



Welsh Government
Consultation Document

Introduction of Medical Examiners in Wales

Proposed operational arrangements and draft regulations for Wales
related to reforms to death certification in England and Wales

Date of issue: **7 November 2016**

Action required: **Responses by 13 January 2017**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

Changes are being planned to introduce a unified system of scrutiny by independent medical examiners of all deaths in England and Wales not investigated by a coroner. These arrangements follow the recommendations of the Shipman Inquiry and will provide assurance to families about the circumstances of a person's death, allow early detection of problems, and improve the accuracy of recorded causes of death. This consultation sets out the proposed arrangements for Wales. It also asks for views on two sets of Wales-only regulations relating to the appointment of medical examiners and the fees to be charged for the issue of the death certificate.

How to respond

Please respond by completing the questionnaire at the back of this document and returning it 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
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Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information please contact :

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Data protection

How the views and information you give us will be

used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Chapter 1: Introduction and background

1. We are preparing to implement changes to the England and Wales death certification and registration systems and introduce the role of medical examiner. This consultation sets out the key operational issues for Wales and asks for views on some specific issues as well as on two sets of draft regulations relating to the appointment of medical examiners and of the fee to be charged for the service. In implementing the medical examiner system in Wales, we will aim to be guided by a number of overarching principles, namely:
 - To ensure a **transparent** system which fits with **existing clinical governance arrangements** for NHS Wales
 - To support **service development and quality improvement**
 - To take a “**Once for Wales**” approach, avoiding duplication and ensuring value for money and
 - To align the new arrangements with **existing systems**, minimising the need for new initiatives particularly in the field of data and information.

General background

2. The death certification system in the UK has remained unchanged for over 60 years, in spite of much criticism and periodic reviews of the system. The UK Government intends to introduce new death certification and registration arrangements in England and Wales. These flow from the recommendations of the Third Report of the Shipman Inquiry¹ published in 2003. More recently, the **Francis Inquiry** into Mid Staffordshire Foundation NHS Trust made recommendations about independent scrutiny of deaths and the need to involve families. The Department of Health (DH) recently consulted on the proposed system, and how it is likely to work in practice, including the role of the medical examiner, the new forms and procedures and the overall effect on the process of death certification². The DH consultation proposed an implementation date of 1 April 2018.
3. 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.

¹ Third Report – Death Certification and the Investigation of Deaths by Coroners (TSO, 2003)

² <https://www.gov.uk/government/consultations/death-certification-reforms>

4. It is important to state that death certification is not a subject which 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 can make regulations in two distinct areas, namely:
 - 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.
5. Given the limited scope of the Welsh Ministers' powers in this area, this document does not repeat in detail the information set out in the DH's document relating to the system or the role of medical examiners, or the impacts on doctors, coroners, bereavement services, registrars, funeral directors and crematoria. This is because the death certification process and the medical examiner role will essentially be the same in England and Wales. For more information on these areas please see the DH consultation document at the above link. Individuals and organisations in Wales were encouraged to respond to the DH consultation and the Welsh Government has seen their responses. As far as possible, and in the context of the Welsh Ministers' remit, the Welsh Government has taken into account those views.

Legislative background

6. 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 this Act requires **local health boards** in Wales to appoint medical examiners.
7. 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 a fee 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.

Interface with the current Mortality Review system in Wales

8. The implementation of the medical examiner system in Wales will further support our aims to improve the quality and safety of health services and work has already been done to help pave the way for the new arrangements. All health boards now have systems in place for reviewing all deaths in acute hospitals and routinely use this information to report to their Boards. Whilst further work is needed to roll out this system in primary and community care, we are confident that a culture has been developed whereby clinical staff are used to looking critically at the causes of death and learning lessons from the reviews. This will sit well with the introduction of medical examiners who will be undertaking a similar process of scrutiny.
9. The information on mortality resulting from medical examiners' scrutiny of cause of death in Wales will provide a valuable indication of possible problems in health care, both local and national, examples being the spread of diseases, the incidence of death following

certain treatments and procedures or following sub-optimal care, or the identification of geographical factors in the incidence of specific causes of death. The information could be fed into improvement and safety processes within NHS Wales and contribute to the WG's wider health, social policy and regeneration strategies.

Welsh Language and other impact assessments

10. As we come to plan for implementation of the scheme in Wales, we will be carrying out a range of impact assessments on those aspects of the medical examiner system which fall within the responsibility of Welsh Ministers. These will be published with the final regulations. We expect the DH to publish a range of impact assessments for the non-devolved elements of the policy. We will also be discussing with DH the provision of bilingual documentation to support the scheme, wherever appropriate.
11. We would be interested to receive views, as part of this consultation, on the effects of the introduction of this scheme on the opportunities for people to use the Welsh Language.

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?

Chapter 2: Operation of the new arrangements in Wales

Overview

12. The main role of the medical examiner is to scrutinise the cause of death in every case not investigated by a coroner. This scrutiny 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. Medical examiner officers will 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.
13. Once a medical examiner has completed his or her scrutiny, they will confirm the cause of death and the certifying doctor will be able to issue the Medical Certificate of Cause of Death (MCCD). A fee is likely to be payable for the medical examiner's scrutiny and this is covered in more detail in paragraphs 40-47 below.

General description of the new death certification process

14. Under the new system for England and Wales, when someone dies, the medical practitioner who attended the person in the days leading up to their death, will be required to prepare a medical certificate of cause of death (MCCD). If the practitioner is unable to establish the cause of death, or if there are any other reasons for doing so, he or she may decide to refer the death to a coroner.
15. 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 practitioner 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 need to decide whether or not to agree with the cause of death as certified by the attending practitioner.
16. After carrying out this scrutiny, the medical examiner, or - more likely - the medical examiner officer, will contact the bereaved family to discuss the cause of death and give them the opportunity to raise any concerns they may have.
17. At the end of the process, the medical examiner will sign a Notification of Confirmed Cause of Death and transmit the form to the registration service and the MCCD will be finalised and issued to the person who will be registering the death.

Ensuring the independence of Medical Examiners and their staff

18. LHBs are the appointing authority for medical examiners and this is set out in the primary legislation. Section 19(2)(a) of the Coroners and Justice Act 2009 sets out that "each Board must appoint enough medical examiners, and make available enough funds and other resources, to enable those functions to be discharged in its area". It is therefore clear that the responsibility for these appointments rests with the LHBs.

19. Some concern has been expressed to the Welsh Government that because the medical examiners will be appointed and resourced by an LHB, and might also be engaged in a substantive clinical post by that LHB, they might be insufficiently independent to carry out the role effectively. The concern is that this could erode public confidence in the system as people might not view it as truly independent.
20. Suggestions have been made that LHBs should seek to appoint the medical examiners through a different body, for example, Public Health Wales, via a contractual arrangement or through Ministerial Directions. However, the Welsh Government does not believe this would work well in practice and is not convinced that it either fits within the legal framework or that it would add any further layer of independence to the system. This is because medical examiners must be senior medical practitioners and will inevitably be performing the role of medical examiner alongside their senior medical roles. They will still be employed by LHBs as medical practitioners and therefore this would not remove concerns about independence.
21. The protections afforded to the role are first and foremost set out in the legislation itself. In the first instance, the issue of independence is dealt with directly in section 19(5) of the Coroners and Justice Act 2009. This makes clear that a LHB cannot interfere in any way with a medical examiner's exercise of his or her professional judgment. In addition, the draft appointment regulations also set out a number of areas where a conflict of interest might arise and in what circumstances a medical examiner should withdraw from a case.
22. It is also the case that independence will be supported and ensured through peer review, through the National Medical Examiner and lead medical examiners and the via professional standards to which all healthcare professionals must adhere.
23. Therefore in terms of independence, the Welsh Government believes the legislation and draft regulations adequately provide for it. Medical examiners, as health professionals, will also be operating under their professional code of conduct. Experience from the Sheffield pilot site, where the medical examiner is also an employee of the NHS Trust concerned, has shown there to be no conflict of interest and that it is possible to have a complete separation of roles. However we would be interested to hear views on this aspect of the arrangements.

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?

Operational arrangements for the Medical Examiner service

Management of the service

24. For reasons of operational sustainability, even though LHBs are the appointing authority for medical examiners, it would be undesirable for every LHB to make its own individual arrangements. Taking a 'Once for Wales' approach would make it easier to manage the service across LHB boundaries and in line with coroner services. It would also provide the necessary resilience in terms of staff rosters and training, provide opportunities to identify themes and trends, and allow for appropriate data sharing. We have considered various options for the managerial arrangements which could be achieved within the current legal framework and conclude that there are two, which are set out below.

- **Option 1: Each LHB to appoint its own medical examiner(s).** Operationally this may be the least cost-effective model and might not provide sufficient flexibility and could leave the medical examiners isolated. It is therefore not recommended.
- **Option 2: Medical examiners to be appointed by a committee of the LHBs.** This is an option whereby a joint committee could be set up to appoint and manage the service on an all-Wales basis. The advantages of such an approach include a single line management and support structure, appointments made on an all-Wales basis dependent on service need, resulting in greater economy and effectiveness and flexibility in staff deployment. There is already experience of such joint committees, for example, the Welsh Health Specialised Services Committee and the Emergency Ambulances Services Committee. This option is therefore recommended. If this option is to be pursued then a number of practical considerations will need to be taken forward as part of the implementation, for example, the physical location of medical examiners and their officers across Wales and how this best fits with coroner areas.

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?

Workforce - skills needed for the medical examiner and medical examiner officer role

25. Because of the nature of the role, medical examiners must be registered medical practitioners and should have been so for the previous five years and continue to practise as such, at the time of appointment, or have worked in clinical practise within the previous 5 years. This is to ensure that those appointed as medical examiners will be senior doctors having worked in a hospital or hospice, or a GP practice. This is based on advice from the pilot schemes which found that there could be a significant risk to the effective delivery of the service unless all medical examiners have such qualities. Those appointed as medical examiners must have sufficient knowledge and seniority to command the respect of their medical colleagues and senior coroners.
26. The medical examiners are unlikely to be drawn from any particular medical speciality but would be expected to have a good working knowledge of a broad range of medical and surgical healthcare matters. It is also assumed that the majority of doctors who apply for the role of medical examiner would opt to continue in some form of clinical practice in the NHS to maintain their professional knowledge and experience, and work part-time as medical examiners. We expect that many medical examiners would provide two or three sessions or programmed activities a week alongside their existing work in senior hospital or GP roles.
27. Medical examiner officers are likely to have a certain level of clinical experience, although they do not need to be doctors. Nurses, staff working in bereavement services, or other healthcare professionals may possess suitable skills for the role of medical examiner officer.
28. As part of the implementation of the new arrangements, we will work with the NHS in Wales to draw up job descriptions, to advertise and to recruit people to these roles. In doing so, we will have regard to the impact on the current workforce of introducing a sustainable medical examiner service.

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

Terms of appointment

29. The draft appointment regulations set out the specific terms which must be included in every medical examiner's appointment. These are:

- that the term of appointment would be terminated immediately in the event that the medical examiner ceases to be a registered medical practitioner;
- that the term of the appointment may be terminated where the medical examiner is not meeting the standards and expected levels of performance set out in the National Medical Examiner's guidance and that the medical examiner is "not a fit and proper person to be a medical examiner";
- that medical examiners may be asked to exercise any relevant function in relation to a death which occurred either:
 - outside the area of the appointing authority; or
 - where no information as to the place of death is available, in respect of which the body of the deceased person was found outside the appointing authority's area;
- that appointing authorities might wish to agree other terms with their medical examiners, such as to enable them to provide temporary cover for medical examiners in other areas where there is a shortage due to leave commitments, illness or pressure of work;
- a requirement for medical examiners to have undertaken the appropriate training for the role as specified by the National Medical Examiner.

30. We believe these terms of appointment strike the right balance of prescription and flexibility for the role. However we would be interested to hear views on this matter.

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

Remuneration, expenses and fees

31. The level of remuneration for medical examiners and their support staff will not be prescribed in regulations. Instead the draft appointment regulations provide for local discretion and agreement between the appointing body and the medical examiner.

32. The LHB or an employing body may pay each medical examiner it appoints such remuneration, expenses, compensation for termination of appointment, pensions, allowances or gratuities as it determines. We will work with the NHS in Wales to agree

the right level of remuneration in order to recruit the required calibre of medical examiners, who fulfil the regulatory requirements and meet the person specification.

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

Additional functions and functions related to death and cremation

33. The core functions of medical examiners referred to in paragraphs 9 to 12 above are set out in the draft Death Certification Regulations which will apply to England and Wales³.

34. The draft appointment regulations set out a number of additional functions for the medical examiner which include:

- providing advice to medical practitioners in the completion of the MCCD;
- providing advice to a coroner;
- being involved in drawing up local protocols between medical examiners and persons whose functions are connected with the functions of medical examiners;
- maintaining good records;
- providing advice to a local health board in relation to the mortality reviews they undertake;
- reporting any serious concern, for example to the most appropriate “governance body” – i.e. the clinical team caring for the deceased, the Medical Director/Nursing Director of the LHB or Trust, Healthcare Inspectorate Wales, the medical examiner’s employing organisation and the National Medical Examiner. Any such report would trigger a second stage more detailed mortality review to establish whether sub-optimal care contributed to the death and to identify how such deficiencies could be addressed and remedied;
- obtaining information about the outcome of any reporting as referred to above;
- preparing information and reports relating to the medical examiner’s functions for certain persons or organisations;
- identifying training needs of medical practitioners in the area and
- keeping their own performance under review including participating in peer reviews and audits.

35. There are also a number of specific functions of medical examiners relating to death and cremation. Before cremation can be carried out, a particularly rigorous process must be

satisfied in relation to the confirmation of cause of death. This is because cremation destroys the body entirely, together with any forensic evidence; therefore any suspicious circumstances must be fully investigated before cremation is allowed to proceed. There is also the need to ascertain the presence of any potentially hazardous implant, or medical device, and the presence of any communicable disease as this could be hazardous in the cremation process.

36. Amendments will be made to the cremation regulatory framework to take account of the new medical examiner system. These changes will be made by the Secretary of State for Justice and will apply in England and Wales.

37. The draft appointment regulations set out the specific functions of medical examiners in relation to the Cremation (England and Wales) Regulations 2008. These include:

- undertaking an examination of the body of a deceased person, or instructing another individual to do so;
- receiving, taking into account and disseminating health and safety information;
- completing forms or other documentation relating to health and safety information;
- the medical examiner may only appoint another individual to undertake an external examination of the body of the deceased person if that individual has suitable expertise;
- certain conditions and relationships including direct or indirect financial interests with the deceased which would exclude that individual from making an external examination of the body because of the medical examiner having reasonable doubts as to the person's objectivity.

38. We believe these functions cover the majority of situations relating to the medical examiner role. However we would be interested to hear views on whether anything else should be included.

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

Data capture

39. The majority of information requirements relating to death certification will be taken forward on an England and Wales basis and as part of the implementation, we and the NHS in Wales will be working with DH on these issues. Our aim will be to ensure that for Wales, the right information is available to the right professional at the right time. We will also be seeking to reduce the burden of information and to introduce, whenever possible, systems which are in line with the aim of a 'digitally enabled' service.

Funding of the service

40. As death certification is a largely non-devolved issue, the UK Government has agreed to fund one off set-up costs for the service in Wales. However, the ongoing cost of funding the service is a matter for the Welsh Government. Presently, around three quarters of

deaths involve cremation and fees are payable to doctors or a medical referee to complete cremation forms 4, 5 and 10. Under the new system the cremation fees will be abolished and replaced by a different fee for all deaths which will cover the services of the medical examiner.

Fee-based approach

41. The DH consultation proposed that the running costs of the medical examiner system will be met through a public fee. Start-up costs incurred by local health boards for setting up the medical examiner service will be funded centrally. Whilst the Welsh Government could choose to fund the reforms in a different way, we feel there is a need to retain as much parity as possible with the system across the border. The preferred approach is therefore a single fee paid by families (in most cases) for scrutiny of all deaths (irrespective of whether death is followed by burial or cremation, but excluding cases referred to coroners). The draft fees regulations therefore make provision for a fee to be payable.

What fees will cover and who will pay them

42. The fee will be payable for a medical examiner's confirmation of the cause of death stated on an attending practitioner's certificate, or the issue of a medical examiner's certificate. The fees will be legally payable by the person responsible for registering the death – in the vast majority of cases this will be a member of the deceased's family. In a small number of cases where there are no family members, this could be a hospital or council official.

How much is the fee likely to be?

43. No decisions have been made as yet about the exact amount. Currently, there are cremation form fees charged to families (£184) and this will be abolished under the new arrangements. The new fee for the medical examiner service will certainly be less than the current cremation fee and so because the majority of people choose cremation, most people will pay less than they do now.
44. It does mean that people who choose burial will have to pay a fee where there is currently none, but they will have the peace of mind that the medical examiner has checked the cause of their relative's death.
45. Deaths referred to the coroner will not attract a fee. This is because the activities of the coroner, which can involve extensive investigation, additional time and often lead to an inquest, are funded by central government. It would not be reasonable to expect the public to pay a fee for the coroner service and the law does not permit the coroner to charge a fee.
46. Some families will not be in a position to pay the medical examiner fee. For those who qualify for help from the Social Fund, the Funeral Expenses Payments scheme may be able to make a contribution towards the cost. Funeral Expenses Payments are made via the funeral director if one is used. Help may also be available in the form of a loan from the Social Fund Budgeting Loan scheme for qualifying applicants.

How the fee will be collected

47. There will be a number of options for collection of the fee and a number of points in the process of death certification, registration or arranging a funeral, where it would be possible to collect the fee. We are currently open-minded about the approach to be taken, but a sensible way forward would seem to be to preserve existing arrangements as far as possible, for families. We would therefore like to explore whether it might be feasible to collect the fee at the same time as payment of other funeral costs. As part of the implementation, we will explore the various options further but in the meantime, we would be interested to receive views on the matter.

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?

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
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SA31 3BS

Your name:

Your address:

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:

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:

Consultation response form

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:

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

Your response to Question 5:

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

Your response to Question 6:

Consultation response form

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:

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

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