POLICY NOTE

THE CERTIFICATION OF DEATH (SCOTLAND) ACT 2011 (AUTHORISATION OF CREMATION – DEATH OUTWITH SCOTLAND) REGULATIONS 2015

SSI 2015/162

THE CERTIFICATION OF DEATH (SCOTLAND) ACT 2011 (APPLICATION FOR REVIEW) REGULATIONS 2015

SSI 2015/163

THE CERTIFICATION OF DEATH (SCOTLAND) ACT 2011 (POST-MORTEM EXAMINATIONS – DEATH OUTWITH UNITED KINGDOM) REGULATIONS 2015

SSI 2015/165

THE REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES (SCOTLAND) ACT 1965 (PROHIBITION ON DISPOSAL OF A BODY WITHOUT AUTHORISATION) REGULATIONS 2015

SSI 2015/166

1. The following Regulations are made in exercise of the powers conferred by section 4(8), 18(4) and 19(4) of the Certification of Death (Scotland) Act 2011 ("the Act") and section 27A(2)(a) and (b) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 and all other powers enabling them to do so.

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. These Regulations may be cited as:
    - the Certification of Death (Scotland) Act 2011 (Application for Review) Regulations 2015.

- the Certification of Death (Scotland) Act 2011 (Authorisation of Cremation) Regulations 2015.

- the Certification of Death (Scotland) Act 2011 (Post-Mortem Examinations) (Scotland) Regulations 2015.

- the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on the Disposal of a Body without Authorisation) Regulations 2015.

These Regulations come into force 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 from 13 May 2015 either before or after they have been registered but applications must be made within three years of the date of death. This instrument makes provision 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. This regulation prescribes 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.

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. This regulation makes provision 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 of the body of a stillborn child or

a deceased person without authorisation. This regulation prescribes the types of documentation required and makes 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, 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
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