

**A consultation on coronial investigations into deaths abroad**

27 October 2022

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**SECTION 1: THE CONSULTATION PROCESS**

* 1. A coroner in Northern Ireland has jurisdiction to hold an inquest where a body is ‘found’ in Northern Ireland, or where a death is unexpected, unexplained or occurred in suspicious circumstances. As ‘found’ is interpreted to involve an element of surprise a coroner does not have jurisdiction to hold an Inquest into a death which occurred abroad and the body returned to Northern Ireland.
  2. The purpose of this consultation is to seek your views on a number of different options which would provide coroners in Northern Ireland with a statutory power to undertake an investigation and, where necessary, an inquest into such deaths.
  3. Although each option is different, the result would bring our law into line with the rest of the UK and Ireland by providing for an investigatory process which could provide answers for bereaved families as to how, when and where their loved one came to their death abroad.

**Responding to this consultation**

1. The Department is seeking your views on the issues raised by this consultation. We encourage respondents to answer the consultation questions via the on-line Citizen Space platform (https://consultations.nidirect.gov.uk/doj/coronial-investigations-into-deaths-abroad) on the NIDirect website.

If you are unable to respond using our online consultation facility, you can email your response using the response template above to the following address: [DOJCivilJusticePolicy.Division@justice-ni.gov.uk](mailto:DOJCivilJusticePolicy.Division@justice-ni.gov.uk)

or you can write to us at:

Civil and Family Courts Branch,

Department of Justice,

Massey House,

Stormont Estate,

Belfast

BT4 3SX.

1. The Department will publish a summary of responses to the consultation.

**Duration and closing date**

1. The consultation opens on 27 October 2022 and will last for eight weeks, closing on 22 December 2022. The Department is unable to consider any responses received after this date.

**Alternative formats**

1. Copies in alternative formats can be made available on request. If it would assist you to access the document in an alternative format or language other than English please let us know and we will do our best to assist you.

**Privacy, confidentiality and access to consultation responses**

1. For this consultation, we may publish all responses except those in which the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity may be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we may publish them in full. For more information about what we do with personal data please see our consultation privacy notice at **Annex B**.
2. Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA). Any such disclosures will be in line with the requirements of UK data protection legislation.
3. If you want the information that you provide to be treated as confidential, please explain why you regard it as confidential so that your explanation may be considered if the Department receives a request for the information under the FOIA.

**Complaints**

1. If you have any concerns about the way that this consultation process has been handled, please contact us at:

By email: [standardsunit@justice-ni.x.gsi.gov.uk](mailto:standardsunit@justice-ni.x.gsi.gov.uk)

In writing: Standards Unit,

Department of Justice,

Knockview Buildings,

Stormont Estate,

Belfast

BT4 3SL.

**Impact assessments**

1. The Department of Justice has conducted a rural needs impact assessment, human rights impact assessment, and an equality screening exercise of the proposals has identified that there is no potential adverse impact on any of the identified groups. Further screening exercises will be undertaken if necessary in relation to any further development of proposals following consideration of responses to the consultation.

**SECTION 2: BACKGROUND**

1. One of the key priorities of the Department of Justice is to deliver an effective justice system. This means working to make our justice system faster, and to serve the needs of those who engage with it.
2. Coroners’ courts are a key part of Northern Ireland’s judicial system. The role of a coroner is to conduct formal investigations, known as inquests, into certain deaths and to determine who the deceased was, and how, when and where they came to their death.
3. Section 13 of the Coroners Act (Northern Ireland) 1959 (the 1959 Act’), as it currently stands is as follows:

***(13) Coroner may hold inquest.***

*(1) Subject to sub-section (2) a coroner within whose district—*

*(a) a dead body is found; or*

*(b) an unexpected or unexplained death, or a death in suspicious circumstances or in any of the circumstances mentioned in section seven, occurs; may hold an inquest either with a jury or, except in the cases in which a jury is required by sub-section (1) of section eighteen, without a jury.*

1. In *Forde v the Attorney General and the Coroner for Northern Ireland* [2009] NICA 66, the Court of Appeal clarified that ‘found’ implies an element of discovery or chance encounter. It follows that a body has not been ‘found’ in Northern Ireland if it has been returned here following a death abroad (repatriated), and a coroner therefore has no jurisdiction to hold an inquest into such a death.
2. In the rest of the UK and Ireland, coroners, or the Lord Advocate in Scotland, have jurisdiction to investigate a death abroad where a body has been repatriated, although the powers in Scotland are subject to criteria which are not used elsewhere. This is outlined in more detail in Section 4.
3. The law in Northern Ireland is therefore different to that in the rest of the UK and Ireland. For citizens ordinarily resident in Northern Ireland who suffer the death abroad of a loved one, there is currently no mechanism for a coronial investigation in Northern Ireland in circumstances that would merit one had the death occurred here.
4. In many, if not most cases, an inquest into a death abroad is not required as it will be obvious the deceased died entirely from natural causes. If it is believed that it was an accidental, suspicious or violent death, or the causes are unknown, it is likely to be investigated in the jurisdiction in which it occurred. We recognise however that there are practical challenges for the next of kin being able to fully engage with a foreign investigative process at an emotionally vulnerable time and in the context of perhaps a very different cultural and legal environment with language and geographical barriers.
5. There is legislation, which has not yet been commenced, that would provide coroners here with the statutory power to undertake an investigation into a death abroad. Section 49(1) of the Coroners and Justice Act 2009 (CJA 2009) would amend section 13 of the 1959 Act to allow an inquest to be held on a body ‘lying’ rather than ‘found’ in Northern Ireland, which would therefore include a body returned from another jurisdiction. Section 13 as it would be amended by section 49 (1) is as follows:

***(13) Coroner may hold inquest.***

*(1) Subject to sub-section (2) a coroner—*

*(a) who is informed that the body of a deceased person is lying within his district; or*

*(b) in whose district an unexpected or unexplained death, or a death in suspicious circumstances or in any of the circumstances mentioned in section seven, occurs; may hold an inquest either with a jury or, except in the cases in which a jury is required by sub-section (1) of section eighteen, without a jury.*

1. Section 49(1) has not been commenced however because of concerns in relation to a range of practical difficulties that may limit the potential effectiveness of an inquest into a death abroad and the ability of a coroner to determine how the deceased died. In as much as we are conscious of the difficulties a family may face in engaging with an investigation abroad into the death of a loved one, we are also conscious that there are real challenges for a local coroner in investigating a death outside Northern Ireland and which may also be frustrating and stressful for next of kin. These issues are discussed in more detail in the next section.
2. This consultation considers the merits of amending section 13 of the Coroners Act either as intended by section 49(1), or in some other way to allow coroners to undertake effective investigations into the deaths abroad of individuals ordinarily resident in Northern Ireland. We want to ensure that any process that may be put in place is effective and capable of providing answers as to how a death occurred while also taking account of the practical challenges of investigating deaths abroad. Three different options are outlined and we want to hear your view as to the merit of the different approaches.

**Deaths abroad statistics**

1. We do not know how many people ordinarily resident in Northern Ireland die abroad each year. There are no statistics collected by the General Register Office for Northern Ireland. Deaths must instead be registered with the local authorities in the country where the person died.
2. If a family intends to hold a funeral or memorial service following repatriation, a certified English translation of the death certificate from the country in which the person died must be taken to the register office in the area where the service is to take place. The registrar will present a document referred to as a ‘certificate of no liability to register’, which is usually provided to a funeral director to allow a funeral to be undertaken. There are however, no recorded statistics on the number of such certificates provided in Northern Ireland.
3. This is not just an issue in Northern Ireland. There is no formal process for registering deaths abroad in either the rest of the UK or the Republic of Ireland. Published statistics in England and Wales on deaths abroad are only in relation to those reported to coroners, not all deaths abroad.
4. Statistics provided by the Kevin Bell Repatriation Trust, however, help to provide an estimation, albeit it is somewhat limited. This organisation helps bereaved families to repatriate loved ones who have died abroad but have travelled without insurance. Between 2013 and February 2021, over 320 deceased individuals have been repatriated to Northern Ireland. Prior to the Covid pandemic, the Trust supported approximately five to seven repatriations to Northern Ireland a month, equating to between 60 to 84 per year. According to a 2020 YouGov survey, around one-fifth of UK holidaymakers do not purchase some form of travel insurance before going abroad.[[1]](#footnote-1) Applying this proportion to the statistics provided by the Kevin Bell Repatriation Trust suggests that somewhere in the region of 300 to 420 deaths occur abroad of individuals ordinarily resident in Northern Ireland each year.

**SECTION 3: PRACTICAL ISSUES**

1. Whatever legislative change might be adopted, there is a range of factors that have the potential to limit the ability of a coronial investigation to find answers for bereaved families.

**Obtaining Evidence**

1. Coroners in Northern Ireland do have statutory powers to compel documents and summon witnesses as part of an initial investigation or inquest, but these powers of course do not extend to witnesses who live outside Northern Ireland, nor to documentation (such as medical or police reports, death certificates, or CCTV footage) held by authorities in other jurisdictions.
2. We understand from experience in England and Wales and Ireland that where an inquest is held into a death abroad, obtaining relevant documentation is usually requested through Consular authorities. In England and Wales the coroner would work with the Foreign, Commonwealth and Development Office (FCDO) whose officials would then liaise with the authorities in the other jurisdiction to obtain the information sought and to secure witness cooperation where necessary. Similarly, coroners in Ireland work through the Department of Foreign Affairs (DFA). The level and speed of co-operation varies greatly and depends on the authorities in the other state and the circumstances of the case.
3. An English case, *Dorish Shafi v HMC for East London* [2015] EWHC 2106 (Admin), reflects the difficulties facing coroners when undertaking an investigation into a death abroad.
4. In this particular case, the claimant’s son had died while being held in custody in Dubai. In proceedings before the High Court the claimant sought to have the initial inquest verdict, that the cause of death was unascertained, quashed and a new inquest ordered arguing that in the first inquest, the coroner had not done enough to obtain certain materials, particularly CCTV footage, from the authorities in Dubai and that more should have been done to secure the attendance of witnesses.
5. In its decision, the High Court considered coroners’ obligations when evidence from another jurisdiction is not forthcoming. During the course of the initial investigation, the coroner had requested autopsy and toxicology reports, the death certificate, witness statements and CCTV footage from the scene through the FCDO. All information was forthcoming, except for the CCTV footage. The coroner made a further eight documented requests for the footage, before deciding that the inquest could proceed without it as it seemed unlikely it would be provided.
6. While the bereaved family contended that the coroner had not done enough to obtain this material and that the inquest should not have proceeded, the Court disagreed, noting that there is a limit to what a coroner can do to obtain evidence, though all reasonable efforts should be made to do so. Where it appears unrealistic that the information will be received despite these reasonable efforts, then a coroner should proceed with an inquest based on the material before them, even if it is limited, as long as they are satisfied that it would be in the interests of justice to do so. The Court further noted that it is not in the public interest for requests from coroners to remain outstanding for indefinite periods of time in the hope that additional information may be forthcoming at some indeterminate point in the future.
7. The High Court did however reflect that more should have been done to try to secure the attendance of witnesses from foreign jurisdictions. This would begin with an invitation to attend in person. If they could not or would not, then they could be invited to attend by video link.

**Other Proceedings**

1. A further consideration is the willingness and appropriateness of another State affording full cooperation to a coroner in Northern Ireland where there may be an ongoing criminal or coronial type investigation in the jurisdiction abroad. A particular difficulty is the potential for conflicting verdicts between an inquest here and a criminal investigation abroad.
2. When investigating a domestic death, a coroner will wait for criminal investigations to be completed where a person may be, or has been charged with certain offences. This avoids parallel proceedings into the same circumstances with different rules and standards of proof. It may be equally unhelpful to have an inquest proceeding in Northern Ireland into a death abroad if it was at the same time the subject of a criminal investigation in another jurisdiction, and it is unlikely that the authorities abroad would co-operate in sharing evidence until their own investigation had concluded which could take some time. Even after the conclusion of all proceedings bereaved families may find it difficult to reconcile apparently conflicting verdicts which will not serve to promote confidence.

**Differing Legal Systems**

1. There are also considerable differences between how different countries investigate sudden deaths, not just in terms of investigative processes employed and the figure that leads on it, but also in cultural responses, particularly in terms of post-mortem examinations.
2. Generally speaking, countries with a common law tradition, such as the UK, Ireland, Australia, New Zealand and Canada, operate a coronial system to investigate unexpected, violent or unexplained deaths. Elsewhere there are a wider array of responses, with investigations led by medical examiners or pathologists (USA), police (Scandinavia), or other judicial officers such as magistrates (western Europe). Many of these processes are focused on excluding criminal causes of death and are less concerned with non-criminal or unexpected deaths, or on death prevention or other wider social or health issues which may have influenced the death. This may have a direct impact on the detail or volume of relevant information which can be provided in certain types of deaths.
3. More generally, it would not be helpful to take any steps which may give the impression of a lack of confidence in the foreign investigation or cause any sensitivities that would undermine international co-operation or good relations.

**Post Mortems**

1. The 1959 Act provides that a coroner may order that a post-mortem be carried out to help determine who the deceased was, and how, when and where they came to their death.
2. Post-mortem examinations of bodies that have been repatriated from another jurisdiction are more complex than normal for a number of reasons. As a matter of course, before being repatriated, a body is often preserved with specialist chemicals to slow down the effects of natural deterioration: a process referred to as embalming. The presence of these chemicals has a significant impact on the reliability of many tests that a pathologist may carry out, particularly toxicology. Working on embalmed bodies also has health and safety implications for pathologists and mortuary staff.
3. The standard of post-mortem reports and the time taken to produce them varies between jurisdictions and we are informed that bodies may even be returned with organs missing. This can in turn significantly decrease the chances of a second post-mortem examination providing a cause of death.
4. In practical terms, it is likely to be necessary for the Department of Justice to recruit another Consultant Forensic Pathologist for the State Pathologist’s Department to support the additional volume of post mortem examinations as a result of any legislative change. Currently one of the four consultant pathologist posts has remained unfilled for eight years. For deaths occurring in Northern Ireland, between one third and one quarter of reported deaths to a coroner require a post-mortem which we estimate may equate to perhaps between twenty-one and thirty-nine additional post-mortem examinations per year for deaths which have occurred abroad.
5. There is, however, a historic problem in recruiting pathologists, so there is a very real risk that the appointment of an additional pathologist, if one was required, would prove extremely challenging. Furthermore, the additional workload would undoubtedly cause delays for the completion of post-mortems and reports in both re-patriated bodies and domestic cases.
6. These practical issues are not of course unique to Northern Ireland, with the relevant authorities in England and Wales, Scotland and Ireland encountering these same challenges. Indeed the fact that we know about the challenges comes from the experience in those other jurisdictions. The question is whether we should proceed to confer on a coroner in Northern Ireland the same jurisdiction over a death abroad as coroners in England & Wales and Ireland in light of these challenges, or whether learning from the experience of others, we adopt a more managed approach as is the case in Scotland.

**SECTION 4: LEGISLATIVE APPROACH IN THE REST OF THE UK AND IRELAND**

**England and Wales**

1. Under the Coroners and Justice Act 2009 (see **Annex A** for the key legislative provisions), a coroner is under a duty to investigate a death if the body is ‘within’ his area, and the coroner has reason to suspect that the deceased died a violent or unnatural death, the cause of death is unknown, or it occurred while in custody or otherwise in state detention. As ‘within’ does not involve the element of surprise that is denoted by ‘found’ in the 1959 Act in Northern Ireland, it follows that a coroner in England & Wales has jurisdiction to investigate a death occurring abroad and the body repatriated.
2. This was considered in *R v West Yorkshire Coroner ex parte Smith* [1983]. The statutory provision at that time was section 3 of the Coroners Act 1887, which referred to a body ‘lying’ in a coroner’s district. In that case, the Court of Appeal determined that the obligation to hold an inquest applies whether the cause of death occurred in the jurisdiction or not.

**Republic of Ireland**

1. The Coroners Act 1962 confers a general duty to hold an inquest where a body is ‘lying’ in a coroner’s district, and where the death may have occurred in a violent or unnatural manner, or suddenly and from unknown causes, or where there is another specific statutory duty to hold an inquest. The Act applies to deaths abroad where the body has been repatriated as the element of surprise does not feature.

**Scotland**

1. The Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016) provides that fatal accident inquiries (FAIs) (the Scottish equivalent of inquests), may be undertaken at the discretion of the Lord Advocate where the death occurred outside the UK, and where the person was ordinarily resident in Scotland.
2. The Lord Advocate may hold an inquiry where certain criteria are met: that it is considered that the circumstances of the death have not been sufficiently established in the course of an investigation abroad; that there is a real prospect of an inquiry actually establishing the circumstances of the death; and there is a public interest in an inquiry being held.
3. The Lord Advocate’s decision is informed by an investigation by the Scottish Fatalities Investigation Unit (SFIU), which is a specialist unit within the Crown Office and Procurator Fiscal Service (COPFS), and is responsible for investigating all sudden, suspicious, accidental and unexplained deaths. When the remains of a person who has died outside the UK are repatriated to Scotland, it has to be reported to the Death Certification Review Service (DCRS), with medical examiners ensuring that burials or cremations do not take place where there is missing or unclear death certification. Where the possibility emerges that the death may have occurred in suspicious circumstances, then the DCRS reports it to the SFIU who take control of the body and, after consulting a Crown pathologist, request that a post-mortem examination be undertaken where necessary.

**SECTION 5: PARTICULAR ISSUES**

**Pre-commencement deaths**

1. Another issue relates to pre-commencement deaths, i.e., whether or not coroners’ jurisdiction should be retrospective and extend to deaths abroad where the body was repatriated to Northern Ireland prior to commencement of section 49(1).
2. Section 49(1) does not introduce a time limit for inquests into deaths abroad and, as it stands, the amendment to section 13 would likely have practical retrospective effect in the sense that bodies of persons perhaps long deceased and currently lying in Northern Ireland would potentially come within the scope of a coroner’s power to hold an inquest. Bereaved families could therefore apply to the Attorney General for Northern Ireland for a direction under section 14 of the 1959 Act to require a coroner to undertake an inquest into such a death.
3. The issue of pre-commencement deaths is, of course, complex and sensitive. The practical problems of undertaking an inquest into a death abroad (the inability to compel documents and witnesses, and the difficulties in undertaking post-mortem examinations in particular) are likely to be exacerbated by the passage of time in such cases. As a result, it may be less likely that a coroner would be able to undertake a meaningful and effective investigation in such cases.
4. We are, however, cognisant of the sensitivities of this issue and the fact that there will be families who have never been satisfied about an investigation abroad into the death of their loved one and, despite the real practical challenges of such an investigation which may limit their effectiveness, would still welcome the opportunity for a coronial investigation in Northern Ireland.

**Death notification**

1. There is an existing legal duty on a number of individuals under section 7 of the 1959 Act, including doctors, registrars and funeral directors, to report to a coroner a death caused other than by natural illness or disease for which they had been seen and treated by a registered medical practitioner within twenty-eight days prior to their death.
2. If the law is changed to confer jurisdiction on a coroner in respect of a death abroad it may be difficult for a funeral director to know enough about the circumstances of the death to regard it as requiring onward reporting to a coroner. It may therefore be necessary to require funeral directors to inform coroners of all deaths abroad where a body is to be repatriated.

**UK and Irish Citizens**

1. Coroners’ requests for information from authorities in other jurisdictions usually go through a consular service which will largely depend on the passport on which the deceased person was travelling. Generally, the passport on which they made their journey outside Northern Ireland would indicate whether consular support would be obtained by working through the FCDO in the case of British citizens, or the Department of Foreign Affairs in the case of Irish citizens.
2. Our understanding is that the support and assistance provided by the FCDO and DFA are broadly similar, albeit within the significant practical constraints previously discussed.

**SECTION 6: OPTIONS**

**OPTION 1: COMMENCE SECTION 49(1) OF THE CORONERS AND JUSTICE ACT 2009**

* 1. Under this option, section 49(1) of the CJA 2009 would be commenced in its current form, thus amending section 13 of the 1959 Act so that a coroner who, after being informed that the body of a deceased person is ‘lying’ in Northern Ireland, may hold an inquest into that death.
  2. Commencing section 49(1) could be carried out by the Department more quickly than drafting and implementing other potential changes to primary legislation as suggested in options 2 and 3, albeit time would be required to ensure adequate engagement with key stakeholders such as the Funeral Directors sector, and consular departments in the FCDO and DFA. Care would also have to be taken to ensure before commencement that necessary guidance, memoranda of understanding or similar agreements were in place between key justice agencies which reflect their roles and responsibilities. Additional resources would also have to be provided to agencies, such as the Coroner’s Service, SPD and PSNI.

**OPTION 2: THE ATTORNEY GENERAL FOR NORTHERN IRELAND AS GATEKEEPER**

* 1. This option is largely based on the current statutory framework in Scotland, under which the power to hold an inquiry into a death abroad where the person was ordinarily resident in Scotland, is a discretionary one of the Lord Advocate with more prescriptive conditions than in any other jurisdiction in the UK or the Republic of Ireland.
  2. As noted above, the Lord Advocate may hold an inquiry where it is considered that the circumstances of the death have not been sufficiently established in the course of an investigation; that there is a real prospect of an inquiry actually establishing the circumstances of the death; and there is a public interest for an inquiry to be held. The Lord Advocate’s decision is informed by the investigation of the SFIU.
  3. Applying this model to Northern Ireland would mean that the gatekeeper function undertaken by the Lord Advocate in Scotland would be exercised by the Attorney General for Northern Ireland (AGNI). The AGNI already has a similar function in respect of domestic deaths by virtue of section 14 of the 1959 Act, which allows her to direct a coroner to conduct an inquest into a death where there is reason to believe that the circumstances of the death are such that holding an inquest would be ‘advisable’.
  4. The AGNI’s decision would necessarily have to be informed by a preliminary investigation by the Coroners Service into the circumstances of a death. As stated above, all deaths abroad, even if from natural causes, would be reported to a coroner on repatriation of the body. Where it appears that there is reason to believe that the death was unexpected or unexplained, or occurred in suspicious circumstances, the Coroners Service would have to gather reasonably available information on the basic facts to help inform the AGNI’s decision.
  5. In some cases a post-mortem examination would be necessary to determine if these criteria had been met. Similar to the process in Scotland, the Coroners Service would consult with the State Pathologist’s Department before requesting or directing that a post-mortem should take place. That consultation would consider the prospect of a post-mortem providing the necessary information to allow the AGNI to decide if an inquest should be undertaken.
  6. Option 2 would provide clear statutory criteria by which the AGNI would ultimately make a decision as to whether or not an inquest should be undertaken.
  7. Relevant grounding criteria would seem to require that:
* the body has been physically repatriated to Northern Ireland,
* the deceased was ordinarily resident in Northern Ireland; and
* the death was unexpected, unexplained or in violent or suspicious circumstances.
  1. If the grounding criteria were met, the AGNI would then apply the following proposed criteria:
  + the circumstances of the death have not been, and are not likely to be, adequately established in the course of some other investigation outside Northern Ireland; **and**
  + it is in the public interest for a coroner to conduct an investigation into the death, taking into account the evidence that is likely to be available to him or her and the real prospect of that evidence allowing the circumstances of the death to be adequately established in the course of the investigation.
  1. This statutory criteria applied by the Attorney General would likely mean fewer inquests than under Option 1, but would mean that any which are held into a death abroad may be more likely to be effective in determining how, when and where an individual came to their death.

**OPTION 3: THE HIGH COURT TO DIRECT AN INQUEST ON APPLICATION BY THE ATTORNEY GENERAL**

* 1. Under this option, which is similar to section 13 of the Coroners Act 1988 in England and Wales, the High Court would be empowered on the Attorney General’s application to order an inquest. The High Court would order an inquest if it was satisfied that the circumstances of the death are not otherwise likely to be established and it is in the public interest for a coroner in Northern Ireland to hold an inquest, taking into account the evidence likely to be available and the real prospect of that evidence allowing the circumstances of the death to be established.
  2. The initial stages of an investigation under Option 3 would operate in exactly the same fashion as outlined in Options 1 and 2, with all repatriated deaths reported to the Coroners Service, and an initial preliminary investigation undertaken to determine if further investigation is necessary. In some cases a post-mortem examination may be necessary, so that the AGNI is provided with as much information as possible as to the circumstances of an individual’s death to determine whether an application should be made to the High Court. Option 3 is therefore a two-step process, with the High Court ultimately acting as a gatekeeper rather than the AGNI as outlined in Option 2.
  3. As with Option 2, Option 3 will likely mean fewer inquests into deaths abroad than under Option 1. The opportunity to have the matter in the High Court may give reassurance to families and afford a court hearing while also ensuring that only those deaths abroad that can be investigated effectively will proceed to be the subject of an inquest.

**SECTION 7 – CONSULTATION QUESTIONS**

| **Consultation Question 1** |
| --- |
| **Do you think a coroner should be able to hold an inquest into a death outside Northern Ireland following repatriation of a body here?** |

| **Consultation Question 2** |
| --- |
| **Do you agree that we have identified all the practical issues which may potentially limit the effectiveness of an inquest into a death abroad? Are there any other issues that we haven’t considered?** |

| **Consultation Question 3** |
| --- |
| **Should any legislation apply to deaths that occurred abroad prior to its commencement?** |

| **Consultation Question 4** |
| --- |
| **Which option outlined in this consultation do you prefer and why?** |

# **SECTION 8 – IMPACT ASSESSMENTS**

8.1 The Department has carried out a range of impact assessments connected with this consultation. These are:

* Section 75 Equality Screening;
* Rural Needs Impact Assessment; and,
* Human Rights Impact Assessment.

**QUESTION**

Do you have any comments to make on any of the draft impact assessments?

**RELEVANT LEGISLATIVE PROVISIONS**

**England & Wales**

**Coroners and Justice Act 2009**

**Section 1: Duty to investigate certain deaths**

(1) A senior coroner who is made aware that the body of a deceased person is within that coroner's area must as soon as practicable conduct an investigation into the person's death if subsection (2) applies.

(2) This subsection applies if the coroner has reason to suspect that—

(a) the deceased died a violent or unnatural death,

(b) the cause of death is unknown, or

(c) the deceased died while in custody or otherwise in state detention.

(3) Subsection (1) is subject to sections 2 to 4.

(4) A senior coroner who has reason to believe that—

(a) a death has occurred in or near the coroner's area,

(b) the circumstances of the death are such that there should be an investigation into it, and

(c) the duty to conduct an investigation into the death under subsection (1) does not arise because of the destruction, loss or absence of the body,

may report the matter to the Chief Coroner.

(5) On receiving a report under subsection (4) the Chief Coroner may direct a senior coroner (who does not have to be the one who made the report) to conduct an investigation into the death.

(6) The coroner to whom a direction is given under subsection (5) must conduct an investigation into the death as soon as practicable.

This is subject to section 3.

(7) A senior coroner may make whatever enquiries seem necessary in order to decide—

(a) whether the duty under subsection (1) arises;

(b) whether the power under subsection (4) arises.

(8) This Chapter is subject to Schedule 10.

**Section 4: Discontinuance where cause of death becomes clear before inquest**

(1) A senior coroner who is responsible for conducting an investigation under this Part into a person's death must discontinue the investigation if—

(a) the coroner is satisfied that the cause of death has become clear in the course of the investigation,

(aa) an inquest into the death has not yet begun, and

(b) the coroner thinks that it is not necessary to continue the investigation.

(2) Subsection (1) does not apply if the coroner has reason to suspect that the deceased—

(a) died a violent or unnatural death, or

(b) died while in custody or otherwise in state detention.

(3) Where a senior coroner discontinues an investigation into a death under this section—

(a) the coroner may not hold an inquest into the death;

(b) no determination or finding under section 10(1) may be made in respect of the death.

This subsection does not prevent a fresh investigation under this Part from being conducted into the death.

(4) A senior coroner who discontinues an investigation into a death under this section must, if requested to do so in writing by an interested person, give to that person as soon as practicable a written explanation as to why the investigation was discontinued.

**Section 6: Duty to hold inquest**

A senior coroner who conducts an investigation under this Part into a person's death must (as part of the investigation) hold an inquest into the death.

This is subject to section 4(3)(a).

**Coroners Act 1988**

**Section 13: Order to hold investigation**

(1) This section applies where, on an application by or under the authority of the Attorney-General, the High Court is satisfied as respects a coroner (“the coroner concerned”) either—

(a) that he refuses or neglects to hold an inquestor an investigation which ought to be held; or

(b) where an inquest or an investigation has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that an investigation (or as the case may by, another investigation) should be held.

(2) The High Court may—

(a) order an investigation under Part 1 of the Coroners and Justice Act 2009 to be held into the death either—

(i) by the coroner concerned; or

(ii) by a senior coroner, area coroner or assistant coroner in the same coroner area;

(b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and

(c) where an inquest has been held, quash any inquisition on, or determination or finding made at that inquest.

(3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) For the purposes of this section, “coroner” means a coroner appointed under section 1 of this Act, or a senior coroner, area coroner or assistant coroner appointed under the Coroners and Justice Act 2009.

**Ireland**

**Coroners Act, 1962**

**Section 17: General duty to hold inquest**

Subject to the provisions of this Act, where a coroner is informed that the body of a deceased person is lying within his district, it shall be the duty of the coroner to hold an inquest in relation to the death of that person if he is of opinion that the death may have occurred in a violent or unnatural manner, or suddenly and from unknown causes or in a place or in circumstances which, under provisions in that behalf contained in any other enactment, require that an inquest should be held.

**Section 18: Optional power to hold inquest and duty to notify coroner**

(1) Where a coroner is informed that the body of a deceased person is lying within his district and that a medical certificate of the cause of death is not procurable, he may inquire into the circumstances of the death of that person and, if he is unable to ascertain the cause of death, may, if he so thinks proper, hold an inquest in relation to the death.

(2) Subsection (1) of this section shall not apply to any case to which section 17 of this Act applies.

(3) It shall be the duty of an inspector or officer of the Garda Síochána, if he becomes aware of the death within the district of a coroner of any person in whose case a medical certificate of the cause of death is not procurable, to inform the coroner of such death.

(4) Every medical practitioner, registrar of deaths or funeral undertaker and every occupier of a house or mobile dwelling, and every person in charge of any institution or premises, in which a deceased person was residing at the time of his death, who has reason to believe that the deceased person died, either directly or indirectly, as a result of violence or misadventure or by unfair means, or as a result of negligence or misconduct or malpractice on the part of others, or from any cause other than natural illness or disease for which he had been seen and treated by a registered medical practitioner within one month before his death, or in such circumstances as may require investigation (including death as the result of the administration of an anaesthetic), shall immediately notify the coroner within whose district the body of the deceased person is lying of the facts and circumstances relating to the death.

(5) The obligation imposed on a person by subsection (4) of this section shall be deemed to be discharged if he immediately notifies a member of the Garda Síochána not below the rank of sergeant of the facts and circumstances required to be notified under that subsection.

(6) Every person who contravenes subsection (4) of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty pounds.

**Scotland**

**Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016**

**Section 6: Inquiries into deaths occurring abroad: general**

(1) Subsection (3) applies to the death of a person if—

(a) the death occurred outwith the United Kingdom, and

(b) at the time of death, the person was ordinarily resident in Scotland.

(2) But that subsection does not apply to the death of a person within section 12(2) or (3) of the Coroners and Justice Act 2009 (investigation in Scotland of deaths of service personnel abroad).

(3) An inquiry is to be held into a death to which this subsection applies if the Lord Advocate—

(a) considers that the death—

(i) was sudden, suspicious or unexplained, or

(ii) occurred in circumstances giving rise to serious public concern,

(b) considers that the circumstances of the death have not been sufficiently established in the course of an investigation in relation to the death,

(c) considers that there is a real prospect that those circumstances would be sufficiently established in an inquiry, and

(d) decides that it is in the public interest for an inquiry to be held into the circumstances of the death.

# **Confidentiality and Privacy Notice**

**Confidentiality of consultation responses – Freedom of Information Act 2000**

The Department intends to publish a **summary** of responses following completion of the consultation process.

Your response, and all other responses to the consultation, may also be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this public consultation.

Subject to certain limited provisos, the Freedom of Information Act gives members of the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation.

The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor’s Code of Practice on the Freedom of Information Act provides that:

* the Department should only accept information from third parties “in confidence” if it is necessary to obtain that information in connection with the exercise of any of the Department’s functions and it would not otherwise be provided;
* the Department should not agree to hold information received from third parties “in confidence” which is not confidential in nature;
* acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Further information about confidentiality of responses is available by contacting the Information Commissioner’s Office (or at <https://ico.org.uk/>)

**Privacy Notice**

**Data Controller Name:** Department of Justice

**Address:** Department of Justice

Castle Buildings

Stormont Estate

BELFAST

BT4 3SG

**Telephone:** 02890 378617

**Email:** [VAP@justice-ni.gov.uk](mailto:VAP@justice-ni.gov.uk)

**Data Protection Officer Name:** Department of Justice Data Protection Officer

**Telephone:** 02890 378617

**Email:** [DataProtectionOfficer@justice-ni.gov.uk](mailto:DataProtectionOfficer@justice-ni.gov.uk)

**Why are you processing my personal information?**

The Department is seeking comments from interested parties as part of its public consultation on increasing the general civil jurisdiction of the county courts in Northern Ireland. The Department is not seeking personal data as part of the consultation but is likely to receive names and addresses/e-mail addresses as part of a consultee’s response.

Consultation is a requisite part of the development of public policy and strategy.

**ONLY if you are relying on consent to process personal data.**

The Department is not relying on consent for processing the data supplied by the applicant. DoJ is required to seek consultation responses as part of policy development.

**What categories of personal data are you processing?**

Responses to the consultation will include names and addresses and/or e-mail addresses.

**Where do you get my personal data from?**

The personal data will originate from the person responding to the consultation.

**Do you share my personal data with anyone else?**

We will not share your personal data with other organisations.

**Do you transfer my personal data to other countries?**

No.

**How long do you keep my personal data?**

We will retain your data in line with 5.7 of Schedule 5 of the DoJ Retention and Disposal Schedule (<https://www.justice-ni.gov.uk/publications/doj-retention-and-disposal-schedule>)

**(If you use automated decision making or profiling) How do you use my personal data to make decisions about me?**

The Department will not use automated processing for responses to this consultation.

**What rights do I have?**

You have the right:

* to obtain confirmation that your data is being processed, and access to your personal data
* to have personal data rectified if it is inaccurate or incomplete
* to have personal data erased and to prevent processing, in specific circumstances
* to ‘block’ or suppress processing of personal data, in specific circumstances
* to data portability, in specific circumstances
* to object to the processing, in specific circumstances
* in relation to automated decision making and profiling

**How do I complain if I am not happy?**

Complaints should be submitted to:

Freedom of Information Unit

Department of Justice

Castle Buildings

Stormont Estate

BELFAST

BT4 3SG

Telephone: 02890 378617

Email: [FOI@justice.x.gsi.gov.uk](mailto:FOI@justice.x.gsi.gov.uk)

**If you are unhappy with any aspect of this privacy notice, or how your personal information is being processed, please contact the Departmental Data Protection Officer at:** [DataProtectionOfficer@justice-ni.gov.uk](mailto:DataProtectionOfficer@justice-ni.gov.uk)

**If, after contact the Departmental Data Protection Officer, you are still not happy, you have the right to lodge a complaint with the Information Commissioner’s Office (ICO):**

Information Commissioner’s Office

Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF

Tel: 0303 123 1113

Email: casework@ico.org.uk

<https://ico.org.uk/global/contact-us/>

1. <https://yougov.co.uk/topics/economy/survey-results/daily/2020/02/27/f735a/3> [↑](#footnote-ref-1)