

Report



Cabinet Member for Regulatory Functions

Part 1

Date: 12 January 2017

Item: 01

Subject **Welsh Government Consultation - Introduction of Medical Examiners in Wales**

Purpose To seek Cabinet Member approval of the proposed Council response to the Welsh Government's Consultation on the introduction of Medical Examiners in Wales

Author Head of Law & Regulation

Ward General

Summary The Welsh Government has published a Consultation document on proposed operational arrangements for the introduction of independent medical examiners in Wales in the light of proposed reforms to the death certification process in England and Wales. The new system is intended to provide an independent process for certifying the cause of death in cases where the coroner is not involved. The independent scrutiny of the cause of death by the new medical examiners will provide assurances that the death has been accurately recorded, and will provide robust information to help identify trends and patterns, making malpractice easier to detect.

In Wales, the appointment of independent medical examiners, medical examiner officers and the management of the operational arrangements for delivery of the death certification process will be the responsibility of the Local Health Boards. Therefore, the proposed response to the consultation focusses on those general issues that are relevant to the exercise of the Council's statutory functions in relation to the registration of deaths and the inter-relationship with the new medical examiner service.

In particular, the proposed consultation response highlights the need to ensure that the service is delivered in a timely fashion, with adequate support, to avoid any delays and the requirement for consistency and clarity in relation to the certified cause of death.

It is also important that the medical examiner fees should be collected and paid in the same way as other funeral expenses and not become a further administrative burden on the Registration service.

Proposal **To approve the proposed response to the Welsh Government Consultation on the introduction of Medical Examiners in Wales**

Action by Head of Law & Regulation

Timetable Response to Consultation by 13th January 2017

This report was prepared after consultation with:

- Registration Services Manager
- Head of Finance
- Head of People and Business Change

Signed

Background

1. The Welsh Government has published a Consultation document on proposed operational arrangements for the introduction of independent medical examiners in Wales in the light of proposed reforms to the death certification process in England and Wales. A copy of the full consultation document can be seen at <https://consultations.gov.wales/consultations/introduction-medical-examiner-role-and-reforms-death-certification>
2. The UK Government intends to introduce new death certification and registration arrangements in England and Wales following the Shipman Inquiry in 2003 and the more recent Francis Inquiry into the Mid Staffordshire Foundation NHS Trust. These inquiries made recommendations about independent scrutiny of deaths and the need to involve families in the process. The Government is proposing an implementation date of 1st April 2018 for these new arrangements.
3. Death certification is not a function that is currently devolved to the National Assembly for Wales. However, Welsh Ministers are responsible for the practical implementation of the system in Wales. As such, they have the power to make Regulations in relation to the appointment and remuneration of medical examiners and the fees to be charged for the medical examiner's confirmation of the cause of death stated on the attending practitioner's certificate or the issue of a medical examiner's certificate.
4. Therefore, this consultation document is only seeking comments on these proposed operational arrangements in Wales. The new death certification process will essentially be the same in England and Wales, although in England the appointment of the medical examiners and medical examiner's officers will be a matter for unitary authorities, whereas in Wales that responsibility will fall to the Local Health Boards.
5. The legal basis for the new system is set out in Chapter 2 of Part 1 of the Coroners and Justice Act 2009. Section 19 of the Act requires Local Health Boards in Wales to appoint independent medical examiners to scrutinise the cause of death in every case not investigated by a coroner. Chapter 2 of Part 1 of the Coroners and Justice Act 2009 also provides Welsh Ministers with limited powers, specifically:
 - a power under section 19 to make Regulations about the terms of appointment, payment, training and additional functions of medical examiners, and
 - a power under section 20 to make Regulations about the fees to be payable to a local health board for the medical examiner's certificate or a medical examiner's confirmation of the cause of death stated on an attending practitioner's certificate.
6. The new system is intended to provide an independent process for certifying the cause of death in cases where the coroner is not involved. Currently, the attending doctor would certify the cause of death where there is no coroner's investigation but there is no independent system of verifying the accuracy of the medical certificates or for identifying any health care issues arising from the death. Registrars are required to raise any concerns or discrepancies regarding the cause of death with coroners if any issues arise at the registration of the death but, otherwise, there is no further process for checking the medical certificates, where the deceased is to be buried. With cremations, there is a more rigorous process that needs to be undertaken before any cremation can be carried out, involving an examination of the body by a doctor and medical referee, for which an additional fee of £184 is currently paid.
7. The Shipman Inquiry's Third Report concluded that the present system of death certification is open to abuse by a dishonest doctor. The Inquiry concluded that an adequate system of death certification must provide some effective cross-check of events given by the certifying doctor who has treated the deceased and who claims to identify the cause of death. Furthermore, the Inquiry recommended that an account of the same events should be obtained from a family member, or someone with knowledge of the circumstances of the death. These cross-checks will, in future,

be provided by a medical examiner as part of the scrutiny process not only to deter a doctor such as Shipman, but also to deter any doctor who might be tempted to conceal an error or neglect by him/herself or a colleague.

8. The independent scrutiny of the cause of death by the new medical examiners will provide assurances that the death has been accurately recorded, and will provide robust information to help identify trends and patterns, making malpractice easier to detect. The expected benefits of the new system will be to:
 - provide confirmation to families about the circumstances of a person's death;
 - provide a safeguard in relation to the quality of care provided in the period prior to the person's death;
 - allow early detection of 'patterns' which require attention to determine whether there are local problems of care which can be corrected to prevent further harm to patients; and
 - improve the accuracy of recorded causes of death to aid the planning of delivery of health and social services.
9. Medical examiner officers will also be appointed to act on behalf of, and to assist medical examiners in the exercise of their functions, including taking a lead role in liaising with families, coroners' offices and others involved in the process following a death. Medical examiner scrutiny will cover all deaths not referred to the coroner and will include all settings, i.e. in hospital, at home, in hospices, nursing or residential care settings. Medical examiners and their staff will work within the standards and guidelines set by the National Medical Examiner for England and Wales. There are also likely to be a number of lead medical examiners appointed within Wales, and they will provide practical support to the medical examiners and their staff.
10. Under the new process, when someone dies, and the death is apparently natural, a doctor who attended the person in the previous days will be required to prepare a medical certificate of cause of death (MCCD). If this doctor decides that the death needs to be notified to a coroner, or if the doctor is unable to establish the cause of death, he or she will contact the coroner's office. Where a death is not notified to a coroner, or it is notified but the coroner decides that it does not need to be investigated, the doctor will prepare a MCCD and provide a copy to the medical examiner together with the relevant medical records and other information. The medical examiner will then scrutinise the deceased person's medical records and may choose to carry out a thorough (non-forensic) external examination of the body (or arrange for it to be carried out by someone else) to determine whether or not he or she agrees with the cause of death that the attending doctor certified.
11. If the medical examiner disagrees with what the attending doctor has written on the MCCD there will be a discussion and the medical examiner will either invite the doctor to prepare a new MCCD or conclude that the death needs to be referred to a coroner.
12. After scrutinising the deceased person's medical records and the results of any external examination, the medical examiner (or an officer acting on his or her behalf) will speak with a member of the bereaved family, usually by telephone, to discuss the cause of death with them and to offer them the opportunity to raise any concerns they may have. If concerns are raised, the medical examiner will usually discuss them with the attending doctor and then if necessary refer the death to a coroner. If, as a result of the discussion the death is not subsequently referred to a coroner, the person with whom the death is discussed will be asked to sign a form confirming the discussion.
13. If at the end of the process the death does not need to be investigated by a coroner and an agreed MCCD has been seen and checked by the medical examiner, the medical examiner will sign a Notification of Confirmed Cause of Death as soon as practicable and on the same day arrange for a copy to be sent to the Registrar for the district where the death occurred. A copy will also be sent to the attending doctor. The medical examiner pilots suggest that copies should be transmitted electronically to avoid delays. Within two days of receiving that notification, the

original MCCD must be finalised and issued to a person who intends to be the informant in registering the death.

14. When the confirmed MCCD is given to a Registrar and matched to the notification provided by the medical examiner it can be used to register the death unless, in exceptional circumstances, the informant provides new information to the Registrar that suggests the confirmed cause of death may be incorrect or the death may be unnatural. In these exceptional cases, the Registrar will speak with a medical examiner's officer first and, if necessary, invite the attending practitioner to prepare a new MCCD.
15. Although the initial set-up costs will be funded by Central Government, the on-going costs of providing the medical examiner's service will be a devolved matter for the Welsh Government. The intention in the consultation paper is for the Local Health Boards to charge a fixed fee for the medical examiner's certificate, which should cover the cost of providing the service.

16. Consultation response

In Wales, the appointment of independent medical examiners, medical examiner officers and the management of the operational arrangements for delivery of the death certification process will be the responsibility of the Local Health Boards. Therefore, for the most part, the Council has no comment to make on those questions that relate to the appointment process, the remuneration and functions of the medical examiners.

17. The proposed response to the consultation focusses on those general issues that are relevant to the exercise of the Council's statutory functions in relation to the registration of deaths and the inter-relationship with the new medical examiner service. In particular, the comments emphasise:-

- the need to ensure that the service is delivered in a timely fashion and that the medical examiners are accessible at all times
- the fact that this additional scrutiny of the cause of death should not delay the current registration process and the target of 5 working days for registering a death
- the need for adequate administrative support
- the requirement for consistency and clarity in relation to the certified cause of death
- the need to establish good working relationships with the Registrars, coroners and other agencies involved in bereavement services
- the need for the medical examiner fees to be collected and paid in the same way as other funeral expenses

18. Fees and Charges.

Although the level of fees is a matter for Welsh Government and the Local Health Boards, the consultation document is inviting comment on the various options for the collection and payment of the fees. One of the options being considered is for the Registrars to take payment from the informants when they register the death. It is proposed that the Council strongly objects to any such arrangement as that would place an increased burden on the Registration service to collect, bank and transfer the fees to the Local Health Boards, when the Council does not benefit from any of the additional income generated by the fees. In addition, the registration process is an entirely separate statutory function, quite distinct from the death certification process and, therefore, to two should be kept separate. If the medical examiner fees were charged at the point of registration, then this could deter family members from coming forward to register the death if they were not responsible for any funeral expenses. Instead, the Council would propose that the fees should be paid in the same way as the current medical referees' fees for cremations. The £184 fee is currently paid by funeral directors and recharged to the bereaved as part of the overall funeral costs. Under the new arrangements, the need for an independent medical referee and this additional cremation charge of £184 will be abolished and replaced by the new medical

examiners certificate and a standard fee, which is likely to be less than £184. This will reduce the costs of cremation but increase expenses for burials.

19. The proposed responses to the consultation document and questions are set out in Appendix 1

Financial Summary

- 20 There are no financial implications for the Council as the medical examiners service will be managed by the Local Health Boards.

21 Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
The need for an independent medical examiner's certificate could cause delays to the death registration process	M	L	By commenting on the proposals, the Council can highlight the need to avoid delays and maintain accuracy of the death certification process	Head of Law & Regulation/Cabinet Member
If the Registrars are required to collect the medical examiners fees, this would have an adverse impact on the registration process and cause workload problems	M	L	By responding to the consultation, the Council can identify a preferred alternative method of collecting fees through funeral directors	Head of Law & Regulation/Cabinet Member

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The independent medical examiner service is in accordance with the PSB health and well-being objectives as it should provide a safeguard in relation to quality of care, help to identify any local problems and improve the accuracy of recorded causes of death to aid the planning and delivery of health and social services.

Options Available and considered

- (1) To approve the proposed Council response to the Welsh Government's Consultation on the introduction of Medical Examiners in Wales as set out in Appendix 1
- (2) Not to approve the consultation response.

Preferred Option and Why

- (1) To approve the proposed response and submit the comments to the Welsh Government, so that the Council's views on the proposed service and the preferred method of fee collection can be taken into account when formulating the final scheme and Regulations.

Comments of Chief Financial Officer

There are no Finance implications.

Comments of Monitoring Officer

Set out in the Report.

Comments of Head of People and Business Change

The paper notes in the section below on the Wellbeing of Future Generations (Wales) Act 2015 how the introduction of Medical Examiners in Wales is in accordance with the sustainable development principle.

There are no direct HR implications arising directly from this report.

Comments of Elected Members

Councillor O Ali:

The issuing of the death certificate in the case of a Muslim death still remains critical & its speedy delivery.

As Muslims we are required to be buried as quickly as possible. Cremation is not allowed.

We are keen for the matter please to be given the priority it requires in the consultation & to be reflected in the report if possible.

Response from Cabinet Member for Regulatory Functions:

The proposed Council response to the Consultation already emphasises the need to ensure that the new service is delivered in a timely fashion, that medical examiners are accessible at all times and have the necessary administrative support, so that there are no delays to the current registration process. This is particularly important in relation to urgent death certification and registration. The previous Home Office consultation noted that the most frequent reason for urgent death certification is to allow relatives to comply with faith and cultural practices that require burial as soon as possible after the death. However, feedback from the pilot sites indicated that the demand for urgent certification is manageable within the new process and, where necessary, it can be met by arranging for medical examiners to be available for extended hours during the week and for specified periods during the weekend and on bank holidays. The Council already operates an urgent out-of-hours service for urgent faith registrations – the Registration Services Manager and her Deputy were called out over the Christmas and New Year period to deal with urgent death registrations – and this will not change.

Equalities Impact Assessment and the Equalities Act 2010

The submission of this consultation response will have no implications in terms of the Council's public sector equality duty.

Children and Families (Wales) Measure

There are no implications.

Wellbeing of Future Generations (Wales) Act 2015

The Government's independent medical examiner service is in accordance with the sustainable development principle, as it will lead to greater integration and collaboration between various agencies involved in the death certification process and require greater involvement with family members regarding any concerns over the cause of death. The process should also assist in identifying any issues in terms of health care and help to inform health and social care objectives within PSB Well-Being Plans

Crime and Disorder Act 1998

There are no Crime and Disorder implications.

Background Papers

Welsh Government's Consultation on the introduction of Medical Examiners in Wales.

Dated: 12 January 2017

Consultation response form

Please use this form to respond to the consultation questions. Please return form to

HQDMailbox@wales.gsi.gov.uk

or by post to:

Natalie Harris
Healthcare Quality Division
Health and Social Services Group
Welsh Government
Hill House
Picton Terrace
Carmarthen
SA31 3BS

Your name:

Newport City Council

Your address:

Civic Centre, Newport, South Wales NP20 4UR

Responding as (please tick one):

- Individual
- Local Government body
- University/academic body
- Political party/union
- Health professional representative body/advisory group/association
- NHS body
- Government department/agency
- Citizen voice/third sector organisation
- Social enterprise/business
- Legal or other professional

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

Consultation response form

Question 1: Are there any issues in relation to the use of the Welsh Language which you feel should be considered as we take forward the implementation of the scheme with the NHS in Wales?

Your response to Question 1:

As with all services in Wales, the scheme must ensure that every member of the public is offered the opportunity to conduct their business through the medium of the Welsh language and enough Welsh speaking Medical Examiners (MEs) or Medical Examiner Officers (MEOs) are available at any given time to facilitate this. All paperwork should be bi-lingual.

Question 2: Can you think of any other measures which could be taken to safeguard the independence of medical examiners, other than those described above?

Your response to Question 2:

Question 3: Do you foresee any particular issues with setting up a joint committee of the health boards to manage the medical examiner service in Wales?

Your response to Question 3:

The committee must ensure that the location and availability of MEs & MEOs make them accessible to the public and to registration officers – both geographically and in a timely manner.

Question 4: Do you have any comments on workforce issues, or any areas of concern you would wish to bring to our attention?

Your response to Question 4:

No comment regarding skills required for MEs & MEOs but concerns about administrative support to these medical personnel to enable them to function effectively with clear communication to the bereaved and registration officers. Where will administrative support be located, who will prioritise workload and how will workload be allocated?

Question 5: Can you think of any other terms of appointment which should be included in the regulations?

Your response to Question 5:

In terms of training, MEs & MEOs should involve the General Register Office to ensure that paperwork received by registration officers is consistent to national standards throughout England & Wales, follows regulations and can be processed without further queries (to avoid delays to the bereaved) eg. modes of dying are unacceptable as the sole cause of death – currently these deaths have to be referred to the Coroner before a Registrar can register.

Question 6: Do you have any comments about the remuneration of medical examiners?

Your response to Question 6:

Question 7: Are there any other functions or areas we should consider adding in to the draft appointment regulations?

Your response to Question 7:

Question 8: Do you have any comments in relation to the charging and collection of a fee which you feel we should take into account?

Your response to Question 8:

The local authority is not charging, receiving or benefitting from the fee so it is not appropriate for it to be involved in its collection. Extra administration would have to put in place – accounting, audit & transfer of funds to the LHB - and this would create additional burdens on the local authority. Certification is a separate part of the process to Registration and is carried out by a different organisation - registration officers should remain – and be seen to remain – independent from the certification process.

Importantly, any link between the registration informant and the paying of the fee could result in a significant impact on who is willing to attend to register and this would compromise the quality of the registration.

“At the point of registration” is an inappropriate stage in the bereavement journey process for the informant to be asked to pay such a fee and registration officers need to garner registration information in the best environment possible.

The local authority advocates that the current cremation system of payments being made by the funeral director and charged to their customer via disbursements should be used This charge is payable at a later stage in the process, more readily accepted as an overall part of the funeral cost and the charge can then be met by the deceased’s family or estate – not necessarily by those attending to register (who may not have the means to pay at that time).

Please use the box below for any other comments you wish to make:

Liaison between all stakeholders is paramount for the smooth introduction of these reforms. Our particular comment is for professional working relationships to be established and developed between MEs & MEOs and registration officers – as are currently in place with Coroners and Coroners’ Officers. All have roles to play, albeit different roles and responsibilities, in the best possible service for the bereaved.

Thank you for taking the time to respond to the consultation.