rr.11(3), 26.
[76] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.9(3).
[77] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.10(2).
[78] Both the Brodrick Committee (15–19) and the Working Party on the Coroners Rules (2nd Report, April 30, 1980, paras 37–40) were urged by press representatives to recommend formalising and strengthening the informal arrangements which usually exist for the benefit of the media. Neither body so recommended, the Working Party saying that they "did not consider that the Press should be given a special position under the Coroners Rules". Nonetheless, the Home Office view was that the spirit of the existing informal position whereby the local media were normally informed of inquest arrangements should be given effect where possible: Home Office Circular No. 53 of 1980, paras 19 and 20. As to media relations with coroners in Australia, see Waterford, in Selby (ed.), *The Inquest Handbook* (1998), Ch.5.

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Persons to receive notice

10–22 In addition to the requirement to make inquest details publicly available, a coroner must notify the next of kin or personal representative,[79] and any other interested persons[80] who have made themselves known to the coroner, of the date, time and place of the inquest hearing within one week of setting the date.[81] Under the old rules, the coroner had to give notice of the time and place of the inquest to any other person whose conduct was likely in the coroner's opinion to be called into question at the inquest.[82] But this rule has not been carried over into the new system, on the basis that such persons will be interested persons and notified anyway.[83] In this connection strict adherence to the letter of the rules does not necessarily mean that fairness has resulted.[84] The Home Office formerly encouraged coroners to make reasonable inquiries to establish contact with relatives with a proper interest in the death.[85]

10–23 In the case of death through certain industrial accidents or diseases, notification of the inquest has to be given to an inspector or enforcing authority.[86] Such persons too fall within the definition of "interested person".[87] In 1981 the Home Office made a blanket request to coroners to notify such persons of the opening of an inquest, and for that purpose supplied them with telephone numbers and addresses.[88] This request may have had some effect at the time, but cannot now satisfy the provisions referred to in the previous paragraph, and so put the coroner under an obligation to notify such persons of the opening of the inquest.[89] The coroner may (not must) also consider giving notice to any relevant trade union

[79] For the meaning of these expressions, see 8–29 ff.
[80] For the meaning of this expression, see 8–22.
[81] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.9(1), (2); formerly Coroners Rules 1984 r.19(b). The Home Office supplied coroners with the addresses and telephone numbers of all relevant inspectors or enforcing authorities for this purpose (Home Office Circular No. 3 of 1981), but, whether or not this was a sufficient compliance with the old rule, it cannot be one for the purposes of the new. No one can claim to be an interested person before the death has occurred. If any person to be notified is in prison or other place of detention, the coroner should notify the prison governor (or similar person) as early as possible of the date of the inquest so that the necessary arrangements may be made; however, this need not be done where the inquest is to be opened and immediately adjourned under the Coroners (Amendment) Act 1926 s.20 (now the Coroners and Justice Act 2009 s.11 Sch.1 para.2, formerly Coroners Act 1988 s.16): Home Office Circular No. 68 of 1955 para.14; Home Office Circular No. 5 of 1972.
[82] Coroners Rules 1984 r.24. Indeed, in *R. v Davies* [2011] EWCA Crim. 871, the Court of Appeal in a manslaughter case held that "fairness" demanded that the coroner having formed a preliminary view on the papers that the likely conclusion would be unlawful killing should have informed the solicitors for the suspect of that view.
[83] Strictly this is not quite correct: to fall within the notification rule the person must have made himself known to the coroner; the old rule was absolute.
[84] *Re Price's Application* [1986] N.I. 390, CA (NI); *Re McKerr's Application* [1993] N.I. 249, CA (NI).
[85] See Home Office letter to coroners of April 30, 2002 (sent with Newsletter No. 38 of the same date): "this may entail making enquiries of a range agencies [*sic*] or organisations to which relatives may have given their contact details." Cf. 8–60 above (obligation to notify persons of post-mortem examination).
[86] See Ch.15.
[87] Coroners and Justice Act 2009 s.47(2)(l); see 8–22.
[88] Home Office Circular No. 3 of 1981.
[89] The request was made in relation to the earlier legislation. Moreover, no one can claim to be an interested person before a death has occurred. In any event the contact details will probably have changed in over 30 years.

representative,[90] although where the deceased's death may have been caused by an injury in the course of employment or by an industrial disease, and the deceased belonged to a trade union, such representative is an interested person,[91] and therefore entitled as of right to be notified, if he makes himself known to the coroner.[92]

10–24 There was formerly a provision that, where an accident occurred within Greater London or the City resulting in death, and the accident was alleged to be due to the nature or character of a road or road surface, or to a defect in the design or construction of a vehicle or in the materials used in the construction of a road or vehicle, the coroner inquiring into the death had to notify the Secretary of State in writing of the time and place of holding the inquest.[93] But this has not been carried over into the new system. If such circumstances occur now, anywhere in England and Wales, the coroner may consider that the highway authority[94] or some other person responsible for the road surface or the construction of the road vehicle involved is an interested person,[95] and may be notified accordingly.

SUMMONING WITNESSES

Power to call witnesses

10–25 The coroner must also consider which persons should be called as witnesses, and how best to secure their attendance at the inquest.[96] Unlike ordinary civil proceedings, where witnesses are called by the parties, and cannot be called by the judge except with their consent,[97] and criminal proceedings, where the judge *has* power (to be exercised sparingly)[98] to call witnesses but the parties themselves usually do so, at an inquest it is the coroner alone who has the power to call witnesses.

10–26 This is a consequence of the inquisitorial nature of the proceedings before the coroner.[99] It is his or her duty to conduct an investigation, rather than to hear and determine issues raised by parties to litigation.[100] Hence the coroner, and no one

[90] Home Office Circulars No. 40 of 1956 and No. 18 of 1980.
[91] Coroners and Justice Act 2009 s.47(2)(g); see 8–22.
[92] Coroners (Inquests) Rules 2013 (SI 2013/1616) r.9(2); formerly Coroners Rules 1984 rr.19(b), 20(2)(e); see 10–22 above.
[93] Coroners Act 1988 s.18(1).
[94] See Highways Act 1980, ss 1–3.
[95] Coroners and Justice Act 2009 s.47(2)(f); see 8–22.
[96] See also 12–01 ff below.
[97] *Re Enoch and Zaretsky, Bock & Co.'s Arbitration* [1910] 1 K.B. 327.
[98] *R. v Edwards* (1848) 3 Cox C.C. 82; *R. v Cleghorn* [1967] 3 Q.B. 584; *R. v Grafton* [1993] Q.B. 101.
[99] Compare the procedural directions given by Lord Scarman in the *Red Lion Square Inquiry* (1974) (cited by Scott (1995) 111 L.Q.R. 596, 610–611): "First of all it is I, and I alone, who will decide what witnesses will be called. I also decide to what matters their evidence will be directed." This was endorsed by Lord Hutton at the opening of the *Hutton Inquiry into the Death of Dr David Kelly* on August 1, 2003.
[100] *R. v South London Coroner Ex p. Thompson*, 1–19 above; cf. *Jones v National Coal Board* [1957] 2 Q.B. 55 at 63.

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else, decides which witnesses can give relevant evidence,[101] and hence shall be called.[102] This applies to the production of documents as to the giving of oral evidence. And notwithstanding that there may be an obligation at common law for all persons able to give evidence to attend at the inquest,[103] it is still for the coroner to decide who should be examined.[104] He will do this by reference to the proper scope of the inquiry.[105] Privilege to refuse to answer questions put[106] is not a conclusive reason for not calling a person as a witness.[107]

Medical evidence

10–27 Formerly it was held that the coroner should call a "surgeon" to give medical evidence in all cases of sudden or violent death, and particularly when a criminal charge was likely to be made.[108] There used to be special provisions for calling medical practitioners,[109] but these were little used, and have now been replaced by the general provisions already referred to above. In practice, medical evidence is given at every inquest, though sometimes in documentary form rather than orally: in some cases more than one medical witness may be desirable or necessary, particularly where the medical issues are complex and involve more than one medical speciality, or where complaint is made regarding medical treatment received or some allegation of negligence is made.[110] Even if the coroner is himself medically qualified, he cannot give expert evidence, and will need to call a suitably qualified medical expert in appropriate cases.[111] That does not, of course, mean that the coroner must call all the available experts: it is a matter for him.[112] In particular, where the coroner has called other witnesses with appropriate expertise, he is not obliged to call a particular expert who had prepared a report for an interested person.[113]

[101] *R. v West Yorkshire Coroner Ex p. Clements* (1993) 158 J.P. 17, DC; *Re Chaudhari's Application* Unreported September 10, 2001, Elias J. "Relevance" is determined by the scope of the inquest: see Ch.6.

[102] *McKerr v Armagh Coroner* [1990] 1 W.L.R. 649, HL; *R v East Sussex Coroner Ex p. Homberg* (1994) 158 J.P. 357, DC; *Re Bradley's Application* Unreported August 29, 1996, HC (NI), Kerr J; *Re Potter's Application* Unreported January 24, 1997, Harrison J; *Hay v Devon Coroner* (1997) 162 J.P. 96, CA; *Quinlan v Deputy State Coroner* [2000] NSWSC 434 (failure to call witness did not amount to insufficiency of inquiry); *R. (Al-Fayed) v Inner West London ADC* [2008] EWHC 713 (Admin.); *R. (Ahmed) v South and East Cumbria Coroner* [2009] EWHC 1653 (Admin.).) at [35]; *R. (Le Page) v Inner South London ADC* [2012] EWHC 1485 (Admin.).

[103] See 12–01 below.

[104] Coroners Act 1988 s.11(2) (not carried over expressly into the 2009 Act); *R. v West Yorkshire Coroner Ex p. Clements* (1993) 158 J.P. 17, DC; *R. v South Yorkshire Coroner Ex p. Stringer* (1993) 158 J.P. 453, DC; *Francis v Southwark Coroner's Office* [2013] EWCA Civ. 313 at [5].

[105] See Ch.6.

[106] See 12–94 below.

[107] cf. *R. v Lincoln Coroner Ex p. Hay* [2000] Lloyd's Rep. Med. 264 at [55].

[108] *R. v Quinch* (1831) 4 C. & P. 571; see also the first edition of this work (1829).

[109] Coroners Act 1988 s.21(1).

[110] *R. (Warren) v Northamptonshire Assistant Deputy Coroner* [2008] EWHC 966 (Admin.).

[111] *R. v Inner North London Coroner Ex p. Linnane (No. 2)* (1990) 155 J.P. 343, DC; *Nicholls v Liverpool Coroner* Unreported November 8, 2001, DC. As to the duties of expert witnesses, see *R. v T* [2010] EWCA Crim. 2439. See also *Re Siberry's Application for Judicial Review* [2008] N.I.Q.B. 147.

[112] See 10–25—10–26 above.

[113] *R. (Warren) v Northamptonshire Assistant Deputy Coroner* [2008] EWHC 966 (Admin.).

Challenge to coroner's decision on witnesses

10–28 But a coroner's decision to call[114] or not to call a particular witness, or to ignore the possibility of evidence from a particular quarter, is not unassailable. It is clear that where, at an inquest, the coroner refuses to seek to obtain relevant documents,[115] or to hear potential witnesses having relevant evidence to give and being available to give that evidence at the hearing,[116] or even where he declines to call such witnesses (even expert)[117] and as a result makes an insufficient inquiry,[118] the whole inquest is liable to be quashed.[119] Thus, although it is in the discretion of the coroner as to who should be called and examined as witnesses, there will be cases where any decision by the coroner *not* to call particular witnesses will be quashed by the court and the coroner will be ordered to call such witnesses.[120] As long as the coroner has made a definitive decision, it is unnecessary to wait for the inquest to be held before challenging that decision.

Procedure for notification

10–29 Usually, notification to a witness is informal, but if the coroner considers that the witness may not attend unless a formal coroner's notice is served, then such a notice should be prepared and served. The procedure for obtaining evidence and other information before the inquest and for calling witnesses has already been described.[121] In summary, the coroner may by written notice require a person (who may be a medical practitioner, a witness of fact or an expert), during the investigation to provide evidence in the form of a statement, to produce relevant documents in his custody or control, or produce for examination or testing anything in his custody or control relevant to the investigation,[122] and may require

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[114] See *Re Donaldson's Application* [2010] NIQB 144. See also *Re Siberry's Application for Judicial Review* [2008] N.I.Q.B. 147 (coroner's decision to permit Prison Ombudsman to give evidence to jury of all contents of his Report held *Wednesbury* unreasonable in relation to matters addressed in medical expert reports).

[115] *Re O'Reilly* (1996) 160 J.P. 749, DC; cf. *Hay v Devon Coroner* (1997) 162 J.P. 96, CA; see 10–65 below.

[116] *R. v Carter* (1876) 45 L.J.Q.B. 711; *Dowler v North London Coroner* [2009] EWHC 3300 (Admin.); *R. (Le Page) v Inner South London ADC* [2012] EWHC 1485 (Admin.). Cf. *Francis v Southwark Coroner's Office* [2013] EWCA Civ. 313 at [5].

[117] *R. (Stanley) v Inner North London Coroner, The Times*, June 12, 2003, Silber J; *R. (Duffy) v Worcestershire Deputy Coroner* [2013] EWHC 1654 Admin.

[118] *R. v Rothera Ex p. Chetwin, The Times*, July 25, 1930, DC; *R. (Hair) v Staffordshire (South) Coroner* [2010] EWHC 2580 (Admin.); *R. (Mack) v Birmingham and Solihull Coroner* [2011] EWCA Civ. 712; *R. (Le Page) v Inner South London ADC* [2012] EWHC 1485 (Admin.).

[119] See 19–30—19–31 below.

[120] cf. *R. v South London Coroner Ex p. Ridley* [1985] 1 W.L.R. 1347, QBD; *R. v Southwark Coroner Ex p. Hicks* [1987] 1 W.L.R. 1624. See also *R. v Elliott Ex p. McKerr, The Independent*, December 21, 1988 (revsd. on other grounds, *sub. nom. McKerr v Armagh Coroner* [1990] 1 W.L.R. 649; *R. v Inner North London Coroner Ex p. Linnane (No. 2)* (1990) 155 J.P. 343, DC; *R v West Berkshire Coroner Ex p. Thomas* (1991) 155 J.P. 681; *R. v East Sussex Coroner Ex p. Homberg* Unreported June 14 1993, DC; *Re Bradley's Application* Unreported August 29, 1996, HC (NI); *Re Mullan's Application* [2000] B.N.I.L. 14, HC (NI); *Nicholls v Liverpool Coroner* Unreported November 8, 2001, DC.

[121] See 7–12 ff. Where the witness is in prison, application may be made to the Secretary of State under the Crime (Sentences) Act 1997 s.41 Sch.1 para.3, for the production of the witness at the inquest. But this is a matter of discretion for the Secretary of State. An alternative procedure is to apply on affidavit to a judge of the Queen's Bench Division for an order for the witness to be produced for examination under s.9 of the Criminal Procedure Act 1853.

[122] Coroners and Justice Act 2009 s.32 Sch.5 para.1(2); see 7–13.

Chapter 14

HOMICIDE

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The Practice in Homicide Cases

14–01 As has been seen,[1] the coroner has the duty to investigate deaths which he or she has reason to suspect are violent or unnatural. Some of these will be obvious homicides; others may not seem so at first, but may later turn out to be homicides. Although the various procedures have been covered elsewhere, it is convenient to draw together in summary form the practice in homicide cases, together with a short exposition of the relevant principles of the criminal law.

14–02 Cases which seem to be obvious homicides will fall into a number of different categories, from the coroner's point of view:

(i) cases where charges are made in connection with a death, and criminal proceedings follow;

(ii) cases where no charges are made because the suspect is immune from the criminal law (such as where he has diplomatic immunity[2]) or is dead;

(iii) cases where, whether or not charges are brought, the coroner is otherwise obliged to cease his investigation (for example because the deceased was a member of a visiting force,[3] or he had diplomatic immunity);

(iv) cases where the perpetrator has not been found[4];

(v) cases where no charges are made, the inquest is held, *but* unexpected evidence is given that obliges the coroner to adjourn and notify the Crown Prosecution Service[5];

(vi) cases where the Crown Prosecution Service considers the matter but does not consider that the evidence is sufficient to support a charge of unlawful killing[6];

[1] See 5–01.
[2] See 5–109 ff.
[3] See 5–98 ff.
[4] See 14–28.
[5] See 14–30 ff.
[6] See 14–31.

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(vii) cases where ultimately the matter turns out not to have been a homicide.

14–03 In addition, there will be cases where a death appears not to be suspicious at first, but evidence subsequently is found to give grounds for suspicion of homicide. Although in each of these cases the procedure for coroners will differ, certain principles are common.

INITIAL INQUIRIES

The incidence of jurisdiction

14–04 A coroner has no jurisdiction until death has taken place. Thus the investigation of potentially unlawful injuries to a person dying in hospital or elsewhere is initially a police matter and the coroner is not involved.

14–05 Once the victim has died, it is the coroner's investigation and the coroner's body, and therefore only the coroner (or, with the coroner's authority, the officer on his or her behalf) can give permission for any interference with the body (including its examination at, or removal from, the place where it was found).[7] In practice the coroner's officer will either attend the scene, or give any necessary permission by telephone. In rare cases, the coroner may attend the scene in person.

14–06 However, it is the police who have the experience and the resources to do much of the work involved, and there will need to be consultation and co-operation between the police and the coroner. In particular, if the police inform the coroner that a person may be charged with a homicide offence in relation to the deceased, the coroner must consult the chief officer of police with regard to who should carry out the post-mortem examination.[8]

Recovery and removal of body

14–07 Where a Home Office or specialist pathologist is available, the scene may be visited before the body is removed.[9] The recovery of the body may be carried out by police scientific support (formerly "scenes of crime") officers, using special techniques to retain trace evidence (nowadays, especially DNA evidence) and to avoid extraneous contamination. The so-called "Murder Manual" should be followed.[10] Photographs may be taken at all stages, and the full spectrum of scientific tests may be utilised. The post-mortem examination may be preceded by radiographic examination for missiles or evidence of bony injury. Continuity of evidence of the finding of the body and of the origin of all specimens and exhibits is essential. Subsequent criminal proceedings may otherwise be prejudiced.

[7] See 8–11.
[8] See 8–48 above.
[9] Knight, *Forensic Pathology*, 3rd edn (2004), pp.4–7.
[10] ACPO, *Murder Investigation Manual* (2006); available at *http://www.acpo.police.uk/documents/crime/2006/2006CBAMIM.pdf* [Accessed June 13, 2014].

POST-MORTEM EXAMINATION

14–08 The coroner alone has the legal power to order an examination of the body of a suspected homicide victim, but this is invariably carried out by agreement with the police. Indeed, in some cases the police ask the coroner to instruct a particular pathologist. In most cases, the coroner has no reason not to agree.[11]

Fees for examination

14–09 The payment of the fees incurred is also a matter of agreement. The special nature of the post-mortem examination in a homicide case is recognised by provision for an enhanced fee.[12] In addition, the pathologist may be paid a further fee or a retainer by the police, to cover parts of the examination beyond the post-mortem examination. So long as the coroner is satisfied that the pathologist is an appropriate person for his or her purposes, and is content that the pathologist may carry out additional services for the police, he or she is not concerned with the performance of those additional services.

Position of pathologist

14–10 The pathologist carrying out an autopsy in a homicide case has two sets of powers and duties, and two masters. One master is the coroner,[13] from whom is derived one set of powers and duties, and the other is the local police force, from which is derived another set, under their responsibility for the detection and prosecution of crime. In exercising these, the pathologist must also follow the directives of the Pathology Delivery Board.[14] To the extent that the coroner is responsible at all for the actions of the pathologist, he or she is only responsible in respect of what is done on *his or her* instructions, and not for what the pathologist does on the instructions of the police. The coroner's role is to investigate the death and try to find answers to the statutory questions. For *these* purposes (but not for others) the pathologist may remove and retain body material which bears on the cause of death or the identity of the deceased.[15] But the coroner has no power to investigate or prosecute possible criminal activity.

14–11 The consequence is that the coroner has no power to authorise the pathologist to remove and retain material from the body which does not bear on the identity of the deceased or the cause of death, but which may be useful for the purposes of any criminal investigation or proceedings. That must be authorised, if at all, by the police under their own powers.[16] The coroner's role in relation to this exercise of police power is at most limited to consenting to the interference with the body by the pathologist on behalf of the police for their criminal justice purposes (just as he may consent to the removal of organs for the purposes of transplantation), on the basis that this interference is not itself permitted by police powers.[17]

[11] See 8–54.
[12] See 18–38 below.
[13] See 8–39 ff above.
[14] See its constitution, at *https://www.gov.uk/government/publications/constitution-of-the-pathology-delivery-board* [Accessed June 13, 2014], and see also 8–55—8–56.
[15] See 8–72, 8–76.
[16] Either under the Police and Criminal Evidence Act 1984 or at common law. See 8–11.
[17] See also the Human Tissue Act 2004 s.39.

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The effect of homicide investigation on examination

14–12 There may be pressure on the coroner to have the post-mortem examination performed as quickly as possible, either because the police seek information to enable them to identify or trace a suspect, or because a suspect is or suspects are being held in custody. However, this must not be regarded simply as a police investigation. Two cases out of three investigated in this manner are subsequently shown not to be homicidal deaths, and the coroner must still inquire into a death that once appeared to be suspicious.

14–13 Even if the death continues to appear to be homicidal, the coroner may still have to hold an inquest (for example, if no person is ever charged with causing the death). In either event, the coroner will still need to know (a) who the deceased person was and (b) what was the medical cause of death. Obtaining identification evidence may present problems. These may be due to the circumstances of the death,[18] or it may be that the next of kin (who would normally identify the body) are suspects, or potential suspects.

14–14 In the converse case, it may be discovered in the course of a post-mortem examination of an apparently non-suspicious death that there are grounds for suspicion of homicide. In such a case, the examination should be halted and the evidence preserved until a full homicide investigation can be mounted.

Findings of post-mortem examination

14–15 Following the conclusion of the post-mortem examination, any one of a number of situations may arise:

(i) it may be certain that the death was not due to homicide;

(ii) the evidence is inconclusive at this stage;

(iii) further tests may be required, as for example in poisoning cases;

(iv) the police enquiries and preparations for inquest continue while a suspect is being traced;

(v) a person or persons may be charged in connection with the death.

PROCEDURE FOLLOWING POST-MORTEM EXAMINATION

Where death is not homicidal

14–16 If the death is not homicidal and the autopsy discloses a natural cause of death, it may be possible to use the Pink Form B procedure.[19] Whereas under the old law[20] a special examination (e.g. histological) could only be carried out once the coroner had decided to hold an inquest, under the new law the coroner may direct such an

[18] For example, where the body is found badly decomposed.
[19] See 8–36—8–37 above.
[20] Coroners Act 1988 ss.19–20 (repealed).

examination once he is under a duty to investigate.[21] This makes it more likely that a natural causes death can be so identified and disposed of quickly.[22]

Where a person is, or may be, charged

14–17 In certain cases where criminal proceedings may be or have been begun, the coroner must suspend any investigation into the death. These cases have already been discussed.[23] Where the investigation is suspended, the coroner *must* adjourn any inquest being held as part of the investigation,[24] and *may* discharge any jury summoned.[25] (He may later resume the inquest, in certain circumstances, which also have already been discussed.)[26] Exceptionally, in these cases the death can be registered before the investigation is complete. So the coroner receives the minimum of information required to allow the death to be registered, and issues the relevant certificate.[27] Then he has to deal with the question of the release of the body for the funeral.[28] Where the coroner subsequently notifies the registrar of the result of the criminal proceedings the registrar will record it.[29]

Release of the body

14–18 Obviously the coroner should not consider releasing the body until he has received the pathologist's report, or at any rate a summary of the report to come.[30] If the death appears to be homicidal, but no suspect has been traced and arrested, the coroner is in a difficulty in releasing the body for disposal. If the body is released and subsequently destroyed by cremation, or taken to another country for burial or other disposal, a suspect when finally charged with the killing may claim that his defence has been jeopardised by the impossibility of having an examination on behalf of the defence to substantiate any assertions or challenge the prosecution in evidence.

14–19 Of course, the pathologist should have retained such specimens as are required for further examination or even demonstration at a trial, but realistically this cannot apply to every wound or injury, however slight. The strength of the defendant's argument will however depend on the nature of the case. For example, there may be more value in a further examination where the deceased died in a fight, than where he was shot dead from a considerable distance. Also, the argument weakens over time, as deterioration of the tissues (even when frozen) makes them less likely to yield anything of value on a second or subsequent examination.

14–20 It has been suggested that the coroner in such cases should order a second post-mortem examination by another pathologist, and keep the report on file in case charges are subsequently brought.[31] But that pathologist will not have received any

[21] See 8–18, 8–69.
[22] See 8–36.
[23] See 10–73 ff.
[24] Coroners and Justice Act 2009 s.11 Sch.1 para.6(1).
[25] Coroners and Justice Act 2009 s.11 Sch.1 para.6(2).
[26] See 10–83 ff.
[27] See 10–82. If the body is returned from abroad, however, there is no registration.
[28] See 9–14 ff above.
[29] Births and Deaths Registration Act 1953, s.23(2B).
[30] Home Office Circular No. 45 of 1988.
[31] See 8–40 above.

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instructions regarding the defence case, and it seems unlikely that the defence will be satisfied by the second autopsy.

14–21 Accordingly, the coroner may feel that he should retain the body for a reasonable time, if there is a prospect of an arrest, and should in the meantime ensure that the body is maintained in a frozen condition. If there is no provision for such storage within the coroner's district, the body may have to be moved to another district that has the appropriate facility. Official guidelines were issued to minimise the delay in releasing the body.[32] The new law now provides that the coroner must release the body for burial or cremation "as soon as reasonably practicable",[33] and, moreover, that if the coroner cannot release the body within 28 days of being made aware that it is in his area, he must notify the next of kin or personal representative of the reason for the delay.[34]

14–22 It has been suggested that the coroner set a time limit for retaining the body, but if a charge has been made the accused may make an application to the High Court. The need to have the prosecution statements and the delay in obtaining legal aid for counsel's advice and the post-mortem examination may mean in practice that, where there is a serious risk of losing potentially useful defence evidence, the High Court would restrain the coroner from releasing the body until the second examination is carried out.[35] But if no sufficient advantage to the defence can be demonstrated, the court is unlikely to interfere with the coroner's decision.[36]

HOLDING THE INQUEST

General

14–23 Despite the abolition in 1977 of the last vestiges of criminal jurisdiction of the coroner's court,[37] the senior judiciary persist in treating it as if it were still a part of the criminal justice system. This manifests itself in relation to a number of specific areas already mentioned, such as requiring the criminal standard of proof for suicide and unlawful killing conclusions,[38] and treating the coroner's jury as if it were performing the same function as a criminal jury.[39] But it also appears more generally in relation to procedure.

14–24 In one case,[40] after the death of the deceased in a fight at a public house in October 2007, the CPS originally declined to prosecute at all.[41] The coroner

[32] See originally Home Office Circular No. 30 of 1999, attaching a Memorandum of Guidance, subsequently reissued by the Ministry of Justice in May 2008. See also *R. (McLeish) v North London Coroner* [2010] EWHC 3624 (Admin.).
[33] Coroners (Investigations) Regulations 2013 reg.20(1). See 8–11 above.
[34] Coroners (Investigations) Regulations 2013 reg.20(2). See 8–12 above.
[35] *R. v Bristol Coroner Ex p. Kerr* [1974] Q.B. 652; *R. v Bristol Coroner Ex p. Atkinson* Unreported May 5, 1983. See also 8–40, 9–11, 9–16, 9–17.
[36] See e.g. *Haydon v Chivell* (1999) 73 A.L.J.R. 1311, HC (Aus), Gaudron J.
[37] Criminal Law Act 1977 ss.56, 65. See 1–28 ff.
[38] See 13–47 ff, 13–67 ff.
[39] See 13–04.
[40] *R. v Davies* [2011] EWCA Civ. 871.
[41] A decision described by the Court of Appeal as "the result of incompetence on the part of the CPS and advising counsel".

having read the papers nevertheless formed the view that an unlawful killing conclusion was a real possibility and so informed the police, who, however, did not contact the CPS. The coroner did not contact the appellant or the lawyers that he had instructed, but proceeded to hold an inquest, resulting in a conclusion of unlawful killing. The CPS then reconsidered the position and charged the appellant with manslaughter. At trial, the appellant was convicted of manslaughter, and appealed. The Court of Appeal said, firstly, that "fairness demanded that [the coroner] should have informed" the appellant's solicitors "of her preliminary view".[42] In substance, this conclusion involves giving back to the coroner the grand jury/examining magistrate function of finding a case to answer, which Parliament expressly took away in 1977.

14–25 Secondly, at the trial, a critical eye-witness was cross-examined by the Crown on the basis of the inconsistency of his evidence at the coroner's inquest, and his credibility was damaged. The Court held that at the inquest, the coroner should have given the witness the opportunity to read his statement before giving evidence, saying that it was "normal practice at a criminal trial, particularly where there is a significant delay between the events and the trial itself as there was in this case", and that they "would have hoped it was normal at an inquest."[43] It is not clear if the court considered that such refreshing of memory should take place at *all* inquests, or only at those where there was a risk of criminal proceedings following.

14–26 Taken all together, the Court regarded this as "a very serious irregularity in the inquest taking place in the circumstances it did".[44] The conviction was quashed. The Court appears to have regarded the functions of the coroner as including that of safeguarding the interests of possible future defendants to criminal proceedings, over and above the specific provisions of the coroner legislation. It is submitted that this is not consistent with the intention of Parliament in abolishing the criminal jurisdiction of coroners.

Homicide with no charge brought

14–27 Where the death is obviously a homicide, but no person has been charged and a request for adjournment is made by the police or the CPS, the coroner must adjourn.[45] But if no request for an adjournment has been made by the police or the CPS, the coroner must proceed to hold the inquest.

Suspect untraced or dead

14–28 Whether the reason that no one has been charged is that the suspect has not yet been traced, or that he or she is already dead, the coroner must take sufficient evidence to find the facts required by the law.[46] These findings must not include

[42] *R. v Davies* [2011] EWCA Civ. 871 at [68].
[43] *R. v Davies* [2011] EWCA Civ. 871 at [69]. The Court appears to have been unaware that neither the witness himself, nor the appellant nor his legal representative at the inquest asked that the witness should be permitted to refresh his memory from his statement before giving evidence at the inquest.
[44] *R. v Davies* [2011] EWCA Civ. 871 at [72].
[45] See 10–78 above.
[46] See 13–02 above.

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(i) requirements as to the publication of information or its provision to any person.

(2) The regulations—

(a) may require a decision as to the exercise of functions under section 108, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;

(b) may require that prescribed steps be taken by the Lord Chief Justice or the Lord Chancellor in exercising those functions or before exercising them.

(3) Where regulations under section 115(a) impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint)—

(a) as may be prescribed by the regulations, or

(b) as may be determined by the Lord Chief Justice and the Lord Chancellor or either of them in accordance with provisions so prescribed.

(4) Regulations under section 115 may—

(a) provide for any prescribed requirement not to apply if the Lord Chief Justice and the Lord Chancellor so agree;

(b) make different provision for different purposes.

(5) Nothing in this section limits the generality of section 115.

Procedural rules

A1–049

117.—(1) Regulations under section 115 may provide for provision of a prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor.

(2) But the provision that may be made by rules does not include—

(a) provision within section 116(2);

(b) provision made for the purposes of section 108(7) or (8) or 116(3).

(3) The rules are to be published in such manner as the Lord Chief Justice may determine with the agreement of the Lord Chancellor.

Extension of discipline provisions to other offices

A1–050

118.—(1) This Chapter applies in relation to an office designated by the Lord Chancellor under this section as it would apply if the office were listed in Schedule 14.

(2) The Lord Chancellor may by order designate any office, not listed in Schedule 14, the holder of which he has power to remove from office.

(3) An order under this section may be made only with the agreement of the Lord Chief Justice.

Delegation of functions

A1–051

119.—(1) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4)) to exercise any of his functions under the relevant sections.

(2) The relevant sections are—

(a) section 108(3) to (7);

(b) section 111(2);

(c) section 112;

(d) section 116(3)(b).

Chapter 4 Interpretation Of Part 4

Interpretation of Part 4

A1–052

122. In this Part—

"appoint" includes nominate or designate (and "appointment" is to be read accordingly);

the "Commission" means the Judicial Appointments Commission;

"Head of Division" means any of these—

(a) the Master of the Rolls;
(b) the President of the Queen's Bench Division;
(c) the President of the Family Division;
(d) the Chancellor of the High Court;

"High Court" means the High Court in England and Wales;

"high judicial office" has the meaning given by section 60;

["lay member", in relation to the Commission, has such meaning as may be given by regulations under paragraph 3C(a) of Schedule 12;][97]

"Lord Chief Justice", unless otherwise stated, means the Lord Chief Justice of England and Wales;

"Lord Justice of Appeal" means a Lord Justice of Appeal in England and Wales;

"office" includes a position of any description;

the "Ombudsman" means the Judicial Appointments and Conduct Ombudsman;

"prescribed" means prescribed by regulations under section 115 or, subject to section 117(2), by rules under section 117;

"vacancy" in relation to an office to which one of sections 68, 77 and 86 applies, means a vacancy arising on a holder of the office vacating it at any time after the commencement of that section.

SCHEDULE 1

POWERS TO MAKE RULES

PART 1

THE PROCESS

Interpretation

A1–053

1 In this Part "designated rules" means rules under another Act which are, by virtue of provision in that Act, to be made in accordance with this Part.

2 (1) It is for the Lord Chief Justice, or a judicial office holder nominated by the Lord Chief Justice with the agreement of the Lord Chancellor, to make designated rules.

(2) The Lord Chief Justice may nominate a judicial office holder in accordance with sub-paragraph (1)—

[97] Definition substituted by Crime and Courts Act 2013 c. 22 Sch.13(3) para.26 (September 4, 2013: substitution has effect as SI 2013/2200 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8).

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(a) to make designated rules generally, or

(b) to make designated rules under a particular enactment.

(3) In this Part—

(a) "judicial office holder" has the same meaning as in section 109(4);

(b) references to the Lord Chief Justice's nominee, in relation to designated rules, mean a judicial office holder nominated by the Lord Chief Justice under sub-paragraph (1) to make those rules.

3 (1) The Lord Chief Justice, or his nominee, may make designated rules only with the agreement of the Lord Chancellor.

(2) If the Lord Chancellor does not agree designated rules made by the Lord Chief Justice, or by his nominee, the Lord Chancellor must give that person written reasons why he does not agree the rules.

4 (1) Designated rules made by the Lord Chief Justice, or by his nominee, and agreed by the Lord Chancellor—

(a) come into force on such day as the Lord Chancellor directs, and

(b) are to be contained in a statutory instrument to which the Statutory Instruments Act 1946 (c. 36) applies as if the instrument contained rules made by a Minister of the Crown.

(2) A statutory instrument containing designated rules is subject to annulment in pursuance of a resolution of either House of Parliament.

5 (1) This paragraph applies if the Lord Chancellor gives the Lord Chief Justice, or his nominee, written notice that he thinks it is expedient for designated rules to include provision that would achieve a purpose specified in the notice.

(2) The Lord Chief Justice, or his nominee, must make such designated rules as he considers necessary to achieve the specified purpose.

(3) Those rules must be—

(a) made within a reasonable period after the Lord Chancellor gives notice under sub-paragraph (1);

(b) made in accordance with the provisions of this Part.

Contempt of Court Act 1981 c. 49

Strict liability

The strict liability rule

A1–054 **1.** In this Act "the strict liability rule" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

Limitation of scope of strict liability

A1–055 **2.**—(1) The strict liability rule applies only in relation to publications, and for this purpose "publication" includes any speech, writing, [programme included in a cable programme service][98] or other communication in whatever form, which is addressed to the public at large or any section of the public.

(2) The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

[98] Words substituted by Broadcasting Act 1990 (c.42), s. 203(1), Sch. 20 para. 31(1)(a).

(3) The strict liability rule applies to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(4) Schedule 1 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

[(5) In this section "programme service" has the same meaning as in the Broadcasting Act 1990.][99]

Defence of innocent publication or distribution

A1–056 **3.**—(1) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) he does not know and has no reason to suspect that relevant proceedings are active.

(2) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) he does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(3) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

[. . .][100]

Contemporary reports of proceedings

A1–057 **4.**—(1) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(2) In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

[(2A) Where in proceedings for any offence which is an administration of justice offence for the purposes of section 54 of the Criminal Procedure and Investigations Act 1996 (acquittal tainted by an administration of justice offence) it appears to the court that there is a possibility that (by virtue of that section) proceedings may be taken against a person for an offence of which he has been acquitted, subsection (2) of this section shall apply as if those proceedings were pending or imminent.][101]

(3) For the purposes of subsection (1) of this section [. . .][102] a report of proceedings shall be treated as published contemporaneously—

(a) in the case of a report of which publication is postponed pursuant to an order under subsection (2) of this section, if published as soon as practicable after that order expires;

[(b) in the case of a report of allocation or sending proceedings of which publication is permitted by virtue only of subsection (6) of section 52A of the Crime and Disorder Act 1998 ("the 1998 Act"), if published as soon as practicable after publication is so permitted;

[99] S. 2(5) inserted by Broadcasting Act 1990 (c.42), s. 203(1), Sch. 20, para. 31(1)(b).
[100] Repeals Administration of Justice Act 1960 (c. 65), s. 11.
[101] Added by Criminal Procedure and Investigations Act 1996 c. 25 Pt VII s.57(3) (July 4, 1996).
[102] Words repealed by Defamation Act 1996 c. 31 Sch.2 para.1 (April 1, 1999 as SI 1999/817).

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["the Thirteenth Protocol" means the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3rd May 2002;][356]

"remedial order" means an order under section 10;

"subordinate legislation" means any—

(a) Order in Council other than one—
  (i) made in exercise of Her Majesty's Royal Prerogative;
  (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
  (iii) amending an Act of a kind mentioned in the definition of primary legislation;

(b) Act of the Scottish Parliament;

[(ba) Measure of the National Assembly for Wales;

(bb) Act of the National Assembly for Wales;][357]

(c) Act of the Parliament of Northern Ireland;

(d) Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973;

(e) Act of the Northern Ireland Assembly;

(f) order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation);

(g) order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in paragraph (b), (c), (d) or (e) or made under an Order in Council applying only to Northern Ireland;

(h) order, rules, regulations, scheme, warrant, byelaw or other instrument made by a member of the Scottish Executive [, Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government][358], a Northern Ireland Minister or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty;

"transferred matters" has the same meaning as in the Northern Ireland Act 1998; and

"tribunal" means any tribunal in which legal proceedings may be brought.

(2) The references in paragraphs (b) and (c) of section 2(1) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(3) The reference in paragraph (d) of section 2(1) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

[356] Definition inserted by Human Rights Act 1998 (Amendment) Order 2004/1574 art.2(2) (June 22, 2004).

[357] Added by Government of Wales Act 2006 c. 32 Sch.10 para.56(3) (May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5)).

[358] Words inserted by Government of Wales Act 2006 c. 32 Sch.10 para.56(4) (May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5)).

(4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

[. . .][359]

SCHEDULE 1

THE ARTICLES

PART I

THE CONVENTION RIGHTS AND FREEDOMS

Right to life

Article 2

A1–293

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Prohibition of torture

Article 3

A1–294

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Prohibition of slavery and forced labour

Article 4

A1–295

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

[359] Repealed by Armed Forces Act 2006 c. 52 Sch.17 para.1 (October 31, 2009 as SI 2009/1167).

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Right to liberty and security

Article 5

A1–296 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Right to a fair trial

Article 6

A1–297 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

No punishment without law

Article 7

A1–298 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Right to respect for private and family life

Article 8

A1–299 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Freedom of thought, conscience and religion

Article 9

A1–300 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Freedom of expression

Article 10

A1–301 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of assembly and association

Article 11

A1–302 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the

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exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Right to marry

Article 12

A1–303 Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Prohibition of discrimination

Article 14

A1–304 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Restrictions on political activity of aliens

Article 16

A1–305 Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Prohibition of abuse of rights

Article 17

A1–306 Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Limitation on use of restrictions on rights

Article 18

A1–307 The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Part II

The First Protocol

Protection of property

Article 1

A1–308 Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Right to education

Article 2

A1–309 No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Right to free elections

Article 3

A1–310 The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Part III

Article 1 Of The Thirteenth Protocol

[*Abolition of the death penalty*

A1–311 The death penalty shall be abolished. No one shall be condemned to such penalty or executed.][360]

Human Tissue Act 2004 c. 30

Part 1

Removal, Storage And Use Of Human Organs And Other Tissue For Scheduled Purposes

Authorisation of activities for scheduled purposes

A1–312 **1.**—(1) The following activities shall be lawful if done with appropriate consent—

(a) the storage of the body of a deceased person for use for a purpose specified in Schedule 1, other than anatomical examination;

(b) the use of the body of a deceased person for a purpose so specified, other than anatomical examination;

(c) the removal from the body of a deceased person, for use for a purpose specified in Schedule 1, of any relevant material of which the body consists or which it contains;

(d) the storage for use for a purpose specified in Part 1 of Schedule 1 of any relevant material which has come from a human body;

(e) the storage for use for a purpose specified in Part 2 of Schedule 1 of any relevant material which has come from the body of a deceased person;

(f) the use for a purpose specified in Part 1 of Schedule 1 of any relevant material which has come from a human body;

(g) the use for a purpose specified in Part 2 of Schedule 1 of any relevant material which has come from the body of a deceased person.

(2) The storage of the body of a deceased person for use for the purpose of anatomical examination shall be lawful if done—

(a) with appropriate consent, and

(b) after the signing of a certificate—

[360] Substituted by Human Rights Act 1998 (Amendment) Order 2004/1574 art.2(3) (June 22, 2004).

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(i) under section 22(1) of the Births and Deaths Registration Act 1953 (c. 20), or

(ii) under Article 25(2) of the Births and Deaths Registration (Northern Ireland) Order 1976 (SI 1976/1041 (N.I. 14)),

of the cause of death of the person.

(3) The use of the body of a deceased person for the purpose of anatomical examination shall be lawful if done—

(a) with appropriate consent, and

(b) after the death of the person has been registered—

(i) under section 15 of the Births and Deaths Registration Act 1953, or

(ii) under Article 21 of the Births and Deaths Registration (Northern Ireland) Order 1976.

(4) Subsections (1) to (3) do not apply to an activity of a kind mentioned there if it is done in relation to—

(a) a body to which subsection (5) applies, or

(b) relevant material to which subsection (6) applies.

(5) This subsection applies to a body if—

(a) it has been imported, or

(b) it is the body of a person who died before the day on which this section comes into force and at least one hundred years have elapsed since the date of the person's death.

(6) This subsection applies to relevant material if—

(a) it has been imported,

(b) it has come from a body which has been imported, or

(c) it is material which has come from the body of a person who died before the day on which this section comes into force and at least one hundred years have elapsed since the date of the person's death.

(7) Subsection (1)(d) does not apply to the storage of relevant material for use for the purpose of research in connection with disorders, or the functioning, of the human body if—

(a) the material has come from the body of a living person, and

(b) the research falls within subsection (9).

(8) Subsection (1)(f) does not apply to the use of relevant material for the purpose of research in connection with disorders, or the functioning, of the human body if—

(a) the material has come from the body of a living person, and

(b) the research falls within subsection (9).

(9) Research falls within this subsection if—

(a) it is ethically approved in accordance with regulations made by the Secretary of State, and

(b) it is to be, or is, carried out in circumstances such that the person carrying it out is not in possession, and not likely to come into possession, of information from which the person from whose body the material has come can be identified.

[(9A) Subsection (1)(f) does not apply to the use of relevant material for the purpose of research where the use of the material requires consent under paragraph 6(1) or 12(1) of Schedule 3 to the Human Fertilisation and Embryology Act 1990 (use of human cells to create an embryo or a human admixed embryo) or would require such consent but for paragraphs 16 and 20 of that Schedule.][361]

(10) The following activities shall be lawful—

(a) the storage for use for a purpose specified in Part 2 of Schedule 1 of any relevant material which has come from the body of a living person;

(b) the use for such a purpose of any relevant material which has come from the body of a living person;

(c) an activity in relation to which subsection (4), (7) or (8) has effect.

[(10A) In the case of an activity in relation to which subsection (8) has effect, subsection (10)(c) is to be read subject to any requirements imposed by Schedule 3 to the Human Fertilisation and Embryology Act 1990 in relation to the activity.][362]

(11) The Secretary of State may by order—

(a) vary or omit any of the purposes specified in Part 1 or 2 of Schedule 1, or

(b) add to the purposes specified in Part 1 or 2 of that Schedule.

(12) Nothing in this section applies to—

(a) the use of relevant material in connection with a device to which Directive 98/79/EC of the European Parliament and of the Council on in vitro diagnostic medical devices applies, where the use falls within the Directive, or

(b) the storage of relevant material for use falling within paragraph (a).

(13) In this section, the references to a body or material which has been imported do not include a body or material which has been imported after having been exported with a view to its subsequently being re-imported.

"Appropriate consent": children

A1–313

2.—(1) This section makes provision for the interpretation of "appropriate consent" in section 1in relation to an activity involving the body, or material from the body, of a person who is a child or has died a child ("the child concerned").

(2) Subject to subsection (3), where the child concerned is alive, "appropriate consent" means his consent.

(3) Where—

(a) the child concerned is alive,

(b) neither a decision of his to consent to the activity, nor a decision of his not to consent to it, is in force, and

[361] Added by Human Fertilisation and Embryology Act 2008 c. 22 Sch.7 para.22(a) (October 1, 2009).

[362] Added by Human Fertilisation and Embryology Act 2008 c. 22 Sch.7 para.22(b) (October 1, 2009).

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