

CERTIFICATION OF DEATH (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Referral of medical certificates of cause of death for review

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

10. 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 National Records of Scotland (NRS) (formerly General Register Office for Scotland (GROS)), which is responsible for the registration of deaths. NRS is expected to use computerised systems to identify a random selection of certificates for review.
11. [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.
12. 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 is any certificate which has already been referred for review, any replacement certificate (described in sections 10 and 11), any certificate 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 (this includes cases of notifiable deaths which have been formally reported to the procurator fiscal).
13. 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.
14. 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 to suspend the referral of

*These notes relate to the Certification of Death (Scotland) Act
2011 (asp 11) which received Royal Assent on 20 April 2011*

certificates by order is subject to emergency affirmative procedure (subsections (9), (12) and (13)); this will allow an order to be made with immediate effect, but Parliamentary approval is required if it is to have effect for more than 28 days (not including periods when the Parliament is dissolved or in recess for more than 4 days). Where this power is used to revoke an existing order, negative procedure applies to the making of the revoking order (subsections (10) and (11)).

Section 3: Medical reviewer requests

15. 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

16. 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.
17. 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).
18. 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.
19. 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.
20. 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. By virtue of section 29(2) to (6), the same Parliamentary procedures apply to orders made under section 4(7) as apply to orders made under section 24A(7) of the 1965 Act.
21. 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

22. **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.

23. 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

24. **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

25. 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.