

Chief Coroner submission of 15 December 2022

PE1911/II: Review of Human Tissue (Scotland) Act as it relates to post-mortems

I refer to your letter dated 20 September 2022, which unfortunately was not received by me until recently; my apologies for the delay in responding.

I am the Chief Coroner of England and Wales, not part of the Coroner Society of England and Wales. If you wish to contact the Society, here is a link to their contact page: <https://www.coronersociety.org.uk/contact/>.

I understand that you are seeking information about the practical operation of the human tissue legislation in this jurisdiction, and to know more about the costs associated with body scanners, how often they are used in place of a full post-mortem, and what training might be required. As a judge, I cannot comment on the merits of any policy, but am able to provide information on the operation of the coroner service in England and Wales, which might help you when considering the petition.

The Human Tissue Act 2004 covers England, Wales and Northern Ireland, and regulates activities concerning the removal, storage, use and disposal of human tissue. The Coroners (Investigations) Regulations 2013 also contain provisions relating to the retention of material from a post-mortem examination ('PME'). The way these provisions relate to coroners are as follows:

1. Coroners' post-mortem examinations and the storage of tissue removed during post-mortem examinations do not require consent from the family of the deceased. When the coroner's authority ends, consent under the Act is required for storage or use of tissue for a scheduled purpose.
2. A pathologist who retains material from a PME that relates to the cause of death or identity of the deceased must tell the coroner in writing what is being retained or preserved and why (NB/ where material does not relate to the cause of death or identity of the

deceased, the coroner is not involved, but if the pathologist retains any such material they must have a different power to do so, or it will be unlawful).

3. Coroners must notify the pathologist of the period for which they will need the material to be preserved/retained for their coronial functions. The decision that material is no longer needed is akin to the decision to release a body for burial or cremation; it will depend on whether further investigations are needed.
4. Where the coroner receives a request from a prosecuting authority, Provost Marshal or Director of Service Prosecutions to suspend an investigation, or they become aware that a person has been charged with an offence in relation to the death of the deceased, the coroner must tell the police or prosecuting authority how long they need material to be preserved for their coronial functions. Similarly, where there is to be a public inquiry, the coroner must tell the chairman of the inquiry.
5. The coroner may from time to time vary the retention period of material, but must notify the variation to both the pathologist and any police, prosecuting authority or chairman notified of the original period.
6. The coroner must also notify, where known, the next of kin or personal representative of the deceased, and any other relative who has notified the coroner of their desire to be represented at the PME, (i) that material is being preserved or retained, (ii) the periods for which it is being retained, and (iii) the options for dealing with it once the periods have expired. These options are (a) disposal by burial, cremation or other lawful disposal, (b) return to one of the next of kin, personal representative, or any other relative who has notified the coroner of their desire to be represented at the examination, or (c) retention for medical research or other purposes in accordance with the Human Tissue Act 2004, with the consent of one of the next of kin, personal representative, or any other relative who has notified the coroner of their desire to be represented at the examination.

7. There can be practical difficulties with this, as the deceased's relatives may not make a decision, or may not agree. I understand that the Human Tissue Authority's Code of Practice on Disposal provides that unless consent is given, tissue should be disposed of in a lawful manner within three months of the expiry of the coroner's authority.
8. Where material is being retained, but the body has been released by the coroner, families have to decide whether to proceed with the funeral or wait until all tissue (where possible) is repatriated.
9. It is important that families understand the implications of their decisions on dealing with the material. In our system, such information would usually come from coroner's officers, who should be trained to explain the relevant considerations to bereaved families when they notify them of their options.
10. I cannot comment on what additional costs might arise, as they are not a matter for the coroner, and they would depend on the circumstances of the case and the wishes of the bereaved family. In cases where there was likely to be an additional cost (e.g. if a body was released by the coroner, but the family wanted it to be stored until all the retained material could be returned to it), I would expect coroner's officers to draw that to the families' attention.

With regard to CT scanning, as coroner areas are locally-funded and resourced, there is a variation both in access to scanning facilities and the types of cases that are scanned. There is Chief Coroner guidance on CT scanning here: <https://www.judiciary.uk/guidance-and-resources/chief-coroners-guidance-no-1-the-use-of-post-mortem-imaging-adults/>. If you would like to speak to a few coroners about their use of CT scanning, I would be happy to put you in touch with Senior Coroners who have good access to scanning facilities.