

FACULTY OF FORENSIC & LEGAL MEDICINE

of the Royal College of Physicians, London

Registered Address

11 St. Andrews Place
Regent's Park,
London NW1 4LE
Telephone 020 7935 1174
Textphone 020 7486 5687
Facsimile 020 7487 5218



Registered Charity No: 1119599

Correspondence Address

3rd Floor
116 Great Portland Street
London
W1W 6PJ
Telephone 020 7580 8490
E-mail registrar@fflm.ac.uk

Kevin Wilkie
Health Protection Team Area 3ES
St Andrew's House
Scottish Government
Edinburgh
EH1 3DG

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Dear Mr Wilkie

Burial, Cremation and Death Certification Review CRESID No 1233

Thank you for your letter dated 27 January 2010 inviting comment on this subject. The Faculty was established in 2006 and has been founded to achieve the following objectives:

- To promote for the public benefit the advancement of education and knowledge in the field of forensic and legal medicine;
- To develop and maintain for the public benefit the good practice of forensic and legal medicine by ensuring the highest professional standards of competence and ethical integrity.

The Faculty includes three different professional groups:

- Forensic practitioners
- Medically qualified coroners
- Medico-legal advisers to the medical defence organisations.

The Faculty has a particular interest in this matter having been actively involved in the development of the Medical Examiner system being introduced in England and Wales where a number of our members have written material for the e-learning modules.

Members also participated in the Burial and Cremation Review group that produced the 33 recommendations on which you are now consulting. Consequently, the Faculty has direct knowledge in this area and anticipates that a number of its members will fill the roles envisaged.

The Faculty wishes to express disappointment that comment has been limited to the two options set out where it is clear that the Medical Investigator model is favoured by the government. Our considered view is that not only may this be less robust than the current arrangements but also such a system will not be fit for purpose and will be markedly inferior to the changes planned for England and Wales in which the Faculty has considerable confidence.

The medical members of the review group believed that the Medical Examiner model as detailed was the minimum acceptable where there was a degree of pragmatism in

agreeing to this as a proportionate way to deal with disposal of the dead in Scotland. A much more comprehensive system such as is intended for England and Wales would have had much to commend it, had that alternative been available.

In answer to the specific questions posed –

SECTION ONE

When a Death Occurs

Question 1 Would it be appropriate to enable trained clinical staff such as nurses and paramedics to verify life extinct?

Yes – provided they have received the relevant training, are working within clearly defined guidelines, are members of a national regulatory body, have their own indemnity arrangements and are willing to accept the professional responsibility required. Any guidance will require to ensure consideration is given to the requirement to exclude criminality.

Duty of instructing disposal of the body

Question 2 Should the right to instruct the disposal of bodies on death be vested in the nearest relative?

Yes. This will be helpful to the medical profession in any dealings they have with the disposal of the deceased. However, one has to be mindful that in our increasingly dysfunctional society not all deceased persons will have a relative able to take on this function.

Question 3 Should the definition of nearest relative follow the definition used in the Human Tissue (Scotland) Act 2006?

Yes.

Question 4 In the case of a dispute about disposal of a body should this be resolved by way of summary application to a sheriff?

Yes. Appropriate time limits e.g. two working days should be set.

SECTION TWO

Disposal following Inconclusive Post Mortem

Question 5 In cases where the cause of death is undetermined, even after a post mortem has been carried out, what measures should be put in place to allow the disposal of the body?

Toxicology should be undertaken and written (email will suffice) confirmation from the Fiscal that disposal may proceed. Also, a robust system should be in place to ensure that any retained organs are either reunited with the body or that the relatives are aware of their location. Greater accessibility to the Fiscal will be necessary to ensure that an unacceptable delay or a systems error does not occur.

Question 6 Should disposal of the body where cause of death is undetermined be restricted to burial or are there circumstances where cremation or other methods should be permitted?

Because of the possibility of foul play, such a decision should be a specific one for the Fiscal.

The Medical Investigator Model

Question 7 Is the Medical Investigator model your preferred model?

No. It is inadequately resourced both in terms of personnel and finance where the proposed system is likely to be considerably less robust than the one that is being replaced.

Question 8 If yes, why?

Question 9 What do you view as its strengths over the existing system?

It isn't better – see Q7. If based at NQIS then it will give a degree of independence and better statistics on death for public health purposes, so this would be welcomed.

Question 10 What do you view as its potential weaknesses?

Going from 3 doctors being involved with the current cremation arrangements to a single doctor with token random and for cause scrutiny appears a retrograde step. This proposal will be markedly less effective than the intended system for England & Wales. If the intention is to scrutinise 60,000 deaths with 4 FTE medical investigators then it is difficult to see how this might be done in any meaningful way.

Preliminary feedback to the Faculty is that there is no support from the medical profession for this model and the public will almost certainly share this view.

Question 11 Do you think it offers best value for money?

Not if it's ineffective.

The Medical Examiner Model

Question 12 Is the Medical Examiner model your preferred model?

Yes.

Question 13 If yes, why?

This should be more robust than the current arrangements where the proposals are fit for purpose but in a way that is proportionate and affordable by society even if it is not as comprehensive as the English model which would have been the preferred alternative had this been available.

Question 14 What do you view as its strengths over the existing system?

There will be a degree of deterrence of criminality coupled with two doctors involvement in all deaths as a check where this will help reinforce public confidence in the system.

It should allow for improved clinical governance.

Question 15 What do you view as its potential weaknesses?

It will remain less comprehensive than the English system that is planned for introduction which coupled with less involvement by the Fiscal than the Coroner means a system that will not be suitably robust.

Question 16 Do you think it offers best value for money?

Yes.

Funding Increased Governance

Question 17 Should bereaved families or the deceased's estate pay a moderate fee to cover the cost of introducing increased scrutiny by a Medical Investigator or Medical Examiner?

Yes but less than current cremation certification.

Question 18 Can you suggest any other ways of funding increased governance, bearing in mind the current constraints on public spending?

No – it is up to the government to decide this.

Question 19 If a fee were to be levied, should it be set at the same level irrespective of the method of disposal of the body?

Yes.

Question 20 A fee could potentially be levied at the point of disposal (i.e. included as part of the fee currently collected by local authority, burial or cremation authorities) or by private burial and cremation companies when charging for provision of their services. Are there any practical issues which need to be taken into account in considering these options?

Some deceased persons will have neither Executor nor next of kin and will be without funds.

SECTION THREE

Regulation of Cemeteries

Question 21 Do you agree that new legislation should be introduced to regulate all local authority and private cemeteries?

No comment.

Memorials and Headstones

Question 22 Do you agree with the recommendations set out above, about the erection of headstones and regulations on matters relating to memorial masons and memorials?

No comment.

Question 23 Are there any other factors in connection with headstones or memorials which should be taken into consideration when taking forward legislation?

No comment.

Continued Sustainability and Affordability of Burial Grounds

Question 24 Should there be re-use of graves with appropriate safeguards?

No comment.

Question 25 What should be the optimum time before a grave is allowed to be re-used?

No comment.

Lift and Deepen

Question 26 Is the 'lift and deepen' method an acceptable use of burial space?

No comment.

Question 27 Views are invited on any advantages or disadvantages of this method.

No comment.

Question 28 What acceptable alternative approaches are available?

No comment.

Question 29 It would be helpful to know whether particular methods of reusing graves should be prescribed, or whether burial ground operators should be free to adopt whatever method appeared appropriate to local circumstances taking account of local consultation and the views of family or descendants?

No comment.

Tenure of Burial Layers

Question 30 Is 25 years a sufficient length of time to allow exclusive tenure to a burial plot with the ability to extend that tenure for each subsequent 10 year period thereafter? (This relates to unused lairs and is unconnected to the recommendation that a period of at least 75 years should elapse before a layer can be re-used.)

No comment.

Question 31 If not, what length of exclusive tenure do you think would be reasonable from purchase to use of a plot (with the ability to extend the tenure)? Please explain why.

No comment.

Question 32 If a system of time limited tenure was to be introduced, would it be reasonable to introduce this retrospectively?

No comment.

Question 33 Should compensation be paid when a burial authority resumes ownership of a plot?

No comment.

Question 34 If yes, what would be a fair way of calculating the compensation due?

No comment.

Question 35 Do you think the practice of selling blocks of layers or multiple lairs should be prohibited unless it is for imminent use?

No comment.

Electronic Records

Question 36 Do you agree that if re-use of graves occurs using the 'lift and deepen' (or 'dig and deepen') method, electronic records should be kept and made readily available to the public?

No comment.

Green Burials

Question 37 Should green burials be covered by new general legislation on burials, for instance, setting out the minimum depth between the surface and top of the coffin?

No comment.

Question 38 What, if any, additional provisions should apply to green burial sites?

No comment.

Question 39 Are there any exemptions from regulations that should apply to green burial sites?

No comment.

Home Burial

Question 40 Should legislation be enacted to govern home burials?

Yes, if deemed appropriate as public health issues with this.

Question 41 Should local authorities be responsible for authorisation and recording of home burials?

No.

Question 42 If you think the task of authorising and recording home burials should not be the responsibility of local authorities, which organisation do you think should take on this role? Please set out your reasons why.

Should be arranged centrally for consistency.

Exhumation

Question 43 Would it be appropriate and practical to introduce a new system where the nearest relative or local authority can apply to the Scottish Government for consent to exhume a body?

No.

Question 44 Can you suggest any other options which would introduce practical benefits and avoid unnecessary delays for exhumation?

No.

Question 45 Are there any benefits in maintaining the current system where applications are made to the Sheriff for exhumation?

Yes – should only be done in exceptional circumstances where judicial involvement is preferable as a safeguard and to ensure uniformity.

SECTION FOUR

Planning for New Crematoria

Question 46 Should the requirements specifying minimum distances (converted into metric) between new crematorium buildings and houses or roads be maintained when granting planning permission?

No comment.

Exhumation of Cremated Remains

Question 47 Should the Scottish Government introduce legislation covering the exhumation of cremated remains?

No comment.

Disposal of Cremated Remains

Question 48 Is a time limit of 5 years a reasonable length of time to enable the next of kin to collect the ashes of the deceased?

No comment.

Question 49 Is it reasonable and practical for the ashes to be returned to the cremation authority for disposal if they are not collected after 5 years?

No comment.

Question 50 Is it reasonable to enable the disposal of existing unclaimed ashes that have currently been stored on the premises of funeral directors for over 5 years and where no instructions have been received, to be dispersed at a suitable location at the discretion of the funeral director?

No comment.

Deaths Abroad

Question 51 When death of a person who is normally resident in Scotland occurs abroad should a Government body be able to arrange a post mortem to establish the cause of death if this is unknown?

Yes – comparable to England & Wales.

Question 52 Are there any other measures that could be taken to simplify this process?

No.

Should any further clarification be required, the Faculty would be happy to provide this.

Yours sincerely



Dr C George M Fernie
LLB MB ChB MPhil FFFLM FRCGP DFM
Registrar