



Health and Social  
Care Board

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15 September 2014

Dear Ms Darrah

**Re: Justice Bill 2014: Delegated Powers and Planned Amendments**

Thank you for the opportunity to respond to these proposals. In general, the Health and Social Care Board (HSCB) considers most of the proposals to be both necessary and desirable and as such are to be welcomed. Our response addresses each proposal in turn and, where the HSCB cannot fully support an amendment, the reasons for that are set out in some detail.

**Part 4: Victims and Witnesses – Sharing Victim and Witness Information**

The HSCB is supportive of this amendment and considers it has the potential to be of particular benefit to vulnerable children and adults.

**Part 5: Criminal records – Publication of the Code of Practice**

The HSCB supports this proposed amendment.

**Part 5: Criminal records – Exchange of Information between Access NI and Disclosure and Barring Service for barring purposes**

The HSCB supports this amendment and considers that it has the potential to have an immediate and positive impact on the

wellbeing of vulnerable people by the provision of additional safeguards against abuse by those in paid care positions.

**Part 5: Criminal records – review of criminal record certificates where convictions or disposals have not been filtered**

The HSCB supports this proposal.

**Part 8: Miscellaneous – Duty of solicitor to advise client about early guilty pleas**

The HSCB supports this proposal and considers it has the potential to have a positive benefit on frail or vulnerable people who might otherwise be unnecessarily subjected to the emotional and mental strain of preparing to testify in a court.

**Part 8: Miscellaneous – Defence Access to Premises**

The HSCB supports this proposed amendment.

**Provision of information to Attorney General for Purposes of Section 14 of the Coroners Act (Northern Ireland) 1959**

The HSCB is unable to support this proposal.

Section 14 of the Coroners Act (Northern Ireland) 1959 reads as follows:

“(1) Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person, and that coroner shall proceed to conduct an inquest in accordance with the provisions of this Act (and as if, not being the coroner for the district in which the death occurred, he were such coroner) whether or not he or any other coroner has viewed the body, made any inquiry or investigation, held any inquest into or done any other act in connection with the death.

(2) Subsection (3) applies in relation to the death of a person if the Secretary of State certifies that there is information relevant to the question of whether a direction should be given under this section

in relation to the death which is or includes information the disclosure of which may be against the interests of national security.

(3) The functions of the Attorney General under this section are to be exercised by the Advocate General for Northern Ireland instead.”

This section confers a general authority on the Attorney General to direct a Coroner to conduct an Inquest in any case where he has reason to believe that the Deceased died in such circumstances which in his opinion make the holding of an Inquest advisable. The coroner is required to comply with such a direction but a direction from the Attorney cannot enlarge the jurisdiction of the coroner under the 1959 Act. The power may be exercised whether or not the Coroner has taken any action in relation to the holding of an Inquest. There is no equivalent provision in England and Wales although a similar provision exists in the Republic of Ireland. The key phrases of the provision are “reason to believe” and “the circumstances of the death” and the key word is “advisable”. In order to exercise his power all that is required is for the Attorney General to have a reason to believe that the circumstances of the death make the holding of an Inquest advisable. The use of these words and phrases seem to import a wide degree of discretion and a low threshold for taking action and the wording certainly does not envisage the Attorney General carrying out a significant investigative role in order to determine whether the holding of an Inquest is advisable.

When this provision was enacted it was envisaged that the discretionary power contained in Section 14 would be used sparingly and only in the most exceptional cases. See Senate Debates (Northern Ireland) vol 43, col 668 (3 November, 1959) (Minister of Home Affairs). It would clearly run contrary to the will and intention of Parliament if this provision was to be interpreted as conferring upon the Attorney General an investigatory function and role usurping and supplanting the function and role of the Coroners Service in Northern Ireland.

If it is accepted that the correct interpretation of Section 14 cannot involve the usurpation or supplanting of the Coroner’s role, then Section 14 can only be interpreted so that the role of the Attorney General is akin to a supervisory or reviewing role. If this is correct

then the powers sought by the Attorney General are unnecessary to enable him to properly perform that role. He does not need to be satisfied on the basis of a careful analysis of all relevant documentation that an Inquest should be held. He simply needs to have a reason to believe that the circumstances of the death are such that the holding of an Inquest is advisable.

It would clearly be wrong to interpret this provision as enabling the Attorney General to direct the Coroner to conduct an Inquest in circumstances where the Coroner had not been given an opportunity to consider the issue of whether an Inquest was necessary. The correct interpretation of Section 14 would envisage the Attorney General exercising his discretion where a decision by the Coroner had been made not to hold an Inquest or an Inquest had been held but it was deficient in some material respect or fresh evidence had become available since the conclusion of the Inquest. In this reviewing or supervisory capacity the Attorney General would be able to request all relevant documentation obtained by the Coroner during his or her investigations into the death and could review this documentation. There would be no need or rationale for the enlargement of his powers to include the power to demand the production of documentation from Health Trusts or Health Boards in the context of health care related deaths. The information provided by the family and the information contained in the Coroner's file would in all likelihood be sufficient to enable him to form a reasonable belief in relation to the key issue i.e. whether the circumstances of the death were such as to render it advisable to hold an Inquest. The present system is sufficiently robust in order to ensure that the interests of justice are properly served.

In relation to the specific issue of the Attorney General obtaining access to Serious Adverse Incident Reports (SAIs) it should be remembered that these documents are prepared by investigatory teams in Trusts but then go through a validation process at the Regional Board. The SAI process is fully described in the explanatory documentation enclosed with this submission. During the Coronial investigation of healthcare related deaths such documentation is provided to the Coroner who then decides whether an Inquest should be held. The Attorney General can subsequently obtain this documentation from the Coroner if for some reason he considers that the exercise of the power granted to him in Section 14 may be required.

It is important to remember that the very clear purpose of SAI investigations is to extract learning from adverse incidents. As such, openness in reporting is positively encouraged in return for an assurance about the confidential nature of any such report. The SAI reporting system is expressly intended not to be an investigation to determine fault or blame but rather to try to facilitate learning in order to prevent recurrence. The granting of this statutory investigatory power to the Attorney General where he has expressly stated that he would intend to exercise this power to gain access to SAI documentation in order to assist him in exercising his discretion under Section 14 could well have the detrimental effect of discouraging openness and transparency during the SAI investigative process. For these reasons, it is considered that the amendment to the Legal Aid and Coroners' Courts Bill proposed by the Attorney General is neither necessary nor desirable.

Thank you once again for the opportunity to respond to these proposals. The HSCB would, of course, welcome the opportunity to discuss any aspect of this response further.

Yours sincerely

A handwritten signature in black ink that reads "Valerie Watts". The signature is written in a cursive, slightly slanted style.

Valerie Watts  
Chief Executive