



# Certification of Death (Scotland) Act 2011

## 2011 asp 11

### *Referral of medical certificates of cause of death for review*

## **2 Referral of certain medical certificates of cause of death for review**

After section 24 of the 1965 Act insert—

### **“24A Duty to refer certain certificates of cause of death for review**

- (1) The Registrar General must ensure that randomly selected certificates of cause of death are referred for review under section 8(1) of the 2011 Act prior to registration of the death to which each certificate relates.
- (2) The Registrar General must ensure that certificates of cause of death of such descriptions as may be specified in a request by medical reviewers under section 3 of the 2011 Act are referred for review under section 8(1) of that Act.
- (3) A district registrar for a registration district may refer for review under section 8(1) of that Act a certificate of cause of death where the district registrar considers it appropriate to do so.
- (4) The following certificates may not be referred under subsections (1) to (3)—
  - (a) a certificate of cause of death relating to a body in respect of which a direction has been given by a Health Board under section 90(2) of the Public Health etc. (Scotland) Act 2008 (asp 5) (restrictions on release of infected etc. bodies from hospital),
  - (b) a certificate of cause of death which has already been referred under this section,
  - (c) a certificate of cause of death which has been (or is being) reviewed under section 8(1) of the 2011 Act following an application made under section 4(1) of that Act,
  - (d) a certificate of cause of death which is a replacement certificate attested and transmitted in response to an invitation to do so under section 10 or 11 of the 2011 Act,
  - (e) a certificate of cause of death where the cause of death of the deceased person has been (or is being) investigated by a procurator fiscal,

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- (f) a certificate of cause of death attested prior to the coming into force of this section.
- (5) The Scottish Ministers may give directions to the Registrar General about the referral of certificates under this section; and the Registrar General must comply with any such direction.
- (6) A direction under subsection (5) may in particular specify—
- (a) the minimum number of certificates of cause of death which are to be selected for referral under subsection (1) in any year, and
  - (b) the method of determining which certificates are to be selected for referral under subsection (1).
- (7) The Scottish Ministers may by order made by statutory instrument suspend the referral of certificates under this section—
- (a) during an epidemic, or
  - (b) where the Scottish Ministers consider, on reasonable grounds, that it is necessary to do so to prevent, or to prevent the spread of, infectious diseases or contamination.
- (8) An order made under subsection (7)—
- (a) may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) may be exercised so as to make different provision for different purposes.
- (9) An order made under subsection (7) (other than one to which subsection (11) applies)—
- (a) must be laid before the Scottish Parliament, and
  - (b) ceases to have effect at the expiry of a period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of the Parliament.
- (10) Subsection (11) applies to an order made under subsection (7) consisting only of—
- (a) provision revoking an earlier order made by virtue of subsection (7), or
  - (b) such provision and provision made by virtue of subsection (8)(a).
- (11) An order to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.
- (12) In reckoning for the purposes of subsection (9)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved, or
  - (b) in recess for more than 4 days.
- (13) Subsection (9)(b) is without prejudice to anything previously done by reference to an order under subsection (7) or to the making of a new order under that subsection.”.

### **3 Medical reviewer requests**

- (1) A medical reviewer may request that the Registrar General ensure that medical certificates of cause of death of such description as the medical reviewer may specify are referred for review under section 8(1).
- (2) A request under subsection (1) may relate to a certificate in respect of which the death has been registered.

### **4 Application for review of certificate by interested person**

- (1) An interested person may apply to a medical reviewer for a review under section 8(1) of an eligible medical certificate of cause of death.
- (2) An application under subsection (1)—
  - (a) may relate to a certificate in respect of which the death has been registered,
  - (b) must be made within three years of the date of death of the deceased person to whom the certificate relates.
- (3) Where the medical reviewer considers an application under subsection (1) to be vexatious, the medical reviewer may reject it.
- (4) A medical reviewer must notify the Registrar General of an application received under subsection (1) (other than one which is rejected under subsection (3)).
- (5) For the purposes of subsection (1), an interested person is—
  - (a) a person who, under the 1965 Act, is required or stated to be qualified to give information concerning the deceased's death,
  - (b) a health care professional (or other carer) who was involved with the deceased's care prior to the deceased's death,
  - (c) the funeral director responsible for the funeral arrangements of the deceased,
  - (d) the person having charge of the place of disposal of the body of the deceased,
  - (e) such other persons as the Scottish Ministers may by order specify.
- (6) For the purposes of subsection (1), an eligible medical certificate of cause of death is a medical certificate of cause of death other than—
  - (a) a certificate relating to a body in respect of which a direction has been given by a Health Board under section 90(2) of the Public Health etc. (Scotland) Act 2008 (asp 5) (restrictions on release of infected etc. bodies from hospital),
  - (b) a certificate which has been referred under section 24A of the 1965 Act (duty to refer certain certificates of cause of death for review),
  - (c) a certificate which has already been (or is being) reviewed under section 8(1) following an application made under subsection (1),
  - (d) a certificate which is a replacement certificate attested and transmitted in response to an invitation to do so under section 10 or 11,
  - (e) a certificate where the cause of death of the deceased person has been (or is being) investigated by a procurator fiscal,
  - (f) a certificate attested prior to the coming into force of this section.
- (7) The Scottish Ministers may by order suspend the application of this section—
  - (a) during an epidemic, or

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- (b) where the Scottish Ministers consider, on reasonable grounds, that it is necessary to do so to prevent, or to prevent the spread of, infectious diseases or contamination.
- (8) The Scottish Ministers may by regulations make provision about applications under subsection (1) including, in particular, provision about—
- (a) the procedure for making applications,
  - (b) the form and content of applications,
  - (c) the action to be taken by medical reviewers in respect of applications.

## 5 Stay of registration of death pending review

In section 25B of the 1965 Act (registration of deaths)—

- (a) in subsection (1), after “subsection (2)” insert “and (2A)”, and
- (b) after subsection (2) insert—

“(2A) The registrar is not to register a death in respect of which the certificate of cause of death has been referred under section 24A or where the Registrar General has been notified under section 4(4) of the 2011 Act of an application for review having been made until the first occurrence of any of the following events—

- (a) a medical reviewer, under section 7(2)(b) of the 2011 Act (request for review not to stay registration), notifying the registrar that it is appropriate in the circumstances to register the death before the review is complete,
- (b) the certificate or its replacement being approved by a medical reviewer—
  - (i) under section 9 of the 2011 Act (action following satisfactory review), or
  - (ii) under section 10 of that Act (action following unsatisfactory review: medical reviewer),
- (c) the certificate or its replacement being approved by the senior medical reviewer under section 11 of the 2011 Act (action following unsatisfactory review: senior medical reviewer),
- (d) the senior medical reviewer, under section 11(8)(a), (9)(a) or 12(5)(a) of the 2011 Act, signifying that the review has been conducted,
- (e) a medical reviewer, under section 12(2)(a) of the 2011 Act (action where relevant medical practitioner is unavailable or incapacitated), signifying that the review has been conducted, or
- (f) a procurator fiscal approving the certificate or providing a replacement certificate attested by a registered medical practitioner.”.

## 6 Request for review not to stay registration

After section 24A of the 1965 Act insert—

### **“24B Request for review not to stay registration**

- (1) This section applies where a certificate of cause of death is referred under section 24A(1).
- (2) A district registrar for a registration district must, following a request by a qualified informant, refer the certificate to a medical reviewer for a determination under section 7 of the 2011 Act (medical reviewer to determine whether review to stay registration).
- (3) Such a referral must include a statement by the qualified informant of the circumstances which the qualified informant believes justify registering the death before the review is complete.
- (4) The qualified informant must also provide such other information as the medical reviewer may reasonably require.”.

### **7 Medical reviewer to determine whether review to stay registration**

- (1) This section applies where a medical reviewer receives a referral under section 24B(2) of the 1965 Act (request for review not to stay registration).
- (2) The medical reviewer must—
  - (a) determine whether it is appropriate to register the death to which the referral relates before the review of the certificate under section 8(1) or, as the case may be, any further review under section 11(2)) is completed, and
  - (b) notify the relevant registrar of the determination.
- (3) The medical reviewer may determine under subsection (2)(a) that it is appropriate to register the death before the review (or further review) is completed only where the medical reviewer is satisfied that—
  - (a) the circumstances of the case justify such registration, and
  - (b) there are no obvious indications that the medical certificate of cause of death is not in order.
- (4) The medical reviewer may make such enquiries as the medical reviewer considers appropriate when making a determination under subsection (2)(a).