CHAPTER 1

GENERAL INTRODUCTION

THE EARLY ORIGINS OF THE OFFICE OF CORONER IN IRELAND

1-01 The office of coroner is an ancient one whose origins cannot now be identified with any certainty.[1] Reference to a "coroner" in England has been found during the reign of King Alfred (871-900),[2] but what his duties were is unknown. Modern research points to the office having been conclusively established by 1194, with the publication of the Articles of Eyre during the reign of Richard the Lionheart.[3] By Article 20, the Justices in Eyre were required to ensure that three knights and one clerk were elected in each county[4] as keepers of the pleas of the Crown: *Pretera in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronae*. With the passage of time *custodes placitorum coronae* was corrupted to *coronator* and then to *crowner* or *coroner*.

1-02 The office of coroner appears to have been established in Ireland in the early 13th century. According to Professor Otway-Ruthven, "the office of coroner ... is first mentioned in Ireland in 1264, but was not then new, and it may have existed in the time of John Comyn, archbishop of Dublin, who died in

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[1] For a definitive account of the early history of the office of coroner see R F Hunnisett, *The Medieval Coroner* (1961). See also *Report of the Committee on Death Certification and Coroners* ("Brodrick Report") (Cmnd 4810, 1971), Chap 10; F Danford Thomas, Introduction to *Jervis on Coroners* (7th ed, 1927); Knight, "The Medieval Coroner" (1990) 58 *Medico-Legal J* 65 and McKeogh, "Origins of the Coronial Jurisdiction" (1983) 6 *U NSW Law J* 191. For a fascinating account of coroners' inquests held in Sussex in Tudor times see R F Hunnisett, "Sussex Coroners' Inquests 1485-1558" (1985) 74 *Sussex Record Society* lxxiv and *Sussex Coroners' Inquests 1558-1603* (1996).

[2] Reference has also been found in the Charter of Privileges granted by King Athelstan to St. John of Beverley in 925 - see Horgan, "The Coroner's Court in Ireland" (1940) 74 *ILTSJ* 87.

[3] "The earliest method of [financial] control appears to have been a system of local agents, local justiciars, who were to take part in the determination of any matter involving royal rights. This gave way to a system of periodic audit by commissioners sent out from the centre, the justices in eyre, supplemented by a permanent local accountant, the coroner, whose records provided a check on the accounts given by the local institutions themselves": SFC Milsom, *Historical Foundations of the Common Law* (2nd ed, 1981), p 26. According to W Holdsworth, *A History of English Law* (1903), vol 1, p 84, "The office was established for the purpose of safeguarding the pecuniary interests of the Crown, and more especially its pecuniary interests arising from the administration of the criminal law".

[4] Borough coroners were authorised by royal charter from 1200 - see T D Hardy (ed), *Rotuli Chartarum* (Rec Comm, 1837), pp 46, 56, 57 and 65.

1212".[5] Horgan[6] has also noted that "as early as 1216 the Great Charter of Ireland (1 Henry 3) provided that 'no sheriff, constable, coroners, or other our bailiffs shall hold pleas of the Crown'".[7] By the end of the 13th century, at least, there appears to have been a coroner for each cantred in Ireland.[8] The history of the development of the office in Ireland remains to be written, but it would appear that it generally evolved in much the same manner as in England and Wales.

1-03 The Articles of Eyre charged coroners to "keep" the pleas of the Crown by making a formal record on parchment - the "Coroners' Rolls".[9] According to Hunnisett,[10] the "Crown pleas" consisted of "holding inquests upon dead bodies, receiving abjurations of the realm made by felons in sanctuary, hearing appeals, confessions of felons and appeals of approvers, and attending and sometimes organising exactions and outlawries promulgated in the county court". The Crown pleas were *kept* by fulfilling those requirements and in addition by attaching or arresting witnesses, suspects and others, appraising and safeguarding any lands and goods which might later be forfeited, and by recording all the details. Despite the coroner's title as "keeper of the pleas of the crown", he was never concerned *ex officio* with any crown pleas other than felonies and unnatural deaths and in practice, that meant homicide and suicide.

1-04 The provisions of a statute of 1276, *De Officio Coronatoris*,[11] are generally considered to constitute the basis of modern coronial practice in Ireland as well as in England:

> "That the coroner, upon information, shall go to the place where any be slain, or suddenly dead or wounded; and shall forthwith command four of the next towns, or five or six, to appear before him in such place, and when they are come thither, the coroner, upon the oath of them, shall inquire in this manner, that is, to wit, if it concerns a man slain, whether they know where the person was slain, whether it were in any house, field, bed, tavern, or company, and if any and who were there.
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[5] *A History of Medieval Ireland* (2nd ed, 1980), p 179, in which the author shows that the Justiciary Rolls of Ireland contain numerous entries relating to the election and duties of coroners in Ireland during the 13th and 14th centuries.

[6] *Op cit* note 2. The archives of Dublin Corporation also contain early coroners' records (including a list of coroners and references to early inquests) dating from about 1215.

[7] Some early coroners, at least in England, actually tried criminal pleas, and therefore this prohibition, which had been included in Magna Carta, was then extended to Ireland. Despite the prohibition against acting as criminal judges there is evidence that the early coroners continued to act at times as judges in both criminal and civil cases.

[8] *Calendar of Justiciary Rolls of Ireland, 1295-1303* (1905), pp 167 *et seq*, cited Otway-Ruthven, "Anglo-Irish Shire Government in the 13th Century" (1946) 5 *Ir Hist Stud* 1, 26.

[9] Some of the Irish coroners' rolls are still accessible - see eg roll of the Eyre of Kildare in 1297-1298 discussed in G J Hand, *English Law in Ireland 1290-1324* (1967), p 108.

[10] *The Medieval Coroner* (1961), p 1. See also Otway-Ruthven, *op cit* note 5 at p 179.

[11] 4 Edw 1, c 2, reproduced in *Jervis on Coroners* (4th ed, 1880), p 28 and J Gabbett, *A Treatise on the Criminal Law* (1843), vol II, pp 54-55. Both authors agree that the statute was "merely directory, and in affirmance of the common law". It was not formally repealed in Northern Ireland until 1959 - see the Schedule to the Coroners Act (NI) 1959.

[12] *Gabbett, supra* at p 56, citing

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[14] Hunnisett, *op cit* note 10 at p

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> Likewise it is to be inquired who were and in what manner culpable, either of the act, or of the force; and who were present, either men or women; and of what age soever they be (if they can speak, or have any discretion).
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> And how many soever be found culpable by inquisition, in any the manners aforesaid, they shall be taken, and delivered to the sheriff, and shall be committed to gaol; and such as be founden, and be not culpable, shall be attached until the coming of the justices; and their names shall be written in the Coroner's Rolls.
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> And if there be any who are said to be guilty of the murder the Coroner shall immediately go into their house and shall inquire what goods they have, and what corn they have in the grange. And if they be Freemen he shall inquire how much land they have, and what it is worth yearly ... And when he has thus inquired upon everything he shall cause all the corn and goods to be valued, and the land to be extended in like manner, as if they should be sold incontinently....
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> And immediately upon these things being inquired, the bodies of such persons, being dead and slain, shall be buried....
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> In like manner, it is to be inquired of them that be drowned or suddenly dead; and after it is to be seen of such bodies, whether they be so drowned, or slain, or strangled, by the sign of the cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies; whereupon they shall proceed in the form abovesaid; and if they were not slain, then ought the coroner to attach the finders, and all others in company.
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> And also all wounds ought to be viewed, the length, breadth, and deepness, and with what weapons, and in what part of the body the wound or hurt is, and how many be culpable, and how many wounds there be, and who gave the wounds; all which things must be inrolled in the roll of the Coroners....
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> If any be suspected of the death of any man, being in danger of life, he shall be taken and imprisoned as before is said."

Although not specifically mentioned in the statute, it was taken that the coroner's duty to hold an inquest extended to the deaths of prisoners, "that the public may be satisfied that such persons came to their deaths by the course of nature, and not by duress of imprisonment, or default of the gaoler".[12] Thus by the end of the 13th century inquests were being routinely held where (i) the death was sudden or unexpected; (ii) a body was found in the open and the cause of death was unknown; (iii) the hue and cry had been raised maliciously;[13] (iv) a felony was suspected, or (v) the death occurred in prison.[14]

1-05 The main purpose of such inquests was not to determine criminal liability nor to establish the medical cause of death, but rather to identify and protect the financial interests of the Crown. The investigation of sudden deaths

[12] *Gabbett, supra* at p 56, citing Coke and Hale.

[13] It was the duty of the first finder of the body to raise the hue and cry by informing the four nearest neighbours, who then informed the bailiff of the hundred, who in turn informed the coroner. The theory was that a hunt for "the killer" should be started as soon as possible, even when it was clear that death did not result from any human intervention.

[14] Hunnisett, *op cit* note 10 at p 21.

provided a lucrative opportunity to raise money for the Crown through a variety of devices, for example, forfeiting deodands,[15] amercements,[16] the "*murdrum*" fine,[17] the confiscation of the property of felons and the forfeiture of sureties.[18] Coroners were also able to secure other sources of revenue for the Crown by asserting royal rights to treasure trove,[19] wrecks[20] and royal fish.[21]

[15] An object ("deodand") causing death was forfeit to the Crown; its "sin" in being the instrument of death could be expurgated by dedicating it to the church so that the proceeds might be used for pious purposes as a gift to God. In some cases, the proceeds were used to compensate the deceased's dependants: "At its most equitable, the deodand system provided a primitive and haphazard form of insurance for the dependants of the deceased": J H Baker, *An Introduction to English Legal History* (3rd ed 1990), p 437. Gabbett, *op cit* note 11 at p 64 observed, however, that "It has ... been the custom of jurors, at all times, to mitigate those forfeitures, by finding only some trifling thing, or part of an entire thing, to have been the occasion of the death ...". The old law, which Gabbett sets out in some detail, remained in force until 1846, "when a general awareness of its absurdity was aroused by its application to railway engines" (Baker, *ibid*) and dependants were finally given a right to sue in respect of the death; the relevant legislation - the Deodands Act 1846 (9 & 10 Vict, c 62) and the Fatal Accidents Act 1846 (9 & 10 Vict, c 93) - applied to Ireland as well as to England and Wales.

[16] Heavy fines could be imposed on an individual or township for failing to raise the hue and cry or to inform the coroner, or for burying a body before the arrival of the coroner. The rationale for fining the township collectively was that law and order was seen as the responsibility of the whole population and the commission of a crime implied negligence on the part of the neighbourhood or town.

[17] The Normans imposed a collective fine upon any hundred in which a Norman, or anyone not proved to be English (or in Ireland, Irish) was found dead. "It is not surprising that a coroner's jury might be charged with having falsely found that a dead man was Irish, or a coroner himself charged with accepting a bribe to secure such a finding": Hand, *op cit* note 9 at p 202.

[18] See eg the case of Emma in 1221, as discussed by Milsom, *op cit* note 3 at p 28.

[19] Gold and silver coins and artefacts hidden by a person unknown belonged to the Crown unless claimed by the true owner. Coroners in England and Wales and Ireland, north and south, still possess jurisdiction in such cases - see below, Chapter 13.

[20] By the Statute of Westminster I, c 4 (1275), "wreck of sea" belonged to the Crown unless the owner claimed the goods within a year and a day. Although the coroner's power to hold an inquest in such cases in Northern Ireland does not appear to have been explicitly abolished (*cf* Coroners Act 1887, s 44 in England and Wales), this jurisdiction has for many years been exercised by a "receiver of wreck" appointed under the Merchant Shipping Acts, which continue to provide that all unclaimed wrecks belong to the Crown - see now Merchant Shipping Act 1995, especially ss 241 and 243. This transfer of jurisdiction was confirmed by section 39(1)(*c*) of the Coroners Act (NI) 1959, which provides that "Nothing in this Act shall authorise a coroner ... to hold inquests of wreck ...".

[21] Whales, sturgeons, porpoises and dolphins - see eg *Constable's Case* (1601) 5 Co Rep 106, 108 and Forsyth, *Cases and Opinions on Constitutional Law* (1869), pp 178-179. This jurisdiction, which has in any case been doubted by Hunnisett (see *The Medieval Coroner* (1961), Chap 1), was abolished in England and Wales by the Coroners Act 1887, s 44. Although this provision did not apply to Ireland, it was accepted in 1926 that royal fish, when captured within the three mile limit or washed ashore in Northern Ireland, should be reported to the local receiver of wreck: see Letter of 15 February 1926 from SG Tallents, Imperial Secretary to the Governor of Northern Ireland to the Home Office (*PRO HO/45/12373*). The 195

1-06 Nonetheless, procedure has its orig special warrant, had body, *super visum cor* of an inquest.[22] On re to travel immediately chances of apprehend financial interests of t decomposition of the b the sheriff or bailiff of swearing in the jury, th be naked to facilitate strangulation.[24] There performed in Italy as e record an accurate de object was responsibl Hunnisett states that th to them by the corone naturally? If felonious were rare; but it seems verdicts of misadventur

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[24] "... in truth, the body itse 11 at p 56.

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[26] See *ibid*, Chapter X. Pr 1980), p 180 suggests th

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1-06 Nonetheless, it is from this period that much of the present-day procedure has its origins. From the outset, the coroner, unless issued with a special warrant, had no jurisdiction in the absence of a body; a view of the body, *super visum corporis*, was normally a condition precedent to the holding of an inquest.[22] On receiving a report of the finding of a body, the coroner had to travel immediately to the *locus*. Speed was essential to maximise the chances of apprehending those responsible for the death, for securing the financial interests of the Crown and to prevent the unlawful disposal or undue decomposition of the body. Before leaving the coroner would have requested the sheriff or bailiff of the hundred to provide a jury for a certain day.[23] After swearing in the jury, the coroner and jurors would view the body which had to be naked to facilitate an examination for wounds, bruises and signs of strangulation.[24] There was no autopsy, although it is known that autopsies were performed in Italy as early as the 14th century. The coroner would take care to record an accurate description of the wounds; he would also establish what object was responsible and therefore subject to being forfeit as deodand. Hunnisett states that the jurors had to answer on oath a series of questions put to them by the coroner: was death caused feloniously, by misadventure or naturally? If feloniously, whether by homicide or suicide? Verdicts of suicide were rare; but it seems likely that many suicides may have been concealed by verdicts of misadventure.[25]

1-07 Within the county the office of coroner was for a time second only to the sheriff in importance. By the end of the thirteenth century, however, the position of the coroner was in decline, and the following two centuries saw an acceleration of this process.[26] Changes in the judicial system and in substantive

HO/45/12373). The 1959 Act, s 39(1)(*b*) provides that "Nothing in this Act shall authorise a coroner ... to hold inquests of royal fish ...".

22 This principle was so firmly entrenched that Gabbett, writing in 1843, stated that "if the body be not found, or have lain so long before the view that no information can be obtained from the inspection of it, or if there be danger of infection by digging it up, the inquest ought not to be taken by the coroner, (unless he have a special writ or commission for that purpose,) but by justices of the peace ... who shall take the inquest on the testimony of witnesses ...": *op cit* note 11 at p 57. The Coroners (Ir) Act 1846, s 46 provided, however, that no inquest should be quashed simply because "the coroner and jury did not all view the body at one and the same instant, provided they all viewed the body at the first sitting of the inquest ...". The requirement to view the body survived until 1926 (in the case of jurors) and 1959 (in the case of the coroner) - see below, Chapter 4, paras 4-17 and 4-18 and Chapter 8, para 8-25.

23 Originally the jury comprised every male over 21 years of age from at least four neighbouring townships; but after about 1300 this was reduced to a representative selection of between 12 and 16 persons. Later, the size of the coroner's jury was equated to that of the grand jury, viz, between 12 and 23. Modern juries are much smaller in number - see below, Chapter 8, para 8-11.

24 "... in truth, the body itself is part of the evidence before the jury...": Gabbett, *op cit* note 11 at p 56.

25 Hunnisett, *The Medieval Coroner* (1961), pp 20-21.

26 See *ibid*, Chapter X. Professor Otway-Ruthven, *A History of Medieval Ireland* (2nd ed, 1980), p 180 suggests that the position in Ireland was similar: "The office of coroner,

law, notably, the cessation of the eyre, a marked decrease in the number of appeals of felony and the abolition of outlawry and of the murdrum fine, made obsolete many of the duties attached to the office. This period was also marked by the rise in importance of two other local officials, the escheator and the keeper (justice) of the peace. Nonetheless, throughout the Middle Ages the coroner continued to retain authority to discharge a wide range of inquisitorial and administrative duties, sometimes pursuant to Royal warrant, either alone or in conjunction with the sheriff.[27] By 1500, however, his role had been largely reduced to its modern form - the holding of inquests into sudden deaths.

1-08 Coroners were elected by twelve men in the county court.[28] To qualify for office, which originally was for life and during good behaviour, the coroner had to reside in the county, to be a "wise and discreet" knight and to be of substantial means.[29] The rationale for this last requirement was that persons of wealth and status were thought to be less likely to succumb to corruption - and if they did, there were lands or other possessions which could be confiscated to make good any resulting loss. Such optimism proved to be unfounded in many cases.[30] As early as 1295, for example, "The Sheriff of Tipperary was directed (because Walter son of Peter was unfit for the office of Coroner in the parts of Oconath and Muscricork) to cause another to be elected in full county court by the oaths of twelve lawful men and to commit the office to him on his taking the oath".[31]

though important, had a fixed and limited place in the scheme of administration, and shows no significant development after its first appearance".

27 The potential range of a coroner's duties during this period in Ireland is shown by records which disclose that in 1306 the sheriff and coroner for Tipperary were directed to take an inquisition concerning the ownership of land, and at Kildare in 1307 jurors were assigned by the coroner to bring a murderer called John Godard to gaol: see *Calendar of Justiciary Rolls of Ireland, 1305-1307* (1914), pp 271 and 514, cited Horgan, "The Coroner's Court in Ireland" (1940) 74 *ILTSJ* 87, 88.

28 Otway-Ruthven, *op cit* note 26 at p 179 Professor Otway-Ruthven had earlier noted that "As in England, the office was an unpopular one, which could sometimes be avoided by bribing the sheriff, whose duty it was to see that the election took place ...": "Anglo-Irish Shire Government in the 13th Century" (1946) 5 *Ir Hist Stud* 1, 26.

29 Statute of Westminster I, c 10 (1275), which recited that "mean and unwise persons now of late are commonly chosen" as coroners. This provision, which was extended to Ireland by special ordinance in 1285 (13 Edw 1), was not formally repealed in Northern Ireland until 1952 (Statute Law Revision Act (NI) 1952 (c 1)). That Act also repealed the Escheators and Coroners Act 1340 (14 Edw 3, st 1, c 8) (none to be chosen coroner unless he held land in fee "sufficient to answer to all manner of people").

30 Standards appear to have been relative - during the 13th century four coroners were replaced for oppression and extortion, but only because they had so acted "regularly, excessively and over a long period": Hunnisett, *op cit* note 25 at p 179.

31 *Calendar of Justiciary Rolls of Ireland, 1295-1303* (1905), p 71, cited Horgan, "The Coroner's Court in Ireland" (1940) 74 *ILTSJ* 87, 88. Horgan also notes that in 1302 a coroner was fined half a mark "because he did not perform the office of Coroner, and for other transgressions" (*Calendar of Documents relating to Ireland* (Sweetman ed, 1875), vol 1, p 39); in 1306 the Coroner for the Cross of Meath was removed (*Calendar of Justiciary Rolls of Ireland, 1305-1307* (1914), p 174) and the Coroner for Louth was

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32 *Commentaries on the* Statute of Westminster I (see above, n of any man for executing his

33 *Op cit* note 25 at p 189.

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36 See especially Sheriffs (Fee and partiality of sub-sherif process). According to N (*1692-1760* (1996), p 97, th century, so that the grand j confirmation by the justice eighteenth century the socia

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1-09 Coroners were originally of such substance and station that, in the words of Blackstone, they would not "condescend to be paid for serving their country", in accordance with the common law "that none having any office concerning the administration of justice should take any fee or reward of any subject for the doing of his office".[32] According to Hunnisett, such lofty sentiments had been forgotten by the fifteenth century:

> " ... with the waiving of the knighthood qualification, it was open to more, on some of whom it undoubtedly conferred a status to which they aspired and might otherwise not have attained. Also, by this time extortion had become firmly established, was consistently practised and only rarely punished. The office therefore appealed increasingly to families which were struggling to rise and to the unscrupulous."[33]

The concern generated by falling standards in those aspiring to the office was reflected in legislation of 1487[34] and 1509[35] which provided for the payment of certain fees to coroners with the underlying intention of providing an incentive to them to discharge their duties properly, particularly where the deceased had been "feloniously slain".

THE CORONERS (IRELAND) ACT 1846

1-10 Although it seems unlikely that such provisions would have been successful in halting the decline in the quality of those holding the office, the Irish Parliament seems to have retained some faith in the reliability of elected coroners.[36] But further action apparently became necessary during the eighteenth century. An Act of 1751,[37] which did not extend to Ireland, provided

charged with insufficiently inquiring into a death (*ibid*, p 489), and in 1307 the Limerick Coroner was committed to gaol for improperly releasing a murderer of whom he had apparently had the custody (*ibid*, p 517). See also the case cited by G J Hand, *English Law in Ireland 1290-1324* (1967), p 202 (coroner found guilty of accepting a bribe to secure finding that the deceased was Irish).

[32] *Commentaries on the Laws of England* (1st ed, 1765), p 336. In fact the Statute of Westminster I (see above, note 29) had enjoined that "no coroner demand or take anything of any man for executing his office upon pain of heavy forfeiture to the King".

[33] *Op cit* note 25 at p 189.

[34] 3 Hen 7, c 2, legislation which extended to Ireland and remained in force until the late 19th century. The fee payable to the coroner under this provision was 13*s*.4*d* for "every inquisition taken upon the view of a body slain".

[35] 1 Hen 8, c 7, which did not extend to Ireland.

[36] See especially Sheriffs (Fees) Act 1707 (6 Anne, c 7), s 5 (to counteract "great corruption and partiality of sub-sheriffs and their bailiffs", coroners given power to execute mesne process). According to N Garnham, *The Courts, Crime and the Criminal Law in Ireland 1692-1760* (1996), p 97, the election of coroners "had been formalised by the eighteenth century, so that the grand jury presented potential coroners at the assizes or sessions for confirmation by the justices". Garnham goes on to suggest (at p 98) that "even by the eighteenth century the social origins of the coroners were probably still quite exalted".

[37] 25 Geo 2, c 29. Fees were payable by the local justices in respect of any inquests "duly held"; but the justices soon began to limit payment to inquests into deaths caused by felonious violence. The view that inquests into other deaths were not "duly held" was

for the payment of increased fees and travelling expenses to coroners. In due course, the Irish Parliament followed suit.[38] Although the general aim of this legislation was to improve the status of coroners and to encourage them to discharge their duties with diligence and integrity,[39] it appears to have been unsuccessful, at least in Ireland. By 1822, it was clear that further measures were required:

> "Whereas anciently none were chosen Coroners but persons of an estate sufficient to maintain the dignity of the office, and to answer all demands which might be made upon them for misbehaviour; and whereas for many years past the office of Coroner, in Ireland, has been suffered to fall into disrepute, and get into low and indigent hands ..." [40]

1-11 The immediate solution was to stipulate a minimum property qualification for holding the office of coroner[41] and to give a criminal court finding a coroner guilty of extortion, wilful neglect of duty or misdemeanour in his office an express power "to adjudge that he shall be removed from his office ...".[42] But Parliament soon turned to more fundamental reforms. With the development of medical science it was now becoming possible to make a more accurate analysis of the cause of death. This development wa
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approved by Lord Ellenborough CJ in *R v Kent Justices* (1809) 11 East 229, 231 - a decision which "gave the justices almost unlimited power in refusing the costs of inquests, and which perverted the development of our medico-legal investigative system for more than half a century": JDJ Havard, *The Detection of Secret Homicide* (1960), p 43.

38 By the Remuneration of Coroners Act (Ir) 1790 (30 Geo 3, c 9) the grand jury could present a sum not exceeding 40 guineas for the payment of coroners, in lieu of fees, for inquests held since the last assizes. It appears that the *Kent* case was followed in Ireland - see Gabbett, *A Treatise on the Criminal Law* (1843), p 56: "... unless there be some reasonable ground of suspicion that the party came to his death by some violent or unnatural means, there is no necessity for the interference of the coroner". A further disincentive was provided by the Coroners' Fees (Ir) Act 1820 (1 Geo 4, c 28), which stipulated a maximum fee of 5 guineas per inquest while retaining the overall 40 guineas' limit; the holding of more than eight inquests accordingly reduced the fee payable for each inquest.

39 The Irish law relating to coroners in the early 18th century is set out in M Dutton, *The Office and Authority of Sheriffs, Under-Sheriffs, Deputies, County Clerks and Coroners in Ireland* (1721), pp 103-133. The author (p 106) describes the office of coroner as "twofold", namely "judicial" and "ministerial" (i e cases in which the coroner may act in lieu of the sheriff); but it is noteworthy that he devotes less than one page to the latter. According to Garnham, *op cit* note 36 at p 98, "Essentially the potential of the coroner's office was as great as that of the sheriff, though it would seem the opportunities for it to be exercised were limited by the existence of the large numbers of officers employed by the sheriff."

40 *Preamble* to the Office of Coroner (Ir) Act 1822 (3 Geo 4, c 115).

41 *Ibid*, s 1 (an estate of inheritance of £200 annual value or an estate of freehold of £400 annual value). The 1822 Act did not stipulate any qualification for those who elected coroners; but this was put right in 1829 when the Coroners (Ir) Act (10 Geo 4, c 37), s 2 provided that only those qualified to vote in parliamentary elections were eligible to elect a coroner.

42 *Ibid*, s 7. This appears to have been in addition to the "common law" power of the Crown to remove a coroner from office for incapacity or neglect of duty by issuing a writ *de coronatore exonerando* - see *Ex parte Pasley* (1842) 3 Dr & War 34 (removal of a Co Dublin coroner on grounds of unfitness and incapacity).

43 6 & 7 Will 4, c 89. This
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44 Section 2 of the 1836 Act p
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46 9 & 10 Vict, c 37.
47 Normally counties were d
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death. This development was reflected in Ireland as well as England and Wales by the passing of the Coroners Act 1836.[43] The Act empowered a coroner to order the performance of a post-mortem examination and to summon a qualified medical practitioner to attend an inquest.[44]

1-12 Ten years later, increased awareness of the importance of collecting and recording accurate statistics on mortality[45] and the development of a police service provided the background to the enactment of further legislation in the form of the Coroners (Ireland) Act 1846.[46] This Act effected a thorough overhaul of all aspects of coronial law and practice in Ireland and indeed provided the basis for the holding of inquests in Ireland, north and south, for more than a century. Provision was made for the division of each county into coroners' districts[47] and for the election, by the parliamentary electors in each district, of a "resident" coroner with the necessary property qualifications.[48] Where, however, the coroner had not held an inquest within two days of the finding of the body or of the death, section 44 of the Act confirmed that any two magistrates of the district could continue to do so.[49] The newly-elected

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[43] 6 & 7 Will 4, c 89. This Act remained in force in Northern Ireland until repealed by the Schedule to the Coroners Act (NI) 1959.

[44] Section 2 of the 1836 Act provided that if a majority of the jury were not satisfied with the explanation of why death occurred, they could require the coroner to have a post-mortem examination carried out by a medical practitioner of their choosing.

[45] In England and Wales this was provided for by the Births and Deaths Registration Act 1836; similar legislation was not, however, enacted for Ireland until the Registration of Births and Deaths (Ir) Act 1863 (26 & 27 Vict, c 11). For further details, see eg *People Count: A History of the General Register Office* (HMSO, 1987) and *Registering the People: 150 Years of Civil Registration* (General Register Office for NI, 1995). The registration of deaths in the Republic of Ireland is still largely governed by the 1863 Act - see eg *O'Connell* v *An t-Ard Chlaraitheoir*, unreported, High Ct, 21 March 1997 [transcript on LEXIS].

[46] 9 & 10 Vict, c 37.

[47] Normally counties were divided into two districts, but some counties had three or four coroners. In 1868 it was reported that there were 86 coroners in Ireland: *Report from the Select Committee on the Grand Jury Presentments (Ireland) 1868: Minutes of Evidence:* 1867-1868 *Parl Papers*, vol x, p 371 (evidence of Dr Hayes).

[48] Sections 1-18. It would seem that the property qualification set in 1822 (see above, note 41) had proved to be too restrictive - section 16 of the 1846 Act stipulated that a coroner must now be seised only of an estate of inheritance of £50 net annual value or an estate of freehold of £100 net annual value. Any person who satisfied the property qualification was eligible for election to the office.

[49] This power appears to have been more frequently used *before* 1846; in Counties Antrim and Donegal, for example, the office of coroner was vacant for several years in the early 1840s, and the duties were performed by the magistrates of the respective counties: see *A Return of the Number of Inquests held by the several Coroners in Ireland ... for the years 1848 ... [to] 1853*: 1854-1855 *Parl Papers*, vol xlvii, p 371. The need for the magistrates to act may have been avoided after 1846 by the authority granted to coroners by sections 38 and 39 of the 1846 Act to hold inquests in other districts within the county "during the illness, incapacity, or absence of the coroner for any other district, or during a vacancy in the office of coroner for any other district ...". It would also have been obviated when the

coroners, who were clearly intended to hold the office only on a part-time basis, were to be paid a fixed fee for each inquest and limited travelling expenses.[50] The expenses of witnesses and other persons involved in inquest proceedings were also to be paid from presentments made by the grand jury and levied from local ratepayers.[51] The Act prescribed in some detail the procedure to be followed at inquests, the qualifications required of jurors, etc, and required the coroner to make "an abstract of the inquisition and finding of the jury" in every case.[52] The modern role of the coroner was effectively enshrined in section 22, which provided that whenever any dead body was *found*,[53] or any sudden death or death in suspicious circumstances occurred, the newly established Irish Constabulary had to give immediate notice to the coroner; if the coroner "shall deem it necessary" to hold an inquest, he was then to arrange for jurors to be summoned and to issue a summons "for every witness whom he shall deem necessary to attend such inquest ... for the purpose of giving evidence relative to such dead body ...".

1-13 Some evidence of the impact of the 1846 Act is available from the relatively sparse statistics which were produced in the nineteenth century. In 1841, when the population of Ireland was just over eight million, some 1,984 inquests were conducted.[54] In 1853, when the 1846 Act was in full operation and the population of the island had as a result of the Famine fallen to six and a half million, some 3,300 i number of inquests had fa of inquests in England fluctuated considerably f significantly decreased ov

1-14 The 1846 Act de regard to the cities, the M certain boroughs outside I councillor or alderman, to behave himself in the off appointed exclusive juris Londonderry (and certain then held for either city. 1860, when the Borough power to appoint their c coroners appointed under of the City of Dublin wa Act 1876.[60]

1-15 Notwithstanding Ireland came under consi century.[61] As early as 18

power to appoint deputy coroners was conferred in 1908 - see below, para 1-18. But section 44 nonetheless remained in force until the 1846 Act was repealed by the 1959 Act.

50 Payment of fees had still to be approved by the grand jury, who were empowered to examine the coroner on oath "as to the truth and correctness of all or any of the statements or items contained in [his] accounts, or as to the belief which such coroner may at the time of holding any such inquest have entertained of the necessity for holding the same": 1846 Act, ss 24-27. The extent to which this power was exercised to restrict the holding of inquests is not known; but the fee for each inquest was reduced to £1.10*s* and made subject to an overall limit of £65 at any assizes. *Cf* the "obstruction" of coroners by the local justices in England and Wales continued until the County Coroners Act 1860 (23 & 24 Vict, c 116) made provision for the payment of salaries to coroners - see Havard, *op cit* note 37 at pp 51-64. Coroners in Ireland continued to be paid by fees until 1881 - see below, para 1-16.

51 By s 28, the coroner was authorised to pay such witnesses "any sum ... not exceeding the sum contained in Schedule C ... as to such coroner shall seem just and reasonable ...".

52 Sections 22-24 and 31-36. Sections 33 and 34 in particular replicated the provisions of the 1836 Act regarding the attendance of medical witnesses, the carrying out of post-mortem examinations and the rights of the jury with respect thereto. Section 36 reflected the fact that Irish coroners still experienced certain practical difficulties by giving the coroner power to fine the owner of a public house who refused to allow a body to be deposited there until the inquest had taken place. This provision remained in force until 1959 in Northern Ireland and 1962 in the Republic of Ireland.

53 This wording, which has given rise to some difficulties, is replicated in the 1959 Act, s 8; the word "found" is not used in the legislation for England and Wales or the Republic of Ireland. See further below, Chapter 4, para 4-31.

54 *A Return of the Number of Inquests held by the several Coroners of the Counties and Counties of Cities in Ireland ... during the year 1841:* 1842 *Parl Papers*, vol xxxviii, p 185.

55 *A Return of the Number of . 1848 ... [to] 1853:* 1854-1 a coroner's jury found that "reversed" when her husba part to the intervention of one of life imprisonment. - see eg Anon, *The Kirwa Evidence and the Necessity*

56 *Criminal and Judicial Sta* main difference between Wales of (i) accidental d greater use of railways a manslaughter was relative from excessive drinking.

57 Thus, in 1890, 2,041 in deaths; in 1910, this numb *Annual Reports of the Re* and 1911 *Parl Papers*, vol

58 3 & 4 Vict, c 108, s 153.

59 23 & 24 Vict, c 74, s 1, la and Belfast Corporation A

60 (39 & 40 Vict, c *xciii*), s 6

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half million, some 3,300 inquests were held.[55] By 1875, however, the annual number of inquests had fallen to 2,985 - roughly half the rate of the incidence of inquests in England and Wales.[56] Thereafter, the number of inquests fluctuated considerably from year to year, but generally appears to have significantly decreased over the next 30 years or so.[57]

1-14 The 1846 Act dealt only with the election of "county" coroners. With regard to the cities, the Municipal Corporations (Ireland) Act 1840[58] had given certain boroughs outside Dublin the power to appoint a "fit" person, not being a councillor or alderman, to be coroner of the borough, "so long as he shall well behave himself in the office of coroner". This Act, which gave coroners so appointed exclusive jurisdiction to hold inquests, did not apply to Belfast or Londonderry (and certain other cities), since no separate quarter sessions were then held for either city. The county coroner, therefore, continued to act until 1860, when the Borough Coroners (Ireland) Act[59] extended to these cities the power to appoint their own coroners and provided for the remuneration of coroners appointed under the Act. The appointment of coroners for the County of the City of Dublin was - and remains - governed by the Coroners (Dublin) Act 1876.[60]

1-15 Notwithstanding such legislative activity, the office of coroner in Ireland came under considerable scrutiny in the third quarter of the nineteenth century.[61] As early as 1859 a commentator could write:

[55] *A Return of the Number of Inquests held by the several Coroners in Ireland ... for the years 1848 ... [to] 1853;* 1854-1855 *Parl Papers*, vol xlvii, p 371. It was during this period that a coroner's jury found that Maria Kirwan had drowned accidentally - a verdict subsequently "reversed" when her husband was convicted of her murder and sentenced to death; due in part to the intervention of the foreman of the coroner's jury, this sentence was commuted to one of life imprisonment. The case became one of the great *causes célèbres* of the century - see eg Anon, *The Kirwan Case: Illustrating the Danger of Conviction on Circumstantial Evidence and the Necessity of Granting New Trials in Criminal Cases* (1853).

[56] *Criminal and Judicial Statistics (Ireland) 1875*: 1876 *Parl Papers*, vol lxxix, p 302. The main difference between the two countries is identified as the higher rate in England and Wales of (i) accidental deaths "arising from the greater density of town population and greater use of railways and machinery", and (ii) suicides. The number of deaths from manslaughter was relatively higher in Ireland, as was (marginally) the number of deaths from excessive drinking.

[57] Thus, in 1890, 2,041 inquests were reported to the registrars of births, marriages and deaths; in 1910, this number had declined to 1,698; see respectively 27th and 47th *Detailed Annual Reports of the Registrar-General (Ireland)* 1890-91 *Parl Papers*, vol xxiii, p 329 and 1911 *Parl Papers*, vol xi, p 661.

[58] 3 & 4 Vict, c 108, s 153.

[59] 23 & 24 Vict, c 74, s 1, later amended by Coroners (Ir) Act 1881 (44 & 45 Vict, c 35), s 3 and Belfast Corporation Act 1911 (1 & 2 Geo V, c *cxc*), s 100.

[60] (39 & 40 Vict, c *xciii*), s 6. This provision was *not* repealed in 1962 - see 1962 Act, Sch.

[61] Much the same debate had taken place slightly earlier in England, with particular reference to the investigation of deaths in poor law workhouses and prisons - see especially Middlesex Quarter Sessions, *Report as to the Duties and Remuneration of Coroners* (1851). For a general discussion, see JDJ Havard, *The Detection of Secret Homicide*

> "There are many who insist that at the present day the coroner is an useless relic of the middle ages, and that for all the purposes of repressing crime, and inquiring into guilt, the same object would be more effectually and satisfactorily effected by our police and stipendiary magistrates."[62]

The answer to this suggestion was obvious: most inquests did not involve criminal charges[63] and it would not be satisfactory either to the public or to the family of the deceased for an "inquest" to be held by an official "so connected with the criminal procedure of the country as to cast a taint upon character by his very presence".[64] But even where a criminal offence was suspected, it was contended that the coroner's jurisdiction should be "strengthened and improved, rather than emasculated and destroyed", since it provided "a salutary safeguard of the credit of the innocent".[65] For whatever reason, the suggestion that the office of coroner should be abolished does not appear to have been seriously entertained. But there were persistent demands for its reform, with particular emphasis on the need for coroners to be paid a "respectable" salary, for coroners to be appointed rather than elected and for the introduction of a "professional" qualification.[66]

(1960), Chap 4 and J Sim and T Ward, "The Magistrate of the Poor? Coroners and Deaths in Custody in Nineteenth-Century England" in M Clark and C Crawford, *Legal Medicine in History* (1994), Chap 10. According to Sim and Ward (at p 257), "The report of the 1860 Select Committee [on the Office of Coroner] marked a decisive victory for the coroners."

62 Anon, "The Office of Coroner - Its Practice and Duties" (1859) 9 *Ir Quart Rev* 268, 271. See also *Report from the Select Committee on the Office of Coroner*: 1860 *Parl Papers*, vol xii, pp 261 and 267, where Mr George (MP for Co Wexford) suggested that it was "a matter for grave consideration, whether the jurisdiction of the coroner in Ireland does not obstruct, rather than promote, the ends of criminal justice in that country ...". This suggestion was rejected by the Committee, which reported that "The [1846] Act seems to be framed with care ... and the Committee have not thought it necessary to recommend any alteration in the law ...". No doubt the criticisms of their office played some part in the decision to set up the Coroners Association of Ireland in 1870. But the coroner's role in criminal cases continued to be doubted - see eg Dodd, "The Preliminary Proceedings in Criminal Cases in England, Ireland and Scotland" (1876-79) 7 *JSSISI* 189.

63 They might, for example, be more concerned with *civil* liability - in 1860, for example, the jury investigating the death of a worker in a boiler explosion at the York Street Flax Mill in Belfast "cannot separate without expressing their unanimous opinion that the boiler which caused the death ... was unfit for the work at which it was kept": *Report of the Inspectors of Factories to the Home Secretary for 1860*: 1860 *Parl Papers*, vol xxxiv, p 52.

64 Anon, "The Office of Coroner - Its Practice and Duties" (1859) 9 *Ir Quart Rev* 268, 271.

65 Editorial, (1875) 9 *ILTSJ* 177. It appears that the practice at this time was *not* to adjourn an inquest to enable committal proceedings to be conducted by the magistrates (see *Report from the Select Committee on the Grand Jury Presentments (Ireland) 1868: Minutes of Evidence:* 1867-1868 *Parl Papers*, vol x, p 371 (evidence of Dr. Hayes)) and in a series of cases in 1873-1874 the Irish courts held that a person suspected of causing the death should be able to appear and give evidence at the inquest, even if criminal proceedings were pending - see further below, Chapter 9, para 9-19.

66 See generally *Report from the Select Committee on the Grand Jury Presentments (Ireland) 1868:* 1867-1868 *Parl Papers*, vol x, p 73, *Copy of a Memorial addressed to the Lord Lieutenant by the Coroners of Ireland, requesting that a Measure in their Behalf may be brought before Parliament early in the present Session:* 1871 *Parl Papers*, vol lviii, p 439

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68 *Report from the Select C*
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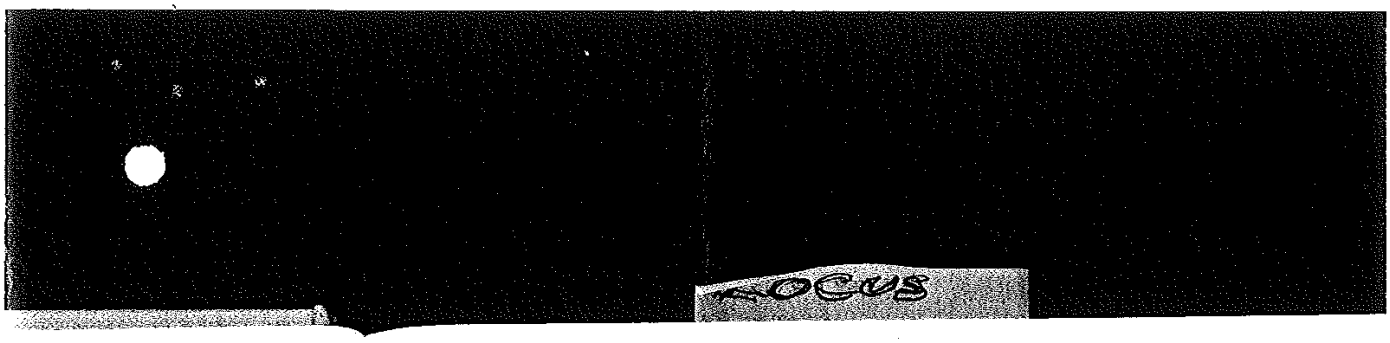
69 50 & 51 Vict, c 71.

70 *Brodrick Report*, para 10



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871 *Parl Papers*, vol lviii, p 439

1-16 Ultimately, a measure of reform was achieved by the Coroners (Ireland) Act 1881.[67] This Act provided (*inter alia*) for the payment of coroners by means of an annual salary (in lieu of fees and allowances), and stipulated that no person was thereafter to be elected or appointed coroner unless he was duly qualified to practise medicine or surgery, or was a barrister or solicitor, or a justice of the peace of at least five years' standing. The system of election was to be retained; but now "such polling shall continue for one day only", instead of two, as heretofore.

1-17 The 1881 Act did not reflect a general review of the office of coroner; indeed, it would appear that no such review was carried out with respect to Ireland during the whole of the nineteenth century. The position in England and Wales was somewhat better. In 1860, a Parliamentary Select Committee had recommended (*inter alia*) that inquests should be held in all cases of violent or unnatural death, all sudden deaths where the cause was unknown and all deaths where "reasonable suspicion of criminality" existed.[68] Although the Committee's recommendations were not implemented until the enactment of the Coroners Act 1887,[69] that Act represented an important step in the modernisation of the office of coroner in England and Wales:

> "In consolidating the law relating to coroners, which remains the statutory basis of the law today, the Act confirmed that the emphasis was no longer to be on protecting the financial interests of the Realm, but rather on providing a service for the investigation of both the cause of and the circumstances surrounding deaths, for the eventual benefit of the community as a whole. The coroner's interest in medical causes of death grew gradually as a result of the ever increasing demand of the registration system, which, as it developed, required more precise information on mortality, and in answer to increasing public concern at the possibility that murder might be concealed."[70]

There was now a definite change of emphasis. The increasing professionalism and improved organisation of the police force, coupled with advances in medical knowledge, gave the coroner a rather different role than heretofore. He became no longer principally concerned with the uncovering of suspected homicide, but with an accurate determination of the cause of death.

1-18 The 1887 Act did not apply to Ireland. But it was shortly followed by legislation which was necessary to put the office of coroner in Ireland on a

and TG Peel, *The Case of the Irish Coroners Stated* (1872). For a discussion of the various issues in the House of Commons, see in particular the debate on the Coroners (Ir) Bill 1875 - 224 Parl Debs, cols 514-529 (12 May 1875).

67 44 & 45 Vict, c 35. The Bill had the support of a number of Irish MPs, but was viewed with some disfavour by the Government; it appears to have been accepted as affording an opportunity to show Parliament's willingness, at a difficult time, "to redress Irish grievances": see 259 Parl Debs, cols 372 *et seq* (4 March 1881).

68 *Report from the Select Committee on the Office of Coroner:* 1860 *Parl Papers*, vol xxii, p 257.

69 50 & 51 Vict, c 71.

70 *Brodrick Report*, para 10.28.

more modern footing. Section 14 of the Local Government (Ireland) Act 1898[71] abolished the "objectionable" system whereby coroners were elected by the parliamentary electors of the county[72] and provided instead that coroners were to be appointed by the newly established county councils. A further advance was the express power given to the Lord Chancellor to remove any coroner "for inability or misbehaviour in the discharge of his duty".[73] Then in 1908 Parliament at last acceded to the request of the Irish coroners, first made more than 35 years earlier, by providing for the appointment of deputy coroners. The Coroners (Ireland) Act 1908[74] stipulated that "any deputy coroner ... shall have the same qualifications as a person to be elected to the office of coroner" and provided further that a deputy coroner was liable to removal by the Lord Chancellor in the same way and for the same causes as a coroner.

THE CORONERS ACT (NORTHERN IRELAND) 1959

1-19 The Report of the Departmental Committee on Coroners published in 1910[75] recognised that more could be done in England and Wales to improve the accuracy of the certification of the medical cause of death. The Committee considered that there was no need for all deaths properly referred to the coroner to be the subject of an inquest, although there would be merit in having some form of coronial inquiry which stopped short of the holding of an inquest. It recommended that, in every case in which a medical certificate was *not* given, the death should still be reported to the coroner, who would then decide if an inquest was necessary. The coroner should have power to order a post-mortem examination in cases of sudden death where the cause is unknown, even though there is no reason to suspect that the death is unnatural or violent. But the Committee also endorsed the continuing value of an inquest as a means of obtaining information about criminal aspects of sudden deaths.

1-20 By this time, however, the "criminal" function of the coroner had been largely superseded, and this fact was reflected in the legislation which gave effect to the recommendations of the 1910 Committee. The Coroners (Amendment) Act 1926,[76] which only applied to England and Wales, continued the process begun by the 1887 Act of transferring to the police complete

[71] 61 & 62 Vict, c 37.

[72] As early as 1868 a parliamentary select committee had concluded that "The present system of election ... is in many respects objectionable. There is no guarantee that a fit person will be elected ... and the expense, where there are contests, is heavy": *Report from the Select Committee on the Grand Jury Presentments (Ireland) 1868:* 1867-1868 *Parl Papers*, vol x, p 73. As we have already noted (para 1-14), most city coroners were appointed rather than elected.

[73] Section 14(3).

[74] 8 Edw VII, c 37, applying to Ireland various provisions of the Coroners Act 1892 (55 & 56 Vict, c 56). The Act finally rendered unnecessary the provision in section 44 of the 1846 Act for the holding of inquests by magistrates.

[75] *Second Report of the Departmental Committee appointed to inquire into the Law relating to Coroners and Coroners' Inquests, and into the Practice in Coroners' Courts* (Cd 5004, 1910).

[76] 16 & 17 Geo V, c 59.

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responsibility for the investigation and prosecution of homicides. In particular, the new Act imposed an obligation on a coroner to adjourn an inquest where someone had been charged with the murder, manslaughter or infanticide of the deceased. But the Act also modernised the coroner's role on the lines recommended by the Select Committee. Thus, the coroner was now allowed to order a post-mortem examination without having to hold an inquest where death was due to natural causes; juries were no longer required in inquests into suicides and non-traffic accidents, and the Lord Chancellor was empowered to make rules of practice concerning procedure in coroners' courts and concerning post-mortem examinations. In addition the 1926 Act sought to increase the professionalism of the office by providing that in future coroners should have either legal or medical qualifications and be of at least five years' standing within their respective professions.

1-21 Northern Ireland did not follow suit and there were few developments of legislative significance prior to 1959. It should, perhaps, be noted that special provision had been made during the "emergency" of 1920-1922 to enable the authorities to prohibit the holding of inquests and to provide for the duties of a coroner and/or his jury to be performed by another "officer" or court.[77] Some minor amendments were made in the "ordinary" law in 1926,[78] but no further changes were made until the enactment of the Coroners (Amendment) Act (Northern Ireland) 1955.[79] That Act was concerned primarily with coroners' juries and followed the lead taken by the Coroners (Amendment) Act 1926 in England and Wales by providing that a coroner was *required* to sit with a jury only in certain circumstances. Section 1(2) of the Act stipulated that a jury was mandatory in five cases: (i) the death was due to murder, manslaughter or infanticide; (ii) the death occurred in prison or in other

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[77] Restoration of Order in Ireland Act 1920, s 1(3)(*f*) ((duties of coroner may be performed by court of inquiry under Army Act); Civil Authorities (Special Powers) Act (NI) 1922, s 10 (duties of coroner and/or jury may be performed by such officer or court as may be prescribed). The extent to which these powers were invoked is not known. *Cf* C Campbell, *Emergency Law in Ireland, 1918-1925* (1994), p 278 states that when s 10 of the 1922 Act was invoked in Belfast in April 1922, "the Belfast Coroner was appointed to conduct the inquiry"! The Minister of Home Affairs later explained to the House of Commons that "a solicitor or a barrister has been appointed to hold inquiries in a few cases in which the circumstances were such as to render it undesirable to ask either juries or the local coroner to act": HC Debs (NI), vol 2, col 828 (26 June 1922). This "special power" was not formally repealed until 1973, when no similar power was substituted by the Northern Ireland (Emergency Provisions) Act.

[78] Jury Laws (Amendment) Act (NI) 1926, s 17 (coroners' juries no longer required to view the body - see below, Chapter 4, para 4-18 and Chapter 8, para 8-25). Provisions relating to coronial law and practice were also contained in the Petroleum (Consolidation) Act (NI) 1929, s 15, the Hydrogen Cyanide (Fumigation) Act (NI) 1938, s 3 and the Factories Act (NI) 1938, s 71 (where death may be due to a notifiable accident the coroner is not to proceed with an inquest unless a government inspector is present); all three provisions were consolidated in the Factories Act (NI) 1965, s 81(1) - see further below, Chapter 7, para 7-20. *Cf* the Coroners (Amendment) Act 1927 made a number of changes in the law relating to coroners in the Republic of Ireland.

[79] 1955, c 9.

circumstances where an inquest was required by statute; (iii) the death had to be reported to a government department; (iv) the death was due to a road traffic accident, and (v) the death was due to circumstances "the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public". However, section 1(3) of the Act granted the coroner an overriding discretion to summon a jury in any other case where he "thinks there is reason to have a jury".

1-22 The major reforms introduced by the Coroners Act (Northern Ireland) 1959 appear to have been influenced primarily by certain recommendations of a departmental committee appointed for England and Wales in 1935. The impetus for this inquiry came from criticism of the way in which some inquests had been conducted at that time. The chief concern of the Committee, which was chaired by Lord Wright, was "to lessen the damage to persons' reputations occasioned by the rigour of some coroners' enquiries".[80] In their Report, published in 1936,[81] the Wright Committee made a number of general recommendations for reform which were largely ignored in England and Wales, but which were to a significant degree implemented in Northern Ireland by the 1959 Act. The more notable of these recommendations were as follows:

(1) The office of coroner should be retained, the coroner's jurisdiction being limited to the investigation of the facts how, when and where the death occurred and this investigation of facts being clearly distinguished from any trial of liability, whether civil or criminal.
(2) In future, only solicitors or barristers should be appointed as coroners, but, whenever possible, they should have had experience as deputy coroners and should have a knowledge of forensic medicine.
(3) The coroner should no longer have the power to commit any person for trial on the inquisition on a charge of murder, manslaughter, or infanticide, and the inquisition should not name any person as guilty of one of these offences.
(4) Verdicts, or riders to verdicts, of censure or exoneration should be prohibited, but this prohibition should not extend to recommendations of a general character designed to prevent further fatalities.
(5) In any case in which questions of criminality are involved the laws of evidence should be observed; and where a person is suspected of causing the death he should not be called and put on oath unless he so desires, and should not be cross-examined.
(6) A coroner should be obliged to adjourn an inquest for 14 days, if requested to do so by a Chief Officer of Police on the ground that he is investigating the circumstances of the death to determine whether he should proceed for an indictable offence; and the inquest should be adjourned for further periods of 14 days if the Chief Officer of Police repeats his request.

[80] *Brodrick Report*, para 10.37.
[81] *Report of the Departmental Committee on Coroners* (Cmd 5070, 1936).

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[82] HC Debs (NI), vol 44, col 1
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[83] HC Debs (NI), vol 44, cols
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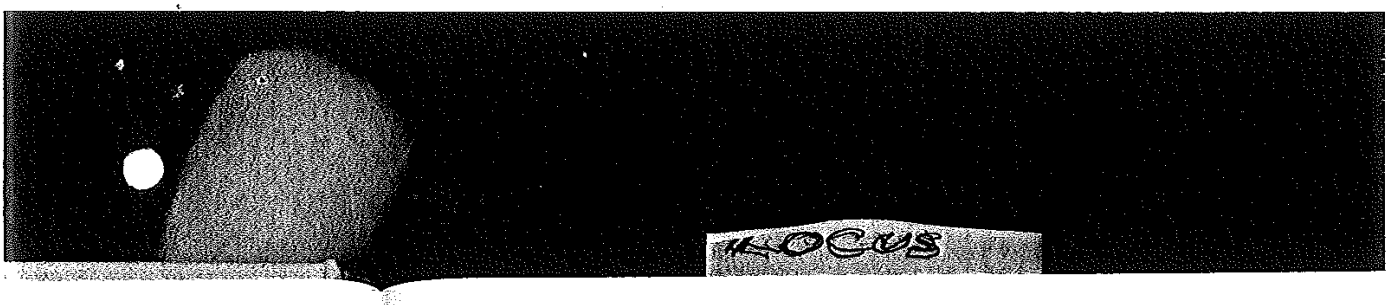

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(7) The coroner should have a discretion to dispense with the holding of an inquest in the case of deaths due to simple accidents, or to chronic alcoholism, and likewise in the case of deaths under an anaesthetic or during an operation. He should be obliged to hold an inquest in cases of suspected industrial disease.

(8) The coroner should have a discretion whether or not to view the body.

1-23 The Coroners Bill introduced in the Northern Ireland House of Commons in May 1959 substantially adopted recommendations (2), (3), (7) and (8) above. The aim of the Bill was to adapt the office of coroner to modern conditions, and it was acknowledged that "the grounds of criticism and the need for alterations in the law referred to [in the Wright Committee Report] have been largely dealt with in the Measure now before the House".[82] Perhaps the most controversial aspect of the Bill was the provision designed to give effect to the Wright Committee's recommendation that only barristers and solicitors should be appointed as coroners. The Minister of Home Affairs justified this proposal as follows:

> "In these modern days all the medical aspects of the case can be fully presented by expert medical witnesses, and the sifting of the evidence thus presented is for a legal and not a medical mind.... Where exercising a judicial function, where very important rights of the public - perhaps more so if someone is dead - are at stake, the person inquiring into those matters should be a person legally qualified to do so."[83]

1-24 The subsequent Act of 1959, which both amended and consolidated the law relating to coroners, contained a diverse and comprehensive range of provisions, the majority of which are still in force.[84] The Ministry of Home Affairs became responsible for the administration of all matters relating to coroners, and county councils were relieved of their functions regarding the provision, maintenance and equipment of coroners' courts. The power to appoint coroners and their deputies was given to the Minister of Home Affairs and all newly appointed coroners had to be practising solicitors or barristers of at least five years' standing. The Minister also became responsible for their remuneration and the provision of support staff. At his discretion he could amalgamate coroners' districts on the death, resignation or removal from office of a coroner. Expenses incurred by coroners in the discharge of their duty became the responsibility of Parliament. Coroners, with certain exceptions, were permitted to hold inquests only within their own districts. The Act also contained provisions as to the circumstances in which there was a duty on certain persons to report a death or the finding of a body to the coroner; the

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[82] HC Debs (NI), vol 44, col 1412 (14 May 1959)(Minister of Home Affairs). A review of the Irish legislation was also conducted in 1962; but although the Coroners Act 1962 made a number of changes in the law, it "mainly consists of a re-enactment of the existing law": Seanad Éireann Debs, vol 55, col 126 (21 March 1962)(Mr Haughey, Minister for Justice). For a general commentary on the 1962 Act see P O'Connor, *Handbook for Coroners in the Republic of Ireland* (1997).

[83] HC Debs (NI), vol 44, cols 1413 and 1442 (14 May 1959).

[84] The full text of the Act, as amended to the end of 1997, is set out in Appendix 1.

circumstances in which a coroner could take possession of a body; the investigations, including post-mortem examinations, which could then be carried out on his behalf; the summoning of jurors and the calling of witnesses; the holding of inquests - and in particular the circumstances in which the holding of an inquest with a jury was mandatory; the viewing of a body by the coroner and the jurors; the disposal of bodies; the registration of a death following an inquest and confirmation of the coroner's jurisdiction in relation to treasure trove.

THE BRODRICK REPORT AND REFORM OF THE LAW

1-25 The timing of the 1959 Act was somewhat unfortunate, in that it came into force only a few years before there commenced the most comprehensive and thorough inquiry into the modern role and function of the office of coroner in England and Wales. In 1965 a Committee under the chairmanship of His Honour Judge Brodrick QC was appointed -

> "To review (a) the law and practice relating to the issue of medical certificates of the cause of death and for the disposal of dead bodies, and (b) the law and practice relating to coroners and coroners' courts, the reporting of deaths to the coroner, and related matters; and to recommend what changes are desirable."

The subsequent Report (hereafter referred to as "the Brodrick Report"), which was published in 1971,[85] is generally accepted as being the most detailed and far-reaching study of the coroners' system ever undertaken. The Committee interpreted their terms of reference as requiring them to undertake a wide-ranging inquiry, thus enabling them "to trace the thread which runs through and binds together the disparate elements of the legal and administrative procedures which we have reviewed".[86] In the Committee's view the accurate certification of the cause of death had now become the most important function of the coroner:

> "Several of our recommendations are based on the premise that, to a very large extent, coroners and doctors are mutually dependent agents in the same process - the certification of the cause of death - and that their objective is the same: to certify the cause of death as accurately as possible. The emergence of the coroner as a principal agent in the procedure for certifying the medical cause of death was foreshadowed by the changes made in the legislation of 1926.... But the significance of the fact that the coroner now has this role has been recognised only slowly and the contribution which the coroner can make to the certification process has not yet been fully understood, let alone achieved. Our proposals for extending the coroner's role as an agent of medical certification are intended as a logical development of existing trends and they are evolutionary rather than revolutionary. We have seen our task as being partly to identify those changes which have already occurred, and to draw conclusions from them, as well as to make specific recommendations to improve the

[85] *Report of the Committee on Death Certification and Coroners* (Cmnd 4810, 1971). See also Thurston, "The Brodrick Report: An Appreciation" (1972) 40 *Medico-Legal J* 27 and Brodrick, "Death Certification and Coroners" (1972) 40 *Medico-Legal J* 89.

[86] *Brodrick Report*, p 341.

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> efficiency with which both medical certification of the cause of death and enquiry by the coroner serve the interests of the community."[87]

1-26 The Brodrick Report contained a total of 114 recommendations. The Committee made proposals (*inter alia*) for the improvement of the medical certification of the cause of death, the reorganisation of the provision of pathological and related services and the development of the coroners' service.[88] But more than half of their recommendations related to "the coroner's present and future responsibilities". In particular, the Committee recommended that the coroner should have a statutory duty "to determine the identity of the deceased and the fact and cause of death"; he should be obliged to make such enquiries as will allow him to decide whether a post-mortem examination or an inquest or some other action is required, and for this purpose should be given additional powers of investigation; with certain exceptions, he should have "complete discretion" as to the form which his enquiries take after a death has been reported to him, but there should be wider rights of appeal against a decision not to hold an inquest or against the findings of an inquest; "properly interested persons" should be given an "absolute" right to participate in an inquest, and legal aid should be made available to enable them to be legally represented; subject to any objection by a "properly interested person", the coroner should have a discretion to hold a "short" inquest based exclusively on documentary evidence; the duty of a coroner's jury to name the person responsible for causing a death and the coroner's obligation to commit a named person for trial should be abolished and the term "verdict" should be abandoned and replaced by "findings".

1-27 It was anticipated that the Brodrick Report would act as the long-awaited catalyst for fundamental reforms in coroners' law and practice. Twenty-seven years later, however, few of their recommendations have been adopted.[89] The coroner's criminal jurisdiction has been abolished in England and Wales,[90] as has the requirement that the coroner must view the body.[91] A recommendation for a reduction in the number of categories of death for which a jury is mandatory was partially implemented in England and Wales[92] and in

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[87] *Ibid.*

[88] In particular, the Committee recommended that only barristers or solicitors of at least five years' standing should be eligible for appointment as coroners, and that all appointments should be made by the Lord Chancellor - recommendations which had been largely anticipated by the 1959 Act (with the substitution of the Minister of Home Affairs for the Lord Chancellor).

[89] It is therefore somewhat surprising to find that the Report is often cited in court hearings dealing with coronial matters and that it has in many ways acquired the status of a legal authority.

[90] Criminal Law Act 1977, s 56. This had already been achieved in Northern Ireland by the 1959 Act.

[91] Coroners Act 1980, s 1. This is in accord with the position in Northern Ireland, where a view of the body by the coroner is discretionary by virtue of s 11(2) of the 1959 Act.

[92] Criminal Law Act 1977, s 56.

Northern Ireland.[93] Only Northern Ireland has adopted the recommendation that the term "verdict" should be abandoned and replaced by "findings" - a reform which may in fact have created more problems than it has solved.[94]

1-28 Considering the plaudits Brodrick attracted it is difficult to comprehend why almost all their recommendations have been ignored. A general Coroners Act for England and Wales was enacted in 1988,[95] but, with some minor exceptions, this was merely "a useful consolidation" of the existing legislation.[96] The Act was viewed in many quarters as a missed opportunity to do something innovative, and this feeling of deep frustration was reflected by the reaction to the Act of the Coroners' Society of England and Wales:

> "The Coroners Act 1988 was enacted against the advice of the Coroners' Society. We made it clear, in the channels that were open to us, that it would have been preferable to leave the law in need of urgent amendment and not to give the unfounded illusion that the 1988 Act represented modern thought and practice."[97]

Writing shortly after the twentieth anniversary of the publication of the Brodrick Report, another commentator made the following trenchant remarks:

> "More than 20 years later, as the number of suspicious deaths continues to rise, coroners remain very much a law unto themselves and very few lawyers, let alone laymen, know precisely what such officers can and cannot do.
>
> Brodrick's greatest achievement was seeing to it that coroners should lose their ancient power to publicly name people responsible for a death, even a murder, and commit them for trial. It seems outrageous that such a verdict could ever have been given before or after a committal from a magistrates' court and before a jury trial, with no restriction on reporting the accusative verdict from the coroner's court, with all its ill-defined powers.
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> Blame not Brodrick for not achieving more. The State which commissioned his diligently researched and carefully worded report should have ensured there would be the people, organisation, accommodation, goodwill and money to bring the coroners' service efficiently into the 21st century."[98]

1-29 Since the coronial law of Northern Ireland, as enshrined in the 1959 Act, follows much the same lines as that of England and Wales, it is difficult to

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[93] Criminal Justice (NI) Order 1980, art 13 and Sch 1. For an appraisal of the legislative changes in Northern Ireland at this time see Elliott, "Recent Developments in the Law Relating to Coroners" (1981) 32 *NILQ* 353.

[94] Coroners (Practice and Procedure)(Amendment) Rules (NI) 1980 - see below Chapter 11, paras 11-03 to 11-06.

[95] 1988, c 13. The provisions of this Act are discussed in detail in P Matthews and J Foreman (eds), *Jervis on Coroners* (11th ed, 1993) (hereafter referred to as *Jervis*).

[96] As Lord Hailsham LC described the Bill when introducing it in the House of Lords: HL Debs, vol 489, col 242 (22 October 1987). His Lordship made no reference to the Brodrick Report.

[97] Matthews, "Consolidation, Coroners and Democracy" (1989) 86 *Law Soc Gaz* 28.

[98] See McConnell: "Waiting for Brodo" (1992) 142 *New LJ* 1022. These comments were made at much the same time as the Home Secretary's announcement that he had no plans for a review of the inquest system: HC Debs, vol 205, col 252w (5 March 1992).

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[100] Brodrick Report, para 9-56.

[101] See, in particular, Hadden,
Reform" in Standing Advis
1992 (HC 54,1992), Annex
of a Seminar organised by
International and Comparat
English law, see eg Bucha
Medical Law R 142.

iopted the recommendation replaced by "findings" - a is than it has solved.[94]

it is difficult to comprehend nored. A general Coroners 8,[95] but, with some minor of the existing legislation.[96] pportunity to do something reflected by the reaction to lcs:

advice of the Coroners' open to us, that it would nt amendment and not to nted modern thought and

of the publication of the lowing trenchant remarks:

s deaths continues to rise, nd very few lawyers, let nd cannot do.

hat coroners should lose sible for a death, even a geous that such a verdict ittal from a magistrates' reporting the accusative l powers.

tate which commissioned ort should have ensured tion, goodwill and money century."[98]

l, as enshrined in the 1959 l and Wales, it is difficult to

or an appraisal of the legislative ecent Developments in the Law

JI) 1980 - see below Chapter 11,

tail in P Matthews and J Foreman ed to as *Jervis*).
ng it in the House of Lords: HL nade no reference to the Brodrick

89) 86 *Law Soc Gaz* 28.
'J 1022. These comments were nouncement that he had no plans 252w (5 March 1992).

avoid the conclusion that much the same criticism may validly be made of the law in this part of the United Kingdom.[99] The Brodrick Committee *did* recognise the value of the office of coroner and advocated its retention:

> "The best interests of the public are served by inquiries into sudden deaths, or deaths from causes which remain doubtful, that are conducted under the auspices of someone who is independent of the medical profession, of the police, and of 'government' in its widest sense. The English coroner system is all of these things and, whatever changes need to be made in organisation and responsibility of the system, we are in no doubt that the coroner's office, as the present embodiment of the 'appropriate authority', should retain its present integration of function and independence of character."[100]

What was of the utmost importance, however, was new legislation to recognise the role the coroner in practice fulfils in the second half of the twentieth century. While the Report itself is no longer perceived as necessarily representing modern thinking, the absence of up-to-date legislation has served to compound a widespread misunderstanding of the nature of a coroner's powers and the scope of an inquest. As a result, the office of coroner has come under increasingly critical scrutiny both in England and Wales and in Northern Ireland, and judicial challenges to coronial decisions have in recent years become commonplace in both jurisdictions. In Northern Ireland, attention has in particular focused on the differences between the law of the two jurisdictions, and on the adequacy of the law relating to inquests in cases where a person has been shot dead by the security forces in disputed circumstances.[101] It is hoped to demonstrate that the true scope of the coroner's inquest both in England and Wales and in Northern Ireland - and as envisaged by the Brodrick Committee - is much more limited than many, including some legal practitioners, believe - or wish - to be the case. However, common cause is joined with those who believe that the legislative basis of the office, as presently constituted, is flawed in many respects and that some further measure of principled reform is long overdue.

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[99] That certainly appears to be the case in the Republic: "The 1962 Act needs updating. Other areas requiring urgent attention include the inadequate funding, facilities and equipment provided for running a modern coronership. The absence of training for coroners and of formalised rules as to practice and procedure is less than optimal .... Centralisation under one Department with availability of legal advice and legal precedents together with standardisation of the medico-legal autopsy would be desirable ...": Editorial, "The Coroner's Court - In the Public Service, In the Public Eye and In Crisis" (1995) 1(3) *Medico-Legal J of Ireland* 82. The Dublin City Coroner, Dr Brian Farrell, has also called for the enactment of Coroners' Rules - see *Irish Medical Times*, 4 March 1994.

[100] Brodrick Report, para 9-56.

[101] See, in particular, Hadden, "The Law on Inquests in Northern Ireland: Proposals for Reform" in Standing Advisory Commission on Human Rights, Annual Report for 1991-1992 (HC 54,1992), Annex L and Inquests and Contentious Deaths (Record of Proceedings of a Seminar organised by British Irish Rights Watch, INQUEST and the Centre for International and Comparative Human Rights Law, Belfast 1997). For criticism of the English law, see eg Buchanan and Mason, "The Coroner's Office Revisited" (1995) 3 *Medical Law R* 142.

1-30 We may, however, end this historical review on a more positive note. The effect of the legislative changes in Ireland and Northern Ireland over the past century or so must be regarded as largely beneficial. In 1996, the coroners of Northern Ireland held 481 inquests, conducted 1,282 post-mortems in cases not requiring an inquest and dealt with 1,110 other deaths where neither a post-mortem nor an inquest was required.[102] Notwithstanding the controversies surrounding certain cases, this level of public and independent scrutiny of sudden or unnatural deaths must surely be instrumental in securing and maintaining a general degree of public confidence in the continued value of, and necessity for, the office of coroner in Northern Ireland.

[102] *Judicial Statistics for Northern Ireland 1996* (1997), Part G, Table 3.

THE PRESEN

APPOINTM

2-01 Prior to 1959 corc authorities,[1] and this is still of Ireland.[2] In accordanc Committee in 1957,[3] howev coroners in Northern Irel prorogation of the Parlia responsibility became that with the abolition of that P January 1974 was transfer confirmed and continued b the result that section 2(1) provides:

> "The Lord Chancello deputy coroner for suc numbers, remuneration, after consultation with t

[1] Local Government (Ir) Act 18
[2] Coroners Act 1988, s 1 [E an
[3] *Report of the Committee on* In the debates on the 1959 authorities have no objectior logical that following the ac and petty sessions courts it Debs (NI), vol 44, cols 1412 of the power of appointmer that the power of appointi transferred to the Lord Cha standards of selection: *Brod* not been implemented; hov available its expertise to lo "We can offer informatio unnecessary difficulties for t
[4] Northern Ireland (Temporar
[5] Northern Ireland Constitutic Enactments - No 1) Order Order, other matters pertai State until they, too, were t
[6] Section 122(1) and Sch 5, Chancellor shall be respons