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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 29 October 2024**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



**Stuart McMillan**  
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**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Daniel Johnson**  
Scottish Labour



**Roz McCall**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 29 October 2024<sup>i</sup>, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
  - Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Amendment Regulations 2024 (SSI 2024/281).
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

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<sup>i</sup> Rona MacKay MSP substituted for Bill Kidd MSP at this meeting.

# Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

## Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Amendment Regulations 2024 (SSI 2024/281)

4. This instrument changes which certificates are required before a funeral (burial or cremation) can lawfully take place in Scotland of a person who died in England, Wales or Northern Ireland. It does so by amending the [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(Prohibition on Disposal of a Body without Authorisation\) Regulations 2015](#), in particular by amending [regulation 4](#) of those Regulations in relation to England & Wales and [regulation 5](#) in relation to Northern Ireland.
5. It is an offence to allow a burial or cremation to take place without the necessary certificate. The principal change made by this instrument is to allow a certificate by the coroner releasing the body for burial/cremation to be accepted as sufficient authority in Scotland where a final death certificate is not yet available. Before this instrument, where the death was subject to a coroner's investigation, the funeral could not take place in Scotland even though the coroner had authorised a funeral because a full certificate of registration of death was required, and this is only issued at the end of the coroner's investigation in England, Wales or Northern Ireland.
6. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument breaches this requirement as it was laid on 15 October 2024 and came into force on 16 October 2024.
7. 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.
8. As such, the Scottish Government considers that it is necessary and reasonable to breach the 28 day rule to ensure that the amendments are made immediately to avoid prolonging the distress of grieving families.
9. A copy of the correspondence from the Scottish Government to the Presiding Officer can be found in the Annex.
10. The lead committee for this instrument is the Health, Social Care and Sport Committee.

**11. The 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.**

**12. The Committee is content with the reasons provided by the Scottish Government for its failure to comply with the laying requirements.**



# No points raised

## Equalities, Human Rights and Civil Justice Committee

Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms) (Scotland) Amendment Regulations 2024 (SSI 2024/275)

## Finance and Public Administration Committee

Budget (Scotland) Act 2024 Amendment Regulations 2024 (SSI 2024/Draft)

## Local Government, Housing and Planning Committee

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2024 (SSI 2024/273)

## Net Zero, Energy and Transport Committee

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024 (SI 2024/Draft)

- In relation to the above instrument, the Committee noted that the original draft of this instrument was withdrawn on 9 October 2024, and the present version re-laid on 22 October 2024 to correct an error, following a [question raised by the Committee with the Scottish Government](#).

Road Traffic (Permitted Parking Area and Special Parking Area) (West Dunbartonshire Council) Designation Order 2024 (SSI 2024/270)

Parking Attendants (Wearing of Uniforms) (West Dunbartonshire Council) Regulations 2024 (SSI 2024/271)

## Social Justice and Social Security Committee

Scotland Act 1998 (Agency Arrangements) (Specification) Order 2024 (SI 2024/989)

# Annex

## **Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Amendment Regulations 2024 (SSI 2024/281)**

On 15 October 2024, the Scottish Government wrote to the Presiding Officer:

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 average <sup>ii</sup>

).

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.

