

POLICY NOTE

THE CERTIFICATION OF DEATH (SCOTLAND) ACT 2011 (COMMENCEMENT NO.1) ORDER 2013

SSI 2013/159 (C. 11)

1. The above Order is made in exercise of the powers conferred by section 32(3) and (4)(b) of the Certification of Death (Scotland) Act 2011 (“the Act”). The instrument is laid in the Scottish Parliament by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. The Act received Royal Assent in April 2011 and is projected to be brought fully into force from April 2014. The intervening period was and is required in order to develop, test and prepare significant aspects of the system, prior to the full national launch.

3. The Act replaces the existing ‘cremation only’ scrutiny of cause of death documentation, as well the associated fees for this process, with a new process which will:

- introduce a single system of independent, effective scrutiny applicable to deaths that do not require a Procurator Fiscal investigation;
- improve the quality and accuracy of Medical Certificates of Cause of Death (MCCDs); and
- provide improved public health information and strengthened clinical governance in relation to deaths.

4. This instrument commences sections 1(3), 20, 26, 27 and 31 of, and schedule 1 to, the Act for all purposes, and section 1(1) and (2) for the limited purpose of enabling medical reviewers, and the senior medical reviewer, to exercise functions under sections 20 and 21 of the Act. Sections 21 and 22 are also commenced for the purposes of section 20 only.

Recruitment and Training of the Senior Medical Reviewer and Medical Reviewers Sections 1, 20, 21, 22 and Schedule 1

5. As part of the preparation arrangements prior to the full launch of the new system, the commencement of section 1(3) of, and Schedule 1 to, the Act will allow Healthcare Improvement Scotland to proceed with the recruitment and appointment process for the national role of Senior Medical Reviewer and the medical reviewers whom he or she will manage.

6. In the interim period between their appointment and full launch of the new system, the Senior Medical Reviewer and medical reviewers appointed will carry out certain functions under section 20 of the Act, having regard to any guidance issued by Scottish Ministers in relation to those functions as a result of section 22, including the provision of training and guidance to persons who are required to complete MCCDs,

and the analysis of statistical information relating to such certificates. Section 1(1) and (2) are therefore commenced from 8th June 2013 for the purpose of allowing medical reviewers and the Senior Medical Reviewer to carry out functions under section 20 only.

7. Since the exercise of certain functions under section 20 may require the co-operation of Health Boards, Special Health Boards and the Common Services Agency as regards their existing functions relating to the completion and review of MCCDs, collation and analysis of information relating to causes of death, and the disposal of bodies, the duty to co-operate in section 21 is commenced from 8th June 2013 for the purposes of section 20 only.

National Records Scotland – Sections 26 and 27

8. Section 26 of the Act amends sections 21(2)(a) and 21(4) of the Registration of Births, Deaths and Marriages Act 1965 (“the 1965 Act”) to allow additional “relevant medical information” to be added to prescribed MCCDs and still-birth certificates. The purpose of section 26 is to widen the information that doctors may be required to provide on the still-birth certificate and MCCD. In relation to the latter, for example, this will allow a requirement to be added for certifying doctors to confirm that there are no implants requiring removal before cremation or that the body is not infectious. The commencement of section 26 from 8th June 2013 will allow the Registrar General to prescribe the additional information to be contained in these certificates in advance of full implementation of the new certification system contained in the Act.

9. Section 27 repeals paragraph (b) of section 21(2) of the 1965 Act (still-births) from 8th June 2013. This paragraph provides for a declaration that the child was not born alive and that no medical practitioner or midwife was present. Such cases will in future be referred to the procurator fiscal.

Consultation

10. Public consultation took place on the proposals as part of the Bill for the Act. Further engagement has been undertaken with a specialist Implementation and Advisory Group (including local authority, Crown Office and NHS representatives) about the commencement of the specific provisions covered by this note.

Impact Assessments

11. The finalised EQIA for the Act is available on the Scottish Government website: <http://www.scotland.gov.uk/Topics/Health/Policy/BurialsCremation/Death-Certificate/Equality-Impact-Assessment>. Copies of the EQIA can be requested from the Death Certification Implementation Team, Scottish Government, St Andrew’s House (3EN), Regent Road, Edinburgh, EH1 3DG.

Financial Effects

12. There will be a cost to Healthcare Improvement Scotland arising from the recruitment of the Senior Medical Reviewer and Medical Reviewers, which will be agreed with and reimbursed by Scottish Government.

13. There may be minimal additional costs for National Records Scotland arising from the amendment of MCCDs and still birth certificates to include additional medical information. These costs may also be agreed with and reimbursed by Scottish Government.

14. The Regulatory Impact Assessment for the Act is available on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Health/Policy/BurialsCremation/Death-Certificate/Business-Regulatory-Impact>.

Scottish Government
Health and Social Care Directorate
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