

POLICY NOTE

THE CERTIFICATION OF DEATH (SCOTLAND) ACT 2011 (COMMENCEMENT No. 2) ORDER 2015

SSI 2015/115 (C. 24)

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 will be brought fully into force from 13th May 2015. The intervening period was 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 4(8), 18(4), 19(4) and 25 of the Act for the limited purpose of enabling regulations to be made. To the extent that it is not already in force, the Act is brought into force for all purposes on 13th May 2015

Application for review of certificate by interested person Section 4(8)

5. This section provides for a list of “interested persons” who may apply to a medical reviewer for a review. These applications may relate to deaths either before or after they have been registered but applications must be made within three years of the date of death and after 13 May 2015. As part of the preparation arrangements prior to the full launch of the new system, the commencement of section 4(8) of the Act on 25th March will allow Regulations to be made on that date to coincide with the coming into force of the remainder of the Act on 13th May regarding details of the applicant to establish that they are an “interested person”; information about the deceased to establish if the application is time barred, or otherwise ineligible for review under section 4 of the Act.

Medical reviewers to authorise cremation – Section 18(4)

6. Section 18 provides medical reviewers with the function of ensuring that it is safe to cremate the body of anyone who dies overseas and who is to be cremated in Scotland. The commencement of section 18(4) from 25th March 2015 will allow

Regulations to be made on that date to coincide with the coming into force of the remainder of the Act on 13th May providing for the information to be contained in the application and certificate of authorisation and the procedure to be followed by medical reviewers when deciding whether to authorise cremation to be prescribed in advance of full implementation of the new certification system contained in the Act.

Post-mortem examination of person who died out with United Kingdom – section 19(4)

7. Persons mentioned in section 19(3) may apply to the medical reviewer for assistance, including financial assistance, to arrange a post-mortem examination in situations where the body of someone who died out with the UK has been returned to Scotland for disposal. An application may only be made under this section for the purpose of providing information about the cause of death where none can be ascertained. It will allow the small number of families in this position an opportunity to have the cause of death established. The commencement of section 19(4) of the Act from 25th March 2015 will allow Regulations to be made on that date to coincide with the coming into force of the remainder of the Act on 13th May enabling the information provision to be made by regulations about the form and content of applications.

Prohibition on disposal of body without authorisation – section 25

8. This section insets a new section 27A into the Registration of Births, Deaths and Marriages (Scotland) Act 1965 making it an offence to dispose of the body of a stillborn child or a deceased person without authorisation. The commencement of section 25 of the Act from the 25th March 2015 will allow Regulations to be made on that date to coincide with the coming into force of the remainder of the Act on 13th May specifying the types of documentation required and make provision for the form and content of such documents, except where these are already prescribed by the Registrar General.

Consultation

9. 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, funeral industry, burial and crematoria authorities, faith groups National Records Scotland, third sector organisations/patient support groups, Crown Office and NHS representatives) about the commencement of the specific provisions covered by this note.

Impact Assessments

10. 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

11. There will be a cost to Healthcare Improvement Scotland arising from the functions of the new system from 13th May 2015 which will be agreed with and reimbursed by Scottish Government.
12. There may be minimal additional costs for National Records Scotland arising from the amendment of registration certificates to include additional medical information. These costs may also be agreed with and reimbursed by Scottish Government.
13. 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
Population Health Improvement Directorate
11 March 2015