

The logo for SPICe (The Information Centre) is located in the top left corner. It consists of the word "SPICe" in a large, white, sans-serif font, with "The Information Centre" in a smaller, white, sans-serif font directly below it. The text is set against a dark purple, rounded rectangular background that features a series of white, curved lines and arrows pointing towards the right, creating a sense of motion and information flow.

SPICe

The Information Centre

SPICe Briefing

Certification of Death (Scotland) Bill

25 November 2010

10/83

Murray Earle

The Certification of Death (Scotland) Bill was introduced in the Scottish Parliament on 7 October 2010 by the Minister for Public Health and Sports, Shona Robison MSP. It seeks to make provision for the establishment of a system of review of medical certificates of cause of death and still-birth certificates by medical reviewers and a senior medical reviewer. It also makes provision for deaths occurring outwith Scotland.

This Briefing considers the provisions of the Bill as well as some of its history.



The Scottish Parliament
Pàrlamaid na h-Alba

CONTENTS

EXECUTIVE SUMMARY	3
BACKGROUND	4
SCOTTISH GOVERNMENT CONSULTATION	4
HEALTH AND SPORT COMMITTEE CONSULTATION	5
CERTIFICATION OF DEATH (SCOTLAND) BILL PROVISIONS	5
ORDER-MAKING POWERS	6
MEDICAL REVIEWERS AND THE MEDICAL REVIEWER MODEL.....	6
REFERRAL OF DEATH CERTIFICATES FOR REVIEW	7
REVIEWS OF MEDICAL CERTIFICATES OF CAUSE OF DEATH	9
POWERS OF MEDICAL REVIEWERS.....	9
CONDUCT OF REVIEWS.....	10
DEATHS ABROAD	12
OTHER FUNCTIONS AND DUTIES OF MEDICAL REVIEWERS	13
FEES IN RESPECT OF MEDICAL REVIEWER FUNCTIONS	14
DISPOSAL OF BODIES	14
STILL-BIRTHS.....	14
IMPLEMENTING THE NEW SYSTEM AND THE FINANCIAL MEMORANDUM.....	15
REFERENCES	18
RELATED BRIEFINGS	20



EXECUTIVE SUMMARY

The Certification of Death (Scotland) Bill was introduced in the Scottish Parliament on 7 October 2010 by the Cabinet Secretary for Health and Wellbeing Shona Robison MSP. The Bill proposes the creation of the posts of Medical Reviewer and Senior Medical Reviewer. Their functions will be to review a random sample of Medical Certificates of Cause of Death. These reviews may also be conducted following the application of an interested person. The reviews will be done with a view to assessing the accuracy of the certificates, in respect of the cause of death among other factors. The Bill also proposes to amend the form of medical certificates to show additional medical information and to indicate whether it is safe to cremate a body. The Bill creates the offence of disposing of a body or body parts without authorisation. Specific provision is made in respect of those who have died abroad. There is scope for subordinate legislation throughout the Bill, for example to provide for the form and content of applications for a post-mortem examination of those who have died abroad.

BACKGROUND

Under the current system of death certification, a certifying doctor completes a Medical Certificate of Cause of Death (MCCD) which is taken by a qualified informant (e.g. a relative) to the office of the Registrar of Births, Deaths and Marriages (the Registrar) to complete the registration process. This must be done within 8 days of the death. The MCCD has the purpose of recording the cause of death, the fact of death and to enable the registration of death.

After that, the deceased is either buried or cremated. If the body is buried, the relevant documents must first be passed to the burial authority. If the body is cremated, two forms are completed by two separate doctors to authorise cremation, followed by the completing of an application for cremation. Relevant documentation (e.g. the MCCD and application for a cremation) is then handed to a medical referee – a person of at least 5 years medical standing – who will authorise the cremation if he or she is content with it.

In this regard, the [Policy Memorandum](#) to the Bill noted (Para. 2) that,

Scotland’s burial and cremation legislation required updating as much of it was over 100 years old and did not reflect 21st century life. This coincided with a need to examine the processes governing death certification following the inquiry into the case of Dr Harold Shipman. Following the publication of the Shipman Inquiry’s Third Report in June 2003, an independent review group was established in January 2005 by the then Scottish Executive to bring forward recommendations on the law relating to burial, cremation and death certification.”

The Scottish Government consulted on the recommendations of the Burial and Cremation Review Group: Report and Recommendations (Scottish Government 2008) early in 2010. Some of the results from the latter consultation gave rise to the current legislation.

As the Scottish Government observed ([Policy Memorandum](#) para. 17), even although events surrounding the Harold Shipman case were the original driver for change, no system can guarantee the prevention of that kind of criminal activity. The proposed new system covers only those cases which are not within the scope of the criminal justice authorities. Instead, the policy aims are to establish a single system of scrutiny of deaths not subject to investigation by the Procurator Fiscal (PF); improve quality and accuracy of MCCDs and provide improved public health information and strengthened clinical governance in relation to deaths.

Following its introduction on 7 October 2010, the [Certification of Death \(Scotland\) Bill \(SP Bill 58\)](#) was referred for Stage 1 discussion to the [Health and Sport Committee](#) as lead committee on the Bill. Along with the [Bill as introduced](#), the Scottish Government also published the [Explanatory Notes](#) and [Policy Memorandum](#) to the Bill and a [Delegated Powers Memorandum](#).

At its [meeting on Wednesday 10 November 2010](#), (Scottish Parliament 2010) the Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed a number of candidates from whom to take oral evidence.

SCOTTISH GOVERNMENT CONSULTATION

The Scottish Government consulted on two alternative models of death certification recommended by the Review Group: the medical investigator (MI) model and the medical examiner (ME) model. The difference between the two models lies in the level of scrutiny of medical certificate of cause of death (MCCD) forms:

- Under the MI model, medical investigators (MIs) comprehensively scrutinise a 1% random sample of deaths, plus any deaths where concerns had been raised, for example

by a relative or doctor (estimated to account for up to a further 1% of all deaths) and countersign the 2% of MCCDs linked to those deaths.

- Under the ME model, this comprehensive scrutiny takes place but, in addition, medical examiners (MEs) undertake a basic level of scrutiny of all other deaths (with much of this work carried out as administrative checks by their assistants) and therefore countersign all MCCDs in Scotland.

Following the consultation, the Scottish Government developed a “strengthened version” of the MI model and this is the model that has been set out in the Bill. By ‘strengthened’, it is understood that the Medical Reviewer (MR) will have the scope to conduct any and as many reviews as he or she chooses, covering a particular geographical area of medical field, even up to 100% of all deaths in Scotland.

Of relevance to the Bill are Sections 3 and 4 of Phase 1 (of 2) of the consultation on death certification, burial and cremation – specifically questions 5-20 and 51-52. That consultation was published as [Death Certification, Burial and Cremation - Analysis of Consultation Findings Phase 1 Report Questions 1-20, 51 and 52](#). (Scottish Government (2010a)) A [summary of findings](#) was also published. (Scottish Government (2010b)) The published analysis of findings will be referenced in this paper, where appropriate.

HEALTH AND SPORT COMMITTEE CONSULTATION

On 29 September 2010, the Health and Sport Committee agreed to issue a [call for written evidence](#) on the then forthcoming Bill. That call was issued on introduction of the Bill with a closing date of Thursday 18 November 2010. The Committee received 39 responses, which [are available online](#).

CERTIFICATION OF DEATH (SCOTLAND) BILL PROVISIONS

The [Policy Memorandum](#) which accompanies the Bill states that its main objectives are to:

- Introduce a new system in Scotland for the scrutiny of medical certificates of cause of death
- Create the post of medical reviewer and senior medical reviewer, whose functions will be to review for accuracy the certificates referred to them
- Provide improved public health information and strengthened clinical governance in relation to deaths
- Provide 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
- Make it an offence to dispose of a body or body parts without authorisation, and
- 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 with arranging a post-mortem in such cases from outwith the UK if no cause of death is available and the body is to be disposed of in Scotland.

ORDER-MAKING POWERS

Scottish Ministers will be given order making powers in several parts of the Bill, for example:

- the form and content of applications for a post-mortem examination of those who die abroad
- fees to be charged in respect of medical reviewer functions
- provision about applications by interested persons, such as the procedure to be followed, the form and content of applications and any action to be taken by medical reviewers in respect of the applications for review made by an interested person
- any guidance issued for the purposes of, or in connection with, the provisions of the Bill.
- specifying the certificates or other documentation required for the burial, cremation or other disposal of the body of a still-born child or a deceased person

These powers will be discussed at appropriate places in this paper, but for further background information, see the [Delegated Powers Memorandum](#).

MEDICAL REVIEWERS AND THE MEDICAL REVIEWER MODEL

The positions, appointment and status of medical reviewers and the senior medical reviewer are set up by section 1 and Schedule 1 to the Bill. They are to exercise such functions as conferred by the Bill or any other enactment, and do so on behalf of Healthcare Improvement Scotland (HIS), which is the body that replaces NHS Quality Improvement Scotland.

Schedule 1 amends Schedule 5A to the National Health Service (Scotland) Act 1978 (c. 29) (the 1978 Act). This adds paragraph 7A to that Schedule, which sets out the status and appointment – which must be done by HIS – of medical reviewers and the senior medical reviewer.

To be appointed as a one of the six medical reviewers or as the senior medical reviewer, a person must be a medical practitioner, and have been so 5 years prior to appointment. They must also hold other qualifications, training and experience as may be specified by regulations. They may not be a member of HIS being in effect an appointee or employee of HIS. As such, an employee of HIS (other than a MR or SMR) may not exercise the functions of medical reviewer or senior medical reviewer. Appointment as MR or SMR does not affect their status as an employee of HIS.

Subject to the approval of HIS, the SMR may arrange for their functions to be carried out by a MR where the SMR is absent or unavailable. Other than in that circumstance, the function conferred on a MR or SMR may not be delegated by HIS.

The Scottish Government, in the [Policy Memorandum](#) to the Bill, set out its justification for proposing what it calls a strengthened version of the Medical Investigator model, as opposed to the Medical Examiner model:

114. According to Scottish Ministers' view, the approach taken in England and Wales of requiring the actions of a certifying doctor to be double checked in every single case is not an efficient, required or desirable use of resources. Under the current system up to three doctors can be involved in providing certification for cremation, including additional scrutiny from the crematorium referee. Practice has shown that such checking tends to be perfunctory. It is neither necessary nor proportionate as a means of ensuring that an effective level of monitoring and governance is in place. Rather than requiring costly and

unnecessary checks of the actions of every single doctor in certifying every single death in Scotland, focus should be on building on existing systems of clinical governance, seeking to drive up standards and quality throughout the process and introducing a level of deterrence. Fundamentally, therefore, this can be achieved through a scrutiny system that checks a (flexible) sample of cases supplemented by the ability of certain interested parties to refer cases and the power of the MRs to conduct additional checks where they feel this is of value. This system should seek and lead to improvements over time and can then also adapt to those improvements. In this way it can be adapted and made responsive to needs as they change over time.

In the [Policy Memorandum](#) to the Bill, the Scottish Government acknowledged that “[it had] expressed an initial preference for the MI model in its consultation.”¹ According to a summary of the research findings to the Scottish Government Consultation (Scottish Government 2010b):

In relation to the two alternative models for the system of death certification (the Medical Investigator and the Medical Examiner), while the views were divided overall and there was a relatively even split between the models, a slightly larger number [52%] of those who identified their views preferred the Medical Investigator model to the Medical Examiner. A small number of respondents expressed the view that they did not consider either to be suitable.

This should be put in the context of the majority of responses to the Health and Sport Committee consultation that came from commercial bodies, being opposed to the proposed strengthened Medical Investigator model and favouring retaining double checks of MCCDs. Medical community responses were split, with a slim majority opposing the proposed system. In contrast all local authority and public bodies as well as patient and consumer bodies were in favour of the proposed system on the ground that it will provide a proportionate level of scrutiny of the cause of death for all deaths that does not currently exist.

REFERRAL OF DEATH CERTIFICATES FOR REVIEW

The Bill proposes to give the Registrar General a duty to refer MCCDs for review by a Medical Reviewer (MR). These provisions are set out in sections 2-7 of the Bill. Reviews are to take place under section 8, discussed below.

Section 2 makes an addition to the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (the 1965 Act), by placing a duty on the Registrar General to ensure that randomly selected MCCDs are referred for review. This takes place before completion of the registration process. Scottish Ministers may give directions to specify the minimum number of MCCDs that should be referred for review and the method by which the random selection is to be made.

The Policy Memorandum explains that (para. 35), “The scrutiny system to be carried out by the MRs will review around 500 randomly selected cases annually. This is a similar level to the 1% recommended by the Review Group.”²

In addition – and read with section 3 – the Registrar General must refer for review MCCDs of a particular description, as requested by the Medical Reviewer. This may take place after the death has been registered. A district registrar may refer a MCCD for review where he or she deems it appropriate.

¹ Further information on alternative approaches is set out in para 107 – 118 of the [Policy Memorandum](#) to the Bill.

² Further Information Regarding the Sampling Process has been set out in paragraphs 56-62 of the [Policy Memorandum](#) to the Bill.

As the Policy Memorandum goes on to explain (para. 36), "... as also proposed by the Review Group, there is power for "interested persons" to make an application where they wish a review to be conducted by an MR. This is expected to add a further 500 deaths annually to the cases scrutinised. The numbers referred by interested persons will of course be flexible."

According to the Bill, as long as the application is not a vexatious one, an 'interested person' may, within three years of the death, apply for review of the MCCD. An 'interested person' is:

1. a person required or qualified to give information concerning the deceased's death. Under s23(1) of the 1965 Act this means:
 - (a) any relative of the deceased
 - (b) any person present at the death
 - (c) the deceased's executor or other legal representative
 - (d) the occupier, at the time of death, of the premises where the death took place, or
 - (e) if there is no such person under (a)-(d) above, any other person having knowledge of the particulars to be registered.
2. a health care professional or other carer involved with the deceased's care prior to their death
3. the funeral director responsible for the funeral arrangements of the deceased
4. the person having charge of the place of disposal of the body of the deceased, or
5. other person specified by order by Scottish Ministers.

Scottish Ministers may by regulations make provision about applications by interested persons, such as the procedure to be followed, the form and content of applications and any action to be taken by medical reviewers in respect of the applications.

Scottish Ministers may through statutory instrument order the suspension of referral either during an epidemic, or to prevent the spread of infectious diseases or contamination. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament.

The following MCCDs may not be referred for review, either by the Registrar General or by an interested person:

1. certificates relating to a body subject to a direction restricting its release from hospital, as it represents a risk to public health
2. certificates already referred under section 2 – among the randomly selected MCCDs
3. certificates that have been or are being reviewed following application by an interested person (s4) – this has the effect that a MCCD referred by an interested person may be reviewed only once.
4. replacement certificates following a prior unsatisfactory review (under s10 and s11) – that is MCCDs replaced by the original certifying doctor following referral of the MCCD to that doctor by the MR
5. certificates in respect of which the cause of death has been or is being investigated by a procurator fiscal

6. certificates signed before section 2 comes into force.

Section 5 makes a further addition to the 1965 Act in respect of deaths that should not be registered where the MCCD has been referred for review, or where the Registrar General has been notified that an application for review has been made. In any event, registration of death may not take place until one of the following events has taken place:

1. a medical reviewer gives notice that it is appropriate to register the death before the review is complete
2. the certificate or its replacement is approved by a medical reviewer, whether this follows a satisfactory review under s9 or an unsatisfactory review under s10
3. the certificate or its replacement is approved by the senior medical reviewer following an unsatisfactory review under s11
4. the senior medical reviewer signifying that the review has been conducted³
5. a medical reviewer signifying that the review has been conducted, where the relevant medical practitioner is unavailable or incapacitated, under s12(2)(a)
6. a procurator fiscal approving the certificate or providing a replacement certificate attested by a registered medical practitioner.

Section 6 makes provision for an expedited procedure insofar as a qualified informant may apply for a death to be registered before a review is complete. Section 6 proposes to do this by making another addition to the 1965 Act, in respect of MCCDs referred for review following their random selection. In such an instance, the district registrar must refer the MCCD for a determination, by the medical reviewer, whether or not the review is to have the effect of a stay in registration (under s7). This will follow notification by a 'qualified informant' – defined under s56 of the 1965 Act, a "person who is by [the 1965 Act] required or stated to be qualified to give information concerning that birth or death". The qualified informant must also provide a statement of the circumstances he or she believes justify registering the death before the review is complete, along with any other information that the medical reviewer reasonably requires.

In such a circumstance, the medical reviewer must, under s7, determine whether it is appropriate to register the death before the review of the MCCD under s8 or before any further review under section 11(2) (action following an unsatisfactory review) is completed. The review must notify the relevant registrar of that determination. The medical reviewer may make such a determination only if justified by the circumstances and where there are no obvious indications that the MCCD is not in order.

REVIEWS OF MEDICAL CERTIFICATES OF CAUSE OF DEATH

POWERS OF MEDICAL REVIEWERS

A medical reviewer will have certain powers in conducting a review of a medical certificate of cause of death under s8(1) or a further review by the senior medical reviewer under s11(2). He or she may under s14 require any person who is able, to produce relevant documents (including health records) or copies of documents. This applies as long as prior notice is given of the type of documents required, the date by which they are required and the name of the deceased.

³ under s11(8)(a), 11(9)(a) or 12(5)(a)

It will be an offence under s15 to fail, without reasonable excuse, to produce those documents or to deliberately alter, suppress, conceal or destroy any document that is required to be produced. The offence carries a maximum penalty of a fine not exceeding level 5 on the standard scale (£5,000) or to imprisonment for a period not exceeding 3 months, following summary conviction. The offence may be committed by both a body corporate and a person acting on behalf of the body corporate.

CONDUCT OF REVIEWS

Under sections 8-13 of the Bill, a hierarchy of reviewers is put in place. A MCCD will be reviewed first by the MR and if the review it is not in order and the certifying doctor does not issue a replacement MCCD, by the SMR and subsequently by the PF if that review is also unsatisfactory.

According to the [Policy Memorandum](#) to the Bill,

29. The scrutiny (review) to be conducted by MRs will involve the following:

- Comprehensive checks of all (relevant) paperwork associated with the death including the MCCD, appropriate medical records and the results of any medical investigations;
- A discussion with the certifying doctor and other relevant clinical and healthcare staff, as required;
- A discussion with the family of the deceased or an informal carer, as required; and
- Consideration of any other relevant evidence, such as (arranging to) view the body, if necessary (rarely).

A medical reviewer is required under s8 to review any MCCD that is properly referred to them. In so doing, the MR may:

1. examine the health records of the deceased
2. seek the views of the medical practitioner who attested the MCCD
3. make such other enquiries and examine such other things as the MR considers appropriate.

The MR must come to a view on whether the certificate is in order, insofar as the cause of death mentioned represents a reasonable conclusion and other information contained in the certificate is correct. If the MCCD is in order the MR must approve it and notify the relevant registrar.

The Scottish Ministers may by regulations make further provision for action to be taken by medical reviewers when conducting a review, or further review, as the case may be.

Under s10, where the certificate is not in order, the MR must inform the doctor that signed the MCCD of the reasons for having reached that view, and invite the practitioner to attest a replacement certificate. If the replacement is in order, the MR must approve it and submit it to the relevant registrar. If the MCCD is not in order in the view of the MR, he or she must refer the review to the SMR. If, however, the medical practitioner declines to attest and transmit a replacement certificate, the MR must either approve the certificate and notify the registrar, or refer the review to the SMR.

It may be that the review by the MR is unsatisfactory. This would be the case where the medical practitioner transmits an alternative MCCD which is not in order or where that practitioner declines to attest a replacement MCCD. Following such an unsatisfactory review, the SMR may conduct a further review of the MCCD and in so doing may take any of the actions open to a medical reviewer under s8. He or she must, in the same way, decide whether the MCCD, or its replacement, is in order. If it is in order, the SMR must approve it and notify the registrar and the relevant medical practitioner. If not in order, the SMR must inform the medical practitioner of the reasons and invite them to attest and transmit a replacement certificate which takes those reasons into account. If the replacement is in order, the MR must approve and transmit it to the relevant registrar. If it is not in order, the SMR must either signify that a review has been conducted and notify the registrar, or refer the certificate to the PF for investigation into the cause of death.

Where either the SMR finds the certificate or its replacement contain incorrect information as to cause of death, or where the medical practitioner declines to attest and transmit a replacement, the SMR may take steps to inform such persons as he or she considers appropriate of the relevant information (s11(11)). These options are available to the SMR in addition to the requirements placed upon the SMR where the medical practitioner submits a replacement certificate that is not in order or where that practitioner declines to submit a replacement MCCD (discussed above).

Where a review has been conducted in which the medical reviewer found the MCCD was not accurate as to cause of death, and the relevant medical practitioner is unavailable or unable to attest and transmit a replacement, the medical reviewer must either signify a review has been done and notify the registrar, or refer the certificate to the PF for investigation into the cause of death. This option is also open to the MR where he or she is not satisfied the MCCD is in order for reasons other than the accuracy of cause of death. In addition, the MR may take steps to inform appropriate persons of the relevant information.

In any event, the MR or the SMR as the case may be, is by virtue of s16 under a duty to report any suspicion of criminality arising from a review to the PF and having done so must follow the directions of the PF as to the appropriate action to take.

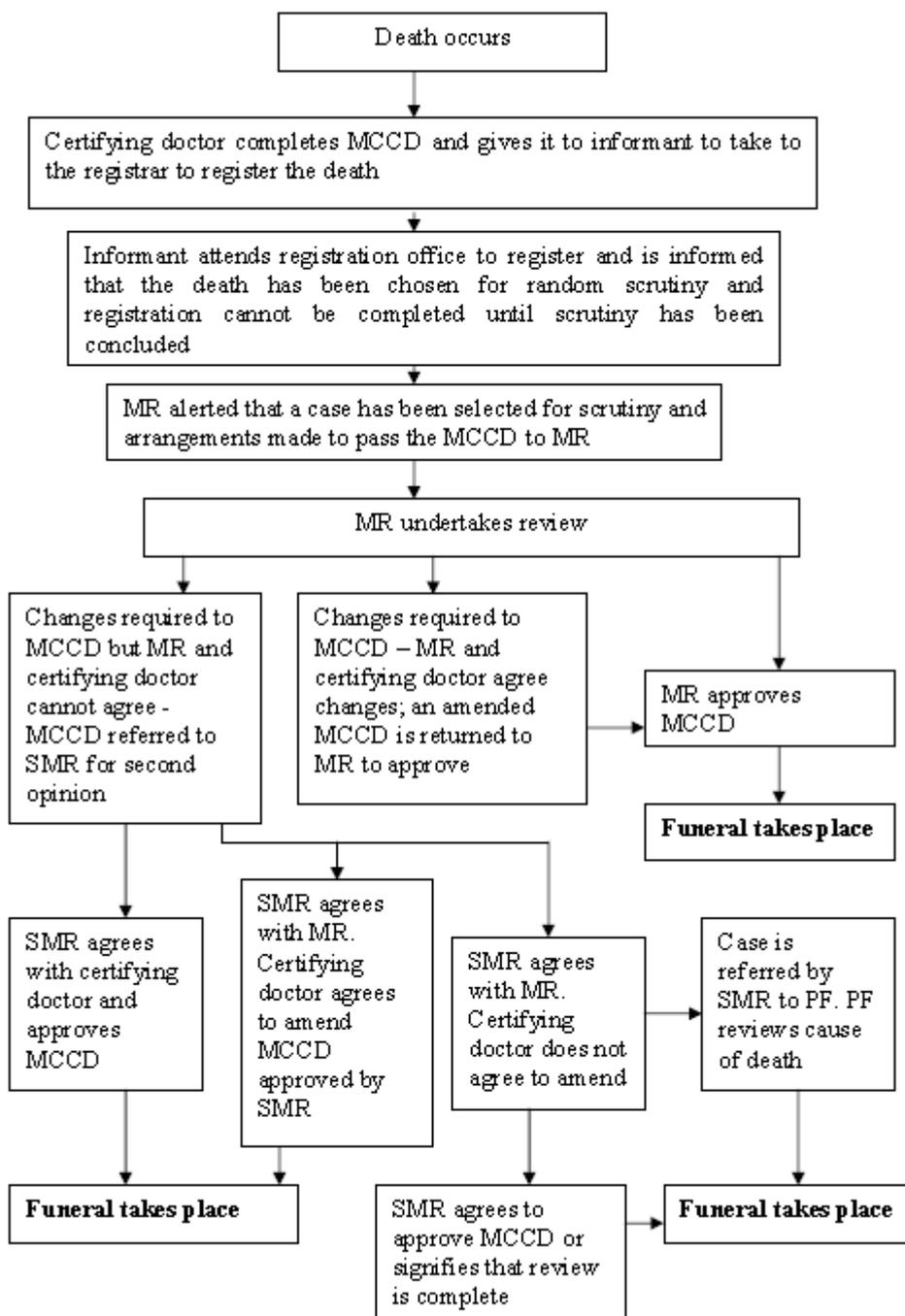
Where the MR has referred a review to the SMR who in turn forms the view that the MCCD is not in order and the relevant medical practitioner is unavailable or unable to submit a replacement certificate, the SMR must either signify a review has been conducted and notify the relevant registrar, or refer the certificate to the PF for investigation into the cause of death. Again, this option is also open to the SMR where he or she is not satisfied the MCCD is in order for reasons other than the accuracy of cause of death. In addition, the SMR may take steps to inform appropriate persons of the relevant information.

This duty to inform following review refers to those mentioned in s13(3) – that is the person who gave information of the particulars required under the 1965 Act to be registered, and the ‘interested person’ in the case of a review conducted at the request of such a person (s4), unless that is one and the same person. The duty to inform must take place once a ‘relevant requirement’ is first complied with – that is instances in which the MR is required to approve a certificate and notify the relevant registrar accordingly.⁴

The process described above and in the Bill, has been set out in a flowchart contained in the Policy memorandum to the Bill and reproduced below:

⁴ Under sections 9(2), 10(3) or (5)(a), 11(5), (7), (8) or (9) or section 12(2) or (5)

Figure 2 - Random Review



DEATHS ABROAD

The [Policy Memorandum](#) to the Bill observes (para.78) that, “Currently Scottish Ministers have a role under the Cremation (Scotland) Regulations 1935 in giving authority for cremation in Scotland where a death has occurred abroad and there is sufficient certification equivalent to the certificates required under those Regulations.”

The Scottish Government consultation found that (Scottish Government 2010b):

There was a high level of agreement that when death of a person who is normally resident in Scotland occurs abroad, a Government body should be able to arrange a post mortem to establish the cause of death if this is unknown. Some respondents suggested other measures that could be taken to simplify this process.

Under s17 of the Bill, where someone dies outwith Scotland and it is intended that they be cremated in Scotland, a medical reviewer must, following an application by someone wishing to arrange the cremation, determine whether it is safe for the deceased's body to be cremated. If it is safe, the MR must give the applicant a certificate authorising the cremation. Scottish Ministers may by regulations provide for the form and content of applications, the procedure to be followed by medical reviewers following an application and the form and content of the certificate authorising cremation.

If under similar circumstances (death abroad, burial or cremation in Scotland), no cause of death is available and following an application by a relevant person, a medical reviewer may assist that person in arranging for a post-mortem examination of the body for the purpose of providing information about or confirming the cause of death.⁵ The MR may also meet the cost of such an examination. A relevant person is a person who may authorise a post-mortem examination of the body.⁶ Scottish Ministers may by regulations make provision for the form and content of such applications.

This follows an agreement between the Crown Office and the Procurator Fiscal Service that, "a power should be given to allow MRs to assist in the arranging of a post mortem (including providing financial assistance) to help support relatives whose family member is returned to Scotland for disposal and no cause of death is available." ([Policy Memorandum](#) para.86)

OTHER FUNCTIONS AND DUTIES OF MEDICAL REVIEWERS

Under s19, the MR and SMR are to have the following training and information functions:

1. collate and analyse information relating to or contained in MCCDs
2. provide training, guidance and support to those required to complete MCCDs
3. provide guidance and support to district registrars in relation to MCCDs
4. liaise with such persons as the MR considers appropriate with a view to improving the accuracy of information recorded in MCCDs (particularly cause of death) and the administrative processes relating to the disposal of bodies.

The Scottish Government sees the relationship between Medical Reviewers and NHS Boards as a key part of the new scrutiny system. Indeed, as para 47 of the Policy Memorandum to the Bill notes, "It is the correlation of the accurate information and strong links under the new scrutiny system with well established clinical governance systems in NHS Boards that helps to ensure that it will be robust."

There will be, by virtue of s20, a duty to co-operate in relation to MCCDs, the collation and analysis of information relating to the causes of death and the disposal of bodies. This duty will apply to Health Boards, Special Health Boards, the Common Services Agency for the Scottish Health Service and medical reviewers in the exercise of their respective functions.

The SMR is required to produce a report for each financial year on the activities of medical reviewers and provide such further information as the Scottish Ministers may reasonably require. A copy is to be published and sent to the Scottish Ministers. The Ministers may, in turn and by regulations, make further provision about the information to be contained in a report, require them to be prepared more frequently and specify other persons to whom a copy of must be sent.

⁵ That is for the purpose mentioned in section 23(a) of the Human Tissue (Scotland) Act 2006 (asp 4)

⁶ Under section 30, 32 or 33 of the Human Tissue (Scotland) Act 2006 (asp 4)

FEES IN RESPECT OF MEDICAL REVIEWER FUNCTIONS

In this regard, the Scottish Government consultation found that (Scottish Government 2010b):

The majority of respondents agreed that bereaved families or the deceased's estate should pay a moderate fee to cover the cost of introducing increased scrutiny by a Medical Investigator or Medical Examiner, at least in some circumstances, although several expressed reluctance. A small number of suggestions were made about other ways of funding increased governance. Almost all agreed that if a fee were to be levied, it should be set at the same level irrespective of the method of disposal of the body. Some identified practical issues to take into account if a fee were levied at the point of disposal.

Scottish Ministers may, under s23, charge a fee in respect of the review functions, functions exercised by the Common Services Agency in connection with the review functions and any application by a person who wishes to arrange the cremation of the body of a person who died outwith Scotland. The persons liable for the fee are the personal representatives of those whose deaths require to be registered under Part 3 of the 1965 Act. But the fee is to be treated as part of the testamentary and administration expenses of the estate of the deceased.

Even so, Scottish Ministers may by regulations made following consultation, make provision setting the amount of the fee, arrangements for its collection and any circumstances in which no fee is payable.

DISPOSAL OF BODIES

The Bill makes further amendment to the 1965 Act by creating the offence of unauthorised disposal of a body. The offence applies to,⁷

... a person having charge of a place of interment, cremation or other means of disposal of human bodies who interments, cremates or otherwise disposes of the body of a still-born child or a deceased person (or who knowingly permits such interment, cremation or disposal) without the certificates or other documentation specified.

The documentation, including its form and content, is that which Scottish Ministers may specify by regulations made by statutory instrument. That Ministerial power may be exercised so as to make different provision for different purposes and is broad insofar as it includes the power to make such incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient. Any such statutory instrument will, however, be subject to annulment by a resolution of the Scottish Parliament.

Although reasonable excuse is a statutory defence, following summary conviction the offence carries a penalty of a fine not exceeding level 3 on the standard scale (£1,000). As is the case with an offence under s15,⁸ the offence may be committed by both a body corporate and a person acting on behalf of the body corporate.

STILL-BIRTHS

There are already procedures in place to identify cause of death in the case of still-births and these are "already investigated by maternity units with post mortems offered and currently undertaken in around half of cases."⁹ However, further amendment of the 1965 Act will be made

⁷ Section 24 of the Bill adds s27A to the 1965 Act

⁸ That is the failure, without reasonable excuse, to produce those documents or to deliberately alter, suppress, conceal or destroy any document that is required by the MR or SMR to be produced.

⁹ [Policy Memorandum](#) para 89.

by sections 25 and 26 of the Bill. These amendments will require the words “any other relevant medical information” to be inserted after provisions requiring the particulars of registration of a still-birth to include the cause of death or belief as to the cause of death. The Bill will also allow for “such other medical information as may be prescribed” to be added to the information included on a MCCD. According to the Policy Memorandum (para.90), this is to improve quality and accuracy of still-birth and death certificates.

The amendment that will be made by s26 will remove paragraph (b) of section 21(2)(b) of the 1965 Act. The effect of this is to remove the requirement to make a declaration the child was not born alive and that no medical practitioner or midwife was present at the birth or has examined the body. This will have the effect of requiring the qualified informant to both deliver the prescribed form to the registrar *and* to make the required declaration that no medical practitioner or midwife was present at the birth. This relates to para 95 of the Policy memorandum, which reads:

Furthermore, it has been agreed with [the Crown Office and Procurator Fiscal Service] that, in future, where no doctor or midwife is present at a stillbirth, such cases should be referred directly to the PF. It is therefore proposed to repeal the existing provision in the 1965 Act which enables a stillbirth declaration to be made by a non-clinician (i.e. Form 7, *Declaration as to Still-Birth*, would be withdrawn as it would no longer serve a function). In such cases, the PF will, if satisfied, issue an authorisation which will allow burial or cremation to proceed.

IMPLEMENTING THE NEW SYSTEM AND THE FINANCIAL MEMORANDUM

According to the [Policy Memorandum](#) to the Bill (para. 101), although full implementation of the Bill will be no earlier than 2013-14, in the interest of delivering an immediate improvement in information available, “the new NHS NSS national statistician could begin work immediately following the passage of the [Bill], i.e. from 2011-12.” Although this is put forward in the Policy Memorandum, it does not appear on the face of the Bill.

In the event the Bill passes in the current parliamentary session, it will be possible to consult on secondary legislation with a view to its passage in 2011-12. This will be followed by a further transitional period of at least one year to run two small test sites, with a view to testing how the new process will operate in practice. An urban and a rural test site are envisaged for 2012-13, to run for six months and be evaluated. In the alternative, the Policy Memorandum asserts, it might be possible to undertake work on secondary legislation in parallel with the operation of the test sites, although, “[a] full implementation plan will be drawn up in due course.” (para 102)

The Financial Memorandum ([Explanatory Notes](#) para 73-144) sets out in greater detail, the anticipated mechanics and costs of the test sites. The new system will have a strong focus on education and training for doctors (para. 77) and the proposed role of a national statistician will form a critical part of the MR model, because the production of national statistics will underpin that model (para.79).

Medical Reviewers will scrutinise around 1,000 MCCDs per year, 500 of which will be submitted following random selection and an estimated 500 submitted by interested parties. They will also, “directly support certifying doctors in making decisions in relation to death certification and will support and guide registrars where information provided on MCCDs is inaccurate, incomplete or requires further inquiry (para. 80).” Costs are based on these assumptions, which were made by an independent Review Group which met between 2005 and 2007¹⁰ ([Explanatory Notes](#) para. 80, 82).

¹⁰ <http://www.scotland.gov.uk/Topics/Health/burialcremation/intro>.

The costs allow for six MR posts, which is seen as justified based on the workload as set out above. “Each added MR post (including an additional medical assistant) will 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 (para. 87).” Start-up costs will be funded from Scottish Government Health Directorate budgets, subject to the 2010 Spending Review. However, the Scottish Government proposes that annual running costs should be self-funding through the charge of a fee to the public.

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

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

	Recurring	Start-up*	TOTAL
Analytical staff ¹¹	£74,579	£0	£74,579
Medical staff ¹²	£903,345	£0	£903,345
Support staff ¹³	£149,568	£0	£149,568
SUB TOTAL	£1,127,492	£0	£1,127,492
Total running costs	£61,564	£0	£61,564
Accommodation	£0	£20,017	£20,017
IT changes & support	£0	£7,000	£7,000
GRO promotional costs	£0	£10,000	£10,000
Development of training module ¹⁴	£0	£57,500	£57,500
TOTAL £1	£1,189,056	£94,517	£1,283,573

*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.

Currently a fee of £147 applies to each cremation. It is paid by the bereaved family to two doctors: one to sign off the MCCD and another to authorise the cremation. A medical referee performs a final check on the papers at the crematorium. This gives rise to an additional fee which varies from £5.50 to £71 (it is set locally) and is ultimately recouped from the relatives of the deceased.

Under the proposed future arrangements, the Scottish Government argues that, “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.” (Financial Memorandum para 111) Scottish Ministers have decided that a small, universal fee should fund the new death certification system. This should apply to all disposals, rather than cremations only, as is the case under the current system.

Estimated to be £22, plus £8-10 collection costs, the fee will be paid by the personal representatives of the deceased. The fee was determined based on full recovery of costs in respect of estimated numbers of annual deaths in Scotland. Because there is some fluctuation in annual deaths, the fee will be subject to annual review by secondary legislation.

Transitional costs of £82,282 have been estimated in respect of the national statistician and his or her assistant. This will be included in the next spending review bid, and the estimated cost of the test sites will be included in the following spending review bid. This will include staff, advertising, evaluation, running and initial accommodation costs, adding up to £102,676.

¹¹ Based on 2010 [Agenda for Change](#) pay scale averages for Band 5 and Band 7 (statisticians).

¹² MR cost based on the upper end of a consultant’s salary scale at £100,500; SMR cost estimated at the top end of a consultant salary plus a management allowance, totalling £120,000.

¹³ Based on the 2010 [Agenda for Change](#) pay scale for a Band 3 officer.

¹⁴ During the start-up phase only, where additional training through an e-Learning module will be required to top-up the MRs’ skills set.

Table 2 below¹⁵ shows when particular costs will occur and the costs themselves, up to full introduction of the new system from 2013-14 onwards, from which point the fee is set to cover the annual costs. The fee will not offset any costs incurred during 2011-2013.

Table 2 Year-on-Year Costs of Medical Reviewer Model (inc. test sites)

	2011-12	2012-13	2013-14	2014-15+ (each year)
	Inception phase	Including test sites	1 st year of implementation	2 nd year onwards
Analytical staff (statisticians)	£74,579	£74,579	£74,579	£74,579
Medical staff	£0	£62,779	£903,345	£903,345
Support staff	£0	£10,683	£149,568	£149,568
SUB TOTAL	£74,579	£148,041	£1,127,492	£1,127,492
Total running costs	£4,200	£14,912	£61,564	£61,564
Test site evaluation costs	£0	£15,000	£0	£0
Initial accommodation	£2,502	£2,502	£15,013	£0
IT changes & support	£0	£0	£7,000	£0
GRO promotional costs	£0	£1,000	£10,000	£0
Development of training module	£0	£57,500	£0	£0
TOTAL [cost to the Scottish Government]	£81, 281	£263, 955	£1,221,069	£1,189,056
Estimated FEE to cover costs (exc. costs of fee collection)				£22.08

Indirect costs to local authorities – such as training in relation to the new system – will be borne by the Scottish Government, while costs to other bodies, individuals and businesses are envisaged to comprise changes to existing costs and duties. For example, there will be a change to the existing routine duties of GPs which will involve training and publicity costs, although these costs are envisaged as being part of the job descriptions of the MRs and SMRs.

The costs involved in the estimated 25 annual deaths abroad (assisting persons in arranging post mortems, discussed above) is estimated to be £12,500 per annum. This will be borne by the Scottish Government and not recouped through the fee.

¹⁵ Table 3 in the Financial Memorandum

REFERENCES

Certification of Death (Scotland) Bill [as introduced] Session 3 (2010). SP Bill 58. Edinburgh. Scottish Parliament. Available at <http://www.scottish.parliament.uk/s3/bills/58-CertDeath/b58s3-introd.pdf>

Certification of Death (Scotland) Bill: Explanatory Notes (and other accompanying documents) Session 3 (2010). SP Bill 58. Edinburgh. Scottish Parliament. Available at <http://www.scottish.parliament.uk/s3/bills/58-CertDeath/b58s3-introd-en.pdf>

Certification of Death (Scotland) Bill: Policy Memorandum. Session 3 (2010). SP Bill 58. Edinburgh. Scottish Parliament. Available at <http://www.scottish.parliament.uk/s3/bills/58-CertDeath/b58s3-introd-pm.pdf>

Certification of Death (Scotland) Bill: Delegated Powers Memorandum Session 3 (2010). SP Bill 58. Edinburgh. Scottish Parliament. Available at <http://www.scottish.parliament.uk/s3/bills/58-CertDeath/b58s3-introd-dpm.pdf>

Human Tissue (Scotland) Act 2006 (asp 4). London. The Stationery Office. Available at <http://www.legislation.gov.uk/asp/2006/4/contents>

Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49), as amended. London. The Stationery Office.

Scottish Government (2008). *Burial and Cremation Review Group: Report and Recommendations*. [Online] Available at <http://www.scotland.gov.uk/Publications/2008/03/25113621/6>

Scottish Government (2010a). *Death Certification, Burial and Cremation - Analysis of Consultation Findings Phase 1 Report Questions 1-20, 51 and 52*. [Online] Available at <http://www.scotland.gov.uk/Resource/Doc/318318/0101513.pdf>

Scottish Government (2010b). *Death Certification, Burial and Cremation Analysis of consultation findings Phase 1: Questions 1-20, 51 and 52 RF 102/2010. Summary of Findings*. [Online] Available at <http://www.scotland.gov.uk/Publications/2010/07/07112605/1>

Scottish Parliament Health and Sport Committee. (2010) 33rd Meeting 2010, Session 3. [Online] Available at <http://www.scottish.parliament.uk/s3/committees/hs/mop-10/hemop10-1110.htm>

This page is intentionally blank.

RELATED BRIEFINGS

[SB 05-44 Human Tissue \(Scotland\) Bill-Organ Donation and Transplantation](#)

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Murray Earle on extension 85370 or email murray.earle@scottish.parliament.uk. Members of the public or external organisations may comment on this briefing by emailing us at spice@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk