

## EXPLANATORY MEMORANDUM

### THE CORONERS (SUSPENSION OF REQUIREMENT FOR JURY AT INQUEST: CORONAVIRUS) REGULATIONS 2024

2024 No. [XXXX]

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

#### 2. Declaration

- 2.1 Mike Freer, Parliamentary Under-Secretary of State for Justice at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Terence Davies, Deputy Director for Death Management, Inquiries and Coroners Division, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

#### 3. Contact

- 3.1 Hugo Malim at the Ministry of Justice Telephone: +447511163620 or email: hugo.malim@justice.gov.uk can be contacted with any queries regarding the instrument.

### Part One: Explanation, and context, of the Instrument

#### 4. Overview of the Instrument

##### *What does the legislation do?*

- 4.1 This instrument extends, until June 2026, the temporary statutory disapplication of the requirement for any inquest to be held with a jury where COVID-19, as a notifiable disease, is suspected to be the cause of death.

##### *Where does the legislation extend to, and apply?*

- 4.2 The territorial extent of this instrument (that is, the jurisdiction(s) of which the instrument forms part of the law) is England and Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

#### 5. Policy Context

##### *What is being done and why?*

- 5.1 As COVID-19 is a natural disease, the majority of COVID-19 related deaths are due to natural causes and, therefore, are not reported to the coroner or, if they are reported, do not require an inquest. However, where a death results in an inquest (because its cause is unknown or is suspected to have been violent or unnatural, or the death occurred in custody or other state detention), COVID-19 may be suspected as a contributory factor in the cause of death.

- 5.2 The classification of COVID-19 as a notifiable disease in March 2020 would have meant that, throughout the pandemic, all COVID-19 related inquests would have required a jury. To mitigate the additional pressure this would have created on coroner services and on the funding local authorities, and the resulting delay and distress for bereaved families, an easement was included in the Coronavirus Act 2020 (“the 2020 Act”) to disapply the requirement for a jury in inquests where COVID-19 was suspected to be the cause of death.
- 5.3 The 2020 Act provision was sunsetted in June 2022 but, to support continued pandemic recovery in the coroners’ courts, it was immediately replaced by the Judicial Review and Courts Act 2022 (“the 2022 Act”) provision, which has an identical effect. In light of concerns that COVID-19 related inquests should not be permanently treated differently from inquests involving other notifiable diseases, particularly once COVID-19 became endemic and vaccine-preventable, the 2022 Act provision was implemented on a temporary basis, but with provision for time-limited extension where this was considered expedient following an assessment of expiry on the coronial system.
- 5.4 Following the assessment required by the 2022 Act (see Consultation Outcome below), the Lord Chancellor considers that, in light of continuing inquest backlogs and consequent delays for bereaved families, it is expedient for the disapplication of the jury requirement in COVID-19 related inquests to be extended for the maximum permitted period of two years i.e. to June 2026.
- 5.5 The disapplication provision does not preclude the coroner from calling a jury in a COVID-19 related inquest – they retain the discretion to do so in these, as in any other inquests.

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 Section 7(2)(c) of the Coroners and Justice Act 2009 (“the 2009 Act”) requires that an inquest into a death which the coroner suspects to have been caused by a notifiable disease must be held with a jury. Section 42(1) of the 2022 Act inserts a new provision into the 2009 Act (section 7(5)) which declassifies COVID-19 as a notifiable disease for the purposes of section 7(2)(c). In effect, therefore, the inserted provision disapplies the statutory requirement for a jury in an inquest in which COVID-19 is suspected to be the cause of death.
- 6.2 Section 42(3) of the 2022 Act provides that the disapplication provision expires two years after coming into force (therefore, on 27 June 2024), subject to extension by regulations made under section 42 (6) of that Act.
- 6.3 Section 42 (4) of the 2022 Act requires that, prior to expiry, the Lord Chancellor must assess the likely effects of expiry on the coronial system. The Lord Chancellor may extend the disapplication provision by a maximum period of two years, if he considers it expedient to do so.
- 6.4 COVID-19 is designated as a notifiable disease by Schedule 1 to the Health Protection (Notification) Regulations 2010, as amended by the Health Protection (Notification) (Amendment) Regulations 2020.

### *Why was this approach taken to change the law?*

- 6.5 The 2022 Act makes provision for extension to be implemented by regulation.

## **7. Consultation**

### *Summary of consultation outcome and methodology*

- 7.1 In early 2024, the MoJ surveyed all coroners in England and Wales on their use of the 2022 Act provision since its implementation; and their assessment of the likely impact of its expiry on their case management. The response rate was low: 52 coroners engaged with the survey and the majority of those who did respond indicated that they rarely or never had cause to rely on the disapplication provision.
- 7.2 However, 24 coroners, many in major urban areas which commonly have higher caseloads, predicted a significant impact for their case management if the provision were allowed to expire. This is because, although the real time impacts of COVID-19 have diminished, they are inevitably delayed in the context of the coronial system as inquests backlogs, some of which were built up during the pandemic in order to manage wider pressures, continue to be worked through.
- 7.3 While this is the case, the listing of additional jury inquests (which is inevitably complex) would be likely to create additional delay and, therefore, to cause additional distress for bereaved families. It would also create financial and other resource pressure for coroner services in the relevant areas.

## **8. Applicable Guidance**

- 8.1 The Chief Coroner has published a suite of Guidance for coroners which is available online<sup>1</sup>.

## **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because this SI relates to maintenance of existing regulatory standards.

### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation specifically applies to public services in the context of operational case management.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 The impact on the public sector is consequential because this legislation will extend existing operational support to the coroner service by helping it to process the backlog of cases which built up over the pandemic.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 Section 42(4) of the 2022 Act requires the Lord Chancellor, prior to the expiry of the disapplication of the requirement for a jury in COVID-19 related inquests, to make an assessment of the likely effects of expiry on the coronial system. The disapplication provision is being extended for the maximum permitted period of two years because,

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<sup>1</sup> <https://www.judiciary.uk/courts-and-tribunals/coroners-courts/coroners-legislation-guidance-and-advice/coroners-guidance/>

given the average duration of the inquest process, a shorter extension would not provide sufficient sample in terms of case numbers on which to base a fair and well evidenced assessment of the effects of expiry on the coronial system, as required. The Ministry of Justice will consider carefully how such an assessment can most effectively be undertaken prior to the expiry of the provision in June 2026.

- 10.2 A statutory review clause is included in the primary legislation, the 2022 Act.

### **Part Three: Statements and Matters of Particular Interest to Parliament**

#### **11. Matters of special interest to Parliament**

- 11.1 None.

#### **12. European Convention on Human Rights**

- 12.1 The Parliamentary Under-Secretary of State for Justice has made the following statement regarding Human Rights:

“In my view the provisions of the Coroners (Suspension of Requirement for Jury at Inquest: Coronavirus) Regulations 2024 are compatible with the Convention rights.”

#### **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).