

CHAPTER 4

THE JURISDICTION OF THE CORONER

DEATH WITHIN NORTHERN IRELAND

The need for a body

4-01 In general, a coroner acquires jurisdiction under section 11(1) of the 1959 Act when he is informed that "there is within his district the body of a deceased person and that there is reason to believe that the deceased person died in any of the circumstances mentioned in section 7 or section 8 [of the 1959 Act]". In essence¹ these provisions bring the vast majority of all sudden, unexpected, violent or unnatural deaths in Northern Ireland within the jurisdiction of the coroner - provided, of course, that he has "reason to believe"² that the deceased died in such circumstances.

4-02 Prior to 1959, the physical presence of a body within the coroner's district was an essential prerequisite to the exercise of this jurisdiction and, with one exception, the absence of the body remains an absolute bar to the holding of an inquest. The one exception to the general rule is set out in section 16 of the 1959 Act:

"Where a coroner is satisfied that the death of any person has occurred within the district for which he is appointed but, either from the nature of the event causing the death or for some other reason, neither the body nor any part thereof can be found or recovered, he may proceed to hold an inquest."³

4-03 Whether any action will be taken following the report of a death, but in the absence of a body, is ultimately a matter of coronial discretion; but that discretion is exercisable only when the coroner is "satisfied" that a death has occurred within his district, and the coroner's decision in any particular case is, no doubt, ultimately subject to judicial review. It is unfortunately the case that the nature of certain events may well mean that a body cannot be found or

¹ The scope of these sections is discussed in Chapter 3, paras 3-02 to 3-12.

² Cf a coroner in England and Wales has jurisdiction where there is "reasonable cause to suspect" that the deceased died a violent or unnatural death, etc (1988 Act, s 8(1)), whereas a coroner in the Republic of Ireland acquires jurisdiction "if he is of opinion" that the death may have occurred in a violent or unnatural manner, etc (1962 Act, s 17).

³ Cf Coroners Act 1988, s 15(1), which provides that "Where a coroner has reason to believe (a) that a death has occurred in or near his district in such circumstances that an inquest ought to be held; and (b) that owing to the destruction of the body by fire or otherwise, or to the fact that the body is lying in a place from which it cannot be recovered, an inquest cannot be held except in pursuance of this section, he may report the facts to the Secretary of State." Section 15(2) then provides that the Secretary of State may "direct a coroner" to hold an inquest into the death. See further below para 4-05 and *Jervis*, paras 5-12 to 5-15. Cf in the Republic of Ireland, the 1962 Act, s 23 confers a discretion on the Minister for Justice in much the same terms as s 15 of the 1988 Act.

recovered. A particularly severe explosion or conflagration⁴ may, for example, destroy all human remains; similarly, following a tragedy, such as a multiple drowning, not all the bodies of the known victims may be recovered. If a body is found or recovered, of course, matters proceed in the normal way. But if no body is found, the coroner must decide whether he is satisfied that death has in fact occurred. Where the evidence of death is conclusive, there should be no difficulty in this regard. Where he is left in some doubt, however, there appear to be two courses open to the coroner.

4-04 One approach is to delay making any decision in order to allow more time for physical remains to be found or recovered. Such a delay is particularly appropriate in the case of a suspected drowning, since a body is not uncommonly recovered until some considerable time after the event. Likewise, if there is a multiple fatality and some only of the bodies are initially recovered, the coroner may decide to delay holding an inquest for a period to allow time for recovery of the other bodies. If, as a result, all the bodies are recovered or otherwise accounted for, a single inquest may suffice. Such an outcome has much to commend it, since it avoids duplication of proceedings. On the other hand, coroners recognise that the families of the deceased, and indeed witnesses generally, often approach an inquest with some degree of trepidation, and that delay can exacerbate their apprehensions and may also prolong the grieving process. Coroners must therefore weigh these considerations against the type of practical considerations outlined above and the decision may not be an easy one.⁵

4-05 The more difficult case, however, is where it appears likely that no body will ever be found, but the evidence of death, while highly persuasive, is less than conclusive. In such a case, an inquest might well be unable to

⁴ One of the phenomena of the Lockerbie air disaster was the "vaporisation" of the bodies of some of the residents of the town which occurred when part of the fuselage crashed on to a housing estate. In Northern Ireland there have been a few instances of the complete, or almost complete, destruction of bodies as a result of terrorist explosions. In the late 1970s a severed hand was found on the roof of a building in the centre of Belfast and this was reported to the coroner. It was never established if this was all that remained of a body - although it could be proved that it was severed as a result of a bomb explosion.

⁵ The Brodrick Committee recognised that there was a possibility that the body may be recovered *after* an inquest has been held under a power such as that conferred by s 16 of the 1959 Act. This could create difficulties, particularly if the body was discovered in the district of another coroner, who might not be aware that an inquest had already been held. However, "although the existence of two sets of papers in relation to the same death might pose minor difficulties for registrars of deaths, we do not think that there should be an objection in principle to the holding of a second inquest The availability of the body for post-mortem examination might disclose the exact medical cause of death and could, indeed, throw a new light on the circumstances in which the death had occurred. We recommend that the finding of the second inquest should automatically replace the finding of the first ...": *Brodrick Report*, para 13.09. The Committee went on (para 13.10) to recommend that the Home Office should keep a register of cases in which inquests had been held in the absence of a body, and that coroners should consult the register in all appropriate cases.

conclude on the availal suggested, however, the sufficiently "satisfied" tl section 16 to hold an inq the Home Department, e woman had been murder the murder, but later con and might still be alive. inadmissible and he wa However, the coroner, " murdered within his distr the 1988 Act,⁷ to direct l establish that she was in jurisdiction to direct that for such a purpose:

"It is evident that the normally exist where t that in the normal cas; jurisdiction proceeds f makes it clear that the the Secretary of State i circumstances where tl about holding a norma destroyed or is irrecor belief....

In absolute terms, in has occurred may or n that section [15] can c certainty. There is no elevated to a certainty:

Thus, although no d those, where, for exan irrecoverably drowned by combustion or othe reason to believe that certain. In my view, th legitimate purposes for judicial determination i carrying with it the abil

It is accordingly suggestec coroner in Northern Irela discretion under section 16

⁶ (1995) 160 JP 627.

⁷ See above note 3.

⁸ (1995) 160 JP 627, 639-640. the Home Secretary had acte held.

lustration⁴ may, for example, tragedy, such as a multiple may be recovered. If a body is recovered in the normal way. But if no body is recovered, it is not possible to be satisfied that death has in fact occurred. Inclusive, there should be no doubt, however, there appear

provision in order to allow more

Such a delay is particularly significant, since a body is not recovered after the event. Likewise, where bodies are initially recovered, it is not possible for a period to allow time for the bodies to be recovered for the office. Such an outcome has been the result of proceedings. On the other hand, where proceedings have ceased, and indeed witnesses express a degree of trepidation, and that may also prolong the grieving process. Considerations against the type of decision may not be an easy

where it appears likely that no body will be recovered, while highly persuasive, the coroner might well be unable to

the "vaporisation" of the bodies of aircraft. In the case of the fuselage crashed on to a few instances of the complete, or partial, destruction of the bodies. In the late 1970s a large number of bodies were discovered in the centre of Belfast and this was the result of a bomb explosion.

the possibility that the body may be recovered, such as that conferred by s 16 of the Act, if the body was discovered in the time between an inquest had already been held. In relation to the same death might not think that there should be an inquest. The availability of the body for the medical cause of death and could, in such cases, indicate the death had occurred. We should not automatically replace the finding of the coroner's committee went on (para 13.10) to the fact that in cases in which inquests had been held, the coroner should consult the register in all appropriate

conclude on the available evidence that death has in fact occurred. It is suggested, however, that even in such circumstances the coroner may be sufficiently "satisfied" that death has occurred to acquire jurisdiction under section 16 to hold an inquest. This question arose in *R v Secretary of State for the Home Department, ex parte Weatherhead*,⁶ where there was evidence that a woman had been murdered and her body incinerated. Her husband confessed to the murder, but later contended that his wife had disappeared for other reasons and might still be alive. At his trial, the husband's confession was held to be inadmissible and he was acquitted. The woman's body was never found. However, the coroner, "definitely of the opinion" that the woman had been murdered within his district, requested the Home Secretary, under section 15 of the 1988 Act,⁷ to direct him to hold an inquest into her death, so that he could establish that she was in fact dead. The Home Secretary agreed that the Home Secretary had jurisdiction to direct that an inquest should be held in such circumstances and for such a purpose:

"It is evident that the historical and present statutory functions of a coroner normally exist where there is a dead body, and it therefore goes without saying that in the normal case the fact of death is not a question for an inquiry. The jurisdiction proceeds from the existence of a dead body. However, [section 15] makes it clear that the foundation of the coroner's discretion to report facts to the Secretary of State is that he has reason to believe that death has occurred in circumstances where there ought to be an inquest, but that there are difficulties about holding a normal inquest as the body is unavailable because it has been destroyed or is irrecoverable. What triggers the discretion is the coroner's belief...

In absolute terms, in the absence of a body, the coroner's belief that a death has occurred may or may not be correct. I reject [the] ... submission ... [that] that section [15] can only operate where the fact of death is established with certainty. There is no suggestion in s. 15 that the coroner's belief has to be elevated to a certainty before the Secretary of State's discretion arises....

Thus, although no doubt cases where s. 15 may apply will more often be those, where, for example, it is without doubt known that a person has been irrecoverably drowned or is lost down a mine shaft, or completely incinerated by combustion or otherwise, the section may also apply where a coroner has reason to believe that a death has occurred, but the fact of death is less than certain. In my view, the purposes for which [the coroner] wants an inquest are legitimate purposes for which s. 15 may be used. Those purposes include a judicial determination of the fact of death if that were to be the inquest result, carrying with it the ability to register the death as a result of the inquest."⁸

It is accordingly suggested that where, notwithstanding the absence of a body, a coroner in Northern Ireland is "satisfied" that a death has occurred, he has a discretion under section 16 of the 1959 Act to decide whether or not to hold an

⁶ (1995) 160 JP 627.

⁷ See above note 3.

⁸ (1995) 160 JP 627, 639-640. The learned judge held, however, that in the particular case, the Home Secretary had acted fairly and reasonably in refusing to order that an inquest be held.

not been established "with
 presence of a body will usually
 coroner is therefore more likely
 on in favour of holding an
 ared to demonstrate that he

in 11 or 16 of the 1959 Act
 not be found or recovered,
 ally a problem, death being
 itional criteria that there has
 system.¹⁰ However, in some
 be too simplistic, given that
 now permit the artificial

inition of "death" as such.¹²
 and hydrocephalus and at the
 maintained on a ventilator,
 was held that Baby A was
 decision by the medical staff

Therefore, for all practical
 tem death.¹³ This approach
 or).¹⁴ As in the case of Baby
 id hydrocephalus and at the

and Medical Ethics (4th ed, 1994),
 95), pp 175-177. The authors are
 Queen's University of Belfast for

1995), p 56.

J 47 and (1993) 1 *Med Law Rev*
 821.

statutory definition of "death",
 Revision Committee, namely: "We
 tute (which is not always capable
 ul opinion and knowledge from a
 tering its opinions in the light of
the Person (Cmnd 7844, 1980),

of brain stem function. The brain
ngata which contain the centres
 usness, breathing and the beating

C Havard, 1990). For a fuller
xford Medical Companion (1994),
 val College of Physicians, *Criteria*

time of the application was being maintained on a ventilator, although brain-stem death had been diagnosed. In the course of his judgment, MacDermott LJ held that "brain-stem death" is the definition of death which ought to be accepted for legal purposes. The learned Lord Justice quoted with approval a passage from the speech of Lord Browne-Wilkinson in *Airedale NHS Trust v Bland*:

"Recent developments in medical science have fundamentally affected these previous certainties. In medicine, the cessation of breathing or of heartbeat is no longer death. By the use of a ventilator, lungs which in the unaided course of nature would have stopped breathing can be made to breathe, thereby sustaining the heartbeat. Those like Anthony Bland, who would previously have died through inability to swallow food, can be kept alive by artificial feeding. This has led the medical profession to redefine death in terms of 'brain-stem death', ie the death of that part of the brain without which the body cannot function at all without assistance. In some cases it is now apparently possible, with the use of the ventilator, to sustain a beating heart even though the brain-stem, and therefore in medical terms the patient, is dead: 'the ventilated corpse'.¹⁵

What constitutes a body

4-09 The finding of a "body" may be reported to the coroner in a number of instances where it is not always clear if he has jurisdiction.

The body of a fetus, stillborn or newly born child

4-10 No jurisdiction exists in relation to the "body" of a child unless there had been life independently of the mother. If the body is that of a newly-born child who was born alive, the coroner will have jurisdiction:

"An infant is not considered to be born alive until it has issued completely from its mother's body, whether naturally or by Caesarean section. It is not necessary for the placenta to have been delivered nor for the umbilical cord to have been cut. Signs of life are essential."¹⁶

But the coroner has no jurisdiction where the body is that of a non-viable fetus or of a stillborn child:

"Neither a non-viable fetus (that is a human being at so early a stage of development as to be unable to establish and sustain a separate existence in any event) nor a stillborn child can be the subject of a completed inquest, since in neither case is there any independent life and therefore in neither case can there be a subsequent death."¹⁷

By "stillbirth" is meant the "birth" of a dead child. For the purposes of death registration a stillbirth is defined as:

¹⁵ [1993] 1 All ER 821, 878. It should perhaps be noted that the definition of "death" is still a matter of debate, at least in some other jurisdictions - see eg M Evans, "Death in Denmark" (1990) 16 *J Med Ethics* 191 ("cardiac death" test preferred).

¹⁶ *Thurston's Coronership*, para 9-06.

¹⁷ *Jervis*, para 5-03.

"... the complete expulsion or extraction from its mother after the twenty-fourth week of pregnancy of a child which did not at any time after being completely expelled or extracted breathe or show any other evidence of life."¹⁸

4-11 A coroner may claim jurisdiction if there is any doubt as to whether these criteria have been met. Normally this is resolved by a post-mortem examination and consideration of the evidence of those present at the birth. However, a post-mortem examination is not essential and the coroner may feel able to reach a conclusion based solely on the evidence of those present at the birth. This is likely to occur only where experienced medical personnel (such as an obstetrician or midwife) were in attendance and there is no allegation that death was due to some form of medical mishap. However, if the coroner is of opinion that the circumstances warrant it, he may hold an inquest with or without a jury. If as a result of his consideration of the case, by whichever course is appropriate, the coroner concludes that it is *not* a case of still-birth, he will deal with the death in the same way as any other death reported to him. But if he is satisfied that it was a still-birth, he will send a prescribed form of notification to the Registrar of Deaths.¹⁹ This notification contains, *inter alia*, a statement of *the cause of the still-birth*. The Registrar then enters the particulars on the register of still-births.²⁰ The significance for the parents of the "death" of their child *not* being a still-birth is that both the birth and the death will be registered in the normal way - although, tragically, both at the same time. Where the "death" is shown to have been a still-birth, there is neither a birth nor a death certificate; however, the parents are now permitted to register a name and to obtain a copy extract from the still-birth register.²¹

*Old human remains*²²

4-12 All coroners from time to time receive reports of the finding of bones; to claim jurisdiction the coroner must be satisfied that the bones are human and, if so, that taken in their entirety they constitute a "body". The services of a pathologist, and possibly other experts, will be essential in this regard. The location of the find may also be important, since it might point for example to

¹⁸ Births and Deaths Registration (NI) Order 1976, art 2(2), as amended by the Still-Birth (Definition) (NI) Order 1992. Until 1992 the relevant period was 28 weeks. For a commentary on this legislation, see "Still-Birth Definition" (1993) 1 *Med Law Rev* 110.

¹⁹ See Form 6 (notice after inquest) and Form 7 (notice where inquest not necessary) as prescribed by Registration (Births, Still-Births and Deaths) (Amendment) Regulations (NI) 1973, Sch 1, as amended by Registration (Births, Still-Births and Deaths) (Amendment) Regulations (NI) 1992.

²⁰ 1976 Order, art 16. For further details of this procedure, see CJ Polson and TK Marshall, *The Disposal of the Dead* (3rd ed, 1975), pp 128-129.

²¹ There is no statutory provision in the United Kingdom for recording a child's name in the still-birth register. With effect from 1 May 1989, however, an extra-statutory regulation was brought in under ministerial approval (in advance of a suitable vehicle to amend the regulations) authorising the Registrar General, at the request of the parents of a still-born child, to record a name for the child and to issue them with a certified copy of the entry in the still-birth register.

²² See further J O'Sullivan, "Burials in Archaeology and the Law" (1997) 25 *Bull Ir Ass'n of Professional Archaeologists* 32.

an ancient burial ground. time to time and it is known "famine" pits or mass graves have an advantage in such cases. The latter are obliged to be investigated if it is established, for example, that the body, or the remains, are of archaeological interest and it is most unwise to ignore them. The remains of more recent origin are more likely to be investigated and are more likely to be inquest.

Mutilated and incomplete

4-13 Terrorist action in the 1980s, unfortunately, has become more common. When pathologists find human remains, much forensic work is required to identify the casualties represented by them. On some occasions there has or may have been a question as to whether the remains are of sufficient identity to enable a coroner to hold an inquest. The occurrence has to be appraised and the police liaised with for this purpose. Together they can decide if anyone is unaccounted for as a casualty in the incident in which a few body parts are all that remain. The services of a pathologist are sufficient to enable the coroner to hold an inquest following major disasters, such as air crashes and the collapse of buildings, where dismemberment is greatest.

4-14 In all such cases the coroner must be satisfied that the remains constitute a "body". Some reports that a torso had been found that it had been conveyed to the pathologist, the coroner would hold an inquest as to the "body" and an inquest was

²³ Coroners Act 1988, s 8(1): "... Cf 1959 Act, s 13: "A coroner ..."

²⁴ The effects of prolonged submersion in water, such as saponification by which the tissues become soft and volatile substances. An example may be found in Polson, Gee (1985), p 23.

²⁵ Identifying the deceased proved to be a difficult task. A torso and a wallet containing

4-15 Where less substantial human remains are found, the coroner must be satisfied (a) that the remains came from a *dead* body, and (b) that survival without the part or parts found would have been impossible. Obviously, the coroner has to rely on expert medical evidence in such cases, since survival without certain limbs and organs is clearly possible. Thus two severed forearms found in a street were held *not* to constitute a body - and, indeed, the subsequent inquiry established that the incident was the work of a mortuary assistant with a ghoulish sense of humour. Other remains have been found to be anatomical specimens. In an Australian case²⁶ the coroner for Sydney commenced an inquest when all that was recovered was an arm. Tattoo marks allowed it to be positively identified as being an arm of the deceased. The coroner received evidence that it had been severed from the trunk by a sharp knife and that it had been cut from a dead body. The coroner averred that he was satisfied as to the death of an identified individual and on that basis claimed jurisdiction to hold an inquest. Halse Rogers J disagreed, however, and held that the coroner did not have jurisdiction:

"The whole matter ... reduces itself ... to the question, 'Is an arm a body or corpus?' or 'How much of a body may be called a body?' Now, I am clearly of opinion that in ordinary parlance no one would dream of speaking of an arm as a body, and I am equally clear that the respondent can give no assistance by referring to the original Latin term. I am of opinion that the limb which has been viewed in this case cannot be called a body. Were I to hold otherwise it would follow that each leg was a body, and likewise a severed head, and consequently if the various parts were found lying within the jurisdiction of different coroners there might be so many different inquests. I am not concerned to decide whether a trunk without head or limbs might be called a body or corpus, but I am constrained to the opinion that any separate member cannot be so termed."²⁷

In another often cited case, however, a lung *was* held to constitute a body:

"An air force officer lost contact with his formation while flying over the North Sea. His last message was that he could not see the flight leader. Later in the same day two fresh lobes of a lung were taken from the sea at a place where the aircraft could have been lost. No other trace of man or aircraft was found. The lung was proved to be human and it was possible to group blood extracted from it. The blood group corresponded to that of the missing officer. The coroner, after consultation, decided that disintegration had occurred on contact with the sea and that the lung represented a body on which he held an inquest."²⁸

The deceased had last been seen, several years previously, driving through the harbour estate in a car and it was surmised that for some reason the car had left the road and plunged into deep water.

²⁶ *Re Oram, ex parte Brady* (1935) 52 NSWWN 109.

²⁷ *Ibid*, p 111.

²⁸ *Re Bennett*, unreported decision of HM Coroner for Louth District, Lincolnshire, 1965, cited Thurston, *Coronership* (1980), p 37. *Jervis*, p 58, n 22 doubts the correctness of this decision on the basis that the lung tissue could simply have been discarded after an operation and flushed out to sea. Further doubt as to the correctness of the decision arises

More recently, the Western half of a girl's body was recovered.²⁹

Calcined remains and

4-16 Where these are found is subject to the same criteria as remains and that they are vital organs is generally not dependent on the forensic and though the medical cause nonetheless may serve a gossip. In Northern Ireland therefore would be a matter identified, the coroner will inquire before making his decision.

View of the body

4-17 In the years following the abolition of the practice developed into the body in order to acquire abolition by section 22(a) body is now a matter for the coroner and his attendance exceptional, although in some cases the scene of death or attendance the coroner's understanding

4-18 Historically, the jury has not been mandatory since

by virtue of the fact that it comprises two lobes and the one lung.

²⁹ *Re Suha Youmis Hawa, The* Para 5-10.

³¹ See above Chapter 1, para 1.

³² *Cf* 1988 Act, s 11(1) also for "the body" - and goes on to state that any court on the ground that this latter provision prevails, but *Jervis*, para 12-2 to prevail. In the Republic or is irrecoverable or the effect of exhuming the body by a member of the Garda body has previously been v

³³ Jury Laws Amendment Act

re found, the coroner must be satisfied that (a) that survival was not impossible. Obviously, the coroner is in such cases, since survival was not possible. Thus two severed limbs constitute a body - and, indeed, the work of a mortuary where remains have been found to constitute a body²⁶ the coroner for Sydney was an arm. Tattoo marks on an arm of the deceased. The coroner averred that he was an individual and on that basis the coroners J disagreed, however, and

question, 'Is an arm a body or a limb?' Now, I am clearly of the opinion of speaking of an arm as a limb can give no assistance by the fact that the limb which has been severed. Were I to hold otherwise it would be as if I were to hold otherwise a severed head, and that would be within the jurisdiction of the coroner in different inquests. I am not of the opinion that arms or limbs might be called a body in that any separate member

held to constitute a body: while flying over the North Sea the flight leader. Later in the morning on the sea at a place where the wreckage of man or aircraft was found. It was possible to group blood extracted from the missing officer. The coroner's conclusion had occurred on contact with the body on which he held an

iously, driving through the harbour as the car had left the road and

Louth District, Lincolnshire, 1965, but in 22 doubts the correctness of this conclusion have been discarded after an appeal the correctness of the decision arises

More recently, the Westminster coroner claimed jurisdiction where the lower half of a girl's body was found in the street and the remainder was never recovered.²⁹

Calcined remains and ashes

4-16 Where these are found the coroner's task, although a more difficult one, is subject to the same criteria; he has to be satisfied that the remains are human remains and that they are sufficient to constitute a body. The presence of a vital organ is generally necessary in such cases, but once again much will depend on the forensic and medical advice received. *Jervis*³⁰ suggests that, even though the medical cause of death may not be ascertainable, an inquest nonetheless may serve a useful purpose in allaying rumour, suspicion and gossip. In Northern Ireland the holding of an inquest is not mandatory and therefore would be a matter for coronial discretion. If the remains can be identified, the coroner will normally wish to consider the views of the next of kin before making his decision; but he is not, of course, bound to accede to their wishes.

View of the body

4-17 In the years following the institution of the office of coroner, the inquest was held with the coroner and the jury sitting around the body.³¹ That practice developed into the common law rule that the coroner must view the body in order to acquire jurisdiction. This obligation remained until its abolition by section 22(a) of the 1959 Act, which provides that a view of the body is now a matter for the coroner's discretion.³² The viewing of a body by a coroner and his attendance at the post-mortem examination now tend to be exceptional, although in some instances a view of a body which is still in situ at the scene of death or attendance at the post-mortem may add immeasurably to the coroner's understanding of the circumstances of the death.

4-18 Historically, the jury also were required to view the body, but this has not been mandatory since 1926.³³ Section 22 of the 1959 Act now provides:

by virtue of the fact that survival without two lobes of lung is possible; the left lung comprises two lobes and the right three and persons have survived who have only part of one lung.

²⁹ *Re Suha Youmis Hawa, The Times*, 22 November 1984.

³⁰ Para 5-10.

³¹ See above Chapter 1, para 1-06.

³² Cf 1988 Act, s 11(1) also provides that "it shall not be obligatory for a coroner ... to view the body" - and goes on to add that "the validity of ... an inquest shall not be questioned in any court on the ground that the coroner did not view the body". *Thurston*, para 19-38 states that this latter provision excludes judicial review of the coroner's decision not to view, but *Jervis*, para 12-23 doubts this. It is suggested that the latter view is more likely to prevail. In the Republic, with the exception of cases where the body has been destroyed or is irrecoverable or the deceased has already been buried and no good purpose will be effected by exhuming the body, the coroner "shall" view the body unless it has been viewed by a member of the Garda Síochána who gives evidence to that effect at the inquest, or the body has previously been viewed by another coroner: 1962 Act, ss 22, 23 and 27(1).

³³ Jury Laws Amendment Act (NI) 1926, s 17.

"(b) no juror shall be required to view the body unless the coroner, having himself viewed the body, considers that a view is necessary in order to assist the jury in arriving at their verdict; and

(c) every juror shall have the right to view the body if he so wishes."³⁴

So far as sub-section (b) is concerned, the quality of modern colour photography and video-recording techniques is such that a view of the body in the mortuary is, in the vast majority of cases, unlikely to add to the jurors' understanding of the facts. Such considerations are taken by coroners as justifying their current practice of releasing the body and permitting burial - and even cremation (where appropriate) - long before any inquest is held.³⁵ Obviously a coroner could encounter a difficulty in any such case should a juror at the inquest claim the right to view the body under sub-section (c); it may, however, be that that right is subject to the proper exercise of the coroner's power to release the body prior to the inquest.³⁶ In any event, there is no known instance of a juror having claimed the right to view the body.³⁷

GEOGRAPHICAL JURISDICTION

"Within his district"

4-19 The term "jurisdiction" may refer either to the scope of the legal powers under which the coroner acts or to the geographical area constituting the coroner's "district". A coroner normally has no jurisdiction outside the geographical area covered by the district to which he has been appointed.³⁸ Where the district has a coastal boundary, the position at common law was that the boundary extends to the low water mark and included an arm of the sea and

³⁴ In England and Wales there is no longer any statutory provision dealing specifically with the viewing of the body by the jury; *Jervis*, paras 12-21 and 12-22 explains that the provision giving the jury the right to see the body if a majority of them so desired or the duty to do so if the coroner so directed was repealed by the Coroners Act 1980, Sch 2 and adds: "Since there is neither jurisdictional obligation nor right to view, any view nowadays must be at the discretion of the coroner". Cf the former English law still applies in the Republic of Ireland, where by the 1962 Act, s 27(2), "the jury shall view the body only if the coroner so directs or a majority of the jury so desires"; it is understood, however, that this rarely occurs in practice.

³⁵ See the discussion of "Disposal of the Body" below, Chapter 5, paras 5-31 *et seq.*

³⁶ Although the right of a juror in England and Wales to view the body was repealed in 1980 (Coroners Act 1980, Sch 2), a similar question may still arise under the 1988 Act, s 21(4), which gives a majority of the jury the right to require the coroner to direct a post-mortem examination in certain cases. *Jervis*, para 6-20 asks: "If a coroner in a jury case permits cremation and the jury requires a post-mortem examination, has the coroner committed an offence? ... It is submitted that the answer is No. The jury's right to require a post-mortem examination is plainly a right to do so if there is a body available. If there never was a body, or if it has been disposed of in the meantime, then the jury cannot require a post-mortem examination to be carried out."

³⁷ The reality is that jurors are largely in ignorance of this provision; this is perhaps fortunate, since there would undoubtedly be a public outcry if coroners routinely guarded against this remote possibility by refusing to release a body until after the inquest.

³⁸ 1959 Act, s 6(1). 1988 Act, s 5(1) [E and W] and 1962 Act, ss 17-19 [Ir] contain similar provisions.

a tidal river.³⁹ The commo of an international conve boundaries may give rise coroner for the district jurisdiction. In the case, f Carlingford Lough, the p whether the case is consi coroner.⁴¹

Other means of acquir

4-20 A coroner may a outside his district in five c

Amalgamation of distri

4-21 Where there has b district "shall be deemed to district ...".⁴²

Coroner for another di

4-22 Where, for whate or neglects to do so, the I Act, appoint another coro for appointment as a cor Situations which may le incapacity or unavoidable office or (possibly) certain otherwise falling foul of t

³⁹ See eg *R v Keyn* (1876) 2 E: 7. It has been held that a c low water mark: *R v Solegu*

⁴⁰ Convention on the Territor 1987, s 1(1), discussed *Jer Jurisdiction (Amendment) /*

⁴¹ See also *Jervis*, para 3-28: ' should not extend to overfl killed in aeroplane acciden place where the aircraft c unlikely to give rise to an asserting jurisdiction." It n not so straightforward - see

⁴² 1959 Act, s 3, discussed a 1962 Act, s 7 [Ir] to the sar

⁴³ The 1988 Act, s 5(3) is i appointment; presumably if Ireland, the power to appe district is at the same tin Sfochána not below the rar to hold the inquest ...": 196

⁴⁴ Cf the equivalent provision (1962 Act, s 20(1)(a)) - e

unless the coroner, having necessary in order to assist

if he so wishes.³⁴

quality of modern colour which that a view of the body in unlikely to add to the jurors' as are taken by coroners as body and permitting burial - before any inquest is held.³⁵ y in any such case should a body under sub-section (c); it o the proper exercise of the quest.³⁶ In any event, there is ight to view the body.³⁷

DICTION

o the scope of the legal powers apical area constituting the no jurisdiction outside the ich he has been appointed.³⁸ ition at common law was that ncluded an arm of the sea and

provision dealing specifically with 2-21 and 12-22 explains that the majority of them so desired or the the Coroners Act 1980, Sch 2 and r right to view, any view nowadays er English law still applies in the he jury shall view the body only if es"; it is understood, however, that

pter 5, paras 5-31 *et seq.* view the body was repealed in 1980 arise under the 1988 Act, s 21(4), he coroner to direct a post-mortem If a coroner in a jury case permits tion, has the coroner committed an ury's right to require a post-mortem ly available. If there never was a en the jury cannot require a post-

provision; this is perhaps fortunate, mers routinely guarded against this r the inquest. 2 Act, ss 17-19 [Ir] contain similar

a tidal river.³⁹ The common law may now have been superseded by the effects of an international convention.⁴⁰ But any legal problems to which coastal boundaries may give rise in theory tend to be avoided in practice, with the coroner for the district in which the body is brought ashore asserting jurisdiction. In the case, for example, of bodies recovered from Lough Foyle or Carlingford Lough, the place where the body is brought ashore determines whether the case is considered by a Northern Ireland or Republic of Ireland coroner.⁴¹

Other means of acquiring jurisdiction

4-20 A coroner may acquire jurisdiction over a death which has occurred outside his district in five circumstances:

Amalgamation of districts

4-21 Where there has been an amalgamation of districts, the coroner for one district "shall be deemed to have been appointed coroner for the [amalgamated] district ...".⁴²

Coroner for another district unable or neglecting to perform duties

4-22 Where, for whatever reason, a coroner is unable to discharge his duties or neglects to do so, the Lord Chancellor may, under section 6(2) of the 1959 Act, appoint another coroner or any other person possessing the qualifications for appointment as a coroner to act in that district for a specified period.⁴³ Situations which may lead to the exercise of this power include illness, incapacity or unavoidable absence - and presumably conduct unbefitting the office or (possibly) certain circumstances giving rise to a conflict of interest or otherwise falling foul of the rules against bias.⁴⁴ It would also appear that the

³⁹ See *eg R v Keyn* (1876) 2 Ex D 63, 82. See also Territorial Waters Jurisdiction Act 1878, s 7. It has been held that a coroner has jurisdiction over a ship in harbour irrespective of the low water mark: *R v Soleguard* (1738) And 231, 95 ER 376.

⁴⁰ Convention on the Territorial Sea and the Contiguous Zone 1958 and Territorial Sea Act 1987, s 1(1), discussed *Jervis*, para 3-26. For the Republic of Ireland, see now Maritime Jurisdiction (Amendment) Act 1988.

⁴¹ See also *Jervis*, para 3-28: "In principle, there is no reason why the jurisdiction of a coroner should not extend to overflying aircraft, although of course in practice inquests on persons killed in aeroplane accidents will normally be held by coroners having jurisdiction in the place where the aircraft crashes, and in-flight deaths which do not cause crashes are unlikely to give rise to any practical reason for the coroner [where the aeroplane lands] asserting jurisdiction." It may, however, be that the position under Northern Ireland law is not so straightforward - see further below, paras 4-31 *et seq.*

⁴² 1959 Act, s 3, discussed above Chapter 2, para 2-03. See 1988 Act, s 4 [E and W] and 1962 Act, s 7 [Ir] to the same effect.

⁴³ The 1988 Act, s 5(3) is in similar terms, save that it does not specify who makes the appointment; presumably it is the "relevant council" which does so. *Cf* in the Republic of Ireland, the power to appoint another coroner only applies if the deputy coroner for the district is at the same time unable to act; in such a case, "any member of the Garda Síochána not below the rank of inspector may request the coroner for an adjoining district to hold the inquest ...": 1962 Act, s 20(1).

⁴⁴ *Cf* the equivalent provision in England and Wales (1988 Act, s 5(3)) - and in the Republic (1962 Act, s 20(1)(a)) - expressly confers a similar authority for another coroner to act

wording of the subsection is wide enough to authorise the appointment by the Lord Chancellor of another coroner where the court has quashed the original inquest and ordered the holding of a fresh inquest before a different coroner.⁴⁵

By direction of the Attorney General

4-23 Section 14 of the 1959 Act provides that "where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable, he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person ...".⁴⁶ This power, which may be exercised "whether or not [the coroner for the district] or any other coroner has viewed the body, made any inquiry or investigation, held any inquest into or done any other act in connection with the death", appears to have been intended to operate primarily in a case where new evidence comes to light which justifies the investigation or re-investigation of the circumstances of the death through a coroner's inquest.⁴⁷ It would appear that this power has rarely been exercised in Northern Ireland.⁴⁸

"where there is a vacancy in the office of coroner" for the district in question; such a case in Northern Ireland would appear to be covered by s 6(2) of the 1959 Act as a case in which "the coroner ... is unable ... for any other cause to discharge his duties". The 1988 Act, s 5(3) further provides that "the inquisition returned in respect of an inquest held under this subsection shall certify the cause of the coroner's holding the inquest and shall be conclusive evidence of any matter stated in it which falls within [this subsection]". It may be noted that s 6(2) of the 1959 Act requires any direction by the Lord Chancellor to be "in writing", and it seems unlikely that such a direction would be regarded in practice as anything less than conclusive.

⁴⁵ In such a case, the coroner for the district would appear to be "unable ... for any other cause to discharge his duties ...". It may, however, be preferable for the court itself to make this decision - see further below Chapter 15, paras 15-40 *et seq.* Another approach was suggested in *R (Larmor) v HM Coroner for the City of Belfast*, unreported, QBD (Crown Side), 31 March 1969 [transcript on LEXIS], where Lowry J quashed an inquest on the grounds that the coroner had, contrary to the "mandatory" requirements of s 18(1)(a) of the 1959 Act, failed to sit with a jury in a case where he had reason to suspect that the deceased had committed suicide. Lowry J considered that it would be wrong for him to order a fresh inquest; he suggested instead that "section 14 [of the 1959 Act] does provide the means of doing this if it is desired or necessary to do so", and continued: "No doubt section 14 was not framed with this situation in mind; but, if one takes the literal meaning, it seems to me that one could not impeach the appointment or the operations of a coroner who was appointed under section 14 to hold an inquest in respect of a matter occurring outside his own district". We suggest in Chapter 15, paras 15-08 and 15-11, however, that developments in judicial review since 1969 have made it inappropriate to exercise the power conferred by s 14 in this way.

⁴⁶ Cf in England and Wales s 13 of the 1988 Act provides that, subject to the authority or *fiat* of the Attorney General being obtained, application may be made to the High Court for an order that an inquest be held or that the inquisition on a previous inquest be quashed. See further below, Chapter 15, para 15-02.

⁴⁷ See especially the statement made by the Minister of Home Affairs (Mr WWB Topping) during the debates on the 1959 Bill: *Sen Debs (NI)*, vol 43, cols 667-668 (3 November 1959). This statement, and the scope of the power conferred by s 14, are dealt with in

Multiple fatalities

4-24 Where a particular appears to a coroner who deaths arising from the section 13(2) of the 1959

(a) with the consent of the deaths, hold the in

(b) request the other c

This provision was designed or incident has resulted district. The most extreme flight, which may result in of coroners, or the subsection coroner's district. In a highly desirable for obvious this manner is agreement is lying and any other cor one of the deaths. It is interests of justice that approach in such a situation separate inquests may be

Chapter 15, paras 15-01 to the 1962 Act, s 24 is also c

⁴⁸ The only occasion known *Larmor* case (see above, General (Mr Basil Kelly), inquest be held before a d returned a verdict of accident

⁴⁹ As inserted by the Criminal

⁵⁰ There is no equivalent power a coroner to request another would be "expedient" for provide that if the other coroner ask the Home Secretary for the coroner so designated of consent between two or exercise the power conferred the relevant inquests. Cf i of two or more persons who are lying within the district that one of those coroners s

⁵¹ The provisions of this section arising out of a road traffic die later in a hospital in an the inquest be held by convenience of witnesses carried out by the local police

Transfer of body to another coroner's district

4-25 In certain circumstances a body may be removed from one coroner's district to another. By section 32(1) of the 1959 Act:

"If it appears to a coroner that an inquest ought to be held on a body lying within his district but that it is expedient to allow or necessary to order the body to be removed into the district of another coroner, he may with the consent of that coroner ... allow or order the removal of the body to any place to which that coroner could have allowed or ordered the body to be removed if it had been found within his district and that coroner may deal with the body as if it had been found within his district."⁵²

The specified grounds for such a removal are *expediency* or *necessity*. The consent of both coroners is necessary and the coroner into whose district the body is transferred "may deal with the body as if it had been found in his district".⁵³ This section may be used, for example, where holding the inquest in a coroner's district other than that in which death occurred would be more convenient for the family, the witnesses and the police officers concerned in the investigation of the death.

DIPLOMATIC AND OTHER IMMUNITY

Diplomatic immunity

4-26 A head of state, an ambassador or minister of a foreign country, members of their families and their official staff are immune from suit and all legal process in the United Kingdom; senior members and officers of certain international organisations have similar immunities.⁵⁴ Although the relevant legislation does not deal specifically with the position following the death of a person who was, when alive, entitled to such immunity, the better view appears to be that the immunity continues to attach.⁵⁵ A coroner therefore has no jurisdiction to investigate the death of any person who, if alive, would have been entitled to state or diplomatic immunity, unless of course that immunity has been waived by an act of submission.⁵⁶

⁵² The 1988 Act, s 14(1) contains a similar provision, but note the additional "tie-breaking" provision (discussed in note 50 above), which has no express equivalent in Northern Ireland. Cf the Brodrick Committee recommended that the "receiving" coroner should have a duty to accept jurisdiction: *Brodrick Report*, para 13.02. There is no provision in the Republic of Ireland expressly equivalent to s 32(1) of the 1959 Act, but s 34 of the 1962 Act (inquest adjourned when identification evidence only has been given may be resumed by a different coroner) may by implication allow such a practice.

⁵³ For example, by ordering a post-mortem examination once the body has arrived at a mortuary within his district.

⁵⁴ See especially Diplomatic Privileges Act 1964 and International Organisations Act 1968.

⁵⁵ See eg *Jervis*, paras 5-82 to 5-83 and *Halsbury's Laws of England* (4th ed, 1994), vol 9, para 1057. On diplomatic immunity generally, see eg Lewis, *State and Diplomatic Immunity* (3rd ed, 1990).

⁵⁶ See eg *Duff Development Co v Government of Kelantan* [1924] AC 797.

Consular officers

4-27 The staff of cor Consular Relations Act 1987 both extend to No: jurisdiction of the legal a coroner. Thus, the 19 premises⁵⁷ and the immu But the immunity of con the judicial and administ "acts performed in the therefore, that a coroner officer or employee, exc performed in the exercis give evidence at an ir conditions.⁶¹

Visiting forces

4-28 The jurisdiction to be a member of a visit Forces Act 1952.⁶² Mem

⁵⁷ "The authorities of the re which is used exclusively head of the consular post c sending State. The conser case of fire or other disast The consular archives and may be": *ibid*, art 33. S: *Republic of Iran* [1986] 3

⁵⁸ These immunities, which r to the families of consula either: 1968 Act, Sch 1, art Schedule 1, art 43.

⁵⁹ See *Jervis*, para 5-84.

⁶⁰ 1968 Act, Sch 1, art 44 prc "1. Members of a consular judicial or administrative staff shall not, except in th evidence. If a consular offi be applied to him.

2. The authority requiring the performance of his fun or at the consular post or a 3. Members of a consular connected with the exerci documents relating theret witnesses with regard to th

⁶² "Visiting force" is define detachment of the forces o a body, contingent or de

removed from one coroner's district:

be held on a body lying on or necessary to order the coroner, he may with the consent of the body to any place where the body to be removed if it may deal with the body as

convenience or necessity. The coroner into whose district the body if it had been found in his district where holding the inquest in which it occurred would be more convenient for the officers concerned in the

IMMUNITY

Minister of a foreign country, consular officers and officers of certain consular posts.⁵⁴ Although the relevant immunity following the death of a consular officer, the better view appears that a coroner therefore has no jurisdiction over a body who, if alive, would have enjoyed of course that immunity

note the additional "tie-breaking" express equivalent in Northern Ireland a "receiving" coroner should have jurisdiction. There is no provision in the 1959 Act, but s 34 of the 1962 Act has been given may be resumed at once the body has arrived at a

International Organisations Act 1968. *Law of England* (4th ed, 1994), vol 9, para 6 Lewis, *State and Diplomatic Immunities* [1924] AC 797.

Consular officers

4-27 The staff of consular offices are in a less privileged position. The Consular Relations Act 1968 and the Diplomatic and Consular Premises Act 1987 both extend to Northern Ireland. Their effect is severely to curtail the jurisdiction of the legal authorities of the United Kingdom, including that of the coroner. Thus, the 1968 Act provides for the inviolability of consular premises⁵⁷ and the immunity from jurisdiction of certain consular officials.⁵⁸ But the immunity of consular officers and employees from the jurisdiction of the judicial and administrative authorities of the receiving State is limited to "acts performed in the exercise of consular functions".⁵⁹ It would appear, therefore, that a coroner may hold an inquest where the deceased is a consular officer or employee, except insofar as this may involve investigation of acts performed in the exercise of consular functions.⁶⁰ Consular officials may also give evidence at an inquest in certain circumstances and under certain conditions.⁶¹

Visiting forces

4-28 The jurisdiction of the coroner concerning the body of a person shown to be a member of a visiting force is governed by the provisions of the Visiting Forces Act 1952.⁶² Members of visiting forces are in general immune from the

⁵⁷ "The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the sending State may, however, be assumed in case of fire or other disaster requiring prompt protective action": 1968 Act, Sch 1, art 31. The consular archives and documents are also inviolable "at all times and wherever they may be": *ibid*, art 33. See eg *Westminster City Council v Government of the Islamic Republic of Iran* [1986] 3 All ER 284.

⁵⁸ These immunities, which may be waived by the State concerned, do not in any event extend to the families of consular officials or consular employees or the personal employees of either: 1968 Act, Sch 1, art 45.

⁵⁹ Schedule 1, art 43.

⁶⁰ See *Jervis*, para 5-84.

⁶¹ 1968 Act, Sch 1, art 44 provides:

"1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular official should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State."

⁶² "Visiting force" is defined in s 12(1) of the 1952 Act as "any body, contingent or detachment of the forces of a country to which [the visiting forces] provision applies, being a body, contingent or detachment for the time being present in the United Kingdom

legal process.⁶³ Accordingly, a coroner may not hold an inquest on a member of a visiting force unless the Secretary of State⁶⁴ otherwise directs, although there is no prohibition on a coroner having a post-mortem examination carried out.⁶⁵ If the status of the deceased becomes apparent only after the inquest has begun, it must be adjourned and if there is a jury it must be discharged.⁶⁶ The inquest may not be resumed except on the direction of the Secretary of State. Similar provisions apply to an inquest into the death of a person caused by a member of a visiting force. The coroner should notify the Registrar of Deaths if an inquest is not held.

Home Office advice

4-29 If a coroner is concerned with *any* death where his investigation has the potential of impinging on diplomatic or State immunity, or the death may involve a member of a visiting force, he should seek the advice of the Lord Chancellor at an early stage of the inquiry; the Lord Chancellor may in turn consult the Home Office and the Foreign Office. This potentially difficult area has been the subject of a Home Office Circular,⁶⁷ which states:

"A coroner should not attempt to hold an inquest, or exercise any power preliminary to holding an inquest, on the body of any person who, if alive, would have been entitled to diplomatic privilege if, in respect of that body, a good claim to privilege is set up. If a coroner is in doubt whether the claim is good, or if, although the claim be good, the coroner considers that there are strong reasons for his exercising jurisdiction, he should consult the Secretary of State, who, after consultation with the Foreign Office, will advise the coroner."

Although directed specifically to coroners in England and Wales, this Circular provides advice that Northern Ireland coroners would be unwise to ignore.⁶⁸ Various statutory provisions stipulate that the certificate of the Secretary of State as to whether a person is entitled to a particular privilege or immunity is

(including United Kingdom territorial waters) on the invitation of Her Majesty's Government in the United Kingdom." The Act has no application to members of the British army in Northern Ireland; since the province is part of the United Kingdom, the British army cannot be a "visiting force". Accordingly, Northern Ireland coroners are not precluded from holding inquests on soldiers of the British army who die in Northern Ireland.

⁶³ See *Halsburys Laws of England* (4th ed, 1994), vol 9, paras 1058-1061 and *Jervis*, paras 5-73 to 5-80.

⁶⁴ Section 7(7) of the 1952 Act provides that so far as Northern Ireland is concerned "the Minister of Home Affairs for Northern Ireland" should be substituted for any reference to "the Secretary of State". This provision was preserved by the 1959 Act, s 39(2)(b). It is assumed that the power is now vested in the Secretary of State for Northern Ireland.

⁶⁵ See, however, the provisions of the Home Office Circular referred to in para 4-29 below.

⁶⁶ 1952 Act, s 7(1).

⁶⁷ No 68 of 1955, para 8.

⁶⁸ Coroners in England and Wales may seek advice from "D" Division of the Home Office during office hours; at other times both the Home Office and the Foreign Office have duty officers for urgent queries. Coroners in Northern Ireland should approach the Northern Ireland Court Service or the duty officer.

conclusive as to the facts,⁶⁹ on whether a person is entitled to any immunity.⁷⁰

DEATH O

4-30 Each year a number of persons - often while on consular officials and per next of kin often express authorities of the country accuracy of an autopsy in province unfortunately do state of preservation, and Sometimes, for example, a further investigation to re autopsy had been carried out before transit, and this subsequent post-mortem a background that coroners a be limited by the way in w

Jurisdiction to hold an

4-31 Coroners in England jurisdiction to hold an inquest there is reasonable cause of unnatural death or a sudden *West Yorkshire Coroner*, held that if these conditions the deceased died abroad England for burial. The different. Section 13(1) o

⁶⁹ See eg *Diplomatic Privileges and Immunities of International Organisations* certificates are challengeable. *Foreign and Commonwealth Affairs v Governor of Pentonville*, where it is stated that "... the answer to an issue of fact is the court by his opinion on whether diplomatic privilege

⁷⁰ See eg *R v Lambeth Justice* Coroners Act 1988, s 8 [E a

⁷² [1982] 3 All ER 1098. C should make it clear that a he is informed that within Wales in circumstances where jurisdiction to act ...": *Brook* the way in which s 17 of th

hold an inquest on a member otherwise directs, although post-mortem examination carried out only after the inquest has been discharged.⁶⁶ The consent of the Secretary of State is required in the case of the death of a person caused by a coroner or the Registrar of Deaths

where his investigation has the consent of the Secretary of State, or the death may be referred to the Lord Chancellor or the Lord Chief Justice. This potentially difficult area is dealt with in the following sections:

4-29. A coroner shall not exercise any power conferred on him by this Act in respect of any person who, if alive, is entitled to diplomatic privilege, or in respect of that body, a coroner shall doubt whether the claim is well founded or considers that there are special circumstances which would justify consulting the Secretary of State, he will advise the coroner."

and in England and Wales, this Circular would be unwise to ignore.⁶⁸ The Circular is a certificate of the Secretary of State that the coroner has no diplomatic privilege or immunity in

the invitation of Her Majesty's Government to members of the part of the United Kingdom, the Northern Ireland coroners are not entitled to diplomatic privilege in respect of British army who die in Northern

as 1058-1061 and *Jervis*, paras 5-

northern Ireland is concerned "the words 'in respect of that body' shall be substituted for any reference to 'that body' by the 1959 Act, s 39(2)(b). It is the duty of the Secretary of State for Northern Ireland to refer to in para 4-29 below.

"D" Division of the Home Office and the Foreign Office have duty and should approach the Northern

conclusive as to the facts.⁶⁹ That apart, the courts are empowered to arbitrate on whether a person is entitled to any privilege, diplomatic or otherwise, or to any immunity.⁷⁰

DEATH OUTSIDE NORTHERN IRELAND

4-30 Each year a number of deaths are referred to Northern Ireland coroners of persons - often while on holiday - dying abroad. Despite the assistance of consular officials and perhaps also of holiday company representatives, the next of kin often express dissatisfaction with the inquiry carried out by the authorities of the country concerned. Sometimes, and with good reason, the accuracy of an autopsy performed abroad is questioned. Coroners in the province unfortunately do not have experience of bodies being returned in a poor state of preservation, and of unlikely causes of death having been given. Sometimes, for example, a body shows the normal autopsy incisions, only for further investigation to reveal that these were 'cosmetic' and that in fact no autopsy had been carried out. In addition, all internal organs are often removed before transit, and this practice significantly reduces the value of any subsequent post-mortem examination in Northern Ireland. It is against this background that coroners are asked to help; but their power to do so appears to be limited by the way in which the 1959 Act is drafted.

Jurisdiction to hold an inquest

4-31 Coroners in England and Wales and the Republic of Ireland have jurisdiction to hold an inquest if there is a body lying within their district and there is reasonable cause to suspect that the deceased died a violent or unnatural death or a sudden death of which the cause is unknown.⁷¹ In *R v West Yorkshire Coroner, ex parte Smith*,⁷² the Court of Appeal (by a majority) held that if these conditions are satisfied the coroner *must* hold an inquest where the deceased died abroad and his or her body has been brought home to England for burial. The position in Northern Ireland, however, appears to be different. Section 13(1) of the 1959 Act provides that:

⁶⁹ See eg Diplomatic Privileges Act 1964, s 4; Consular Relations Act 1968, s 11; International Organisations Act 1968, s 8; State Immunity Act 1978, s 21. But such certificates are challengeable in the courts to some extent - see eg *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Trawnik*, *The Times*, 21 February 1986 and *R v Governor of Pentonville Prison, ex parte Osman (No 2)*, *The Times*, 24 December 1988, where it is stated that "... the Secretary of State is empowered to supply the courts with an answer to an issue of fact relating to diplomatic privileges, but is not empowered to bind the court by his opinion on any question of law which may be entailed in a decision on whether diplomatic privilege is due".

⁷⁰ See eg *R v Lambeth Justices, ex parte Yusufu* [1985] *Crim L Rev* 510.

⁷¹ Coroners Act 1988, s 8 [E and W]; Coroners Act 1962, s 17 [Ir].

⁷² [1982] 3 All ER 1098. *Cf* the Brodrick Committee considered that "future legislation should make it clear that a coroner has discretion whether or not to act in any case where he is informed that within his area is the body of a person who died outside England and Wales in circumstances which had they occurred in this country would have given him jurisdiction to act ...": *Brodrick Report*, para 13.12 (emphasis added). This appears to be the way in which s 17 of the 1962 Act is in practice applied in the Republic of Ireland.

"... a coroner within whose district -

- (a) a dead body is found; or
- (b) an unexpected or unexplained death, or a death in suspicious circumstances or in any of the circumstances mentioned in section 7, occurs;

may hold an inquest..." [emphasis added].

Accordingly, where a death occurs outside Northern Ireland and the body is brought back to the province, the coroner has jurisdiction to hold an inquest only if the body may be said to have been "found" in his district. The use of the word "found" suggests that there must be something more than the fact that the body is now lying within the coroner's district - that someone has, for example, "met with or come upon [the body] by chance" or "discovered [it] by searching".⁷³ It is suggested that the wording of the 1959 Act requires that "found" be given some such limited meaning, for two reasons:

- (1) The Act itself appears to distinguish between "found" and "lying"; the wording of section 13(1) may, for example, be contrasted with that of section 32(1), which refers to a body "lying within [the coroner's] district ...". The explicit use of different terms in these two provisions suggests that the legislature intended them to have different meanings.
- (2) In any case the use of the disjunctive "or" in section 13(1) appears to be conclusive, in the sense that if "found" is interpreted as "lying" the Northern Ireland coroner may hold an inquest in *any* case simply on the basis that the body is lying in his district; such an interpretation, which makes paragraph (b) of section 13(1) largely redundant, is surely not what the legislature intended.⁷⁴

Accordingly, where a person dies abroad and the body is returned to an airport or port in Northern Ireland, it does not appear possible to hold that the body has been "found" at that airport or port.⁷⁵ As the death did not occur within Northern Ireland, it would seem, therefore, that a coroner here has no jurisdiction to hold an inquest into the death. It may, however, be that the Attorney General has power under section 14 of the 1959 Act to direct the holding of an inquest in such a case.⁷⁶ It has also to be accepted that the matter

⁷³ See eg the definition of "find" given in the *New Shorter Oxford English Dictionary*. Use of the word "found" in this context appears to date from the Dublin Coroners Act 1844 (7 & 8 Vict, c 106), s 129 and the Coroners Act (Ir) 1846 (9 & 10 Vict, c 37), ss 22 and 36. No reason has been found why the wording of these Acts does not follow that of their English counterparts.

⁷⁴ In England and Wales, the body must be lying in the coroner's district and there is reasonable cause to suspect that the death came about in a certain way: 1988 Act, s 8.

⁷⁵ It would not be unreasonable to assume that a qualified medical practitioner will have formally certified death in the country where the deceased died. If the coroner has reasonable grounds for believing that this has not been done, he may acquire jurisdiction by having life pronounced extinct by a medical practitioner within his district. See further below, Chapter 11, para 11-23, note 64.

⁷⁶ It is not clear whether that power is limited to deaths which have occurred in Northern Ireland: see further below, Chapter 15, para 15-06.

is not beyond doubt, and t
13(1) itself as understood
contrary interpretation of th
of an inquest in such a case
there is much to be said for
same as that of England and

Post-mortem examinati

4-32 In the past, the vie
that when a death occurred
they were not empowered to
approach went unchallenged
recourse for a family unhar
to have a "private" post-m
returned. However, the leg
coroners in recent years hav
examination even in the cas
1959 Act provides:

"Where a coroner is inf
deceased person and the
died in any of the circum
shall instruct a constable
investigation as may be i
inquest is necessary."

It is submitted that secti
authority in these circum:
imposed on the police to in

⁷⁷ See eg ss 7 (certain persons v
which may require investige
such deceased person is ...")
his district the body of a dece

⁷⁸ Historically, considerable im
"first finder" of a body. H
township may have selected
always mean a chance discov
the duties of the 'first finder'
no more than "lying". Alter
place of death, which ga
considerations into account,
Court of Appeal in *Smith*, v
added).

⁷⁹ "Inevitably a coroner condu
difficulties of evidence and s
death occurring overseas. C
Indeed the same difficulties
enough to be brought back t
England": *R v West Yorksh*
Lord Lane CJ.

h, or a death in suspicious
ances mentioned in section

ern Ireland and the body is
isdiction to hold an inquest
in his district. The use of the
ng more than the fact that the
at someone has, for example,
ice" or "discovered [it] by
f the 1959 Act requires that
wo reasons:

en "found" and "lying"; the
, be contrasted with that of
within [the coroner's] district
hese two provisions suggests
erent meanings.

t section 13(1) appears to be
s interpreted as "lying" the
st in *any* case simply on the
uch an interpretation, which
redundant, is surely not what

body is returned to an airport
ible to hold that the body has
death did not occur within
at a coroner here has no
t may, however, be that the
f the 1959 Act to direct the
o be accepted that the matter

Oxford English Dictionary. Use of
Dublin Coroners Act 1844 (7 & 8
10 Vict, c 37), ss 22 and 36. No
es not follow that of their English

e coroner's district *and* there is
t certain way: 1988 Act, s 8.

ed medical practitioner will have
eased died. If the coroner has
ne, he may acquire jurisdiction by
r within his district. See further

which have occurred in Northern

is not beyond doubt, and that other provisions of the 1959 Act,⁷⁷ or section 13(1) itself as understood in the light of earlier legislation,⁷⁸ may support a contrary interpretation of the coroner's own jurisdiction. Given that the holding of an inquest in such a case would not cause insuperable practical difficulties,⁷⁹ there is much to be said for the law of Northern Ireland on this point to be the same as that of England and Wales.

Post-mortem examinations

4-32 In the past, the view had also been taken by Northern Ireland coroners that when a death occurred abroad and the body was returned to the province, they were not empowered to have a post-mortem carried out on the body. This approach went unchallenged for many years, with the result that the only recourse for a family unhappy about the recorded medical cause of death was to have a "private" post-mortem examination carried out when the body was returned. However, the legal position is now seen as somewhat ambiguous and coroners in recent years have claimed the legal authority to order a post-mortem examination even in the case of a person who died abroad. Section 11(1) of the 1959 Act provides:

"Where a coroner is informed that there is within his district the body of a deceased person and that there is reason to believe that the deceased person died in any of the circumstances mentioned in section seven or section eight he shall instruct a constable to take possession of the body and shall make such investigation as may be required to enable him to determine whether or not an inquest is necessary."

It is submitted that section 8 of the 1959 Act provides no jurisdictional authority in these circumstances, since it is concerned only with the duty imposed on the police to inform the coroner when "a dead body is found, or an

⁷⁷ See eg ss 7 (certain persons who have reason to believe that a person died in circumstances which may require investigation must notify coroner "within whose district the body of such deceased person is ...") and 11(1) ("Where a coroner is informed that there is within his district the body of a deceased person ..."). See further below, paras 4-32 and 4-33.

⁷⁸ Historically, considerable importance was attached to the raising of the hue and cry by the "first finder" of a body. Hunnisett, *The Medieval Coroner* (1961), p 11 suggests that a township may have selected someone to act as "first finder" and that "finding" did not always mean a chance discovery: "When a death was witnessed, the witnesses naturally had the duties of the 'first finder'" (p 8). "Finding", in this technical sense, may therefore mean no more than "lying". Alternatively, it may be argued that it was the body, rather than the place of death, which gave the coroner jurisdiction. The court may take such considerations into account, given that the 1959 Act, unlike the 1887 Act considered by the Court of Appeal in *Smith*, was an Act "to amend and consolidate the law ..." (emphasis added).

⁷⁹ "Inevitably a coroner conducting an inquisition into a death abroad will be faced with difficulties of evidence and so on [But] such difficulties are ... by no means confined to death occurring overseas. Coroners are well experienced in dealing with such problems. Indeed the same difficulties would have arisen if Miss Smith had survived her fall long enough to be brought back to England to hospital and had died in hospital or elsewhere in England": *R v West Yorkshire Coroner, ex parte Smith* [1982] 3 All ER 1098, 1105, per Lord Lane CJ.

unexpected or unexplained death, or a death attended by suspicious circumstances, occurs...". Section 7 of the 1959 Act, on the other hand, imposes a duty on certain categories of persons to report deaths to the coroner where there is -

"... reason to believe that the deceased person died, either directly or indirectly, as a result of violence or misadventure or by unfair means, or as a result of negligence or misconduct or malpractice on the part of others, or from any cause other than natural illness or disease for which he had been seen and treated by a registered medical practitioner within twenty-eight days prior to his death, or in such circumstances as may require investigation..."

4-33 Section 7 contains no geographical limitation and the coroner may well receive the report of a death which occurred abroad that falls within its terms.⁸⁰ If so, the requirements of section 11(1) of the 1959 Act appear to have been met, *provided* the body is "within his district". Arguably the coroner then has power to order that a post-mortem examination be carried out. On the other hand, section 11(1) does conclude with the phrase "... and shall make such investigation as may be required to enable him to determine whether or not an inquest is necessary". The implication of this wording may be that, if the coroner does not have power to hold an inquest, it is both unnecessary and pointless to make any determination under section 11(1). If that is so, the need for a post-mortem examination disappears. Indeed, an argument could be constructed that for a coroner to order a post-mortem examination in such circumstances would be *ultra vires*. It would appear, therefore, that the legal position is unclear; that being so, it may not be unreasonable for coroners to err on the side of assisting the families. The fact that post-mortem examinations carried out in Northern Ireland on bodies returned from abroad have on occasions clearly shown that all was not as it seemed may further justify the assumption of jurisdiction. After all, coroners are, or should be, conscious of the possibility that a criminal act has been committed and ought to be uncovered.⁸¹

Registration of the death

4-34 When a person dies abroad the death is registered in the country concerned, and the deceased's family would be wise to obtain a certified copy of the Death Certificate at the time of such registration. This certificate may require to be translated, in which case the services of a translation agency should be used and a certified copy of the translation obtained. It may be, for example, that the medical cause of death given in the certificate is incorrect. There is, unfortunately, no provision in the Northern Ireland legislation which allows a Northern Ireland Registrar of Deaths to register the death in the province, even where a subsequent post-mortem examination has given an

⁸⁰ For example, a funeral undertaker may advise the coroner that a body has arrived at Belfast International Airport from abroad and that there are reasons for believing that the cause of death was unnatural.

⁸¹ On several occasions, the results of a post-mortem examination on a body returned to Northern Ireland from abroad have led to the instigation of a criminal inquiry by the Royal Ulster Constabulary.

entirely different cause of death with the local British Consulate where the death occurred. At the end of the year the Registrar General's Register Offices in Belfast and the consular record are obtained.

"Suspicious" deaths

4-35 If a post-mortem examination abroad having been the direct communication by the Registrar General's Office should also be not

⁸² See Births and Deaths Registration Act 1953, section 1(1) registration by the registrar of a death of an ordinarily resident "immigrant" (ii) the district "found", or (iii) the district where the death was brought ashore.

h attended by suspicious
19 Act, on the other hand,
report deaths to the coroner

ither directly or indirectly,
means, or as a result of
rt of others, or from any
h he had been seen and
wenty-eight days prior to
vestigation..."

on and the coroner may well
l that falls within its terms.⁸⁰
19 Act appear to have been
guably the coroner then has
e carried out. On the other
se "... and shall make such
determine whether or not an
ording may be that, if the
it is both unnecessary and
11(1). If that is so, the need
ed, an argument could be
ortem examination in such
ear, therefore, that the legal
asonable for coroners to err
t post-mortem examinations
ned from abroad have on
med may further justify the
, or should be, conscious of
mitted and ought to be

s registered in the country
to obtain a certified copy of
tion. This certificate may
ces of a translation agency
on obtained. It may be, for
the certificate is incorrect.
ern Ireland legislation which
o register the death in the
examination has given an

that a body has arrived at Belfast
ns for believing that the cause of
mination on a body returned to
f a criminal inquiry by the Royal

entirely different cause of death.⁸² However, it is possible to record the death with the local British Consul (if there is one) in the country where the death occurred. At the end of each year all such consular recordings are transmitted to the Registrar General in England, and then disseminated to the General Register Offices in Belfast and Edinburgh. Certified copies in English of the consular record are obtainable from the local Registrar.

"Suspicious" deaths

4-35 If a post-mortem carried out in Northern Ireland points to a death abroad having been the result of a criminal act that should, of course, be brought to the attention of the authorities in the country concerned, either by direct communication between the respective police authorities or through Interpol. The appropriate consular division of the Foreign and Commonwealth Office should also be notified.

⁸² See Births and Deaths Registration (NI) Order 1976, art 21, which provides only for registration by the registrar for (i) the district in which the person died or the person was ordinarily resident "immediately" before death, (ii) the district in which the body was "found", or (iii) the district in which a body recovered from water (eg a river, the sea, etc) was brought ashore.