



## Briefing for the Public Petitions Committee

**Petition Number:** PE01442

**Main Petitioner:** Douglas Reid

**Subject:** The body on death becomes part of the estate

Calls on the Parliament to urge the Scottish Government to amend the law to provide that a person's dead body is part of their estate and in effect clearly invokes their will.

### Background

The petitioner is concerned that a deceased person's clear wish that their body be donated to science can be ignored by their surviving family and/or those responsible for administering their estate. This is because, on death, responsibility for the disposal of a person's body falls to their relatives or executors (the person or people responsible for administering their estate). This is a common law principle – ie. a principle based on tradition and the law developed by judges through decisions in cases before them.

It is possible for such relatives or executors to decide to dispose of a body in a manner which differs from the express wishes of the deceased person. Nevertheless, one would expect that, in most cases, the express wishes of the deceased would be respected.

The petitioner proposes that the law is changed so that a person's body is treated as part of their estate. He argues that this would mean that the deceased person's express wishes in relation to disposal would have to be followed.

It should be noted that there are circumstances where the express wishes of a deceased person can currently be ignored. For example, children and spouses are entitled to make a claim on the estate even where they have been expressly disinherited by the deceased. A further, practical issue might arise where the costs of arrangements proposed by the deceased cannot be covered from their estate.

The law currently provides<sup>1</sup> that, in order to donate their body for the purposes of anatomical examination, a person must express their wish to do so in writing. Their declaration must be witnessed and signed by another adult. Anatomical examination can include dissection, removal of body parts and

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<sup>1</sup> Anatomy Act 1984, sections 4(1) and (1A).

implantation of organs or devices. A relative cannot authorise the donation of a deceased person's body for anatomical examination.

Where an adult would like part of their body to be removed after their death and used for transplantation, research, education, training or audit, they can authorise this in writing or verbally. In addition, after death, a deceased person's nearest relative can authorise the same so long as they do not have actual knowledge that this was against the wishes of the deceased.<sup>2</sup>

## **Scottish Government Action**

The Scottish Government commissioned a review of burial and cremation legislation in Scotland which resulted in the publication of the "[Burial and Cremation Review Group Report and Recommendations](#)" (2008). The report recommended that the right of the "nearest relative" (in preference to the executor) to dispose of the body of a deceased person should be codified in legislation. If a dispute arose around the issue of disposal of the body, this could be resolved in the sheriff court. The Scottish Government has since consulted on the recommendations. The "[Analysis of Consultation Responses](#)" (2010, Phase 1) reported that there was a high level of agreement with these proposals.

The Scottish Government has taken forward aspects of the work of the review group in the [Certification of Death \(Scotland\) Act 2011](#). However, this did not deal with rights in relation to disposal of a dead body. The Scottish Government does not intend to deal with this issue until implementation of the 2011 Act is complete.

## **Action by Other Bodies**

The Scottish Law Commission reviewed the law in relation to [succession](#)<sup>3</sup> (what happens to the estate of a deceased person) in 2009. Their report did not consider the disposal of a deceased person's body.

## **Scottish Parliament Action**

A search has not uncovered any relevant Scottish Parliament action.

**Abigail Bremner**  
**Senior Researcher**  
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Every effort is made to ensure that the information contained in petition briefings is

<sup>2</sup> Human Tissue (Scotland) Act 2006, sections 3, 6 and 7.

<sup>3</sup> Scottish Law Commission. (2009). [Report on Succession](#).

correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.