

Health and Community Care

Death certification, burial and cremation Analysis of consultation findings Phase 1: Questions 1-20, 51 and 52

Reid Howie Associates

A consultation was carried out by the Scottish Government between 27th January 2010 and 21st April 2010 on the recommendations contained in the report of the independent Burial and Cremation Review Group. The first phase analysis examined responses relevant to death certification. The questions covered in this analysis focused upon: when a death occurs (the verification of life being extinct; and the duty of instructing disposal of the body); death certification (disposal following inconclusive post mortem; monitoring and assurance models: proposals for change; and funding increased governance); and deaths abroad. 102 responses were received.

Main findings

- There was a high level of agreement that it would be appropriate to enable trained clinical staff such as nurses and paramedics to verify life extinct; that the right to instruct the disposal of bodies on death should be vested in the nearest relative; that the definition of nearest relative should follow the definition used in the Human Tissue (Scotland) Act 2006; and that, in the case of a dispute about disposal of a body this should be resolved by way of summary application to a sheriff.
- In relation to disposal following inconclusive post mortem, common suggestions from respondents to allow the disposal of the body included the retention of medical evidence and the power of the PF to authorise disposal. The majority of respondents did not believe that disposal of the body where cause of death is undetermined should be restricted to burial.
- 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 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.
- 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.
- 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.

Background

A Burial and Cremation Review Group chaired by Sheriff Robert Brodie was set up by the (then) Scottish Executive in 2005, with a remit to consider existing legislation and to make recommendations about any changes which were required to better serve the needs of the people of Scotland. The Review Group considered two main areas: death certification; and burial and cremation and cemeteries legislation. Consultation on both of these issues had taken place in recent years in England and Wales, although not in Scotland. Policy on death certification and burial and cremation are devolved, and the Review Group examined these issues in the Scottish context.

It presented its report to the Scottish Government in late 2007 and made 33 recommendations, covering both issues. The Scottish Government considered the report and decided to carry out a consultation on the Group's recommendations.

The consultation

The Scottish Government issued a document on Wednesday 27th January 2010 entitled "Consultation Paper on Death Certification, Burial and Cremation" and circulated this to a wide range of consultees. Written responses were invited to 52 specific questions, most of which invited respondents to agree or disagree with an issue and provided the opportunity for detailed qualitative comments.

The first phase of the analysis focused upon 22 of these questions (1-20, 51 and 52). These questions covered: when a death occurs (the verification of life being extinct; and the duty of instructing disposal of the body); death certification (disposal following inconclusive post mortem; monitoring and assurance models: proposals for change; and funding increased governance); and deaths abroad. The analysis of these questions forms the basis of the phase 1 report, the findings of which are summarised below.

The consultation generated 102 responses from a range of types of respondent, categorised as: medical (30% of responses); trade (25%); local authority (20%); other (16%); religion / faith (5%); government (3%) and academic (1%).

When a death occurs

Views were sought of whether it would be appropriate to enable trained clinical staff such as nurses and paramedics to verify life extinct (question 1), and there was a high level of agreement that this would be appropriate¹. Many of the respondents who addressed this question made additional comments. Some expressed or reiterated their overall agreement with the question. Other themes related to: perceived requirements of such an approach; the circumstances; and perceived implications or benefits. Although not explored specifically in the consultation, some respondents made comments on whether trained clinical staff should be able to certify cause of death (rather than commenting only on whether they should be able to verify life being extinct).

There was a high level of agreement that the right to instruct the disposal of bodies on death should be vested in the nearest relative (question 2). Amongst the comments made, some respondents expressed their overall support or agreement. Some, however, identified that there may be difficulties, or cases where this would not be possible. Other issues raised were: a perceived need for the opportunity for individual choice; a perceived role for the executor; and perceived requirements of the proposal.

Question 3 explored whether the definition of nearest relative should follow the definition used in the Human Tissue (Scotland) Act 2006 and there was found to be a high level of agreement that this should be the case. Some additional comments were made in relation to this question, many of which expressed general support or identified benefits. A small number of suggested requirements were highlighted.

There was also a high level of agreement that, in the case of a dispute about disposal of a body this should be resolved by way of summary application to a sheriff (question 4). Among a relatively small number of additional comments, several related to expressions of general agreement. A small number identified the circumstances in which resolution by application to a sheriff should take place and some respondents identified additional requirements, implications or issues for consideration.

A small number of other issues were raised in responses to this part of the consultation. These included: the observation that, in England, a Coroner would release a body to a specific person with this incorporated in statute, and the suggestion that this may be worth considering; a question about a dispute post-disposal and legal challenge; and comments on foetal remains.

¹ Where references are made to patterns of views, these generally relate to patterns among those who addressed a question.

Disposal following inconclusive post mortem

Question 5 asked what measures should be put in place to allow the disposal of the body in cases where the cause of death is undetermined, even after a post mortem has been carried out. One of the common measures suggested was the retention of medical evidence. Several respondents made comments on the power to authorise disposal, generally suggesting that the Procurator Fiscal (PF) should be allowed to authorise disposal. A small number suggested that only burial of the body should be allowed, or made other suggestions or comments.

The majority of respondents who addressed Question 6 did not believe that disposal of the body where cause of death is undetermined should be restricted to burial, believing that there are circumstances where cremation or other methods should be permitted. Comments were made relating to the use of other methods, with examples given of the circumstances in which this could be permitted.

Monitoring and assurance models – proposals for change

The consultation explored two alternative models for the system of death certification: the Medical Investigator and the Medical Examiner models (Questions 7-16). Just over half of all respondents expressed views which enabled their preferred model of the two to be identified. Overall, while the views were divided and there was a relatively even split between the two models, a slightly larger number 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.

Among the reasons for choice, or perceived strengths of the Medical Investigator model were: costs; timescale; issues relating to overall practice; the provision of protection; the nature of scrutiny; the provision of parity; and other issues. Among the reasons for not choosing this option, or perceived weaknesses were: issues relating to scrutiny and effectiveness; workload or staffing issues; resourcing or costs; timescale and delays; particular perceived gaps and specific issues.

Among the reasons for the choice and perceived strengths of the Medical Examiner model were: the level of scrutiny; alignment with arrangements in England and Wales and / or parity in Scotland; confidence in the model; security and safeguards; issues relating to overall practice; and other issues. Among the reasons for not choosing this option, or perceived weaknesses were: costs; timescale and delays; scrutiny and effectiveness; and staffing issues.

The consultation also explored whether respondents believed each model offers best value for money (questions 11 and 16). Just over a third of respondents overall addressed each question. In relation to the Medical Investigator model, most of the respondents whose views could be ascertained believed that this offered the best value for money. In relation to the Medical Examiner model, most of the respondents whose views could be ascertained believed that this did not offer the best value for money. Several respondents, who generally favoured the Medical Examiner model, stated that cost should not be the determining factor in selection of the option, with other factors suggested.

Some respondents made additional general comments relating to the models including: concerns with the current system; concerns with both models; issues with the basis of the models; employment or staff arrangements; concerns about the consultation in relation to the models; other matters for consideration; perceived requirements for the models or suggestions for the way forward.

Funding increased governance

Respondents were asked whether 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 (question 17). The majority of respondents to this question agreed with this, at least in some circumstances, although several expressed reluctance. Some raised concerns or problems or made comments or observations on the general implications of such a proposal.

Question 18 invited respondents to suggest any other ways of funding increased governance. Only a small number of suggestions were made, and the most common was that any increased costs should be met by government. Some respondents suggested that a small percentage increase to national insurance contributions would cover the costs. Some compared the perceived low costs of increased governance to other costs met by the Scottish Government. A small number stated specifically that the costs could be met through general taxation. A few respondents made other suggestions for ways of funding increased governance.

Almost all respondents 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 (question 19). The most common issues identified related to fairness, consistency, simplicity and the view that, if the same system was used for both, there should be no difference in the fees. A very small number of respondents disagreed, or raised issues with this suggestion. A small number of respondents responded to this question by stating that there should be no fee.

Question 20 stated that a fee could potentially be levied at the point of disposal and invited respondents to identify practical issues which need taken into account. The most common issues raised focused on the potential for collection of fees by funeral directors or local authorities (with some suggesting that this could be managed at the point of registration). A small number of respondents suggested specifically that there could be a single, combined fee, or that this would avoid multiple bills to the family. A small number stated specifically that they did agree that the fee should be collected at the point of disposal, or that it should be collected as part of the cremation or burial fee. Some identified perceived implications of changes, or made other comments.

A small number of respondents made additional comments of relevance to Section 2 of the consultation document, including comments on forms and certificates; the use of electronic information; the recording of deaths on the Criminal History System; and the MRI method of post mortem examination.

Deaths abroad

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 (question 51). Additional comments included those expressing general agreement, sometimes giving reasons. Some respondents identified specific circumstances in which the arrangement of a post mortem by a Government body could or should take place in the case of a death abroad by a person normally resident in Scotland. A number of respondents made suggestions about who should have the authority to issue the instruction and the most common suggestions were that this should rest with the Procurator Fiscal or with the Medical Examiner. A small number of additional comments were made relating to this question.

Question 52 explored whether there were any other measures that could be taken to simplify this process. Suggestions included: the retention of detailed toxicological evidence which could facilitate disposal by burial or cremation; and the application of the same level of inquiry to all deaths regardless of the method of disposal (removing the need for the cause of death to be definitely ascertained in order for cremation to take place). Additional suggestions included: uniformity of measures and procedures; provision of guidance; and some additional comments.

This document, along with the full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.



ISBN: 978-0-7559-9453-3

