

## List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to coroners@justice.gsi.gov.uk or it fax to 020 3334 2233.

**Question 1:** do you agree that the proposals set out in this consultation paper will impose no significant new burdens on local coroner's services or others?

Yes     No

If you disagree, what new costs would arise? And how could these be mitigated?

It is difficult as lawyers to assess the costs impact of these proposals. Our concerns with regard to particular parts of the proposals are set out within this document and we do not propose to repeat them in this section.

**Question 2:** do you have any views on the proposed changes to coroner areas under the 2009 Act, as set out in the table at Annex E? If so, please give details.

No

**Question 3:** do you support the proposal to amend the Judicial Appointments Order 2008 so that Fellows of CILEX are eligible for coronial appointments?

Yes     No

Please give reasons for your response.

It is entirely appropriate that experienced colleagues who are Fellows of CILEX are now eligible.

**Question 4:** in your experience what difference has the current Guide to coroners and inquests and Charter for coroner services made since it was published?

Introduction of consistency in terms of provision of information to bereaved families and users of the Coroners' courts is welcomed. However, many of the proposals contained within the Coroner's Act and which form part of the consultation in summer 2010 are still to be implemented.

Our members are also still concerned at a lack of consistency of conduct of coroner's courts and services in different locations. In so far as the proposals that have been part of this consultation assist in further consistency across the coroners' courts, we welcome them.

**Question 5:** the new Guide to coroner services (at Annex D) revises the Guide to coroners and inquests and Charter for coroner services, so that it is consistent with the 2009 Act. Do you think the new document is a helpful summary of what to expect during a coroner investigation?

Yes  No

If not, please explain your answer.

With regard to section 5, post-mortem examination, we would express caution over taking into account the views of the bereaved family and their religious / cultural concerns when deciding on a method of post-mortem examination. If it is stated that these are to be taken into account, as currently set out in the draft Guide (and even with the caveat of "where possible"), in cases where the coroner takes a decision that it is not accepted by the family, this is likely to lead to appeal / complaints by the family which require the coroner to justify his decision, leading to delay and increased costs. On balance, we would suggest that this paragraph should not be included in the Guide on the basis that this is not information that should be stated in such terms to the general public. We would anticipate that coroners are alive to the need to be sensitive to such matters and any training provided to coroners should focus on this.

Section 7 - release of a body for a funeral and administration of the estate. Section 7.3 ought to describe "what happens about administration of the deceased's estate if a coroner continues an investigation after a post-mortem examination?" However, the text then goes on simply to deal with what to do if a body is to be taken out of England and Wales rather than dealing with it if the body continues to rest within the jurisdiction.

Section 9 - what is an inquest? No doubt in the interests of brevity and clarity, this section states "the job of the inquest is to discover the facts of the death. This also means that the coroner (or jury) cannot blame a person or organisation for the death." We would suggest that the job of the inquest is to establish the identity of the person who has died and the date and location of their death, how they came by their death, i.e. the circumstances in which they died and the events leading up to it. The description in the Guide is too brief and the description "the facts of the death" is inadequate. It is true that it is not for the coroner to blame a person / organisation for the death, the phrase that has been used for many years by practitioners in the coroners' courts when explaining the process to their clients is to say that it is not the role of the coroner to apportion blame for the death. That is a slightly different inference and to say that the coroner cannot blame a person / organisation suggests that if they do, then they will be held to account. We do not anticipate that that is an intended outcome of this new wording.

**Question 6:** is there anything else we should cover in the Guide to coroner services, or cover differently?

Yes  No

If so, please explain your answer.

Disclosure of documents - we cannot see that there is anything within the Guide dealing with the provision of documents to the bereaved family in advance of the inquest. Some information on this point should be included within the guide.

See answer to question 5 above.

**Question 7:** should the new coroners rules include a target date for completing inquests?

Yes  No

If so, what should this target be? Would three months be appropriate?

Yes  No

Please give your reasons.

The Act requires the coroner to hold an inquest as soon as reasonably practicable with which we agree. Whilst we understand the desire to set an aspirational target date, this could create unrealistic expectations for bereaved families and interested parties. There may necessarily be delays pending investigation / obtaining documents and therefore a target date may not necessarily be helpful. We would suggest the provision of Section 1 of the 2009 Act as currently drafted and the existing requirements within European case law are sufficient.

**Question 8:** are you aware of a time when a coroner has in practice needed to be available out of hours for duties not relating to a post-mortem examination or organ donation?

Yes  No

If so, please give details.

On very rare occasions, a coroner has been required to carry out a site visit to see the e.g. place of work where the deceased was involved in a fatal accident; this may require a visit out of hours.

**Question 9:** are you content with this approach to the drafting of the regulations on post-mortem examinations?

Yes  No

If you are not, please give your reasons.

It will be a matter for the coroner, possibly with advice from a medical examiner, as to when it is appropriate for less invasive investigative methods to be used. We would be wary of undertaking non-invasive methods such as an MRI scan only for the results of this to lead to further investigations, i.e. a full post-mortem examination. This will lead to increased costs rather than reduced costs.

As lawyers, our main concern with regard to conduct of post-mortem is to ensure consistency of approach and accuracy, a rigorous examination and analysis. A standard template no doubt assists in ensuring consistency of approach and ensures that the coroner has all the relevant information upon which to draw their conclusion or alternatively call an inquest.

We would also suggest that the PM standard report recites the information that the authorities have received about the case and the light in which the subsequent examination took place. Our members have experience of the facts being mis-reported to the pathologist, perhaps due to verbal reporting from the coroner's officer who misunderstood the medical position. The concern is that this leads to inadequate and occasionally erroneous investigation. Keeping the resume within the PM as standard information is an important safeguard.

With regard to the detail of the PM, it is probably a question best left to medical practitioners and coroners but as lawyers, we would simply suggest that the post mortem report be brief and written in language as free from impenetrable medical language as possible and capable of being understood not only by the bereaved but also by lawyers.

With regard to taking into account religious and cultural concerns for the bereaved family, please see our response to question 5. above.

**Question 10:** are you content with the draft regulation which says that a body should normally be released within 30 days, and that if this is not possible, the coroner must explain why?

Yes     No

If not, please explain your answer.

**Question 11:** do you agree that one month (with the possibility of seeking a one month extension) should be sufficient for a person to respond to a coroner's reports of actions to prevent other deaths?

Yes     No

If you do not, please explain your reasons.

In order for the response to a report to be meaningful and of use in its stated aim of preventing other deaths, it may be that a period of 1 month is insufficient in many instances. We have in mind, for example, where a large organisation or company carry out a detailed investigation in order to respond to the report involving multiple witnesses and possibly different parts of an organisation (which may not be headquartered in the UK).

It may be reasonable for a time-limit of 8 weeks to be more appropriate in order for a full response to be provided.

**Question 12:** do you agree that the draft regulations to be made under section 43 (Annex A) will ensure more consistent standards in the coroner investigation process?

Yes     No

If not, please give details.

Broadly, we agree. However, there is little detail within the regulations that actually direct the investigation. The majority of regulations as drafted focus on the transfer of proceedings from coroner A to coroner B and focus on the post-mortem examination, etc. They do not focus in any great detail on the way in which an investigation should be carried out.

**Question 13:** do you agree with the time limit for notifying interested persons of the arrangements for the inquest hearing?

Yes     No

Do you agree with the requirement on coroners to publish the arrangements for an inquest hearing?

Yes     No

If you do not, please explain your reasons.

**Question 14:** are you content that our proposed rules on disclosure will help bereaved people and other interested persons play a more active part in the investigation process (where they choose to do so)?

Yes  No

Please explain your reasons.

We repeat some of the points made in our response to the original consultation dating back to 2010. At present, the bereaved families that are unrepresented will not know what type(s) of documents are available. When presented with a list, there is no doubt that the request for copy documents will increase. In those circumstances, it is better to restrict the list to what is relevant to the investigation / inquest. It may be possible to refer to extracts of reports where relevant, i.e. the 2 or 3 pages of a long report that are relevant to the death.

Where a second or subsequent request is made by the bereaved family (for example where they have lost the original set of documents sent to them) then it should be appropriate to charge. In addition, where it is appropriate only to disclose an extract of a report, if a bereaved person seeks a full copy, they could be requested to pay for this.

**Question 15:** do you have any suggestions as to how the rules on disclosure could be improved?

Yes  No

If so, please explain your answer.

See above answer to question 14.

**Question 16:** are you content with the proposed rules on evidence: a) written evidence; b) video link; c) screened evidence?

Yes  No

If not, please explain your answer.

In addition, we would add a note of caution on acceptance of written evidence in place of oral evidence. Of course, this has its place but should in no way be seen as preferable to hearing direct oral evidence, which also allows the family and interested parties to have the opportunity to put questions to the witness.

**Question 17:** do you agree with new rule 25 and the requirement for a coroner to record inquest proceedings?

Yes  No

Should the rules contain sanctions for misuse of recordings?

Yes  No

Please give your reasons.

Where an inquest contains information in connection with UK special forces personnel, it would be appropriate for the coroner automatically to have the right to withhold information.

**Question 18:** are you content with the draft rule and form on conclusions, determinations and findings?

Yes  No

If not, how could they be improved?

We refer to a general point that we made in our response to the 2010 consultation. We do not accept that the new term "determination" is preferable to the previous term "verdict". We are not aware and are still not aware of members of the public failing to understand the meaning of the word "verdict" in the context of a coroner's court.

With regard to the "determinations" now listed, we have the following comments to make:

- \* "drink/drug related" - this can lead to some confusion where for example it may stray towards an indication of clinical negligence where the drugs were administered. It could also be a determination used in, for example, a road traffic collision where the driver was under the influence of drugs (see below). There is also some possibility of confusion with the last available determination, suicide.
- \* "road traffic collision" - a death following a road traffic collision could be as a result of e.g. natural causes, accidental death, suicide, dependence on drugs or consumption of excess alcohol and lastly as a result of unlawful killing. In the circumstances, the simple statement that the deceased died of injuries received in the course of a road traffic collision is unlikely to be satisfactory to many bereaved families. In the circumstances, we cannot see that such a determination adds anything to a determination that already exists e.g. accident.

Do you agree with the addition of the new short-form conclusions 'drink/drug related' and 'road traffic collision'?

Yes  No

Please give your reasons.

see answer above

**Question 19:** do you agree that the draft rules on inquests to be made under section 45 (Annex B) will help make inquests more consistent?

Yes  No

If not, please give details.

See answers to questions 14, 15 and 16 above.

**Question 20:** would any of the proposed regulations for juror and witnesses allowances lead to increased costs for local authorities?

Yes     No

If you think so, please give details.

This is a question that is more appropriate to be dealt with by local authorities in their responses to this consultation. As lawyers, we do not think we have anything to add to this section.

**Question 21:** do you have any comments on the draft regulations to be made under Schedule 7 (Annex C) in addition to your answer to question 20 above? If so, please give details.

No - see answer to question 20 above.