



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

A consultation on coronial investigations into deaths abroad

Summary of consultation responses

February 2023

Contents

	Page
1 Introduction	3
2 Summary of consultation responses	5
3 Other issues	11

Introduction

This report provides a summary of the responses received by the Department of Justice to a public consultation on coronial investigations into deaths abroad. The consultation sought the public's view as to whether or not coroners here should have a statutory power to carry out a formal investigation, known as an inquest, into the death abroad of a Northern Ireland resident whose body has been repatriated.

The role of a coroner is to determine, in so far as possible based on the evidence, who the deceased was, and how, when and where they came to their death. This only applies to bodies which are 'found' in Northern Ireland, or where a death is unexpected, unexplained or occurred in suspicious circumstances. 'Found' is interpreted as involving an element of discovery or chance encounter, meaning that a body has not been 'found' here if it has been repatriated following a death abroad.

In our consultation, we outlined a number of different options that would provide coroners with a statutory power to undertake an investigation into such deaths. Although each option was different, the aim was to bring our legislation into line with coronial law in the rest of the UK and Ireland by providing for an investigatory process that could provide answers for bereaved families as to how, when and where their loved one came to their death abroad.

The public consultation opened on 27 October 2022. A consultation paper, a regulatory impact assessment, and a number of screening assessments were published on the Department's web site, as well as on Citizen Space on the NIDirect web site. The consultation closed on 22 December.

Five responses were received and a list of respondents is at **Annex A**.

The Department is grateful to all respondents for their interest in this consultation. The responses were collated and carefully considered. This paper summarises the responses.

It will be for an incoming Minister to consider any next steps in response to this consultation.

Summary of Consultation Responses

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?

Yes	5
No	0

Although legislation differs in each jurisdiction, coroners in the rest of the UK and Ireland, or the Lord Advocate in Scotland, have jurisdiction to investigate a death abroad where a body has been repatriated. The law in Northern Ireland is different as coroners do not have such a power. This means that for citizens here, there is currently no mechanism for a coronial investigation where a loved one dies abroad and where that death is unexpected, unexplained, or occurred in suspicious circumstances.

Responses:

All five responses received were in favour of coroners in Northern Ireland being able to hold an inquest into a death that occurred abroad.

Sinn Féin noted the gap in legislation here, and supported change that would ensure that families have the same opportunity as exists in the rest of the UK and Ireland to seek information through a coronial process about the death of a loved one abroad following repatriation of a body.

The Alliance Party outlined a preference for a process here that is capable of providing answers to bereaved families where a death has occurred in unexpected, unexplained or suspicious circumstances.

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?

Yes	3
No	1
Did not answer	1

In the consultation, we outlined a number of issues that have the potential to limit the effectiveness of a coronial investigation into a death that occurs in another jurisdiction.

This included factors such as:

- coroners being unable to compel the production of documents, relevant materials, or summon witnesses from other jurisdictions;
- delays in undertaking a coronial inquest as a result of criminal or civil investigations in the jurisdiction abroad;
- the differences in how other jurisdictions investigate sudden deaths, both in terms of investigative processes, but also cultural responses;
- the difficulties in undertaking post-mortem examinations on repatriated bodies that have been embalmed, or where organs are missing.

These practical issues are not unique to Northern Ireland, and are challenges to coroners and diplomatic authorities in England and Wales, Scotland and Ireland where investigations into deaths abroad already take place. The operation of different legislative provisions means that we have an opportunity to learn from the experience of other jurisdictions and ensure that, whatever legislative solution is put in place in Northern Ireland, it is effective, fit for purpose, and supports families looking for answers into the deaths of their loved ones.

Responses:

Sinn Féin agreed that, while the practical issues outlined in the consultation may make coronial investigations more difficult, they should not be considered as a reason to deny bereaved families the possibility of a coronial investigation into the death of a loved one abroad. The Alliance Party also expressed this view, noting that the experience of the operation of provisions in the rest of the UK and Ireland can inform the way ahead here.

Sinn Féin also referred to the recruitment of expert pathologists as a particular resourcing issue, and suggested that the Department should consider how workforce capacity could be improved to accommodate a change in the legislation and an expected resultant increase in the number of post-mortems.

Forensic pathology is a highly specialist area of medicine, and there has been a longstanding issue in Northern Ireland with not only the recruitment, but also the retention of consultant forensic pathologists. The work undertaken by the State Pathologist's Department (SPD) is demand driven and due to existing vacancies across the SPD it is already in a challenging position managing an existing caseload without additional, potentially complex, examinations which would be required on repatriated bodies. Alternative arrangements, such as identifying and flying in suitably qualified forensic pathologists from other jurisdictions, or flying scientific test samples to other labs across the UK, have been found to be prohibitively expensive and impractical. A pilot exercise to outsource scientific testing to private laboratories actually increased delays. The issue of workforce capacity at the SPD will therefore require discussion with a Minister.

Any extension of jurisdiction in relation to deaths abroad would mean a further additional caseload on top of the existing significant workload of the Coroners Service and SPD. We estimate that, under any of the three options outlined in the consultation, there could be somewhere in the region of 300–420 deaths abroad that would be reported to the Coroners Service each year.

In terms of other issues not addressed in the consultation, KRW Law referred to Article 2 of the European Convention on Human Rights considerations. This relates to a procedural obligation to investigate a death where the state's positive duty to protect life is engaged. Cases where Article 2 ECHR is engaged in respect of a death abroad is likely to be extremely rare and only where UK state agents exercise control or authority over the deceased abroad. Outside of military operations, it is difficult to envisage the circumstances in which Article 2 would be engaged. That said, it cannot be ruled out that circumstances may emerge where such an investigation is required following repatriation.

There are, of course, significant difficulties in ensuring co-operation with other states, whether Article 2 ECHR is engaged or not. As an inquest is not a criminal process it does not benefit from mutual legal assistance and co-operation in criminal matters between contracting states under various international conventions. Some other

international conventions, such as the *Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters*, also do not apply to the coronial process. Coroners would, therefore, have to rely on responses provided to letters rogatory issued to the relevant national court via diplomatic channels. A recent inquest undertaken by the Cambridgeshire and Peterborough Coroner Service in England demonstrates that, where another jurisdiction does not co-operate with an inquest, or provides very limited information, it may significantly undermine the effectiveness of the inquest. In such cases, the result is that families are not provided with all the answers they seek into the circumstances of the death of a loved one.¹

Question 3: Should any legislation apply to deaths that occurred abroad prior to its commencement?

Yes	1
No	3
Did not answer	1

We asked for your views whether coroners' jurisdiction should be retrospective and include deaths abroad where the body was repatriated prior to commencing relevant legislative change. Commencing section 49(1) of the Coroners and Justice Act would not introduce time limits for inquests into deaths abroad, meaning that bodies of persons long deceased and currently lying in Northern Ireland would come within the scope of a coroner's power to hold an inquest. If one of the other options outlined in the consultation were implemented (i.e. the Attorney General for Northern acting as a gatekeeper, or the High Court directing an inquest on application by the Attorney General), then the Department could specifically legislate so that any widening of coroners' jurisdiction would not have retrospective effect.

Responses:

The Alliance Party suggested that investigating pre-commencement deaths risks creating significant practical challenges that may undermine the very operation of new legislative provisions.

¹ BBC, 'Rafaelle Tsakanika: Missing facts over woman's Qatar death – coroner' (7 December 2022). Available at <https://www.bbc.co.uk/news/uk-england-cambridgeshire-63889740>.

Sinn Féin suggested however that the Department should consider options that would avoid recently bereaved families being excluded from the opportunity to have an inquest, and consider the introduction of reasonable timeframes or exceptional circumstances that would allow for some investigations to take place within clearly defined parameters.

The Department recognises that, whatever practical challenges there may be in undertaking a coronial investigation, there may be some families who would welcome an investigation into a historic death abroad regardless and may, for a range of reasons, have been dissatisfied with the investigation in another jurisdiction. This is something that a Minister may wish to consider further.

Question 4: Which option outlined in this consultation do you prefer and why?

Commence Section 49(1) of the Coroners and Justice Act 2009	4
The Attorney General for Northern acting as a gatekeeper	1
The High Court to Direct an Inquest on Application by the Attorney General	0

The consultation document outlined three different options as to how coroners' jurisdiction may be widened to include investigations into deaths abroad.

Option 1 is to commence section 49(1) of the Coroners and Justice Act in its current form, amending section 13 of the Coroners Act (Northern Ireland) 1959. This would mean that a coroner who, after being informed that the body of a deceased person is 'lying' in Northern Ireland (rather than the current 'found'), may hold an inquest into that death.

Option 2 was largely based on the arrangements in Scotland and would involve the Attorney General exercising a 'gatekeeper' decision-making function, under which she could, where criteria are met, direct a coroner to undertake an inquest. The proposed criteria would include 'grounding criteria': 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. Where these grounding criteria have been met, further criteria would be applied. These are that 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.

Option 3 was based in principle on section 13 of the Coroners Act 1998 in England and Wales, which allows for a legal challenge to a coroner's decision not to order an inquest, or challenge the outcome of an inquest through an application by the Attorney General to the High Court. In Northern Ireland, this would involve the Attorney General, following a preliminary investigation by the Coroners Service, making a determination as to whether or not an application should be made to the High Court. 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.

Responses:

Sinn Féin favoured Option 1, which it stated would bring the law into line with the rest of Ireland, giving bereaved families across the island the same rights to access a coronial investigation into a death abroad.

The Commissioner-designate for Victims of Crime stated that all three options would address the current gap in the law here, but suggested that Option 1 would provide a quicker mechanism to address this gap. Without specific legal advice however, the Commissioner-designate did not provide a definitive opinion on which option would be the most effective way forward.

KRW Law expressed its view that Options 2 and 3 are unnecessary, and would only serve to increase the existing resource burdens on the justice system, particularly in for the Attorney General and the High Court.

The Alliance Party preferred Option 2, suggesting that it represents the clearest path to achieving meaningful outcomes for bereaved families, with fewer practical

challenges for those who enter into the process. The party also stated its belief that Option 1 was significantly flawed, with Option 3 requiring relatives to instruct legal representatives when bringing an application to the High Court, which may present concerns about access to justice. However, under option 3, it is for the Attorney General for Northern Ireland to make an application to the High Court rather than individual families. In England and Wales under section 13 of the Coroners Act 1998, the Attorney General may give standing to a third party by way of a *fiat* to make the application to the High Court.

Other issues

The Commissioner-designate for Victims of Crime raised two additional issues in her response to the consultation. The first related to support for families where there is a death abroad, particularly given the language barriers, differing legal processes, costs, and cultural differences. She suggested that the Department should consider commissioning a Homicide Service, akin to that which operates in the rest of the UK, which could work alongside the Foreign, Commonwealth and Development Office to support bereaved families.

The second issue relates to the often significant costs that can be incurred when a body is repatriated to Northern Ireland from another jurisdiction. The Commissioner-designate suggested that further consideration should be given as to who bears these costs and how a cost recovery scheme could operate if one were put in place. We note, however, that such costs should be recoverable as part of travel insurance policies and that organisations and charities, like the Kevin Bell Repatriation Trust, already help bereaved families to repatriate loved ones who have died abroad but have travelled without insurance.

Consultation respondents

The Alliance Party
The Commissioner for Victims of Crime
John Holbrook
KRW Law
Sinn Féin