

EXPLANATORY MEMORANDUM TO
THE CORONERS AND JUSTICE ACT 2009 (CONSEQUENTIAL
PROVISIONS) ORDER 2013

2013 No. 1874

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice ('the Department') and is laid before both Houses of Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Coroners and Justice Act 2009 (Consequential Provisions) Order 2013 ('the Order') makes consequential amendments to provisions of the Coroners Act 1988 ('the 1988 Act') to make the language consistent with the Coroners and Justice Act 2009.

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

3.1 None.

4. Legislative Context

4.1 The current coroner legislation is set out in the 1988 Act and the Coroners Rules 1984. Part 1 of the 2009 Act repeals and replaces the 1988 Act and makes a number of changes to the coroner system, including the appointment of a Chief Coroner to provide national leadership to coroners in England and Wales. The 2009 Act also introduces new terminology, including new titles for coroners and the new concept of an 'investigation' into a death (of which the inquest will form part). It also renames 'coroner districts' as 'coroner areas' and requires the coroner (or jury where there is one) to make 'determinations and findings' at the end of an inquest rather than reaching a 'verdict' and making an 'inquisition'.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Coroners and Justice Act 2009 (Consequential Provisions) Order 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Department intends to bring most of the provisions in Part 1 of the 2009 Act relating to coroners and investigations into deaths into force in summer 2013. There are, however, some provisions that have been repealed which have necessitated changes to the 1998 Act.

7.2 The Public Bodies Act 2011 repealed section 40 of the 2009 Act which would have created new rights of appeal to the Chief Coroner. In making this change, the Department made clear its intention to retain the existing mechanisms for challenging a coroner's decision, namely judicial review and the power in section 13 of the 1988 Act which allows an application to be made by, or under the authority of, the Attorney-General to the High Court for an inquest, or a fresh inquest, to be ordered¹. It is therefore intended that section 13 of the 1988 will not be repealed by Schedule 23 to the 2009 Act.

7.3 Consequential amendments are therefore needed to section 13 of the 1988 Act to enable it to be consistent with the provisions of the 2009 Act. The Order amends section 13 by:

- Changing references to 'coroner district' to 'coroner area';
- Allows the High Court to order an 'investigation' (rather than an 'inquest') into a death where the coroner has refused or neglected to hold an investigation, or a fresh investigation where a coroner has already held one;
- Allows the High Court to order a different coroner within the coroner area to conduct the investigation or fresh investigation (rather than a coroner 'in the same administrative area', as administrative areas will no longer exist) and omits the related provision in section 13(3). (This should also be read alongside section 3 of the 2009 Act which allows the Chief Coroner to direct **any** coroner to conduct an investigation into a death.); and
- Changing the reference to the High Court quashing the 'inquisition' (the conclusion of the inquest) to read 'any inquisition, determination or finding made at that inquest'. This is to reflect the new terminology of the 2009 Act (section 10 in particular) but also to capture any inquests held before section 10 comes into force.

7.4 The Order also amends subsection 4A(8) of the 1988 Act. The Department intends to keep section 4A(8) alongside the new provisions of the 2009 Act, because of the additional flexibility which it provides in Wales. Section 4A(8) provides that a coroner appointed to a coroner area in Wales is to be considered as a coroner for the whole of Wales. This allows additional flexibility in the deployment of resources within Wales and can be used to allow coroners with specialist skills to sit outside their own

¹ <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111129/debtext/111129-0003.htm#11112951000008>

areas, without the need to be appointed as an assistant deputy coroner in the area where they are sitting temporarily. The rest of section 4A will be repealed.

7.5 Preserving this provision will, for example, allow a Welsh-appointed coroner to approve an organ-donation request at very short notice when no other coroner in Wales is available. The provision will also help to facilitate the Chief Coroner's stated aim of developing specialist cadre of coroners on a regional or national basis (in relation to Wales at least).

7.6 It is therefore envisaged that this provision will not be repealed under Schedule 23 to the 2009 Act and in order to enable it to fit with the 2009 Act, the Order amends subsection 4A(8), changing the reference to 'coroner district' to 'coroner area' and removing the words 'Except as provided by this Act'.

8. Consultation outcome

8.1 The Department has consulted on new rules and regulations to be made under the 2009 Act. The consultation set out again the Department's intention to retain section 13 of the 1988 Act, suitably amended, but did not seek views on this. The consultation closed on 12 April 2013.

9. Guidance

9.1 Guidance for coroners and local authorities on Part 1 of the 2009 Act, including the new rules and regulations, is currently being prepared.

10. Impact

10.1 There is no impact on business, charities, voluntary bodies or the public sector.

11. Regulating small business

11.1 These changes will have no impact on small businesses.

12. Monitoring and review

12.1 As the Order only makes consequential amendments to existing legislation, there are no plans to monitor or review its effect.

13. Contact

Dominic Smales, Geraint Davies or Elizabeth Knapp at the Department can answer any queries regarding the instrument.

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