CERTIFICATION OF DEATH (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Certification of Death (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 58–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY OF THE BILL

4. The Bill introduces a new system of scrutiny of medical certificates of cause of death. It creates the post of medical reviewer and senior medical reviewer whose functions are to review for accuracy the certificates referred to them from a variety of sources. A number of certificates will be referred at random by district registrars. The Registrar General will be responsible for ensuring that certificates are referred according to the chosen selection scheme. Persons with some connection to the deceased can apply for a review and certificates may also be selected by the medical reviewers themselves for scrutiny.

5. Medical reviewers will be involved in the training of doctors in the completion of medical certificates of cause of death and information derived from reviews will directly feed into that training.

6. The Bill provides for the form of medical certificates of cause of death to be amended to show additional relevant medical information to indicate, for example, whether it is safe to dispose of the body by cremation. The Bill also provides for the form of still-birth certificates to be amended to show additional relevant medical information, to indicate whether the body presents a risk to public health.

7. Where a person has died outwith Scotland and the body is to be cremated in Scotland, medical reviewers will determine whether it is safe to cremate the body. They may also assist persons to make arrangements for a post-mortem examination (including meeting the cost of the examination) in such cases from outwith the UK if no cause of death is available.

8. A fee may be charged to pay for the review system and in cases where authority to cremate a body from outwith Scotland is required.

9. It will be an offence to dispose of a body or body parts without authorisation.
COMMENTARY ON SECTIONS

Medical reviewers

Section 1: Medical reviewers

10. This section introduces medical reviewers and the senior medical reviewer who will exercise their functions on behalf of Healthcare Improvement Scotland (HIS), a body set up in Schedule 5A to the National Health Service (Scotland) Act 1978. They will be appointed by and be employees of HIS. This section also gives effect to schedule 1 to the Act which provides further detail regarding the status and appointment of medical reviewers and the senior medical reviewer.

Referral of medical certificates of cause of death for review

Section 2: Referral of certain certificates of cause of death for review

11. Under the new system for scrutiny of medical certificates of cause of death, certificates will be sent for review from a variety of sources. One of these is the General Register Office for Scotland (GROS), which is responsible for the registration of deaths. GROS is expected to use computerised systems to identify a random selection of certificates for review.

12. Section 2 amends the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49) ("the 1965 Act") by inserting a new section 24A. Section 24A(1) requires the Registrar General to ensure that randomly selected certificates of cause of death are referred to medical reviewers for review prior to the completion of the registration process (and therefore before the registrar’s certificate of registration has been issued). Subsection (2) imposes a duty on the Registrar General to ensure that medical certificates of cause of death requested by medical reviewers under section 3 are referred for review. Subsection (3) allows a district registrar to refer a certificate for review, where he/she decides this is appropriate.

13. Some certificates, listed in subsection (4), are not eligible to be referred to the medical reviewer for investigation. The first category consists of cases where the body presents a risk to public health and a direction has been issued by a Health Board under section 90(2) of the Public Health (Scotland) Act 2008 (asp 5) to the effect that an infectious or contaminated body may not be removed or may only be removed from a hospital by a specified person for immediate disposal. Also ineligible for review are any certificate which has already been referred for review, any replacement certificate (described in sections 10 and 11), certificates signed before section 2 comes into force and any certificate relating to a death which has already been (or is being) investigated by the procurator fiscal.

14. Subsection (5) gives the Scottish Ministers power to direct the Registrar General as to the minimum number of certificates to be referred in the random sample and the method of determining the random sample. The sample size and method could be amended from time to time for statistical reasons.

15. The Scottish Ministers have the power to suspend by order the referral of certificates to the medical reviewer during an epidemic or if it becomes necessary to do so for public health reasons in order to prevent the spread of infectious disease or contamination. Suspension of the
referrals could be judged necessary in such situations to expedite the disposal of bodies and free up medical personnel. The power is subject to negative resolution procedure as is set out in subsection (9) with ancillary powers in subsection (8).

Section 3: Medical reviewer requests

16. In addition to the random sample of certificates provided for in section 2, medical reviewers may request any medical certificate of cause of death for review, including certificates where the death has already been registered. This will allow medical reviewers to conduct additional scrutiny where they feel this is required e.g. in response to a particular issue of concern.

Section 4: Application for review of certificate by interested person

17. This section provides for a list of “interested persons” who may also 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. A medical reviewer may reject an application that is considered vexatious.

18. The medical reviewer must notify the Registrar General of the application. The purpose of this is to stay the registration process, as provided for in section 5, where the death has not already been registered. This also provides the medical reviewer with a means for discovering whether the certificate has already been reviewed (and therefore is ineligible).

19. Subsection (5) sets out the list of interested persons, which may be added to by order of the Scottish Ministers. Interested persons either have some personal connection to the deceased or are in a position to have informed concerns about the accuracy of the medical certificate of cause of death.

20. Certain certificates are excluded from this type of review. These are cases where a Health Board direction has been issued regarding a contaminated or infectious body, where the certificate has already been referred or reviewed, a replacement certificate has already been issued under sections 10 or 11, or the death has been referred to the procurator fiscal.

21. Subsection (7) allows the Scottish Ministers to suspend applications for review from interested persons during an epidemic or when necessary to prevent or halt the spread of infectious diseases or contamination. This mirrors the provision in section 24A(7) of the 1965 Act (introduced by section 2) which allows for the suspension of referrals under that section in the same circumstances. Suspension of applications could be necessary in situations where there are large numbers of deaths and it becomes a priority to expedite the disposal of bodies and free up medical personnel.

22. Subsection (8) allows the Scottish Ministers to prescribe in regulations the content of and procedure for making “interested person” applications and the actions to be taken by medical reviewers in respect of such applications.
Section 5: Stay of registration of death pending review

23. Section 5 amends section 25B of the 1965 Act. The purpose of this section is to ensure that the registrar does not complete the registration of any death where the certificate of cause of death has been referred for review under the provisions in section 24A of the 1965 Act or where an application for review has been made under section 4 prior to the death being registered.

24. Registration must usually be suspended until the review has been completed. In certain circumstances, however, a medical reviewer may confirm that it is appropriate for the registration process to proceed prior to the review being completed (see sections 6 and 7). This is the process set out in section 6 which may apply in certain circumstances where speed is of the essence.

Section 6: Request for review not to stay registration

25. Section 6 provides for a request for the registration of a death not to be stayed. This is available where there has been a referral of the certificate under the random sampling provision in section 24A(1) of the 1965 Act, inserted by section 2. Requests for this process are to be made to the registrar who will then refer the case to the medical reviewer for a decision. The application must include a statement by the applicant of the circumstances that might justify use of the process. In practice a copy of the medical certificate of cause of death will be sent to the medical reviewer (the original certificate will follow the copy by the usual means).

Section 7: Medical reviewer to determine whether review to stay registration

26. It is for the medical reviewer to decide whether it is appropriate to register the death before the review is complete and to notify the registrar of the decision. The medical reviewer must be satisfied that the circumstances of the case justify this and that the certificate appears on the face of it to be in order. This process may reduce any delay to the funeral and so may be useful in cases where it has to take place more quickly than usual. The circumstances to be considered by medical reviewers will be set out in guidance.

Review of medical certificates of cause of death

Section 8: Review of medical certificates of cause of death

27. Section 8 provides that the medical reviewer must review the certificates of cause of death referred under section 24A of the 1965 Act or those referred to the medical reviewer under section 4 (provided they are not rejected as vexatious under section 4 subsection (3)).

28. Subsection (2) describes the conduct of a review. Medical reviewers may review the medical records of the deceased, discuss matters with the certifying doctor and make other enquiries as they consider appropriate. This might include speaking to other health professionals involved in the care of the deceased, speaking to relatives and, possibly, (arranging to) view the body before coming to a view as to whether the medical certificate of cause of death is in order.

29. Subsections (3) and (4) provide that medical reviewers must come to a view on whether the given cause of death is a reasonable conclusion and that other information in the certificate is correct.
30. Subsection (5) allows the Scottish Ministers to make further provisions regarding the conduct of reviews in regulations.

Section 9: Action following satisfactory review

31. If the medical reviewer is satisfied with the medical certificate of cause of death, then he or she must approve it and notify the relevant registrar (in practice, this will mean sending the certificate back to the relevant registrar for registration to occur).

32. The relevant registrar is defined in section 30 and will usually be the district registrar who has made the referral or, where that person is unknown to the medical reviewer (as might be the case in an interested person application), the Registrar General.

33. In cases where the registration of the death has been stayed, the registrar will then be free to complete it and notify the informant, that is the relative or other person who came to register the death.

Section 10: Action following unsatisfactory review: medical reviewer

34. Section 10 sets out the next steps if the medical reviewer is not satisfied that a medical certificate of cause of death is in order. The medical reviewer must inform the doctor who certified the cause of death, giving reasons for their view, and invite the doctor to replace the certificate which takes account of the reasons why the medical reviewer considers that the certificate is not in order, thus allowing the medical reviewer to then approve and notify the registrar. However, if the certifying doctor issues a replacement certificate which the medical reviewer considers is not in order then he or she must refer the review to the senior medical reviewer.

35. The certifying doctor may decline to issue a replacement certificate. In such cases the medical reviewer may be persuaded in discussion with the doctor that the cause of death does, after all, represent a reasonable conclusion as to the cause of death or that the other information on the form is in fact correct. In such instances the medical reviewer can then decide to approve the certificate. If not persuaded, the medical reviewer must refer it to the senior medical reviewer.

Section 11: Action following unsatisfactory review: senior medical reviewer

36. This section applies where a medical reviewer has been unable to agree with the certifying doctor that a medical certificate of cause of death is in order and has referred the matter to the senior medical reviewer.

37. The senior medical reviewer must also come to a view on whether the given cause of death is a reasonable conclusion and that other information in the certificate is correct. To do so, he or she may conduct a further review of the certificate in the same manner as a medical reviewer.

38. If the senior medical reviewer is of the view that the certificate is in order, the certificate will be approved and sent to the relevant registrar for registration to proceed.
39. However, if the senior medical reviewer does not think that the certificate is in order, he or she must inform the doctor who certified the cause of death, giving reasons for their view, and invite the doctor to replace the certificate. There is no obligation on certifying doctors to change their opinion but they may agree to issue a replacement certificate which takes account of the reasons why the senior medical reviewer considers that the certificate is not in order, thus allowing the senior medical reviewer to then approve and notify the registrar. If the certifying doctor issues a replacement certificate but the senior medical reviewer does not agree with the revised cause of death information, or the certifying doctor does not issue a replacement certificate and the senior medical reviewer is not persuaded of the doctor’s original view as to the cause of death, the senior medical reviewer must refer the certificate to the procurator fiscal for investigation.

40. In cases where the senior medical reviewer agrees with the cause of death, but believes that other information contained in the certificate, or its replacement, is incorrect (such as whether a pacemaker is fitted), or where the doctor will not issue a replacement certificate, the senior medical reviewer can take steps to alert whomever he or she considers appropriate as to what he or she believes to be the relevant information. This might typically be the family of the deceased or the person in charge of the burial or cremation of the deceased.

41. The senior medical reviewer can also take such steps when referring a certificate to the procurator fiscal.

Section 12: Action where relevant medical practitioner is unavailable or incapacitated

42. This section deals with the situation where the relevant doctor is unavailable or unable to issue a replacement certificate, for example, when that doctor is unwell. If a medical reviewer is not satisfied as to the cause of death given in the certificate but the relevant doctor is not available or is incapacitated and so could not issue a replacement certificate, the death must be referred to the procurator fiscal for investigation. If there is some other defect in the certificate not related to the cause of death, the medical reviewer can take steps to alert whomever he or she considers appropriate as to what he or she believes to be the relevant information. If the doctor becomes unavailable after a certificate has been referred to the senior medical reviewer, who is not satisfied that the certificate is in order, the senior medical reviewer can take the same actions as the medical reviewer.

Section 13: Duty to inform following review

43. Specified persons are to be informed of the outcome of a review including any changes made to the medical certificate of cause of death. An interested person who made an application under section 4 will be informed as will the person who gave information in order to register the death. Such notification will take place after a review has been conducted and the registrar has been notified or when the case has been referred to the procurator fiscal.

Powers of medical reviewers when conducting review

Section 14: Power to require documents

44. Medical reviewers and the senior medical reviewer have the power to require any person who, in their opinion, may have relevant documents, to provide them with documents including
medical records. Medical reviewers (and the senior medical reviewer) must make a request for these in a formal notice in accordance with subsection (2). Copies or extracts of the document are sufficient.

Section 15: Documents: offences

45. This section creates an offence where a document referred to in section 14 either is not provided and there is no reasonable excuse for the failure to produce it or it has been deliberately altered, suppressed concealed or destroyed. There is no obligation to produce a document that a person would be entitled to refuse to produce in court. The penalty for the offence is level 5 on the standard scale or imprisonment for up to 3 months.

46. This section applies to individuals and organisations. Subsection (5) of section 15 confirms that in cases where the offence is committed by a body corporate, the person in charge of that body (for example, the manager of a private nursing home) commits the offence, as well as the body corporate.

Duty to report suspicions of criminality

Section 16: Involvement of procurator fiscal

47. This section requires the medical reviewer or senior medical reviewer to report any suspicion of criminal activity to the procurator fiscal and follow any directions from the procurator fiscal after a suspicion has been reported.

48. The role of the procurator fiscal in Scotland is not altered by the establishment of the system of medical reviewer scrutiny.

Deaths outwith Scotland

Section 17: Medical reviewers to authorise cremation

49. Medical reviewers have the additional function of ensuring that it is safe to cremate the body of anyone who died overseas and who is to be cremated in Scotland. This means, for example, that the reviewer will check medical records to see if the individual has any implants or a pacemaker that would need to be removed prior to cremation. Medical referees at crematoria currently perform this function but this role will be abolished when the new system is introduced.

50. Anyone wishing to arrange the cremation of a body in such a case must apply to the medical reviewer. The form and content of the application and authorisation and any further procedure to be followed by medical reviewers may be specified in regulations by the Scottish Ministers.

Section 18: Post-mortem examination of person who died outwith United Kingdom

51. The persons listed in subsection (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 outwith the UK has been returned to Scotland for disposal. The
These documents relate to the Certification of Death (Scotland) Bill (SP Bill 58) as introduced in the Scottish Parliament on 7 October 2010

persons who can make an application under subsection (3) are the same persons who are entitled to authorise a post-mortem under sections 30, 32 or 33 of the Human Tissue (Scotland) Act 2006. An application may only be made under this section for the purpose of providing information about the cause of death where none is available. It will allow the small number of families in this position an opportunity to have the cause of death established.

Other functions of medical reviewers

Section 19: Training and information functions

52. This section sets out additional functions of the medical reviewer and senior medical reviewer. These are: collating and analysing information relating to medical certificates of cause of death; providing guidance, training and direct support to doctors and other healthcare professionals; providing guidance and support to district registrars in relation to certificates; and liaison with other individuals or bodies. The purpose of this is to improve the quality of medical certificates of cause of death and the administrative processes for dealing with the disposal of bodies.

Section 20: Duty to co-operate

53. The new system of scrutiny has to connect with agencies and systems in the NHS. The Common Services Agency, for example will provide statistical support services for the review system. This section provides that NHS Boards, the Common Services Agency for the Scottish Health Service and medical reviewers (including the senior medical reviewer) have a duty to co-operate with one another in connection with the review of medical certificates of cause of death, the information gathered and analysed and the administrative processes for the disposal of bodies.

Section 21: Guidance

54. This section requires medical reviewers (including the senior medical reviewer) to have regard to guidance issued by the Scottish Ministers in the exercise of their functions under the Act. Guidance can help to ensure consistency of approach, for example, in situations where medical reviewers (or the senior medical reviewer) may be exercising discretion.

Section 22: Annual report

55. This section requires the senior medical reviewer to prepare and publish an annual report for the Scottish Ministers on the activities of medical reviewers. The Scottish Ministers may by regulation make further provision for additional information to be included, for greater frequency of reporting, or to specify additional people who must receive copies.

Fees

Section 23: Fees in respect of medical reviewer functions

56. This section allows for a fee to be charged in two situations. One is a charge to cover the costs of the new system of scrutiny of medical certificates of cause of death including the associated statistical support provided by the Common Services Agency. This fee may be
charged to the personal representatives of the deceased and will be payable out of the deceased’s estate.

57. The other fee is for the application for authorisation to cremate the body of a person who died outwith Scotland. The medical reviewer has to determine whether it is safe to do so in such cases (section 17).

58. The Scottish Ministers may make regulations about the charging of fees, the arrangements for collection and any circumstances in which no fee is payable. When setting a fee they must have regard to the reasonable costs of the functions paid for by the fee.

**Disposal of bodies**

*Section 24: Prohibition on disposal of body without authorisation*

59. This section inserts a new section 27A into the 1965 Act making it an offence to dispose of the body of a still-born child or a deceased person without authorisation. The offence is committed by a person in charge of a place where the disposal of human bodies takes place, for example, a superintendent of a crematorium or burial ground. The Scottish Ministers may by regulation prescribe 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. For instance, it is likely that in many cases one of the documents required will be the registration certificate issued by the district registrar.

60. The penalty for the offence is a fine not exceeding level 3 on the standard scale. When the offence has been committed by a body corporate, its officers can also be convicted.

61. Under subsection (4) a defence is available to a person charged with such an offence, if that person can prove that there was a reasonable excuse for disposing of a body without the relevant authorisation.

*Section 25: Certifying medical practitioner to provide additional information*

62. This section paves the way for replacing the current death certification system. It amends section 21(2)(a) and section 24(1) of the 1965 Act. These sections provide respectively for a prescribed still-birth certificate and the medical certificate of cause of death. They are amended to allow “any relevant medical information” to be added to the certificates. The purpose of this section is to widen the information that doctors may be required to provide on the still-birth certificate and medical certificate of cause of death. 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. Medical reviewers will perform this task for bodies returned from outwith Scotland (see section 17). The function of checking for implants is performed by medical referees at crematoria. This role will be abolished with the setting up of the new system.
Section 26: Still-birth declarations

63. Section 26 repeals paragraph (b) of section 21(2) of the 1965 Act (still-births). 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.

General

Sections 27-31

64. Sections 27 and 28 set out various general provisions.

65. Section 29 introduces Schedule 2.

66. Section 30 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 31 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.

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 medical reviewer and senior medical reviewer functions may not be delegated. However, the senior medical reviewer is entitled, with the agreement of Healthcare Improvement Scotland, to arrange for one of the medical reviewers to carry out those 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

71. Schedule 2 (which is introduced in section 29) makes consequential amendments to the 1965 Act by updating definitions in that Act to reflect the new system set out in the Bill and allowing doctors to sign a replacement medical certificate of cause of death. Section 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.

72. The Cremation Act 1902 (c.8) 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.

FINANCIAL MEMORANDUM

INTRODUCTION

73. This document relates to the Certification of Death (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

74. The Bill will introduce a new death certification system which will aim to:

- 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 the medical certificate of cause of death (MCCD);
- provide improved public health information and strengthened clinical governance in relation to deaths.

75. While the events surrounding the Harold Shipman case were the original driver for change in systems of death certification throughout the UK, no death certification system is able to guarantee that the kind of criminal activities carried out by Shipman could be prevented. Instead, the proposed new system covers only those cases which are not investigated by the Procurator Fiscal Service and therefore not within the scope of the criminal justice authorities. As such, it focuses on the aims outlined above, although in doing so it will establish arrangements which should also act as a deterrent to criminal activity or malpractice.

76. The Bill provides for the newly created positions of Medical Reviewers (MRs) (referred to in consultation documents as Medical Investigators); these will be doctors who will perform the scrutiny role. MRs will also be given the power to assist persons to make arrangements for a post mortem examination (including meeting the cost of the examination) in such cases where a death has occurred abroad, where the cause of death is unknown and disposal is to take place in Scotland. In addition, the MRs will have a role in checking the paperwork for implants for bodies from outwith Scotland where the chosen method of disposal is cremation, as the posts of medical referees who currently perform this role will be abolished.

DEATH CERTIFICATION

The Medical Reviewer Model
77. The new death certification model will remove current inconsistencies between the processing and scrutiny of cremations and burials and will streamline procedures. Following consultation and stakeholder engagement, the new system will have a strong focus on education and training for doctors, as well as on changing the culture relating to death certification within the NHS in Scotland.

78. MRs will scrutinise around 500 randomly selected deaths per year as part of an audit cycle of activity by examining the MCCD form, speaking to the certifying doctor and other relevant healthcare professionals and reviewing medical records. They may also speak to relatives, if required, and (arrange to) view the body in rare cases. In addition, persons with a legitimate interest, for example, funeral directors, or relatives, may refer cases for scrutiny to the MRs. This is referred to as an ‘interested person review’ and is expected to lead to at least a further 500 deaths annually being reviewed. The Policy Memorandum sets out in more detail the ability of MRs to conduct further checks as issues arise and also details the relationship between the MRs and NHS Boards’ clinical governance systems.

79. The proposed role of a national statistician is a critical part of the MR model. The production of national statistics will underpin the scrutiny function. It will allow the analysis of national trends and unusual patterns of activity, and it will identify through close working with the MRs, further cases for review. Important links can then be made from this information to the clinical governance processes of Health Boards.

80. MRs will also directly support certifying doctors in making decisions in relation to death certification through, for example, phone support as well as offering on- and off-the-job training of doctors and other healthcare professionals. MRs will support and guide registrars where information provided on MCCDs is inaccurate, incomplete or requires further inquiry.

81. The Bill also proposes to establish a Senior MR (SMR) with a national strategic role involving professional leadership, national education and training support, management of the MRs, providing a second opinion, liaison with the Crown Office and Procurator Fiscal Service (COPFS) and the Chief Medical Officer, and Continuing Professional Development (CPD) and revalidation.

COSTS ON THE SCOTTISH ADMINISTRATION

82. These costings are based on assumptions made of likely workload and tasks initially agreed by an independent Review Group which met between 2005 and 2007. Assuming that 500 cases are sampled and a further 500 are referred for investigation (“interested person reviews”) this would mean that around 1,000 deaths would be scrutinised annually, around 19-20 cases per week. It is estimated that reviewing a single case would take an MR around half a working day. However, clearly the number of cases referred by an “interested person” or district registrar will vary. There is some spare capacity within the model, to also cover additional scrutiny initiated by MRs and the costings will allow for this.

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1 Information about the Burial and Cremation Review Group is available on the Scottish Government website: [http://www.scotland.gov.uk/Topics/Health/burialcremation/intro](http://www.scotland.gov.uk/Topics/Health/burialcremation/intro). It submitted a report to the Scottish Government which was published in 2008 which is also available on the Scottish Government website: [http://www.scotland.gov.uk/Publications/2008/03/25113621/0](http://www.scotland.gov.uk/Publications/2008/03/25113621/0).
83. The Review Group report recommended that four individuals should be appointed with one assuming a management role (a separate SMR role was not envisaged by the Review Group). However, the Scottish Government has since consulted extensively on the proposals and has put forward the strengthened scheme described in the Policy Memorandum. Additional functions are now proposed for the MRs as follows:

- to perform additional checks in the light of information gathered by the national statistician, where MRs believe further scrutiny is required e.g. at regional, hospital, practice or individual level (up to 100% of deaths if required);
- to directly support certifying doctors in taking responsibility for making effective decisions in relation to death certification through, for example, phone support;
- to directly support registrars in assessing the quality and accuracy of MCCDs;
- to offer ‘on-the-job’ and/or ‘off-the-job’ education and training of doctors and other healthcare professionals.

84. Our consideration of the numbers of MRs that require to be appointed has taken into account these proposed additions to their role. If the original numbers (four) were retained, each MR would be required to deal with five or so detailed cases per week. If, as estimated, around half a day would need to be spent on each case, each MR would have around two days a week remaining for: conducting additional targeted scrutiny; giving more general guidance; and fulfilling an education and training role. The caseload may increase at times and at other times the advice and guidance and education roles may require more time. Furthermore, the additional retrospective scrutiny could take a considerable portion of time leaving little scope for an advice and guidance role. Account must also be taken of sickness, leave commitments and the time each MR will require to devote to continuing professional development, to duties related to appraisal and revalidation and to reports to/liaison with the SMR and the regional MRs.

85. To account for this, the costings allow for six MR posts. This will also provide greater flexibility, more speedy response times and ensure that each MR has a reasonably sized territorial patch. It has been estimated that this number would allow around three days per week for conducting additional focussed scrutiny and the other functions set out above. It would also allow some additional flexibility if the number of ‘interested person reviews’ increased beyond those expected.

86. The number of MRs would not appear in legislation and it is expected that proposed test sites will provide further information about the exact number required. These costs are therefore estimates at present and will ultimately depend on the number of MRs appointed.

87. The associated cost would not necessarily rise linearly with sample size, due to the flexibility between review and training time incorporated into the model, due to non-linear changes in the travel cost and transport charges, and due to possible economies of scale arising from conducting more than the currently assumed number of reviews per week. Each added MR post (including an additional medical assistant) would increase the start-up costs by approximately £2,500 and the annual costs by £151,124, made up of salary and on-costs for the MR and the medical assistant, as well as IT and telephony running costs.
88. The start-up costs (c. £94,500) (see Table 1) will be funded from Scottish Government Health Directorate budgets and are therefore subject to a bid in the next Spending Review expected in autumn 2010.2

89. The costs for the strengthened MR model, based on six MRs and assistants and a SMR, are summarised in Table 1 below (this excludes costings for test sites).

Table 1 Recurring and Start-up Costs of Medical Reviewer Model (exc Test Sites)

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<th>Recurring</th>
<th>Start-up*</th>
<th>TOTAL</th>
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<td>£74,579</td>
<td>£0</td>
<td>£74,579</td>
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<td>Medical staff</td>
<td>£903,345</td>
<td>£0</td>
<td>£903,345</td>
</tr>
<tr>
<td>Support staff</td>
<td>£149,568</td>
<td>£0</td>
<td>£149,568</td>
</tr>
<tr>
<td>SUB TOTAL</td>
<td>£1,127,492</td>
<td>£0</td>
<td>£1,127,492</td>
</tr>
<tr>
<td>Total running costs</td>
<td>£61,564</td>
<td>£0</td>
<td>£61,564</td>
</tr>
<tr>
<td>Accommodation</td>
<td>£0</td>
<td>£20,017</td>
<td>£20,017</td>
</tr>
<tr>
<td>IT changes &amp; support</td>
<td>£0</td>
<td>£7,000</td>
<td>£7,000</td>
</tr>
<tr>
<td>GRO promotional costs</td>
<td>£0</td>
<td>£10,000</td>
<td>£10,000</td>
</tr>
<tr>
<td>Development of training module</td>
<td>£0</td>
<td>£57,500</td>
<td>£57,500</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£1,189,056</td>
<td>£94,517</td>
<td>£1,283,573</td>
</tr>
</tbody>
</table>

*Start-up costs currently do not include recruitment costs. These can be non-linear depending on the number of posts advertised (multiple posts announced in one advertisement) and can range anywhere between £2,000 and £20,000.

Analytical Staff

90. The costs for the analytical staff (national statistician and assistant) are based on 2010 Agenda for Change pay scale averages3 for Band 5 and Band 7 (statisticians).

Medical Staff

91. The costs for the medical staff (MRs) are based on an assumption that they are paid at the upper end of a consultant’s salary scale at £100,500, amounting to £603,000 for six MRs (plus on-costs).4 The SMR cost is estimated at the top end of a consultant salary plus a management allowance, estimated at a total of £120,000.

Support Staff

92. The costs for the support staff are based on the 2010 Agenda for Change pay scale for a Band 3 officer.5 The total annually recurring salary costs associated with this model are therefore based on one national statistician, one statistical assistant, seven MRs (including the SMR) and seven medical administrative assistants, also accounting for 25% on-costs (NI contributions and pension provisions) over and above the salary costs.

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2 The estimated financial costs are at 2010-11 price levels.
3 http://www.sehd.scot.nhs.uk/pcs/PCS2010(AFC)02.pdf
4 ASDHD workforce team estimates.
5 http://www.sehd.scot.nhs.uk/pcs/PCS2010(AFC)02.pdf
Provision For On-Costs

93. Total running costs are made up of document transit; travel claims incurred from MRs travelling to and from inspections; and other IT and telephone running costs. Estimates of potential courier costs arising from having to send MCCD forms and medical records between the MRs and the registrars have been derived in consultation with Scottish Government courier contractors. A maximum charge per death of £10.98 has been applied to the sample of 1,000 to give a cost of £10,980 (although this can be expected to be at the upper end of the actual cost, with shorter distances being less costly).

94. To arrive at an estimate for the cost of travel claims submitted by MRs, the sample of 1,000 cases was distributed proportionately across Scottish administrative areas, given the number of deaths in each area in 2009. Each administrative area was divided into either urban and accessible rural or rural (under the Scottish Government’s 6-fold urban rural classification). Average travel distance in urban and accessible rural areas was assumed to be 15 miles per single journey; with 30 miles assumed for rural areas, based on Scottish Transport Statistics. Applying a £0.40 mile compensation figure (Scottish Government mileage rate) to these estimated number of miles claimed per annum gives a total annual cost of approximately £16,984.

95. IT and telephone costs per employee were provided by Scottish Government IT services and are estimated at £2,100 per annum. For 16 employees, the total annual IT and telephone costs are therefore estimated at £33,600.

96. Total running costs, including courier costs, travel claims and IT and telephone costs, are estimated at £61,564 per annum.

Accommodation

97. The two statisticians (the national statistician and statistical assistant) will be based at Information Services Division (ISD), a division of NHS National Services Scotland (NSS). They are expected to be accommodated at ISD within existing premises at no extra cost.

98. The MRs and their assistants will be employed by Healthcare Improvement Scotland (HIS) which was established through the Public Services Reform (Scotland) Act 2010 and will operate from April 2011. The base/location of the MRs is currently under discussion, but it is considered that these posts will be mobile, given the territorial area covered by each MR. It is hoped the MRs can be located within existing premises with no additional costs for buying or leasing out premises, the only costs incurred being running costs such as IT, electricity, furniture, etc. Physical location costs (rent etc.) are therefore not included. Initial start-up accommodation costs (furniture, IT equipment, etc.) have been estimated at £1,251 per full-time employee. For the six MRs plus one SMR, seven assistants and the analytical staff this would amount to £20,017 in Year 1.

7 http://www.scotland.gov.uk/Topics/Statistics/Browse/Transport-Travel/TablesPublications/ScottishTransportStats
IT Changes And Support

99. Under the new system the format of death certificates (also known as MCCD forms or Form 11) would be changed to incorporate a unique identifier code for each doctor certifying deaths and will include questions on implants and public health. A cost to the General Register Office for Scotland (GROS) is involved in making this change to the forms, and in changing the GROS computer system used by registrars to capture the registration data. There would also potentially be a cost in updating the database at ISD in order to receive and hold the additional information. It is estimated that reprinting the MCCD to take account of any changes would cost GROS about £6,000.

100. In addition, the GROS vital events database, a system used for statistical outputs and analysis and based on the information held on the registration database, would need to be amended to include the unique identifier. It is expected that the cost of this would be in the order of £1,000 bringing the total costs for IT changes and support to £7,000.

Promotional Costs

101. There will be an additional expense to provide for materials to alert doctors and other stakeholders such as funeral directors and the public about the changes. It is expected that these materials will be placed within registrar offices. In a recent Regulatory Impact Assessment on sunbed regulations it was estimated that the issuing and distribution of leaflets and posters cost no more than £10,000. After initial distribution, information materials will be available on designated websites to download.

Training And Development

102. Training needs will vary in different phases of the programme. In the first phase after the inception of this model, the MR posts are likely to be filled by experienced specialists, such as those currently filling the position of medical referees. During this phase only additional training through an e-Learning module (£57,500) will be required to top-up the MRs’ skills set.

103. It is expected that after approximately seven years a second phase will commence. This will coincide with new teaching cycles (with updated modules on the medical reviewer model) for training GPs and other specialists, who would form a pool of second or third generation of designated specialists (MRs) after a few years’ experience of practice. After about 10 years, a third phase is envisaged in which the first group of MRs will begin to be replaced by new doctors, in turn requiring top-up e-Learning training.

104. Initial costs for the introduction of an e-Learning module for MRs will consist of the salary costs of the specialists writing the module and, principally, for the technology development, design and management of the module. Based on the costs of the development of the Department of Health’s e-Learning module for Medical Examiners (the England and Wales equivalent of Medical Reviewers) and past experience in Scotland, such as development of the mental health module and the e-Learning programme for the delivery of services in secure accommodation, this has been costed at around £50,000-£65,000 (a mid-way point of £57,500 is

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8 Public Health etc (Scotland) Act 2008 (Sunbed) Regulations 2009
http://www.scotland.gov.uk/Publications/2009/06/23100211/0
used in the financial model). The recurring cost of training with this module is assumed to be low as there will be no accommodation or teaching costs.

105. The backfill cost associated with GPs (or other doctors) spending time on a training module rather than at work constitutes an opportunity cost of time allocation, which is discussed further in the Cost Benefit Analysis (CBA) but is not incorporated into the financial model. It is estimated that the time requirement will be in the order of two days of a consultant’s time.

106. Over time it is expected that the training programme will produce a number of experienced professionals who could become MRs, probably from the third generation of MRs onwards. In line with the backfill costs, these training programme costs are treated as economic costs and are therefore accounted for in the CBA but not in the financial model. The economic costs which will arise for three years in each 10-year training cycle would consist of GP Registrar salaries and out-of-hours pay and it is assumed that these costs would also arise if the group of GP Registrars in each cohort was trained for any other specialism.

**Recouping the Costs Of The New System**

107. The initial set-up costs of the new system, estimated at c.£94,500, will be paid by the Scottish Government and subject to a Spending Review bid. However, it is proposed that the annual running costs of operating the new arrangements should be self-funding through the charge of a fee to the public.

**Current Fee Arrangements**

108. A fee is currently charged to bereaved families (or whoever arranges a funeral) by the doctors signing off certificates authorising cremation of the body. This fee, which goes to two doctors, amounts to £147 per cremation. It is paid as a private financial transaction between the family and the authorising doctors – funeral directors often act as intermediaries by paying the fee to the doctors (which allows them to secure the necessary certificates and proceed with the cremation) and then recoup the fee from the bereaved family when they invoice the relatives for their services.

109. In addition, when a body is cremated a third doctor, the medical referee at the crematorium, performs the final check on the papers. The cremation authority pays the medical referee a fee which is recouped through the cremation fee which is charged by the authority to the nearest relative. This charge appears on the funeral director bill as part of the funeral arrangements. Cremation authorities separately pay the medical referee a fee for their services (this varies, dependent on local decisions).

110. There are currently 26 crematoria, with around 114 medical referees or deputies. Medical referees are regarded as self employed and are approached through their medical practice to become medical referees. The cremation or burial authority will then approach a medical referee from their pool of referees on an ‘as and when’ basis and pay them accordingly.

**Proposed Future Fee Arrangements**
111. There are two options for financing the recurring annual costs of the new arrangements: by charging a fee per disposal to recover the full costs incurred or by identifying a budget from public funds via the Spending Review process.

112. Whilst the Review Group did not propose that a fee should be charged, economic circumstances have changed since 2005 and the wider financial constraints under which the public sector operates have led Scottish Ministers to conclude that a small, universal fee should be introduced to fund the new death certification system, principally the MRs’ role to carry out the review functions (and related national statisticians’ function).

113. The existing fee is inequitable in so far as it applies to cremations but not to burials, and the current arrangements are not regarded as having resulted in necessary improvements to scrutiny. The new fee would be fairer by applying to all disposals (cremations and burials) and would fund improved scrutiny and improvements in clinical governance related to death certification. This fee is estimated at a much lower rate than the fees currently paid by relatives for cremations. Therefore, for the majority (around 60%) of families in Scotland who currently opt for cremation, there will be a significant saving. The fee will be payable by the personal representatives of the deceased and will be treated as part of the general testamentary and administration expenses of the estate.

114. The fee is estimated at around £22.00, with an additional element to cover the costs of collection (see paragraph 117. below). The fee collection cost is estimated not to exceed £8-£10 per fee and it may be considerably less than this. Under both options the fee level would be set centrally by the Scottish Government and varied according to the number of deaths in the previous year and on longer-term trends. Any increase in estimated running costs would of course also have a direct impact on the proposed level of fee.

115. Indicative fee levels have been calculated assuming 53,856 deaths per annum (based on 2009 deaths in Scotland, GROS 2010). The level of fee will be determined using the principles of full cost recovery; this assumes that no subsidy will be provided against the recurring costs. Year 1 is likely to be 2013-14.

116. As fees will be based on estimated costs, there is a residual risk in any one year that fees collected may not be sufficient to offset the total costs incurred. Any resulting deficit would fall to be met from existing Scottish Government Health budgets. A deficit may arise, for example, if the number of deaths is significantly below projections, if less than 100% of fees is collected or if unanticipated cost pressures emerge during the year. Similarly, a surplus could arise in any given year. If the number of deaths declines, the greater the fee-per-death required to recoup costs. Deaths have been steadily declining – by 10.7% since 1999, in line with a slight decrease in the death rate (from 1.19% of population in 1999 to 1.04% in 2009). The number of deaths in Scotland is currently projected to decline by a further 3.3% until 2017-18 (52,100 deaths) and to then increase again to 59,600 deaths in 2032-33, taking into account projected changes in the

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9 Including for where MRs will check the necessary paperwork in relation to a death occurring outwith Scotland where the body is to be cremated in Scotland to ensure safe disposal (implants etc).
population size. To ensure consistent application of the principle of full cost recovery, the level of the fee would be subject to annual review and adjusted through secondary legislation.

117. Administrative options for collection of the fee are currently being developed and the preferred option will require to be detailed in secondary legislation. It is anticipated that it will be necessary to pay those collecting the fee an administration charge to cover the costs of collection. Such charges in other areas are around 10-20% of the fee incurred.

**Medical Examiner System In England And Wales**

118. At the time of writing England and Wales are in the early stages of developing options for fee collection for their Medical Examiner system.

**Transitional Arrangements**

*National Statistician And Assistant*

119. Full implementation of the new system would begin in 2013-14 at the earliest. However, to deliver an immediate improvement in the information available to NHS Boards and the Scottish Government, the national statistician could begin statistical work immediately following the passage of the primary legislation, i.e. from 2011-12. The costs associated with employing the national statistician and an assistant would fall to be met from the Scottish Government’s Health and Wellbeing budget until the full model is implemented.

120. The associated costs would be included in a Spending Review bid as set out in Table 3 below. The budgeted costs of £81,282 per annum on 2010-11 pay scales do not include recruitment costs. HR advice is that these costs vary widely depending on the type of post, the ability to advertise for multiple posts in one announcement, the breadth of media used and any special offers at the time - a broad range of £2,000-£20,000 has therefore been quoted.

**Test Sites**

121. Provided that primary legislation is completed in the 2010-11 legislative session, secondary legislation may be consulted on and go through the Scottish Parliament in 2011-12. Stakeholders agree that a further transitional period of at least one year would then be required to have small test sites for the new system to trial how the process works in practice. Two test sites in two different areas of the country are anticipated which would offer a comparison between rural and urban populations. Test sites would be expected to run during 2012-13 for six months to allow for evaluation before full implementation in 2013-14. Alternatively, test sites could run in parallel with the development of secondary legislation and guidance.

122. Table 2 below summarises the estimated costs associated with the test.

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Table 2 Test Sites Summary Costs 2012-13

<table>
<thead>
<tr>
<th>Costs</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff costs</td>
<td>£73,462</td>
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<tr>
<td>Advertising costs</td>
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</tr>
<tr>
<td>Evaluation costs</td>
<td>£15,000</td>
</tr>
<tr>
<td>Running costs*</td>
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</tr>
<tr>
<td>Initial accommodation costs</td>
<td>£2,502</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>£102,676</strong></td>
</tr>
</tbody>
</table>

* Running costs include transport cost; travel expenses; IT and telephone charges for staff.

123. A bid for the test sites would be included in the next Spending Review. The costs of the test sites are approximately made up as follows: staff costs for two part-time (0.5 FTE) MRs and two assistants for six months (£73,462); advertising costs for initially affected registrar offices (£1,000); evaluation (£15,000 - this is based on previous evaluation expenditure); running costs including document transit / transport (up to £5,000), with the remainder being available for incidental costs including administrative and running costs (around £5,700); and accommodation costs. The costs of the test sites would not be recouped through the fee as these are one-off costs and apply to the test sites period only.

124. While GROS will bear the estimated £1,000 cost of printing addendum forms required for the MCCD forms during the test sites phase, there would be an indirect cost to registrars arising from the additional time spent on registering a death as well as general administrative costs, including the testing of desk instructions for registrars in the test sites areas. It is difficult to place a precise estimate on these costs. However, applying the administrative costs of the MR model to the staff requirements for the test sites would give a figure of around £4,200. This estimate may increase to cover any expenses for materials to alert doctors and others (e.g. funeral directors) about the test sites. These ‘promotional’ costs are currently estimated at £1,000.

125. Project management responsibilities for the test sites are expected to be covered within existing staff resources within the Scottish Government.

126. During the test sites a draft e-Learning module would be available and it is expected that the national statistician will have been appointed by that stage. The e-Learning costs make up the predominant share of the start-up costs of the new death certification model, currently assumed to fall in Year 1 of implementation. Since these would not have to be renewed for the actual programme, they would ‘pre-empt’ a large part of the (£94,500) start-up costs.

127. Table 3 below shows when individual costs will occur, with the national statistician costs being incurred first, followed by the costs of the test sites (the running costs comprise of transport and administrative costs), before full introduction from 2013-14. The fee is set to cover the annual costs from 2013-14 onwards - it will not offset any costs incurred during 2011-2013.
Table 3 Year-on-Year Costs of Medical Reviewer Model (inc test sites)

<table>
<thead>
<tr>
<th></th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>2014-15+ (each year)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Inception phase</td>
<td>Including Test sites</td>
<td>1st year of implementation</td>
<td>2nd year onwards</td>
</tr>
<tr>
<td>Analytical staff (statisticians)</td>
<td>£74,579</td>
<td>£74,579</td>
<td>£74,579</td>
<td>£74,579</td>
</tr>
<tr>
<td>Medical staff</td>
<td>£0</td>
<td>£62,779</td>
<td>£903,345</td>
<td>£903,345</td>
</tr>
<tr>
<td>Support staff</td>
<td>£0</td>
<td>£10,683</td>
<td>£149,568</td>
<td>£149,568</td>
</tr>
<tr>
<td>SUB TOTAL</td>
<td>£74,579</td>
<td>£148,041</td>
<td>£1,127,492</td>
<td>£1,127,492</td>
</tr>
<tr>
<td>Total running costs</td>
<td>£4,200</td>
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<td>£61,564</td>
<td>£61,564</td>
</tr>
<tr>
<td>Test sites evaluation costs</td>
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</tr>
<tr>
<td>Initial Accommodation</td>
<td>£2,502</td>
<td>£2,502</td>
<td>£15,013</td>
<td>£0</td>
</tr>
<tr>
<td>IT changes &amp; supports</td>
<td>£0</td>
<td>£0</td>
<td>£7,000</td>
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</tr>
<tr>
<td>GRO promotional costs</td>
<td>£0</td>
<td>£1,000</td>
<td>£10,000</td>
<td>£0</td>
</tr>
<tr>
<td>Development of training module</td>
<td>£0</td>
<td>£57,500</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£81,281</td>
<td>£263,955</td>
<td>£1,221,069</td>
<td>£1,189,056</td>
</tr>
</tbody>
</table>

Estimated FEE to cover costs (exc costs of fee collection) £22.08

128. Table 4 below shows when individual costs will occur, with the national statistician costs being incurred first, without the costs of the test sites. Again, the fee is set to cover the annual costs from 2013-14 onwards - it will not offset any costs incurred during 2011-2013.

Table 4 Year-on-Year Costs of Medical Reviewer Model (exc test sites)

<table>
<thead>
<tr>
<th></th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>2014-15+ (each year)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Inception phase</td>
<td>Excluding Test sites</td>
<td>1st year of implementation</td>
<td>2nd year onwards</td>
</tr>
<tr>
<td>Analytical staff (statisticians)</td>
<td>£74,579</td>
<td>£74,579</td>
<td>£74,579</td>
<td>£74,579</td>
</tr>
<tr>
<td>Medical staff</td>
<td>£0</td>
<td>£0</td>
<td>£903,345</td>
<td>£903,345</td>
</tr>
<tr>
<td>Support staff</td>
<td>£0</td>
<td>£0</td>
<td>£149,568</td>
<td>£149,568</td>
</tr>
<tr>
<td>SUB TOTAL</td>
<td>£74,579</td>
<td>£74,579</td>
<td>£1,127,492</td>
<td>£1,127,492</td>
</tr>
<tr>
<td>Total running costs</td>
<td>£4,200</td>
<td>£4,200</td>
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<td>£61,564</td>
</tr>
<tr>
<td>Initial Accommodation</td>
<td>£2,502</td>
<td>£0</td>
<td>£15,013</td>
<td>£0</td>
</tr>
<tr>
<td>IT changes &amp; support costs</td>
<td>£0</td>
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<td>£7,000</td>
<td>£0</td>
</tr>
<tr>
<td>GRO promotional costs</td>
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<td>£0</td>
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<td>£0</td>
</tr>
<tr>
<td>Development of training module</td>
<td>£0</td>
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<td>£0</td>
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<tr>
<td>TOTAL</td>
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<td>£132,279</td>
<td>£1,221,069</td>
<td>£1,189,056</td>
</tr>
</tbody>
</table>

Estimated FEE to cover costs (exc costs of fee collection) £22.08
These documents relate to the Certification of Death (Scotland) Bill (SP Bill 58) as introduced in the Scottish Parliament on 7 October 2010

COSTS ON LOCAL AUTHORITIES

129. Indirect costs to local authorities comprise of raising staff awareness and training on the new death certification system and the impact of scrutiny on bereaved families. Specifically, desk instructions for registrars will be required as it will be registrars who bereaved relatives will come into contact with first in relation to the new scrutiny system (selection for random sampling, whether they understand and are content with the cause of death on the MCCD form etc.). General material about the new scrutiny system which explains its purpose and where it sits in relation to the death certification process is also required, not least for public reassurance. However, the cost of these materials would be borne by the Scottish Government.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

130. As part of the new system, changes are being considered to the MCCD form to include medical information about surgical implants and the presence of any disease that might pose a risk to public health. Certifying doctors would in future be required to provide this information. This would facilitate the safe handling of the body and ensure the body can be safely cremated (in the case of implants). These changes are likely to be necessary because under the new model the existing cremation documentation (and the associated fees payable to doctors and to medical referees) will be removed. The MCCD is currently completed by hospital doctors and GPs as part of their routine duties free of charge and the proposed changes to the form are not expected to change this.

131. For the new system to work effectively as a deterrent, clinicians and other healthcare practitioners will need to know about the activities and powers of the MRs and national statistician. Effective publicity and awareness raising among the medical and wider health as well as other relevant professionals is therefore crucial and plans to embed these into existing documentation, training and publicity will be developed as the Bill moves through Parliament and beyond. The financial implications are costed through the training elements in the start-up costs as well as this being part of the job description of the MRs and the SMR.

132. Table 5 below summarises the year-on-year costs including the costs of the test sites to the Scottish Government and all others.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs to SG</td>
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<td>£238,955</td>
<td>£1,221,069</td>
<td>£1,189,056</td>
</tr>
<tr>
<td>Costs to LAs, other bodies, individuals and businesses</td>
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<td>£0</td>
<td>£0</td>
<td>£0</td>
</tr>
</tbody>
</table>

SAVINGS

133. The Scottish Government does not anticipate any direct savings as a result of implementing a new death certification system.
134. Currently, people opting for cremation pay cremation fees for the statutory forms but these fees are paid to doctors outwith their NHS duties. The forms and fee will be abolished under the new system. In Scotland approximately £4.9m was incurred for cremation fees in 2008, paid by bereaved families. Any reduction in such payments would represent a reduction in opportunity costs to bereaved families, rather than direct savings to the Scottish Government.

135. Indirect savings are expected through a reduction in administrative burden on registrars and certifying doctors as the number of forms required will be reduced and a simplified unified system is introduced. Funeral directors and crematoria directors/managers will no longer have to collect and process fees for the crematoria referees. Equally there will be savings to crematoria authorities who will not need to have medical referees (who perform checks of cremation forms signed by two separate doctors) and their support staff.

DEATHS ABROAD

COSTS ON THE SCOTTISH ADMINISTRATION

136. Under the new system MRs would be empowered to assist persons in arranging a post mortem (including meeting the cost of the examination) in certain cases where a death has occurred abroad, cause of death is not known and disposal is to take place in Scotland. This will support relatives whose family member is repatriated and where currently families have to arrange and pay for post mortems privately.\footnote{The persons who can make an application to the MR are the same persons who are entitled to authorise a post mortem under sections 30, 32 or 33 of the Human Tissues (Scotland) Act 2006; an application to the MR can only be made for the purpose of providing information about the cause of death where none is available.} This will end the discrepancy between Scotland and England and Wales where Coroners have powers to instruct post mortems in such cases.

137. An estimated annual maximum of 25 deaths abroad do not have a clear cause of death and could therefore potentially fall into this category. The costs would be up to £12,500 annually and this cost would ultimately be borne by the Scottish Government and not recouped through the fee. The assumptions behind the figures are as follows:

138. The current costs of a post mortem for non suspicious deaths, for the purpose of establishing a primary cause of death, is up to £500 at the University of Dundee’s Pathology Department. This £500 figure is an inclusive figure covering minor consumables and other minor technician and secretarial expenses. The University of Dundee is one of the four centres in Scotland providing post mortem services for the PF (the other three centres are Edinburgh, Glasgow and Aberdeen Pathology Departments).

139. The annual figure of 25 deaths abroad which may request a post mortem has been derived from Scottish Government records, which show that 95 overseas cremation cases were dealt with in 2009. The numbers for the previous five years were:

- 2008 - 128 cases
- 2007 - 143 cases
140. These statistics point to an average of around 130 requests a year for cremation authorisations resulting from repatriation of Scots who have died abroad. There are no statistics on the total number of annual repatriations (i.e. burials and cremations) but assuming the 40/60 split between burial and cremation in Scotland applies also to deaths of Scots abroad, one can estimate a total of around 250 deaths per year requiring repatriation for a funeral service. Based on our experience of dealing with those being cremated, in around 10% of these cases the primary cause of death will not have been established. This means that there would be around 22 deaths (rounded up to 25) which would potentially fall into this category.

**COSTS ON LOCAL AUTHORITIES**

141. There will be no costs on local authorities as a result of this Bill.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

142. There will be no costs on other bodies and businesses – the costs of the post mortems will initially be met by medical reviewers (who are part of HIS) but would ultimately be borne by the Scottish Government.

**SAVINGS**

143. The Scottish Government does not anticipate any savings to the public purse as a result of implementing these proposals. Bereaved families will benefit as they currently pay for a post mortem in these circumstances.

**MARGINS OF UNCERTAINTY**

144. Where, appropriate, any margins of uncertainty are set out above in each section where they occur.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

145. On 7 October, the Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Certification of Death (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

146. On 5 October, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Certification of Death (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
CERTIFICATION OF DEATH (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)