Certification of Death (Scotland) Act 2011

2011 asp 11

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th March 2011 and received Royal Assent on 20th April 2011

An Act of the Scottish Parliament to make provision about the certification of death and still-birth certificates; to make provision for medical reviewers, the senior medical reviewer and their functions; and for connected purposes.

Medical reviewers

1 Medical reviewers S

(1) Medical reviewers are to exercise the functions conferred on them by this Act or any other enactment on behalf of Healthcare Improvement Scotland.

(2) The senior medical reviewer is to exercise the functions conferred on that person by this Act or any other enactment on behalf of Healthcare Improvement Scotland.

(3) Schedule 1 (which makes further provision about the appointment and status of medical reviewers) has effect.

Commencement Information

I1 S. 1(1) in force for specified purposes at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

I2 S. 1(1)(2) in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

I3 S. 1(2) in force for specified purposes at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

I4 S. 1(3) in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

Referral of medical certificates of cause of death for review

2 Referral of certain medical certificates of cause of death for review S

After section 24 of the 1965 Act insert—

Changes to legislation: *There are currently no known outstanding effects for the Certification of Death (Scotland) Act 2011. (See end of Document for details)*

"**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,

(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.”.

Commencement Information

I5 S. 2 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

3 Medical reviewer requests S

(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.

Commencement Information

I6 S. 3 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

4 Application for review of certificate by interested person S

(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

(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.

Commencement Information

I7 S. 4(1)-(7) in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

I8 S. 4(8) in force at 25.3.2015 for specified purposes by S.S.I. 2015/115, art. 2, **Sch.**

I9 S. 4(8) in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

5 Stay of registration of death pending review S

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.".

Commencement Information

I10 S. 5 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

6 Request for review not to stay registration S

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.”.

Commencement Information
I11 S. 6 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

7 Medical reviewer to determine whether review to stay registration S

(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).

Commencement Information
I12 S. 7 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Review of medical certificates of cause of death

8 Review of medical certificates of cause of death S

(1) A medical reviewer must review any medical certificate of cause of death—
- (a) referred under section 24A of the 1965 Act, or
- (b) in respect of which an application has been made under section 4(1) (other than one which has been rejected as vexatious under section 4(3)).

(2) In conducting a review, the medical reviewer may—

(a) examine the health records of the deceased person to whom the certificate relates,

(b) seek the views of the medical practitioner who attested the certificate,

(c) make enquiries of any other person who the medical reviewer considers may have information about the health of the deceased person (for example, a member of the deceased person's family, a carer or a nurse),

(d) make such other enquiries and examine such other things as the medical reviewer considers appropriate.

(3) Following a review under subsection (1) the medical reviewer must come to a view on whether the certificate is in order.

(4) For the purposes of this Act, a certificate is in order where a medical reviewer is satisfied, on the basis of the evidence available to the medical reviewer, that—

(a) the cause (or causes) of death mentioned represents a reasonable conclusion as to the likely cause (or causes) of death, and

(b) the other information contained in the certificate is correct.

(5) The Scottish Ministers may by regulations make further provision about the review of certificates including, in particular, action to be taken by medical reviewers when conducting a review or by senior medical reviewers when conducting a further review.

Commencement Information

I13 S. 8 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

9 Action following satisfactory review S

(1) Subsection (2) applies where, following a review under section 8(1), a medical reviewer is of the view that a medical certificate of cause of death is in order.

(2) The medical reviewer must approve the certificate and notify the relevant registrar accordingly.

Commencement Information

I14 S. 9 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

10 Action following unsatisfactory review: medical reviewer S

(1) This section applies where, following a review under section 8(1), a medical reviewer is of the view that a medical certificate of cause of death is not in order.

(2) The medical reviewer must—

(a) inform the relevant medical practitioner of that view and the reasons for coming to that view, and

(b) invite the relevant medical practitioner to attest and transmit to the medical reviewer a replacement certificate which takes account of the reasons.

(3) If the relevant medical practitioner attests and transmits a replacement certificate which in the view of the medical reviewer is in order, the medical reviewer must approve the replacement certificate and transmit it to the relevant registrar.

(4) If the relevant medical practitioner attests and transmits a replacement certificate which in the view of the medical reviewer is not in order, the medical reviewer must refer the review to the senior medical reviewer.

(5) If the relevant medical practitioner declines to attest and transmit a replacement certificate in response to the invitation under subsection (2)(b), the medical reviewer must—

(a) approve the certificate and notify the relevant registrar accordingly, or

(b) refer the review to the senior medical reviewer.

Commencement Information

I15 S. 10 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

11 Action following unsatisfactory review: senior medical reviewer S

(1) This section applies where a review is referred to the senior medical reviewer under section 10(4) or (5)(b).

(2) The senior medical reviewer may conduct a further review of the certificate.

(3) If the senior medical reviewer conducts a further review under subsection (2), the senior medical reviewer may exercise the powers conferred on a medical reviewer by section 8(2).

(4) The senior medical reviewer must come to a view on whether the certificate is in order (and for that purpose references in section 8(4) to a medical reviewer are to be read as references to the senior medical reviewer).

(5) If the senior medical reviewer comes to the view that the certificate is in order, the senior medical reviewer must approve the certificate and notify the relevant registrar and the relevant medical practitioner accordingly.

(6) If the senior medical reviewer comes to the view that the certificate is not in order, the senior medical reviewer must—

(a) inform the relevant medical practitioner of that view and the reasons for coming to that view, and

(b) invite the relevant medical practitioner to attest and transmit to the senior medical reviewer a replacement certificate which takes account of the reasons.

(7) If the relevant medical practitioner attests and transmits a replacement certificate which in the view of the senior medical reviewer is in order, the senior medical reviewer must approve the replacement certificate and transmit it to the relevant registrar.

(8) If the relevant medical practitioner attests and transmits a replacement certificate which in the view of the senior medical reviewer is not in order, the senior medical reviewer must—

(a) signify that a review has been conducted and notify the relevant registrar accordingly, or

(b) refer the certificate to the procurator fiscal for investigation into the cause of death of the deceased person to whom the certificate relates.

(9) If the relevant medical practitioner declines to attest and transmit a replacement certificate, the senior medical reviewer must—

(a) approve the certificate, or otherwise signify that a review has been conducted, and notify the relevant registrar accordingly, or

(b) refer the certificate to the procurator fiscal for investigation into the cause of death of the deceased person to whom the certificate relates.

(10) Subsection (11) applies where—

(a) the senior medical reviewer has come to the view that the certificate or, as the case may be, its replacement, is not in order because the senior medical reviewer is not satisfied that information (other than the cause of death) contained in the certificate (or its replacement) is correct, or

(b) the relevant medical practitioner declines to attest and transmit a replacement certificate in response to the invitation under subsection (6).

(11) The senior medical reviewer may (in addition to the action to be taken under subsection (8) or (9)) take such steps as the senior medical reviewer considers appropriate to inform such persons as the senior medical reviewer considers appropriate of the relevant information.

Commencement Information

I16 S. 11 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

12 Action where relevant medical practitioner is unavailable or incapacitated S

(1) Subsections (2) and (3) apply where—

(a) a medical reviewer has conducted a review under section 8(1),

(b) the medical reviewer has come to the view that a medical certificate of cause of death is not in order, and

(c) the relevant medical practitioner is unavailable or unable to attest and transmit a replacement certificate in accordance with section 10.

(2) The medical reviewer must—

(a) signify that a review has been conducted and notify the relevant registrar accordingly, or

(b) refer the certificate to the procurator fiscal for investigation into the cause of death of the deceased person to whom the certificate relates.

(3) Where the medical reviewer has come to the view that the certificate is not in order because the medical reviewer is not satisfied that information contained in the certificate (other than the cause of death) is correct, the medical reviewer may (in addition to the action to be taken under subsection (2)) take such steps as the medical reviewer considers appropriate to inform such persons as the medical reviewer considers appropriate of the relevant information.

(4) Subsections (5) and (6) apply where—

(a) a medical reviewer has referred a review to the senior medical reviewer under section 10(4) or (5)(b),

(b) the senior medical reviewer has come to the view that a medical certificate of cause of death is not in order, and

(c) the relevant medical practitioner is unavailable or unable to attest and transmit a replacement certificate in accordance with section 11.

(5) The senior medical reviewer must—

(a) signify that a review has been conducted and notify the relevant registrar accordingly, or

(b) refer the certificate to the procurator fiscal for investigation into the cause of death of the deceased person to whom the certificate relates.

(6) Where the senior medical reviewer has come to the view that the certificate is not in order because the senior medical reviewer is not satisfied that information contained in the certificate (other than the cause of death) is correct, the senior medical reviewer may (in addition to the action to be taken under subsection (5)) take such steps as the senior medical reviewer considers appropriate to inform such persons as the senior medical reviewer considers appropriate of the relevant information.

Commencement Information

I17 S. 12 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

13 Duty to inform following review S

(1) This section applies where a medical reviewer has conducted a review under section 8(1).

(2) The medical reviewer must, when a relevant requirement is first complied with in relation to the certificate to which the review relates, inform the persons mentioned in subsection (3) of the outcome of the review including, in particular, any changes made to the medical certificate of cause of death.

(3) The persons are—

(a) the person who gave information of the particulars required to be registered concerning the death to the district registrar under section 23(1) of the 1965 Act,

(b) in the case of a review conducted by virtue of section 4, the interested person (unless that is the same person as mentioned in paragraph (a)).

(4) In subsection (2), "relevant requirement" means a requirement imposed by any of the following sections—

(a) section 9(2),

(b) section 10(3) or (5)(a),

(c) section 11(5), (7), (8) or (9),

(d) section 12(2) or (5).

Commencement Information

I18 S. 13 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Powers of medical reviewers

14 Power to require documents S

(1) A medical reviewer may for the purposes of—

(a) reviewing a medical certificate of cause of death under section 8(1) or, as the case may be, section 11(2), or

(b) determining whether it is safe to cremate the body of a person who died outwith Scotland under section 18(2),

require any person who is able, in the opinion of the medical reviewer, to produce relevant documents (including health records) to do so.

(2) Where a requirement under subsection (1) is imposed by the medical reviewer, the person in question must be given a notice specifying—

(a) the documents or types of documents which the person is required to produce,

(b) the date by which the person is required to produce them, and

(c) the name of the deceased person in respect of whom they are required.

(3) For the purposes of this section, a person is to be taken to comply with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.

(4) In this section, references to the medical reviewer include references to the senior medical reviewer.

Commencement Information

I19 S. 14 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

15 Documents: offences S

(1) Any person to whom a notice under section 14 is given commits an offence if the person—

(a) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice, or

(b) refuses or fails to produce any such document.

(2) It is a defence for a person charged with an offence under subsection (1)(b) to prove that there was a reasonable excuse for the refusal or failure.

(3) A person is not obliged under section 14 to produce any document which that person would be entitled to refuse to produce in a court in Scotland.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding 3 months.

(5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, commits the offence and is liable to be proceeded against accordingly.

Commencement Information
I20 S. 15 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Duty to report suspicions of criminality

16 Involvement of procurator fiscal S

(1) A medical reviewer (including the senior medical reviewer) must report any suspicion of criminality arising from the review of a medical certificate of cause of death (or a number of such reviews) to the procurator fiscal.

(2) A medical reviewer (including the senior medical reviewer), having reported a suspicion under subsection (1), must follow the directions of the procurator fiscal as to the appropriate action to take.

Commencement Information
I21 S. 16 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Deaths outwith Scotland

17 Verification of foreign death certificates S

(1) This section applies where—
  (a) a person ("A") died outwith the United Kingdom, and
  (b) the body of A is to be disposed of in Scotland.

(2) A medical reviewer must, on the request of a relevant person, determine whether the documentation relating to A's death is in order.

(3) Documentation is in order if it appears to the medical reviewer to be—
  (a) authentic, and
  (b) equivalent to the certificates or other documentation required under section 27A of the 1965 Act (offence of disposal of body without authorisation) for the interment, cremation or disposal by other means of the body of a person who died in Scotland.

(4) If the medical reviewer determines that the documentation is in order, the medical reviewer must give the relevant person a certificate specified for the purposes of this section under section 27A(2) of the 1965 Act.

(5) In making a determination under subsection (2), a medical reviewer may make such enquiries as the medical reviewer considers appropriate.

(6) For the purposes of subsection (2), a relevant person is—
  (a) a person who wishes to arrange the interment, cremation or disposal by other means of A's body, or

(b) the person having charge of the place where A's body is to be interred, cremated or disposed of by other means.

Commencement Information

I22 S. 17 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

18 Medical reviewers to authorise cremation S

(1) This section applies where—

(a) a person ("A") died outwith Scotland, and

(b) it is intended that A be cremated in Scotland.

(2) A medical reviewer must, on an application by a person who wishes to arrange the cremation of A, determine whether it is safe for A's body to be cremated.

(3) If the medical reviewer determines that it is safe for A's body to be cremated, the medical reviewer must give the applicant a certificate authorising the cremation.

(4) The Scottish Ministers may by regulations make provision about—

(a) the form and content of applications under subsection (2),

(b) the procedure to be followed by medical reviewers in relation to applications under subsection (2),

(c) the form and content of the certificate authorising the cremation to be given under subsection (3).

Commencement Information

I23 S. 18(1)-(3) in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

I24 S. 18(4) in force at 25.3.2015 for specified purposes by S.S.I. 2015/115, art. 2, **Sch.**

I25 S. 18(4) in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

19 Post-mortem examination of person who died outwith United Kingdom S

(1) This section applies where—

(a) a person ("A") dies outwith the United Kingdom,

(b) the body of A is to be disposed of in Scotland, and

(c) no cause of death is available.

(2) A medical reviewer may, on an application by a relevant person—

(a) assist the relevant person in making arrangements for a post-mortem examination of A's body for the purpose mentioned in section 23(a) of the Human Tissue (Scotland) Act 2006 (asp 4), and

(b) meet the cost of such an examination.

(3) For the purposes of subsection (2), a relevant person is a person who, under section 30, 32 or 33 of the Human Tissue (Scotland) Act 2006, may authorise a post-mortem examination of A's body.

(4) The Scottish Ministers may by regulations make provision about the form and content of applications under subsection (2).

Commencement Information

I26 S. 19(1)-(3) in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

I27 S. 19(4) in force at 25.3.2015 for specified purposes by S.S.I. 2015/115, art. 2, **Sch.**

I28 S. 19(4) in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

Other functions of medical reviewers

20 Training and information functions S

(1) A medical reviewer (including the senior medical reviewer) has the functions mentioned in subsection (2).

(2) The functions are—

(a) to collate and analyse information relating to or contained in medical certificates of cause of death,

(b) to provide training, guidance and support to persons who are required to complete medical certificates of cause of death,

(c) to provide guidance and support to district registrars in relation to medical certificates of cause of death,

(d) to liaise with such persons as the medical reviewer considers appropriate with a view to improving—

(i) the accuracy of the information (and in particular the causes of death) recorded in medical certificates of cause of death, and

(ii) the administrative processes relating to the disposal of bodies.

Commencement Information

I29 S. 20 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

21 Duty to co-operate S

Health Boards, Special Health Boards, the Common Services Agency for the Scottish Health Service and medical reviewers (including the senior medical reviewer) are to co-operate with one another in the exercise of their respective functions in relation to—

(a) the completion and review of medical certificates of cause of death (including in particular the recording of causes of deaths),

(b) the collation and analysis of information relating to the causes of death,

(c) the disposal of bodies.

Commencement Information

I30 S. 21 in force for specified purposes at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

I31 S. 21 in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

22 Guidance S

In exercising functions under this Act, medical reviewers (including the senior medical reviewer) must have regard to any guidance issued by the Scottish Ministers for the purposes of or in connection with this Act.

Commencement Information

I32 S. 22 in force for specified purposes at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

I33 S. 22 in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

23 Annual report S

(1) The senior medical reviewer must—

(a) prepare a report for each financial year on the activities of medical reviewers (including the senior medical reviewer) during the year, and

(b) provide such further information as the Scottish Ministers may reasonably require.

(2) As soon as reasonably practicable after the end of each financial year, the senior medical reviewer must—

(a) send a copy of the report to the Scottish Ministers, and

(b) arrange for it to be published.

(3) The Scottish Ministers may by regulations—

(a) make further provision about the information to be contained in a report,

(b) require reports to be prepared on a more frequent basis,

(c) specify other persons to whom a copy of the report must be sent.

Commencement Information

I34 S. 23 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Fees

24 Fees in respect of medical reviewer functions S

(1) The Scottish Ministers may charge a fee in respect of—

(a) the review functions,

(b) the functions exercised by **[**[F1]Public Health Scotland**]** in connection with the review functions,

(c) an application under section 18(2).

(2) The persons liable for the fee in respect of the functions mentioned in subsection (1)(a) and (b) are the personal representatives of every person whose death requires to be registered in accordance with Part 3 of the 1965 Act; and any such fee is to be treated as part of the general testamentary and administration expenses of the estate of the deceased.

(3) The Scottish Ministers may by regulations make provision about the charging of fees under subsection (1).

(4) Regulations made under subsection (3) may in particular—

(a) set the amount of any such fee,

(b) make provision about the arrangements for collection of any such fee (including specifying persons (or types of person) who must collect the fee on behalf of the Scottish Ministers),

(c) specify circumstances in which no fee is payable.

(5) The Scottish Ministers, in setting the amount of fees under this section, must not set a fee in excess of the reasonable costs of the exercise of the functions in respect of which the fee is to be charged.

(6) Before making any regulations under subsection (3) the Scottish Ministers must consult such persons as they consider appropriate.

(7) In subsection (1), the review functions are the functions of the medical reviewers (including the senior medical reviewer) under this Act (other than sections 17, 18 and 19).

Textual Amendments

F1 Words in s. 24(1)(b) substituted (1.4.2020) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(3)(b), **sch. 2 para. 7(2)** (with art. 4(4)(5))

Commencement Information

I35 S. 24 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Disposal of bodies

25 Prohibition on disposal of body without authorisation S

After section 27 of the 1965 Act insert—

"27A Offence of disposal of body without authorisation

(1) A person having charge of a place of interment, cremation or other means of disposal of human bodies who inters, cremates or otherwise disposes of the body of a still-born child or a deceased person (or who knowingly permits such interment, cremation or disposal) without the certificates or other documentation specified under subsection (2)(a) for such purpose commits an offence.

(2) The Scottish Ministers may by regulations made by statutory instrument—

(a) specify the certificates or other documentation required for the interment, cremation or other disposal of the body of a still-born child or a deceased person,

(b) make provision about the form and content of such certificates (other than those which are to be prescribed by the Registrar General under this Act).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) It is a defence for a person charged with an offence under subsection (1) to prove that there was a reasonable excuse for the interment, cremation or disposal of a body (or for that person permitting such interment, cremation or other disposal) without the certificates or other documentation specified under subsection (2)(a).

(5) Where an offence under subsection (1) which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, commits the offence and is liable to be proceeded against accordingly.

(6) The power conferred by subsection (2)—

(a) may be exercised so as to make different provision for different purposes,

(b) includes power to make such incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient.

(7) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(8) In subsections (1), (2) and (4) reference to a body includes reference to a part of a body.”.

Commencement Information

I36 S. 25 in force at 25.3.2015 for specified purposes by S.S.I. 2015/115, art. 2, **Sch.**

I37 S. 25 in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

26 Certifying medical practitioner to provide additional information S

(1) In section 21(2)(a) of the 1965 Act (certificates relating to still-births), after “death” insert “ , any other relevant medical information ”.

(2) In section 24(1) of that Act (certificates of cause of death)—

(a) after the words “death of” where they first appear insert “ , and any relevant medical information about, ”,

(b) after the words “belief the cause of death” insert “ and such other medical information as may be prescribed ”.

Commencement Information

I38 S. 26 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

I39 S. 26 in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

27 Still-birth declarations S

In section 21 of the 1965 Act (still-births)—

(a) in subsection (2), paragraph (b) and the word "or" immediately preceding it is repealed,

(b) in subsection (3)(a), the words "paragraph (a) of" are repealed.

Commencement Information

I40 S. 27 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

I41 S. 27 in force at 13.5.2015 in so far as not already in force by S.S.I. 2015/115, **art. 3**

General

28 Ancillary provision S

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment, instrument or document.

29 Orders and regulations S

(1) Subject to subsection (9), any power conferred by this Act on the Scottish Ministers to make an order or regulations—

(a) must be exercised by statutory instrument,

(b) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision,

(c) may be exercised so as to make different provision for different purposes.

(2) An order made under section 4(7) (other than one to which subsection (4) applies)—

(a) must be laid before the 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.

(3) Subsection (4) applies to an order made under section 4(7) consisting only of—

(a) provision revoking an earlier order under section 4(7), or

(b) such provision and provision made by virtue of section 29(1)(b).

(4) An order to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.

(5) In reckoning for the purposes of subsection (2)(b) any period of 28 days, no account is to be taken of any period during which the Parliament is—

(a) dissolved, or

(b) in recess for more than 4 days.

(6) Subsection (2)(b) is without prejudice to anything previously done by reference to an order under section 4(7) or to the making of a new order under that provision.

(7) No order is to be made under section 28 containing provisions which add to, omit or replace any part of the text of an Act, unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

(8) Subject to subsection (9), any other statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the Parliament.

(9) Subsections (1) and (8) do not apply in relation to an order made under section 32(3).

30 Minor and consequential modifications S

Schedule 2 (which makes minor modifications and modifications consequential on this Act) has effect.

Commencement Information
I42 S. 30 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

31 Interpretation S

(1) In this Act (unless the context otherwise requires)—

"the 1965 Act" means the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49);

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c. 29);

"funeral director" means a person whose business consists of or includes the arrangement and conduct of funerals;

"Health Board" means a Health Board constituted under section 2 of the 1978 Act;

"health record" means a record which—

(a) consists of information relating to the physical or mental health of an individual, and

(b) has been made by or on behalf of a health professional in connection with the care of that individual;

"medical certificate of cause of death" means a certificate mentioned in section 24 of the 1965 Act;

"medical reviewer" means a person appointed under paragraph 7A(1) of Schedule 5A to the 1978 Act;

[[F2]"Public Health Scotland" means the Special Health Board of that name constituted by the Public Health Scotland Order 2019;**]**

"registration district" has the meaning given in section 5 of the 1965 Act;

"Registrar General" has the meaning given in section 1(2) of the 1965 Act;

"relevant registrar" means—

(a) the district registrar for a registration district—

(i) to whom a medical certificate of cause of death was transmitted under section 24 of the 1965 Act,

(ii) in the presence of whom a death registration form (within the meaning of section 23(1A) of the 1965 Act) was attested under section 23(1A)(a)(ii) of that Act, or

(iii) to whom a death registration form was submitted under section 23(1A)(b) of that Act, or

(b) where the information mentioned in paragraph (a) is not known to the medical reviewer (or, as the case may, the senior medical reviewer), the Registrar General;

"relevant medical practitioner" means the registered medical practitioner who attested the certificate of cause of death under section 24 of the 1965 Act;

"senior medical reviewer" means the person appointed under paragraph 7A(2) of Schedule 5A to the 1978 Act;

"Special Health Board" means a Special Health Board constituted under section 2 of the 1978 Act.

(2) Unless the context otherwise requires, any undefined expression used in this Act but defined in section 56 of the 1965 Act is to be construed in accordance with section 56 of the 1965 Act.

Textual Amendments

F2 Words in s. 31 inserted (1.4.2020) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(3)(b), **sch. 2 para. 7(3)** (with art. 4(4)(5))

Commencement Information

I43 S. 31 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

32 Short title and commencement S

(1) This Act may be cited as the Certification of Death (Scotland) Act 2011.

(2) This section and sections 28 and 29 come into force at the beginning of the day after the day on which the Bill for this Act receives Royal Assent.

(3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may appoint by order made by statutory instrument.

(4) An order made under subsection (3)—

(a) may make transitional, transitory or saving provision,

(b) may make different provision for different purposes or different areas.

SCHEDULE 1 S

(introduced by section 1)

STATUS AND APPOINTMENT OF MEDICAL REVIEWERS

1 Schedule 5A to the 1978 Act (Healthcare Improvement Scotland) is amended as follows.

Commencement Information
I44 Sch. 1 para. 1 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

2 After paragraph 7 insert—

"Medical reviewers

7A (1) HIS must appoint persons employed under paragraph 7(5) to exercise the functions of medical reviewers; and when doing so those employees are to be known as medical reviewers.

(2) HIS must appoint a person employed under paragraph 7(5) to exercise the functions of the senior medical reviewer; and when doing so that employee is to be known as the senior medical reviewer.

(3) A person appointed as a medical reviewer or the senior medical reviewer must—

(a) be a medical practitioner;

(b) have been so throughout the 5 years prior to appointment; and

(c) have such other qualifications, training and experience as may be specified by regulations.

(4) A member of HIS may not exercise the functions of—

(a) a medical reviewer; or

(b) the senior medical reviewer.

(5) An employee of HIS (other than a medical reviewer) may not exercise any function of a medical reviewer other than those under section 17.

(6) An employee of HIS (other than the senior medical reviewer) may not exercise the functions of the senior medical reviewer (except by virtue of arrangements made under paragraph 11(2C)).

(7) An appointment as a medical reviewer or the senior medical reviewer does not affect the appointed person's status as employed under paragraph 7(5).".

Commencement Information
I45 Sch. 1 para. 2 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

3 In paragraph 11 (delegation of functions)—

(a) in sub-paragraph (1), for "and" where it first occurs substitute " to ",

(b) after sub-paragraph (2) insert—

"(2A) HIS may authorise an employee to carry out the functions of a medical reviewer under section 17.

(2B) Any other function conferred on a medical reviewer or the senior medical reviewer may not, subject to sub-paragraph (2C), be delegated by HIS.

(2C) The senior medical reviewer may, with the approval of HIS, make arrangements for the functions of the senior medical reviewer to be carried out by a medical reviewer where the senior medical reviewer is absent or otherwise unavailable.".

Commencement Information

I46 Sch. 1 para. 3 in force at 8.6.2013 by S.S.I. 2013/159, art. 2, **Sch.**

SCHEDULE 2 S

(introduced by section 30)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Cremation Act 1902 (c. 8)

1 (1) The Cremation Act 1902 is amended as follows.

(2) In section 7 (regulations as to burning)—

(a) the words from "and" where it fifth occurs to "place" where it second occurs are repealed,

(b) the words from "Each" to "prescribe" are repealed.

[F3](3) . . . . . .

[F3](4) . . . . . .

Textual Amendments

F3 Sch. 2 para. 1(3)(4) repealed (4.4.2019) by Burial and Cremation (Scotland) Act 2016 (asp 20), s. 112(2), **sch. 2** (with s. 111); S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

Commencement Information

I47 Sch. 2 para. 1 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Cremation Act 1952 (c. 31)

2 In section 2(2) of the Cremation Act 1952 (procedure for regulations made under section 7 of the Cremation Act 1902) the words from "Any" to "and" are repealed.

Commencement Information
I48 Sch. 2 para. 2 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49)

3 Section 21(5) of the 1965 Act (person having charge of place of interment to give notice of burial of still-born child without certificate) is repealed.

Commencement Information
I49 Sch. 2 para. 3 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

4 In section 24 of the 1965 Act (certificate of cause of death), after subsection (1), insert—

"(1A) A registered medical practitioner may, where invited to do so under section 10(2)(b) or 11(6) of the 2011 Act (action following unsatisfactory review), attest and transmit a replacement certificate to a medical reviewer or, as the case may be, the senior medical reviewer.".

Commencement Information
I50 Sch. 2 para. 4 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

5 Section 27(2) and (3) of the 1965 Act (transmission of certificate of registration) is repealed.

Commencement Information
I51 Sch. 2 para. 5 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

6 In section 56(1) of the 1965 Act (interpretation)—

(a) before the entry for "birth" insert—

""the 2011 Act" means the Certification of Death (Scotland) Act 2011 (asp 11);",

(b) after the entry for "local authority" insert—

""medical reviewer" means a person appointed under paragraph 7A(1) of Schedule 5A to the National Health Service (Scotland) Act 1978 (c. 29);",

(c) after the entry for "relative" insert—

""senior medical reviewer" means a person appointed under paragraph 7A(2) of Schedule 5A to the National Health Service (Scotland) Act 1978 (c. 29);".

Commencement Information
I52 Sch. 2 para. 6 in force at 13.5.2015 by S.S.I. 2015/115, **art. 3**

Changes to legislation:
There are currently no known outstanding effects for the Certification of Death (Scotland) Act 2011.