

Health, Social Care and Sport Committee
Tuesday 5 November 2024
29th Meeting, 2024 (Session 6)

The Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Amendment Regulations 2024

Overview

2. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 6 December 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
3. More information about the instrument is summarised below:

Title of instrument: [The Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(Prohibition on Disposal of a Body without Authorisation\) Amendment Regulations 2024](#)

Laid under: Section 27A(2) and (6)(a) of the [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#).

Laid on: 15 October 2024

Procedure: Negative

Deadline for committee consideration: 2 December 2024 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 6 December 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 16 October 2024

Procedure

4. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
5. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
6. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

7. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 5 November 2024 and reported on it in its [61st report, 2024](#). The DPLR Committee draws this instrument to the attention of the Parliament under reporting ground (j) for failure to comply with laying requirements, as it was not laid 28 counting days before it comes into force.

9. However, the Committee reported that it “is content with the reasons provided by the Scottish Government for its failure to comply with the laying requirements”.

10. The instrument, laid on 15 October 2024, came into force on 16 October. In its report the DPLR Committee noted that:

“The Scottish Government wrote to the Presiding Officer stating that this breach had occurred in order to resolve the issue that some families have been unable to arrange burial or cremation in Scotland where a loved one has died elsewhere in the UK due to the required certificate not being available until a coroner’s investigation is complete, notwithstanding that the coroner is content to release the body. In one known case, this is expected to take at least a year.

11. In its correspondence, the Scottish Government explained that a breach of the laying requirements had been necessary to allow Scotland to recognise the procedures in other UK jurisdictions, and doing so without delay will avoid prolonging the distress of grieving families. The correspondence is included in **Annexe B**.

Purpose of the instrument

12. The purpose of this instrument is to amend Regulations 4 and 5 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 so that a person who has died in England, Wales or Northern Ireland and whose death is subject to a coroner investigation, can be buried or cremated in Scotland with the consent of the Coroner, before the conclusion of the coroner investigation and prior to death registration.

13. The Policy Note accompanying the instrument is included in Annexe A. It includes impact assessments carried out on the instrument, and the anticipated financial effects.

Committee consideration

14. So far, no motion recommending annulment has been lodged.

15. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or

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- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

16. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
17. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
November 2024

Annexe A: Scottish Government Policy Note

POLICY NOTE

THE REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES (SCOTLAND) ACT 1965 (PROHIBITION ON DISPOSAL OF A BODY WITHOUT AUTHORISATION) AMENDMENT REGULATIONS 2024

SSI 2024/281

The above instrument was made in exercise of the powers conferred by section 27A(2) and (6)(a) of The Registration of Births, Deaths and Marriages (Scotland) Act 1965. The instrument is subject to the negative procedure.

Summary Box

The purpose of this instrument is to amend Regulations 4 and 5 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 so that a person who has died in England, Wales or Northern Ireland and whose death is subject to a coroner investigation, can be buried or cremation in Scotland with the consent of the Coroner, before the conclusion of the coroner investigation and prior to death registration.

Policy Objectives

The purpose of this instrument is to ensure that in circumstances where a person dies in England, Wales or Northern Ireland and the burial or cremation is to take place in Scotland, that coroner certificates will be accepted as sufficient authorisation in Scotland to enable the burial or cremation to take place, where the death is subject to an ongoing coronial investigation and no certificate of registration of death is yet available from the registrar.

This ensures that burial or cremation can occur in Scotland in the same circumstances as in England, Wales and Northern Ireland and ensures that bereaved families are not required to wait until the conclusion of a coroner investigation before arranging the burial or cremation, so long as the coroner has issued a certificate releasing the body for disposal.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Amendment Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The regulations were developed with input from key stakeholders including representatives of funeral directors and burial and cremation authorities.

The Scottish Government also worked in close collaboration with the UK Ministry of Justice and the Northern Irish General Registers Office and Coroner's Office.

Impact Assessments

The Scottish Government has considered a series of impact assessments related to these regulations:

Equality Impact Assessment – the Scottish Government is satisfied that there is no clear indication that the proposed regulations are likely to have major impacts on groups with protected characteristics. An initial screening assessment concluded that there was no need to complete a full EQIA.

Fairer Scotland Duty – The Scottish Government is satisfied that a full assessment is not required in this case. An initial screening assessment concluded that these Regulations do not introduce any differential socio-economic disadvantages or exacerbate negative outcomes for individuals and households already affected by issues of low income.

Child Rights and Wellbeing – The Scottish Government have carried out a Child Rights and Wellbeing Impact Assessment (CRWIA) and this has been published alongside the laying of these Regulations. The CRWIA has concluded that there is no impact on the rights or wellbeing of children.

Islands Communities – After an initial screening assessment, the Scottish Government is satisfied that the effect of this instrument is not anticipated to result in a disadvantage for an island community compared to the mainland or compared to another island group(s). The Scottish Government is satisfied that a full assessment has therefore not been required.

Strategic Environment Assessment – After an initial screening assessment, the Scottish Government is satisfied that there is no environmental impact arising from this instrument.

Financial Effects

A Business and Regulatory Impact Assessment has been undertaken and completed for this policy and has been published alongside the laying of these Regulations. The Regulations have positive impacts on businesses which are supporting bereaved families as the Regulations are intended to reduce any delay to a funeral which is caused by an ongoing coronial investigation or inquest in England, Wales or Northern Ireland. No negative impacts have been identified.

Annexe B: Correspondence from the Scottish Government to the Presiding Officer

15 October 2024

Dear Presiding Officer

THE REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES (SCOTLAND) ACT 1965 (PROHIBITION ON DISPOSAL OF A BODY WITHOUT AUTHORISATION) AMENDMENT REGULATIONS 2024

The Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Amendment Regulations 2024, SSI 2024/281 was made by the Scottish Ministers under section 27A(2) and 6(2) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 on 15 October 2024. It is being laid before the Scottish Parliament today, 15 October 2024 and comes into force on 16 October 2024.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

SSI 2024/281 is required to amend the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 (SSI 2015/166) (“the 2015 Authorisation Regulations”).

All nations of the UK have death certification systems in place to ensure robust monitoring and oversight of deaths and body disposal. In most respects, these procedures broadly align and the repatriation of bodies between UK nations is straightforward. However, where coronial investigation occurs, differences have come to light.

By virtue of section 27A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, a death must first be registered before burial or cremation can proceed in Scotland, and it is an offence to allow one to proceed without the appropriate evidentiary documentation. The appropriate documentation is set out in the 2015 Authorisation Regulations. However, in England, Wales and Northern Ireland, a coroner can release a body for burial or cremation while their investigation (which may or may not include an inquest) is ongoing, and prior to the death being registered.

In England, Wales and Northern Ireland coroner authorisation for cremation or burial is sufficient for the burial or cremation to take place. However, in Scotland, because a death must be fully registered before disposal of a body takes place in Scotland, such authorisation from a coroner is not sufficient to meet the requirements of the 2015 Authorisation Regulations. As a result, where a death occurs in any other UK nation and the coroner has authorised the release of the body for burial or cremation but the death has not yet been registered (because coronial investigation is on-going), the burial or cremation cannot take place in Scotland.

Burial or cremation instead can only proceed once the coronial investigation is complete and the death is able to be registered with the district registrar in the relevant jurisdiction. This can add significant delay to a burial or cremation taking place in Scotland for a death which occurs in England, Wales or Northern Ireland and which

remains subject to coronial investigation (in England, for example, a coroner's inquest takes 31.5 weeks on average¹).

Although the requirements for Scotland have been in place since the 2015 Authorisation Regulations came into force on 13th May 2015, recent regulatory changes in England and Wales have brought to light that it was not clear to all in the funeral sector that certificates issued by coroners were not accepted in place of certificates of death registration in Scotland. This increased clarity has now resulted in a number of cases where families have presented coroner certificates as evidence of death instead of certificates of registration of death and the families have been unable to arrange burial or cremation in Scotland.

Until this is resolved, the families affected have only two options: either wait for the inquest to complete before arranging the burial or cremation in Scotland (in one known case, this is expected to take at least a year), or carry out the burial or cremation in the UK nation of death. At what is already undoubtedly a distressing time, these are very difficult choices.

Swift resolution is therefore needed to remove barriers to burial or cremation for those families already affected, and to prevent further cases occurring. As the accepted documentation to allow a burial or cremation to proceed is set out in the 2015 Authorisation Regulations, an SSI is the only means of addressing the issue.

The SSI is narrow in scope. It expands the documentation to include an alternative to the requirement for a certificate of registration of death that can be accepted to allow burial or cremation to proceed in Scotland. This will only apply where deaths occur in another UK jurisdiction. It will not change the requirements for registration or authorisation where deaths occur in Scotland.

We understand that experience in other UK jurisdictions indicates that accepting the coroner authorisation certificate for burial or cremation does not lessen the robust system of death certification in those jurisdictions. This is supported by consultation with trade bodies in the funeral sector and with the UK Government and Northern Ireland Executive.

In light of this, the Scottish Government's view is that it is both necessary and reasonable to breach the 28 day laying requirement to ensure that the intended amendments are made to the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 immediately. The SSI will do no more than allow Scotland to recognise the procedures in other UK jurisdictions, and doing so without delay will avoid prolonging the distress of grieving families.

Yours sincerely

Rachael Thomson
Public Health Capabilities
Population Health

¹ [Coroners statistics 2023: England and Wales - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/coroners-statistics-2023)