

CRYONICS UK

(A working name of Human Organ Preservation Research Trust, charity number 1001750)

RESEARCH REPORT

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1 Disclaimer

- 1.1 The contents of this document are the mere opinions of the author(s) and do not constitute legal advice, nor do they give rise to a solicitor/client relationship. Independent legal advice should be taken by anyone intending to rely on any of the contents of this document.
- 1.2 Cryonics UK's legal research efforts are aimed at gaining an understanding of the law as it relates to the charity's objects. Cryonics UK does not have a policy of campaigning to change any aspect of the law and any implications to the contrary in this document are unintended.

2 Background

- 2.1 In response to the 2019-2020 coronavirus (COVID-19) pandemic, the government passed the Coronavirus Act 2020 (the '**Coronavirus Act**').
- 2.2 Section 18 of the Act came into force on 26 March 2020 and provides that Part 1 of Schedule 13 of the Act "*contains temporary modifications of legislation relating to the registration of deaths and still-births in England and Wales, and related provision*".¹
- 2.3 The provisions of Part 1 of Schedule 13 which are applicable to cryonics are those that concern registration of deaths, cause of death certificates, and reporting / notification of deaths to the coroner.²
- 2.4 This report will only examine the position in England and Wales, but similar provisions for Scotland and Northern Ireland can be found at Parts 2 and 3 respectively of Schedule 13.³
- 2.5 A summary of the practical effect of the changes can be found at the end of this report for those not interested in the legal basis.

3 Funeral directors permitted to register death

- 3.1 The Births and Deaths Registration Act 1953 (the '**1953 Act**') requires the fact and cause of death of any person dying in England or Wales to be registered by the registrar of births and deaths for the sub-district in which the death occurred.⁴
- 3.2 The 1953 Act sets out those individuals who are 'qualified informants' for the purposes of registering the death.
- 3.3 For deaths occurring in a house, the list includes any relative of the deceased person present at the death or in attendance during his last illness, any other relative of the deceased residing or being in the sub-district where the death occurred, any person present at the

1 Coronavirus Act 2020 s 18(1)

2 Coronavirus Act 2020 sch 13 pt 1

3 Coronavirus Act 2020 sch 13 pts 2 and 3

4 Birth and Deaths Registration Act 1953 s 15

death, the occupier of the house if he knew of the happening of the death, any inmate of the house who knew of the happening of the death, and the person causing the disposal of the body.⁵

- 3.4 For other deaths, the list includes: any relative of the deceased who has knowledge of any of the particulars required to be registered concerning the death, any person present at the death, any person finding or taking charge of the body, and any person causing the disposal of the body.⁶
- 3.5 The Coronavirus Act adds the funeral director responsible for the arrangement of the deceased's funeral to the list of those who are permitted to register the death, provided that they are authorised to do so by a relative of the deceased.⁷

4 Method of registering death

- 4.1 The 1953 Act requires that the person registering the death "*in the presence of the registrar [sign] the register*".⁸ The Registration of Births and Deaths Regulations 1987 (the '**1987 Regulations**') require that the "*registrar receives **personally** from any qualified informant information of the particulars required to be registered*" (emphasis added) and that the registration take place "*in the presence of the informant*".⁹ The effect of these provisions is to require the registrant to visit the register office in person.
- 4.2 The Coronavirus Act allows for deaths to be registered remotely instead:
- 4.2.1 the words 'personally' and 'in the presence of the informant' are deleted from the 1987 Regulations;¹⁰
- 4.2.2 provided that the registrant is "*unable to attend before the registrar in person*" then they may register the death by telephone or "*by any other methods specified in guidance issued by the Registrar General*".¹¹
- 4.2.3 being 'unable to attend' includes that "*it would be impractical for the person to [attend in person] (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)*";¹² and
- 4.2.4 If any documents are required to be submitted to the registrar, these may now be "*delivered by any electronic or other means specified in guidance issued by the Registrar General*".¹³

5 Cause of death certificates

- 5.1 The 1953 act requires that "*In the case of the death of any person who has been attended during his last illness by a registered medical practitioner, that practitioner shall sign a certificate in the prescribed form stating to the best of his knowledge and belief the cause of death*".¹⁴
- 5.2 The Coronavirus Act permits a doctor who did not attend the deceased during his last illness to sign the cause of death certificate provided that "*the practitioner who attended [the deceased] is unable to sign the certificate or it is impractical for that practitioner to sign the certificate*" and provided that "*[the other practitioner] is able to state to the best of [their] knowledge and belief the cause of death*".¹⁵

5 Birth and Deaths Registration Act 1953 ss 16(1) and 16(2)
6 Birth and Deaths Registration Act 1953 ss 17(1) and 17(2)
7 Coronavirus Act 2020 sch 13 pt 1 para 2(1)
8 Birth and Deaths Registration Act 1953 ss 16(3) and 17(3)
9 Registration of Births and Deaths Regulations 1987 r 42(1)
10 Coronavirus Act 2020 sch 13 pt 1 para 6(4)
11 Coronavirus Act 2020 sch 13 pt 1 para 3(1)
12 Coronavirus Act 2020 sch 13 pt 1 para 3(4)
13 Coronavirus Act 2020 sch 13 pt 1 para 5
14 Birth and Deaths Registration Act 1953 s 22(1)
15 Coronavirus Act 2020 sch 13 pt 1 para 4(2)

5.3 The above provision is extended “*even in the case of a person who has not been attended during that person’s last illness by a registered medical practitioner*”.¹⁶

6 Reporting of death to coroner by registrar

6.1 The 1987 Regulations require the registrar to report a death to the coroner “*if the death is one in respect of which the deceased was not attended during his last illness by a registered medical practitioner*”.¹⁷

6.2 The Coronavirus Act removes this requirement where the cause of death certificate has been signed in line with the above provisions by a doctor who did not attend the last illness.¹⁸

6.3 The 1987 Regulations also require the registrar to report a death in cases where “*the deceased was not seen by the certifying medical practitioner either after death or within 14 days before death*”.¹⁹

6.4 The Coronavirus Act relaxes this requirement in two ways:

6.4.1 the requirement to report is waived if any doctor saw the deceased; it no longer has to be the certifying doctor; and

6.4.2 the 14 day period is extended to 28 days.²⁰

7 Notification of death to coroner by doctor

7.1 The Notification of Deaths Regulations 2019 provides that a doctor who becomes aware of a death must notify the coroner if, among other circumstances, he “*reasonably believes that there is no attending medical practitioner required to sign a certificate of cause of death in relation to the deceased person*” or if he “*reasonably believes*” that there is such an attending medical practitioner but they are “*not available within a reasonable time of the person’s death to sign the certificate of cause of death*”.²¹

7.2 The Coronavirus Act relaxes this requirement. In the circumstances described above, the doctor who becomes aware of the death is not required to notify the coroner provided that there is a doctor available within a reasonable time of the deceased’s death who may sign the cause of death certificate under the alternative circumstances permitted by the Coronavirus Act.²²

8 Summary

8.1 The Coronavirus Act brings in a number of measures which may make things easier for the cryopreservation team, the patient’s relatives, and the funeral director.

8.2 Those measures are as follows:

8.2.1 funeral directors can register the death instead of the relative;

8.2.2 the death can be registered remotely instead of in person;

8.2.3 the cause of death certificate can be signed by a doctor other than the one who attended the patient during his last illness (the ‘attending doctor’);

8.2.4 the cause of death certificate can be signed by an alternative doctor even where there was no attending doctor;

8.2.5 the rule requiring the registrar to report the death to the coroner in cases where there was no attending doctor is waived provided that an alternative doctor signs the cause of death certificate;

16 Coronavirus Act 2020 sch 13 pt 1 para 4(3)

17 Registration of Births and Deaths Regulations 1987 r 41(1)(a)

18 Coronavirus Act 2020 sch 13 pt 1 para 4(6)

19 Registration of Births and Deaths Regulations 1987 r 41(1)(b)(ii)

20 Coronavirus Act 2020 s 6(3)

21 Notification of Deaths Regulations 2019 rr 2(1), 3(1)(e), and 3(1)(f)

22 Coronavirus Act 2020 s 7(1)

- 8.2.6 the rule requiring the registrar to report the death to the coroner in cases where the certifying doctor did not see the patient either after death or within 14 days before death is relaxed such that:
 - 8.2.6.1 any doctor, not just the certifying doctor, can have seen the patient; and
 - 8.2.6.2 the 14 day period is extended to 28 days; and
- 8.2.7 the rule requiring a a doctor who becomes aware of the death to notify the coroner in cases where there was no attending doctor or where the attending doctor was unavailable to sign the cause of death certificate is waived provided that an alternative doctor signs it.