



**BRIEFING PAPER**

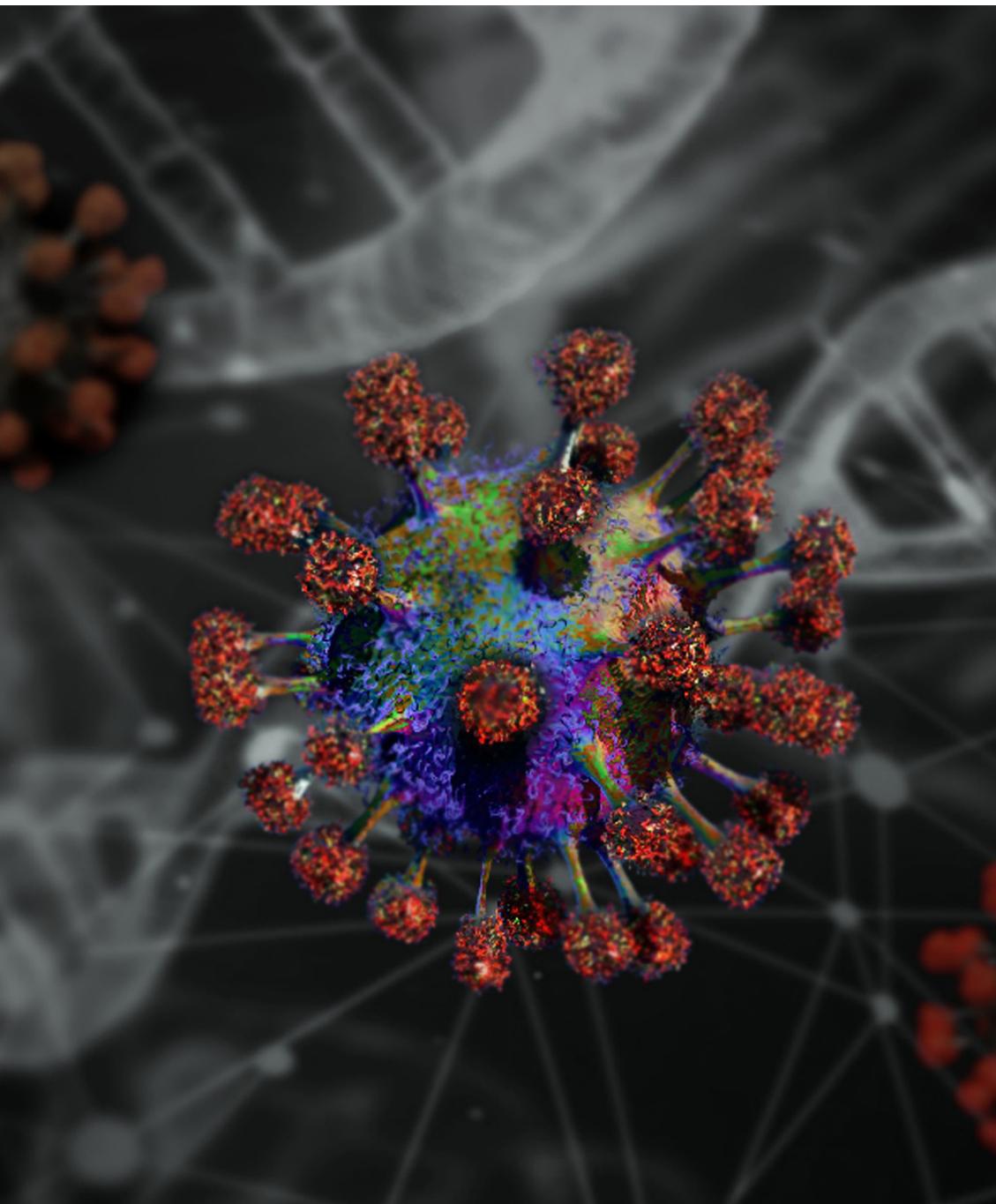
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# Coronavirus Bill: Managing the deceased

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## Summary

This briefing paper is one of a collection of Commons Library briefing papers on the [Coronavirus Bill](#) (the Bill). It deals only with the provisions in the Bill which concern managing the deceased. The other briefing papers, dealing with other parts of the Bill and general background, are available on the Commons Library website ([Coronavirus Bill: Overview](#)).

This paper was updated on 25 March 2020, following Commons stages and Lords Second Reading of the Bill. It now includes information about agreed amendments to Schedule 27 (in the Bill as originally presented, now Schedule 28 in the Bill presented in the House of Lords) which deals with the transportation, storage and disposal of dead bodies and human remains. The amendments deal with local and national authorities having regard to the deceased's wishes, or the requirements of their religion or beliefs, concerning burial or cremation.

Acknowledging that people will die as a consequence of the Covid-19 pandemic, the Government has stated that it wants to ensure the deceased are treated with the utmost respect and dignity and that the current procedures in relation to death and stillbirth registration and management are modified to enable this and to protect public health. The relevant measures in the Bill are stated to take account of the fact that families who have lost loved ones may be self-isolating, and that there may be reduced capacity to register and manage deaths as a result of pandemic-related sickness absence.

The Bill would:

- expand the list of people who can register a death and enable a death to be registered without the informant attending in person;
- amend who can sign a medical certificate of cause of death, enabling a doctor who may not have seen the deceased to certify the cause of death without the death being referred to the coroner;
- relax the requirement, in England and Wales, for a death to be reported to the coroner if the certifying doctor has not seen the deceased after death or within 14 days before death, so that the death need not be reported to the coroner if any doctor has seen the deceased after death or within an extended period of 28 days before death;
- remove the requirement in Northern Ireland that a death from natural illness or disease must be notified to the coroner if the deceased had not been seen or treated by a registered doctor within 28 days prior to the death;
- streamline the registration of a stillbirth (Northern Ireland);
- enable documents that currently have to be physically presented in connection with death registration to be transmitted electronically or by other means;
- remove the need for a second confirmatory medical certificate in order for a cremation to take place in England and Wales and Northern Ireland;
- enable Scottish Ministers to suspend the review of certain medical certificates of cause of death and provisions relating to the collection of ashes;
- provide that for the purposes of inquests, Covid-19 is not a notifiable disease, meaning that the coroner would not be required to sit with a jury;
- confer powers to facilitate the transportation, storage and disposal of dead bodies and human remains.

# 1. Introduction

Acknowledging that people will die as a consequence of the Covid-19 pandemic, the Government has stated that it wants to “ensure the deceased are treated with the utmost respect and dignity and that the current procedures in relation to death and still-birth registration and management are modified to enable this and to protect public health”.<sup>1</sup>

The relevant measures in the [Coronavirus Bill](#) (the Bill) are stated to take account of the fact that families who have lost loved ones may be self-isolating, and that there may be reduced capacity to register and manage deaths as a result of pandemic-related sickness absence.<sup>2</sup>

This Commons Library briefing paper deals only with the provisions in the Bill which concern dealing with the deceased. The [Explanatory Notes](#) published with the Bill include detailed explanations of each of the clauses, including transitional provisions which are not considered in this paper, unless otherwise stated.<sup>3</sup>

In this briefing paper, unless otherwise stated, the Clause and Schedule numbers are as set out in the Bill presented in the House of Lords (the current version as at 25 March 2020), and references to the Explanatory Notes are to those published with that Bill.<sup>4</sup>

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<sup>1</sup> Department of Health and Social Care Guidance, [What the coronavirus bill will do](#), 17 March 2020

<sup>2</sup> Ibid

<sup>3</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN](#)

<sup>4</sup> Bill 122 of 2019-21

## 2. Registration of deaths and still-births etc

### 2.1 Current position

#### Overview

The present system of death certification requires certification of the cause of death by a registered medical practitioner who attended the deceased during their last illness; alternatively, the death must have been reported to the coroner (in England, Wales and Northern Ireland) and the appropriate certificate provided by the coroner. Scotland does not have a coroner system, but some deaths must be reported to the Procurator Fiscal.

The medical certificate is given to the registrar, in person, by someone qualified to register the death (usually a relative) and is used to record the cause of death in the death registration.

There is a legal obligation on a qualified informant, as defined in legislation in order of priority, to register the death within a specified time limit.

Relevant legislation includes:

- for England and Wales, [Births and Deaths Registration Act 1953](#);
- for Scotland, [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#);
- for Northern Ireland, [Births and Deaths Registration \(Northern Ireland\) Order 1976](#).<sup>5</sup>

Where appropriate, the Bill would make similar changes to the relevant legislation applying respectively to England and Wales, Scotland and Northern Ireland.

#### Certification of death by medical practitioner

The doctor who attended the deceased during their last illness has a legal responsibility to complete a medical certificate of cause of death (MCCD) and to arrange for the delivery of it to the relevant registrar (in person), as soon as possible, to enable the registration of the death to take place.<sup>6</sup>

[Guidance for doctors completing Medical Certificates of Cause of Death in England and Wales](#), published in 2018, provides information about who should certify a death:

When a patient dies it is the statutory duty of the doctor who has attended in the last illness to issue the MCCD. There is no clear legal definition of “attended”, but it is generally accepted to mean a doctor who has cared for the patient during the illness that led to death and so is familiar with the patient’s medical history, investigations and treatment. The certifying doctor should

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<sup>5</sup> Northern Ireland Orders in Council 1976 No. 1041 (N.I. 14)

<sup>6</sup> Births and Deaths Registration Act 1953 section 22 (for England and Wales)

also have access to relevant medical records and the results of investigations. There is no provision under current legislation to delegate this statutory duty to any non-medical staff.

In hospital, there may be several doctors in a team caring for the patient. It is ultimately the responsibility of the consultant in charge of the patient's care to ensure that the death is properly certified. Any subsequent enquiries, such as for the results of post-mortem or ante-mortem investigations, will be addressed to the consultant.

In general practice, more than one GP may have been involved in the patient's care and so be able to certify the death. If no doctor who cared for the patient can be found, the death must be referred to the coroner to investigate and certify the cause.<sup>7</sup>

There is separate [guidance for doctors completing MCCDs in Scotland](#) from the Scottish Government and the National Records of Scotland.<sup>8</sup>

The Department of Health in Northern Ireland has also issued guidance, [Guidelines for Death Certification](#).<sup>9</sup>

### Notification of death to coroner or Procurator Fiscal

#### England and Wales

The 2018 [Guidance for doctors completing Medical Certificates of Cause of Death in England and Wales](#) includes information about the registrar reporting a death to the coroner where the doctor had not seen the deceased in the 14 days preceding death or after death:

If the attending doctor has not seen the patient within the 14 days preceding death, **and** has not seen the body after death either, the registrar is obliged to refer the death to the coroner before it can be registered. In these circumstances, the coroner may instruct the registrar to accept the attending doctor's MCCD for registration, despite the prolonged interval. In contrast, a doctor who has not been directly involved in the patient's care at any time during the illness from which they died cannot certify under current legislation, but he should provide the coroner with any information that may help to determine the cause of death. The coroner may then provide this information to the registrar of deaths. It will be used for mortality statistics, but the death will be legally "uncertified" if the coroner does not investigate through an autopsy, an inquest, or both.<sup>10</sup>

The [Notification of Deaths Regulations 2019](#) require a registered medical practitioner to notify the relevant senior coroner of a death if one or more of a set of prescribed circumstances apply.<sup>11</sup>

The circumstances in which the duty to notify the coroner arises include:

- the registered medical practitioner reasonably believes that there is no attending medical practitioner required to sign a certificate

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<sup>7</sup> Gov.UK from HM Passport Office, [Completing a medical certificate of cause of death \(MCCD\)](#), 25 September 2018

<sup>8</sup> Crown Office and Procurator Fiscal Service, [Reporting Deaths to the Procurator Fiscal. Information and Guidance for Medical Practitioners](#), May 2019

<sup>9</sup> 14 January 2019

<sup>10</sup> Gov.UK from HM Passport Office, [Completing a medical certificate of cause of death \(MCCD\)](#), 25 September 2018

<sup>11</sup> SI 2019/1112

of cause of death in relation to the deceased person (Regulation 3(1)(e)); and

- the registered medical practitioner reasonably believes that—
  - an attending medical practitioner is required to sign a certificate of cause of death in relation to the deceased person; but
  - the attending medical practitioner is not available within a reasonable time of the person’s death to sign the certificate of cause of death (Regulation 3(1)(f)).

The [Explanatory Memorandum](#) published with the 2019 Regulations provides further information:

Broadly speaking, under the Regulations, medical practitioners must report a death if: they suspect the cause of death was unnatural; the cause of death is unknown; the deceased died in custody or otherwise in state detention; they suspect that no medical practitioner is required to sign a medical certificate cause of death for the deceased person; another medical practitioner is required to sign a death certificate for the deceased person but is not available to do so within a reasonable time; or the identity of the deceased cannot be ascertained. The instrument provides a detailed list of examples of unnatural deaths which must be reported to the coroner.<sup>12</sup>

Gov.UK provides information about [reporting a death to the coroner](#).<sup>13</sup> A Library briefing paper provides information about the coroner’s duty to investigate some deaths, [Coroners' investigations and inquests](#).<sup>14</sup>

### Scotland

Some deaths should be reported to the Procurator Fiscal – but [guidance](#) specifies that this does not include only where the deceased had not been seen by a GP for some time.<sup>15</sup>

### Northern Ireland

The duty to report a death to the coroner arises if a medical practitioner has reason to believe that the deceased person died directly or indirectly from, among other things, natural illness or disease if the deceased had not been seen and treated for it by a registered medical practitioner within 28 days prior to death.<sup>16</sup>

## 2.2 Background information

One of the fundamental purposes of death registration is the protection of human life. A White Paper published in 2002 states:

Society needs to be confident that no burial or cremation can take place without there having been an opportunity to investigate the

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<sup>12</sup> Paragraphs 7.2 and 7.3

<sup>13</sup> Gov.UK, [When a death is reported to a coroner](#) [accessed 18 March 2020]

<sup>14</sup> Number 03981, 10 February 2020

<sup>15</sup> Crown Office and Procurator Fiscal Service, [Reporting Deaths to the Procurator Fiscal, Information and Guidance for Medical Practitioners](#), May 2019, section 4.1

<sup>16</sup> Northern Ireland Department of Health, [Guidance for Matters relating to the Coroner](#), 1 November 2018, p4

death and that there are full and proper procedures for its certification.<sup>17</sup>

The 2018 [Guidance for doctors completing Medical Certificates of Cause of Death in England and Wales](#) states that prompt and accurate certification of death is essential as it serves a number of functions:

A medical certificate of cause of death (MCCD) enables the deceased's family to register the death. This provides a permanent legal record of the fact of death and enables the family to arrange disposal of the body, and to settle the deceased's estate.

(...)

Deaths are required by law to be registered within 5 days of their occurrence unless there is to be a coroner's post mortem or an inquest.

After registering the death, the family gets a certified copy of the register entry ("death certificate"), which includes an exact copy of the cause of death information that you give. This provides them with an explanation of how and why their relative died. It also gives them a permanent record of information about their family medical history, which may be important for their own health and that of future generations. For all of these reasons it is extremely important that you provide clear, accurate and complete information about the diseases or conditions that caused your patient's death in a timely manner.

Information from death certificates is used to measure the relative contributions of different diseases to mortality. Statistical information on deaths by underlying cause is important for monitoring the health of the population, designing and evaluating public health interventions, recognising priorities for medical research and health services, planning health services, and assessing the effectiveness of those services. Death certificate data are extensively used in research into the health effects of exposure to a wide range of risk factors through the environment, work, medical and surgical care, and other sources.<sup>18</sup>

### 2.3 What the Bill would do

**Clause 18** "Registration of deaths and still-births etc" introduces **Schedule 13, Parts 1, 2 and 3** of which set out temporary modifications of legislation relating to the registration of deaths and still-births in England and Wales, Scotland, and Northern Ireland, respectively.<sup>19</sup>

The Bill would:

- **Expand the list of people who can register a death:**

The list of people who can register a death would be expanded to include a funeral director who is responsible for the arrangement of the deceased's funeral and is authorised by a relative of the deceased to give information concerning the death (**England and Wales and Scotland**); in **Northern Ireland**, the certificate of registration of death

<sup>17</sup> [Civil Registration: Vital Change](#), CM 5355, January 2002, paragraph 2.18

<sup>18</sup> Gov.UK from HM Passport Office, [Completing a medical certificate of cause of death \(MCCD\)](#), 25 September 2018, p2

<sup>19</sup> Clause 17 and Schedule 12 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

could be issued directly to the funeral director to enable the disposal of the body (rather than having to be issued to the person giving the information) and it could be provided electronically.

- **Enable a death to be registered without the informant attending in person:**

A qualified informant who is required to give information about a death or still-birth to the registrar would be able to give the information to the registrar by telephone, or by any other methods specified in guidance issued by the Registrar General,<sup>20</sup> if the informant is unable to attend before the registrar in person. A person would be treated as unable to give information in person if it would be impractical<sup>21</sup> for the person to do so (whether because of illness, the need to care for others, the risk of infection, staff shortages at the registrar's office or any other reason). The informant's signature in the presence of the registrar would not be required in these circumstances. Part 2 of the Schedule provides for alternative methods by which a person who is required under Scottish legislation to give information about a death or still-birth to the district registrar could attest the death registration form, or the register page for a still-birth, rather than attending at the registration office to manually sign the form or the page.

The [impact assessment](#) (the impact assessment) published with the Bill sets out why this provision is included:

The purpose of the provision is to enable civil registration officials who cannot travel to their office, either because of transport difficulties or because of child care commitments, to register deaths from home. It is also intended that this will reduce the chance of cross infection by collecting information for death registration via other means rather than face to face interview.<sup>22</sup>

- **Amend who can sign a MCCD:**

The Explanatory Notes state that the Bill would simplify the position and provide more flexibility in an emergency situation by enabling a doctor who may not have seen the deceased to certify the cause of death without the death being referred to the coroner.<sup>23</sup>

In **England and Wales**, a registered medical practitioner ("X") who did not attend the deceased during their last illness would be able to sign a MCCD if:

- the practitioner who attended the deceased is unable to sign the certificate or it is impractical for that practitioner to sign the certificate, and
- X is able to state to the best of X's knowledge and belief the cause of death.

A registered medical practitioner ("P") would also be able to sign an MCCD even for a person who has not been attended by a registered

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<sup>20</sup> By telephone or by electronic means in Northern Ireland

<sup>21</sup> "Unreasonable" in Scotland, "unreasonable or impracticable" in Northern Ireland

<sup>22</sup> Department of Health and Social Care, [Coronavirus bill: summary of impacts](#), 19 March 2020, Section 4 – Managing the deceased

<sup>23</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN](#), paragraph 39

medical practitioner during their last illness, if P is able to state to the best of P's knowledge and belief the cause of death.

In **Northern Ireland**, if the deceased died of a natural illness and no doctor attended the deceased during their last illness, the MCCD could be signed by any doctor who is able to state the cause of the deceased's death to the best of their knowledge and belief. If the deceased was seen by a doctor within 28 days prior to death, another doctor could sign the MCCD if the person died as a result of natural illness, it is impracticable for the attending doctor to sign the MCCD, and the signing doctor can state to the best of their knowledge and belief the cause of death.

- **Amend the rules relating to notification of death to the coroner:**

In **England and Wales** the requirement for a death to be reported to the coroner if the deceased had not been seen by a doctor during their last illness would be relaxed, as long as no other factors would require the death to be reported to the coroner, and the doctor can state to the best of their knowledge and belief the cause of death.<sup>24</sup>

The requirement that a death must be reported to the coroner by the registrar if the certifying doctor has not seen the deceased after death or within 14 days before death would be modified so that the death need not be reported to the coroner if a doctor (and not just the certifying doctor) had seen the deceased after death or within an extended period of 28 days before death.

A registered medical practitioner would only have to notify the relevant senior coroner of a person's death in the circumstances described in regulation 3(1)(e) or (f) of the [Notification of Deaths Regulations 2019](#)<sup>25</sup> if the practitioner also reasonably believes that:

- there is no registered medical practitioner who may sign a MCCD or
- there is such a registered medical practitioner, but the practitioner is not available within a reasonable time of the person's death to sign the certificate.

In **Northern Ireland** the requirement under section 7 of the Coroners Act (Northern Ireland) 1959 that a death from natural illness or disease must be notified to the coroner if the deceased had not been seen or treated by a registered doctor within 28 days prior to the death would be removed. A doctor who signs the MCCD could send this electronically directly to the registrar.

- **Streamline the registration of a stillbirth (Northern Ireland):**

**Part 3 of Schedule 13** would require a registered doctor or registered midwife to send a certificate of cause of stillbirth electronically to the registrar. Following receipt of the notification and a copy of the certificate of cause of stillbirth, the registrar would be able to issue the

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<sup>24</sup> [Coronavirus Bill Explanatory Notes, Bill 116-EN](#), paragraph 188

<sup>25</sup> See pp6-7 of this briefing paper above

certificate of registration electronically directly to the funeral director to enable the disposal of the body to proceed.

- **Enable documents that currently have to be physically presented to be transmitted electronically or by other means:**

The [impact assessment](#) provides the following information about this provision:

Currently a certificate of the registrar (or alternately an order of the coroner) authorising the disposal (a disposal certificate) has to be issued prior to the disposal of a body. Additionally, a person effecting to the disposal of a body has to deliver a notification of disposal to the registrar within 96 hours of the disposal. Legislation provides that any document required under the Act may be sent by post, however, it is silent as to what other modes of delivery are permitted.

The provision clarifies that during a coronavirus outbreak period any document or certificate relating to the disposal of a body may be delivered by alternative methods specified in guidance issued by the Registrar General.<sup>26</sup>

The impact assessment anticipates that, in the event of a severe coronavirus outbreak, there may be disruption to the postal service. In addition, it states that this provision would enable documents to be delivered without the need for members of the public or the postal workforce to travel unnecessarily.

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<sup>26</sup> Department of Health and Social Care, [Coronavirus bill: summary of impacts](#), 19 March 2020, Section 4 – Managing the deceased

## 3. Authorising a cremation: England and Wales

### 3.1 Current position

Before cremation can take place, as a safeguard, two certificates need to be signed, one by the registered medical practitioner who attended the deceased during their last illness, and the other by a registered medical practitioner who is neither a partner nor a relative of the doctor who completed the first form. This is a longstanding requirement. A fee can be charged for the completion of both cremation forms as this does not form part of a doctor's NHS duties.

### 3.2 Background information

The requirement for two separate certificates for cremation dates back to the beginning of the twentieth century. The [Report of a Fundamental Review of Death Certification and Investigation in England, Wales and Northern Ireland](#), which was published in 2003, set out the reasoning behind the certification requirement:

The separate and additional cremation certification system dates from a time when cremation was relatively new as a process and no doubt reflected concern that the incineration of bodies might remove evidence of foul play because exhumation of a body for further forensic examination – which still remains possible after it has been buried - would not be possible after a cremation. Further and special checks were seen therefore as an essential safeguard.<sup>27</sup>

### 3.3 What the Bill would do

**Clause 19** would remove the need for a second confirmatory medical certificate in order for a cremation to take place in England and Wales.<sup>28</sup> The Explanatory Notes state that this is aimed at simplifying the process in order to address the expected increased volume of deaths and the need to focus a reduced number of available medical practitioners on dealing with more priority cases, whilst keeping a necessary level of safeguards in place.<sup>29</sup> It is also intended to reduce the likelihood of delays to allowing families to be able to make cremation arrangements for the deceased.<sup>30</sup>

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<sup>27</sup> At pp 48-9

<sup>28</sup> Clause 18 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

<sup>29</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN](#), paragraph 262

<sup>30</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN](#), paragraph 45

## 4. Review of cause of death certificates: Scotland

### 4.1 Current position

The [Certification of Death \(Scotland\) Act 2011](#) introduced a new system of scrutiny of medical certificates of cause of death. It also created the post of medical reviewer and senior medical reviewer whose functions are to review for accuracy the certificates referred to them from a variety of sources. The Explanatory Notes published with the 2011 Act summarise which certificates will be reviewed:

A number of certificates will be referred at random by district registrars. The Registrar General will be responsible for ensuring that certificates are referred according to the chosen selection scheme. Persons with some connection to the deceased can apply for a review and certificates may also be selected by the medical reviewers themselves for scrutiny.<sup>31</sup>

Where a certificate is being reviewed, the death cannot be registered and so funerals cannot proceed until the review has been completed.

### 4.2 Background information

[Healthcare Improvement Scotland](#) has set out why the changes were made:

In the past, MCCDs have not always been as fully or accurately completed as they could have been. The new arrangements are designed to:

- improve the quality and accuracy of MCCDs
- provide improved public health information about causes of death in Scotland, and
- ensure that the processes around death certification are robust and have appropriate safeguards in place.<sup>32</sup>

### 4.3 What the Bill would do

**Clause 20** introduces **Schedule 14, Part 1** of which would provide a power, by direction, to suspend the review of certain medical certificates of cause of death if Scottish Ministers consider that:

- the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health, and
- the exercise of the power would be an effective means of expediting the disposal of bodies and better utilise medical resources.<sup>33</sup>

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<sup>31</sup> [Certification of Death \(Scotland\) Act 2011 Explanatory Notes](#), paragraph 3

<sup>32</sup> Healthcare Improvement Scotland, [Death certification Questions and answers](#), Q5, [accessed 19 March 2020]

<sup>33</sup> Clause 19 and Schedule 13 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

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Before making any such direction, Scottish Ministers would be required to consult the senior medical reviewer (or, if unavailable, the medical reviewer who is to perform the senior medical reviewer's functions in such circumstances).

## 5. Collection of ashes: Scotland

### 5.1 Current position

The [Burial and Cremation \(Scotland\) Act 2016](#) (the 2016 Act) includes provisions relating to the handling of ashes following cremation,<sup>34</sup> including:

[Section 51](#) requires a cremation authority to take reasonable steps before carrying out a cremation to ascertain what way an applicant wants the ashes to be dealt with. The options, set out in subsection (3), are for the cremation authority to:

- keep the ashes for the applicant to collect;
- keep the ashes for the funeral director to collect; or
- dispose of the ashes in a way indicated by the applicant or as specified in regulations made by the Scottish Ministers.

[Section 53](#) sets out the procedure to be followed by a cremation authority where it has retained ashes but the applicant for cremation or the funeral director has not collected the ashes as agreed. The cremation authority must take reasonable steps to ascertain whether the applicant wishes the ashes to be retained for longer to enable the applicant or a funeral director to collect the ashes. Ultimately, if the cremation authority is unable to ascertain the wishes of the applicant, it may either retain or dispose of the ashes in a manner specified in regulations made by the Scottish Ministers.

### 5.2 Background information

Many of the 2016 Act's provisions stem from recommendations made by various review groups, particularly the [Infant Cremation Commission](#)<sup>35</sup> and the [Burial and Cremation Review Group](#).<sup>36</sup> For example, the Infant Cremation Commission recommended that the application form for cremation should be revised to include a mandatory section dealing with the course of action proposed in relation to the ashes.<sup>37</sup>

Another Library briefing paper deals with the issues surrounding [infant cremation](#).<sup>38</sup>

### 5.3 What the Bill would do

**Schedule 14, Part 2**, which is introduced by **Clause 20**, would enable Scottish Ministers to suspend provisions of the 2016 Act relating to the handling of ashes which have not been collected.<sup>39</sup> The relevant bodies

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<sup>34</sup> Sections 51 to 56

<sup>35</sup> June 2014

<sup>36</sup> October 2007

<sup>37</sup> Paragraph 9.10

<sup>38</sup> Number 07731, 3 February 2020

<sup>39</sup> Clause 19 and Schedule 13 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

would be under a duty to retain the ashes and to comply with their duties under the Act once the provisions have been re-instated.

**Part 2** would also enable Scottish Ministers to suspend an offence in section 49 of the 2016 Act, so allowing someone to complete the cremation application form, regardless of the required hierarchy set out by section 65 of the 2016 Act. The impact assessment sets out the purpose of this provision:

The intention of this clause is to allow for the situation where it is known, or suspected, by the person making the arrangements that there is someone higher up in the hierarchy who may be able to make the arrangements, but that person is unwell or otherwise unable. For example, it may be that a friend of longstanding is available and content to make the arrangements, even where they are aware that the deceased does have a next of kin who cannot be immediately contacted. Individuals may be more willing to sign the declaration if the associated offence was removed. This will expedite the process of arranging a cremation.<sup>40</sup>

**Part 2** would apply if Scottish Ministers considered that:

- the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health, and
- the exercise of powers conferred by Part 2 would be an effective means of expediting the disposal of bodies and better utilise resources.

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<sup>40</sup> Department of Health and Social Care, [Coronavirus bill: summary of impacts](#), 19 March 2020, Section 4 – Managing the deceased

## 6. Medical certificates for cremations: Northern Ireland

### 6.1 Current position

The [Cremation \(Belfast\) Regulations \(Northern Ireland\) 1961](#) set out the requirements for cremation in Northern Ireland.

The regulations require both a medical certificate giving the cause of death which must be given by a registered medical practitioner and a confirmatory medical certificate which must be given by a second registered medical practitioner, independent of the first, before a cremation may take place.

### 6.2 What the Bill would do

**Clause 21** would:

- remove the requirement for a confirmatory medical certificate and make consequential modifications to the powers and duties of the Medical Referee, including removing the reference to a person being seen and treated within twenty-eight days by a registered medical practitioner for a natural illness or disease in the case where the matter has been referred to the Coroner; and
- remove the requirement in the relevant forms for a registered medical practitioner having to have attended a deceased person during their last illness and within twenty-eight days before death.<sup>41</sup>

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<sup>41</sup> Clause 20 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

## 7. Inquests with juries

### 7.1 Current position

#### England and Wales

[Section 7 of the Coroners and Justice Act 2009](#) requires the coroner to sit with a jury if, among other things, the coroner has reason to suspect that the death was caused by an accident, poisoning or disease which must be reported to a Government department or inspector.

Section 5 of [another Library briefing](#) paper provides information about the other circumstances when the coroner must, or may, sit with a jury.<sup>42</sup>

In 2018, jury inquests represented just 1% of all inquests. The Ministry of Justice has stated that the proportion of inquests held with juries has remained stable between 1% and 2% over the last decade.<sup>43</sup>

#### Northern Ireland

[Section 18 of the Coroners Act \(Northern Ireland\) 1959](#) requires the coroner to summon a jury if, among other things, the coroner has reason to suspect that the death was caused by an accident, poisoning or notifiable disease.

[Section 39 of the Prison Act \(Northern Ireland\) 1953](#) requires an inquest to be held into any death in prison. [Section 18 of the Coroners Act \(Northern Ireland\) 1959](#) requires such inquests to be held with a jury.

In cases where there is no strict requirement for a jury inquest, the coroner has discretion to summon a jury when they think it desirable.

### 7.2 Background information

Covid-19 has been designated as a notifiable disease.<sup>44</sup> The Explanatory Notes comment on the potential consequence of this:

Under current legislation, the status of covid-19 as a notifiable disease in England means that any inquest into a death where the coroner has reason to suspect that the death was caused by covid-19 must take place with a jury.

This could have very significant resource implications for coroner workload and Local Authority coroner services, resulting in a possible 25,000 additional jury inquests even at the lower end of covid-19 mortality modelling in England and Wales.

Although the inquests could be adjourned until the pandemic has passed, this would deprive bereaved families of swift closure and would, in any event, simply delay resource pressure for the future.<sup>45</sup>

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<sup>42</sup> [Coroners' investigations and inquests](#), Number 03981, 10 February 2020

<sup>43</sup> Ministry of Justice Statistics Bulletin, [Coroners Statistics Annual 2018 England and Wales](#), 9 May 2019, p8

<sup>44</sup> Department of Health and Social Care, [Coronavirus bill: summary of impacts](#), 19 March 2020, Section 4 – Managing the deceased

<sup>45</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110–EN](#), paragraphs 67-9

## 7.3 What the Bill would do

### England and Wales

**Clause 30** would provide that for the purposes of section 7 of the Coroners and Justice Act 2009, Covid-19 is not a notifiable disease. This means that the coroner would not be required to sit with a jury where they have reason to suspect the death was caused by Covid-19.<sup>46</sup>

The coroner could still exercise discretion to hold a jury inquest where they consider that there is sufficient reason to do so, under section 7(3) of the Coroners and Justice Act 2009.

This clause would apply to an inquest that is opened while this section is in force, regardless of the date of the death.

### Northern Ireland

Similarly, **Clause 31** would provide that for the purposes of section 18 of the Coroners Act (Northern Ireland) 1959, Covid-19 is not a notifiable disease.<sup>47</sup>

This clause would apply to an inquest that is opened while this section is in force, regardless of the date of the death.

**Clause 32** would remove the requirement for the coroner to sit with a jury in an inquest into the death of a prisoner if it appears to the coroner that the death was caused by natural illness. The coroner would have discretion to summon a jury in such cases if they consider it desirable.

Section 13 of the Coroners Act (Northern Ireland) 1959 enables the coroner to hold one inquest into a number of deaths resulting from the same circumstances. **Clause 32** would modify this provision to enable one inquest without a jury to be held into a number of deaths in prison from natural illness.

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<sup>46</sup> Clause 28 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

<sup>47</sup> Clause 29 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

## 8. Powers in relation to transportation, storage and disposal of dead bodies etc

### 8.1 Background information

In [guidance](#) published on 17 March 2020, the Department of Health and Social Care set out additional powers to deal with the death management process which local authorities might need to exercise in extreme circumstances:

If the scientific advice indicates that the number of people who might die from COVID-19 is likely to significantly exceed the capacity locally to manage the deceased and other contingency measures have been deployed, local government will have the ability to take control of a component or components of the death management process in their area.

For example, local authorities may choose to direct local actors such as funeral directors, mortuaries owners, crematoriums owners and others, to streamline the death management process. This may include an increase in the operating times of crematoriums, directing companies to use their vehicles to move bodies, or directing others not directly involved in the funeral sector, to provide necessary support.

Only in the most extreme situations where there is a risk to public health would the powers of direction be used and only be used when scientific evidence and operational advice suggests that it is necessary. Activating the powers will ensure the local death management system continues to work effectively to protect public health and the dignity of the deceased. Personal choice will be respected as far as possible, especially in regard to how we handle loved ones after they have passed.<sup>48</sup>

The impact assessment sets out how additional deaths might overwhelm the system:

The numbers of additional deaths are unprecedented. Whilst the death management industry has some flexibility to deal with fluctuations in death rates, these are of a different order of magnitude. The average weekly death rate is roughly 11,800 deaths which fluctuates between 14,800 deaths during winter flu season and drops to 8,500 in milder months. Under current planning assumptions roughly 50% of total deaths from coronavirus could fall across a three week peak. A death rate of this scale would far exceed existing capacity in the death management industry.<sup>49</sup>

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<sup>48</sup> Department of Health and Social Care Guidance, [What the coronavirus bill will do](#), 17 March 2020

<sup>49</sup> Department of Health and Social Care, [Coronavirus bill: summary of impacts](#), 19 March 2020, Section 4 – Managing the deceased

## 8.2 What the Bill would do

**Clause 58** introduces **Schedule 28** which would confer powers to facilitate the transportation, storage and disposal of dead bodies and human remains.<sup>50</sup>

The Explanatory Notes provide an overview:

The Bill introduces powers of direction to give local authorities the necessary powers to direct those in the death management system to ensure excess deaths caused by covid-19 do not overwhelm the system. National and local authorities across the UK will have, where necessary, additional powers to direct organisations to support the death management processes. This will ensure that deceased bodies can be stored, transported and disposed of with care and respect.<sup>51</sup>

The Explanatory Notes also note that the death management system is “highly fragmented, involving many different organisations in the public and private sector as well as faith and other groups”.<sup>52</sup>

### Part 1

**Part 1 of Schedule 28** deals with information about capacity. It aims to ensure that local authorities and national authorities would have power to require persons (and in the case of national authorities, to require local authorities) to provide information to enable local and national authorities to ascertain capacity in areas to effectively manage the transportation, storage and disposal of dead bodies and other human remains.<sup>53</sup> The Explanatory Notes state that this may include information from private companies (such as private funeral homes or crematoria) on their capacity and operational status. They may direct that this information is shared with others who require this information (for example neighbouring local authorities who are searching for spare capacity in the region).<sup>54</sup>

**Part 1** would:

- enable a local authority to require (as specified) a person to provide information for the purposes of ascertaining the capacity within its area to deal with the transportation, storage or disposal of dead bodies or other human remains;
- create offences of failing, without reasonable excuse, to comply with such a requirement, and knowingly or recklessly giving false information in response to such a requirement;
- specify that a local authority or other person who holds any information which has been shared under these powers must use it or disclose it only for the purpose of ascertaining capacity to manage the transportation, storage and disposal of dead bodies

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<sup>50</sup> Clause 56 and Schedule 27 in the Bill introduced in the House of Commons (Bill 122 of 2019-21)

<sup>51</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN, paragraph 102](#)

<sup>52</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN paragraph 507](#)

<sup>53</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN, paragraph 505](#)

<sup>54</sup> Ibid

and other human remains – it would be an offence to do otherwise;

- enable a national authority to require (as specified) a local authority to provide information for the purposes of ascertaining the capacity nationally, or within a particular area, to deal with the transportation, storage or disposal of dead bodies or other human remains.

The Explanatory Notes set out the purpose of these provisions:

This information sharing provision is needed to inform decisions to designate a local authority so that directions can be made to enable changes in the death management system where there is or is likely to be insufficient capacity in that area as a result of excess deaths from Covid-19. It will give visibility of the system and help to prevent the system from becoming overwhelmed.<sup>55</sup>

## Part 2

**Part 2 of Schedule 28** deals with directions and other measures to address lack of capacity:

Part 2 allows national authorities to designate a local authority area where, as a result of coronavirus disease, there is likely to be insufficient capacity within that area to transport, store or dispose of dead bodies or other human remains. Once an area is designated a local authority can give directions to companies or corporations. In addition a national authority can give the same directions where a regional or national response is more appropriate. The trigger point of this will be a ministerial decision in the relevant nation. The flexibility to direct locally, regionally or nationally provides that powers are only used where necessary, but also used most effectively and in a proportionate way.<sup>56</sup>

The directions that could be given are broadly defined. The Explanatory Notes state that “flexibility as to what may be required to deal with the situation is necessary”:

However it is expected the following directions may be required: direction to a private company to, for example, extend crematoria operating hours or use their vehicle to transport deceased bodies. The power to direct also includes a power to make directions in relation to a body within an area to be moved to another area.<sup>57</sup>

A direction may, in particular:

- require a person to provide services;
- require a person to provide facilities, premises, vehicles, equipment or anything else within the person’s possession or under the person’s control;
- require a person to exercise any right they have to require others to do things;
- direct whether a dead body or other human remains must be buried by the person or cremated by the person;

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<sup>55</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110–EN, paragraph 507](#)

<sup>56</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110–EN, paragraph 509](#)

<sup>57</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110–EN, paragraph 510](#)

- make provision about how or where a person is to bury or cremate a dead body or other human remains;
- in the case of a direction by a local authority, require a person to do things outside the local authority's area;
- make provision about how or when things are to be done in accordance with the direction;
- make provision about the supervision of anything required to be done in accordance with the direction;
- require a person to provide information about things done in response to a direction.<sup>58</sup>

**Part 2** would also provide that:

- A direction may require a person to do things even if they would involve the person breaching a contract or incurring other liabilities (but the right of any other person to claim damages for such a breach or to enforce such a liability is not affected by the direction).
- In exercising its functions, a designated local authority or the appropriate national authority must have regard to the effect that any direction is likely to have on the ability of any person to carry on their normal business.
- It would be an offence if a person fails without reasonable excuse to comply with a direction.
- The appropriate national authority may make a direction in place of a local authority where the local authority has failed to exercise its functions properly.
- To the extent that any local authority directions conflict with a national authority direction, the national authority direction prevails.
- The appropriate national authority must publish a scheme for paying compensation (as provided) to persons to whom directions are given.
- The appropriate national authority may give guidance as to the exercise by designated local authorities of functions under Part 2 of Schedule 28 and designated local authorities would be required to have regard to any such guidance.

### Part 3

**Part 3 of Schedule 28** confers powers on national authorities to give directions to local authorities as to the exercise of their functions where they have failed to exercise functions in relation to dead bodies generally. The Explanatory Notes state that "This allows for central government to intervene if the local authority is not effectively managing the excess deaths in their area".<sup>59</sup>

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<sup>58</sup> Coronavirus Bill Schedule 28 paragraph 5(3)

<sup>59</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110-EN, paragraph 514](#)

## Part 4

**Part 4 of Schedule 28** was added at Committee stage in the House of Commons, without a vote. It would deal with local and national authorities having regard to the deceased's wishes, or the requirement of their religion or beliefs, concerning burial or cremation. The Explanatory Notes provide further information:

Part 4 provides that in carrying out functions under Schedule 28, Local and National Authorities must have regard to the deceased person's wishes, religion and belief, where known, of the method used for their final committal (i.e. burial or cremation). It also disapplies legislation in paragraph 13(4) prohibiting cremation against the wishes of the deceased, instead requiring authorities to have regard for wishes, where known. In other words, while powers of direction may be used to direct whether a body is buried or cremated, the appropriate Local or National Authority must have regard for the deceased's wishes.

In Scotland, legislation only requires due regard to be had to the deceased's wishes so no equivalent disapplication is needed. It also requires the appropriate national authority to give guidance to local authorities on discharging their duties under paragraph 13A, and that local authorities must have regard to that guidance.<sup>60</sup>

### Background and debate on Part 4

The impact assessment states that the wishes of the deceased and their next of kin "is a very important consideration" and that these wishes will be respected as far as possible, adding that "increasing the capacity of the death management system is critical for extending the length of time these wishes can be complied with".<sup>61</sup>

However, the Explanatory Notes published with the Bill introduced in the House of Commons indicated that personal wishes as to burial or cremation might have to be disregarded in some limited circumstances:

Personal choice for body disposal will be respected as far as possible, however, only where there is no suitable alternative (for example if safe storage limits were likely to be breached and out of area alternatives were not available), the power to direct may be used to direct whether a body is buried or cremated. In this respect it has been necessary to disapply section 46(3) of the Public Health (Control of Disease) Act 1984<sup>[62]</sup> which prohibits cremation against the wishes of the deceased. Similar provisions are disapplied in Northern Ireland. Scotland's legislation only requires due regard to be had to the deceased's wishes so no equivalent dis-application is needed.<sup>63</sup>

When the Bill was introduced in the House of Commons, concerns were raised, including by faith groups for whom burial is a religious requirement, about the prospect of cremation against the wishes of the deceased and their families.

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<sup>60</sup> [Coronavirus Bill Explanatory Notes HL Bill 110-EN paragraphs 516-7](#)

<sup>61</sup> Department of Health and Social Care, [Coronavirus bill: summary of impacts](#), 19 March 2020, Section 4 – Managing the deceased

<sup>62</sup> Local authority public health funerals

<sup>63</sup> [Coronavirus Bill Explanatory Notes, Bill 116-EN, paragraph 442](#)

Imran Hussain (Labour) was among those who raised the issue at Commons Second Reading:

I will make one point that has been raised with me by a number of constituents about schedule 27, which suspends protections that prevent the cremation of an individual regardless of their wishes or faith. The right to faith and dignity in death is one of our most inalienable rights and one on which we must never compromise. How our physical bodies are handled and treated after our death is a core tenet of all faiths. That is why I wrote to Public Health England some time ago to express my concerns about how the deceased may be handled during this emergency, and why I was alarmed to learn of the measures in the Bill that overrule the right to faith and dignity in death by permitting a local authority to cremate an individual against their wishes.<sup>64</sup>

At Committee stage, Penny Mordaunt, Paymaster General, provided information about the amendment moved by the Government:

The purpose of the provisions is to ensure that people's choices can be adhered to, that the dignity of the deceased is respected and that support services for families are in place, even in times of great stress. There should be no public health reason or capacity reason why someone who wished to be buried would be cremated. I hope that is very clear. I can give the House that reassurance. We have included further measures in the Bill. Local authority leaders will also want to reassure their communities in the coming days—clearly, it is local authority chief executives who will use these powers, if they are ever used.<sup>65</sup>

Yasmin Qureshi (Labour) questioned the Minister on the wording of the amendment:

The provision states that it is desirable for a local authority or public authority to seek the wishes of the deceased person's family or a place of worship if there is no next of kin. Saying that it is desirable to take their views into consideration does not mean that those views will apply if a local authority or public authority decides that a cremation is going to take place, under the legislation as it stands. The Government could make an amendment to clearly specify that if somebody does not wish to be cremated, they will not be cremated. That is missing from the Bill at the moment.<sup>66</sup>

Penny Mordaunt gave the following assurance on the issue:

We have brought forward an amendment that gives those guarantees with regard to someone's beliefs, religion or wishes. In addition, I stress that it has never been the case—there has never been any doubt about this—that somebody who wished to be buried would have to be cremated. There is no public health reason or capacity reason why that should be the case. We have worked from the off with all faiths to produce the guidelines, and the amendment was produced through consultation. I see no circumstance—and it certainly would not relate to these powers—in which somebody would be cremated against their wishes. I do not think I can give any more guarantees than that. That is

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<sup>64</sup> [HC Deb 23 March 2020 c95-6](#)

<sup>65</sup> [HC Deb 23 March 2020 c136](#)

<sup>66</sup> [HC Deb 23 March 2020 c137](#)

absolutely not the intent of the policy and it is certainly not anything to do with the practice.<sup>67</sup>

At Lords Second Reading, Lord Sheikh (Conservative) returned to the issue of Muslim funerals and stressed its importance to the Muslim community:

There should be respect for the souls of our dead. Our collective human dignity and preservation should not be compromised and defeated by this pandemic. It is important to emphasise that Islam strictly forbids cremation of the deceased in any circumstances. There are verses in the Holy Koran which state that the body must be buried. We regard what is written in the Holy Koran as the words of God, and we need to abide by them. There is a great deal of disquiet and concern about the provisions of the Bill relating to this subject.<sup>68</sup>

Lord Sheikh asked for assurance on the amendment agreed by the Commons:

Although I welcome the Government's concession, I fear that it may not go far enough, as there is a chance that cremations could occur in exceptional circumstances. I would therefore be grateful if my noble friend the Minister could inform your Lordships' House as to whether Her Majesty's Government will give further guarantees to ensure that cremations do not take place against the will of the deceased's loved ones in any circumstances. These guarantees are absolutely essential.

Lord Bethell, junior Minister at the Department of Health and Social Care, replied:

The amendment agreed to in the Commons is, I believe, an extremely important step in the right direction. A huge amount of discretion is given to local councils to make arrangements with the communities that they know best. This is a set of decision-making that is best made at a local level, and for that reason I would prefer to leave it in the hands of the amendment and in the hands of the local councils. However, I want to be clear that faith communities will be involved in the drawing up of statutory guidance that will be issued before any direction affecting burial or cremation is issued. It is of the utmost importance during this difficult time that we continue to respect people of faith and their beliefs.<sup>69</sup>

## Commencement of Schedule 28

The Explanatory Notes provide the following information about commencement:

The Schedule comes into effect on Royal Assent, meaning the information powers are available immediately; however, the Direction making powers in Part 2 only are exercisable on designation by a national authority.

A devolved minister can activate the powers in their country without needing the approval of the other nations.

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<sup>67</sup> [HC Deb 23 March 2020 c137](#)

<sup>68</sup> [HL Deb 24 March 2020 c1704](#)

<sup>69</sup> [HL Deb 24 March 2020 c1737-8](#)

The territorial extent and application of this provision is England, Wales, Scotland and Northern Ireland. The powers will be activated within each nation by their respective Ministers if required. The ministers who can activate the powers in the provision are set out in paragraph 14.<sup>70</sup>

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<sup>70</sup> [Coronavirus Bill Explanatory Notes, HL Bill 110–EN paragraphs 515 and 518-9](#)

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