

C O N F I D E N T I A L

P151/88

E. R.

RM/3565/88/SW

cc Mr Stephens
Mr Burns
Mr Miles
Mr A P Wilson
Mr Bell
Mr Shannon
Mr Harmer



Mr Hewitt

**BRIEFING THE IRISH ON INQUESTS - FORTHCOMING SENSITIVE HEARINGS AND
LEGISLATIVE PROVISIONS**

Together with Mr Wilson and Mr Harmer, you kindly briefed the Irish members of the Secretariat on 19 October about forthcoming sensitive inquests and the comparative legislative provisions for the holding of Coroners' inquests in Northern Ireland. You handed over the attached paper.

Timetable

2. You began by advising the Irish of the progress and likely timing in the various sensitive inquests, drawing on the note circulated to Ministers and copy recipients by Mr Harmer on 18 October. Questions raised by the Irish during this part of the proceedings included the basis of the appointment of Mr Elliott, the Belfast Coroner, to deal with the six 1982 deaths, whether the reason for the delay in the holding of the 1982 inquests had been the requirement to deal with all possible criminal proceedings arising from them first, and whether the Stalker/Sampson disciplinary proceedings might yet further delay the inquests.

Legislative Provisions

3. With Mr Wilson's assistance, we endeavoured to explain to the Irish the similarities and, where they existed, differences, between the provisions in the Acts and Rules relating to the hearing of

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Coroners' inquests in Northern Ireland and England and Wales. The Irish side in particular highlighted the fact that in Northern Ireland it does not appear to be open to the jury to bring in a verdict of unlawful killing, lawful killing or an open verdict. We made the point that there was in practice little difference since in both jurisdictions the proceedings at an inquest were directed to finding out how, when and where the deceased died. Moreover in neither, could the jury express a view on the issue of criminal or civil liability. The Irish side however remained of the view that the absence of a verdict was of great political importance, even though they were brought to appreciate that in the normal sequence of events, criminal (though not necessarily civil) proceedings would have been dealt with prior to the inquest. The Irish made some play of Lord Scarman's remarks in the television programme on 17 October when he had referred to the historic role of an inquest of allaying suspicions.

4. The Irish raised a number of other matters, including:

- a) the empanelling of jurors (and whether the legislation in Northern Ireland required a jury);
- b) the attendance of witnesses, including specifically those charged with criminal offences, and the extent to which any witnesses could be compelled to give evidence (where it appeared that the provisions in the United Kingdom differed from those in the Republic;
- c) whether Guardsman Holden would actually attend the McAnespie inquest;
- d) and the extent of assistance available to interested parties.

ACTION FOR LOB

5. You kindly undertook to come back to the Irish, probably through

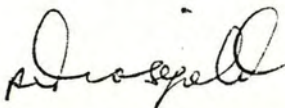
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myself, with further information on the following points:

- i) copies of the relevant legislation, including specifically the 1980 Coroners Rules,
- ii) the extent to which there was a requirement to have a jury at a Northern Ireland inquest,
- iii) the extent to which individual witnesses could be compelled to attend inquests, and then the nature of the discretion that might be available to them in answering questions put at the inquest.

[signed]



R C MASEFIELD

20 October 1988

3565/SW

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CORONERS' INQUESTS: A SUMMARY OF THE KEY POINTS OF THE LAW IN NORTHERN IRELAND AND THE DIFFERENCES IN PROCEDURE WITH THE LAW IN ENGLAND AND WALES

1. MAIN LEGISLATIVE PROVISIONS

Coroners' inquests in Northern Ireland are governed by the Coroners Act (Northern Ireland) 1959 and the Coroners' (Practice and Procedure) Rules (Northern Ireland) 1963 (as amended) ("The Northern Ireland Rules") made under the 1959 Act. The Judicature (Northern Ireland) Act 1978 transferred responsibility for the administration of coroners' courts in Northern Ireland (and the power to make statutory rules governing their practice and procedure) from The Secretary of State for Northern Ireland to the Lord Chancellor. In England and Wales the conduct of coroners' inquests is governed by the Coroners Acts, 1887 to 1926 (as amended) and the Coroners Rules 1984.

While there are certain differences in matters of procedural detail, the law on coroners inquests is broadly similar in England and Wales and Northern Ireland.

2. PURPOSE OF INQUEST

Rules 15 and 16 of the Northern Ireland Rules state;

Rule 15: "The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely

- (a) who the deceased was;
- (b) how, when and where the deceased came by his death;
- (c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death."

Rule 16:- "Neither the Coroner nor the jury shall express any

opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rules".

Rule 36 and 42 of the Coroners Rules 1984 ("the English Rules") state: Rule 36 (1) "The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely;

- (a) who the deceased was;
- (b) how, when and where the deceased came by his death;
- (c) the particulars for the time being required by the Registration Acts to be registered concerning the death.

(2) Neither the Coroner, nor the jury, shall express any opinion on any other matters".

Rule 42: "No verdict shall be framed in such a way as to determine any question of -

- (a) criminal liability on the part of a named person, or
- (b) civil liability."

The position, therefore, is that in England and Wales, as in Northern Ireland, the proceedings and evidence at an inquest must be directed to establishing who the deceased was and how, when and where he came by his death (Rule 15 of the Northern Ireland Rules and rule 36 of the English Rules). Similarly, neither the coroner nor a coroner's jury may express any opinion on questions of criminal or civil liability.

3. VERDICTS

In England and Wales, the Form of Verdict to be returned is

prescribed in Form 4 of Schedule 4 to the English Rules. The notes to that Form suggest a range of verdicts, but these are not compulsory. The range of suggested available verdicts includes lawful killing, unlawful killing and an open verdict.

In Northern Ireland the equivalent form in the Northern Ireland Rules does not contain a list of suggested verdicts. This form of findings was introduced in 1980 and was based on the recommendation of the Brodrick Report that "a change be effected in what the public expect of an inquest, away from the attribution of blame and towards a merely fact-finding inquiry." [Report of the Committee on Death Certification and Coroners, 1971. Cmnd 4810, para 16.43]. As already noted, the purpose of inquests in both jurisdictions is identical, is not concerned with opinion on matters of criminal liability and the form of verdict in NI is consistent with that purpose.

4. WITNESSES

In England and Wales, Rule 22 provides:

"22.-(1) No witness at an inquest shall be obliged to answer any question tending to incriminate himself.

(2) Where it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer."

The Northern Ireland rules contain a provision to virtually the same effect.

"9.-(1) No witness at an inquest shall be obliged to answer any question tending to incriminate himself or his spouse and, where it appears to the coroner that a witness has been asked such question, the coroner shall inform the witness that he may refuse to answer."

In addition to this privilege against self-incrimination which extends to all inquest witnesses in both jurisdictions, in NI, Rule 9(2) and (3) provide:

"9.-(2) Where a person is suspected of causing the death or has been charged or is likely to be charged with an offence relating to the death, he shall not be compelled to give evidence at the inquest.

(3) Where a person mentioned in paragraph (2) offers to give evidence the coroner shall inform him that he is not obliged to do so, and that such evidence may be subject to cross examination."

This rule which has been in force since 1963 is based on one of the main recommendations of the Wright Committee. "In any case in which questions of criminality are involved the laws of evidence should be observed: and where a person is suspected of causing the death he should not be called and put on oath unless he so desires, and should not be cross-examined" [para 231(6), Report of the Departmental Committee on Coroners, Cmnd 5070 (January 1936)].

5. ADJOURNMENTS

In both England and Wales and Northern Ireland, the coroner is obliged to delay the holding of a full inquest if the prosecuting authorities indicate that a person may be charged with murder, manslaughter or certain other specified offences. Thus it is recognised that the proceedings must be delayed until either any criminal proceedings are completed or the prosecuting authorities indicate that no criminal proceedings will be taken.

Where these circumstances pertain, the practice in England and Wales is for the coroner to formally open the inquest and immediately adjourn until the position concerning criminal proceedings becomes clear. In Northern Ireland, the practice is to delay the decision

whether to hold an inquest or not (which lies within the coroner's discretion) until the position is clarified. In both jurisdictions, once the position on criminal proceedings is known, the coroner will decide whether or not the inquest needs to be resumed (in England and Wales) or started (in Northern Ireland). If the coroner is satisfied that the full facts of the death have been explored in the course of the criminal proceedings and that there is no other purpose to be served by an inquest, he will not resume or commence the inquest, as the case may be.

Given the unprecedented volume of violent crimes in Northern Ireland, the consequent strain on police resources and the need to allow the Director of Public Prosecutions sufficient time in which to investigate the circumstances of the death, it is inevitable that there will be some delay associated with some inquests in Northern Ireland. Nevertheless Her Majesty's Coroners and the Northern Ireland Court Service are aware of the desirability of ensuring that inquests are held as soon as practicable.

6. ACCESS TO DOCUMENTS

Although there are slight differences in the administrative arrangements for inspection of relevant documents (and the supply of copies) by "properly interested persons" in the two jurisdictions, the fundamental position is the same.

The material rule in Northern Ireland is rule 38, which provides:

Rule 38 (1)

"A coroner may, on application and without a charge, permit any person who, in the opinion of the coroner, is a properly interested person to inspect any report of a post-mortem examination, or any notes of evidence or any document put in evidence at any inquest.

(2)

The Lord Chancellor may, with the concurrence of the Coroner, furnish to any properly interested person a copy (including a copy made by photography or other similar process) of all or part of any report of a post mortem examination, notes of evidence, or any document put in evidence at an inquest upon payment of a fee of £0.60p per sheet.

Under rule 38(1) the coroner has a discretion to allow the inspection of any post-mortem report, notes of evidence or any document put in evidence at an inquest by a "properly interested person". In practice this is likely to mean the persons entitled to be represented at an inquest. The coroner's discretion arises only after the documents have been received in evidence and "documents" will include all statements of witnesses, forensic and pathological reports, maps and photographs. Once the coroner has decided to allow inspection, he will normally also allow copies to be taken. Rule 38(2) applies after the conclusion of the inquest and when the relevant papers have been sent to the Lord Chancellor for safe-keeping.

7. CORONERS COUNSEL

In contentious cases, the police do not introduce the evidence as they would in other cases. In such cases, Counsel may be instructed by the Northern Ireland Court Service at the request of and on behalf of the coroner. Counsel will present evidence to the inquest and provide any other assistance requested by the coroner.

8. JURY SELECTION

The practice in both jurisdictions is to use the same method of jury selection for coroners juries as is used for the selection of juries in criminal trials. In effect this means that the necessary number

of jurors are taken in sequence from the Jury Panel for the areas in which the inquest will be held. The Jury Panel is compiled by random computer selection from the electoral register.

9. LEGAL AID

Legal aid is not available in either jurisdiction for representations in proceedings at coroners courts. However, legal advice and assistance falling short of representation is available subject to a means test under the "Green Form" Scheme.