

Delegated Powers and Law Reform Committee
Tuesday, 3rd December 2024
34th Meeting, 2024 (Session 6)

Instrument Responses

Burial (Applications and Register) (Scotland) Regulations 2024 (SSI 2024/334)

On Tuesday 19th November 2024, the Committee asked the Scottish Government:

1. Regulation 3 sets out how and by whom an application for burial may be made. Sub-paragraph 2(a) set outs a list of those who may submit an application where the deceased is an adult.

Regulation 3(2)(a)(v) currently reads “An application for burial may be submitted where the deceased is an adult by the body, body part or parts of the deceased have undergone anatomical examination, or are in the possession of a person licensed under section 3(2) of the Anatomy Act 1984, by the person licensed to carry out the examination or have possession of the body, part or parts, or any other person authorised by the licensed person to submit it”.

Please could you confirm whether you consider that regulation 3(2)(a)(v) is sufficiently clear to the reader of the instrument?

2. The Anatomy Act 1984 appears to make provision in order that children aged 12 and over may request that their body is used after death for anatomical examination. Please could you confirm that the intention is that the person licensed to carry out the examination or to have possession of the body, or any other person authorised by that licensed person, is not able to make a burial application under these regulations where the deceased is a child?
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

On Tuesday 26th November 2024, the Scottish Government responded:

1. Regulation 3(2)(a) of the Burial (Applications and Register) (Scotland) Regulations 2024 specifies those persons, and descriptions of persons, who may submit applications for burials where the deceased is an adult. The Scottish Ministers are grateful to the Committee for drawing their attention to the wording in paragraph (v) of sub-paragraph (a).

The Scottish Ministers consider that the provision is sufficiently clear: first, that regulation 3(2)(a)(v) applies in respect of cases where the deceased is an adult and the adult’s body or body parts have undergone anatomical examination and, second, that the provision specifies that the application in such cases may

be made by persons licensed under the Anatomy Act 1984 or authorised by a licensed person.

However it is accepted that the drafting could be improved. The Scottish Ministers will therefore undertake to amend the instrument to improve the drafting at the next available opportunity.

2. The Scottish Ministers confirm that it is intended that a person licensed under the Anatomy Act 1984 (“the 1984 Act”), or a person authorised by a license holder, will not be able to make an application for the burial of a child where the child has made a request under section 4 of that Act for the use of their body for anatomical examination and that is reflected in the Regulations.

The 1984 Act provides a system of authorisation for, and regulation of, the carrying out of anatomical examination and retention of body parts. Where a child (12 years or over) has made a request under section 4 of the 1984 Act the body may be retained for no longer than the statutory period (3 years) and is then released to the family for burial or cremation. The persons who make arrangements for the burial or cremation of a child are specified in section 66 of the Burial and Cremation (Scotland) Act 2016 (“the 2016 Act”). Section 66 provides that the nearest relative may make the arrangements. It does not make provision to include a person who may be specified in any death declaration. That is in contrast to section 65 which applies to adults. In the case of an adult, a person who has made a request under section 4 of the 1984 Act may also make a death declaration and specify that the anatomy school may make the arrangements. However that is not the case for a child by dint of section 66. The Regulations therefore reflect the terms of section 66 of the 2016 Act.

3. As mentioned above an amendment will be brought forward at the next available opportunity in respect of regulation 3(2)(a)(v).