

“A New Way of Death: Emergency Laws and Funerals in the Shadow of Coronavirus”

Coping with a very different way of life is not the only challenge that we are facing now. The global pandemic that is Coronavirus has aggressively dismantled our way of death in a manner that we would not have thought possible a few short months ago. As the death rate climbs across the UK and elsewhere, what happens to the bodies of those who have died from COVID-19 (and from other causes) has become a pressing issue.

The law’s treatment of human remains has always been based on two things: respect for the dead, and public health concerns around bodily decay and the consequent risk of disease. In pandemics such as this one the emphasis inevitably shifts to public health, with measures put in place to curb the spread of COVID-19 while ensuring that our mortuaries, cemeteries and crematoria do not become overwhelmed. The Coronavirus Act 2020 introduced a range of sweeping powers, designed to allow public bodies throughout the UK to respond to the pandemic as pressures on the system increased. The Act, and ancillary pieces of legislation passed in recent weeks, impact on key aspects of the deceased management process- most notably certifications, dealing with the dead, and how funerals are conducted.

I. Registration of Deaths and Still-Births; Cremation Certificates

Deaths are usually registered by a member of the deceased’s family, attending the registrar’s office in person. The new laws also allow funeral directors to register deaths, and for documentation to be submitted electronically.

While the actual cremation forms remain unchanged, some important revisions have been made for the duration of the emergency period covered by the legislation. These are intended to allow cremations to take place in a timely manner. One key change is the removal of the requirement for second confirmatory medical certificate, i.e. form Cremation 5. This leaves form Cremation 4 as the only medical certificate detailing the cause of death- though the rules around this have also been temporarily relaxed. Ideally, the medical practitioner signing this form will have seen the deceased sometime during the 28 day period prior to death, and this now includes video or other visual consultations (though not phone consultations). The emergency legislation also allows form Cremation 4 to be completed by a medical practitioner who has seen the deceased after death; or by a doctor who knows that another medical practitioner has seen the deceased in the 28 days before he/she died. These are significant changes to the standard legal requirements, though the medical practitioner completing the form must still provide a detailed and clear assessment of the cause of death (and all the necessary supporting information must be included). To expedite the overall process, scanned copies of forms, with electronic signatures, are now accepted.

Finally, although COVID-19 is a notifiable disease, there is no legal requirement to report confirmed or suspected virus deaths to the coroner. Given the sheer volume of deaths, and the certainty around what caused them, coronial inquests will not be necessary or even feasible (though it goes without saying that any suspicious or unexplained deaths must still be notified to the coroner).

II. Dealing with the Dead

The 2020 Act contains detailed measures around the transport, storage and disposal of bodies, stressing that the dead should be treated with 'care and respect' while giving broad powers to local authorities to ensure that the system does not become overwhelmed. Examples of this have already been seen elsewhere: in Bergamo, Italy, bodies had to be dispatched to other crematoria in the province when the city's own crematorium was struggling to cope.

Some local authorities have already taken appropriate preparatory steps, by setting up temporary mortuaries to cope with any increase in demand for mortuary space, and setting aside additional grave plots (in some instances, digging these in advance). The emergency legislation also contemplates restrictions on the transport of bodies and quarantining the dead if there's a danger of contamination, though these measures have (thankfully) not been implemented to date.

III. Funerals

Funerals tend to be based more on social, religious and cultural customs than formal rules of law. There have always been strict legal rules around the logistical and the sanitary aspects of burial and cremation (e.g. location of burial grounds, depth of graves, siting of crematoria etc.), but not the 'ritualistic' elements of funerals. Again, this is something that has changed significantly in recent weeks, and bereaved

families are now experiencing very different funerals than they might have otherwise envisaged.

Funerals do more than remove the threat of disease posed by decaying corpses. They are important social rituals that mark the life of the deceased; they allow family and friends to come together to remember and to mourn their loss, while drawing social support from members of the community who gather to pay their respects to the person who has passed away. However, the emergency legislation has had a significant impact on the way in which funerals are conducted- both for COVID-19 and non-virus deaths.

As part of the lockdown measures introduced on Monday 23rd March, funerals could still go ahead to prevent the system from 'backing up' but with attendance limited to 'immediate' family. The intent was to make social distancing easier, protecting not only the small numbers of attendees, but also funeral directors and others key members of the deathcare industry (e.g. crematoria and cemetery staff, funeral celebrants) who play such a vital role in these challenging times. It seems that the government made a conscious decision not to set a 'numbers cap', though some local authorities imposed their own by limiting attendance to e.g. 5, 10 or 20 people in the funeral chapel- and those crematoria (e.g. York, Leeds, Belfast) that adopted a much more restrictive stance by banning all mourners attracted a lot of public criticism. The decision not to define 'family' was also a sensible one: individual families take all sorts of different forms today, and attempting a 'one-size-fits-all' definition would not have been feasible. Guidance from the Deceased Management Advisory Group (published on 27th March) suggested the following: the deceased's

spouse or partner, parents or carers, siblings, and children (and their partners). Hopefully this is not intended as a pecking order of any sort, since we would probably expect the deceased's children to be prioritised over the deceased's siblings.

Regulations published further into the lockdown¹ list funerals as an exception to the restrictions on movement that prevent us from leaving our homes “without reasonable excuse.” Funerals are a permitted exception to the prohibition on gatherings of more than two people, and the regulations also stipulate who is legally permitted to attend funerals. Beyond the funeral director, chapel attendant and funeral staff, attendance is restricted to members of the deceased's household, close family (again, there is no definition of ‘family’), close friends (but only if no-one from the first two groups can attend) and a celebrant of choice. Social distancing requirements must be maintained while travelling to and from, and while attending, the funeral. Mourners who are self-isolating because of suspected COVID-19 but who are asymptomatic can attend, as can those in vulnerable or protected groups- though anyone showing coronavirus symptoms should (for obvious reasons!) stay away. Part of this regulatory framework and associated government guidance is about acknowledging that funerals are vital for the health and wellbeing of the bereaved: they are a key part of the grieving process as Debbie Kerslake has pointed out in her comment to DMAG (available on this website), and must be handled sensitively.

¹ Health Protection (Coronavirus, Restrictions) (England) Regulations 2020; Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020; Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020; Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020.

Of course, the emotional impact of altered funeral formats on the living, are horrendous; closed coffins prevent families from seeing a loved one who may have died alone in hospital or a care home, and the wider social support that funerals provide- such an important part of the grieving process- is also lost when funerals are necessarily limited to such small numbers. Live-streaming funerals may help with remote participation –and there has been a significant increase in the use of this technology during the pandemic – but many people will feel that it is not the same as attending the funeral.

IV. Coping with the Present; Looking to the Future

Every society prides itself on how it treats its dead. But funerals, as we know them, are another of our social rituals that we must- regrettably, but necessarily- radically alter in the short-term. ‘Compromise and adapt’ is the mantra for now. The legislation makes it clear that the changes outlined here will last for the duration of the emergency period, though we have no idea how long this will be. And since the repeated advice from central government (and from the devolved administrations as well) is that social distancing is likely to be with us for some time, it may be many months before funerals return to any semblance of normal.

So what are we likely to see, when this eventually happens? I suspect that the sweeping changes to funerals that have been foisted upon us by the maelstrom that is COVID-19 are likely to be temporary, and not indicative of a sweeping socio-cultural trend towards small funerals, basic ceremonies, and virtual participation as standard. As lockdown restrictions ease, large numbers of memorials are also likely,

to celebrate the deceased's life and 'compensate' for the fact that a 'proper' funeral was not possible. One interesting question is whether, in the longer term, direct cremations will decline in popularity; will they be, in some way, associated with coronavirus deaths and the spectre of family members not being present at the crematorium (even if that's through necessity, and not through choice during the pandemic)? Finally, will the funeral sector embrace electronic submission of forms and streamlining of processes, making this one particular legal change which could be implemented beyond the emergency period? As the saying goes, we will have to wait and see.

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