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Draft Coroners Bill

The Joint Committee on Human Rights is considering the human rights compatibility of the Draft Coroners Bill. We are aware that this Bill has been subject to detailed pre-legislative scrutiny by the House of Commons Constitutional Affairs Committee. Although the Government had expressed a commitment to bringing forward a Coroners Bill in this parliamentary session, there was no reference to a Coroners Bill made in the Queen's Speech, nor is there any reference to a Bill on the website of the Leader of the House. The Government have indicated to the Committee of Ministers that, in relation to the enforcement of the implementation of general measures to meet the United Kingdom's procedural obligations under Article 2 ECHR, that legislative measures to reform Coroners are underway. The Committee of Ministers Deputies are awaiting further information from the United Kingdom on the progress of these reforms.¹

- 1. We would be grateful if you could update us on the Government's progress on the draft Bill, and whether it is likely that the Government will continue with its proposed reforms in this parliamentary session. If not, why not?**

Having undertaken initial scrutiny of the draft Bill, we recognise that the Bill clearly has the potential to be a human rights enhancing measure; by increasing the effectiveness of Coroners' investigations and addressing the requirement for an effective investigation into deaths which engage the State's responsibility to protect individuals' right to life (as guaranteed by Article 2 ECHR). However, we would be grateful if you could provide a fuller explanation of the Government's view that the proposals in the Bill are compatible with the Convention rights guaranteed by the Human Rights Act 1998, in the following respects.

(1) Reform of death investigation: Article 2 ECHR

There are a number of developments in the Bill which have the potential to enhance the ability of Coroners' investigations to satisfy the requirements of Article 2 ECHR for a full and effective investigation, including, a) widening the statutory duty to conduct investigations, including a broad duty to conduct investigations into the death

¹ Main Cases pending supervision, database, presented 17 October 2006 to the Committee of Ministers; Execution of *Edwards v United Kingdom* App 46477/99 (page 218). We note that the Committee of Ministers Deputies have reopened their consideration of the implementation of this judgment and are awaiting further information.
http://www.coe.int/t/e/human_rights/execution/02_documents/PPcasesExecution_Nov%202006.pdf

of anyone “lawfully detained in custody”, as opposed to the current duty to investigate deaths “in prison”² and b) the introduction of new rights of participation and appeal for bereaved families and other “interested parties”. We welcome the proposed introduction of a Charter for bereaved families, a policy objective which our predecessor Committee praised in its report into deaths in custody (2004-05, Third Report, para 295).

The draft Explanatory Notes accept that a significant number of the Bill’s clauses engage Article 2 ECHR and the obligation to conduct an effective investigation. The Government explain that certain parts of the Bill “are designed to discharge the obligation to conduct an effective investigation”.³ However, the draft Explanatory Notes do not explain why the Government is persuaded that the provisions of the Bill discharge that obligation effectively. We hope that a full explanation of the human rights impact of the proposals in the Coroners Bill will be provided to the Committee, including an explanation of those proposals which the Government considers enhance the United Kingdom’s ability to meet the procedural requirements of Article 2 ECHR, and containing an explanation of the Government’s reasons for its assessment.

Coroners’ Investigations: Recommendations of the Coroner

The draft Bill makes provision similar to that already established under Rule 43 of the Coroners Rules 1984. Under Clause 12(2), where a coroner believes, as a result of an investigation, that action should be taken to prevent similar fatalities, the coroner *may* report the matter both to a person who has power to take such action and to the Chief Coroner. There is no power for the coroner to compel the person to take action or to report back as to what action, if any, has been taken. The Constitutional Affairs Committee, in their report, recommended that the Government take a bolder approach to the Coroners’ preventative role in public health and safety matters (see paragraph 211). Liberty have submitted that the Coroner should be required to make recommendations at the end of every inquest and that these should be centrally recorded and monitored.⁴ Article 2(1) ECHR requires the state to take appropriate steps to safeguard the lives of those within their jurisdiction. The Court will take into consideration the effectiveness of any preventative steps taken by the State in their consideration of the compatibility of any State acts or omissions in respect of a death which engages Article 2 ECHR.

2. Has the Government any plans to enhance the powers of the Chief Coroner to act on recommendations made by coroners with a view to identifying patterns in deaths which require investigation and preventing similar fatalities, in light of the recommendations of the Constitutional Affairs Committee?

Coroners’ Investigations: Evidence

For example, Clause 43(2) would give the Lord Chancellor a wide power to limit the power of the Coroner to call certain evidence or require the production of certain documents. Although the Explanatory Notes explain that this power would “only be

² Clause 1. See Coroners Act 1988, Section 8(1).

³ Ibid, page 116

⁴ “The Draft Coroners Bill”, Liberty Briefing, para 12.

exercised in a way that is compatible with ECHR obligations”, the Committee has previously expressed their concern where issues which may raise significant human rights issues are left to secondary legislation. It is clear from the case law of the European Court of Human Rights that the effectiveness of an individual investigation for the purposes of Article 2 ECHR, where one is required, will be significantly affected by the scope of the evidence taken or heard, and any relevant procedural limitations.⁵

- 3. What has persuaded the Government that it is appropriate to grant the Lord Chancellor a wide power to direct the Coroners’ treatment of evidence?**
- 4. In what circumstances do the Government consider that this power could be exercised in a case engaging Article 2 ECHR, without unduly restricting effectiveness of the Coroner’s investigation for the purposes of Article 2 ECHR?**

Suspension of Coroners Inquests

Clause 22 provides that where certain inquests are suspended, it will be within the discretion of a senior Coroner to resume the inquest, if he thinks there is “sufficient reason” for doing so. Although the Explanatory Notes explain that “where the proceedings for which his investigation was suspended have not met the State’s ECHR obligations, that would provide a good reason for resuming the inquest”, Liberty are concerned that if an inquest is suspended when a criminal prosecution begins, there is a risk that inquests may not be resumed even where a criminal prosecution fails, or where the substance of a trial does not adequately meet Article 2 ECHR standards.⁶

- 5. Has the Government considered how to ensure that Coroners will, in practice, be free to reopen suspended investigations in circumstances where a prosecution or other investigation has not met the UK’s obligation to conduct an effective inquiry into a death?**
 - a. Has the Government considered Liberty’s suggestion that there should be a presumption, on the face of the Bill, that where an investigation which triggers the suspension of an inquiry fails to satisfy the requirements of Article 2 ECHR (and fails to identify by what means and in what circumstances a person came by their death) that the inquest will automatically resume?**
 - b. Does the Government intend to provide guidance to Coroners which emphasises the role which Coroners will play in ensuring that the UK’s obligations under Article 2 ECHR are met?**

Clause 19 requires the Coroner to suspend an inquest where the Lord Chancellor informs him that the circumstances of an individual’s death will be considered in the course of a public inquiry pursuant to the Inquiries Act 2005, unless there are

⁵ *Jordan v United Kingdom* (2003) 37 EHRR 2, para 141 (Failure to disclose witness statements and/or take evidence from various members of the security forces in breach of Article 2 ECHR)

⁶ Liberty, Briefing on Draft Coroners Bill, September 2006

“exceptional reasons” for not doing so. This provision mirrors amendments to the Coroners Act 1988 made to address concerns about overlapping inquiries, and to avoid any conflict or duplication with public inquiries.⁷ The Explanatory Notes do not explain whether the Coroner would be able to refuse to suspend an investigation where it was his view that the Inquiries Act inquiry would not be adequate for the purposes of Article 2 ECHR, or whether the Coroner would have the power to reinstate his investigation where he thought that the scope of the inquiry conducted was not adequate to meet the need for a Convention compliant investigation. In their Report on the Inquiries Bill, the Committee concluded that there was a risk that an inquiry held under the Inquiries Act would not be sufficiently independent to satisfy the requirements of Article 2 ECHR. The Committee were particularly concerned that the power of the Minister to issue “restriction notices” which could limit the scope of an inquiry and the power of the Minister to withhold publication of inquiry reports in the “public interest” would limit the institutional independence and effectiveness of any inquiry.⁸

6. Does the Government consider that a reasonable belief that the inquiry proposed by the Lord Chancellor under the Inquiries Act 2005 was unlikely to meet the requirements of Article 2 ECHR, because the scope of that inquiry was restricted, or because there was a risk that the inquiry would not be considered independent, would be an “exceptional reason” which would justify a refusal to suspend an investigation?

Clause 30(1) provides that the Coroner may issue directions prohibiting the publication of information gathered in the course of an investigation. Any Article 2 ECHR compliant investigation must have an adequate degree of transparency to ensure that it is open to public scrutiny to a degree sufficient to provide accountability in the circumstances of the case. The Government considers that “this power is justified, in that it seeks to strike a balance between rights under Articles 8 and 10”. Clause 41 confirms that, subject to Coroners Rules, inquests are to be held in public. The Explanatory Notes provide that “the Coroners Rules...will set out the grounds on which the public may be excluded from inquests” (see Clause 67).

7. What has persuaded the Government that the discretion afforded to the Coroner under Clause 30(1), and to the Lord Chancellor under Clause 67, is adequately defined to ensure that public scrutiny is not circumscribed arbitrarily or inappropriately and that the provisions in the Bill which permit the restricted publication of information relating to an investigation are compatible with Article 2 ECHR?

(2) Legal assistance for bereaved families

Next of kin must be involved in any Convention compliant death investigation to the extent “necessary to safeguard [their] legitimate interest”. This may include a positive obligation on the State to provide legal aid.⁹ The Luce Report (“*Death Certification in England, Wales and Northern Ireland: The Report of a Fundamental*

⁷ Coroners Act 1988, Section 17A, inserted by Access to Justice Act 1999, s71(1)

⁸ 2004-05, Eighth Report, 3.1-3.18 (See also 2004-05, Fourth Report)

⁹ *Jordan v United Kingdom* (2003) 37 EHRR 2, para 109; *R (Khan) v Secretary of State for Health* [2004] 1 WLR 971

Review 2003) recommended that funding for legal representation should be available to families in all Coroners' cases where a public authority is also legally represented. In our predecessor Committee's Report on Deaths in Custody, it recommended that, at least in relation to deaths in custody, funding should be made available to all next of kin participating in an investigation into the death of their family member.¹⁰ At present, families can apply for funding based on significant public interest. However, the Committee has previously heard evidence that many families involved in cases involving deaths in custody have had to fund their own involvement in inquests.¹¹

8. What has persuaded the Government that the current provision for legal funding for bereaved families is adequate to ensure that their participation in Coroners' investigations is effective for the purposes of the procedural requirements of Article 2 ECHR?

(3) Reporting Restrictions

The Committee is considering whether the reporting restrictions which may be imposed by the Coroner pursuant to Clause 30 strike an appropriate balance between the rights of the deceased person's family under Article 8 ECHR and the rights of the press under Article 10 ECHR. This is a new power. The draft Explanatory Notes explain that the department considers that this power is justified, "in that it seeks to strike a balance between rights under Articles 8 and 10".

9. What has persuaded the Government that the power to impose reporting restrictions provided by the Bill is proportionate to the need to protect bereaved families' right to respect for their private life?

10. Will members of the press be considered "interested persons" for the purposes of asking the senior coroner to vary a direction imposing reporting restrictions, or bringing an appeal against such a direction?

(4) Powers of Search and Seizure

The Committee is considering whether the powers of search and seizure granted to Coroners by the Bill contain adequate safeguards for the protection of individual rights under Articles 6 and 8 ECHR (Clauses 50 – 51). These are relatively broad powers. They will extend to all premises, including residential premises. It appears that there are a number of safeguards which generally accompany intrusive rights of search and seizure in the United Kingdom which are not, as yet, reflected on the face of the Bill. For example a) the draft Bill grants powers of search and seizure to the Senior Coroner, as an entity, without any guarantee as to the identity of the individual conducting the search. It is important that any search is in fact conducted only by an authorised person with an adequate degree of training to exercise this intrusive power; b) it provides no procedure for dealing with the treatment or return of seized materials, and c) it provides no means of redress for those aggrieved by the conduct of any search.

¹⁰ 2004-05, Third Report, at paras 307-309.

¹¹ Ibid.

Have the Government considered whether there are adequate safeguards on the face of the draft Bill to ensure that any interference with the right to respect for the home and private life and the right to the peaceful enjoyment of possessions is proportionate? Have the Government considered incorporating safeguards, similar to those set out in Part II of the Police and Criminal Evidence Act 1984, and if not, why not?

I would be grateful for your response by 19 January 2006.

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