

CHAPTER 5

PROCEDURE FOLLOWING THE REPORT
OF A DEATH

THE CORONER'S DUTY TO INQUIRE INTO A DEATH

5-01 Where a coroner has been informed of the presence of a body within his district,¹ and he has reason to believe that death occurred in any of the circumstances set out in sections 7 and 8 of the 1959 Act, his duty is clear:

"[H]e 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."²

5-02 Before assuming jurisdiction, however, the coroner must be satisfied that there is good reason for him to do so. As Stephen J observed in *R v Price*:

"The coroner has not an absolute right to hold inquests in every case in which he chooses to do so. It would be intolerable if he had power to intrude without adequate cause upon the privacy of a family in distress and to interfere with their arrangements for a funeral. Nothing can justify such interference except a reasonable suspicion that there may have been something peculiar in the death; that it may have been due to other causes than common illness."³

On many occasions a death is reported to the coroner only because it has proved impossible to contact the deceased's general practitioner and it is not known whether a death certificate will be issued. The death may, for example, have been reported to the coroner by a "locum" doctor who has no personal knowledge of the deceased's medical history and is therefore unable to issue a death certificate.⁴ General practitioners increasingly use the services of "locum" doctors at weekends and during holiday periods, and the problems this causes when a patient dies may be compounded if the Health Centre is closed

¹ The 1963 Rules, r 34 requires the coroner to keep an indexed register of all deaths reported to him or his deputy, containing the particulars specified in Sch 2 to the Rules - the date on which each death is reported to him; the name and address of the person who reported the death; the full name, address, age and sex of the deceased; the cause of death, and whether the case was disposed of by inquest (and if so, the inquest verdict), post-mortem examination without inquest or investigation.

² 1959 Act, s 11(1).

³ (1884) 12 QBD 247, 248.

⁴ Everything may point to death from natural causes, but the locum does not know if the deceased was "seen and treated" by the general practitioner for the condition from which he died within 28 days of death within the meaning of s 7 of the 1959 Act (see above Chapter 3, para 3-08). In such a situation it would be unreasonable for a coroner to contend that the locum *had not* "reason to believe" within the meaning of s 11(1). Cf in the Republic of Ireland, a coroner may act where "a medical certificate of the cause of death is *not procurable* ...": 1962 Act, s 18(1)(emphasis added).

and there is no access to medical records. Alternatively, the police may have been called to the scene of a sudden death and, being unable to contact the deceased's general practitioner, they have instead contacted the coroner. In such cases, the circumstances may suggest that death was from natural causes, but it would be wrong for the "locum" doctor or the police to assume that the deceased's general practitioner will issue a death certificate. Nor should the coroner make this assumption - embarrassment has on occasions been caused by doing so. This is due to the fact that if the body has been released to the next of kin and funeral arrangements made, and it is then discovered that the general practitioner is not willing to certify death, the coroner will be left with no alternative but to order a post-mortem examination. The usefulness of such an examination may, however, have diminished considerably if the body has been embalmed⁵ or otherwise interfered with. In both situations the better practice is, therefore, for the coroner to instruct a police officer to take the body to a local mortuary, where it will be retained until contact has been made with the deceased's general practitioner. If the coroner is subsequently advised that a death certificate will be issued, or he is otherwise satisfied that a post-mortem examination is unnecessary, the body can be released. The body should not, however, be held by the coroner indefinitely; where, after a reasonable period of time, efforts to contact the general practitioner have still been unsuccessful, a post-mortem examination may be unavoidable to enable the funeral to take place within the traditional time-scale of three to four days of death.⁶

TAKING POSSESSION OF THE BODY

5-03 Once the coroner has reason to believe that a deceased person died in any of the circumstances mentioned in section 7 or 8 of the 1959 Act, he must take possession of the body under section 11(1)⁷ as quickly as possible, in order to prevent any interference, innocent or otherwise, with it. In this regard the provisions of section 9 are important:

"Where there is reason to believe that a deceased person died in any of the circumstances mentioned in section seven, the body of the deceased person shall not be cremated or buried and no chemical shall be applied to it externally or internally and no alteration of any kind shall be made thereto until the coroner so authorises."

In any case where a death is reported to a coroner, nothing which might prejudice any subsequent post-mortem examination should happen to the body without the consent or authority of the coroner. This appears to be the legislative policy underlying the statutory requirement in section 11(1) that the coroner instruct a constable to take possession of the body in any case where a

⁵ See 1959 Act, s 9, which prohibits the external or internal application of any chemical to the body without the coroner's permission; this prohibition covers embalming fluid.

⁶ This problem can become acute during holiday periods. Suggestions by coroners that general practitioners leave a contact telephone or fax number during such periods have not been acted on; as a result, what proves to be an unnecessary post-mortem examination must often be carried out, adding to a family's distress.

⁷ It would appear that there is no statutory equivalent to this provision either in England and Wales or in the Republic of Ireland.

reported death *might* require the police makes it more likely exercised by the coroner for

5-04 As mentioned above, the same role as "coroners" off Northern Ireland may be normal policing duties. This is not necessarily be a constable may likewise be from either Constabulary.⁹ Normally in a particular case is left to the death point to a serious crime this responsibility will, in

5-05 The taking of possession by the coroner pursuant to section 11(1) for the deposit of the body in a mortuary with refrigerated provisions of section 12(1) is necessary. Construed together, these provisions would satisfy the requirements for a post-mortem examination then being held in a convenient mortuary or in a place without [the coroner's] direct control in extreme situations - for example, in the case of a disaster - for a "body still available in mortuaries in such situations."¹⁰ So far as the further provisions that "the [other convenient] place is responsible for the custody of the body held".¹¹

5-06 It is the coroner's duty to arrange for the removal of a body and to enter into an arrangement

⁸ Chapter 2, paras 2-29 to 2-32.

⁹ The 1959 Act, s 40 defines "Constabulary". See above, Chapter 2, paras 2-29 to 2-32.

¹⁰ *Jervis*, paras 17-08 to 17-11 refers to the need for some

¹¹ Any person in charge of a mortuary who contravenes these provisions is guilty of an offence under level 1 on the standard scale. Penalties (NI) Order 1984, in the Republic of Ireland, a specific offence for anyone who contravenes these provisions.

atively, the police may have been unable to contact the deceased. In such cases, the police may be expected to assume that the death was from natural causes, and to issue a certificate. Nor should the police be expected to take possession of the body on occasions when the body has been released to the family. If it is then discovered that the death was from unnatural causes, the coroner will be left with a difficult task. The usefulness of such a certificate is considerably reduced if the body has not been released. In both situations the better practice is for the police officer to take the body into possession. If contact has been made with the family, the officer should be subsequently advised that a post-mortem examination has been carried out. The body should not be released until after a reasonable period of time. If the post-mortem has still been unsuccessful, a certificate should be issued to enable the funeral to take place within a few days of death.⁶

THE BODY

If a deceased person died in accordance with section 8 of the 1959 Act, he must be buried as quickly as possible, in order to prevent the body from becoming a nuisance. In this regard the

person died in any of the circumstances mentioned in section 8 of the 1959 Act, the provisions of the 1959 Act shall be applied to it and shall be made thereto.

Coroner, nothing which might happen to the body.

This appears to be the intention in section 11(1) that the body in any case where a

application of any chemical to the body for the purpose of embalming fluid.

Suggestions by coroners that the body should be buried during such periods have not been followed. A post-mortem examination must

be carried out in accordance with the provisions either in England and

reported death *might* require a post-mortem examination; this involvement of the police makes it more likely that the necessary control over the body will be exercised by the coroner from the outset of his inquiry.

5-04 As mentioned above,⁸ police officers in Northern Ireland fulfil much the same role as "coroners' officers" in England and Wales; but a police officer in Northern Ireland may be expected to discharge this role in addition to his normal policing duties. The officer "tasked" to take possession of the body will not necessarily be a constable but may be an officer of more senior rank, and he may likewise be from either the uniform or detective branch of the Royal Ulster Constabulary.⁹ Normally the decision as to which police officer is appointed in a particular case is left to the police authorities; unless the circumstances of the death point to a serious crime having been committed, however, it is likely that this responsibility will, initially at any rate, be undertaken by a constable.

5-05 The taking of possession of a body by a constable on the instructions of the coroner pursuant to section 11(1) implies the availability of a suitable place for the deposit of the body. In Northern Ireland this will normally be a mortuary with refrigerated storage facilities, which may then be used under the provisions of section 12(1) in the event of a post-mortem examination proving necessary. Construed together, section 11(1) and 12(1) suggest that a "body store" would satisfy the requirements of section 11(1), with any post-mortem examination then being carried out (as required by section 12(1)) in "a convenient mortuary or morgue or other suitable place (whether within or without [the coroner's] district) ...". It may indeed be necessary in some extreme situations - for example, multiple fatalities following a major air disaster - for a "body store" to be used; but the storage facilities presently available in mortuaries in Northern Ireland have proved adequate in most situations.¹⁰ So far as the safe custody of the body is concerned, section 12(1) further provides that "the person in charge of such mortuary or morgue or [other convenient] place shall allow the body to be deposited in it and shall be responsible for the custody thereof until the inquest or examination shall have been held".¹¹

5-06 It is the coroner's responsibility to make the necessary arrangements for the removal of a body and its deposit in the mortuary. For this purpose he will enter into an arrangement with an adequate number of "reputable" funeral

⁸ Chapter 2, paras 2-29 to 2-33.

⁹ The 1959 Act, s 40 defines "constable" as "any officer or member of the Royal Ulster Constabulary". See above, Chapter 2, para 2-31.

¹⁰ *Jervis*, paras 17-08 to 17-10 sets out the basic requirements for a temporary mortuary and refers to the need for some contingency planning.

¹¹ Any person in charge of a mortuary, morgue or other suitable place who contravenes these provisions is guilty of an offence punishable on summary conviction by a fine not exceeding level 1 on the standard scale (currently £200): 1959 Act, s 12(2), as amended by Fines and Penalties (NI) Order 1984, art 6(1), (3) and Criminal Justice (NI) Order 1994, art 3(2). Cf. in the Republic of Ireland, where similar provision is made in the 1962 Act, s 46, it is also a specific offence for anyone to obstruct the removal of a body pursuant to the directions of the coroner.

undertakers for the "expeditious" removal in suitable vehicles of dead bodies within his district for the purpose of investigating the cause of death.¹² Any reasonable and proper costs incurred in connection with the transport, deposit and custody of a dead body are the responsibility of the Northern Ireland Court Service, as expenses properly incurred by the coroner in the discharge of his duties.¹³ The coroner must also take whatever steps are necessary to preserve the body or prevent decomposition.¹⁴ All mortuaries used by coroners in Northern Ireland have refrigeration facilities and there is therefore rarely any difficulty in complying with these requirements. The procedure on arrival at the mortuary is strictly regulated.¹⁵ The body and any clothing must be carefully examined and an inventory taken both of the clothing and of all personal possessions. Two persons must be present when this is done. It is the responsibility of the mortuary attendant, or whoever is in charge of the mortuary, to do this and the inventory must normally be witnessed by the person who accompanied the body.¹⁶ Unless required by the police or the coroner, all articles taken from the body must be kept in safe-keeping by the person in charge of the mortuary.¹⁷ When such articles are no longer required, they must be handed to the deceased's next of kin or an authorised representative and a receipt obtained. The body may not be removed from the mortuary without the authority of the coroner.

CONDUCT OF THE INVESTIGATION

5-07 By section 11(1) the coroner is charged with making "such investigation as may be required to enable him to determine whether or not an inquest is necessary". For this purpose he will need to ascertain, if possible, the identity of the body and to obtain statements from any witnesses with knowledge of the circumstances of the death. Deaths do sometimes occur where the circumstances of death are never known; but in most cases relevant information can be obtained from members of the deceased's family, friends and neighbours, etc. In addition, a statement from the deceased's general practitioner detailing the medical history is often extremely useful in

¹² 1963 Rules, r 24(1). A prescribed form of "Order to an Undertaker to Remove Body for Inquest or Post-Mortem Examination" is set out in the Rules, Sch 3, Form 15; but removal arrangements are usually made directly with the undertaker by a constable acting on the coroner's instructions and, as a result, this Form is rarely used in practice.

¹³ 1959 Act, s 12(4).

¹⁴ 1963 Rules, r 24(2).

¹⁵ *Ibid*, r 24(3).

¹⁶ Often the accompanying person is a police officer, funeral undertaker or a member of an ambulance crew. There is provision for a relative to be present, if available, and such relative may act as the witness. But it is not acceptable for the witness to be another member of the staff of the mortuary.

¹⁷ They may for example be required for forensic examination, evidential purposes or otherwise in connection with the police investigation of the death.

determining the cause of death, particularly where life extinct, particularly where

5-08 The police officer acting for obtaining any material (e.g. tablet bottles, etc. Where no problem should arise if the police are acting on the coroner's behalf. The coroner has extensive powers under the Coroners (Inquests) Order 1989, where there is a criminal offence has been committed which is likely to be of substantial public interest. It is extremely doubtful whether the police can search premises or seize property without the consent of the coroner. *Jervis*:

"It is said that the coroner has the power to search not only the body but also the place where the body was found. Evidence bearing on the issue is said that possession of the body is [But] it is doubtful if the coroner can search premises unless the body is found there."

No modern authority is known. The common law under which a coroner's warrant were abolished in Northern Ireland. Order 1989. Coroners should have extensive powers in the absence of such legislation. The consent of those directly concerned is not required.

¹⁸ A forensic medical officer training in forensic medicine. The appointment is a part-time position. *Para 5-50.*

¹⁹ The basis for the statement is on an opinion of the Law Officers. It has been held in Australia that a coroner has the power to search for evidence: *Ex parte*

²¹ *Brodrick Report*, para 13.07. His authority should in particular extend to areas where the body was found. A person was prior to his death. Such places are necessary for the coroner to inspect any records relating to the death. He has reasonable grounds for believing that the body should be preserved until the conclusion of the inquest.

able vehicles of dead bodies g the cause of death.¹² Any on with the transport, deposit of the Northern Ireland Court roner in the discharge of his ps are necessary to preserve tuaries used by coroners in there is therefore rarely any The procedure on arrival at and any clothing must be of the clothing and of all when this is done. It is the hoever is in charge of the rmally be witnessed by the quired by the police or the : kept in safe-keeping by the icles are no longer required, of kin or an authorised may not be removed from the

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1 Undertaker to Remove Body for ules, Sch 3, Form 15; but removal aker by a constable acting on the used in practice.

ral undertaker or a member of an e present, if available, and such le for the witness to be another

mination, evidential purposes or e death.

determining the cause of death, as is the opinion of the doctor who pronounced life extinct, particularly where the doctor is a forensic medical officer.¹⁸

5-08 The police officer acting on behalf of the coroner will also be responsible for obtaining any material evidence relating to the death, such as suicide notes, tablet bottles, etc. Where such evidence is in the possession of another person, no problem should arise if that person is willing to hand it over to the constable acting on the coroner's behalf. In the absence of such consent, the police have extensive powers under the Police and Criminal Evidence (Northern Ireland) Order 1989, where there are reasonable grounds for suspecting that a serious criminal offence has been committed, to search premises and to seize anything which is likely to be of substantial value to the investigation of the offence. But it is extremely doubtful whether a police officer has otherwise any power to search premises or seize property for the purposes of a coroner's investigation without the consent of the owner or person in possession thereof. According to *Jervis*:

"It is said that the coroner or his officer is entitled as part of his enquiries to search not only the body but also property belonging to the deceased and also the place where the body was found, if there is reasonable cause to believe that evidence bearing on the purpose of the inquest may thus be found. Similarly it is said that possession may be taken of property relevant to such purposes [But] it is doubtful if a coroner ever had power at common law to enter premises unless the body was there ...".¹⁹

No modern authority is cited, however,²⁰ and in any event "all the rules of common law under which a constable has power to enter premises without a warrant" were abolished by article 19 of the Police and Criminal Evidence (Northern Ireland) Order 1989. The Brodrick Committee considered that coroners should have extensive statutory powers of investigation;²¹ but in the absence of such legislation, their power to act in non-criminal cases without the consent of those directly concerned must be regarded as extremely doubtful.

¹⁸ A forensic medical officer or police surgeon is a medical practitioner with specialist training in forensic medicine who is appointed to act in support of the police investigation; the appointment is a part-time one in Northern Ireland.

¹⁹ Para 5-50.

²⁰ The basis for the statement is a Home Office Circular (No 68 of 1955), which in turn relies on an opinion of the Law Officers given in 1896. The learned authors go on to state that it has been held in Australia that a coroner has no common law power to enter premises and search for evidence: *Ex parte Zinc Corporation* (1969) 90 WN (NSW) 654.

²¹ *Brodrick Report*, para 13.07, where it is proposed that a coroner or any person acting with his authority should in particular have an express power (i) to enter and inspect the place or area where the body was found, (ii) to enter and inspect the places in which the deceased person was prior to his death, if in the opinion of the coroner the entry and inspection of such places is necessary for the purposes of his investigation, (iii) to enter any place to inspect any records relating to the deceased, and (iv) to take possession of anything that he has reasonable grounds for believing is material to the purposes of his investigation and to preserve it until the conclusion of his investigation.

specialist areas. The coroner in various medical specialties is an expert thus employed will may not always prove necessary subsequent inquest.

5-12 As the inquest is a coroner to choose which circumstances of a death a person¹²⁹ obtains the service of a coroner to call that expert; satisfied that the expert's evidence is reliable and that the attendance of the coroner will normally ask the witness and make his decision. Indeed, it is unlikely that the coroner is denied this opportunity.

Exhumation

5-13 For the purposes of this section, the court may issue an order for the body of the person if the court provides:

"For the purposes of exhumation, the direct the exhumation of any remains and the consent of any owner shall not be required by any law, eighty-one of the Public Health Act, 1936."

The Order to Exhume³² is where the body is believed district. It is the coroner f

²⁶ Sometimes on the advice of t

²⁷ Typical examples are obstetric

²⁸ 1959 Act, s 17(1). See further

²⁹ See below, Chapter 7, paras

³⁰ When a coroner agrees to "properly interested person", the coroner expert in attending the inquiry preparing the report, since "properly interested person"

31 Note that a new s 181 has been inserted (Provisions) (NI) Order 1988. It gives coroners in England and Wales the power to request the Minister for Justice to order an inquest in a case where death may have resulted from an act which may either make or refuse to

³² See 1963 Rules, Sch 3, Form

³³ Unless the death has previously occurred, the court has no jurisdiction to order a post-mortem. See *3 E. & E. 137* and *R v Wood*.

coroner for the district in which the death occurred, or in which the cause of death arose, has no power to issue an exhumation order. The request for an Order should therefore be referred to the coroner for the district where the body is buried.³⁴ The Order to Exhume states that the coroner has cause to inquire into the death and directs the disinterment of the body to allow those inquiries to be made.

5-14 Whilst the coroner's power to make an exhumation order is unencumbered in the sense that no consents are required, it may only be made for the purpose of exercising his powers under section 11(1) of the 1959 Act - that is, "to determine whether an inquest is necessary in any case where he has been informed that the body of a deceased person is within his district and there is reason to believe that death occurred in any of the circumstances mentioned in sections seven or eight".³⁵ The power must be exercised reasonably and responsibly, since exhumation is a traumatic and distressing experience for the family, apart from being expensive and time-consuming. The coroner should therefore exercise this power with caution and make an order only where there is cogent evidence that a post-mortem examination will assist in determining whether or not an inquest is necessary. The advice of the State Pathologist's Department should normally be sought in such cases. Exhumation followed by a post-mortem examination is *not* a prerequisite to the holding of an inquest:

"Where the body of any person upon whom it is necessary to hold an inquest has been buried and it is known to the coroner that no good purpose will be effected by exhuming the same for the purposes of an inquest he may proceed to hold an inquest without having exhumed the body."³⁶

Accordingly, where the coroner concludes, on the basis of expert advice or otherwise, that exhumation of the body is not likely to help him decide whether or not to hold an inquest into the death, section 15 permits him to proceed directly to the holding of an inquest.

jurisdiction, the police or the coroner may either request the Attorney General to order a new inquest pursuant to s 14 of the 1959 Act (which would carry with it the power to order exhumation) or apply to the court for the original inquisition to be quashed. According to *Jervis*, para 6-06, the High Court, on quashing the original inquest, itself has power to order exhumation for the purpose of a fresh inquest (*R v Saunders* (1719) 1 Str 167), but "it is more likely that the question of exhumation will be left to the discretion of whichever coroner thereafter has jurisdiction to hold the new inquest".

³⁴ Should an inquest subsequently prove necessary, jurisdiction may be transferred to another coroner under the provisions of s 32 of the 1959 Act - see above, Chapter 4, para 4-25.

³⁵ These provisions differ from the 1988 Act, s 23 which, *inter alia*, allows the coroner in England and Wales to order an exhumation for the purposes of criminal proceedings instituted or contemplated in connection with the death. *Cf* in the Republic of Ireland, the 1962 Act, s 47(1) provides that an exhumation order may only be made where "a member of the Garda Síochána not below the rank of inspector [informs the coroner] that, in his opinion, the death of any person whose body has been buried in the coroner's district may have occurred in a violent or unnatural manner...".

³⁶ 1959 Act, s 15.

5-15 Where the reason for crime, the coroner will consult any decision. It may be, for evidence has come to light by post-mortem examination. If from a crime are made direct referred to the police for investigation are treated with understanding prompted by a desire for ex mental delusion.

5-16 Coroners are also sometimes a body exhumed for the purpose remains cremated. The coroner circumstances, and he should authority of a body which has occurred in consecrated ground authorities, the District Chief authorised to permit exhumation public cemetery, the licence of Ireland is required, and the Inspector must be notified.³⁸

5-17 Where a coroner has with the "mechanics" of the protocol, there is a well established Ireland will be supervised by Pathologist's Department where possible, the services of the funeral are obtained in order the remains after the post-mortem exhumation follows an order incurred in the process, and which normally follows the inquest.

The issuing of a death certificate

5-18 As explained earlier, death certificate to be submitted

³⁷ See eg C Molloy, *The Justice of the Peace* [1975] *Crim L Rev* 525. It Northern Ireland of the Burial.

³⁸ See generally *Davies' Law of* 1993).

³⁹ Exhumation procedure has been textbooks - see eg Polson and XIX, Polson, Gee and Knight, and Mason, *Forensic Medicine*

⁴⁰ See below, para 5-32.

⁴¹ Above, para 5-02.

occurred, or in which the cause of death is in question, the coroner may issue an order for an inquest. The request for an inquest is made to the coroner for the district where the body lies. The coroner has cause to inquire into the body to allow those inquiries to be made.

To make an exhumation order is necessary in any case where he has reason to believe that the body is within his district and there are circumstances mentioned in section 11(1) of the 1959 Act which must be exercised reasonably and with due regard to the distressing experience for the family of the deceased. The coroner should make an order only where there is evidence that the family will assist in determining the cause of death. Advice of the State Pathologist's cases. Exhumation followed by the holding of an inquest.

It is necessary to hold an inquest if there is no good purpose will be served by an inquest he may proceed with it.³⁶

On the basis of expert advice or on the basis of his own knowledge to help him decide whether an inquest is necessary, section 15 permits him to proceed with it.

Under section 15 the Attorney General may order a coroner to carry with it the power to order an inquest to be quashed. According to the original inquest, itself has power to order an inquest (1719) 1 Str 167, but "it is left to the discretion of whichever court is asked".

The jurisdiction may be transferred to another coroner, see above, Chapter 4, para 4-25.

Section 15, *inter alia*, allows the coroner in certain circumstances to order an inquest for purposes of criminal proceedings.

Cf in the Republic of Ireland, the coroner may only be made where "a member of the public" [informs the coroner] that, in his opinion, the body of a person buried in the coroner's district may be the body of a person who has died.

5-15 Where the reason for the exhumation is the investigation of a possible crime, the coroner will consult the Royal Ulster Constabulary before reaching any decision. It may be, for example, that after the death and burial, new evidence has come to light which can only be properly assessed if there is a post-mortem examination. In some cases, allegations that the death resulted from a crime are made directly to the coroner by a third party; these are referred to the police for investigation on the coroner's behalf. Such allegations are treated with understandable caution, given that they may have been prompted by a desire for exhumation motivated by malice or some form of mental delusion.

5-16 Coroners are also sometimes approached by a family who wish to have a body exhumed for the purposes of re-burial in another grave, or to have the remains cremated. The coroner has no jurisdiction to order exhumation in such circumstances, and he should make it clear that any disinterment without lawful authority of a body which has been buried is a criminal offence.³⁷ If the burial occurred in consecrated ground, the family should contact the church authorities, the District Chief Public Health Inspector and the police, who are authorised to permit exhumation for purposes of reburial. In the case of a public cemetery, the licence of the Department of the Environment for Northern Ireland is required, and the police and the District Chief Public Health Inspector must be notified.³⁸

5-17 Where a coroner has made an exhumation order, he is not concerned with the "mechanics" of the exhumation. Although there is no prescribed protocol, there is a well established procedure.³⁹ An exhumation in Northern Ireland will be supervised by an experienced forensic pathologist from the State Pathologist's Department who will liaise closely with the police. Where possible, the services of the funeral undertakers responsible for the original funeral are obtained in order to identify the coffin and the body, and to re-inter the remains after the post-mortem examination has been completed. Where the exhumation follows an order by the coroner, he is responsible for the expenses incurred in the process, and for the expense of the subsequent reinterment which normally follows the issue of a burial order.⁴⁰

The issuing of a death certificate

5-18 As explained earlier,⁴¹ a death may be reported to the coroner only for a death certificate to be subsequently issued by a doctor. When the coroner

³⁷ See eg C Molloy, *The Justice of the Peace for Ireland* (1890), p 1170 and *R v Harmsworth* [1975] *Crim L Rev* 525. It appears, however, that there is no statutory equivalent in Northern Ireland of the Burial Act 1857, s 25.

³⁸ See generally Davies' *Law of Burial, Cremation and Exhumation* (6th ed (by D Smale), 1993).

³⁹ Exhumation procedure has been described in many of the established forensic medicine textbooks - see eg Polson and Marshall, *The Disposal of the Dead* (3rd ed, 1975), Chap XIX, Polson, Gee and Knight, *The Essentials of Forensic Medicine* (4th ed, 1985), p 587 and Mason, *Forensic Medicine for Lawyers* (3rd ed, 1995), p 76.

⁴⁰ See below, para 5-32.

⁴¹ Above, para 5-02.

concur with the issue of the death certificate, he thereupon loses jurisdiction and ceases to have any further involvement in the case.⁴²

THE COURSES AVAILABLE TO THE CORONER

5-19 Where, for whatever reason, a death certificate cannot be issued, the coroner may adopt one of three courses, as appropriate:

- (1) Permit the death to be registered without conducting a post-mortem examination;
- (2) Permit the death to be registered after conducting a post-mortem examination;
- (3) Proceed to hold an inquest (whether or not a post-mortem examination has been conducted).

Registration of the death without a post-mortem examination (Form 14)⁴³

5-20 This course is followed if the coroner is satisfied that there is no need for either a post-mortem examination or an inquest.⁴⁴ This will normally occur where a medical practitioner is satisfied as to the cause of death, but cannot issue a death certificate only because the deceased did not die from a "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".⁴⁵ The statutory basis for this procedure is section 24 of the 1959 Act, which provides:

"(1) Where a coroner decides that an inquest is unnecessary he shall issue his authority to bury the body, and shall forthwith transmit to the registrar of deaths a statement setting forth briefly the result of the investigation and the grounds on which the authority was issued.

(2) Such statement shall contain particulars of the cause of death sufficient to enable the registrar of deaths to register the death."⁴⁶

5-21 Form 14⁴⁷ states:

- (1) that the coroner has investigated the death;
- (2) that a post-mortem examination has not been made;

⁴² Thus the coroner would not be required to issue a burial or cremation order in such a case.

⁴³ 1963 Rules, Sch 3, Form 14.

⁴⁴ In 1996, this course was adopted in just over one-third of the deaths reported to coroners in Northern Ireland: *Northern Ireland Judicial Statistics 1996* (1997), p 187.

⁴⁵ 1959 Act, s 7, discussed above, Chapter 3, para 3-08.

⁴⁶ Although there appears to be no equivalent statutory provision in England and Wales, a similar procedure operates in practice - see *Jervis*, para 6-11. In the Republic of Ireland, the 1962 Act, s 50(2) sets out the "pink form" procedure in much the same terms as s 24 of the 1959 Act, although it may be noted (*à propos* the point made in the next footnote) that the subsection expressly refers to the situation where a coroner inquires into a death "without holding an inquest or causing a post-mortem examination to be made" (emphasis added).

⁴⁷ Form 14 is stated in the Rules to be made under the provisions of s 24. However, that section makes no reference to a post-mortem examination, but merely stipulates that the coroner must decide that an inquest is unnecessary. Arguably, the contents of the form are at variance with the provisions of the section.

- (3) that the coroner is satisfied that the death was caused by a medical practitioner referred to in the death certificate;
- (4) that the coroner does not consider that the death was caused by a medical practitioner referred to in the death certificate;
- (5) the coroner has issued his authority to bury the body.

The form does not state that deaths are processed using the procedure in section 24 where (i) the death has resulted from a medical diagnosis (i.e. a diagnosis has been made); (ii) the death was that of an adult; (iii) the death was that of a person who survived for some time after the death; (iv) the death was that of a person who had the opportunity to complain if the death was not as expected.⁴⁸ A typical formulation would be "bronchopneumonia of the right lung" with the bronchopneumonia being the underlying cause. However, the coroner will be examined by the coroner of others - such as the next of kin - as to the appropriate course to take with regard to the death, whether the deceased had a pre-existing condition, whether the deceased had any other possible significance of these conditions, whether the deceased had attended the scene of the death, whether the coroner may consult them. In these cases, where he is unhappy about its quality, it is inappropriate and that a post-mortem examination should be held. *The "Pro Forma" scheme*

5-22 An extra-statutory scheme for receiving evidence of the medical practitioner with the prior agreement of the coroner as to whether this "Pro Forma" scheme is appropriate to a particular death. If the coroner is of the opinion as to the cause of death is unnecessary and the coroner is then issue a burial or cremation order without unnecessary post-mortem medical practitioners and coroners from them.

⁴⁸ See below, para 5-22.

⁴⁹ See 1959 Act, ss 9 and 28 and the Rules.

⁵⁰ The existence of osteoporosis may be a factor.

thereupon loses jurisdiction
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THE CORONER

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- (3) that the coroner is satisfied with the cause of death given by the medical practitioner referred to thereon;⁴⁸
- (4) that the coroner does not consider it necessary to hold an inquest, and
- (5) the coroner has issued his authority to cremate or bury the body.⁴⁹

The form does not state that the death was natural, and in fact some *unnatural* deaths are processed using this procedure. This may be done, for example, where (i) the death has resulted from asbestosis (provided that a definite clinical diagnosis has been made); (ii) the death was the result of chronic alcoholism, or (iii) the death was that of an elderly person who fell at home fracturing a femur, but who survived for some time afterwards and therefore had ample opportunity to complain if the fall was not the simple accident it appeared to be.⁵⁰ A typical formulation of the cause of death in such latter circumstances would be "bronchopneumonia due to immobility due to fractured neck of femur" with the bronchopneumonia as the terminal event and the fracture as the underlying cause. However, the circumstances of each death in all such cases will be examined by the coroner, and he may wish to have regard to the views of others - such as the next of kin or the State Pathologist's Department - as to the appropriate course to take. In order to make his decision the coroner will wish to know such matters as whether there are any suspicious circumstances surrounding the death, whether any allegations are being made, whether the deceased had a pre-existing medical condition which may have caused death, whether the deceased had complained of any symptoms prior to death and the possible significance of these symptoms, and how long before death he or she had last been seen and treated by his medical practitioner. If police officers attended the scene of the death, or if another doctor pronounced life extinct, the coroner may consult them. A coroner will tend to err on the side of caution in these cases; where he is unhappy with the amount of information available, or concerned about its quality, he may conclude that the Form 14 procedure is inappropriate and that a post-mortem examination should be performed.

The "Pro Forma" scheme

5-22 An extra-statutory scheme has been developed to facilitate the coroner receiving evidence of the medical practitioner's opinion of the cause of death. This scheme is based on a specially-devised form completed by the medical practitioner with the prior approval of the coroner, following a discussion by them of the circumstances of the death. It is for the coroner alone to decide whether this "Pro Forma" scheme is appropriate in the circumstances of a particular death. If the coroner is prepared to accept the medical practitioner's opinion as to the cause of death, a post-mortem examination becomes unnecessary and the coroner may simply register the death using Form 14, and then issue a burial or cremation order. This scheme, which is designed to avoid unnecessary post-mortem examinations, requires candour on the part of medical practitioners and confidence by coroners in the opinions they receive from them.

⁴⁸ See below, para 5-22.

⁴⁹ See 1959 Act, ss 9 and 28 and the Cremation (Belfast) Regulations (NI) 1961, reg 10.

⁵⁰ The existence of osteoporosis may have predisposed towards the fracture.

5-23 This special form contains the following particulars:

- (1) the name, address and telephone number of the medical practitioner;
- (2) the name, age, address and occupation of the deceased;
- (3) how long he or she had been a patient and any relevant medical history;
- (4) when the deceased was last seen by the medical practitioner and his or her state of health at that time;
- (5) the time, date, place and circumstances of death, with particulars of any final symptoms;
- (6) the name of the medical practitioner who saw the body and confirmed death, and
- (7) the cause of death formulated in the same way as on a death certificate - but not including anything which did not contribute to the death.

Should the medical practitioner not have a copy of the actual printed form at the relevant time, a coroner will normally accept an unsigned death certificate setting out the cause of death and an accompanying letter containing the above information and signed by the medical practitioner.

Registration of the death following a post-mortem examination (Form 17)⁵¹

5-24 If the medical practitioner attending the deceased is not satisfied as to the cause of death and is not prepared to issue a death certificate, the coroner must order a post-mortem examination even if the death was almost certainly a natural one.⁵² If the examination establishes that the death was a natural one and that an inquest is therefore not required, or the coroner is otherwise satisfied that an inquest is unnecessary, he will issue Form 17 to enable the death to be registered forthwith. The statutory basis for this procedure is set out in section 28 of the 1959 Act:

"(1) Where a coroner is satisfied that a post-mortem examination should be performed upon the body of a person into whose death he may conduct an inquest, the coroner may secure the services of a registered medical practitioner ... for the performance of a post-mortem examination of the body of the deceased

(2) If as a result of such post-mortem examination as aforesaid the coroner is satisfied that an inquest is unnecessary, he shall send to the registrar of deaths whose duty it is by law to register the death a certificate under his hand stating

⁵¹ 1963 Rules, Sch 3, Form 17.

⁵² A post-mortem examination is the only way of conclusively establishing if a death was natural or otherwise; but it would be both impractical and unacceptable to society to make every death the subject of one. A balance has to be drawn and it is not always easy for the coroner to get it right. In addition, some medical practitioners are more reluctant than others to issue a death certificate or "Pro Forma", thereby avoiding the need for a post-mortem. In 1996, almost 40% of deaths reported to coroners in Northern Ireland were dealt with under the Form 17 procedure: *Northern Ireland Judicial Statistics 1996* (1997), p 187.

the cause of death a examination...."⁵³

5-25 Form 17, as set out

- (1) that the coroner has in
- (2) that a post-mortem exa
- (3) the cause of death give
- (4) that the coroner does n
- (5) that the coroner has is buried.

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5-26 Both Form 14 and Registrar of Deaths, who register the death.

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5-27 When a death certif either the Form 14 or Form

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5-28 The referral of a de the issuing of a death certi principal ones are the need death which may ultimately post-mortem examination. date at which the death may of the investigation or any s determines the medical cause decides whether to hold an i not be issued until after the i a death certificate can crea insurance companies may, f and banks and building soc becomes available.

5-29 Coroners are all too delay often lie beyond thei problems, a non-statutory f Evidence of Death" was d

⁵³ 1988 Act, s 19(3) makes simil 50(1) in the Republic of Ireland

⁵⁴ See Births and Deaths Registra

⁵⁵ See further below Chapter 7, p

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post-mortem examination

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coroners in Northern Ireland were dealt
Judicial Statistics 1996 (1997), p 187.

the cause of death as disclosed by the report of the post-mortem
examination....⁵³

5-25 Form 17, as set out in the 1963 Rules, states:

- (1) that the coroner has investigated the death;
- (2) that a post-mortem examination has been carried out;
- (3) the cause of death given by the pathologist;
- (4) that the coroner does not consider it necessary to hold an inquest, and
- (5) that the coroner has issued his authority for the body to be cremated or buried.

As in the case of the Form 14 procedure, Form 17 may be used to register deaths which are unnatural. The two procedures are virtually the same but for the requirement for a post-mortem examination to enable the coroner to use the Form 17 procedure.

5-26 Both Form 14 and Form 17 are sent by the coroner to the relevant Registrar of Deaths, who will contact a "qualified informant"⁵⁴ to attend to register the death.

The holding of an inquest

5-27 When a death certificate is not issued or the coroner decides not to use either the Form 14 or Form 17 procedure, the coroner must hold an inquest.⁵⁵

"INTERIM DEATH CERTIFICATES"

5-28 The referral of a death to the coroner normally leads to some delay in the issuing of a death certificate. There are many reasons for this, but the principal ones are the need for an investigation into the circumstances of the death which may ultimately lead to criminal proceedings, and the need for a post-mortem examination. The implications of the former are that the earliest date at which the death may be registered by the coroner is *after* the conclusion of the investigation or any subsequent criminal proceedings. The post-mortem determines the medical cause of death and may be the basis on which a coroner decides whether to hold an inquest; where he so decides, a death certificate will not be issued until after the inquest has been held. Such delays in the issuing of a death certificate can create difficulties in the administration of an estate; insurance companies may, for example, defer dealing with insurance policies and banks and building societies may "freeze" accounts until the certificate becomes available.

5-29 Coroners are all too aware of such problems; but the reasons for the delay often lie beyond their control. In an attempt to minimise potential problems, a non-statutory form (Form 21A) entitled "Coroner's Certificate of Evidence of Death" was devised, and this is commonly referred to as an

⁵³ 1988 Act, s 19(3) makes similar provision for England and Wales, as does the 1962 Act, s 50(1) in the Republic of Ireland.

⁵⁴ See Births and Deaths Registration (NI) Order 1976, art 21(4).

⁵⁵ See further below Chapter 7, paras 7-01 *et seq.*

"interim death certificate".⁵⁶ Although it purports to be made under the 1959 Act, it is not one of the statutory forms set out in the 1963 Rules. It is signed by the coroner and states the deceased's name, address, occupation and date of birth; that the death has been reported to the coroner; that a post-mortem examination has been ordered; that the coroner will decide whether to hold an inquest once the results of the examination are known - or, in the alternative, that the coroner is unable to hold an inquest pending the outcome of police investigations into the death or the conclusion of any criminal proceedings. Financial institutions are sometimes prepared to act on the basis of this certificate, which is issued free of charge on application to the coroner.

5-30 The form is intended for use by the coroner before the post-mortem report is received or pending the outcome of a police investigation or any criminal proceedings. It would be inappropriate for a coroner to use this form in any other circumstances. Thus, if the coroner has the post-mortem report and there are no other outstanding matters, it only remains for the coroner to decide whether to hold an inquest and in those circumstances Form 21A should not be used.

DISPOSAL OF THE BODY

5-31 When a death has been reported to a coroner, the body cannot be buried or cremated or removed from Northern Ireland without the authority of the coroner.⁵⁷ When considering whether to grant such authority, the coroner must be satisfied that no further examination of the body is necessary. Before reaching this conclusion, he should bear in mind the possibility that a further post-mortem examination may be required for some reason⁵⁸ and that if an inquest with a jury is subsequently held, any juror has the right to see the body.⁵⁹ If the death is or may be the subject of criminal proceedings, the coroner must also bear in mind that the police, the Director of Public Prosecutions or the defence may also require to have the body available for

⁵⁶ The Brodrick Committee recommended that where a bereaved relative is likely to suffer delay in the receipt of pension or insurance benefits, the coroner should issue an interim certificate of the fact of death to the dependant in order to minimise the delay: *Brodrick Report*, para 18.16. That recommendation has also been implemented in England and Wales, where the 1984 Rules, r 30 provide that a "Coroner's Interim Certificate of the fact of death" (Form 14) "shall" be supplied on the application of a properly interested person - see *Jervis*, para 12-58. In the Republic of Ireland also, a coroner may issue an unofficial "Interim Certificate of the Fact of Death".

⁵⁷ 1959 Act, ss 9, 24 and 25.

⁵⁸ As *Jervis*, para 7-10 points out, "It should be remembered that the results of routine laboratory investigations associated with a post-mortem examination may not be available for a few days or more after the examination, and that these together with the results of the examination may prompt further medical investigations which may be impeded or prevented if the body is disposed of. Normally the pathologist will indicate in his report ... if he requires further access to the body, but if the coroner believes the circumstances warrant it he should check with the pathologist before authorising disposal".

⁵⁹ 1959 Act, s 22(c). The implications of this latter possibility are considered in Chapter 4, para 4-18 and in Chapter 8, para 8-25.

examination.⁶⁰ At common law the body until the inquest was held in those cases in which the coroner does not appear to have been required by section 24(1) of the 1959 Act. If an inquest is unnecessary, he "shall

5-32 The authority for burial is given by the coroner and given by the coroner who causes the body to be buried in charge of the Funeral". See the time the Burial Order is made, a statement setting forth briefly the facts which the authority was issued.

5-33 At present the only method of disposal of a body at the coroner's Regulations (Northern Ireland)

"Except as hereafter provided

(a) a certificate in Form 14 issued by a medical practitioner who is qualified to certify definitely the cause of death in Form C in the Regulations of not less than the deceased or a relative, parent or guardian, or by a certificate in Form B or by

(b) where the application is made in Form 1 in the Schedule to the Regulations present at the still-birth, or by a Midwife where no doctor is present, or

(c) a post-mortem examination approved under section 22 of the 1959 Act appointed by the Crematorium

⁶⁰ See especially *R v Bristol Coroner*, where the coroner had been murdered and the coroner was pending the outcome of the criminal proceedings the administrator of his estate was required to have the body for further examination. *Widgery CJ* held that the decision was "highly relevant", and concluded that the coroner's refusal at that time to disclose any error of law ...

⁶¹ *Ibid*, p 658, per Lord Widgery

⁶² 1963 Rules, Sch 3, Form 19.

⁶³ This will be either Form 14 or

⁶⁴ The procedure in England and

reports to be made under the 1959 in the 1963 Rules. It is signed address, occupation and date of coroner; that a post-mortem will decide whether to hold an known - or, in the alternative, pending the outcome of police of any criminal proceedings. to act on the basis of this lication to the coroner.

coroner before the post-mortem a police investigation or any e for a coroner to use this form ner has the post-mortem report only remains for the coroner to circumstances Form 21A should

BODY

a coroner, the body cannot be Ireland without the authority of rant such authority, the coroner f the body is necessary. Before nd the possibility that a further r some reason⁵⁸ and that if an juror has the right to see the ct of criminal proceedings, the police, the Director of Public to have the body available for

a bereaved relative is likely to suffer s, the coroner should issue an interim order to minimise the delay: *Brodrick* so been implemented in England and Coroner's Interim Certificate of the fact cation of a properly interested person - also, a coroner may issue an unofficial

membered that the results of routine tem examination may not be available at these together with the results of the igations which may be impeded or pathologist will indicate in his report ... he coroner believes the circumstances re authorising disposal". possibility are considered in Chapter 4,

examination.⁶⁰ At common law, the coroner was entitled to retain control over the body until the inquest was determined,⁶¹ and the application of this principle in those cases in which the coroner has decided that an inquest should be held does not appear to have been qualified by any statutory provision. However, section 24(1) of the 1959 Act provides that where a coroner decides that an inquest is unnecessary, he "shall" give authority for the burial of the body.

5-32 The authority for burial is entitled "Coroner's Order for Burial".⁶² It is signed by the coroner and given to "the relative of the deceased or other person who causes the body to be buried, or to the Undertaker or other person having charge of the Funeral". Section 24(1) of the 1959 Act requires the coroner, at the time the Burial Order is issued, to "transmit to the registrar of deaths a statement setting forth briefly the result of the investigation and the grounds on which the authority was issued".⁶³

5-33 At present the only crematorium in Northern Ireland is in Belfast. The disposal of a body at the crematorium is governed by the Cremation (Belfast) Regulations (Northern Ireland) 1961.⁶⁴ Regulation 10 provides:

"Except as hereafter provided no cremation shall take place unless -

- (a) a certificate in Form B in the Schedule has been given by a registered medical practitioner who has attended the deceased during his last illness and who can certify definitely as to the cause of death, and a confirmatory medical certificate in Form C in the Schedule has been given by a registered medical practitioner of not less than five years' standing who is not a relative of the deceased or a relative, partner or assistant of the practitioner who has given the certificate in Form B or by the Medical Referee acting under regulation 12; or
- (b) where the application relates to the body of a still-born child a certificate in Form 1 in the Schedule has been given by the Registered Medical Attendant present at the still-birth or who has examined the body or by a Certified Midwife where no doctor was present at the still-birth or has examined the body; or
- (c) a post-mortem examination has been made by a registered practitioner approved under section 26 of the Coroners Act (Northern Ireland) 1959, and appointed by the Cremation Authority (or in the case of emergency appointed

⁶⁰ See especially *R v Bristol Coroner, ex parte Kerr* [1974] QB 651, where the deceased had been murdered and the coroner, having opened the inquest and adjourned it *sine die* pending the outcome of the criminal proceedings, refused to release the deceased's body to the administrator of his estate until he was satisfied that the defence did not require the body for further examination. His decision was upheld by the Divisional Court. Lord Widgery CJ held that the desire of the defence to have access to the deceased's body was "highly relevant", and concluded (at p 659) that "although one hopes in all these cases the utmost expedition takes place in the release of the body, nevertheless it is impossible to say that the coroner's refusal at the time when it was given was an excess of jurisdiction or disclosed any error of law ...".

⁶¹ *Ibid*, p 658, *per* Lord Widgery CJ.

⁶² 1963 Rules, Sch 3, Form 19.

⁶³ This will be either Form 14 or Form 17.

⁶⁴ The procedure in England and Wales is described in *Jervis*, paras 7-17 to 7-25.

by the Medical Referee) and a certificate given by him in Form D in the Schedule; or

(d) a post-mortem examination has been made and the cause of death has been certified by the Coroner under section 28, sub-section 2 of the Coroners Act (Northern Ireland) 1959, and a certificate has been given by the Coroner in Form E; or

(e) an inquest has been held and the cause of death has been certified by the Coroner and a certificate has been given by the Coroner in Form E; provided that in any case in which the death occurs in connection with an industrial, railway, flying or road accident and the Coroner adjourns the inquest with a view to the investigation of the causes of the accident, he may give a certificate in Form E with the necessary modifications if he is satisfied that death was due to an accident, without waiting for the termination of the inquest; or

(f) an inquest is considered unnecessary and a certificate has been given by the Coroner in Form E.⁶⁵

5-34 There are two types of authority authorising cremation by the coroner. The first is "Coroner's authority for cremation after post-mortem examination".⁶⁶ It is signed by the coroner and certifies that "the said pathologist has stated that no further examination of the body is necessary save in respect of certain parts of the body which have been retained by him". The second is "Coroner's authority for cremation".⁶⁷ This form is used where no post-mortem examination has taken place. Once again it is signed by the coroner, who certifies that "no circumstances exist which would render necessary any further examination of the body". As cremation results in the immediate complete destruction of the body, a coroner must be cautious before authorising that process, particularly where a post-mortem examination has not taken place. However, it may be reasonable to infer that if the coroner had doubts as to the circumstances of the death, a post-mortem examination would have been ordered. Where a post-mortem examination has been held and the pathologist is satisfied that no further examination of the body is required, the coroner will usually have no reservations about giving his authority to cremate. Occasionally, however, the pathologist may express doubts to the coroner about the advisability of cremation, particularly if death resulted from a criminal act or the possibility of death having so resulted cannot definitely be excluded. The pathologist may foresee circumstances arising in the future justifying a further post-mortem examination. Such instances are rare; but where they do arise the coroner is likely to agree to issue only a burial order.

5-35 If the deceased had been fitted with a cardiac pacemaker or a radioactive or other implant, this must be removed before cremation.⁶⁸ The

⁶⁵ Essentially Form E is represented in the Coroners Rules by Forms 20 and 20A, referred to below.

⁶⁶ 1963 Rules, Sch 3, Form 20.

⁶⁷ *Ibid*, Form 20A.

⁶⁸ If there is a post-mortem examination it is removed by the pathologist; otherwise, this responsibility will fall on the funeral undertaker. There is no statutory requirement for the removal of these devices, nor are they the subject of a bye-law. But their removal is a

cremation can cause the form special form of declaration⁶⁹ (Form B⁷⁰) or the coroner. V cremate in circumstances wh inquiry will be made of the c completes the declaration. In that the pacemaker or impl examination has been carried pathologist.

ORGAN TRANSPLANT⁷¹

Organ transplantation

5-36 The Human Tissue Act use of a body, or parts th education and research, pro states:

"If any person, either in wr more witnesses during his any specified part of his bc or for purposes of medic possession of his body after the request was subsequen of any part or, as the case r the request."

Where no such request has permits the person lawfully i of any part thereof *provided*:

"... having made such re reason to believe -

- (a) that the decease dealt with afte
- (b) that the survivi objects to the l

Removal may only be made have satisfied himself by pers

"requirement" or condition of Department of Belfast City Cor

⁶⁹ Form Cem Pm DOC, Parks and

⁷⁰ See Cremation (Belfast) Regul

⁷¹ See *Jervis*, paras 6-53 to 6-61 I Wales.

⁷² Section 1(4). See generally *Ca* of practice (including the diag Party on behalf of the Health E also be noted that the Corneal and social services board empl

by him in Form D in the

If the cause of death has been section 2 of the Coroners Act then given by the Coroner in

which has been certified by the Coroner in Form E; provided in connection with an industrial, he adjourns the inquest with a verdict, he may give a certificate if satisfied that death was due to the inquest; or

If a certificate has been given by the

signing cremation by the coroner. cremation after post-mortem examination and certifies that "the said body of the body is necessary save have been retained by him". The

This form is used where no reason again it is signed by the coroner as exist which would render it invalid. As cremation results in the coroner must be cautious before post-mortem examination has not been carried out to infer that if the coroner had post-mortem examination would have been held and the removal of the body is required, the coroner giving his authority to cremate. Any doubts to the coroner about whether death resulted from a criminal act must not definitely be excluded. The coroner in the future justifying a further inquest; but where they do arise the coroner.

cardiac pacemaker or a radio-activated before cremation.⁶⁸ The

rules by Forms 20 and 20A, referred to

by the pathologist; otherwise, this there is no statutory requirement for the removal of a bye-law. But their removal is a

cremation can cause the former to explode and the latter is a health hazard. A special form of declaration⁶⁹ must be completed by the doctor (who completes Form B⁷⁰) or the coroner. When a coroner is asked to issue an authority to cremate in circumstances where there has been no post-mortem examination, inquiry will be made of the deceased's medical practitioner before the coroner completes the declaration. In such cases, the coroner will require to be satisfied that the pacemaker or implant has been removed. Where a post-mortem examination has been carried out such confirmation will be sought from the pathologist.

ORGAN TRANSPLANTS AND ANATOMICAL EXAMINATIONS⁷¹

Organ transplantation

5-36 The Human Tissue Act (Northern Ireland) 1962 makes provision for the use of a body, or parts thereof, for therapeutic purposes and for medical education and research, provided certain conditions are met. Section 1(1) states:

"If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part or, as the case may be, the specified part, for use in accordance with the request."

Where no such request has been expressed by the deceased, section 1(2) permits the person lawfully in possession of the body to authorise the removal of any part thereof *provided*:

"... having made such reasonable enquiry as may be practicable, he has no reason to believe -

- (a) that the deceased had expressed an objection to his body being so dealt with after his death, and had not withdrawn it; or
- (b) that the surviving spouse or any surviving relative of the deceased objects to the body being so dealt with."

Removal may only be made by a registered medical practitioner "who must have satisfied himself by personal examination of the body that life is extinct".⁷²

⁶⁸ "requirement" or condition of allowing cremation imposed by the Parks and Amenities Department of Belfast City Council, which has responsibility for the crematorium.

⁶⁹ Form Cem Pm DOC, Parks and Amenities Section, Belfast City Council.

⁷⁰ See Cremation (Belfast) Regulations (NI) 1961, reg 10(a).

⁷¹ See *Jervis*, paras 6-53 to 6-61 for a commentary on the identical legislation in England and Wales.

⁷² Section 1(4). See generally *Cadaveric Organs for Transplantation* (HMSO, 1983) - a code of practice (including the diagnosis of brain death) drawn up and revised by a Working Party on behalf of the Health Departments of Great Britain and Northern Ireland. It should also be noted that the Corneal Tissue (NI) Order 1988, art 3(4A)(b) provides that a health and social services board employee may, in certain circumstances, remove eye tissue.

Anatomical examinations

5-37 The Anatomy (Northern Ireland) Order 1992 makes similar provision for the use of bodies of deceased persons, or parts thereof, for anatomical examination. Thus article 6 of the Order provides:

"(1) Paragraph (2) applies if a person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body be used after his death for anatomical examination.

(2) If the person lawfully in possession of the body after death has no reason to believe that the request was withdrawn, he may authorise the use of the body in accordance with the request.

(3) Without prejudice to paragraph (2), the person lawfully in possession of a body may authorise it to be used for anatomical examination if, having made such reasonable inquiry as may be practicable, he has no reason to believe -

- (a) that the deceased, either in writing at any time or orally in the presence of two or more witnesses during his last illness, had expressed an objection to his body being so used after his death, and had not withdrawn it, or
- (b) that the surviving spouse or any surviving relative of the deceased objects to the body being so used."

The coroner's consent

5-38 The removal of organs or other tissues from the body of a deceased person under the 1962 Act or the 1992 Order is subject to the consent of the coroner in appropriate cases. Where the death has been reported to the coroner, the body may not be interfered with in any way without his consent. Section 9 of the 1959 Act⁷³ contemplates that a coroner *may* permit interference with a body and, in the present context, that provision must therefore be read in conjunction with section 1(5) of the 1962 Act and article 6(5) of the 1992 Order. These stipulate in identical terms that:

"Where a person [lawfully in possession of a body] has reason to believe that an inquest may be required to be held on [the] body or that a post-mortem examination of [the] body may be required by the coroner, he shall not, except with the consent of the coroner -

- (a) give an [organ transplantation or anatomical examination] authority ... in respect of the body, or
- (b) act on such an authority given by any other person."

It will be noted that it is not necessary that the person in question actually knows whether or not an inquest or post-mortem examination *will* be held; it is sufficient that he has *reason to believe* that either *may* be required. In practice, whenever a death is reported to the coroner, authority for the removal of an organ or other tissue can only be given when the coroner gives his consent or makes it clear that he does not intend either to conduct a post-mortem examination or to hold an inquest.

5-39 Where the coroner does give his consent pursuant to either enactment, it is on the basis that all the other statutory requirements have been, or will be, complied with. But it is not the coroner's responsibility to ensure compliance

⁷³ See above para 5-03.

with such other requirement consent.

The consent criteria

5-40 Coroners are aware of the need for organs and that this readily - and promptly - avail outstrips supply.⁷⁴ The organs are intended for use underline the importance of the decision to make a quick decision. Those taken into account. Those who have suffered severe injury are invariably tragic. young adults or children and injury are invariably tragic. approached by the medical staff for organ retrieval. Not infrequently themselves. In such a sensitive the family are made aware, and consent to organ removal.

5-41 Whilst consent for a importance or immediacy, given not depend upon the coroner's nonetheless, families are understandably anxious to know what is done.

5-42 The coroner must act objectively rather than subject to prejudices. He should facilitate

"Although the coroner's discretion is absolute, the Home Secretary to place obstacles in the way of moral or ethical decisions in principle to a transplant operation aware that there may be later required as evidence, if he has his own further enquiries, and organ itself was the cause, aware that organs for transplant after the death of the donor

⁷⁴ In 1996, 1,602 kidneys were available for transplant, 5,370 persons on the "waiting list". *Bulletin for the year ending 31 March 1997* improve and, for a variety of reasons

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The consent criteria

5-40 Coroners are aware that lives may be saved through organ transplantation and that this operation depends upon suitable organs being readily - and promptly - available. At the present time, however, demand still outstrips supply.⁷⁴ The urgency of the situation may also be compounded if the organs are intended for use outside Northern Ireland. All these factors underline the importance of the coroner being readily contactable and prepared to make a quick decision. The concerns of the deceased's family have also to be taken into account. Those most likely to become suitable donors after death are those who have suffered severe and irreversible brain damage; such persons are invariably otherwise healthy individuals with healthy organs. Often they are young adults or children and the circumstances in which they sustained the fatal injury are invariably tragic. The family of such persons will usually be approached by the medical staff, in anticipation of death, to give permission for organ retrieval. Not infrequently, this possibility is raised by the family themselves. In such a sensitive and stressful situation it is highly desirable that the family are made aware, without undue delay, of whether the coroner will consent to organ removal.

5-41 Whilst consent for anatomical examination does not have the same importance or immediacy, given that in such cases another person's life does not depend upon the coroner's decision and the speed with which he makes it, nonetheless, families are even in such circumstances invariably and understandably anxious to know just as soon as possible what can or cannot be done.

5-42 The coroner must approach the matter of consent in all such cases objectively rather than subjectively, uninfluenced by his personal views or prejudices. He should facilitate rather than obstruct:

"Although the coroner's discretion to give or refuse consent appears to be absolute, the Home Secretary hopes that, as it is not part of a coroner's function to place obstacles in the way of the development of medical science or to take moral or ethical decisions in this matter, a coroner would never object in principle to a transplant operation, but would refuse his consent only if he is aware that there may be later criminal proceedings in which the organ may be required as evidence, if he believes that the removal of an organ might impede his own further enquiries, or if he has reason to believe that a defect in the organ itself was the cause, or contributory cause, of death. Coroners will be aware that organs for transplant purposes must be removed as soon as possible after the death of the donor (within half an hour in the case of kidneys), and

⁷⁴ In 1996, 1,602 kidneys were available in the United Kingdom for transplantation, but there were 5,370 persons on the "waiting list" - see *Transplant Support Service Authority Bulletin for the year ending 31 December 1996*. Over the years this disparity has failed to improve and, for a variety of reasons, appears to be worsening.

the most effective way to ensure that this is possible is for the coroner to arrange a suitable routine with the hospitals in advance.⁷⁵

In practice, a coroner will only refuse consent where the removal of the organ may impede his own inquiries. A transplant team is unlikely to want to use an organ which was or may have been damaged by a criminal act or which was or may be defective in some way which caused or contributed to the death.

Consent and criminal offences

5-43 Sometimes, however, a person dies from a criminal act which leaves wholly undamaged organs capable of being used for transplantation purposes; a bullet wound of the head will not, for example, damage the victim's kidneys. If the coroner is asked to consent to organ retrieval in such circumstances, he must be mindful of the possibility that such retrieval may prejudice a subsequent post-mortem examination and may in turn detrimentally affect any subsequent criminal proceedings. On the other hand, if he does not consent, the intended donee of the organ in question may die. This potential for conflict between the interests of justice and the saving of life has resulted in the following informal "understanding" between the Northern Ireland coroners, the State Pathologist and the Regional Nephrology Unit.⁷⁶

- (1) Where the circumstances of the death are such that a charge of murder or manslaughter is considered to be unlikely, the coroner will normally be able to consent.
- (2) Where the circumstances of the death make a charge of murder or manslaughter likely, the coroner will normally not be able to consent. Recognising that it might not be reasonable for a coroner to maintain a policy of always withholding consent in such cases, the coroner will first seek the advice of the State Pathologist as to whether the proposed organ retrieval would materially affect pathological evidence as to the cause of death. Where it would not (for example, a bullet wound of the head), the coroner may feel able to give his consent.⁷⁷
- (3) The organ retrieval team will be responsible for recording in the case-notes in *all* cases the following information:
 - (a) the timing of death, which will normally be the time of completion of the second brain stem death tests. However, the findings and exact timings of both sets of brain stem death tests should always be recorded;
 - (b) a clear description of the events between brain stem death and organ donation with the exact time of ventilatory and circulatory arrest recorded; and

⁷⁵ Home Office Circular 65/1977.

⁷⁶ This is the unit which coordinates kidney retrieval and transplantation in Northern Ireland.

⁷⁷ On occasions the pathologist, on the instructions of the coroner who has been made aware that the deceased is dying, has examined the deceased in the ward prior to death. This practice may prevent a premature approach for consent being made to the family before the coroner's views have been ascertained.

- (c) a detailed description of the organs process. This case of multiple

- (4) Members of the organ proceedings and must m

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- (c) a detailed description of the state of the donor's body and of the organs removed before and after the retrieval process. This would be of particular importance in the case of multiple organ retrieval.

- (4) Members of the organ retrieval team are potential witnesses in any court proceedings and must maintain adequate records of their actions.

5-44 Whilst the coroner must act responsibly, always taking care not to prejudice either his own inquiries or any subsequent criminal proceedings, he is understandably anxious to save a life if at all possible. So, too, in many cases are the family of the victim. Having to make a decision against such a background can be very difficult, and refusing consent because of the wider interests of justice can also cause the deceased's family considerable disappointment and, indeed, may increase their sense of loss. As with any coronial decision, the granting or withholding of consent regarding transplantation or anatomical research must be reasonable having regard to *all* the circumstances - the decision, whatever it may be, is of course susceptible to judicial review.