

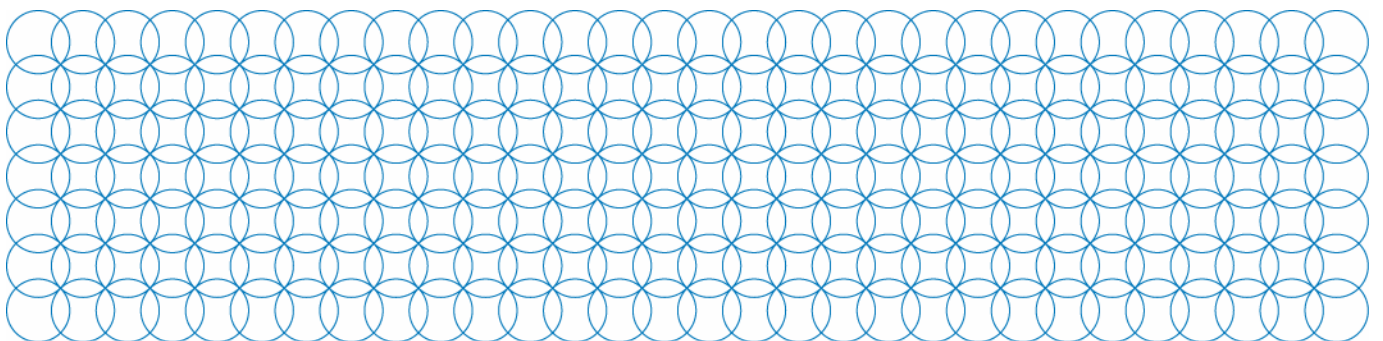


Ministry of
JUSTICE

Pandemic influenza

Guidance on the operation of the
coroner system in England and Wales

May 2009





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Guidance produced by the Ministry of Justice

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Introduction

This paper sets out guidance for coroners and planners in the event of an influenza pandemic. The guidance applies to England and Wales only.

The Ministry of Justice published draft guidance for consultation on 23 July 2008. The consultation closed on 3 September and this document takes into account responses to the consultation. A summary of responses and a government response to the consultation was published on 5 December 2008 and can be found at www.cabinetoffice.gov.uk/ukresilience.aspx.

The proposals contained within the guidance do not impose additional burdens. They are designed to ease the pressure on the coroners system in the event of an influenza pandemic and provide the coroner with greater discretion. Where legislative changes are made, these are intended for a very limited period only and would be in a period of extreme pressure.

The main relevant legislation governing coroners is the Coroners Act 1988 and the Coroners Rules 1984. The Government is reforming the coroner system through a Coroners and Justice Bill currently before Parliament. The guidance below applies to the current system. When the coroners' provisions in Part 1 of the Bill are implemented, a number of changes will be made to the guidance in conjunction with the new Chief Coroner which the Bill establishes. These changes should not affect planning assumptions – the measures described are intended to map across from the current to the reformed system and as greater operational flexibility is one of the aims of the Bill some of the matters will enshrined in primary legislation.

Summary of proposals

This guidance is intended to assist **coroners, local authorities** and **Local Resilience Forums** to prepare for and mitigate the effects of an influenza pandemic in England and Wales.

First, it sets out business continuity measures that could be planned and introduced locally by the coroner or under the aegis of the Local Resilience Forum. These are referred to as Phase One and Two Different Ways of Working and are:

- Prioritising disposal certificates over inquests;
- Identifying and appointing additional assistant deputy coroners;
- Redeploying staff from other local authority functions;
- Pooling of resources between different jurisdictions; and
- Managing the number of coroner post-mortems.

The guidance also outlines a range of measures that would require temporary changes to the law. These are referred to as Phase Three Different Ways of Working. Government Ministers would decide if and when these should be introduced, but they should nevertheless be taken into account when developing local plans. These measures are:

- Jury inquests to be held at the discretion of the coroner in all cases;
- Simplifying arrangements for the appointment of deputy and assistant deputy coroners;
- Greater flexibility for coroners to order post-mortem examinations to be held outside of their jurisdiction;
- Greater flexibility concerning where an inquest can be held and which coroner can hold an inquest;
- Relaxing requirements to investigate deaths abroad; and
- Increasing a coroner's ability to hold inquests based on documentary evidence, rather than requiring attendance of witnesses.

Context and scope

1. A number of different central government departments and local service providers share responsibility for managing deaths. In May 2008 the Home Office issued 'Planning for a possible influenza pandemic: A framework for planners preparing to manage deaths'¹. It was produced to assist local authorities and other service providers (any private or public organisation involved in the management of deaths) to develop preparedness plans for eventuality of an influenza pandemic. The Government's objectives are to ensure that the coroners' court system continues to operate during what might be a period of increased pressure, and to maintain compliance with human rights law, as well as consideration for the bereaved and dignity in dealing with deaths.
2. Coroners are independent judicial officers whose duty is to enquire into violent or unnatural deaths, sudden deaths the cause of which is unknown, or deaths in custody. The coroner, supported by coroner's officers and administrative staff, will investigate the deaths reported to them, possibly ordering a post-mortem and holding a formal inquest. (Annex A provides further information about the current coroner system.)
3. In 2007 there were around 500,000 registered deaths in England and Wales, of which 47% (234,500) were reported to a coroner. Clearly it is not possible to forecast with complete confidence the number of deaths that might result from an influenza pandemic. There is little certainty at this stage about the impact a pandemic will have. It may be spread over one or more waves, each of around 15 weeks, which could be weeks or months apart. Due to this uncertainty, the Home Office National Framework suggests a range of between 55,500 and 750,000 additional deaths in the UK over a 15-week period. The 750,000 is based on a reasonable worst case scenario of a clinical attack rate of 50% in a single wave of 15 weeks duration and an overall case fatality rate of 2.5%.
4. As influenza is considered a 'natural' cause of death these cases should not, theoretically, require investigation by a coroner. However, in the event of a pandemic it might be the case that a doctor is unable to complete a medical certificate of cause of death because no doctor has attended the deceased within the necessary period prior to death, causing an increase in the number of referrals to the coroner of deaths of unknown cause. There are other circumstances where a coroner must always investigate (eg prison deaths) whether the cause of death is pandemic influenza or otherwise. A pandemic will therefore inevitably affect the operation of the normal delivery of services by coroners and their officers.

¹ The Home Office National Framework can be accessed at http://www.ukresilience.gov.uk/pandemicflu/guidance/sector_specific.aspx#deaths

5. Having considered the Home Office National Framework, the Ministry of Justice has issued this operational guidance for the coroner system in England and Wales. It suggests different ways of working in the event of a pandemic, and it is aimed at coroners, local authorities, local police authorities, Local Resilience Forums and other service providers who have dealings with the coroner. For more detail on the role of Local Resilience Forums, the Cabinet Office has produced 'Preparing for Pandemic Influenza: Guidance to Local Planners'². More information is also provided in the Home Office National Framework.
6. When developing business continuity plans, coroners and planners will wish to balance the public interest in the investigation of deaths by the coroner (and the coroners' legal requirement to do so), with the need to ensure that burial and cremation can take place in a timely manner, in order to minimise the pressure on mortuaries and chapels of rest. Separate guidance is also available on the management of death certification³ and death registration⁴ in the event of a pandemic. This should also be taken into account when developing local plans. Key measures in these other guidance are flagged in this document.

² The Guidance to Local Planners can be accessed at www.cabinetoffice.gov.uk/ukresilience/pandemicflu/guidance/regional_local.aspx

³ 'Pandemic influenza: Guidance on the management of death certification and cremation certification'. Published by the Department of Health and accessible at

www.cabinetoffice.gov.uk/ukresilience/pandemicflu/guidance/sector_specific.aspx#deaths

⁴ 'Planning for a possible Influenza Pandemic: Guidance on Death Registration Services for Registration Service Managers and Practitioners'. Published by the General Register Office and accessible at www.cabinetoffice.gov.uk/ukresilience/pandemicflu/guidance/sector_specific.aspx#deaths

Operational guidance

7. The Home Office National Framework outlines three phases of different ways of working in the event of an influenza pandemic. For coroners there may be little substantive difference between the measures adopted in Phase One and Phase Two, so these are dealt with together in this guidance. Phase Three is dealt with separately.
8. As part of the planning process, coroners and planners may want to use the calculator provided in the Home Office National Framework, which enables the number of deaths to be forecast locally in a number of different scenarios. This will help planners to assess the potential impact on the coroner system (in terms of numbers of referrals) and to make proportionate contingency plans.

Phase One and Two Different Ways of Working

9. Phase One Ways of Working are measures that can be implemented by an individual business area, in this case by the coroner. Phase Two Ways of Working form part of the Local Resilience Forum plan, relying on co-operation between one or more organisations to achieve the most efficient management of any additional deaths. An important part of Local Resilience Forum plans will be to set out the agreement of business areas to move to Phase Two, and the triggers that will underpin this movement. The Home Office National Framework gives the detail of how the implementation of different phases should work. A brief summary of the process, as it relates to coroners, is below.
10. The point at which Phase One measures are implemented will be for the coroner to decide. The point at which Phase Two measures begin should be agreed locally through Local Resilience Forum plans. In making plans, coroners and Local Resilience Forums should include arrangements to ensure a smooth transition back to business as usual. Although coroners are not statutory members of the Local Resilience Forum, they will need to work with the Local Resilience Forum flu planning leads to ensure that suitable provision is made for the continued operation of the coroners' service in a pandemic. Similarly, in developing plans, Local Resilience Forums will need to be aware of coroners' business continuity plans to ensure that these are taken into account in overall planning.

11. In addition to the Phase One and Two measures suggested below, coroners should also be aware of the Department of Health's guidance on the management of death certification and cremation certification. This recommends that in Phase Two the common (non-statutory) practice of reporting all deaths that occur within 24 hours of admission to hospital to the coroner will cease where a death is caused by pandemic flu or complications thereof – these deaths would not, therefore, be automatically referred to the coroner. More details of these proposals is given at paragraphs 32 and 33. Coroners will need to agree with Local Resilience Forums when this measure should be implemented.

Identifying and appointing additional assistant deputy coroners

12. Coroners and local authorities with responsibility for appointing and funding coroners may decide to assess the need to appoint additional assistant deputy coroners to deal with any additional deaths and the absence of coroner staff (including the coroner) in the event of a pandemic. The calculator mentioned above may be a useful tool in this respect. If there appears to be a need for additional posts, the next step will be to identify a pool of suitable candidates. Assistant deputy coroners are paid on a fee basis, and so appointments could be made in advance of a pandemic at no cost, although clearly this is a decision to be taken locally.
13. To be qualified for appointment as a coroner, deputy or assistant deputy coroner it is necessary to hold a five year legal qualification that enables practice as a barrister or solicitor, and/or to be a legally qualified medical practitioner of not less than five years standing. There will be an increased demand for doctors to treat influenza victims in the event of an influenza outbreak. It is recommended therefore that those identified for appointment in connection with a pandemic should be legally rather than medically qualified so as not to divert medical resources from provision of frontline medical services.
14. In identifying suitably qualified candidates, coroners may wish to discuss with local authorities whether there may be candidates from their own legal staff. Any potential for staff to act as assistant deputy coroners would, of course, need to play a part in local authority business continuity plans.
15. The Law Society may also be able to help with the identification of potential candidates through the utilisation of their database, which provides solicitors by area. This can be accessed at www.lawsociety.org.uk.
16. Part of the planning process will be to consider how additional assistant deputies should be deployed to best effect. For example, if part of the local business continuity plan is to prioritise the issue of disposal certificates (see paragraph 27), it may be sensible for the additional assistant deputies to be allocated mainly or wholly to that task and trained accordingly.

17. Coroners and those local authorities with responsibility for supporting a coroner may need to make arrangements for the induction and training of any additional assistant deputies. Although it may be sensible for an assistant deputy to work predominantly on pandemic cases, they will have all the powers of a coroner, and may be required (dependent on local need) to deal with cases beyond those caused by the pandemic. This should be taken into account when deciding upon training and induction needs and it should be ensured that any appointees have a full understanding of what performing the functions of a coroner entails.

Redeploying staff from other local authority functions

18. In the first instance, coroners will wish to have considered their own business continuity arrangements in the event of a pandemic. In doing so, consideration should be given to temporarily employing recently retired coroners officers, or police officers, to help cover any shortfall that may exist.
19. However, in the event of a pandemic it may be necessary to redeploy local authority staff to act coroners' administrative staff to provide support to coroners' officers, helping to ensure that deaths are managed in a proper and timely way. It will be for planners to decide whether the aim of redeployment is simply to counter-balance existing staff absences, or whether additional staff should be deployed to help manage an increased caseload.
20. The Government recognises that all services are likely to be under a great deal of pressure in the event of a pandemic. However, in prioritising the allocation of staff for local services, local authorities will need to consider the negative consequences if coroners were unable to continue efficiently, and prioritise accordingly.
21. Agreement will need to be reached between coroners, local authorities (at all tiers) and other service providers on the scope for redeployment. These agreements will need to form part of the overall planning conducted by the Local Resilience Forum. In facilitating this discussion, it will be necessary to take account of potential differences between coroner jurisdictions and Local Resilience Forum boundaries. This is likely to include:
 - Identifying which local authority functions would be able to release staff to act as coroner's officers and/or administrative staff.
 - Assessing the number/proportion of staff available and needed.
 - Agreeing redeployment and training arrangements for staff.

In the event of an outbreak, a final decision about staff redeployment will need to be taken locally, based on the severity of the pandemic, absences within the coroner's office and the relative priority of different services in those circumstances. Similarly, the precise terms of the agreement will be for local decision.

22. It is recognised that the police (who employ around 90% of coroners' officers) are unlikely to have spare capacity to redeploy staff to the coroner system. In addition, administrative staff are often employed by local authorities. Local Resilience Forums will wish to facilitate discussion to ensure that the coroner's function is given suitable priority, and that staff are identified and trained to assist.
23. The role of staff in the coroner's office, even where this is focussed on administration, is relatively specialised and those transferring into the role will require training and support. What is required will depend upon the precise role of the coroner officer locally and what it is envisaged that the additional staff members will undertake. However, any induction will need to include a basic understanding of the role of the coroner and the coroner's officer and the working practices of the coroner's office in question. Key contacts (such as local GPs, hospitals, local authority contacts and police) should also form part of the induction.
24. The Local Resilience Forum should discuss the likely demands on coroners and their staff; the coroners' own staff shortages in a pandemic; and the scope for flexible working, including distance working, and arrangements for the pooling of resources. Coroners will need robust business plans, and these could usefully be included in the Local Resilience Forum Multi-Agency Pandemic Flu Plan.
25. This should include agreement as to funding arrangements, as well as whether there is a need for a single operational centre. Consideration should be given to the fact that, without changes in legislation proposed at Phase Three, there may be some limitation on the coroner being able to sit with his or her staff (and this may also affect whether a regional approach to pooling is, in the first instance, realistic). In particular, until Phase Three, coroners will only be able to move bodies to an adjoining jurisdiction for the purposes of a post-mortem examination and this will need to be reflected in any plans to pool staff.

Managing the number of coroner post-mortems

26. During an influenza pandemic, services could be placed under severe pressure. There is also likely to be an increase in the number of deaths reported to coroners as a result of a pandemic. Coroners will therefore, by necessity, need to consider altering the normal approach taken to ordering post mortem examinations.
27. A coroner must hold an inquest where he or she is informed that the body of a deceased person is lying in his/her district and there is reasonable cause to suspect that the deceased has died:
 - a. a violent or unnatural death;
 - b. a sudden death of which the cause is unknown; or
 - c. has died in a prison or in such a place as to require an inquest under any other Act.

In cases where the death is sudden and cause unknown, a coroner will normally commission a post-mortem examination to determine the cause of death in order to avoid the need for an inquest. A post-mortem examination may also be ordered where the death presents as violent or unnatural, or the death occurred in prison to more accurately determine the cause of death.

28. It is for the coroner to determine whether a post-mortem examination is necessary, or whether the cause of death can be established on the basis of other evidence. In 2007, 47% (110,000) of all cases referred to a coroner were subject to a post-mortem examination, although the rate varied significantly between different jurisdictions from 27% to 78%.⁵
29. Were these proportions to be maintained in a pandemic, there is a significant risk that mortuary and pathology services would be unable to deal with the volume of cases. The reasonable worst case scenario could see 750,000 additional deaths over a fifteen-week period. If just 30%⁶ of these deaths (225,000) were referred to the coroner then, based on current rates, this would result in around 105,000 additional coroner post-mortem examinations in a fifteen-week period.
30. Both hospitals⁷ and local authorities will need to assess the impact of a pandemic on mortuary capacity and to plan accordingly. Coroners will need to recognise that during a pandemic, because of staff shortages there is likely to be a substantial reduction in the capability of mortuaries, pathologists and mortuary staff to process even the normal throughput of cases.
31. The Department of Health's 'Pandemic Influenza: Guidance on the Management of Death Certification and Cremation Certification', sets out measures amending the legal obligation for referral to coroners in the event of a pandemic. The current requirement is that a death must be referred to the coroner if the registered medical practitioner (who must have attended the deceased during their final illness) who certified the cause of death had seen neither the body after death nor the patient within the 14 days preceding their death. This will be relaxed to refer to 28 days.
32. Legislative amendments will also be made to allow a registered medical practitioner who has not attended the deceased in their final illness to provide a Medical Certificate of Cause of Death (MCCD) for those deaths that appear, to the best of the medical practitioner's knowledge and belief, to have been caused by pandemic influenza. The medical practitioner may then complete Cremation Form 4, which will also be streamlined in the event of a pandemic.

⁵ It should be noted that some of the differences may be due to local variation in definition and counting of referrals, and/or through the differences in cases which are reported to coroners in different jurisdictions.

⁶ The 30% figure is an estimate based on the lower numbers of pandemic deaths that should be referred given other measures that will be taken to reduce deaths, and the fact that, as a natural death, a lower percentage should require referral. However, for planning purposes, it may be helpful to use a range of figures to plan for different scenarios.

⁷ Many coroners are reliant upon Hospital Trusts for the provision of post-mortem facilities. It is also important to understand that such mortuaries will be handling a significant number of deceased associated with the pandemic that will not be reported to the coroner.

Guidance is given on the type of evidence that may be available to inform this decision.

33. Notwithstanding these provisions and the fact that influenza is regarded as a natural cause of death, it is recognised that there will be a significant number of cases (in addition to other 'non-influenza' deaths from natural causes) where a doctor is unable to complete an MCCD, and the deaths will therefore need to be referred to the coroner. The question then arises as to how to deal with the totality of cases, it being almost impossible to distinguish with certainty at the outset those cases that are directly related to the influenza pandemic.
34. Coroners will therefore want to ensure that post-mortem examination capability is reserved only for those cases **where it is absolutely essential**. It will be necessary to consider very carefully in every case (including those cases where there is reason to suspect that the death was violent or unnatural) the necessity for the examination in the light of all other circumstances and information to hand. If, for example, a body is found hanging (assuming that there is no evidence of any third party involvement) the cause of death is probably (ie on the balance of probability) going to be "1 a Hanging". Similarly, the remains of a body found on a railway track (assuming there is no evidence of third party involvement) the cause of death is likely to be "1 a Multiple Injuries" consistent with the deceased being struck by a train. In neither of these examples, it is suggested, would a post-mortem examination necessarily increase the essential information to determine **how** it was the cause of death arose.
35. More generally, when assessing the requirement for a post-mortem examination, coroners will need to place much greater reliance on documentary and other non-pathological post-mortem evidence and any previous medical history and lifetime diagnosis than in usual circumstances. In doing so, careful consideration should be given to whether a post-mortem examination will add substantially any essential information to whatever is already to hand in all cases referred to them, not just those cases where influenza is the suspected cause. An example would be deaths from mesothelioma which may not *routinely* require a post-mortem. If the cause of death of the deceased had already been diagnosed in the deceased's lifetime, and the symptoms leading to death were consistent with that condition, it may be reasonable not to order a post-mortem examination.
36. Recognising the overall reduced level of investigative services available, each coroner will have to consider whether there is a real need to determine the precise or direct (as opposed to underlying) cause of death. In appropriate cases a coroner could decide that it is sufficient to meet his or her legal duties to determine that the death was simply from causes that were natural or unnatural. If it is clear that the cause of death was natural even if the direct cause or disease process is uncertain, a post-mortem examination should not be ordered in the extreme circumstances of an influenza pandemic. If on receipt of a case, there are no clear signs as to whether a death is unnatural or violent – for example, if there are no clear signs of injuries or contusions, and taking into account the circumstances in which the body was found – the coroner will have to consider, having taken all other aspects of the case into

account, whether a post-mortem is absolutely necessary to be satisfied that the death was from (non-specific but in all probability) natural causes. None of the above will negate the need for a post-mortem examination in the event that the police require one for legal purposes as part of any investigation.

37. Following this approach, the emphasis would be on ordering post-mortem examinations only for those cases where the coroner has reason to suspect that the death was violent or unnatural or where, without the making of a post-mortem examination, it would not be possible to determine with any precision or certainty the medical cause of death. The simple flowchart at Annex B may help coroners to determine whether a post-mortem examination is necessary. Ultimately however, the decision is for the coroner to make after assessing all the relevant circumstances.

Ensuring efficient issue of disposal certificates

38. In the event of an influenza pandemic, and any associated increase in deaths over a relatively short period of time, the quick and efficient disposal of bodies assumes much greater importance. Were the disposal of bodies to be delayed, this would create delays for families in holding funeral services (and may create additional pressures on the funeral industry). It will also place great strain on funeral homes or mortuaries and other places where bodies may be held before burial or cremation which will in turn impact on the efficiency with which fatalities can be dealt with.
39. Available statistics indicate that approximately 95% of disposal certificates are issued within 1 week of referral. This would indicate that the issuing of certificates is already a priority for coroners and staff. However, coroners should consider the need to dedicate additional time or resources, in consultation with local burial and cremation authorities (whose own pandemic planning may be based on a limited and fixed period between death and disposal of body). The pooling of resources (discussed at paragraphs 21-24) may be a measure which will provide particular assistance in ensuring the timely issue of disposal certificates.

Phase Three Different Ways of Working

40. Phase Three Ways of Working require changes to primary or secondary legislation, which will need to be implemented by Government Ministers. The Home Office National Framework explains how different Phase Three measures would be rolled out. Broadly, this will be a national decision taken by Ministers, based on information available.
41. The Home Office National Framework states that the precise arrangements for terminating Phase Three will be identified in the regulations which enable the implementation of Phase Three. It is intended that this will be a national decision, again taken in the light of the information available, and will be applied on a national basis. The exact timing of the revocation of Phase Three measures will depend upon the severity of the pandemic, and the impact this has on the service and the way in which arrangements can be made for the burial or cremation of fatalities.
42. Where decisions have been taken in accordance with the emergency procedures, those decisions will continue to be valid even after the emergency procedures have been lifted. However, it will be open to the coroner (as at present) to change that decision should that be appropriate once emergency conditions no longer applied.
43. The legislative measures outlined below are largely discretionary. Planning should be on the assumption that they give discretion to a coroner to take certain measures, without requiring him or her to do so. The one exception to this is the measure making coroners responsible for the appointment of a new deputy coroner, or of additional assistant deputy coroners.
44. Coroners should familiarise themselves with the measures below and ensure that they are included in local business continuity plans. Coroners should also take notice of the Department of Health's guidance on the management of death certification and cremation certification, summarised in paragraphs 31 to 33 of this guidance.

Jury inquests to be held at the discretion of the coroner

45. Under the Coroners Act 1988, the coroner is required to hold an inquest with a jury in certain specific circumstances. The coroner also has discretion to summon a jury in any case where it is deemed to be appropriate.
46. It is likely that the number of apparently natural deaths in custody will increase in the event of a pandemic because people in custody will be in closer proximity to each other, increasing the possibility of infection. This is likely to put additional pressure on those coroners with one or more prisons – or psychiatric hospitals or immigration centres - in their jurisdiction.

47. Jury inquests require more resources than other inquests. In part this is due to the often complex subject matter but there is also the need to secure suitable accommodation, to summon jurors and to prepare the necessary paperwork for jurors. It may be particularly difficult to schedule jury inquests during an influenza outbreak, as jurors are more likely than usual to have pressing professional and personal commitments, or may fall ill themselves causing further delay to inquests.
48. To ensure that inquests are held in a timely manner, coroners will be given complete discretion in all cases over whether to hold a jury inquest⁸. It should be noted that this will only remove the requirement for a jury, but not the requirement for an inquest to be held. This discretionary power will apply to both new cases and cases already referred to the coroner for a period of time prior to the introduction of Phase Three Ways of Working. When deciding whether to summon a jury, the coroner may wish to consider:
- Whether the deceased was diagnosed with influenza.
 - The wishes of the deceased's family.
 - Whether it is necessary to summon a jury in order to maintain public confidence in the inquest.
49. It is very likely that there will still be cases of deaths in custody, such as apparently self-inflicted deaths, that would require a jury inquest. The measure is designed to allow coroners a suitable level of discretion where it is likely the death occurred as a result of pandemic influenza or other patently natural causes, but not to preclude jury inquests in all cases. Where the circumstances continue to warrant a jury inquest, then the coroner should hold one.
50. In those cases where it is deemed appropriate to summon a jury, it would be for the coroner to decide whether to proceed or to suspend the inquest until after the pandemic and a return to business as usual.

Arrangements for the appointment of deputy and assistant deputy coroners

51. Under the Coroners Act 1988, it is for the coroner to appoint his or her deputy and assistant deputy coroners, with the approval of the chairman of the relevant council.
52. As part of Phase One and Two ways of working, coroners and local authorities may have made arrangements to identify and appoint additional assistant deputy coroners. Nevertheless, it may still be necessary to appoint a new deputy, or new or additional assistant deputy coroners, at short notice in the event of a pandemic, either to replace other office holders or to deal with a sudden and unexpected increase in workload.

⁸ This complies with Article 2 of the European Convention of Human Rights, which requires an investigation into all deaths that occur through the act of an agent of the State.

53. To avoid any delay coroners will be empowered to make these appointments without the approval of the chairman of the relevant council during the Phase Three period. The local authority should, however, be informed as soon as is practicable as a matter of course.
54. When the powers which authorise Phase Three Ways of Working are revoked, any appointments made by the coroner under emergency legislation will cease, with transitional provisions allowing office holders to complete partly held inquests and investigations. If the local authority wished to retain any of these deputy or assistant deputy coroners, then the chairman of the relevant council should confirm the appointment in the normal way.

Greater flexibility for coroners to order post-mortems outside of their jurisdiction

55. Under the Coroners Act 1988, the coroner may order the removal of the body to any place within his or her own district, or an adjoining district, in order for a post-mortem examination to be carried out. Past experience suggests that these geographical restrictions can cause practical difficulties when there is a sudden increase in caseload in a particular area. It can also make it difficult to procure specialist post-mortem examinations, as specialist pathologists are not available in all parts of England and Wales.
56. At Phase Three of a pandemic, these restrictions will be removed, allowing the coroner to order a post-mortem to be conducted in any suitable facility in England and Wales. This will give maximum flexibility to manage the increased pressure on mortuary facilities, mortuary staff and pathologists.
57. In planning for a pandemic, consideration will need to be given to the options for storing bodies and conducting post-mortem examinations on a local or regional level. Consultations with stakeholders have suggested that by working flexibly, normal through put could be increased by 2 to 3 times the current rate. The Local Resilience Forum will need to work with partners to assess whether existing facilities and capacity are likely to be sufficient, or whether temporary facilities will also be required. If the latter, then a decision will need to be taken as to what premises may be used and what is needed to make them suitable. Regional Resilience staff will, with the agreement of Local Resilience Forums, circulate plans within their region to minimise the risk of more than one identifying the same site.
58. It should be noted that the Home Office Framework recommends that all alternatives are fully explored before any investment is made in temporary mortuaries.

Greater flexibility in where an inquest can be held and which coroner can hold an inquest

59. Under the Coroners Act 1988 an inquest into a death shall be held only by the coroner within whose district the body lies, and a coroner shall only hold inquests within his or her district. Arrangements for the transfer of cases, and responsibility for the costs of transferred cases, are also governed by the Act.

60. In Phase Three, measures will be introduced to give greater flexibility to coroners. The requirement for a coroner to hold an inquest only in his or her jurisdiction will be removed. In addition, the limitation that a case only be heard by the coroner in whose district a body lies (unless transferred) will be removed. This would take away the need for a formal transfer of a case, enabling a more efficient movement of cases if necessary.
61. This will enable a greater level of co-operation between jurisdictions. It would, for example, enable coroners and staff to be co-located at a single base, and create potential efficiencies for workload management. This may allow a more even spread of cases across a set of coroners, without the need to transfer them from one jurisdiction to another. Where such plan was implemented consideration should be given to how best to allocate cases. A central co-ordinating body may be appropriate to ensure that all cases were dealt with appropriately.
62. Another option might be for a monitoring system to be put in place on a regional basis which could distribute cases evenly amongst available coroners.
63. Agreement will be needed in advance of the pandemic on how plans are to be implemented and work co-ordinated. In particular agreements on the monitoring of numbers, potential transfer of cases and pooling of resources will need to be made.
64. In developing plans, a number of points need to be considered. Suitable accommodation for inquests will need to be identified for any option involving the co-location of staff. Accommodation needs to be of a suitable size, and the provision of court space also needs to be considered. Arrangements for the monitoring of numbers, and co-ordination of transfers would also need to be determined and signed up to by all parties. It should also be noted that notification for death registration will need to be sent to the registrar for the district where the death took place.

Relaxing the requirements for investigating deaths abroad

65. Coroners are required to investigate deaths that occur abroad where the body is returned to their jurisdiction and the circumstances of the death are such that they would otherwise be required to investigate if the death had occurred in England and Wales.
66. In the event of an influenza pandemic there is likely to be an increased number of deaths abroad that would need to be referred to the coroner where the body is repatriated. This may be because insufficient evidence of the cause of death is available (even if it is assumed to be influenza) or because the relevant certificates from the overseas authorities cannot be produced.

67. In order to minimise the increased workload that overseas deaths may create, the Government intends to limit the types of deaths abroad that a coroner must investigate to investigate three categories of deaths. These will be:

- (i) If the coroner has reasonable cause to suspect that circumstances arising in England and Wales have caused or significantly contributed to the death e.g. medical treatment in England or Wales.
- (ii) If the coroner has reasonable cause to suspect that an act or omission has taken place which, if it had taken place in England or Wales, would be considered murder, manslaughter or infanticide. This will only apply when there is no investigation in the country where the death occurred.
- (iii) The deaths of a member of the Armed Forces whilst on operational duty abroad.

Coroners will nevertheless continue to have discretion to investigate any other deaths abroad.

Increasing a coroner's ability to hold inquests based on documentary evidence

68. The Coroners Rules 1984 allow for documentary evidence to be submitted where this is unlikely to be disputed, provided there is no objection from an interested person. Were an objection to be made, a coroner must call the witness from whom the documentary evidence has been received.

69. In the event of a pandemic the Government will amend the Coroners Rules so that an objection from an interested party does not necessarily prevent the use of documentary evidence. Coroners will be able to decide, case-by-case, whether to proceed on the basis of the documentary evidence or whether there are compelling reasons to call the witness.

70. This will enable a more efficient processing of cases. Where only documentary evidence is to be used, there will be no need for witness availability to be a consideration in scheduling inquests. It should also enable inquests to be concluded more quickly, meaning a greater number will be completed in a shorter time.

71. In deciding whether to proceed with documentary evidence only, coroners will wish to balance any objections that may have been registered with the need for efficiency. In particular, coroners will need to consider Article 2 ECHR requirements in relation to deaths in custody or in other state institutions where the state potentially bears some responsibility for the death. Of particular relevance will be whether it is necessary to provide the family with an opportunity to question a witness in order to provide them with a proper opportunity to participate in the investigation. The Courts have held that where Article 2 is engaged. The next-of-kin of the deceased must be involved in the procedure to the extent necessary to safeguard his or her legitimate interest. What is required will depend on the circumstances of each case. For example,

the Court of Appeal has held in *Scholes*⁹ that less may be required by way of family involvement where the investigation is into matters of policy and resources than where the investigation is concerned with the underlying facts.

72. In order for the family to play an effective part, it will often be necessary for them to be legally represented. Also relevant to the coroner's determination about whether documentary evidence is sufficient is the Article 2 requirement for an investigation to be 'effective', which means it must be conducted in a manner that does not undermine its ability to establish the relevant facts. In pandemic conditions, coroners should consider whether an Article 2 inquest may meet the effectiveness criterion using documentary evidence to establish certain matters rather than calling witnesses.

Communications

73. Any changes to the coroner system, particularly to the conduct of inquests, will require careful and sensitive communication. It will be important to make clear the reason for the changes and their implications.
74. The Home Office National framework offers further guidance on communications in the event of an influenza pandemic. It notes that local communications will be the first step in providing reassurance to the public, and emphasises a **tell it all, tell it truthfully and tell it quickly** approach. Coroners and local planners should ensure that communications strategies are factored into business continuity plans.
75. The Cabinet Office and the Department of Health have produced 'Pandemic Flu: A National Framework for Responding to an Influenza Pandemic'¹⁰. This sets out the detail of the Government communications strategy in the event of a pandemic.

⁹ *R (Scholes) v Secretary of State for the Home Department* [2006] EWCA Civ 1343

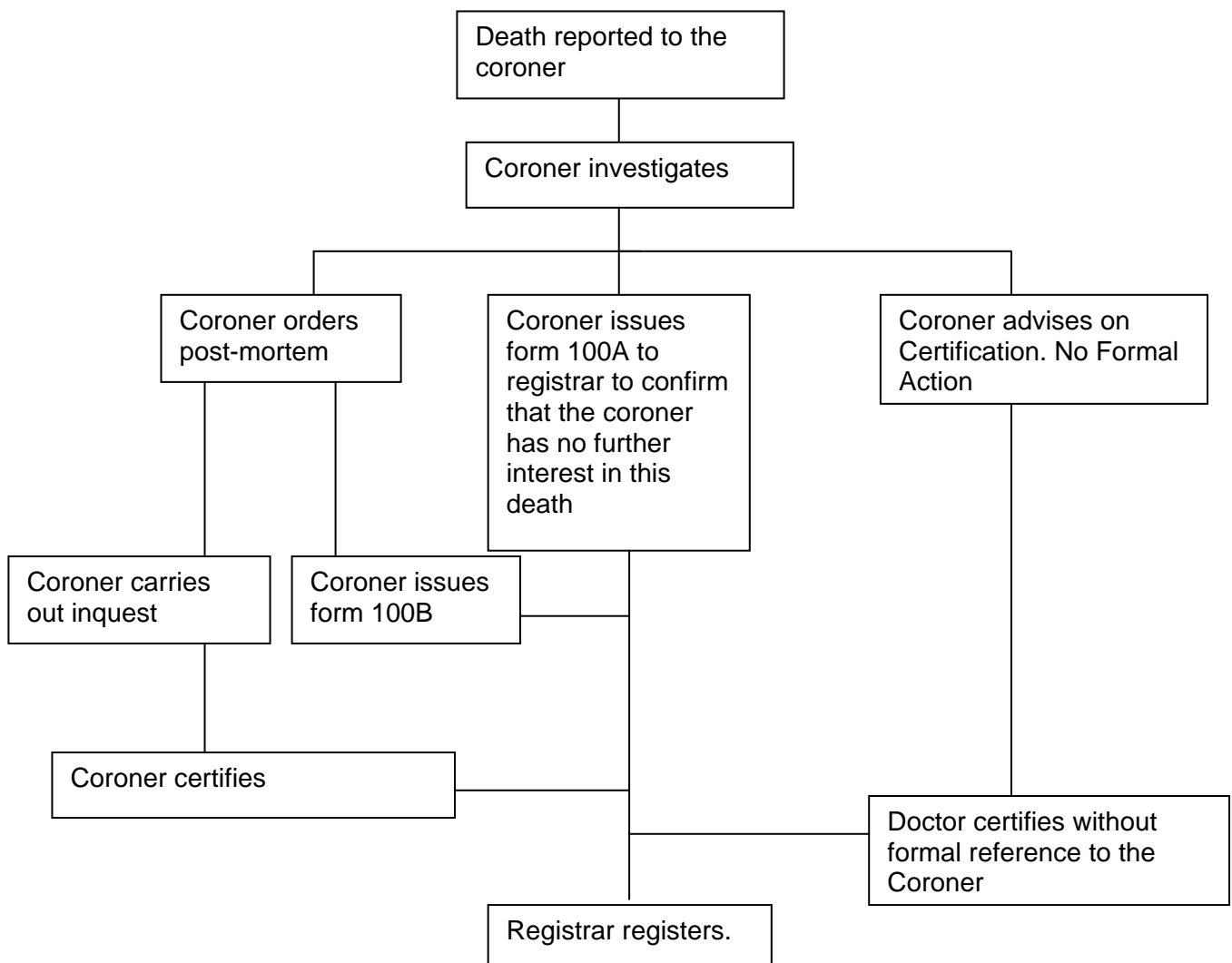
¹⁰ The National Framework can be accessed at:

www.cabinetoffice.gov.uk/ukresilience/pandemicflu/guidance/national.aspx

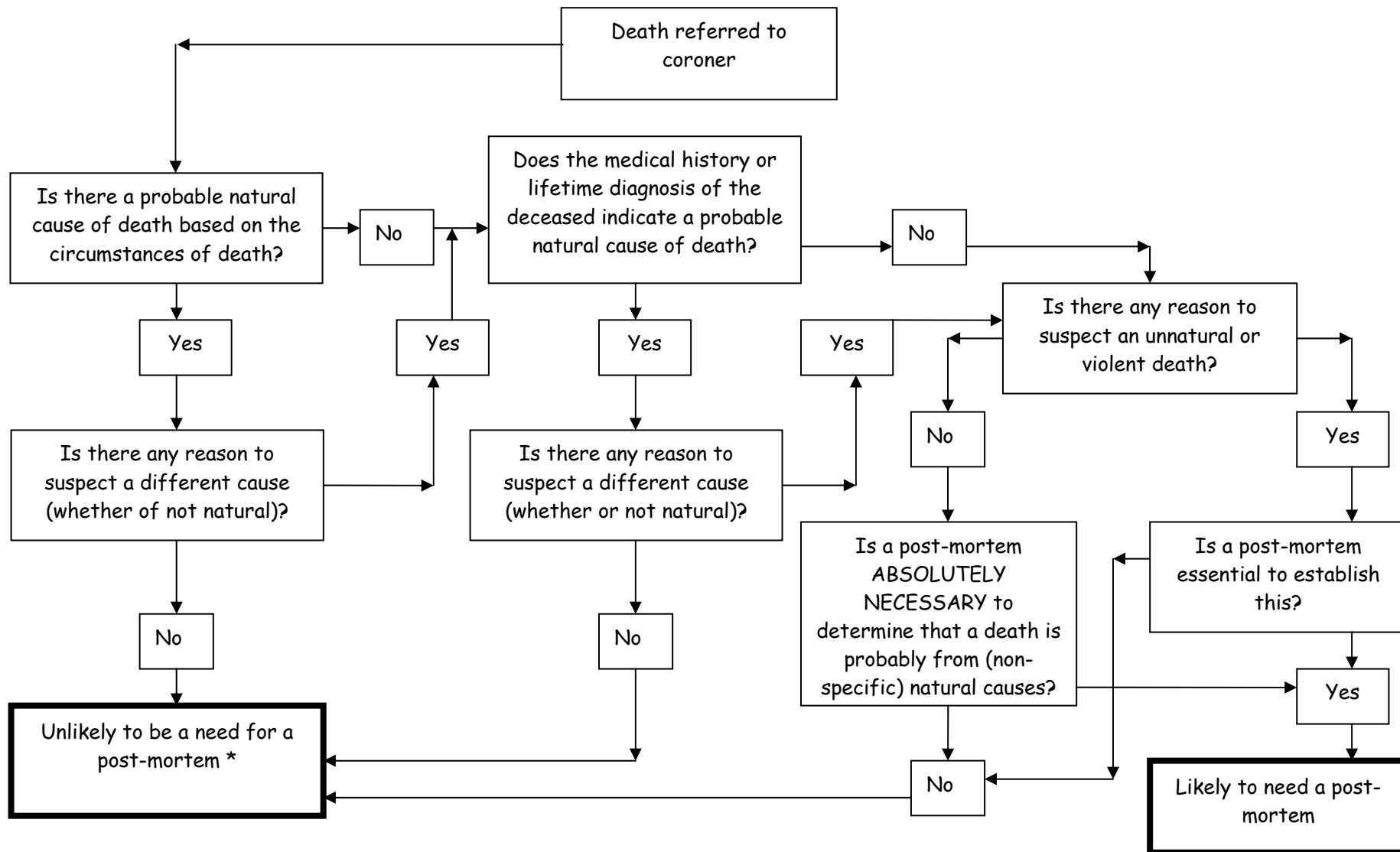
Annex A

1. Deaths are usually reported to the coroner by the police or a doctor called to the death if it is sudden. The local registrar of deaths may also make a referral. Whenever a death is reported, the registrar must wait for the coroner to finish his or her enquiries before the death can be registered.
2. Upon referral, a coroner must consider whether an inquest or post-mortem examination is required or whether to notify the registrar that they are unnecessary. In considering this the coroner will take into account information relevant to the death of other persons.

Figure 1: Current system of death certification and investigation



Annex B: Flowchart to assist in determining whether a post-mortem is necessary



* It should be noted that this does not apply where the police require an autopsy to be carried out for legal purposes.

