

**EXPLANATORY MEMORANDUM TO
THE CORONERS (AMENDMENT) RULES 2008**

2008 No. 1652

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Rules amend Rule 43 of the Coroners Rules 1984 (S.I. 1984/552) regarding coroners' powers to make reports to prevent future deaths, and introduce a new rule to allow coroners to share information with Local Safeguarding Children Boards (LSCBs) to enable them to carry out their statutory functions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

There is a short gap between the Rules being made and laid in Parliament due to the signatures of the Lord Chief Justice and the Minister signing on behalf of the Lord Chancellor being obtained ahead of schedule. We did not wish to bring the laying date forward due to a coroner related announcement of interest to Parliamentarians and stakeholders made in the previous week.

4. Legislative Background

Coroners Rules are made under section 32 of the Coroners Act 1988, in accordance with the provisions in Part 1 of Schedule 1 to the Constitutional Reform Act 2005, by the Lord Chief Justice with the agreement of the Lord Chancellor.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Coroners' powers to make reports to prevent future deaths

Policy

7.1 The draft Coroners Bill, issued for pre-legislative scrutiny in 2006, formalised the Rule 43 requirements in primary legislation in order to give the public protection role for coroners greater prominence. Following feedback, the Minister then responsible for coroner policy, the Rt Hon Harriet Harman MP, informed Parliament in a Written Ministerial Statement of the Government's intention to strengthen further the public protection role for coroners in the Bill proper (30 Jan

2007: Column 9WS). On 8 May 2007, while giving oral evidence, Harriet Harman informed the Constitutional Affairs Select Committee (CASC) that Rule 43 would be amended in advance of Bill implementation through statutory instrument under the powers granted to the Lord Chancellor in Section 32 of the Coroners Act 1988.

- 7.2 The amended Rule places a new statutory duty on organisations receiving reports to respond and to do so within 56 days. Coroners *must* share reports and responses with interested parties to the particular inquest and with the Lord Chancellor, and they *may* share reports and responses with other interested organisations. In sharing reports and responses with the Lord Chancellor, there is a mechanism, for the first time, to ensure national oversight so that lessons learned can be disseminated more widely where relevant.
- 7.3 The Luce Review 2003 considered the use of Rule 43 as part of its general investigation into death certification and investigation in England, Wales and Northern Ireland. It found that the main agencies to which coroners' reports and recommendations were addressed were local road and health authorities. The number of reports made by coroners was found to be around 450 a year, which is relatively low when compared to the 30,000 inquests that are held. According to the coroners who had made the reports, almost half of their recommendations had led to some remedial action within a year. In a quarter of cases the results were unknown or still under review. In the remaining quarter, the recommendation had been rejected or the coroner felt that the response had been inadequate.
- 7.4 Public interest in this rule is generally limited to stakeholders with an interest in coroner reform (generally those from the voluntary sector). These stakeholders are very supportive of strengthening the Rule 43 provisions. The Justice Select Committee (formerly CASC) remains interested in these amendments, having previously recommended that coroners have an enhanced role in relation to public health and safety.

Consultation

- 7.5 Coroners' powers to make reports were discussed extensively during the consultation on the draft Coroners Bill. The formal consultation period lasted from June to September 2006 and the department received 150 written responses. The Bill was also subject to consideration by CASC during the same period. Respondents agreed with CASC that coroners have a key role to play in reporting public safety issues and that more could be done to develop this role.
- 7.6 A discussion paper outlining the details of our proposals, including a revised rule, was issued to those with a key interest (including the Coroners' Society, other Government Departments and voluntary groups) on 15 January 2008 with a deadline for comments of 7 March. The Department received 40 responses. There was widespread support for the proposals for coroners to share reports and responses with interested parties, other relevant organisations and the Lord Chancellor. The vast majority of respondents agreed that 56 days was an appropriate time limit for the relevant person or organisation to respond to a report (with provision for extensions where necessary). Respondents supported the Lord Chancellor's role in providing national oversight of the system, although there was a difference in view between those who thought he should publish

every letter in full, and those who thought it was sufficient for him to publish reports and responses in summary form.

Guidance

- 7.7 The Ministry of Justice will work with coroners to ensure the necessary guidance is issued prior to implementation of the amended rule.

Sanctions

- 7.8 The Statutory Instrument does not create penalties and sanctions.

Provision for coroners to share relevant information with LSCBs

Policy

- 7.9 LSCBs were established under the Children Act 2004 to ensure that organisations in each area work together to safeguard children and promote their welfare. From 1 April 2008 LSCBs have had a statutory responsibility (regulation 6(1) of the Local Safeguarding Children Board Regulations 2006) to conduct child death reviews for all children who die and who were normally resident in a local authority area in England. Coroners investigate deaths that are reported to them that are violent, unnatural, or of unknown cause (section 8 of the Coroners Act 1988). Information gathered during the course of an investigation into a child death would assist LSCBs in fulfilling their statutory responsibilities.
- 7.10 The policy objectives are to (i) require coroners to notify LSCBs of a child death and (ii) enable coroners to share information (such as reports from post-mortem examinations and documents given in evidence at an inquest) with LSCBs for the purposes of their functions. The intended effect is that this will allow coroners and LSCBs to work together to enable LSCBs to meet their obligation to conduct child death reviews and to fulfil their statutory obligations more generally. The policy has been agreed with the Department for Children, Schools and Families (DCSF) which is responsible for legislation regarding LSCBs.
- 7.11 The rule sets up a framework for sharing information – there will be little interest beyond the coronial system and LSCBs.

Consultation

- 7.12 A discussion paper to seek views on the proposed new rule was issued on 30 April 2008 with a deadline for comments of 13 May. This was not a formal consultation exercise – the discussion paper was circulated to the Coroners' Society and other Government Departments with an interest. In addition, the DCSF circulated the paper to all LSCB chairs. The department received 50 responses. The majority of responses were from LSCBs, which regard information from the coroner as a vital component of the child death review process, and strongly welcomed the new rule.

Guidance

- 7.13 The Ministry of Justice will work with coroners and the DCSF to provide guidance on the application of the new rule.

Sanctions

- 7.14 The SI does not create penalties and sanctions.

8. Impact

- 8.1 An impact assessment has not been prepared for the Coroners (Amendment) Rules 2008. The amendments to Rule 43 have no impact on business, charities or voluntary bodies. The vast majority of coroner reports are made to public sector organisations, which will now be under a new duty to send the coroner a written response. There is no evidence to suggest that the impact of this new duty will be significant on any one organisation to which a particular coroner is likely to make reports.
- 8.2 The new rule regarding LSCBs has no impact on business, charities or voluntary bodies. The rule simply sets up a framework for sharing information between coroners and LSCBs.

9. Contact

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