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'Funerals and Coronavirus in Northern Ireland: New Legal Rules, New Social Norms'

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Introduction

The coronavirus pandemic (or SARS-CoV-2, to give the current virus its proper name) has done more than radically alter our way of life; it has fundamentally changed our way of death as well. Increased mortality rates are a sad but inevitable reality, even if the total number of COVID-19 deaths in Northern Ireland has been much lower than initially predicted (at least in the first wave).¹ This will inevitably increase the volume of estate administration work in the months ahead, coming on the back of an increased demand for will-making services in the spring of 2020 as the pandemic triggered a rush of clients wanting to make new wills or update existing ones. As with any death, however, there is the more immediate task of dealing with the deceased's remains. Major changes have been imposed on funerals, in a country where the ritualistic and community elements of this last act for the dead are ingrained in our socio-cultural psyche.

In pandemics the emphasis shifts to public health, with measures intended to curb virus spread while ensuring that the system does not become overwhelmed and that the dead can still be buried or cremated with respect. The Coronavirus Act 2020 introduced a range of sweeping powers, designed to allow devolved administrations and local authorities throughout the UK to respond to the pandemic as pressures on the system increased.² Accompanied by what were originally the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020,³ this new legal framework had a major impact on key aspects of the deceased management process- most notably death certifications, and how funerals are conducted.⁴

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¹ On 19th March 2020, Health Minister Robin Swann predicted that 14,000-15,000 people in Northern Ireland might die from COVID-19, in a worst case scenario "of biblical proportions"- "Coronavirus: First Death Confirmed in NI", *BBC News Online*, 19 March 2020 accessed at <https://www.bbc.co.uk/news/uk-northern-ireland-51958241>.

² This included measures around the transport, storage and 'disposal' of the dead, to ensure that the system did not buckle under the strain (as for example, in Bergamo, Italy where bodies had to be dispatched to other crematoria in the region when the city's own crematorium was struggling to cope). Preparatory steps in Northern Ireland included the conversion of part of Holywood's Kinnegar army base site into a temporary morgue- "Coronavirus: County Down Army Base to be Used as a Mortuary", *BBC News Online*, 26 March 2020 accessed at <https://www.bbc.co.uk/news/uk-northern-ireland-52055727>.

³ As measures with a limited lifespan, these were subsequently repealed and replaced. At the time of writing, the principal regulations are the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020- though these have also been subject to a swathe of revisions and amendments. The most up-to-date information can be found on the Northern Ireland Department of Health website at <https://www.health-ni.gov.uk/publications/health-protection-coronavirus-restrictions-no2-regulations-northern-ireland-2020>.

⁴ Intended to deal with the severe and imminent threat to public health by the spread of COVID-19, the emergency provisions took effect alongside existing public health legislation in NI (e.g. Public Health (NI) Act 1967) but with

Intended as time-limited measures, and accompanied by repeated government advice on curbing virus spread (i.e. hand-washing, social distancing and working from home), the core elements of the response strategy have remained in place as the end of the first wave of the pandemic has yielded to the inevitable second wave. Explaining these rules to bereaved families may be a task that is falling on funeral directors, but it's important to know the key features should any urgent legal queries arise.⁵ This comment attempts to do that, but with one important caveat: the picture is constantly changing as infection rates increase, and the Northern Ireland Executive modifies restrictions. Checking the latest measures is therefore essential; and while all of Northern Ireland is currently subject to the same measures, local restrictions are another complicating factor if designated areas are (again) singled out for additional restrictions, which might also impact on funeral arrangements for deaths in that area.

I. Registration of Deaths; Cremation Certificates

While deaths should still be registered within 5 days (unless the death was reported to the coroner), COVID-19 restrictions have closed registration offices to members of the public. Emergency measures allow the essential documents to be submitted, and deaths to be registered, electronically.

Section 18 of the 2020 Act introduces these temporary modifications, while Sch 13, Pt 3 details specific changes to both the Births and Deaths Registration (NI) Order 1976 and the Civil Registration Regulations (NI) 2012. A Medical Certificate of Cause of Death (MCCD) can be sent electronically to the General Register Office for Northern Ireland (GRONI) by the registered medical practitioner.⁶ The legislation dispenses with the requirement that he/she sign the register (a text signature will suffice during the emergency period), though the medical practitioner must still provide a detailed and clear assessment of the cause of death and all necessary supporting information must be included. GRONI will forward the MCCD to the registration office which covers the deceased's home address. The information supplied

certain modifications. For example, s 48 and Sch 18 of the 2020 Act inserted a new Part 1A into the 1967 Act, with powers for the Department of Health to implement measures to help delay or prevent the spread of COVID-19.

⁵ The Department of Health has provided detailed guidance for funeral directors, which is an excellent point of reference beyond that profession. See "Guidance for handling the infection risks when caring for the deceased and managing funerals during the period of restrictions effective from 16th October 2020" (hereafter referred to as 'Funeral Directors' Guidance') and available at <https://www.health-ni.gov.uk/sites/default/files/publications/health/interim-guidance-for-funeral-directors.pdf>.

⁶ The same procedure applies to a Certificate of Still-Birth, where the certificate of cause can also be given by a registered midwife under Sch 13, Pt 3, paras 18-20.

should include details of the deceased's next-of-kin and the funeral director (if known), and a Certificate for Burial or Cremation can be issued to the funeral director once the process has been completed and the death registered.

However, one of the biggest changes under the legislation relates to who can sign the MCCD where the deceased died of natural causes.⁷ This can be the medical practitioner ('X') who treated the deceased within 28 days of death, or another doctor in the same hospital or GP practice where X is unable to sign the certificate (e.g. because X is self-isolating, or due to staff shortages). Where the deceased was not seen by a medical practitioner within 28 days of death, the MCCD can be signed by a doctor who can state to the best of their knowledge and belief that the deceased died of natural causes (e.g. by reviewing the deceased's medical notes). These are significant changes to the standard legal requirements, though all suspicious or unexplained deaths must still be notified to the coroner.

The emergency measures also impact on the standard cremation documents and streamline the process where the decision is taken to cremate the deceased. Section 21 of the Coronavirus Act 2020 amends the Cremation (Belfast) Regulations (NI) 1961 to map the changes to the MCCD procedures onto the cremation forms. It also removes the need for a confirmatory medical certificate from a second registered medical practitioner before cremation can take place. As regards 'Form B' (confirmatory medical certificate and authority to cremate), where the statutory requirement to "see and identify" the body cannot be met because e.g. the funeral director has already placed the deceased's remains in a body bag, Form B can still be completed by the relevant medical profession and funeral director using a video consultation via Zoom or WhatsApp.⁸ Again, these are major departures from pre-COVID procedure, that are driven by the pandemic and almost certainly time-limited.

II. Funerals

Funerals are important social rituals, especially here in Northern Ireland. They mark the life of the deceased, and allow family and friends to come together to mourn their loss, while drawing social support from members of the community who gather to pay their respects. All this usually occurs within 72 hours of death. However, the emergency legislation has had a significant impact on the way in which funerals are conducted here, for both COVID-19 and

⁷ Sch 13, Pt 3, paras 23-26.

⁸ See Funeral Directors' Guidance, pp 13-14. The consultation must take place in 'real time'; certifying on the basis of a video recording of the deceased is not permissible.

non-virus deaths. There is (surprisingly) no legal requirement to hold a funeral here, nor is there any defined legal right to have one (though one arguably exists as a fundamental, natural right). The thing to bear in mind is that funerals are now subject to a series of legal restrictions, driven by the monomaniacal focus on COVID-19; and these restrictions will trump everything else, from ingrained socio-cultural practices around funerals to specific religious rites that are deemed incompatible with what is euphemistically described as the 'new normal'.

1. Initial Restrictions

As part of the lockdown measures introduced on Monday 23rd March, funerals could still go ahead to prevent the system from 'backing up' and allow bereaved relatives to bury or cremate their dead, but with attendance limited to 'immediate' family. The intent was to make social distancing easier and curb transmission of the virus, protecting not only the small numbers of mourners but also funeral directors and other key members of the deathcare industry (e.g. crematoria and cemetery staff, funeral celebrants) who also play a vital role in these challenging times. The actual legal restrictions were set out in the Health Protection (Coronavirus, Restrictions) Regulations (NI) 2020.⁹ These regulations listed funerals as an exception to the restrictions on movement that prevent us from leaving our homes "without reasonable excuse",¹⁰ and were a permitted exception to the prohibition on gatherings of more than two people in a public place.¹¹ More specifically, attendance at funerals was confined to "(i) a member of the [deceased] person's household, (ii) a close family member, or (iii) if no-one within sub-paragraphs (i) or (ii) is attending, a friend".¹² And while the regulations did not impose a numbers limit, repeated government advice in Northern Ireland stated a maximum of 10 people in attendance (excluding funeral directors, and people officiating at the service).¹³ For those families who decided on cremation, the rules were even harsher given that City of Belfast Crematorium imposed a strict ban on anyone attending cremations from 23rd March.¹⁴

⁹ Because of the urgency of the situation, these regulations (and subsequent amending regulations) were passed without a draft having been laid before, and approved by a resolution of, the Assembly pursuant to the powers set out in s 25Q of the Public Health (NI) Act 1967.

¹⁰ Regulations 5(1) and 5(2).

¹¹ Regulation 6(c).

¹² Regulation 5(2)(g).

¹³ <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-guidance-bereaved-about-funeral-arrangements>.

¹⁴ As the only cremation facility in Northern Ireland, this attracted criticism- see e.g. "Ban on Mourners at Belfast Crematorium Continues", *Belfast Telegraph*, 20 April 2020. However, the ban was based on the need to protect crematorium staff, and funeral directors etc. against the potential spread of COVID-19, while ensuring that the crematorium could still operate at capacity.

2. COVID-Safe Funerals

As the first wave passed and restrictions were eased, the rules around funerals changed slightly. The original regulations were replaced by the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020 ('the principal regulations'), and restrictions on funerals were initially set out in the Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 4) Regulations (Northern Ireland) 2020. As the R number,¹⁵ hospitalisations and COVID deaths all began to climb steadily again in the autumn, the rules were amended again on 16th October 2020, in restrictions imposed across Northern Ireland by the Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 9) Regulations (Northern Ireland) 2020. Intended to last for a period of 4 weeks, these were effectively extended for a further 2 weeks by the Health Protection (Coronavirus, Restrictions) (No. 2) (Amendment No. 15) Regulations (Northern Ireland) 2020.¹⁶

Putting the minutiae of the rules to one side, the core themes of limited attendees and social distancing still dominate. Regulation 5 of the principal regulations (as amended) sets out restrictions on gatherings, but exempts funerals from this under reg 5(3). Similar measures are found in reg 6 which deals with restrictions on gatherings in private dwellings, but exempts funerals under reg 6(6)(a) which refers to a "funeral or an event associated with a funeral"- as long as all the individuals involved are members of linked households (i.e. two households linked with each other, by the agreement of the adults in each household)¹⁷ and with a maximum of 10 people permitted inside to view the body¹⁸ or pay their respects at any time. Mingling of multiple households and visitors at wakes is not permitted; post-funeral gatherings are also banned; and regs 5(6) and 6(6) require those attending or those operating or organising the funeral to comply with Department of Health guidance. Sch 2, para 3(1) of the principal regulations (as amended) prohibits overnight stays at places other than where the person or their linked household is living 'without a reasonable excuse', though para 3(2)(c) lists one such example as attending "a funeral of a member of the person's household, a close family member or a friend."

¹⁵ Secondary infections triggered by any one person.

¹⁶ Supplementary advice and current government guidance can be found online: see <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-regulations-guidance-what-restrictions-mean-you#toc-11> for what is (usually) the most up-to-date information and relevant links. Additional bereavement sources are available at <https://www.publichealth.hscni.net/publications/covid-19-bereavement-resources>.

¹⁷ Sch 2, para 4 of the principal regulations as amended.

¹⁸ Though if the death was COVID-related, the remains should not be taken to a private dwelling- Funeral Directors' Guidance, p 15.

As for the funeral itself, Sch 2, para 4 restricts funerals to a maximum of 25 people. However, much depends on the size of the venue and what it can accommodate, so different places of worship, premises, funeral homes etc. will decide numbers based on the need to ensure compliance with social distancing requirements. The same legal restriction applies to committal of the body, with no more than 25 people allowed to gather at the graveside; and while City of Belfast Crematorium has been open to mourners since 10 August, only 25 people can gather outside the crematorium or at a graveside for burial (entry into the building is prohibited). Numbers limits aside, social distancing requirements must be maintained while travelling to and from, and while attending, all funerals and committals; face coverings should also be worn when entering and leaving a place of worship, and throughout any service in a funeral home.¹⁹ Persons who have tested positive for COVID-19 or who are displaying symptoms should not attend, though those who are self-isolating as a precaution can be there- but only if they are asymptomatic, and adhere to strict social distancing and wear a face mask at all times.

In some ways, funerals have become invite only events, and bereaved families will have to make difficult decisions around who goes. The original statutory rules did not define 'close family member', and the current regulations are not prescriptive about who can or cannot attend beyond restricting numbers and the rules on overnight stays, as noted above. On the one hand, this seems a sensible approach: individual families take many different forms, and attempting a 'one-size-fits-all' definition would be problematic. However, all sorts of situations and family dynamics can complicate decisions on who can and who cannot attend, and it is easy to envisage the anguish (and potential conflict!) that this has created since the unwelcome arrival of COVID-19. Legally, of course, the person who controls the funeral arrangements is still the person with the duty of 'disposal' and associated right to possession of the deceased's remains for this purpose: i.e. the executor of the deceased's will in testate deaths, or the highest ranking next-of-kin for intestacy purposes.²⁰ (If anyone has had to give legal advice on this during the pandemic, I would be very interested in hearing more!)

III. Coping with the Present; Looking to the Future

¹⁹ Sch 2, para 9 of the principal regulations (as amended) and see generally the Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020. Since funeral homes are not places of worship, masks must be worn throughout any service held there.

²⁰ H Conway, "Decision-Making and the Dead: Who Decides the Funeral Arrangements when Families Disagree" (2014) 34 Child and Family Law Update 22.

On the bureaucratic side, whether electronic submission of forms and streamlining of processes becomes the 'new norm' remains to be seen. As with many enforced changes during lockdown, there are pros and cons to this new way of working; but it is a useful time for the legal profession (and law reformers) to reflect on what changes might improve the practice of law in the longer-term.

Dealing with the dead is a much more emotive issue. Funerals, as we know them here in Northern Ireland, are another of our social rituals that we must- regrettably, but necessarily- radically alter in the short-term. Of course, the emotional impact on the living is horrendous, and has already been acknowledged by bereavement charities and deathcare professionals.²¹ Closed coffins prevent families from seeing a loved one who may have died alone in hospital or a care home, and who is now isolated in death as well; and the wider social support that funerals provide- especially here, where large funerals are commonplace- is also lost when funerals are restricted to such small numbers. There is no wake, no viewing the deceased (for confirmed or suspected COVID deaths), no comforting hugs or handshakes at funerals, no post-funeral gathering: all such ingrained parts of our social fabric, and things that are a key part of the grieving process for those who have lost loved ones. The emphasis may be on protecting public health, but that particular narrative is one that seems solely obsessed with physical health and preventing the spread of COVID-19, when mental health and emotional well-being (along with other physical illnesses) is being completely ignored.

The legislation makes it clear that the key changes outlined here will last for the duration of the emergency period, though we have no idea how long this will be. Repeated advice is that restrictions on gatherings and social distancing will be with us for some time, so we should probably accept that it may be many months before funerals return to what they were before. For now, COVID-friendly funerals are the legally mandated new social norm.

²¹ See e.g. "Coronavirus: No Wake, No Funeral, Just Prayers in a Cemetery", *BBC News Online*, 1st April 2020 accessed at <https://www.bbc.co.uk/news/uk-northern-ireland-52106863>.