

# CORONERS AND JUSTICE ACT 2009

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 1 - Coroners etc**

#### *Chapter 5: Further provisions to do with investigations and deaths*

#### *Section 32 and Schedule 5: Powers of coroners*

238. This section brings Schedule 5 into effect, which sets out the powers of senior coroners and the Coroner for Treasure (who has identical powers save for paragraph 7 which does not apply to the Coroner for Treasure).

#### **Paragraph 1 and 2: Power to require evidence to be given or produced**

239. *Paragraph 1* of Schedule 5 gives a senior coroner power to summon witnesses and to compel the production of evidence for the purposes of an investigation.
240. Under *paragraph 1(1)* a senior coroner may issue a notice requiring a person to attend at a given time and place to give evidence at an inquest or to produce any documents they have that are relevant to the inquest or to produce anything else they have that is relevant to the inquest so that it can be inspected, examined or tested.
241. *Paragraph 1(2)* provides that the senior coroner can also notify someone that they must provide the senior coroner with a written statement, or produce any documents or anything else they have that the senior coroner considers is relevant to the investigation.
242. *Paragraph 1(3)* sets out information which must be included in any notice that the senior coroner issues under paragraphs 1(1) or 1(2).
243. *Paragraph 1(4)* gives those to whom the senior coroner has issued a notice under paragraph 1(1) or (2) the right to claim that he or she is unable to comply with the notice or that it is not reasonable for the senior coroner to ask him or her to do so. The senior coroner can cancel or amend the notice on that ground.
244. Under *paragraph 1(5)*, when deciding whether to cancel or amend the notice, the senior coroner has to take into account the public interest of that information being available to the investigation or inquest.
245. Under *paragraph 1(6)*, a document or thing is defined as being under a person's control if it is in that person's possession or if they have a right to possession of it.
246. By *paragraph 1(7)*, the notice is not limited by the coroner's area and can therefore be issued to a person anywhere in England or Wales.
247. *Paragraph 1(8)* extends the powers under paragraph 1 to the Coroner for Treasure when carrying out treasure investigations. This allows the Coroner for Treasure to order a

person to produce an object believed to be treasure for examination and testing, for example.

248. *Paragraph 2* of Schedule 5 makes it clear that the senior coroner does not have the power to require anything to be provided to him or her that a person could not be required to provide to a civil court, mirroring the restriction on many information gathering powers contained in existing legislation. The senior coroner also does not have the power to require evidence to be provided if this would be incompatible with European Union law. It is also made clear that the rules of law in relation to public interest immunity apply equally in relation to investigations or inquests under Part 1 of the Act.

### **Paragraphs 3 to 5: Power of entry, search and seizure**

249. *Paragraph 3* of Schedule 5 gives senior coroners a new, statutory power to enter and search land and seize items which are relevant to their investigations.
250. By *paragraph 3(1)*, a senior coroner has a power to enter and search particular land if he or she has authorisation from the Chief Coroner or from a senior coroner nominated by the Chief Coroner to give such permission. A record must be made of all authorisations sought and given (*paragraph 4*). (The matters recorded under paragraph 4 have to be included in the Chief Coroner's annual report to the Lord Chancellor: see section 36(4)(c).)
251. By *paragraph 3(2)*, the Chief Coroner, or a senior coroner to whom the power is delegated, may allow a coroner to enter and search premises only if that coroner has reason to suspect that there might be something on the premises relevant to the investigation. One of the conditions in *paragraph 3(3)* must also be met ie that the coroner must be unable to contact the person who could give permission to enter and search the premises; permission has already been refused; there is reason to believe that permission would be refused; or the purpose of the search would be frustrated or significantly prejudiced without immediate entry.
252. Under *paragraph 3(4)* a senior coroner has a power to seize anything on the land, or inspect or take copies of any documents that are relevant to the investigation.
253. *Paragraph 3(6)* extends the new statutory powers of entry, search and seizure to the Coroner for Treasure when investigating objects which may be treasure or treasure trove.
254. Under *paragraph 5(1)*, the power to seize items, inspect and take copies of documents under paragraph 3(4) can only be used if the person exercising it has reasonable grounds to believe that its exercise might assist the investigation and, in relation to seizure, that it is necessary to prevent the items from being hidden, lost, damaged, changed or destroyed.
255. Under *paragraph 5(2)*, the power in paragraph 3(4) to inspect and take copies of documents includes power to require information stored in electronic form on the premises, or accessible from the premises, to be produced in a form which can be taken away and which enables it to be read or easily changed into a readable format. This would include for example printing copies of electronic documents or downloading copies of files from a computer so that they can be printed at a later date.
256. *Paragraph 5(3)* of Schedule 5 makes clear that the person exercising the power under paragraph 3 may not seize items which they believe to be subject to legal privilege.
257. Under *paragraph 5(4) and (5)*, items seized or taken away under paragraph 3 may be kept for as long as they are needed, and reasonable force may be used in the exercising of the power.

### **Paragraph 6: Exhumation of body for examination**

258. *Paragraph 6* of Schedule 5 sets out the powers of a senior coroner to order the exhumation of a body. This paragraph, to a great extent, replicates section 23 of the 1988 Act.
259. *Paragraph 6(2)* enables a senior coroner to order the exhumation of the body of a person buried in England and Wales if the senior coroner thinks it is necessary for a post-mortem examination to be made of the body. Although a senior coroner may order the exhumation of a body buried anywhere in England and Wales, it is likely that a senior coroner will only order the exhumation of a body if it is within that coroner's area. This is because the senior coroner will only have jurisdiction to investigate the death due to the initial presence of the body within his or her area. The exceptions to this are where another senior coroner has been asked to conduct an investigation under section 2; the Chief Coroner has directed another senior coroner to conduct an investigation under section 3 or a fresh investigation is ordered after an appeal. A coroner will in all cases have power to order the exhumation of a body for purposes of a post-mortem examination under section 14 even if the body is not within his or her area.
260. *Paragraph 6(3)* enables a senior coroner to order exhumation of a body buried within his or her coroner area if the senior coroner thinks it necessary for the body to be examined for the purpose of any criminal proceedings or possible criminal proceedings in respect of the death of that person or another person who died in circumstances connected to that person's death.

### **Paragraph 7: Action to prevent other deaths**

261. *Paragraph 7* of Schedule 5 gives the senior coroner the power, at the end of an investigation, to report the matter to authorities or organisations with a view to preventing deaths in the future. This power could, for example, be used by the senior coroner to report to a local authority the fact that several deaths have occurred in similar circumstances on the same stretch of road. The person or organisation to whom the report was made must respond in writing to that report. Further provision may be made in regulations enabling reports and responses to be published.
262. All reports made under this paragraph, and all responses to them, must be copied to the Chief Coroner, and summarised in the Chief Coroner's annual report to the Lord Chancellor (see section 36(4)(d)).