

CERTIFICATION OF DEATH (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Disposal of bodies

Section 25: 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 regulations 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 26: 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 18). 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 27: Still-birth declarations

63. **Section 27** repeals paragraph (b) of section 21(2) of the 1965 Act (still-births). That 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.