

CHAPTER 6

THE POST-MORTEM EXAMINATION

THE NATURE AND PURPOSE OF A POST-MORTEM EXAMINATION

6-01 A post-mortem examination, also known as an autopsy or necropsy,<sup>1</sup> may be defined as "the post-mortem dissection of a dead body and its structures in order to determine the cause of death and the nature of the pathological changes that brought it about".<sup>2</sup> The post-mortem is a key stage in the investigation of deaths referred to a coroner, as its findings often determine whether any further action on the part of the coroner is required. The nature of the examination which it involves has been summarised as follows:

"The examination of the body in the mortuary must be careful and thorough. Deficiencies may well be exposed in Court later, to the discomfort of the pathologist and the discredit of his whole evidence. Every case should receive the same degree of care and skill. Mistakes, particularly of omission, may be very hard or impossible to correct later. It is always better to collect too much rather than too little; unwanted material can always be discarded. Before commencing the autopsy, it is imperative that the pathologist satisfies himself that he has the Coroner's personal authority. The pathologist should never commence an autopsy which he does not feel competent to carry out. He should not be too proud or ashamed to suggest that more skilled assistance should be sought."<sup>3</sup>

*Simpson's Forensic Medicine*<sup>4</sup> states that there are two main types of post-mortem examination or autopsy:

"1. The clinical autopsy, where the cause of death is known (or often incorrectly *thought* to be known) and the examination is held to confirm the diagnosis and to discover the extent of the lesions, for academic interest, teaching and research purposes.

2. The medico-legal autopsy, whose function is to discover some or all of the following:

- the identity of the body;
- the cause of death;
- the nature and number of injuries;
- the time of death;

<sup>1</sup> The term "post-mortem examination" is sometimes used to mean only an *external* examination after death. However, in modern medical usage it means exactly the same as an autopsy or necropsy, and it is in that sense that the term is used in this work. See eg B Knight (ed), *Simpson's Forensic Medicine* (10th ed, 1991), p 21.

<sup>2</sup> J Walton, J A Barondess and S Lock (eds), *The Oxford Medical Companion* (1994), p 74.

<sup>3</sup> F E Camps (ed), *Gradwohl's Legal Medicine* (3rd ed, 1976), p 70.

<sup>4</sup> *Op cit* note 1 at p 21.

- the presence of poisons;
- the expectation of duration of life for insurance purposes;
- the presence of natural disease and its contribution to death, especially where there is also trauma;
- the interpretation of injuries, either criminal, suicidal or accidental;
- the interpretation of any other unnatural conditions, including those associated with surgical or medical procedures."

It should, perhaps, be added that a "medico-legal autopsy" may assist in determining whether the circumstances of the death are consistent with accident, suicide or homicide.

6-02 For the coroner the choice of pathologist to conduct a medico-legal autopsy is an important one, particularly where the death might be the subject of a criminal investigation. The era of the "general pathologist" has disappeared, and medicine is now increasingly compartmentalised into a series of specialities and sub-specialities. Within the specialities of "forensic medicine" and "pathology" there are a number of sub-specialities, with forensic pathology straddling both disciplines.<sup>5</sup> *Simpson's Forensic Medicine* advises:

"The performance of an autopsy should ideally be carried out by a pathologist who has been trained in the techniques. Furthermore, medico-legal autopsies should only be carried out by pathologists who have training and experience in forensic pathology, either as a career or as an addition to their pathology training."<sup>6</sup>

6-03 Many families find the idea of a post-mortem examination both distressing and distasteful and may question the need for one. Coroners are often called upon to explain to tearful, distraught and grieving relatives why such an examination has been ordered and the task of doing so in such circumstances can be a difficult one. But if there is a need for a post-mortem examination it would be quite wrong for the coroner to be influenced by sympathy for the family or fear of their wrath. It is also on occasions put to coroners that a post-mortem examination is unnecessary as the cause of death is "obvious". However, nothing should be taken for granted and not everything is always as it appears to be.<sup>7</sup> One leading authority on forensic medicine puts it this way:

"... a complete autopsy is imperative on all occasions when investigating a case for the Coroner. The omission to open the skull and examine the brain is inexcusable. The case which seems the simplest and most obvious at the time is the one which may cause the greatest trouble later on. It is essential that in any medico-legal autopsy, even where there is no suspicion of an unnatural cause of death, or any possible dispute over factors not related to the cause of

<sup>5</sup> See the sections on "Forensic Medicine" and "Pathology" in *The Oxford Medical Companion*, *op cit* note 2 at pp 276 and 727.

<sup>6</sup> *Op cit* note 1 at p 22.

<sup>7</sup> See eg J Havard, *The Detection of Secret Homicide* (1960), Chap XI.

death, always to make a full body."<sup>8</sup>

#### POWER TO ORDER

6-04 The power to order a post-mortem examination, rather than mandatory, may be exercised in certain circumstances.

#### Determining whether to order a post-mortem examination

Section 28 of the 1959 Act provides that a coroner may order a post-mortem examination should he so direct. Where he may order a post-mortem examination he may decide that a post-mortem examination is unnecessary.

#### Where the explanation for a post-mortem examination is unsatisfactory

Section 27(1) of the 1959 Act provides that a coroner<sup>10</sup> that the cause of death is "obvious" he may employ a registered pathologist to conduct a post-mortem examination.<sup>11</sup>

6-05 It is unusual for a coroner to order a post-mortem examination under this latter provision. The power to order a post-mortem examination in an inquest has commenced since the 1962 Act.

<sup>8</sup> CJ Polson, DJ Gee and B Knight, *op cit* note 1 at p 548.

<sup>9</sup> In such a case the coroner must order a post-mortem examination, to the registrar if it appears from the wording of the Act that a post-mortem examination is unnecessary power to dispense with an inquest is shown it to be unnecessary death occurred in a violent or unnatural manner that an inquest should be held.

<sup>10</sup> In England and Wales, where a coroner is of opinion that the cause of death is "obvious" the coroner to direct a post-mortem examination already been carried out: 1988 Act, s 27(1) - see Coroners (Ir) Act 1846, s 27(1) - continues in force in the Republic of Ireland apparently never exercised in the Republic of Ireland.

<sup>11</sup> Cf 1962 Act, ss 33 and 52 provide that a coroner may order a post-mortem examination during an inquest "cause a post-mortem examination by medical practitioners by request of the coroner; he must do so if the coroner is below the rank of inspector of coroners. It is understood that, in case of a post-mortem examination the death may have resulted from a post-mortem examination carried out by the State Pathologist."

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death, always to make a thorough external and internal examination of the body."<sup>8</sup>

POWER TO ORDER A POST-MORTEM EXAMINATION

6-04 The power to order a post-mortem examination, which is discretionary rather than mandatory, may be exercised in two circumstances:

*Determining whether to hold an inquest*

Section 28 of the 1959 Act provides that a coroner may order that a post-mortem examination should be performed "upon the body of a person into whose death he may conduct an inquest", and that as a result of such examination he may decide that an inquest is unnecessary.<sup>9</sup>

*Where the explanation of the cause of death at the inquest is unsatisfactory*

Section 27(1) of the 1959 Act provides that "where on any inquest it appears to a coroner<sup>10</sup> that the cause of death has not been satisfactorily explained to him, he may employ a registered medical practitioner ... to perform a complete post-mortem examination".<sup>11</sup>

6-05 It is unusual for a coroner to order a post-mortem examination under this latter provision. The wording of section 27(1) appears to contemplate that an inquest has commenced either on the basis of some form of medical opinion

<sup>8</sup> CJ Polson, DJ Gee and B Knight, *The Essentials of Forensic Medicine* (4th ed, 1985), p 548.

<sup>9</sup> In such a case the coroner must certify the cause of death, as disclosed by the post-mortem examination, to the registrar of deaths - see above, Chapter 5, paras 5-24 to 5-26. It appears from the wording of section 28 that the power to determine that an inquest is unnecessary may be exercised in *any* case. Cf in the Republic of Ireland the coroner's power to dispense with an inquest on the grounds that a post-mortem examination has shown it to be unnecessary does not apply "if he is of opinion that the death may have occurred in a violent or unnatural manner or in a place or in circumstances which ... require that an inquest should be held": 1962 Act, s 19(2).

<sup>10</sup> In England and Wales, where an inquest is held with a jury, and the majority of the jury are of opinion that the cause of death has not been satisfactorily explained, they may require the coroner to direct a post-mortem examination, whether or not such an examination has already been carried out: 1988 Act, s 21(4). According to *Jervis*, para 6-19, however, this power "is never exercised to-day". A similar power existed in Northern Ireland until 1959 - see Coroners (Ir) Act 1846, s 34, repealed by the Schedule to the 1959 Act. Section 34 continues in force in the Republic of Ireland - see now 1962 Act, s 26(2)(a) - but is apparently never exercised in practice.

<sup>11</sup> Cf 1962 Act, ss 33 and 52 provide that a coroner in the Republic "may at any time before or during an inquest" cause a post-mortem examination to be made by one or two qualified medical practitioners by requesting the Minister for Justice to make the necessary appointments; he must do so "in every case in which a member of the Garda Síochána not below the rank of inspector applies to him so to do and states his reasons for so applying". It is understood that, in cases not involving possible criminal proceedings, the coroner normally makes his own appointment(s) and retrospectively notifies the Minister; where the death may have resulted from a crime, however, the post-mortem examination must be carried out by the State Pathologist.

other than the result of a post-mortem examination, or following a limited post-mortem examination; in the course of the proceedings, it becomes apparent that the cause of death has not been explained satisfactorily, and the coroner then decides that a "complete" post-mortem examination is necessary. In most cases, however, the need for a complete post-mortem to be undertaken before the opening of the inquest will have been clear from the outset.

6-06 Subject to the agreement of the pathologist having been obtained, however, a coroner *is* empowered to order a limited post-mortem examination in certain circumstances. Rule 30(2) of the 1963 Rules provides:

"If in any case the coroner and the registered medical practitioner making a post-mortem examination so agree, the examination may be limited to that necessary to ascertain or confirm the cause of death."

A coroner will rarely agree to a limited examination, if for no better reason than to avoid the situation envisaged by section 27(1).<sup>12</sup> A more practical consideration is that the inquest may not take place until many months after the death, by which time the coroner will normally have issued a burial or cremation order. Cremation obviously poses an insuperable difficulty should the coroner subsequently decide in the course of an inquest that a complete examination is necessary after all; and even in the case of burial, where the coroner has power to exhume the body, decomposition often makes a post-mortem examination a pointless exercise (though there may be exceptional circumstances where this is not the case).

6-07 Accordingly, most post-mortem examinations are ordered under section 28(1) of the 1959 Act.<sup>13</sup> The section does not say that the coroner *shall* order a post-mortem examination in order to determine whether an inquest should be held. Rather, it states that he must be "satisfied" that one *should* be performed. The provisions of section 28(2) suggest that the purpose of the post-mortem examination is to determine whether or not an inquest is necessary, a purpose which is in accordance with the coroner's general duty under section 11(1) to "make such investigation as may be required to enable him to determine whether or not an inquest is necessary". It follows that there may be circumstances where a coroner considers that a post-mortem examination will serve no useful purpose, perhaps because the available medical evidence is sufficiently clear, and it may therefore be dispensed with for this or for any other sufficient reason.<sup>14</sup>

<sup>12</sup> Coroners are also conscious of medical opinion such as that expressed in *The Essentials of Forensic Medicine*, cited above, para 6-03.

<sup>13</sup> That subsection provides that "for the purposes of the examination the coroner and the medical practitioner whose services have been thus secured shall have the like powers, authorities and immunities as if the examination were a post-mortem examination directed by a coroner at an inquest upon the body of the deceased" - ie under s 27(1).

<sup>14</sup> Thus, in exceptional circumstances, a post-mortem examination may be dispensed with where strong objections are made to such an examination on religious or cultural grounds. Such cases are rarer in Northern Ireland than in England and Wales, with its more multi-cultural society.

## CONDUCT OF THE

### Appointment of the pathologist

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<sup>15</sup> 1959 Act, s 28(1). The 1963 Rules provide for the Secretary of State to issue a "Direction to Medical Practitioners" used in practice, since instructed by the Secretary of State.

<sup>16</sup> The reference to art 11 of the 1980 Order and Sch 1, Pt II to the nature of this provision ("shall" of s 27(1) ("may employ a regi secure the services of a registe might be taken to mean the Chancellor's list. It is submit Order militate against such provisions are detailed rather Chancellor and the associated standing practice of coroners constituting the extent of their

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## CONDUCT OF THE POST-MORTEM EXAMINATION

### Appointment of the pathologist

6-08 Where the coroner decides that a post-mortem examination should be performed he "may secure the services of a registered medical practitioner on the list mentioned in section twenty-six for the performance of a post-mortem examination".<sup>15</sup> Section 26 of the 1959 Act (as amended) provides:

"The Lord Chancellor shall keep a list of registered medical practitioners employed by the Secretary of State under Article 11 of the Criminal Justice (Northern Ireland) Order 1980 or with whom the Secretary of State has entered into an arrangement under that Article for the provision of the practitioner's services to conduct post-mortem examinations or analyses and shall furnish coroners with copies of such list."<sup>16</sup>

Article 11(1) of the 1980 Order provides:

"(1) The Secretary of State may -

- (a) employ registered medical practitioners, or
- (b) enter into arrangements with a registered medical practitioner, other than a practitioner employed under sub-paragraph (a), for the provision of that practitioner's services,

to conduct post-mortem examinations or analyses in connection with any death which may be the subject of an inquest held by a coroner."<sup>17</sup>

In practice, the list referred to in section 26 of the 1959 Act is compiled by the Secretary of State on the advice of the State Pathologist; the views of neither the Lord Chancellor nor coroners are sought. The current list is made up of the forensic pathologists on the staff of the State Pathologist's Department and named hospital pathologists attached to the Royal Victoria Hospital and the Belfast City Hospital.

<sup>15</sup> 1959 Act, s 28(1). The 1963 Rules, Sch 3, Form 16 sets out a prescribed form of "Direction to Medical Practitioner to make a Post-Mortem Examination"; this form is rarely used in practice, since instructions to the pathologist are normally given by telephone.

<sup>16</sup> The reference to art 11 of the 1980 Order was substituted for the original provision by art 12(2) of and Sch 1, Pt II to that Order. Arguably, there is a conflict between the mandatory nature of this provision ("shall keep a list ...") and the apparently discretionary provisions of s 27(1) ("may employ a registered medical practitioner on the list ...") and s 28(1) ("may secure the services of a registered medical practitioner on the list..."). The latter provisions might be taken to mean that a coroner may employ a pathologist not on the Lord Chancellor's list. It is submitted that the combined effect of s 26 and art 11 of the 1980 Order militate against such an interpretation, particularly as the relevant statutory provisions are detailed rather than general, and the compilation of the list by the Lord Chancellor and the associated provisions are accorded a high status. In any event, the long-standing practice of coroners in Northern Ireland is to regard the Lord Chancellor's list as constituting the extent of their choice of pathologist.

<sup>17</sup> Article 11(2) provides for the payment of fees, including the payment of mortuary staff who receive remuneration on a case by case basis. Article 11(3) gives the Secretary of State wide powers as to practice and procedure pertaining to the conduct of post-mortem examinations and analyses - see below, para 6-13.



Greater Belfast, only the forensic pathologist's Department<sup>18</sup> perform post-mortem examinations in the Greater Belfast district, post-mortem examinations in certain hospitals are provided, of course, that they are types of death where such an examination involving forensic charges being preferred to the Department,<sup>20</sup> as will any death at any of the staff of the hospital

allowing a member of the State to direct a post-mortem examination, the duty - to refuse must be in the interest.<sup>22</sup> It would be to carry out a coroner's post-mortem examination where, for example, the pathologist's own right to benefit was a victim of a road traffic accident. But hospital pathologists do the 1963 Rules:

"If the deceased died in a hospital, the coroner shall not direct or request a pathologist on the staff of, or associated with, that hospital to make a post-mortem examination if -

- (i) that pathologist does not desire to make the examination, or
- (ii) the conduct of any member of the hospital staff<sup>23</sup> is likely to be called in question, or
- (iii) any relative of the deceased asks the coroner that the examination be not made by such a pathologist,

unless the obtaining of another pathologist with suitable qualifications and experience would cause the examination to be unduly delayed."

It is submitted that the envisaged delay would have to be grossly excessive before a coroner would attempt to persuade a pathologist to carry out a post-mortem examination against his or her will, where there is a clear conflict of interest or in the face of an objection from a family member. In any event, such problems are likely to be of academic interest only, since it is always open to the coroner to request the State Pathologist's Department to assume responsibility - and the coroner will invariably do so in such a case. In addition, such problems would only arise in the Greater Belfast district, as in all other districts *all* coroners' post-mortem examinations are currently carried out by the State Pathologist's Department.

6-11 The present practice means that coroners in Northern Ireland are not able to choose the type of pathologist they wish to perform a particular post-mortem examination.<sup>24</sup> This is in complete contrast to the position in England and Wales, where coroners have a wide discretion in this regard.<sup>25</sup> As already indicated only a limited number of post-mortem examinations occurring in the Greater Belfast district are *not* carried out by the State Pathologist's Department. Thus, *forensic* pathologists are responsible for almost all coroners' post-mortems, which is somewhat surprising at a time of increasing specialisation in this area of medicine. There is a range of sub-specialities, of

ment and its development see Marshall, "Northern Ireland Solution" (April, 1968) overview of forensic medicine within Britain" (1980) 1 *Am J Forensic Medicine*

ations in the hospital which employs a pathologist under contract to provide pathology

English] Coroners Rules 1984, r 6(1)(b), "officer of police" as to the choice of pathologist charged with the murder, manslaughter or other offence pointed out, Greater Belfast is the only district where such examinations are carried out by forensic pathologists. Such pathologists are

Office; they are simply pathologists with special experience of "special" post-mortem examinations. It also be noted that r 6(1)(b) provides a power of police; it does not impose any restriction. Cf by the 1962 Act, s 33(3) a power of Justice to appoint a qualified medical practitioner to conduct a post-mortem when the pathologist is not below the rank of inspector. Cf also the 1962 Act, s 33(3) a power of

examination: ... shall not be made by a pathologist [deceased] ... within one month before

<sup>23</sup> Particularly of the pathologist himself - see *ibid*, s 52(2)(b).

<sup>24</sup> This can only be the result of a policy decision by the Secretary of State, who is responsible for compiling the list referred to in s 26. Cf the Brodrick Committee recommended that responsibility for selecting the appropriate pathologist(s) to investigate a particular death should be entrusted to a senior pathologist or a senior medical administrator: *Brodrick Report*, Chap 23.

<sup>25</sup> Coroners Rules 1984, r 6 requires the coroner to have regard to a number of considerations set out in the rule when choosing a pathologist. In all cases the pathologist should have suitable qualifications and experience and access to laboratory facilities; special considerations apply for certain categories of deaths - murder, manslaughter or infanticide, deaths in hospital and pneumoconiosis. Subject to those provisions, the coroner is empowered by the Coroners Act 1988, s 19 to instruct "any legally qualified medical practitioner" [ie a person fully registered under the Medical Act 1983] to perform the post-mortem examination: see further *Jervis*, paras 6-22 to 6-33. With the exception of deaths which may give rise to criminal proceedings, the position in the Republic of Ireland appears to be similar - see above, note 11.

which paediatric pathology, neo-natal pathology and neuropathology are of particular importance to coroners.<sup>26</sup> It is unfortunately the case that a coroner in Northern Ireland is not yet able to instruct a pathologist trained in one of these sub-specialities to perform the post-mortem examination in an appropriate case.<sup>27</sup> He is in the less than satisfactory position of being able to seek a specialist opinion only *after* the examination has already been carried out.<sup>28</sup> Whether that provision makes up for any deficiency in the specialist pathologist not having done the actual examination in the first place is debatable.

6-12 The Brodrick Committee accepted that while the police need the services of forensic pathologists, coroners do not necessarily do so:

"Much the greater part of coroners' pathology has no forensic implication. What the coroner requires in most cases is an adequate *written* statement of the findings of a pathologist whose qualifications, experience and skill make him best fitted to carry out that particular examination. We do not accept the argument advanced by some forensic pathologists that the pathologist without forensic training or experience has a lower 'index of suspicion' than a forensic pathologist for the potential case of suicide. In our review (Chapter 4) of the danger of secret homicide, we found no significant evidence that routine autopsies were failing to disclose evidence of homicide where it was there for the finding."<sup>29</sup>

There may therefore be cases where there is doubt as to whether a *forensic* post-mortem examination is necessary. In those cases the practice in England and Wales is to have either a joint examination by a forensic pathologist and a pathologist in the appropriate sub-speciality, or two separate examinations by the respective specialists.<sup>30</sup> Because of the manner in which the Secretary of State's list of pathologists is compiled, neither option is available to Northern Ireland coroners.<sup>31</sup>

<sup>26</sup> See Rushton, "Should perinatal post mortems be carried out by specialist pathologists?" (1995) 102 *Br J Obstetrics and Gynaecology* 182, Thornton and O'Hara, "A regional audit of perinatal and infant autopsies in Northern Ireland" (1998) 105 *Br J Obstetrics and Gynaecology* 18 and Rushton, "Perinatal pathology: centralise or perish?" *ibid*, p 5.

<sup>27</sup> As will be seen from para 6-09 above, this expertise may be available to HM Coroner for Greater Belfast for some deaths occurring in hospital.

<sup>28</sup> Under the general power conferred by s 11(3) of the 1959 Act to employ "such persons as he considers necessary to assist him in such investigation".

<sup>29</sup> *Brodrick Report*, paras 23.14 and 23.15. This analysis did not, however, result in any change of the law in England and Wales.

<sup>30</sup> Useful background to this practice is contained in the *Report of the Working Party on Forensic Pathology* (the "Wasserman Report") (HMSO, 1989) and in *The Allitt Inquiry Report* (HMSO, 1994). The latter recommended (Recommendation 3) "that the provision of paediatric pathology services be reviewed with a view to ensuring that such services be engaged in every case in which the death of a child is unexpected or clinically unaccountable, whether the post-mortem is ordered by a coroner or in routine hospital practice".

<sup>31</sup> With the possible exception of some post-mortem examinations in the Greater Belfast district.

## The extent of the exami

6-13 Article 11(3) of the gives the Secretary of Sta mortem examinations:

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Rule 29 adds the further re which in his opinion bears coroner thinks fit".<sup>34</sup>

## Analyses

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<sup>32</sup> Under the provisions of r 30(2)

<sup>33</sup> An inadequate post-mortem ex if that application is made pr *Greater London*, *ex parte Lew* wife of the deceased, who con husband was inadequate, sougl event; the Court of Appeal, ho for granting such leave.

<sup>34</sup> There is no provision in the R teaching or research.

<sup>35</sup> For example, a laboratory exar of alcohol or drugs, the prese alleged) and the presence or ot

Psychiatry and neuropathology are of primary importance in the case that a coroner in Northern Ireland is a pathologist trained in one of these disciplines. The examination in an appropriate form of being able to seek a second opinion as already been carried out.<sup>28</sup> The role of the specialist pathologist in the specialist pathologist's place is debatable.

It is not while the police need the forensic pathologist necessarily do so:

"The forensic pathologist has no forensic implication. It is the forensic pathologist's duty to make a written statement of the forensic pathologist's experience and skill make him or her a forensic pathologist. We do not accept the view that the pathologist without a forensic pathologist's review (Chapter 4) of the forensic pathologist's significant evidence that routine forensic pathologist's evidence where it was there for forensic pathologist's review.

There is no doubt as to whether a forensic pathologist's practice in England is the practice in England by a forensic pathologist and a forensic pathologist's two separate examinations by a forensic pathologist in which the Secretary of State's option is available to Northern Ireland.

...carried out by specialist pathologists?"  
 ...Minton and O'Hara, "A regional audit of forensic pathologist's practice" (1998) 105 *Br J Obstetrics and Gynaecology* 105.  
 ...neutralise or perish?" *ibid*, p 5.  
 ...may be available to HM Coroner for Northern Ireland.

...1959 Act to employ "such persons as are qualified in forensic pathologist's practice on".  
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...the Report of the Working Party on Forensic Pathology (SO, 1989) and in *The Allitt Inquiry* (1989) (commendation 3) "that the provision of forensic pathologist's services to ensuring that such services be available to a child is unexpected or clinically unexpected by a coroner or in routine hospital forensic pathologist's practice.

...examinations in the Greater Belfast area.

**The extent of the examination**

6-13 Article 11(3) of the Criminal Justice (Northern Ireland) Order 1980 gives the Secretary of State wide powers to regulate the conduct of post-mortem examinations:

"The Secretary of State may by rules regulate the practice and procedure to be adopted by registered medical practitioners and others in connection with post-mortem examinations or analyses which are conducted in connection with any death which may be the subject of an inquest held by a coroner and, without prejudice to the generality of this provision, may provide for the manner in which such examinations and analyses are to be conducted and for the preparation of reports upon such examinations and analyses."

To date, no such rules have been made. However, the conduct of post-mortem examinations is governed to some extent by the Coroners Rules 1963. Unless the examination is a limited one,<sup>32</sup> it must comprise an external and internal examination of the body. Rule 30(1) of the 1963 Rules provides:

"Subject to paragraph (2) each post-mortem examination shall comprise a complete external and internal examination of the body, together with the necessary ancillary laboratory investigations, so as to enable the registered medical practitioner making the post-mortem examination to furnish the coroner with a report incorporating the result of his findings under the several headings listed in the First Schedule."<sup>33</sup>

Rule 29 adds the further requirement that the pathologist preserves "material which in his opinion bears upon the cause of death for such period as the coroner thinks fit".<sup>34</sup>

**Analyses**

6-14 Invariably, the pathologist conducting a post-mortem examination will require the forensic analysis of a wide range of materials (tissue samples, a sample of the stomach contents, blood, bullets recovered from the body, clothing, etc). Such an analysis is often the only means of establishing the cause of death or the circumstances in which it occurred.<sup>35</sup> Section 30 of the 1959 Act accordingly provides:

<sup>32</sup> Under the provisions of r 30(2) - see above, para 6-06.

<sup>33</sup> An inadequate post-mortem examination may give rise to an application for judicial review, if that application is made promptly. In *R v HM Coroner for the Northern District of Greater London, ex parte Levy*, unreported, CA, 31 July 1995 [transcript on LEXIS], the wife of the deceased, who considered that the post-mortem examination carried out on her husband was inadequate, sought leave to apply for judicial review some four years after the event; the Court of Appeal, however, could find no basis on the evidence presented to them for granting such leave.

<sup>34</sup> There is no provision in the Rules for the retention of material for other purposes - such as teaching or research.

<sup>35</sup> For example, a laboratory examination may be the only means of establishing the ingestion of alcohol or drugs, the presence of semen (which is important where a sexual offence is alleged) and the presence or otherwise of firearms residue.

"A coroner who considers an analysis of any matter or thing of or concerning any dead body to be necessary may direct that such analysis be made by or under the supervision of a registered medical practitioner on the list mentioned in section twenty-six or by or under the supervision of the Director of the Northern Ireland Forensic Science Laboratory<sup>36</sup> and it shall be the duty of such registered medical practitioner or Director (as the case may be) to submit a report of such analysis to the coroner."<sup>37</sup>

Article 11 of the Criminal Justice (Northern Ireland) Order 1980<sup>38</sup> provides that the Secretary of State shall specify on the list referred to not only those who may conduct post-mortem examinations, but also those who may conduct analyses. No such person is mentioned on the current list and thus all analyses must be carried out by the Forensic Science Agency of Northern Ireland. In the absence of more comprehensive rules made under article 11(3) of the 1980 Order, the general Rules provide only that the person making an analysis is required to make provision "so far as possible, for the preservation of the material submitted to him for analysis for such period as the coroner thinks fit"<sup>39</sup> and that, "unless authorised by the coroner, the person making the analysis shall not supply a copy of his report to any person other than the coroner and the registered medical practitioner making the post-mortem examination".<sup>40</sup>

#### Identification of the body

6-15 As a preliminary before the post-mortem examination commences it is necessary, where possible, for the body to be formally identified to the police officer acting on behalf of the coroner. Where the deceased dies in hospital, the mortuary is usually within the hospital precincts and the body may be taken there directly by hospital staff without the involvement of any funeral undertaker; in such cases, it is acceptable for the identification of the body to be made by one of the hospital staff such as a nurse, doctor or hospital mortuary attendant. Where death occurs elsewhere than in hospital, the body will be brought to the mortuary by an appointed funeral undertaker<sup>41</sup> and

<sup>36</sup> Now the Forensic Science Agency of Northern Ireland.

<sup>37</sup> Cf 1988 Act, s 20(1)(b) authorises a coroner in England and Wales to request "any person whom he considers to possess special qualifications" to conduct a special examination of the body. It would seem that a coroner in the Republic has a similar power in practice in cases not involving possible criminal proceedings - see above, note 11.

<sup>38</sup> See above, para 6-08.

<sup>39</sup> 1963 Rules, r 32.

<sup>40</sup> *Ibid*, r 33.

<sup>41</sup> 1963 Rules, r 24(1). Where a body requires to be transported to a mortuary the police are aware of which undertakers may be called upon without reference to the coroner. For deaths occurring within the City of Belfast, the contract for the moving of bodies is awarded by Belfast City Council on the basis of competitive tender. Neither the coroner for Greater Belfast nor any representative of the Northern Ireland Court Service is involved in the tendering process; this is technically at odds with the requirements of r 24(1), but it has been the practice for many years. Belfast City Council pay the costs incurred and then recoup these from the Northern Ireland Court Service. Outside the Greater Belfast district, the choice of undertaker is left to the local police, with the Northern Ireland Court Service being responsible for the costs so incurred. The undertaker invoices the police, who

accompanied by the police if the body has not been formally necessary for a relative to tra Not surprisingly, this is often relative concerned and tact a required to ensure that the body now have a specially designed appropriate training in the ne

6-16 On occasions, visual available or by reason of d body. Other means must t reference to personal effects of dental records which i odontologist.<sup>42</sup>

6-17 In every case, it is behalf of the coroner to co mortem examination comm

#### Time and place of the ex

6-18 Rule 25 of the 1963

"Where a coroner directs c it shall be made as soon practicable."

Usually the examination tal which the coroner ordered t The State Pathologist's De examinations every day o examinations of deaths invc undertaken. A duty patholog contactable through the dut; Ulster Constabulary Headqu death and/or to carry out a hours".

6-19 Rule 31 provides th any premises which have : Secretary of State for North

forward the bill to the Court :

<sup>42</sup> There is an agreed set fee for e A detailed discussion of the parameters of this book. Re medicine such as Polson, Gee 1985), Chap 2 and B Knight, useful section on identification

<sup>43</sup> This responsibility was transf State by the Northern Ireland ( Sch 1.

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and) Order 1980<sup>38</sup> provides that referred to not only those who also those who may conduct current list and thus all analyses ncy of Northern Ireland. In the der article 11(3) of the 1980 person making an analysis is e, for the preservation of the h period as the coroner thinks the person making the analysis son other than the coroner and st-mortem examination".<sup>40</sup>

n examination commences it is ormally identified to the police e deceased dies in hospital, the ts and the body may be taken involvement of any funeral he identification of the body to is a nurse, doctor or hospital here than in hospital, the body inted funeral undertaker<sup>41</sup> and

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nsported to a mortuary the police are thout reference to the coroner. For ontract for the moving of bodies is etitive tender. Neither the coroner for n Ireland Court Service is involved in the requirements of r 24(1), but it has ancil pay the costs incurred and then . Outside the Greater Belfast district, th the Northern Ireland Court Service undertaker invoices the police, who

accompanied by the police officer acting on the instructions of the coroner. If the body has not been formally identified at the scene of death, it will be necessary for a relative to travel to the mortuary and visually identify the body. Not surprisingly, this is often a distressing and traumatic experience for the relative concerned and tact and sensitivity on the part of the mortuary staff are required to ensure that the body is properly identified. Most modern mortuaries now have a specially designed viewing area and mortuary staff receive appropriate training in the necessary inter-personal and professional skills.

6-16 On occasions, visual identification is not possible due to no one being available or by reason of disfigurement, mutilation or decomposition of the body. Other means must then be employed, for example, identification by reference to personal effects found on the body, fingerprints, DNA and the use of dental records which may require the expert opinion of a forensic odontologist.<sup>42</sup>

6-17 In every case, it is the responsibility of the police officer acting on behalf of the coroner to confirm identity to the pathologist before the post-mortem examination commences.

#### Time and place of the examination

6-18 Rule 25 of the 1963 Rules provides:

"Where a coroner directs or requests that a post-mortem examination be made, it shall be made as soon after the death of the deceased as is reasonably practicable."

Usually the examination takes place on the day death occurred, the day on which the coroner ordered the post-mortem examination, or the day following. The State Pathologist's Department is prepared to carry out post-mortem examinations every day of the year, although on Christmas Day only examinations of deaths involving suspected murder or manslaughter may be undertaken. A duty pathologist from the Department is *always* available and is contactable through the duty inspector at the Force Control Centre at Royal Ulster Constabulary Headquarters, in order to attend the scene of a suspicious death and/or to carry out a post-mortem examination, if necessary, "out of hours".

6-19 Rule 31 provides that "no post-mortem examination shall be made in any premises which have not first been approved for the purpose by the Secretary of State for Northern Ireland".<sup>43</sup> With the exception of the Belfast

forward the bill to the Court Service with confirmation that the removal has taken place. There is an agreed set fee for each removal.

<sup>42</sup> A detailed discussion of these alternative methods of identification is beyond the parameters of this book. Reference should be made to the standard texts on forensic medicine such as Polson, Gee and Knight, *The Essentials of Forensic Medicine* (4th ed, 1985), Chap 2 and B Knight, *Forensic Pathology* (1991), Chap 3. *Jervis* also contains a useful section on identification - see paras 9-18 to 9-34.

<sup>43</sup> This responsibility was transferred from the Ministry of Home Affairs to the Secretary of State by the Northern Ireland (Modification of Enactments - No 1) Order 1973, art 2(1) and Sch 1.

city mortuary, all mortuaries presently used for coroners' post-mortems are the mortuaries of hospitals. No responsibility falls on the coroner to ensure that the mortuary used meets the standard required by current regulations, though a coroner would have to be mindful of being able to comply with the requirements of rule 24(2) of the 1963 Rules.<sup>44</sup> Rather, it is for the Secretary of State to advise the coroner that a particular mortuary may no longer be used and the alternative arrangements which have accordingly been made.<sup>45</sup>

### Persons to be informed of the post-mortem examination arrangements

6-20 Rule 27 of the 1963 Rules provides:

"(1) Where a coroner directs or requests a registered medical practitioner to make a post-mortem examination, the coroner shall inform the persons and bodies set out in paragraph (2) of the date, hour and place at which the examination will be made, unless it is impracticable to inform any such persons or bodies, or to do so would cause the examination to be unduly delayed.

(2) The persons and bodies to be informed by the coroner are as follows:

- (a) any relative of the deceased who has notified the coroner of his desire to be represented at the post-mortem examination;<sup>46</sup>
- (b) the deceased's regular medical attendant;
- (c) if the deceased died in a hospital, the hospital;
- (d) if the death of the deceased may have been caused by any accident or disease of which notice is required, or in respect of which death notice of any inquest is required under any enactment to be given to a Government Inspector, the Government Inspector concerned;<sup>47</sup>
- (e) any government department which has notified the coroner of its desire to be represented at the examination;
- (f) if the superintendent<sup>48</sup> has notified the coroner of his desire to be present or to be represented at the examination, the superintendent.

(3) Any such person or body as aforesaid shall be entitled to be represented at a post-mortem examination by a registered medical practitioner, or if any such

<sup>44</sup> See above Chapter 5, paras 5-05 to 5-06.

<sup>45</sup> In practice, the Secretary of State will normally act on the basis of advice received from the State Pathologist, particularly in relation to Belfast city mortuary (for which responsibility is shared between Belfast City Council and the Northern Ireland Office). Under the Health and Safety at Work (NI) Order 1978 the Health and Safety Division of the Department of Economic Development has inspection and enforcement powers concerning all mortuaries.

<sup>46</sup> Cf the equivalent rule in England and Wales (1984 Rules, r 7(2)(a)) refers to "any relative ... who has notified the coroner of his desire to attend, or be represented at, the post-mortem examination ..." (emphasis added). But it would seem that a relative who wishes "to attend" may not do so in person, but only by representative.

<sup>47</sup> For the purposes of investigation pursuant to the Health and Safety at Work (NI) Order 1978.

<sup>48</sup> "Superintendent or chief superintendent" was substituted for "district inspector" by the Royal Ulster Constabulary (Ranks) Regulations 1970, reg 6(b); a sub-divisional commander normally holds the rank of superintendent.

person is a registered medical practitioner, the coroner shall ensure that a post-mortem examination in person:

Provided that the superintendent of the Royal Ulster Constabulary.

(4) Nothing in the foregoing shall prevent the coroner from exercising the discretion of the coroner to which a post-mortem examination examination."

6-21 It is noteworthy that those entitled to be informed person unless he is a registered medical practitioner only be represented by a registered medical practitioner and may not interfere with the examination. A representative may be removed

6-22 It is the responsibility of the coroner to notify the persons entitled to be informed of a post-mortem examination should not have been allowed for all necessary arrangements in the case of doubt or difficulty. Strictly speaking the onus is on the family; rather the onus is on the coroner. However, the coroner is conversant with the provision unlikely "in the trauma of death as a matter of courtesy, the coroner is advised of the arrangements if they occurred in controversial circumstances.

6-23 As will be seen from the above, the coroner is to notify others who are not mentioned in the Rules. This is in the discretion of the coroner in this regard.<sup>49</sup> This is with the death and charged with the examination is carried out, it is the coroner's duty to receive notification also. This

<sup>49</sup> 1963 Rules, r 28.

<sup>50</sup> *Ibid.*

<sup>51</sup> As Kennedy LJ acknowledged in *London, ex parte Lewy*, unreported, the deceased's wife, who had no access to the deceased's body, sought leave to be examined and was granted it, though she had been deprived of the opportunity some four years after the event, &

<sup>52</sup> Cf 1988 Act, s 20(3)(b): "When a coroner believes the death of the deceased was due to the treatment of a medical practitioner or other person ... shall have the right to require a post-mortem examination."

coroners' post-mortems are the on the coroner to ensure that the y current regulations, though a ng able to comply with the Rather, it is for the Secretary of ortuary may no longer be used cordingly been made.<sup>45</sup>

**post-mortem examination**

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the basis of advice received from the ty mortuary (for which responsibility m Ireland Office). Under the Health Safety Division of the Department of nt powers concerning all mortuaries. ales, r 7(2)(a)) refers to "any relative end, or be represented at, the post- ould seem that a relative who wishes entative.

Health and Safety at Work (NI) Order

stituted for "district inspector" by the 1970, reg 6(b); a sub-divisional

person is a registered medical practitioner he shall be entitled to attend the examination in person:

Provided that the superintendent may be represented by any member of the Royal Ulster Constabulary.

(4) Nothing in the foregoing provisions of this Rule shall be deemed to limit the discretion of the coroner to inform any person of the date, hour and place at which a post-mortem examination will be made and to permit him to attend the examination."

6-21 It is noteworthy that with the exception of the superintendent none of those entitled to be informed under paragraph (2) is permitted to attend in person unless he is a registered medical practitioner. Any other person may only be represented by a registered medical practitioner, who attends as an observer and may not interfere with the examination.<sup>49</sup> Should he do so, the representative may be removed and not re-admitted.<sup>50</sup>

6-22 It is the responsibility of the police officer acting on behalf of the coroner to notify the persons and bodies referred to in paragraph (2), and the post-mortem examination should not commence until a reasonable time has been allowed for all necessary inquiries to be made with reference to them. In the case of doubt or difficulty the coroner should be asked for further instructions. Strictly speaking, there is no requirement to notify the deceased's family; rather the onus is on any relative who desires to be represented to notify the coroner. However, the reality is that very few families are likely to be conversant with the provisions of rule 27(2) and even if they are, they are unlikely "in the trauma of death" to contact the coroner in time.<sup>51</sup> Accordingly, as a matter of courtesy, the deceased's immediate family will normally be advised of the arrangements for the post-mortem, particularly where the death occurred in controversial circumstances.

6-23 As will be seen from the provisions of paragraph (4), the coroner may notify others who are not mentioned in paragraph (2) and he has a wide discretion in this regard.<sup>52</sup> Thus, should someone be apprehended in connection with the death and charged with a criminal offence before the post-mortem examination is carried out, it would seem prudent that he (or his solicitor) receive notification also. The coroner may exercise his discretion to allow

<sup>49</sup> 1963 Rules, r 28.

<sup>50</sup> *Ibid.*

<sup>51</sup> As Kennedy LJ acknowledged in *R v HM Coroner for the Northern District of Greater London, ex parte Lewy*, unreported, CA, 31 July 1995 [transcript on LEXIS]. In that case, the deceased's wife, who had not known that a post-mortem was to be carried out on her husband's body, sought leave to apply for judicial review on the ground that she had thereby been deprived of the opportunity to be represented at the examination. But she only did so some four years after the event, and the Court could find no basis for granting leave.

<sup>52</sup> Cf 1988 Act, s 20(3)(b): "Where a person states upon oath before the coroner that in his belief the death of the deceased was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, that medical practitioner or other person ... shall have the right, if he so desires, to be represented at any ... post-mortem examination".

persons informed pursuant to paragraph (4) to attend the post-mortem examination in person as there is no restriction similar to that in paragraph (2) as to representation only by "a registered medical practitioner". It is suggested that a coroner will normally be cautious in exercising his discretion under paragraph (4) in a manner at variance with the restriction imposed in paragraph (2). In such a situation it would appear sensible to seek the advice of the pathologist and the police. In practice, however, it is unusual for any of those mentioned in paragraphs (2) or (4) of rule 27(2), other than a representative of the police, to be represented at the examination.

6-24 Sometimes the coroner will also attend the post-mortem examination. There is no restriction on him doing so and in any event the post-mortem examination is carried out in his name. The coroner's attendance may be important as providing a unique opportunity at an early stage to assess the significance of the pathological evidence with the pathologist and the police.

6-25 The police officer acting on behalf of the coroner usually remains until the conclusion of the examination. The pathologist will at that time inform him in writing of the findings and request that he forwards these to the coroner. These may be "preliminary" findings pending the results of forensic analyses - for example, toxicology - and therefore should not necessarily be regarded as the definitive cause of death.

#### RELEASE OF THE BODY

6-26 As has been discussed in Chapter 5,<sup>53</sup> the body will only be released from the mortuary on the authority of the coroner. He will issue either a burial or cremation order once he is satisfied that the pathologist has no further need of the body. If the deceased died testate, the personal representatives are entitled to take possession of it; otherwise the person entitled to take out a grant of administration to the deceased's estate is entitled thereto. In practice, funeral arrangements are normally made by the executors or by members of the deceased's family, who are often one and the same.<sup>54</sup> Coroners in Northern Ireland are always under very real pressure to release a body so that it may lie for at least one night at the family home, and the funeral held, all within the traditional three or four-day period. This is normally possible; but in some instances, where for example the post-mortem examination is particularly complex, a longer than normal delay is inevitable. Giving the family an explanation and keeping them informed of what is happening usually results in acquiescence and allows the coroner to avoid unjustified criticism. A much more acute dilemma can arise should the pathologist wish to retain part of the body, for example the skull or a limb, for evidential purposes in case there should be a subsequent criminal trial. Once again, giving the family a full

<sup>53</sup> Paras 5-31 to 5-35. See also *Jervis*, paras 7-06 and 7-07.

<sup>54</sup> See *Jervis*, paras 7-02 to 7-05 as to the procedure in the event of a dispute over possession of, or responsibility for, the body. For a recent example of such a dispute, see *Dobson and Another v North Tyneside Health Authority and Another* [1996] 4 All ER 474. See also *Holtham v Arnold* (1986) 2 BMLR 123 and *Grandison v Nembhard* (1989) 4 BMLR 140 (neither of which was cited in *Dobson*).

explanation is often the key to an entire body to be released,<sup>55</sup> and the truth was concealed if criticised, even where he believed avoid causing additional distress.

6-27 The body will normally be released on behalf of the family. Occasionally the coroner will not authorise release if the body had not been arrived at. Ultimate courts.<sup>57</sup>

#### "HIGH RISK" POST-MORTEM

6-28 All post-mortem examinations have legal implications, not only for the pathologist and the funeral undertaker and the family, but also for the coroner. It is significant if adequate protection is not provided for modern autopsy practices: examinations must be regarded as high risk if they are causing death or the circumstances of the deaths falling into this category. Where a post-mortem examination is performed by a pathologist is likely to regard the examination as inadequate. In such circumstances, if the autopsy room in the mortuary facilities are available regular examinations should occur.<sup>59</sup>

<sup>55</sup> Apart from other considerations, this is important.

<sup>56</sup> For an example of how good the coroner's authority is, see *London Coroner, ex parte Dall* [1996] 2 BMLR 25. The relatives of the deceased were understandably concerned when advised to seek a judicial review.

<sup>57</sup> See further Carson, "Autopsies: A Review" (Issue No 2).

<sup>59</sup> The provision of this facility pursuant to any legal obligation.

to attend the post-mortem similar to that in paragraph (2) "practitioner". It is suggested exercising his discretion under the strictness imposed in paragraph (2) to seek the advice of the coroner if it is unusual for any of those other than a representative of

the post-mortem examination. In any event the post-mortem coroner's attendance may be an early stage to assess the pathologist and the police.

The coroner usually remains until the pathologist has informed him and forwards these to the coroner. The results of forensic analyses - not necessarily be regarded as

**BODY**

the body will only be released if the coroner is satisfied. He will issue either a burial order. The pathologist has no further need for the body if personal representatives are present and a person entitled to take out a grant is present. In practice, funeral directors or by members of the family. <sup>54</sup> Coroners in Northern Ireland release a body so that it may lie in state until the funeral held, all within the normal time possible; but in some cases a post-mortem examination is particularly desirable. Giving the family an opportunity to view the body is usually results in unjustified criticism. A pathologist wish to retain part of the body for identification purposes in case there is a need to do so again, giving the family a full

<sup>57</sup> In the event of a dispute over possession of such a dispute, see *Dobson and Another* [1996] 4 All ER 474. See also *on v Nembhard* (1989) 4 BMLR 140

explanation is often the key to the solution. Not unreasonably, families expect an entire body to be released,<sup>55</sup> should they learn later that this did not happen and the truth was concealed from them, the coroner is likely to be strongly criticised, even where he believed he was acting with the best of motives to avoid causing additional distress to the family.<sup>56</sup>

6-27 The body will normally be released to funeral undertakers acting on behalf of the family. Occasionally, disputes arise as to who is entitled to the body and to make the funeral arrangements. In such a rare situation the coroner will not authorise release of the body until a resolution of the dispute had been arrived at. Ultimately, the matter may have to be determined by the courts.<sup>57</sup>

**"HIGH RISK" POST-MORTEM EXAMINATIONS<sup>58</sup>**

6-28 All post-mortem examinations have some health and safety implications, not only for the pathologist and the mortuary staff but also for the funeral undertaker and the family of the deceased. Usually any such risk is not significant if adequate protective clothing is worn, and proven and accepted modern autopsy practices are adhered to. Inevitably, however, some examinations must be regarded as "high risk" because of the disease process causing death or the circumstances in which death occurred. Examples of deaths falling into this category include deaths arising from active pulmonary tuberculosis, hepatitis (B and C), HIV/AIDS and Creutzfeldt-Jakob disease. Where a post-mortem examination is necessary into such a death, the pathologist is likely to regard the facilities of a conventional mortuary as being inadequate. In such circumstances use will instead be made of the "high risk" autopsy room in the mortuary of the Royal Group of Hospitals Trust. These facilities are available regardless of where in Northern Ireland the death occurred.<sup>59</sup>

<sup>55</sup> Apart from other considerations, there may be particular religious or cultural reasons why this is important.

<sup>56</sup> For an example of how good intentions can backfire on a coroner, see *R v Inner West London Coroner, ex parte Dallaglio and Another* [1994] 4 All ER 139, where the hands of 25 persons who died in a multiple drowning tragedy had been surgically removed with the authority of the coroner for the purpose of fingerprinting to assist the identification process. The relatives of the deceased were not aware that this step had been taken, and were understandably concerned when they subsequently heard about it.

<sup>57</sup> "[I]t is not for the coroner to decide between the parties involved. The relatives should be advised to seek a judicial review in order to settle the issue": *Home Office Newsletter to Coroners*, 29 August 1990.

<sup>58</sup> See further Carson, "Autopsies in Cases of Infectious Disease" (1995) *Forensic Medicine Newsletter* (Issue No 2).

<sup>59</sup> The provision of this facility by the RGH Trust is allowed as a concession rather than pursuant to any legal obligation, statutory or otherwise.



EXAMINATIONS

Post-mortem examinations are not routinely ordered a second time other than "defence" post-mortem by a person accused of an offence in Northern Ireland. In Scotland special rules as to post-mortem examination is

an examination is unusual, but a coroner ordering one and the so prevalent in England and Northern Ireland for the sake of the practice of coroners immediately following the post-mortem has not been criticised and it has been held to be representative, or by the judiciary, as being to the disadvantage. There may be a distinction between examinations into deaths which are preferred to be performed in hospital by forensic pathologists;<sup>62</sup> should an examination be ordered by the defence, it is usually an original post-mortem report, and not one taken at the scene of the death. At an inquest, if the death is at an intangible level, there appears to be a distinction between a post-mortem examination ordered at a funeral beyond the traditional

coroner does not expressly address post-mortem examinations, it arguably recognises a coroner's power to exhume a body.<sup>63</sup> The distinction between a post-mortem examination and an inquest may then come to light, and may call into question the original examination if it is appraised without a further

the post-mortem examination fails to determine the cause of

items" (1998) 148 *New LJ* 178.  
 (1995), pp 37-40.  
 employed by the State Pathologist's  
 to statutory requirement in England  
 for such deaths.  
 5-17.  
 General orders that an inquest be

death to the satisfaction of the pathologist or of the coroner, and a second examination may therefore be required. In particular, where the circumstances of the death suggest some criminal act, and the original examination is inconclusive, it is submitted that it would be entirely proper for the coroner to have a second post-mortem examination performed. Section 11(1) of the 1959 Act, for example, charges the coroner with making "such investigation as may be required to enable him to determine whether or not an inquest is necessary". Sections 27(1) and 28 of the 1959 Act also stress the need for the coroner to have the death satisfactorily explained to him. On rare occasions a second post-mortem examination may be required to achieve one or both of these objects.<sup>65</sup>

6-33 It has been argued that if the proceedings at an inquest are to be directed solely to ascertaining who the deceased was and how, when and where he came by his death, the coroner does not possess the necessary statutory authority to permit a second post-mortem examination if he is satisfied with the results of the first post-mortem examination.<sup>66</sup> If this is correct, the coroner has no power to order a further post-mortem examination at the request of a person charged with an offence connected with the death, and permitting such an intrusive examination will therefore be *ultra vires*. *Jervis* expresses a contrary view, namely that the coroner has in law the power to order a second examination even in such a case:

"The powers of the coroner to cause a post-mortem examination to be carried out are not exclusive of the rights of interested parties, and a coroner may, and in some cases should, permit a second post-mortem examination to be carried out at the instigation of such other interested parties. These will include the deceased's family who are unhappy with the results of the first examination, and a defendant charged with an offence in relation to the death. It has even been known for a coroner to arrange for a second, independent examination to be made and the report kept on file, in a case where a person was being sought in connection with a death, but had not been found by the time the body was to be disposed of .... The interests of family, police, defendants and others will conflict, and the coroner's role includes balancing those competing interests."<sup>67</sup>

6-34 Where a coroner has jurisdiction, he has physical control over the body until he has discharged his coronial functions or for whatever reason loses jurisdiction. Such loss of control will occur, for instance, on the termination of the inquest or on the issuing of a burial order.<sup>68</sup> Even where the coroner undeniably still has control of the body and there are no jurisdictional issues,

<sup>65</sup> For instance, a coroner in Northern Ireland may order a second post-mortem examination to be carried out by a member of staff of the State Pathologist's Department where the findings of an examination carried out by a hospital pathologist cause the circumstances of the death to be viewed with suspicion or where rumours or allegations concerning the death are made following the completion of the initial examination.

<sup>66</sup> See Sivaloganathan, "Medical Evidence for the Defence in Homicide Trials" (1995) 35 *Medicine, Science and the Law* 193.

<sup>67</sup> Para 6-21, citing *R v HM Coroner for Greater London (Southern District), ex parte Ridley* [1986] 1 All ER 37.

<sup>68</sup> *R v Bristol Coroner, ex parte Kerr* [1974] 2 All ER 719.



uring a further post-mortem he coroner to permit such an *Coroner for Greater London* ordered the coroner to consent

rectly accepted - that at this : body of the deceased in the ssession of the body: see for [1974] 2 All ER 719. That is is also common ground, that tem examination is required. that consent or permission is sted with the right to conduct lations undoubtedly give the r see nothing to indicate that e me that it is not unusual for er post-mortem examinations

t-mortem examinations has not s not been judicially considered tted that Saville J's decision in d be very influential. It is also construed in the context of the Wales, which has been carried It follows, therefore, that if the d changes, and a single post-st's Department ceases to be ject to any judicial censure of urts, "interested parties" (to use r own post-mortem examination re charged with complicity in a ation performed, irrespective of n performed on the instructions ners would then feel constrained lsh coroners, when investigating nal charges being preferred, of n carried out, all by different of such complex issues, or even lead to a delay, which could be roner. Many, particularly the to such a development with undesirable.<sup>71</sup>

ities, see *Jervis*, paras 14-14 to 14-16.

6-36 When a coroner releases a body to the person(s) entitled (normally the executors or the family) following a post-mortem examination, the family is entitled to instruct a pathologist of their choosing to carry out a further examination at their expense. As that examination will not have been performed on the instructions of the coroner, the family are under no obligation to advise the coroner or the police of the findings or to provide the coroner or the police with a copy of the post-mortem report.<sup>72</sup> However, if the family intend "their" pathologist to give evidence at any subsequent inquest, it is probable that the coroner will wish to consider his report in advance of the inquest before making a decision as to whether the pathologist is called as a witness.<sup>73</sup>

THE POST-MORTEM REPORT

6-37 The post-mortem examination is performed on the instructions of the coroner<sup>74</sup> and the subsequent report is his property. Section 29(1) states:

"Every registered medical practitioner who performs a post-mortem examination shall immediately report the result thereof in writing to the coroner and such report shall not be furnished to any other person without the permission of the coroner."

The authority of the coroner in this regard is also reinforced by the provisions of rule 33:

"Unless authorised by the coroner, the person making an analysis shall not supply a copy of his report to any person other than the coroner and the registered medical practitioner making the post-mortem examination."

6-38 The form of the post-mortem report is prescribed in the First Schedule to the 1963 Rules. Apart from stating the medical cause of death and a description of the external and internal examination, it contains a commentary by the pathologist in which these findings are interpreted. The first State Pathologist for Northern Ireland, Professor T K Marshall, observed:

"The autopsy report is completed only when the results of all the ancillary investigations are at hand. It ends with a Commentary which summarises in layman's terms the findings in the case, interprets them in the light of the history and answers those questions which the pathologist knows from experience might be put to him by the coroner or by a solicitor interested in subsequent litigation. The writing of a full Commentary is frequently a

<sup>72</sup> Professional medical courtesy, however, requires that the pathologist acting on behalf of the family will inform the coroner's pathologist of the time of his examination and invite him to be present when it is carried out.

<sup>73</sup> Under the 1959 Act, s 17 it is the coroner who decides which witnesses are called to give evidence.

<sup>74</sup> The report will contain a statement to the following effect: "On the instructions of [name and district of coroner] I, [name and particulars of the pathologist and confirmation that he/she is a pathologist approved by the Secretary of State] made a post-mortem examination of the body of [name] identified to me at [place] on [date] by [name]".

salutary demonstration of the difficulties of interpreting post-mortem findings and of how personal many interpretations are."<sup>75</sup>

Referring critically to England and Wales, where the practice is often to open the inquest very shortly after the death in order to take evidence of the identity of the deceased and the cause of death, Professor Marshall went on to say:

"The working out of one's data in this way [sc in the form of a report and commentary] provides a final measure of satisfaction which is not felt when coroners ask only for a likely cause of death obtained from an autopsy carried out only hours beforehand, unsupported by ancillary investigations and unrelated to the history of the deceased."

6-39 Before the post-mortem examination commences it is important for the pathologist to know as much about the circumstances of the death as possible. Normally the police officer acting on behalf of the coroner will have made preliminary inquiries and will advise the pathologist of the results of these inquiries when he attends at the mortuary. However, not all the evidence may be available at that time and in those circumstances the police officer will have to continue to liaise with the pathologist and appraise him of any further evidence that becomes available. Where the deceased died in hospital, the pathologist will in addition have access to the hospital and nursing notes which usually provide much valuable information. Should these notes not be forthcoming voluntarily, the only means available to a coroner to compel their production is by means of a Crown Office *subpoena duces tecum*.<sup>76</sup> It is normal practice, where the deceased died in hospital, for one of the clinical staff to prepare a clinical summary setting out why the deceased was admitted to hospital and the treatment which he or she has received. It is also open to any of the clinical staff to attend the post-mortem examination and give these details directly to the pathologist and, indeed, this is increasingly being regarded as the best way in which to inform the pathologist. Attending the examination also has advantages for the clinical staff, who will see at first hand the progress of the examination and its implications. Pathologists invariably say that the importance of having as much information as possible as to the circumstances of the death and the nature of any speculation as to how it happened cannot be over-emphasised. That being so, it would not be unreasonable, in some instances at least, for the pathologist to delay the examination until the

<sup>75</sup> "A National Forensic Pathology Service - The Northern Ireland Solution" (April, 1968) *Medicine, Science and the Law* 73.

<sup>76</sup> In *R v Southwark Coroner, ex parte Hicks* [1987] 2 All ER 140, 143, it was held that the coroner personally has no power to order the production of documents, and that therefore a Crown Office *subpoena duces tecum* is the only means available of securing their production. The Northern Ireland Court of Appeal have accepted that this procedure is appropriate for enforcing production of a document: *In re McKerr's Application (No 1)* [1993] NI 249, 255, *per* Hutton LCJ. See further below, Chapter 9, paras 9-09 to 9-13. It should be noted that the provisions relating to discovery contained in the Administration of Justice Act 1970, ss 31-33, and the provisions relating to access to medical records contained in the Access to Health Records (NI) Order 1993, do not extend to coroners.

minimum information felt necessary with the coroner is advisable, as is family that the funeral will have to

#### Access to the post-mortem report

6-40 The provisions of section 1 from furnishing a copy of the report, with the permission of the coroner. Coroner the full post-mortem findings may the report being made available (event, a police officer will have been advised orally of the deceased's medical practitioner will of death and in some instances complete report to enable a full ex of the 1963 Rules recognises the 1 of the medical practitioner - and receive notice of an inquest:

"A coroner may, without charge, any post-mortem examination to where the death is one in respect under any enactment to be given Department concerned."

6-41 Normally, the coroner will request to anyone he considers that phrase is not defined in the Act of kin, executors of wills, insurance union representatives, those respect some special risk or who appear to legal representatives of any such report is made available subject to use. The report is the coroner's will be considered on its merits. report will not be used in a way inquest or to the wider interests of

<sup>77</sup> Of course, there will be some death due, for example, to the state of decomposition. Cf the Brodrick Committee recommendation of a post-mortem report to the deceased para 18.22.

<sup>78</sup> See 1963 Rules, r 7 and below, Chapter on application and on payment of the report to any properly interested person coroner "shall" furnish a copy of the therefor", apparently irrespective of 1962 Act, s 29(3).

<sup>79</sup> See further below Chapter 7, paras 7.

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minimum information felt necessary is available.<sup>77</sup> In such cases, close liaison with the coroner is advisable, as it may be necessary for him to explain to the family that the funeral will have to be delayed and to justify that delay.

#### Access to the post-mortem report

6-40 The provisions of section 29(1) of the 1959 Act prohibit the pathologist from furnishing a copy of the post-mortem report to *anyone* without the permission of the coroner. Coroners, recognising how crucial speedy access to the full post-mortem findings may be to the police, do not object to a copy of the report being made available directly to them by the pathologist. In any event, a police officer will have been in attendance at the examination and will have been advised orally of the findings. As a matter of courtesy, the deceased's medical practitioner will be advised in writing of the medical cause of death and in some instances will be sent by the coroner a copy of the complete report to enable a full explanation to be given to the family.<sup>78</sup> Rule 37 of the 1963 Rules recognises the legitimate interest in the post-mortem findings of the medical practitioner - and of any government department entitled to receive notice of an inquest:

"A coroner may, without charge, supply an abstract or summary of the report of any post-mortem examination to the deceased's regular medical attendant, and where the death is one in respect of which notice of an inquest is required under any enactment to be given to a Government Inspector to the Government Department concerned."

6-41 Normally, the coroner will also make a copy of the report available on request to anyone he considers to be a "properly interested person".<sup>79</sup> This phrase is not defined in the Act or the Rules, but it is assumed to include next of kin, executors of wills, insurance companies with a relevant interest, trade union representatives, those responsible in some way for the death, others at some special risk or who appear to the coroner to have a proper interest and the legal representatives of any such persons.<sup>80</sup> In some instances, a copy of the report is made available subject to a suitable undertaking being given as to its use. The report is the coroner's and its release is discretionary; each request will be considered on its merits. The coroner will be anxious to ensure that the report will not be used in a way which might be prejudicial to any subsequent inquest or to the wider interests of justice. On the other hand, coroners realise

<sup>77</sup> Of course, there will be some deaths where no useful information will ever be available due, for example, to the state of decomposition of the body or the deceased's lifestyle.

<sup>78</sup> Cf the Brodrick Committee recommended that a coroner should be obliged to supply a copy of a post-mortem report to the deceased person's family doctor on request: *Brodrick Report*, para 18.22.

<sup>79</sup> See 1963 Rules, r 7 and below, Chapter 10, para 10-07. In England and Wales, a coroner, on application and on payment of the prescribed fee, *must* supply a copy of the post-mortem report to any properly interested person: 1984 Rules, r 57(1). In the Republic of Ireland a coroner "shall" furnish a copy of any document preserved by him "to every applicant therefor", apparently irrespective of whether that applicant is a properly interested person: 1962 Act, s 29(3).

<sup>80</sup> See further below Chapter 7, paras 7-33 to 7-37.

that families in particular are often most concerned to know what caused the death and that making such information available at an early stage can facilitate the grieving process. Clinicians concerned with the medical treatment of the deceased likewise may be anxious to know the pathological findings and the pathologist's conclusions. In deciding whether to release the report the coroner has to engage in a balancing exercise and at times it may be difficult to make the correct decision. But, in general, the early release of the post-mortem report to "properly interested persons" rarely creates future difficulties.

**6-42** Section 29(2) of the 1959 Act provides for the production of a certified copy of the post-mortem report in connection with other court proceedings:

"A court may order a coroner to produce for the purposes of proceedings in that court a copy certified by him as correct of any report furnished to him under sub-section (1), not earlier than ten years before the date of the order and it shall be the duty of the coroner to comply with any such order."

#### ADVERSE DRUG REACTIONS

**6-43** Where it is suspected that the death might be due to an adverse reaction to a drug, an extra-statutory scheme has been devised, for Northern Ireland as well as for England and Wales, whereby such deaths are reported to the Committee on Safety of Medicines in England. Either the coroner or the pathologist may make the report and normally the pathologist will mention such a referral in the post-mortem report.

## THE INQUEST

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**7-01** In Northern Ireland, inquest "for inquiring into the mandatory. Section 13(1) of 1

"Subject to sub-section (2

(a) a dead body

(b) an unexpected circumstances c seven, occurs;

may hold an inquest..."<sup>4</sup>

This wording allows a coroner deaths where no useful purpose Chapter 5,<sup>6</sup> a coroner who i

<sup>1</sup> 1988 Act, s 8(1) states that the cause to suspect that the death occurred in prison; if on consideration reasonable cause to suspect, "he of Greater London, ex parte W LEXIS], citing *Hussein v Chung* [1993] 2 All ER 38 in the 1988 Act or elsewhere for which he considers it to be in the can only be held in a case which hold an inquest ...". Cf in the inquest in much the same circumstances he so thinks proper" hold an inquest procurable and he is on inquiry 18(1).

<sup>2</sup> So defined in 1963 Rules, r 42.

<sup>3</sup> Allocation of jurisdiction in case 24.

<sup>4</sup> Emphasis added. A coroner must Attorney-General under s 14 of the Chapter 15, paras 15-06 et seq.

<sup>5</sup> The Brodrick Committee considers requires the coroner to hold an inquest no reason in the public interest only be mandatory in cases of unidentified persons; otherwise which his enquiries may take ...<sup>1</sup>

<sup>6</sup> Paras 5-19 to 5-26.