EXPLANATORY MEMORANDUM TO

THE CORONERS (INQUESTS) (AMENDMENT) RULES 2021

2021 No. 1379

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument removes note (iii) in Form 2 in the schedule to the Coroners (Inquests) Rules 2013 which states, "The standard of proof required for the short form conclusions of "unlawful killing" and "suicide" is the criminal standard of proof. For all other short-form conclusions and a narrative statement the standard of proof is the civil standard of proof." The instrument amends the legislation following the Supreme Court judgment in the case of R (on the application of Maughan) v. Her Majesty's Senior Coroner for Oxfordshire [2020] UKSC 46 ("Maughan"), handed down on 13 November 2020, which ruled that the civil standard should be used for all short-form conclusions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 45(1) of the Coroners and Justice Act 2009 (the 2009 Act) provides that rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005, which allows the Lord Chief Justice to make rules with the agreement of the Lord Chancellor; section 45(2) provides that Coroner rules may make provisions about evidence. The Coroners (Inquests) Rules 2013 (the 2013 Rules) regulate the practice and procedure relating to inquests conducted as part of an investigation into a death under the 2009 Act. Form 2 in the schedule to the 2013 Rules is the form which sets out what needs to be included in the record of an inquest including the conclusion of the coroner/jury as to the death. Note (iii) sets out the standard of proof required for conclusions.

6.2 The Supreme Court judgment in Maughan is binding on coroners and so the 2013 Rules need to be amended to reflect the correct legal position. The Chief Coroner has circulated guidance to coroners in the light of the Supreme Court decision.

7. Policy background

What is being done and why?

7.1 This instrument amends the notes in Form 2 in the schedule to the 2013 Rules so that Form 2 is compatible with the Supreme Court judgment in Maughan. The judgment clarified that the standard of proof in all inquests concerning unlawful killing and suicide is the lower civil standard of the balance of probabilities, rather than the criminal standard of beyond reasonable doubt.

7.2 For context, there were 61 unlawful killing conclusions in 2020, 135 in 2019 and 94 in 2018. There were 4,475 suicide conclusions in 2020, 4,620 in 2019 and 4,166 in 2018. The number of unlawful killing conclusions in 2020 is likely to be lower than previous years because of the Covid-19 pandemic as inquests where such a conclusion was reached would be likely to be held with a jury and many jury inquests could not be held due to social distancing requirements.

7.3 Form 2 in the schedule to the 2013 Rules is used by coroners to record the conclusion of an inquest, which is either made by the coroner or the inquest jury. Note (iii) sets out the standard of proof required for reaching the conclusion. Currently note (iii) states that the standard of proof required for the short form conclusions of unlawful killing and suicide is the criminal standard and for all other short-form conclusions and a narrative statement the standard is the civil standard. Note (iii) therefore needs to be amended in line with the judgment in Maughan.

7.4 The Supreme Court judgment is binding on coroners and in practice coroners are already applying the civil standard of proof in all short-form conclusions including unlawful killing and suicide and their directions to juries will contain directions on the standard of proof and how it applies to the evidence and their deliberations. The previous Chief Coroner wrote to coroners after the Supreme Court handed down its judgment and in January 2021 the current Chief Coroner issued formal guidance to coroners confirming that they should use the civil standard of proof in all short form conclusions.

7.5 Not amending the 2013 Rules in line with the judgment could lead to inconsistency and confusion between the 2013 Rules and the Supreme Court judgment, particularly by juries who may be given Form 2 to complete as part of their deliberations.

7.6 This instrument removes all references to the standard of proof in Form 2 by omitting note (iii) entirely. Removing note (iii) does not change the substance of the information recorded on Form 2.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument is not being consolidated.

10. Consultation outcome

10.1 Consultation was not undertaken for this change which is minimal and technical. The Ministry of Justice has, however, discussed the proposed change with the Chief Coroner. Further, as the correct standard of proof is already being applied we do not consider this instrument will attract the interest of key stakeholders. However, once the instrument is laid, we will notify all relevant parties such as government departments, coroners and the Chief Coroner's office.

11. Guidance

11.1 No additional guidance will be provided on the amendments made. In January 2021 the Chief Coroner issued guidance to coroners on the impact of the Maughan decision, and the Chief Coroner's Law Sheet No.1 on Unlawful Killing (Law Sheet No.1: Unlawful killing | Courts and Tribunals Judiciary) was subsequently updated to remove incorrect references to the criminal standard of proof. Therefore, in practice the civil standard of proof is already being applied to all short-form conclusions.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it has no or minimal impact on business, the voluntary sector and the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This legislation will not be monitored as the change is technical and minimal. However, the Ministry of Justice will consider in due course the impact of the judgment in practice. The Chief Coroner is under a statutory duty to provide an annual report to the Lord Chancellor covering matters he wishes to bring to the attention of the Lord Chancellor including an assessment of the consistency of standards between coroner areas which could include the impact of the change.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Michelle English at the Ministry of Justice. Telephone: 07748 050944 or email: Michelle.English3@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Charlotte Middleton/Ruth Harriford, Deputy Directors for Death Management, Miscarriages of Justice, Inquiries and Coroners (DMIC) at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom Pursglove MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.