

## 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 essence<sup>1</sup> 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"<sup>2</sup> 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."<sup>3</sup>

**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

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

<sup>2</sup> 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).

<sup>3</sup> 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 conflagration<sup>4</sup> 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.<sup>5</sup>

**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

<sup>4</sup> 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.

<sup>5</sup> 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,<sup>7</sup> 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 irreco belief....

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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 carrying with it the abil

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

<sup>6</sup> (1995) 160 JP 627.

<sup>7</sup> See above note 3.

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

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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*,<sup>6</sup> 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,<sup>7</sup> to direct him to hold an inquest into her death, so that he could establish that she was in fact dead. May J 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."<sup>8</sup>

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

<sup>6</sup> (1995) 160 JP 627.

<sup>7</sup> See above note 3.

<sup>8</sup> (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.



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presence of a body will usually  
coroner is therefore more likely  
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in 11 or 16 of the 1959 Act  
cannot be found or recovered,  
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additional criteria that there has  
system.<sup>10</sup> However, in some  
be too simplistic, given that  
now permit the artificial

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

Therefore, for all practical  
stem death.<sup>13</sup> This approach  
or).<sup>14</sup> As in the case of Baby  
and 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  
stitute (which is not always capable  
of opinion and knowledge from a  
entering its opinions in the light of  
*the Person* (Cmnd 7844, 1980),

of brain stem function. The brain  
organs which contain the centres  
consciousness, breathing and the beating  
C Havard, 1990). For a fuller  
*Harford Medical Companion* (1994),  
Royal 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'.<sup>15</sup>

### 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."<sup>16</sup>

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."<sup>17</sup>

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

<sup>15</sup> [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).

<sup>16</sup> *Thurston's Coronership*, para 9-06.

<sup>17</sup> *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."<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

#### *Old human remains<sup>22</sup>*

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

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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. The latter are obliged to be established, for example, body, are of archaeological discretion and it is most unusual remains of more recent origin investigation and are more inquest.

#### *Mutilated and incomplete*

4-13 Terrorist action in 1980s, unfortunately ensure uncommon. When pathologist human remains, much for casualties represented by the identity. On some occasions there has or may have been then arises as to whether purposes of enabling a co-occurrence has to be appraised will for this purpose liaise the police. Together they can anyone is unaccounted for a casualty in the incident in a few body parts are all that sufficient to enable the coroner arise following major disasters: crashes and the collapse or dismemberment is greatest.

4-14 In all such cases the constitutes a "body". Some report that a torso had been found that it had been conveyed the pathologist, the coroner "body" and an inquest was s

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

<sup>24</sup> The effects of prolonged submersion saponification by which the tissue and volatile substances. An example may be found in Polson, Gee (1985), p 23.

<sup>25</sup> Identifying the deceased proved torso and a wallet containing

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an ancient burial ground. In England "plague pits" have been uncovered from time to time and it is known that there are a number of heretofore unidentified "famine" pits or mass graves throughout Ireland. Northern Ireland coroners have an advantage in such cases over their counterparts in England and Wales. The latter are obliged to hold an inquest if they have jurisdiction;<sup>23</sup> but where it is established, for example, that the remains, although sufficient to constitute a body, are of archaeological interest only, a coroner in Northern Ireland has a discretion and it is most unlikely that he would take any further action. Human remains of more recent origin may, of course, become the subject of a police investigation and are more likely to be viewed by a coroner as meriting an inquest.

### Mutilated and incomplete bodies

4-13 Terrorist action in Northern Ireland, particularly during the 1970s and 1980s, unfortunately ensured that the finding of partial human remains was not uncommon. When pathologists are presented with a collection of assorted human remains, much forensic skill is required to determine the number of casualties represented by the remains, the sex of each victim and his or her identity. On some occasions, unaccounted-for "extra" body parts reveal that there has or may have been an unexpected additional casualty. The question then arises as to whether these extra body parts constitute a "body" for the purposes of enabling a coroner to claim jurisdiction. Inevitably, each such occurrence has to be appraised on its own merits, and the coroner in such cases will for this purpose liaise closely with the pathologist, forensic scientists and the police. Together they consider all the evidence and, in particular, whether anyone is unaccounted for and why it is believed that he or she might have been a casualty in the incident in question. There are, unfortunately, occasions when a few body parts are all that remain of a body, but those may nonetheless prove sufficient to enable the coroner to claim jurisdiction. Similar problems can arise following major disasters, particularly those, such as aircraft or train crashes and the collapse of buildings, where the potential for mutilation or dismemberment is greatest.

4-14 In all such cases the coroner must be satisfied that what is found constitutes a "body". Some years ago the Greater Belfast coroner received a report that a torso had been recovered from Belfast harbour. The pathologist found that it had been converted to adipocere.<sup>24</sup> Following a consultation with the pathologist, the coroner was satisfied that what was found did constitute a "body" and an inquest was subsequently held.<sup>25</sup>

<sup>23</sup> Coroners Act 1988, s 8(1): "... the coroner *shall* ... hold an inquest ..." (emphasis added). Cf 1959 Act, s 13: "A coroner ... *may* hold an inquest ..." (emphasis added).

<sup>24</sup> The effects of prolonged submersion in water had caused the body to undergo a process of saponification by which the tissues had been converted to a mixture of soaps, fatty acids and volatile substances. An excellent commentary on this relatively unusual phenomenon may be found in Polson, Gee and Knight, *The Essentials of Forensic Medicine* (4th ed, 1985), p 23.

<sup>25</sup> Identifying the deceased proved surprisingly easy. A pair of jeans was still attached to the torso and a wallet containing identifiable photographs was found in one of the pockets.

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 ghoulis sense of humour. Other remains have been found to be anatomical specimens. In an Australian case<sup>26</sup> 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."<sup>27</sup>

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."<sup>28</sup>

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.

<sup>26</sup> *Re Oram, ex parte Brady* (1935) 52 NSWWN 109.

<sup>27</sup> *Ibid*, p 111.

<sup>28</sup> *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.<sup>29</sup>

### *Calcined remains and*

4-16 Where these are found, the coroner is subject to the same criteria as for remains and that they are a vital organ is generally irrelevant. They depend on the forensic and medical evidence, though the medical cause of death is nonetheless a matter for the coroner's gossip. In Northern Ireland, therefore, the coroner would be a matter of course identified, the coroner will hold an inquest before making his decision.

### *View of the body*

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

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

by virtue of the fact that it comprises two lobes and the coroner's view of the lung.

<sup>29</sup> *Re Suha Younis Hawa, The*  
<sup>30</sup> Para 5-10.

<sup>31</sup> See above Chapter 1, para 1.

<sup>32</sup> Cf 1988 Act, s 11(1) also for the body" - and goes on to say that any court on the ground that it states that this latter provision prevails, but *Jervis*, para 12-2 to prevail. In the Republic of Ireland, the coroner is irrecoverable or the coroner effected by exhuming the body by a member of the Garda Síochána body has previously been viewed by the coroner.

<sup>33</sup> Jury Laws Amendment Act



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

Louth District, Lincolnshire, 1965, n 22 doubts the correctness of this oply have been discarded after an he 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.<sup>29</sup>

### 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*<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.

<sup>29</sup> *Re Suha Youmis Hawa*, *The Times*, 22 November 1984.

<sup>30</sup> Para 5-10.

<sup>31</sup> See above Chapter 1, para 1-06.

<sup>32</sup> 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).

<sup>33</sup> 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."<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup> In any event, there is no known instance of a juror having claimed the right to view the body.<sup>37</sup>

### 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.<sup>38</sup> 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

<sup>34</sup> 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.

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

<sup>36</sup> 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."

<sup>37</sup> 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.

<sup>38</sup> 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.<sup>39</sup> The common law of an international conveyance may give rise to a coroner for the district jurisdiction. In the case, *Carlingford Lough*, the point whether the case is considered a coroner.<sup>41</sup>

#### Other means of acquiring jurisdiction

4-20 A coroner may acquire jurisdiction outside his district in five circumstances.

#### Amalgamation of districts

4-21 Where there has been an amalgamation of districts, a coroner "shall be deemed to have jurisdiction in the district ...".<sup>42</sup>

#### Coroner for another district

4-22 Where, for whatever reason, a coroner neglects to do so, the 1988 Act, appoint another coroner for appointment as a coroner in certain situations which may lead to incapacity or unavoidable absence from office or (possibly) certain other circumstances falling foul of the Act.

<sup>39</sup> See eg *R v Keyn* (1876) 2 Ex 61. It has been held that a coroner has jurisdiction over a body found at low water mark: *R v Solegu*.

<sup>40</sup> Convention on the Territorial Sea and the Exclusive Economic Zone 1987, s 1(1), discussed *Jervis*, paras 1-10, Jurisdiction (Amendment) 1987.

<sup>41</sup> See also *Jervis*, para 3-28: "The coroner's jurisdiction should not extend to overflights, such as a plane killed in an aeroplane accident, or a place where the aircraft crashed, unlikely to give rise to any asserting jurisdiction." It is not so straightforward - see

<sup>42</sup> 1959 Act, s 3, discussed at 1962 Act, s 7 [Ir] to the same effect.

<sup>43</sup> The 1988 Act, s 5(3) is in effect an appointment; presumably if Ireland, the power to appoint a coroner is at the same time *Síochána* not below the rank of a coroner to hold the inquest ...: 196

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

unless the coroner, having necessary in order to assist

if he so wishes.<sup>34</sup>

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.<sup>35</sup> y in any such case should a body under sub-section (c); it to the proper exercise of the quest.<sup>36</sup> In any event, there is ight to view the body.<sup>37</sup>

## DICTION

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a tidal river.<sup>39</sup> The common law may now have been superseded by the effects of an international convention.<sup>40</sup> 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.<sup>41</sup>

## 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 ...".<sup>42</sup>

### 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.<sup>43</sup> 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.<sup>44</sup> It would also appear that the

<sup>39</sup> 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.

<sup>40</sup> 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.

<sup>41</sup> 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.*

<sup>42</sup> 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.

<sup>43</sup> 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).

<sup>44</sup> *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.<sup>45</sup>

### *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 ...".<sup>46</sup> 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.<sup>47</sup> It would appear that this power has rarely been exercised in Northern Ireland.<sup>48</sup>

"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.

<sup>45</sup> 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.

<sup>46</sup> 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.

<sup>47</sup> 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 death appears to a coroner to be one of a number of deaths arising from the same cause, section 13(2) of the 1959

"(a) with the consent of the coroner, hold the inquest into the death, and

(b) request the other coroner to do so.

This provision was designed to deal with a case where an incident has resulted in the death of more than one person in the same district. The most extreme example is a case of multiple deaths in a road traffic accident, which may result in the death of more than one person. In such a case, the coroner for the district, or the coroner for the district in which the death occurred, may request the coroner for the district in which the death occurred to hold the inquest. In a highly desirable for obvious reasons, this manner of agreement is lying and any other coroner of the deaths. It is interests of justice that approach in such a situation separate inquests may be

Chapter 15, paras 15-01 to 15-04. The 1962 Act, s 24 is also covered.

<sup>48</sup> The only occasion known to the author is the *Larmor* case (see above, para 4-23). The inquest was held before a district coroner and returned a verdict of accident.

<sup>49</sup> As inserted by the Criminal Justice Act 1967.

<sup>50</sup> There is no equivalent provision in the 1988 Act for a coroner to request another coroner to hold an inquest. It would be "expedient" for the 1988 Act to provide that if the coroner so designated for the purpose of consent between two coroners to exercise the power conferred by the relevant inquests. Cf in England and Wales s 13 of the 1988 Act provides that if two or more persons who are lying within the district of a coroner, one of those coroners may request the coroner for the district in which the death occurred to hold the inquest. The provisions of this section are inserted by the Criminal Justice Act 1967. The provisions of this section are inserted by the Criminal Justice Act 1967. The provisions of this section are inserted by the Criminal Justice Act 1967.

prise the appointment by the court has quashed the original inquest before a different coroner.<sup>45</sup>

"where the Attorney General appears in circumstances which in his opinion, he may direct any coroner to hold an inquest into the death of any person ...".<sup>46</sup> This power, [the coroner for the district] or any other coroner, or investigation, held any inquest with the death", appears to be where new evidence comes to light in relation of the circumstances of the death. It appears that this power has

been exercised in a district in question; such a case in which the coroner has discharged his duties". The 1988 Act, in respect of an inquest held under this section, shall be subject to the inquest and shall be subject to the inquest within [this subsection]". It may be ordered by the Lord Chancellor to be "in practice as

to be "unable ... for any other cause to be for the court itself to make this order". *et seq.* Another approach was taken in *Belfast*, unreported, QBD (Crown Court) where the judge quashed an inquest on the ground that the requirements of s 18(1)(a) of the 1959 Act had reason to suspect that the inquest would be wrong for him to hold. s 14 [of the 1959 Act] does provide for the court to do so", and continued: "No doubt that, if one takes the literal meaning, the inquest or the operations of a coroner in respect of a matter occurring in s 15-08 and 15-11, however, that it is inappropriate to exercise the

power, subject to the authority or *fiat* of the court, to be made to the High Court for an order that a previous inquest be quashed. See

Home Affairs (Mr WWB Topping) [1994] 43, cols 667-668 (3 November 1994) referred by s 14, are dealt with in

### Multiple fatalities

**4-24** Where a particular incident has given rise to multiple fatalities, and it appears to a coroner who holds an inquest into one of the deaths that *all* the deaths arising from the incident should be the subject of a single inquest, section 13(2) of the 1959 Act<sup>49</sup> provides that he may -

"(a) with the consent of any other coroner who may hold an inquest into one of the deaths, hold the inquest; or

(b) request the other coroner to hold the inquest."<sup>50</sup>

This provision was designed to cover the situation in which a serious accident or incident has resulted in the finding of bodies in more than one coroners' district. The most extreme example is of an explosion on board an aircraft in flight, which may result in dead bodies being found in the districts of a number of coroners, or the subsequent death of survivors in a hospital in a different coroner's district. In a multiple fatality situation such as this a single inquest is highly desirable for obvious reasons. The only prerequisite to proceeding in this manner is agreement between the coroner for the district in which the body is lying and any other coroner with jurisdiction to hold an inquest into another one of the deaths. It is to be hoped in both the public interest and the wider interests of justice that all coroners would adopt a flexible and practical approach in such a situation. However, in the absence of such consent, separate inquests may be unavoidable.<sup>51</sup>

Chapter 15, paras 15-01 to 15-02 and 15-06 *et seq.*, where the equivalent Irish provision in the 1962 Act, s 24 is also discussed. See also note 45 above.

<sup>48</sup> The only occasion known to the authors resulted from the judgment of Lowry J in the *Larmor* case (see above, note 45). On the day following the judgment, the Attorney-General (Mr Basil Kelly), "in accordance with" s 14 of the 1959 Act, directed that a second inquest be held before a different coroner sitting with a jury; in September 1969 the jury returned a verdict of accidental death.

<sup>49</sup> As inserted by the Criminal Justice (NI) Order 1980, art 12(2) and Sch 1, Pt II.

<sup>50</sup> There is no equivalent provision in England and Wales, but s 14 of the 1988 Act authorises a coroner to request another coroner to hold the inquest whenever it appears to him that it would be "expedient" for the inquest to be held by that coroner. The section goes on to provide that if the other coroner declines to assume jurisdiction, the requesting coroner may ask the Home Secretary for a direction designating the coroner who is to hold the inquest; the coroner so designated may be another coroner altogether. Presumably, in the absence of consent between two or more coroners in Northern Ireland, the Attorney General may exercise the power conferred by s 14 of the 1959 Act to direct any one coroner to hold all the relevant inquests. Cf in the Republic, the 1962 Act, s 21 provides: "Where the bodies of two or more persons whose deaths appear to have been caused by the same occurrence are lying within the districts of different coroners, the Minister [for Justice] may ... direct that one of those coroners shall hold an inquest in relation to all of the deaths ...".

<sup>51</sup> The provisions of this section are used frequently. A typical situation is multiple fatalities arising out of a road traffic accident, where some of the victims die at the scene and some die later in a hospital in another coroner's district. Normally it is considered preferable that the inquest be held by the coroner in whose district the accident occurred, for the convenience of witnesses and because the investigation into the accident will have been 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."<sup>52</sup>

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".<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

<sup>52</sup> 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.

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

<sup>54</sup> See especially Diplomatic Privileges Act 1964 and International Organisations Act 1968.

<sup>55</sup> 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).

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

### Consular officers

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### Visiting forces

4-28 The jurisdiction to be a member of a visit Forces Act 1952.<sup>62</sup> Mem

<sup>57</sup> "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

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

<sup>59</sup> See *Jervis*, para 5-84.

<sup>60</sup> 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.

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

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f England (4th ed, 1994), vol 9,  
g Lewis, *State and Diplomatic*

[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 premises<sup>57</sup> and the immunity from jurisdiction of certain consular officials.<sup>58</sup> 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".<sup>59</sup> 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.<sup>60</sup> Consular officials may also give evidence at an inquest in certain circumstances and under certain conditions.<sup>61</sup>

## 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.<sup>62</sup> Members of visiting forces are in general immune from the

<sup>57</sup> "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.

<sup>58</sup> 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.

<sup>59</sup> Schedule 1, art 43.

<sup>60</sup> See *Jervis*, para 5-84.

<sup>61</sup> 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."

<sup>62</sup> "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.<sup>63</sup> Accordingly, a coroner may not hold an inquest on a member of a visiting force unless the Secretary of State<sup>64</sup> otherwise directs, although there is no prohibition on a coroner having a post-mortem examination carried out.<sup>65</sup> 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.<sup>66</sup> 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,<sup>67</sup> 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.<sup>68</sup> 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.

<sup>63</sup> See *Halsbury's Laws of England* (4th ed, 1994), vol 9, paras 1058-1061 and *Jervis*, paras 5-73 to 5-80.

<sup>64</sup> 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.

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

<sup>66</sup> 1952 Act, s 7(1).

<sup>67</sup> No 68 of 1955, para 8.

<sup>68</sup> 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,<sup>69</sup> on whether a person is entitled to any immunity.<sup>70</sup>

### DEATH OF

4-30 Each year a number of persons - often while on consular officials and persons 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 examination background that coroners' jurisdiction be limited by the way in which

### 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) of

<sup>69</sup> See eg *Diplomatic Privileges International Organisations certificates are challengeable*. *Foreign and Commonwealth 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

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

<sup>72</sup> [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 the



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

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.<sup>71</sup> In *R v West Yorkshire Coroner, ex parte Smith*,<sup>72</sup> 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:

<sup>69</sup> 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 entrained in a decision on whether diplomatic privilege is due".

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

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

<sup>72</sup> [1982] 3 All ER 1098. *Cf* the Brodick 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 ...". *Brodick 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".<sup>73</sup> 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.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup> It has also to be accepted that the matter

<sup>73</sup> 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.

<sup>74</sup> 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.

<sup>75</sup> 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.

<sup>76</sup> 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 examination

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

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

<sup>78</sup> 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).

<sup>79</sup> "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.

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is not beyond doubt, and that other provisions of the 1959 Act,<sup>77</sup> or section 13(1) itself as understood in the light of earlier legislation,<sup>78</sup> 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,<sup>79</sup> 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

<sup>77</sup> 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.

<sup>78</sup> 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).

<sup>79</sup> "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.<sup>80</sup> 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.<sup>81</sup>

#### 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

<sup>80</sup> 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.

<sup>81</sup> 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 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 subject of direct communication to Interpol. The appropriate Office should also be notified.

<sup>82</sup> See Births and Deaths Registration Act 1953, section 1(1) registration by the registrar of a death occurring in the district "found", or (iii) the district was brought ashore.

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entirely different cause of death.<sup>82</sup> 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.

<sup>82</sup> 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.