

# **CERTIFICATION OF DEATH (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *General*

#### *Sections 28-32*

64. [Sections 28](#) and [29](#) set out various general provisions.
65. [Section 30](#) introduces schedule 2.
66. [Section 31](#) sets out definitions for key words and phrases. This includes the medical certificate of cause of death, the form used by the certifying doctor which gives details of the person who has died and the cause of death. It is these certificates that will be scrutinised by medical reviewers under the new system.
67. [Section 32](#) provides for the short title and commencement.

#### *Schedule 1*

68. [Schedule 1](#) amends Schedule 5A to the National Health Service (Scotland) Act 1978 in order to provide for the appointment of persons to carry out the functions of the medical reviewers and senior medical reviewer. Other members or employees of Healthcare Improvement Scotland are expressly prevented from exercising those functions, with the exception of the function of verifying foreign certificates under section 17; it is envisaged that this function will be performed by medical reviewers' assistants.
69. The minimum qualification required for medical reviewers or the senior medical reviewer is to have been a medical practitioner for 5 years prior to appointment. The Scottish Ministers have the power to prescribe in regulations additional requirements for qualifications, training or experience.
70. The functions of the medical reviewer and senior medical reviewer may not be delegated, with the exception of the function of medical reviewers of verifying foreign certificates under section 17, which can be exercised by another employee of Healthcare Improvement Scotland.
71. In addition, the senior medical reviewer is entitled, with the agreement of Healthcare Improvement Scotland, to arrange for one of the medical reviewers to carry out his or her functions if he or she is absent or unavailable. This would enable a deputy to cover for the senior medical reviewer during times of illness or annual leave, for example.

#### *Schedule 2*

72. [Schedule 2](#) (which is introduced by section 30) makes consequential amendments to the 1965 Act by updating definitions in that Act to reflect the new system set out in the Act and allowing doctors to sign a replacement medical certificate of cause of death. Section

*These notes relate to the Certification of Death (Scotland) Act  
2011 (asp 11) which received Royal Assent on 20 April 2011*

21(5) and section 27(2) and (3) of the 1965 Act are repealed. Sections 21(5) and 27(3) require a person having charge of a burial ground to give notice to the registrar where a still-born child is buried without a still-birth certificate or a body is buried without a death certificate. In addition, section 27(2) requires a person to transmit the certificate of registration to the person in charge of the place of interment or cremation. These sections are replaced with a new section 27A in the 1965 Act inserted by section 24.

73. The Cremation Act 1902 is also amended to prevent an overlap of offence provisions between section 8 of that Act and the new section 27A(1) of the 1965 Act. The regulation making power in the Cremation Act 1902 is amended (section 7) to remove aspects of the power which will become redundant on the coming into force of the Act. It also makes the power to prescribe the form of notices, certificates and applications discretionary rather than mandatory, and this power is introduced as a new section. Section 2(2) of the Cremation Act 1952 currently provides that regulations made under section 7 of the 1902 Act are subject to negative Parliamentary procedure; the relevant part of section 2(2) is repealed, and a provision has instead been added to the 1902 Act to confirm that regulations made under sections 7 and 7A are subject to negative procedure.