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A Guide to Coroner Services for the Bereaved & Witnesses

His Majesty's Coroner for the Falkland Islands

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Why have I been given this Guide?

You have been given this Guide because someone close to you has died and their death has been reported to HM Coroner.

You may also have received this Guide if you have been called as a witness at an inquest.

His Majesty's Coroner (HM Coroner) is involved in the death because they need to make enquiries to find out what happened and how the person died.

For most people, the inquest process is new. Preparing for an inquest can be difficult, and you may find it hard to find your way through the legal processes on top of the distress caused by the death.

This Guide is not intended as a statement of the law and it does not cover every situation that might arise. There are some circumstances where the processes might be different and these are covered in section 7 of the Guide.

The Coroners Act 1988 (as applied to the Falkland Islands) is the main legislation that makes provision for the Coroner's service. In this Guide, we refer to this as 'the Act'.

If you have any questions at any point, you can always contact staff at the Coroner's office, who will be happy to answer your questions.

If you have any general queries about this booklet please email enquiries@courts.gov.fk

Section 1: Who is involved in the coroner process and what is my role?

Key Points

HM Coroner is a special judge who investigates unnatural or violent deaths, where the cause of death is unknown, or because the death took place in prison, police custody or resulted from an injury caused by a police officer in the purported execution of his duty.[1]

The investigation may include an inquest hearing.

HM Corner's role is to find out who died and how, when, and where they died. They cannot make a finding that someone is guilty of something or to blame for something.

As a relative or representative of the person who died you have the right to receive documents and evidence and to ask the witnesses relevant questions at the inquest hearing.

Your main contact with HM Coroner will be through the Coroner's office who will answer any questions you may have and keep you informed of progress.

[1] Section 8(3)(c) and 8(3)(d) of the Coroners Act 1988 do not apply to the Falkland Islands – see Schedule 2 of the Administration of Justice Ordinance 1949.

1.1 What does HM Coroner do?

HM Coroner investigates deaths that have been reported to them if they think that:

- the death was violent or unnatural;
- the cause of death is unknown; or,
- the person died in prison, police custody or died as a result of an injury caused by a police officer in the purported execution of his duty.

When a death is reported to HM Coroner, they:

- decide whether an investigation is needed; and if it is,
- investigate to establish the identity of the person who has died; how, when, and where they died; and any information they need to register the death; and,
- use information discovered during the investigation to help prevent other deaths.

1.2 What is HM Coroner's investigation?

HM Coroner's investigation is different from a criminal investigation. If HM Coroner investigates, it does not mean there is suspicion of a criminal act or of any wrong-doing.

HM Coroner's investigation is to establish who has died, and how, when, and where they died. In order to find this out, they may decide to hold an inquest, which is a fact-finding inquiry in a court. Sometimes the inquest may be heard with a jury. There is more information on when this might happen later in the Guide.

HM Coroner's findings may be critical of what happened but they cannot blame individuals or organisations or find them responsible for the death. That will be for the criminal or civil courts.

HM Coroner can also write a report to help prevent future deaths. They will send this report to the organisations involved in the death for them to take action on.

1.3 What is a Coroner's Officer?

Coroner's Officers are members of staff who work for HM Coroner and provide a link between HM Coroner and you as a bereaved person or witness.

Coroner's Officers work to get information from bereaved families, the police, doctors or other hospital staff. They will also get information and documents from those who may have been involved in the death, such as witnesses, or those HM Coroner decides is an 'interested person' in the investigation.

Most of the contact you will have will be with the Coroner's office. Even where HM Coroner is considering a matter you have raised, communication is still likely to be with the Coroner's Office because HM Coroner is a Judge.

1.5 What is an 'interested person'?

Rules 18 and 19 of the Coroner's Rules 1995 provide instruction to HM Coroner about who they are required to notify about the inquest. This includes a close relative or personal representative of the person who has died.

An interested person has certain rights during the investigation and inquest. This includes the right to be told about the dates of hearings and to receive documents from HM Coroner that may be used in the inquest.

The definition of interested person also includes a person involved with the death, a person appointed by a Government department to attend the inquest or provide evidence, and anyone else who HM Coroner thinks has a sufficient interest.

Other people and organisations can also be interested persons. You can find a full list of who is defined as an interested person in the Rules or by asking the Coroner's office.

1.6 What can I expect from the coroner's office during the investigation?

The team in the Coroner's office will:

- explain the role of HM Coroner and answer your questions;
- provide a contact in the Coroner's office throughout the investigation, including their phone number and/or email address;
- tell you about your rights and responsibilities;
- let you know when and where hearings will take place;
- give you documents and evidence that other interested persons have given HM Coroner (as far as possible);
- wherever possible, take account of your views, including your preferences, traditions and faith-based needs with regard to mourning, post-mortem and funerals;
- make reasonable adjustments to accommodate your needs if you have a disability;
- during a long investigation, the Coroner's Officer will regularly inform you of the progress of the investigation; and explain why HM Coroner intends to take no further action in your case, if relevant.

The Coroner's office or HM Coroner themselves cannot give you legal advice.

1.7 What is my role and what rights do I have as an interested person?

As an interested person you will have certain rights during HM Coroner's investigation. These include:

- if you wish, to view the body of the person who died and be told the details of any post-mortem that might take place;
- to receive information and other documents and evidence such as witness statements and expert reports obtained by HM Coroner which may be used at the inquest hearing. This will include evidence that other interested parties may have given to HM Coroner. (This is called 'disclosure');
- to be told the date of any hearings and to attend the inquest, and any pre-inquest hearings;
- if HM Coroner asks, to give a witness statement and give evidence if there is an inquest hearing;
- to ask other witnesses relevant questions at the inquest hearing, if you wish; and
- to bring someone to attend the inquest hearing with you for support.

The Coroner's office is there to help you answer any questions you may have and you should let them know if you have any concerns or questions about the death, investigation or inquest. You can help by:

- co-operating with the Coroner's office and promptly giving them any information you feel may be relevant to the investigation and inquest;
- wherever possible, name one individual as the 'next of kin' to communicate with the Coroner's office. This helps to make sure that information is shared promptly. (If more than one person needs to be a contact for HM Coroner – for example in divided families – please explain this to the Coroner's Officer and provide contact details.);
- telling the Coroner's office if things change e.g. if you move address or change your email or contact number, so you can be contacted promptly; and
- telling the Coroner's office as soon as possible if you have any specific needs, including religious needs, for the inquest, e.g. if you have a disability, or if English is not your first language, so that HM Coroner can take reasonable measures to accommodate your needs.

Section 2: Starting the Investigation – what will HM Coroner do?

Key Points

A death may be reported to HM Coroner by different people, such as the police, prison officers, the registrar of births and deaths, doctors or a hospital.

When a death is reported, HM Coroner first carries out enquiries to see if they can find the cause of death quickly. If they can, and the death was due to natural causes, in most cases HM Coroner has no further role.

If the cause of death is still not known or appears unnatural or violent, HM Coroner investigates to find out the cause of death. This may include a post-mortem.

If the cause of death is unknown or the death was violent or unnatural, HM Coroner needs to hold an inquest. Sometimes, HM Coroner may need to hold an inquest even if the death was natural and the cause is known. This will happen when the person died in prison.

HM Coroner will usually let you have the body for burial or cremation once they have carried out their first enquiries. You can make funeral arrangements once this has happened.

You cannot register the death (a legal requirement to tell the government that a person has died) until the cause of death is known. However, HM Coroner can give you an 'interim certificate of the fact of death' to help you deal with administrative matters. This is also sometimes called an interim death certificate.

2.1 Who reports the death to a coroner

You, or anyone else, may report the death to HM Coroner if you have concerns about it.

Doctors (including medical examiners), the police and the Registrar of Births and Deaths will report deaths to HM Coroner in some circumstances which include when the cause of death is unknown, the death was violent or unnatural or where no doctor is able to complete a death certificate or there are concerns about the cause of death.

In some cases, the police may also investigate the death, separately to HM Coroner, because of their general duties and powers. If this happens the police will share information with HM Coroner to avoid duplication.

2.2 What will HM Coroner do when a death is reported?

The Coroner's Officers will make enquiries to help HM Coroner decide whether to investigate the death, for example by talking to the doctor of the person who died.

If this confirms that the death was due to a natural illness or condition and that there are no unusual circumstances, HM Coroner will not need to investigate.

In some circumstances, early discussions will mean the doctor can sign a Medical Certificate of the Cause of Death. They will tell the Registrar of Births and Deaths of the decision. You will be informed when you are able to register the death.

In other situations, HM Coroner will issue a form which will tell the Registrar that the death was from natural causes and that they can register the death.

HM Coroner may decide that an investigation is needed where they believe the death was not from natural causes, or that it was natural but the cause cannot be determined. They will ask a specialist doctor (usually a pathologist), to carry out a post-mortem to help find out the cause of death. There is more detail on the post-mortem later in this Guide.

If the post-mortem confirms a natural cause death, there are no other concerns about the death and the person did not die in custody or any other form of state detention, HM Coroner will not need to investigate further.

If you have any knowledge or concerns about the how the death happened you should tell the Coroner's office as soon as possible. This information may be important for the medical investigation and tests that are carried out.

2.3 While HM Coroner is investigating will I be able to see the body?

You or your representative may sometimes be asked to formally identify the body. Normally, you can also see the body if you would like to. You should ask the Coroner's office in advance if you want to touch your loved one's body as this may not always be possible, for example, where evidence needs to be taken for use in criminal proceedings.

Sometimes, HM Coroner will suggest that you do not see the body if they feel that this may cause you distress. This will be explained to you sensitively so that you can decide whether you still want to see the body.

2.4 When will I get the body back so I can arrange the funeral?

Under the law, HM Coroner has temporary legal control of the body while they are carrying out their investigation. This legal control is important because it means that no other person or organisation can interfere with HM Coroner's independent investigation.

However, they will let you (if you are the next of kin) have the body for burial or cremation as soon as possible.

If HM Coroner cannot let you have the body within 28 days, they will tell you (if you are the next of kin) or the personal representative of the person who died, the reasons for the delay.

The Coroner's Officer will let you know when your loved one's body can be returned to you.

Procedures may vary where there is a criminal investigation into the death. There is more information on this later in the Guide.

Section 3: HM Coroner has asked for a post-mortem – what is going to happen?

Key Points

A post-mortem is a medical examination of the body after death in order to find out the cause of death.

Usually the post-mortem involves operating on the body to carry out an internal examination. Sometimes there can be a scan of the body instead.

You cannot attend the post-mortem yourself, but you can ask a doctor to attend for you – although the doctor may charge you for this.

The specialist doctor who conducts the post-mortem will write a report for HM Coroner. You can ask the Coroner's office for a copy.

Sometimes samples of blood or body tissue including organs will be kept after the body has been released if further tests and investigations are needed to determine the cause of death. You will be given options to decide what happens to the tissue that has been taken.

3.1 Why is a post-mortem being carried out?

HM Coroner may decide that they need to ask for a post-mortem to help find out the cause of death, for example where a doctor cannot certify the death. A post-mortem is usually carried out by a pathologist who is a doctor who specialises in examining body organs, tissues and fluids to make a medical diagnosis.

If the death involves a possible crime, the post-mortem will be a forensic post-mortem and will be carried out by a forensic pathologist who specialises in criminal matters.

The post-mortem is carried out as soon as possible after the death. The Coroner's office will let you know if there are any delays.

3.2 What will happen at the post-mortem – does it involve an internal examination?

HM Coroner will decide which type of post-mortem there should be.

Usually a post-mortem involves opening and examining the body internally. If you see the body after the post-mortem, it may have marks on it from the post-mortem.

3.3 Are there alternatives to an internal examination?

It may be possible to use other post-mortem techniques such as scanning by CT (computerised tomography) which does not physically damage the body. However, it may not be possible to use this method in each case.

HM Coroner may also decide to ask for toxicology (fluid samples such as blood and urine to identify drugs, alcohol or other harmful chemicals in the body) or histology (when samples are taken from organs and tested under a microscope). These tests and procedures may take place instead of or as well as a post-mortem or scan.

3.4 Can I stop a post-mortem taking place?

HM Coroner does not need your consent for a post-mortem, but they will explain why they consider that they need one.

Wherever possible, HM Coroner will take account of your faith and cultural needs and preferences. You should discuss these with the Coroner's office as soon as you can.

3.5 Can I attend the post-mortem?

You cannot attend the post-mortem yourself, but you can ask a doctor to represent you, although the doctor may charge you for this. You should tell HM Coroner if you want a doctor to attend so that they can tell you when and where the post-mortem will take place. The doctor should be allowed to attend unless it is impractical or would cause delay.

3.6 Will I get the body after the post-mortem?

If the post-mortem shows a natural cause of death, HM Coroner will not need to investigate any further. They will then return the body to you so that the funeral can take place.

If the death is violent or unnatural, or other circumstances apply, such as where the person died in state detention such as in prison, HM Coroner may decide that further investigation is needed. HM Coroner will still usually return the body to you at this point but occasionally this is not possible. If so, the Coroner's office will explain the arrangements to you.

3.7 Will any organs be retained after the post-mortem?

The pathologist may sometimes remove fluid samples, small pieces of tissue and, occasionally, organs from a body if this will help find the cause of death or the identity of the person who has died.

This may be carried out for the purposes of toxicology or histology tests which are made after the post-mortem has been completed and the body released to you for burial or cremation.

HM Coroner does not need your permission for samples to be removed from the body but if this happens, HM Coroner must tell you, and give you options so that you can decide what you want to happen when the tissue or organs are no longer needed for their investigation. The Coroner's Officer will tell you how long these tests are likely to take.

In exceptional cases, (for example, in murder cases) the tissues may have to be kept for longer as evidence. When the tissue or organs are no longer needed by HM Coroner, there are three options for what can happen. The material can be:

- disposed of by lawful means
- returned to you (if this is what you wanted, though this may result in a delay in the release of the body)
- stored for future use, such as for future review, education and training or research. This can only happen with appropriate consent – more information about this and who can give consent can be found on the Human Tissue Authority's website https://www.hta.gov.uk/guidance-public

3.8 What happens after the post-mortem is complete?

After the post-mortem, the pathologist or other specialist who conducted the examination will send a short report to HM Coroner explaining what they have found. This will set out what they did in the examination, any tissue and organs that were retained and why, and any further tests which are being carried out.

Once all the tests have been completed, the pathologist or other specialist will send HM Coroner a full report. You should ask the Coroner's office for a copy of this report if you want to see it.

Sometimes, a final report can take some weeks or months to complete because the examination is complex. This is often the case if there has been a forensic post-mortem, where organs need specialist examination, or if the examination has been carried out on an infant. The Coroner's office will inform you of any delays.

3.9 What if I don't agree with the report?

If you disagree with the post-mortem report, you should first discuss this with the Coroner's Officer. You may wish to consider arranging for your own post-mortem after HM Coroner has released the body to the funeral director. You would have to pay for this yourself. You can also ask HM Coroner if they will request a second post-mortem.

3.10 What will HM Coroner do with the report?

The post-mortem report forms part of the evidence that HM Coroner will consider as part of their investigation. If the post-mortem report shows a natural cause of death, HM Coroner may decide not to investigate further. However, it is HM Coroner who is ultimately responsible for the final decision on the cause of death, not the pathologist.

If there is an inquest, the post-mortem report will form part of the evidence.

Standards you can expect with a post-mortem

The Coroner's office will tell you when and where an examination will take place, wherever possible.

If you have any queries or concerns, you should let the Coroner's office know as soon as possible so that your wishes can be considered.

If HM Coroner decides not to ask for a post-mortem but you think there should be one, you should discuss this with the Coroner's office as soon as possible.

Section 4: There is going to be an inquest – will I need a lawyer?

Key Points

You do not need to have a lawyer to attend or participate in an inquest.

HM Coroner will help you understand what is happening at the inquest and why.

You may want to consider getting legal help for an inquest hearing if other interested persons are represented, for example if the state or a public body has legal representation at the inquest.

Depending on your financial circumstances, you may have a right to financial support from the government to pay for legal help to prepare for the inquest; or legal representation at the inquest.

Public funding ('legal aid') to have a lawyer represent you at an inquest hearing is only available in certain circumstances.

4.1 Do I need a lawyer?

An inquest is a fact-finding inquiry led by HM Coroner and is not like a criminal trial. You do not need a lawyer to attend or participate in the inquest including when you want to ask particular questions or you are giving evidence. HM Coroner will ensure that the process is fair and thorough, that you are able to participate and that you have a chance to ask relevant questions. There is more detail on the inquest process later in this Guide.

However, there may be times where you might wish to have legal advice or representation in preparing for or attending the inquest, for example where the state or public body has legal representation at the inquest because of the circumstances around the death.

You need to tell the Coroner's office if a lawyer will be representing you so that your lawyer receives information, such as hearing dates, documents, and expert reports.

4.2 Is Legal Aid available for my legal costs?

Public funding for early legal advice and assistance before the inquest hearing is known as civil advice and assistance, and is available for inquests depending on your financial circumstances. This can be used to help you to prepare questions that you want HM Coroner to ask other witnesses.

Public funding for legal representation at the inquest hearing is available subject to your financial circumstances. However, it is available for the parent, guardian or other person who has parental responsibility for a child whose death is the subject of an inquest, regardless of financial circumstances.

At some inquests, the state or a public body will count as interested persons. This may occur because the person died in circumstances in which the state or public body had a duty of care, for example where someone died in prison or a police station. In these cases, the inquest may become known as an 'Section 2' inquest. This refers to the state or public bodies' obligations to protect life under Section 2 of the Falkland Islands Constitution Order 2008. Legal Aid may be available in these circumstances in the interests of justice.

Section 5: An inquest is going to be held – what happens next?

Key Points

An inquest is a public court hearing for HM Coroner, sometimes with a jury, to decide who died, how, when and where the death happened.

In more complex cases or where there are many witnesses, there may be a pre-inquest review where HM Coroner sets out how the inquest will run, the main issues that will be considered, the documents that will be needed, what evidence will be heard, and what witnesses and experts will be called.

You may be asked to give evidence if you can give information about the death. You can still attend the inquest if you are not giving evidence.

You, or your legal representative where you have one, can ask the witnesses relevant questions. HM Coroner can help you with this and can ask the questions on your behalf.

A friend or family member can sit with you during the hearing to give you support.

There has to be a jury in some circumstances as set out in the Act, such as where the death happened in prison.

5.1 What is an inquest?

An inquest is a public court hearing held by HM Coroner to decide who died and how, when and where the death happened. It may be held with or without a jury, depending on the circumstances. (See below for details on jury inquests.) At the inquest HM Coroner will hear from witnesses and consider other evidence such as post-mortem or expert reports. Not all deaths which are investigated by HM Coroner need to have an inquest. You will be told when an inquest is required.

An inquest is different from other types of court hearing because there is no prosecution or defence and only HM Coroner can decide what evidence to hear. As the purpose of the inquest is only to discover the facts of the death HM Coroner (or jury) cannot find anyone criminally responsible for the death.

However, if evidence is found that suggests someone may be criminally responsible for the death, HM Coroner can pass the evidence to the police or the Prosecution Service. Similarly, HM Coroner (or jury) cannot find someone liable under civil law. These are matters for other courts.

5.2 When will the inquest take place?

The inquest hearing should take place within six months or as soon as reasonably possible after the death has been reported to HM Coroner. Sometimes it may take longer than six months to hold the inquest. This may be because other investigations into your loved one's death by other organisations have to take place first, for example by the police. The Coroner's office will keep you updated on progress.

5.3 How long will the inquest hearing last?

The length of the inquest hearing will depend on the individual case and how complex it is. Most inquest hearings are quite short and will not take longer than a few hours while some more complicated, such as where the state or public body has interested person status, and can last several weeks. The Coroner's Officer will be able to give you an idea of how long the inquest hearing in your case may last.

5.4 What will happen first?

Where an inquest is needed, HM Coroner must 'open' it as soon as possible. The hearing to open the inquest is usually very brief and will be held in public. This means that members of the public may attend and in some cases the press may also attend and report details. Usually, HM Coroner will then immediately adjourn or pause the inquest until a later date when they have all the information they need to resume the inquest hearing. For example, HM Coroner may decide expert reports are needed to help understand what contributed to the death. At the opening of the inquest, HM Coroner must set the dates of later hearings where possible.

For some inquests, however, where all the information is available already, the inquest can be opened and HM Coroner will hear the inquest and make conclusions in that hearing. The Coroner's office will tell you if this is the case.

5.5 What is a pre-inquest review?

Where the case is complex, HM Coroner may hold one or more hearings before the inquest itself, called pre-inquest reviews. Pre-inquest review hearings will deal with matters of procedure and other issues that need to be decided before the inquest hearing can take place. These may be things like the 'scope' of the inquest (what matters it will cover), what documents will be required and which witnesses and experts will give evidence.

HM Coroner will invite you to the pre-inquest review where you can give your views about what the inquest should consider. HM Coroner will consider your views but the decision is for HM Coroner. You do not have to attend the pre-inquest review if you do not want to. If you have a solicitor you may want them to attend either with you or instead of you.

Other interested persons may also attend with any legal representatives they may have.

5.6 Can I have copies of documents?

As an interested person you will be given copies of documents that HM Coroner or other witnesses will use in the inquest, for example, medical records, witness statements and expert reports – this is called 'disclosure'. You can also ask for copies to be sent to you at the pre-inquest review or you may be able to go to the Coroner's office to look at a document.

If you do not receive documents that you think you have a right to, you should speak to the Coroner's office as soon as possible. The Coroner's office will not charge you for copies of documents they give you before or during the inquest, but they may charge for copies they give you after the inquest.

For legal reasons, HM Coroner may not be able to give you every document or every part of a document that they have received or which they intend to use at the inquest. HM Coroner should explain why they have not given you a particular document or have only given you part of a document.

All inquest hearings must be recorded and you have a right to ask for a recording of proceedings.

Standards you can expect with an inquest

The Coroner's office will contact you regularly. In a long investigation they will contact you regularly to update you on the progress of the investigation (unless you only want to hear if there is any progress to report). You can also contact the Coroner's office for an update.

The Coroner's office must tell you the date and time of the inquest and where it will be held. The Coroner's office will take into account your views on the date and time of the inquest whenever possible.

If the date or location of the inquest has to be changed, the Coroner's office will let you know as soon as possible.

The Coroner's office can give you information about anyone else who may be attending the inquest and how you can take part.

If there is a pre-inquest review, the Coroner's office will tell you the date and time and where it will be held and why HM Coroner has decided to hold one.

If you are an interested person HM Coroner should have given you copies of relevant documents before the inquest.

5.7 Do I have to attend the inquest?

If you are asked to give evidence at the hearing you will be expected to attend. If you think this will be too difficult you should discuss it with the Coroner's office.

You do not need to attend an inquest if you are not giving evidence. This is entirely your decision.

Unless you are giving evidence at the time, you are free to leave and return to the hearing room at any point. HM Coroner will tell you if evidence may be distressing.

5.8 Can I bring someone along for support?

If you choose to attend the inquest you can bring someone with you such as a friend, a family member or someone from your community to give you support in the hearing.

5.9 Will there be a private place to wait in?

Every effort is made in to provide a private space for family members, but this will not always be possible. You should ask the Coroner's office if a space can be provided. Every effort will be made to find you a private area and to offer separate seating within the court room. However, it is possible that you will have contact with other witnesses who may have been involved in the death.

5.10 Who else will be at the inquest?

Members of the Coroner's office will help HM Coroner to make the hearing run smoothly.

Witnesses (for example a doctor, a police officer, a prison officer, or anyone present at the death) may be asked to attend to give evidence as may other interested persons. They may only attend when they actually give their evidence rather than for the whole of the hearing. There may also be lawyers representing other witnesses or interested persons.

Evidence can also be given by video link where necessary.

Inquest and pre-inquest hearings are public hearings so members of the public and the media have a right to attend.

In some cases, there may be a jury. Further information on this is given below

5.11 Who decides which witnesses to call to give evidence?

HM Coroner decides who should give evidence as a witness and the order in which witnesses give evidence. If you believe that you have evidence, or that a particular witness should be called, you should tell the Coroner's office well before the hearing. HM Coroner will then decide whether the evidence is relevant to their investigation.

5.12 I have been asked to give evidence, how does that happen?

You may be asked to give information about the person who has died or about the death. If you are giving evidence you will usually do so first, along with any other family members who are also giving evidence.

You must give evidence under oath or by affirming that you will tell the truth. You should tell the Coroner's office your faith (if you have one) so that you can be given the right faith book when you swear the oath.

HM Coroner will first ask you questions and may talk you through any written statement you have made. You may be asked questions by your legal representative (if you have one), and by the legal representatives of the other interested persons, including those from the state or public body. If there is a jury, jury members will also have the right to ask you any relevant questions, which may be asked through HM Coroner.

When everyone has finished asking questions, you may return to your seat and stay to listen to the rest of the hearing and other witnesses, if you want to. Some evidence will be read and the witness will not need to attend in person. This will be decided by HM Coroner before the hearing.

5.13 Can I ask witnesses questions?

If you are an interested person, once HM Coroner has asked their questions, you have a right to ask your questions. If you have chosen to instruct a legal representative you may prefer that they ask questions for you.

When thinking about the questions to ask, you should try to ask questions that will help decide the facts of the death.

HM Coroner will decide whether a question is relevant. They will tell you, or any interested person and their legal representatives, if they do not think a question is relevant.

HM Coroner will also warn a witness that they do not have to answer any question which might lead them to show that they could be guilty of a crime.

5.14 Will anything private or personal be said about the person who died?

As the inquest is to find out what happened, it is possible that evidence HM Coroner considers relevant will show private or personal information about the person who died. You can ask HM Coroner not to make things public if you think the information is not relevant, but it is for HM Coroner to decide. HM Coroner will be sensitive to your needs but they must by law decide what happened, so personal information may be heard at the hearing.

5.15 When will there be a jury?

Most inquests are held without a jury, but there are times when the law says that a jury must be called. This includes:

- if the death happened in prison (whether or not there is a natural cause of death),
- if the death happened in police custody, or
- if the death happened as a result of an injury caused by a police officer in the purported execution of his duty.

5.16 What does the jury do?

In an inquest heard with a jury, the jury decides the facts of the case and answers the questions of how the person died and the cause of death. Like HM Coroner, the jury cannot blame someone for the death. HM Coroner will decide matters of law and procedure, for example, which witnesses to call.

Section 6: At the end of the inquest?

Key Points

When HM Coroner has heard all the evidence, they will give a summary of the main points.

You or your legal representative (if you have one) cannot address HM Coroner on the facts of the case.

If you have a legal representative, they have a right to address HM Coroner on what the law says on possible conclusions HM Coroner or jury could make.

HM Coroner, or the jury if there is one, will then give their conclusion on who died, how, when and where the death happened.

6.1 What happens after all the witnesses have given evidence?

After all the witnesses have given their evidence, HM Coroner will summarise it all – this is called 'summing up'. Unlike in a criminal trial, legal representatives do not summarise the evidence or make speeches on what they think the outcome of the inquest should be. However, legal representatives have a right to address HM Coroner on the law on possible conclusions, for example what other legal cases have said about what the law should be. If there is a jury HM Coroner will speak to the jury on how they should apply the law when making their decision.

6.2 When does HM Coroner make the decision as to what happened?

After summing up, HM Coroner, or a jury if there is one, will give their conclusion. This is made up of the legal decision of what happened and the cause of death and 'findings' such as what facts contributed to the death.

Before HM Coroner gives their conclusion, they may break off the hearing for a short while to consider what it will be. If there is a jury, the jury members will leave the hearing room to discuss the case in private and agree what their conclusions are. The jury may ask HM Coroner questions if they are unclear about something but there will be no further evidence. HM Coroner may decide which conclusions are open to the jury.

Once HM Coroner or the jury have decided what the conclusion is, they will return to the hearing room to tell HM Coroner their decision. This is the end of the inquest hearing.

An Inquisition is prepared by the Coroner's office and sent to the Registrar for Births and Deaths.

6.3 What conclusions could be made?

When giving the cause of death, HM Coroner or jury may make one of the following conclusions:

- accidental death or misadventure;
- alcohol/drug related;
- industrial disease;
- lawful/unlawful killing – the meaning of these terms is set out in law;
- natural causes;
- road traffic collision;
- stillbirth;
- suicide;
- open, this is used when there is not enough evidence to decide any of the other conclusions.

HM Coroner or the jury may give further details explaining their reasons for coming to a particular conclusion.

Alternatively, or sometimes in addition, HM Coroner or the jury may make a brief 'narrative' conclusion which sets out the facts surrounding the death in more detail and explains the reasons for the decision. A narrative conclusion is likely to be given when the case is more complicated as it can give a longer explanation of the reasons for the decision and what the important issues are.

It is possible to challenge HM Coroner's conclusion. You can find more detail on this later in the Guide.

6.4 What if future deaths may be prevented?

Sometimes HM Coroner's investigation will show that something could be done to prevent other deaths. If HM Coroner considers this to be the case HM Coroner may report this in writing to the person or authority who may have power to take such action to prevent future deaths. This is called a 'Rule 39 report'.

Section 7: Circumstances in which the inquest process may be different

Key Points

There are some circumstances when the process may be different. These include:

- where the person died in prison, police custody or died as a result of an injury caused by a police officer in the purported execution of his duty,
- Where there is a criminal investigation.
- Where there is another investigation such as a public inquiry investigating the death.

7.1 My relative died in police custody or in prison – will things be done differently?

When a death happened in prison or police custody there must be an inquest with a jury.

In cases where the state or public body might have had obligations relating to the circumstances around a death, including where a person has died in police custody or in prison, the inquest may become what is known as an 'section 2' inquest. This refers to the state's obligations to protect life under section 2 of the Falkland Islands Constitution Order (see also Article 2 of the ECHR).

The inquest process is likely to look and feel the same as other inquests, but HM Coroner or jury will be required to investigate more widely into some of the factual circumstances of the death.

In such cases, the state or public body may have interested person status and may have legal representation at the inquest. If so, you may want legal representation. You may be able to get legal aid if the inquest is considered an 'section 2' inquest – there are further details on legal representation and legal aid elsewhere this Guide.

7.2 What happens when there is a criminal investigation into a death?

Where there is a criminal investigation into the death, the criminal defence team may ask for a second post-mortem (although they do not have an automatic right to one).

7.3 Why has the investigation (or inquest) been suspended?

Where someone has been charged with a criminal offence such as murder or manslaughter, HM Coroner must suspend their investigation or inquest until the criminal trial is over.

The inquest may also be suspended if there is a public inquiry which is set up to investigate the cause of death.

When the criminal trial or public inquiry is over, HM Coroner will decide whether to continue their investigation or inquest. If, for example, all the facts about the death have come out at the trial or inquiry, it is not usually necessary to continue the investigation or inquest.

If the investigation or inquest is continued, the finding of the cause of death must agree with the outcome of the criminal trial or the public inquiry. The coroner's office will be able to provide more information on the process.

Section 8: Challenging HM Coroner's decision

There are two ways to challenge a decision by HM Coroner;

1. Section 13 Coroners Act 1988;
2. Judicial Review

8.1 Section 13 Coroners Act 1988

An application may be made under this section if HM Coroner:

- Refuses to hold an inquest;
- Has held an inquest which was unsatisfactory because:
    - of fraud
    - Rejection of evidence
    - Irregularity of proceedings; or
    - Insufficiency of inquiry
- Or, they have held an inquest but new evidence or facts have become known since the inquest was concluded.

Any application under section 13 will be determined by the Supreme Court. To make an application under this section you will need to submit an affidavit to the Attorney General. The affidavit should set out why you think the Supreme Court should hear your application. You should attach any relevant evidence, transcript or information to your affidavit ('exhibits'). The Attorney General will review your affidavit. If the Attorney General gives permission, either yourself or the Attorney General will be able to bring your application to the Supreme Court for hearing. If the Attorney General refuses permission, that is the end of the matter unless further information becomes available. The decision of the Attorney General to grant or refuse permission is not susceptible to Judicial Review but, their decision does not affect your ability to bring your concerns to the court via Judicial Review.

The Attorney General will only consider your affidavit and exhibits. There is no requirement for HM Coroner, or anyone else, to be notified that you have submitted an affidavit for consideration.

If your application goes before the Supreme Court, the court has the authority to:

- Order an inquest take place in the first place; or
- Quash the inquisition from the original inquest and order a fresh inquest take place by the same or different Coroner.

The Supreme Court will not hear the Inquest.

8.2 Judicial Review

An application for Judicial Review may be brought before the Supreme Court if a decision of HM Coroner is:

- *Ultra Vires* (outside of HM Coroner's legal jurisdiction); and/or
- Made in a way which is flawed; and/or
- Irrational

Before the Supreme Court can hear an application for Judicial Review, you will need to seek leave of the court to commence the application. This can be done by filing an application for leave (form 86A) with the Registrar of the Supreme Court within 3 months of the grounds for applying arising.

It's important to remember that a Judicial Review is not an appeal. The Supreme Court will not rehear the original matter again. Instead, the focus will be upon how HM Coroner has conducted themselves and reached their decision. It is not within the power of Supreme Court, when hearing a Judicial Review, to substitute the decision of HM Coroner with its own. Instead it may:

- Grant an injunction prohibiting HM Coroner from doing something (e.g. releasing evidence)
- Order HM Coroner to hold an inquest (if there hasn't been an inquest;
- Quash (when a decision is made void) the inquisition and order a new inquest is held;
- Quash the inquisition but send it back to HM Coroner for a fresh decision (without hold a new inquest);
- Amend the inquisition without recourse to a fresh decision or fresh hearing;
- Order costs to be paid by HM Coroner or any other party to proceedings.

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