



INQUEST-LIBERTY-JUSTICE

Joint Briefing on the return of 'secret inquests' in the Coroners and Justice Bill

**Consideration of the House of Lords
Amendments in the House of
Commons**

November 2009

About Inquest

INQUEST is the only charity in England and Wales that works directly with the families and friends of those who die in custody. This includes deaths at the hands of state agents and in all forms of custody; police, prison, young offender institutions, secure training centres and immigration detention centres. We provide a free, confidential advice service to bereaved people and conduct policy and Parliamentary work on issues arising from the deaths and their investigation.

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

About Justice

JUSTICE is an independent all-party legal and human rights organisation, which aims to improve British justice through law reform and policy work, publications and training. It is the UK section of the International Commission of Jurists.

Contact:

Helen Shaw
Co-Director
Inquest
Direct Line: 0207 263 1111
Email: helenshaw@inquest.org.uk

Isabella Sankey
Director of Policy
Liberty
Direct Line 020 7378 5254
Email: bellas@liberty-human-rights.org.uk

Dr Eric Metcalfe
Director of Human Rights Policy
JUSTICE
Tel: 020 7762 6415
Email: EMetcalfe@justice.org.uk

The Victim's Verdict

On 2nd November 2009, Graham Foulkes, whose son, David, was killed in the bombing at Edgware Road on 7th July 2005 said the following:

“When David was 18 I took him to the local pub to have a drink and celebrate his “coming of age”. This coincided with a local election and so led to a chat about voting. I explained that I believed that our greatest product and export is democracy and how proud he should be to live in this country. Frankly, he thought that this was pretty boring.

I have given no more thought to the freedom that we take for granted until now as we wait for the inquest into David's death and I realise that one of the most important tenets of democracy is that when the state may be involved in an individuals' death an independent judicial officer is appointed to conduct the investigation. The investigation must be open, honest, transparent and without any external pressure being brought to bear. This openness is crucial; how can we talk about democracy if the state can hide behind laws like those now proposed?

I believe that the deal I have with government is that I vote, pay tax and follow the law. Government's part is to provide me with safety and when any part of that deal is not kept, the subsequent investigation has to be independent, open and transparent to qualify as democracy.

In recent years a number of laws have been proposed, that we were warned against by George Orwell. The government's current proposals are another step down a dangerous road.

We waited 6 days for confirmation of David's death and another 4 before we travelled to London to the mortuary. We were strongly advised not to view his body. I wanted to hold his hand just one last time, but couldn't. This is the image that I go to bed with each night, but I also go to bed with the belief that the wheels of truthfulness, honesty and democracy will start to go round in the way I have always taken for granted.

This is a bad law please do not discolour democracy with it”

The Coroner's Verdict

On 29th October 2009, Birmingham Coroner Aidan Cotter delivered the following verdict on the resurrection of the Government's 'secret inquest' plans:

“The issue keeps coming back and it needs to be fought all the way. It is disgraceful that the Government is still trying to make inquests secret. The purpose of an inquest is to make sure the public know how somebody died. Once you have the Government saying, even in just one case, ‘no, the public are not to know why’, then as far as I am concerned it is the end of democracy. Twice the Government has said they would not do this and now, again, they are slipping it in. I appreciate there are cases where for the security of this country you cannot allow all the evidence that has been given but the law already provides what they call public interest immunity. If you talk to ordinary people who have been to an inquest they all talk about closure. Unless you know what happened you can’t get closure. If you know the truth, however bad it is, you can accept it. What you can’t accept is not knowing what happened.”¹

Background

1. INQUEST, Liberty and JUSTICE were delighted when the Government decided to abandon its proposals for 'secret inquests' for the second time in May 2009 in the face of significant cross-party opposition. These controversial proposals started life in the Counter-Terrorism Bill 2008 when the Government was first forced to abandon the plans in November 2008. They were reintroduced in the Coroners and Justice Bill and faced a rocky passage in the House of Commons before being once again dropped as the Bill moved to the House of Lords. While the withdrawal of these original clauses² is to be welcomed the governments planned replacement is not. In a Written Ministerial Statement of 15th May 2009 the Lord Chancellor stated that where it was not possible to proceed with an inquest under current arrangements, the Government would seek powers to establish an inquiry under the

¹ Birmingham Post, 30/10/09 “*Birmingham coroner hits out at Jack Straw over ‘secret’ inquests*” <http://www.birminghampost.net/news/west-midlands-news/2009/10/30/birmingham-coroner-hits-out-at-jack-straw-over-secret-inquests-65233-25048343/>

² Previous clauses 11 and 12 of the Coroners and Justice Bill

Inquiries Act 2005 instead. Debate at Committee Stage in the House of Lords confirmed that the Government intends to use provisions hidden in Schedule 1 of the Bill to entirely circumvent the inquest process whenever it pleases.

House of Lords Amendments

2. On 21st October 2009 at Report Stage of the Bill, the House of Lords intended to defeat Government policy. Peers intended to take out the clauses in Schedule 1 of the Bill that would allow inquests to be replaced with inquiries. They also intended to allow normal inquests to admit intercept evidence where appropriate and without undermining national security. Amendments to this effect were tabled at Report but inadvertently the rebellion was mounted only over the admissibility of intercept at inquests and not the clauses that allow the Government to replace inquests with inquiries. The Bill will receive its Third Reading in the House of Lords on 5th November at which stage peers will argue that as a consequence of the vote that was won on the admissibility of intercept, the Government clauses on 'secret inquiries' must fall. The Bill will then return to the House of Commons (reportedly on Monday 9th November) for consideration of the Lords amendments.

What happens after 3rd Reading in the Lords - two possible scenarios

3. If peers succeed in arguing that the Government clauses to replace inquests with inquiries must fall, MPs are urged to support the Lords amendments in total: the amendments to delete Government clauses on the replacement of inquests and the amendments to allow the admissibility of intercept in certain inquests where appropriate. In this scenario the Government will ask MPs to reject all of these amendments so that the 'secret inquiries' clauses can be re-inserted in to the Bill.

4. If the House of Lords does not succeed in arguing that the Government's 'secret inquiries' must fall, the hard-fought parliamentary battle against these dangerous provisions will sadly have been lost. The Government will have secured the power to suspend an independent inquest into any death in favour of an *Inquiries Act* inquiry. In this scenario we would, however, still urge MPs to support the House of Lords amendments to allow inquests to receive intercept material in tightly defined circumstances. While these amendments cannot alone prevent the Lord Chancellor from entirely overriding the inquest system, they will make it easier for lawyers of

bereaved families to challenge the decision of the Lord Chancellor to do so by way of judicial review.

How the Government's proposals would work

5. It seems that the Government always intended to have a 'Plan B'. Clauses that would allow inquests to be suspended at the behest of the Lord Chancellor were hidden in paragraph 3 Schedule 1 of Bill in its original form. Under these clauses a senior coroner must suspend an inquest (and discharge any jury) at the Lord Chancellor's request. The Lord Chancellor is empowered to make such a request 'on the ground that the cause of death is likely to be adequately investigated by an inquiry under the *Inquiries Act 2005*'. Unlike the original 'secret inquest' proposals there are not even any grounds set out on the face of the Bill for when a normal inquest can be superseded. An inquest can be overridden whenever the Lord Chancellor decides that this would be the preferred option. Under these provisions, once an inquiry has concluded, an inquest *may* be resumed, but only if the senior coroner thinks there is sufficient reason for resuming it. As there is no requirement for an inquest to be resumed, an inquiry convened at the behest of the Lord Chancellor can entirely replace an inquest. Even if an inquest is resumed after an inquiry is held, paragraph 8(11) of Schedule 1 greatly restricted the role of the inquest by providing that a determination as to how, when and where the deceased came by his or her death may not be inconsistent with the outcome of the relevant inquiry. This effectively ties the hands of the coroner (and any jury) meaning there can be no true independent and effective inquest.³

6. Under the Government's model⁴:

- A 'secret inquiry' will be convened to replace an inquest whenever the Lord Chancellor decides that this should be the case;⁵

³ Note, currently section 17A of the *Coroners Act 1988* provides that an inquest must be adjourned if a judge is holding an inquiry into the events surrounding a death. The inquest is not required to be resumed, but if it is, it begins afresh and the findings of the inquiry are not binding.

⁴ On 14th October before the issue came before the House of Lords at Report the Government tabled further last minute amendments to their 'secret inquiries' proposals. These amendments did next to nothing to allay concerns about executive impunity and the corresponding impact on public trust and confidence. The only concession made by government is that a senior judge would be appointed to chair the inquiry and the terms of reference (which are set by the executive) will include the same purposes as a coroners investigation (as found in clause 5 of the current Bill).

- A Minister will appoint a judge of his or her choice to chair the inquiry who will effectively replace a coroner;
- A Minister, or the Chair of an Inquiry, will be able to restrict attendance at an inquiry, or at a part of the inquiry, and restrict disclosure or publication of any evidence or documents;⁶
- Such restrictions can be ordered for a wide variety of reasons, including because it is necessary to do so in the public interest (which is very broadly defined).
- At the end of the inquiry a report must be given to the Minister setting out the facts determined and any recommendations;⁷
- Certain parts of the report may be withheld from publication if it is in the public interest to do so;
- Intercept material can be presented to an inquiry held under the *Inquiries Act 2005*, although the material can only be disclosed to the inquiry panel and to counsel appointed to assist the panel.⁸

‘Secret inquiries’ worse than ‘secret inquests’

7. We do not believe that a public inquiry can ever be a substitute for an independent and open inquest. Neither do we believe that this was intended by parliamentarians when the *Inquiries Act* was passed in 2005. Indeed we believe that the Government’s so-called replacement to ‘secret inquests’ is even worse than the original provisions in safeguarding the rights of victims’ families. As Lord Alton of Liverpool said at the Committee debate in the House of Lords:

We were very pleased that the Government responded to the concerns that were made at earlier stages of the Bill concerning the whole question of secret inquests. However, is replacing those inquests with secret inquiries not a move that could be said to be less transparent? It will involve no jury and may involve greater secrecy than even the original proposal... The Government could run into real difficulty here.

⁵ An inquiry under the *Inquiries Act 2005* can be held after a Minister calls for an inquiry either because particular events have caused, or are capable of causing, public concern or there is public concern that an event may have occurred (section 1 of the *Inquiries Act 2005*).

⁶ See section 19.

⁷ See section 24.

⁸ See section 18(7)(c) of the *Regulation of Investigatory Powers Act 2000*.

The Government's original 'secret inquests' proposal was subjected to several modifications during its bumpy and ultimately unsuccessful parliamentary passage. In particular and most recently, numerous last minute amendments were tabled to the proposals at Report Stage in the House of Commons in an attempt to ward off a Government defeat.⁹ It seems that the Government's new approach has been pursued in the hope that by adapting the remit and purpose of a legislative scheme already in place under a different Act the proposals will seem less controversial than the creation of a parallel 'secret' coronial system was deemed to be. Press coverage after the House of Lords vote on 21st October can leave us in no doubt that this is certainly not the case.¹⁰

Impact on public trust and confidence

8. The extent to which the 'secret inquiries' could undermine public trust and confidence in the accountability of the State cannot be overstated. At Committee Stage in the House of Lords, Baroness Miller of Chilthorne Domer summarised powerfully the unfeasibility of the 'secret inquiry' route:

We do not believe that we can have a situation in which the state, for whatever reason, however justifiable, shoots people, appoints someone under the Inquiries Act to investigate and sets the remit for the inquiry, when there is no jury and little or no openness. In other countries we would criticise that as impunity.

⁹ MPs from across the political spectrum voted against 'secret inquests' at Report Stage of the Coroners and Justice Bill in the House of Commons.

¹⁰ Independent (22/10/09) – *Outrage at government plan for secret inquests*

<http://www.independent.co.uk/news/uk/home-news/outrage-at-government-plan-for-secret-inquests-1806867.html>

Independent Leader (22/10/09) – Resist these attempts to make justice secret. Inquests should be free from the hand of ministerial interference

<http://www.independent.co.uk/opinion/leading-articles/leading-article-resist-these-attempts--to-make-justice-secret-1806775.html>

Mail on Sunday (25/10/09) – *If somebody dies we must know why...it's vital that our inquests stay public* <http://www.dailymail.co.uk/debate/article-1222760/HELEN-SHAW-If-somebody-dies-MUST-know--Its-vital-inquests-stay-public.html>

Birmingham Post (30/10/09) - *Birmingham coroner hits out at Jack Straw over 'secret' inquests* <http://www.birminghampost.net/news/west-midlands-news/2009/10/30/birmingham-coroner-hits-out-at-jack-straw-over-secret-inquests-65233-25048343/>

The Times (29/10/09) - *Coroners and Justice Bill: Jack Straw is determined to try again* <http://business.timesonline.co.uk/tol/business/law/columnists/article6893945.ece>

Many contentious deaths raise important issues of State accountability and, in a free democratic society such deaths should be subject to particularly close public scrutiny. For example, in September this year, Black Country coroner, Robin Balmain concluded the inquest into the death of Stuart Dyson, a soldier who was exposed to depleted uranium in the First Gulf War. The jury in that inquest found that “*it was more likely than not Mr Dyson’s death from cancer was caused or contributed to by his exposure to depleted uranium during his service in the First Gulf War.*” This inquest and verdict is exactly the type of case for which use of the ‘secret inquiries’ provisions might in future be used. There has already been significant speculation that if these provisions were already in place they could have been applied to the inquest into the shooting of Jean Charles de Menezes at Stockwell tube station in July 2005. As is made clear in the statement by Graham Foulkes at the beginning of this briefing, bereaved relatives currently awaiting inquests into the deaths of their loved ones are already concerned that the government’s secrecy provisions are intended for them. It is for their sake imperative that the inquest system remain open and transparent.

Breach of Article 2 of the Human Rights Act

9. Where a death occurs in state custody or where the death is alleged to have resulted from negligence on behalf of state agents, article 2 of the *Human Rights Act 1998*¹¹ requires that an investigation into the death must be made and the investigation must be independent; effective; prompt; open to public scrutiny; and support the participation of the next-of-kin.¹² An inquiry under the *Inquiries Act 2005* will not necessarily support the participation of the next-of-kin and, given the executive can order restrictions on public access to hearings and documents and the final report. It may well be that the next-of-kin, and the public at large, never find out the precise circumstances surrounding the death. An inquiry under the *Inquiries Act 2005* will not focus exclusively on the cause of death of an individual – by its nature its focus must be on matters more generally of public concern. In contrast, an inquest is concentrated solely on that individual’s death and the bereaved family are heavily involved and often represented. We believe that an inquest should be the first step in

¹¹ Article 2 of the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998*.

¹² *Jordan v UK* (2001) 33 EHRR 38 and *R v Secretary of State for the Home Department ex parte Amin* [2003] UKHL 51.

an investigation and if wider issues are raised during the course of the inquest which would warrant an inquiry looking at these broader concerns, this can then occur.

10. As a result of the current legislative framework and the ongoing protracted delay to at least one inquest as a result, the Government is most likely already in breach of Article 2 in that particular case. In our view the termination of an inquest in favour of an inquiry under the Government's current proposals would certainly put the Government in breach of Article 2 and would be subject to challenge in the courts.

How the House of Lords amendments will work

11. The Government's proposals for 'secret inquiries' appear to be motivated by a problem with the current legislative framework. Intercept evidence is currently inadmissible in a number of legal proceedings including coronial proceedings. The problem for the Government is that for deaths where the state may be in some way implicated, the state is under a duty under human rights law to instigate an independent, effective and prompt investigation into a death which is open to public scrutiny and which supports the participation of the next-of-kin. It follows then that for certain deaths, the state will be under a duty to allow intercept evidence to be considered by the independent investigation in order for that investigation to meet the necessary standards of effectiveness, transparency, and next-of-kin involvement. We have consistently agreed with the Government that a change in the law *is* required so that inquests that necessarily involve intercept material are not unnecessarily stalled. We are aware of one such inquest – that of Azelle Rodney – which has so far been stalled for over four years as a result of the general bar on the admissibility of intercept evidence.¹³

12. The House of Lords amendments allow for the limited use of intercept material in coronial proceedings in tightly defined circumstances with powerful safeguards in place to protect national security interests. Under the amendments on

¹³ Azelle Rodney,¹³ a 24 year old black man, died in April 2005 after a police operation in north London in which he was shot seven times by a Metropolitan Police Service (MPS) officer. The shooting took place after the car he was in was brought to a halt in a 'hard stop' in Edgware, north London, after being under police surveillance for several hours. In July 2006 the Crown Prosecution Service (CPS) announced that there was insufficient evidence for a successful prosecution. After the CPS decision, the family was told by the coroner that the full inquest could not be held because large portions of the police officers' statements had been crossed out, probably pursuant to the *Regulation of Investigatory Powers Act 2000* (RIPA), which excludes information obtained from covert surveillance devices such as telephone taps or bugs from being used as evidence or even being seen by coroners.

intercept it will remain possible for a judge conducting an investigation to ban or restrict the jury's or public's access to material that would be contrary to the interests of national security. Currently rule 17 of the *Coroners Rules 1984*¹⁴ enables coroners to "direct that the public be excluded from an inquest or any part of an inquest if he considers that it would be in the interest of national security so to do". A judge can also be appointed to head up the coronial inquest and Public Interest Immunity (PII) certificates can be issued if necessary. These powers are maintained in the present Bill.

13. In legal terms the general bar on the admissibility of intercept is an anomaly. The UK is the only country in the world, to maintain the ban on such evidence. Elsewhere in the world, intercept evidence has been used effectively to convict those involved in terrorism and other serious crimes. While RIPA forbids the use of domestic intercepts in open UK court proceedings, foreign intercepts can be used if obtained in accordance with foreign laws. Bugged (as opposed to intercepted) communications or the products of surveillance or eavesdropping can be admissible even if they were not authorised and interfere with privacy rights. There are no fundamental civil liberties or human rights objections to the use of intercept material, properly authorised by judicial warrant, in criminal or coronial proceedings.¹⁵ The most substantial argument advanced by the Government against lifting the bar on intercept evidence is the concern that this would jeopardise security services sources and methods. It has argued that this would, accordingly, undermine the ability of the state to protect national security and to detect and investigate future criminal activity. In our opinion, however the significance of this argument has been exaggerated and the Government's position is in any case inconsistent. Foreign intercepts can be used if obtained in accordance with foreign laws.¹⁶ Bugged (as opposed to intercepted) communications or the products of surveillance or eavesdropping may also be admissible even if they were not authorised and if they interfere with privacy rights. It is difficult to see how this already admissible covert intelligence raises different secrecy concerns to intercept evidence which is not currently admissible. In recognition of concerns about the sensitivity of interception methods the House of

¹⁴ As enacted by SI 1984 No 552.

¹⁵ Indeed, Liberty and Justice have long argued that the bar on the use of intercept evidence in criminal proceedings should be lifted. See e.g. Liberty's evidence to the JCHR, 'Relaxing the Ban on the Admissibility of Intercept Evidence', February 2007, available at: <http://www.liberty-human-rights.org.uk/pdfs/policy07/liberty-intercept-evidence.pdf> and JUSTICE's 2006 report *Intercept Evidence: Lifting the Ban* available at <http://www.justice.org.uk/images/pdfs/JUSTICE%20Intercept%20Evidence%20report.pdf>

¹⁶ Cf *R v. P and Others*, [2000] All ER (D) 2260.

Lords amendments insert a specific safeguard to allow the redaction of material that may divulge methods and techniques used in interception.

14. It is nearly 10 years since lifting the bar on intercept evidence was first proposed by Lord Lloyd.¹⁷ In February 2006 the then Home Secretary stated that the Government was working “*to find, if possible, a legal model that would provide the necessary safeguards to allow intercept material to be used as evidence*”¹⁸ and promised a report on this matter in 2006.¹⁹ Eventually a Privy Council Review of Intercept as Evidence (the Chilcot Review) was convened and first reported back on 4 February 2008 recommending the abolition of the absolute prohibition contained in section 17 of RIPA.²⁰ However, progress since then has been slow. In the meantime, the compelling reasons for why, at a minimum, the ban on intercept evidence should be lifted in coronial inquests persist. It remains our position that the ban on the admissibility on intercept evidence should be removed in respect of all proceedings,²¹ and it is disappointing that there have been no legislative proposals from the Government to achieve the removal of the bar. Instead, and despite accepting that removal of the bar is right in principle, the Government seems intent on circumventing the Chilcot process by framing its own exceptions to the general bar when it suits²² and creating new mechanisms that undermine due process and open justice when it doesn’t.²³

Wisdom of the House of Lords amendments

15. The House of Lords RIPA amendments and similar amendments tabled following the withdrawal of the ‘secret inquests’ proposal from the Counter-Terrorism Bill in 2008 have a strong history of support in the House of Lords. In 2008 similar amendments tabled by Baroness Miller of Chilthorne Domer, were supported by the Conservative Front Bench. Shadow Minister for Security and National Security and

¹⁷ Lord Lloyd, *Inquiry into Legislation against Terrorism*, 1996, Cm 3420.

¹⁸ HC Deb, 2 Feb 2006, col 479

¹⁹ HC Deb, 2 Feb 2006, col 482

²⁰ Privy Council review of Intercept as Evidence available at: <http://www.official-documents.gov.uk/document/cm73/7324/7324.asp>

²¹ Particularly if a verdict of unlawful killing is given by an inquest that has heard intercept evidence, as a subsequent criminal investigation that did not have the same access to evidence may not be able to reach a verdict.

²² In the Counter-Terrorism Act 2008 the Government amended RIPA to allow intercept to be admissible in *Inquiries Act* inquiries. This was evidently a pre-cursor to the proposals that the Government is now seeking to push through.

²³ As the Government is seeking to do in the present case.

Adviser to the Leader of the Opposition Baroness, Lady Neville-Jones said at the time:

There is widespread support for this measure across your Lordships' House and in another place. It will address an anomaly in RIPA and ensure that all inquests comply with Article 2 of the ECHR. The point is not simply that inquests should be institutionally independent, but that they should be prompt. Part of the problem here is that we are delaying justice in several cases, which is not good for the reputation of British justice.²⁴

16. This time around, the RIPA amendments attracted huge parliamentary support in the House of Lords. In particular, peers expressed support for the care and consideration with which the amendments had been drafted and the inherent safeguards provided for. At Committee Stage Lord Pannick stated:

I support these carefully drafted amendments for all the reasons given by the noble Baroness, Lady Miller, in her powerful speech and for one additional reason. That reason is that new subsections (8B) and (8C) inserted by Amendment 31 contain powerful safeguards to protect intercept evidence from disclosure save where that is necessary in order to ensure an effective investigation of the death. There is also the additional safeguard of the power for the redaction of material disclosing the method or the means by which the information was obtained. If the Minister considers that these safeguards are inadequate, can he explain why and what other safeguards he considers are needed in this context?

The late Lord Kingsland also made clear that the amendments had the full support of the Conservative Front Bench:

As a matter of principle, the Opposition would much prefer a solution in the coronial context to one in the context of the Inquiries Act. I entirely agree with the reasons for the question of the noble Lord, Lord Pannick, to the Minister at the end of his remarks. I submit that if the Minister does not accept the amendment of the noble Baroness, Lady Miller, he ought to tell us why it does not provide sufficient safeguards in relation to intercept evidence...If what is

²⁴ Official Report, 24/11/08; col. 1298

in Amendment 30 does not satisfy the Minister's concerns about the admission of such evidence, what additional ingredients should the amendment have to pass the Minister's test?

17. The Government's response was disappointing. In debate at Committee Stage, Government Minister, Lord Bach, overlooked the safeguards inherent in the RIPA amendments and effectively urged peers to elevate 'the ring of secrecy' above the UK's Article 2 obligations:

While these amendments would, in principle, allow the finder of fact to have access to all the relevant material and thereby conduct an Article 2 ECHR-compliant inquest, they do so by sacrificing what we call the ring of secrecy

18. It is likely that when the House of Lords amendments return for consideration in the House of Commons, the Government will argue that the amendments pre-judge the outcome of the Chilcot Review. That is certainly not the intention of peers and we do not believe that their amendments fall into that trap. While the Chilcot review takes within its ambit the admissibility of intercept in civil proceedings it is principally concerned with the admissibility of intercept in criminal proceedings. As we have outlined at paragraph 10 above, intercept is already partially admissible in a host of civil proceedings – one-sided exceptions to the general bar on admissibility in court are now being made on a regular basis. Far from pre-judging Chilcot, the suggested amendments are in line with the piecemeal exceptions to the general bar on admissibility in civil proceedings, albeit through a much better mechanism that shows due regard to the requirements of process and the rule of law. Moreover disclosure of RIPA material in inquest proceedings is necessary now, to allow at least one long delayed inquest to proceed. It is also worth noting that if (as has already been recommended by the Chilcot review) intercept is to be made admissible in criminal proceedings, under the Government's current proposals intercept would be admissible in criminal proceedings and a significant number of civil proceedings but would not be admissible in coronial proceedings. This would be bizarre. The principal point of the coronial process is to provide information and some degree of comfort and closure to the relatives of the bereaved. It is (for all the reasons outlined above) right to allow intercept in criminal proceedings but to create a dual system whereby defendants are granted access to information to fulfil their due process rights while bereaved victims are left out in the dark would be hugely unfair to all those who seek justice for their loved ones after death.

19. In addition to the powerful safeguards provided for by the House of Lords amendments, these amendments will be combined with a robust and sophisticated inquest system that has for centuries provided justice for the bereaved as well as protecting national security interests. Inquests (and jury inquests especially) invariably deal with material that is sensitive for one reason or another. The de Menezes inquest was a case in point and involved the consideration of evidence that was highly sensitive, such as the details of the Metropolitan Police's operational response to the threat posed by suicide bombers (including Operation Kratos), the assistance they had had from countries such as Israel and the USA in developing this, and other aspects of undercover and surveillance operations. The widespread concern that the Metropolitan Police had been operating a 'shoot to kill' policy without any parliamentary approval or oversight made it particularly sensitive. A large number of witnesses also sought anonymity before giving their evidence. In fact, the de Menezes inquest managed to deal effectively with highly sensitive evidence and the protection of witnesses whilst remaining largely open and accessible to all, showing that it is perfectly possible to for safeguards to be appropriately applied on a case by case basis. This was done in several ways:

- A High Court judge was appointed as coroner and was able to consider PII applications by the police in respect of highly confidential policies and documents. National security issues were clearly central to the subject matter of the inquest, most importantly the Metropolitan Police strategy for dealing with suicide bombers. Where needed, the coroner granted full PII in relation to certain documents. However, he ruled that many of the documents could be provided to the legal teams, on strict undertakings as to confidentiality, not making copies, keeping the material secure, etc. On that basis the family's lawyers were permitted to see highly sensitive documents, and to question witnesses based on that material. In relation to the most sensitive material, a summary was prepared of the material that could be shared with the family and their lawyers were provided with the material underlying the summary (again on strict undertakings).
- Where discussion in open court touched upon the contents of any such protected documents, agreements were reached in the absence of the jury and the public as to what could be explored and, although some aspects were regarded as too sensitive to be investigated publicly, overall a

reasonably fair exploration of the issues was allowed whilst national security and other policing concerns were protected.

- Suitable arrangements were made for the protection of witnesses without the need for certification. There were over 40 police officers who worked in highly sensitive anti-terrorist operations or covert surveillance whose witness evidence was required at the inquest. They were all granted anonymity by the coroner as a result. They gave evidence from behind a screen in court, and careful provision was made at the venue for their arrival and departure to protect their identities. The inquest was nevertheless able to hear evidence from those witnesses.
- The jury, the family, one of their supporters and the lawyers were all permitted to see the witnesses giving evidence so as to assess their demeanour (the police having carried out police checks on the family members and their chosen supporter beforehand). This was done without any risk or compromise to the identity of any of those witnesses whose anonymity has been maintained despite the huge attention from media organisations.

Conclusion

20. As we make clear at page 5 of this briefing, MPs will definitely be able to support the House of Lords amendments on the admissibility of intercept in inquest proceedings when the Bill returns to the Commons on 9th November. We hope that by then peers will also have successfully argued that the Government's 'secret inquiries' clauses must fall as a consequence of the RIPA amendments. This is the only way that the parliamentary battle against 'secret inquests' and the replacement 'secret inquiries' can be won. If this result is achieved we urge MPs from across the House to also support these amendments and allow bereaved people to continue to be able to establish the truth about the death of their loved one and hold those responsible for their treatment and care to account.

Amendments voted on to the Bill at Report Stage in the House of Lords

Amendment 1

To move the following clause—

- ‘(1) Section 18 of the Regulation of Investigatory Powers Act 2000 (c. 23) is amended as follows.
- (2) At the end of subsection (7) insert—
- ‘(d) a disclosure to a coronial judge or to a person appointed as counsel to an inquest or to members of a jury at an inquest or to an interested person in which the coronial judge has ordered the disclosure.’.
- (3) After subsection (8A) insert—
- ‘(8B) A coronial judge shall not order a disclosure under subsection (7)(d) except where the judge is satisfied that the circumstances of the case make the disclosure necessary to enable the matters required to be ascertained by the investigation to be ascertained.
- (8C) An order for disclosure made under subsection (7)(d) may include directions enabling the redaction of any material relating to the method or means by which the information was obtained.’.
- (4) After subsection (13) insert—
- ‘(14) In this section “interested person” has the same meaning as in section 38 of the Coroners and Justice Act 2009.
- (15) In this section “coronial judge” means a judge nominated by the Lord Chief Justice under the Coroners and Justice Act 2009 to conduct an investigation into a person’s death and who has agreed to do so.’.

Effect

This amends the *Regulation of Investigatory Powers Act 2000* (RIPA) to remove the prohibition on intercept material to a judge, counsel, jury members and other interested persons in an inquest when the judge considers it necessary to do so in the circumstances of the case.

Amendment 2

Schedule 20, Part 1, page 212, line 28, at end insert—

‘4A Section [*amendment to RIPA*] has effect in relation to investigations that have begun, but have not been concluded, before the day on which that section comes into force (as well as to inquests beginning on or after that day).’.

Effect

This amends Schedule 20 which contains transitional provisions to ensure that the amendments in amendment 1 will apply to current and future inquests.

Amendment 3

To move the following clause—

In section 15 of the *Regulation of Investigatory Powers Act 2000* (c. 23) after subsection (4)(c) insert—

‘(ca) it is necessary to ensure that an inquest has the information it needs to enable the matters required to be ascertained by the investigation to be ascertained;’.

Effect

This amends section 15 of RIPA to require that a copy made of any of the intercepted material or data is not destroyed before an inquest if it may be necessary in the investigation (without this amendment, current law and practice means that intercept material that may be relevant to an inquest is likely to be destroyed as soon as an investigation is complete).

Amendments that were intended to be moved at Report Stage in the House of Lords and which peers will argue are consequential to the amendments above

Amendment 4

Schedule 1, Part 1, page 120, leave out paragraph 3. Schedule 1, Part 2, page 122, leave out paragraph 8.
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Effect

This would remove paragraphs 3 and 8 from Schedule 1 of the Bill. Paragraph 3 allows for an inquest to be suspended if an inquiry is launched under the *Inquiries Act 2005* that would adequately investigate the death. Paragraph 8 deals with the resumption of an inquest suspended if there is an inquiry.