

# **BURIAL AND CREMATION (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 – Cremation**

123. Part 2 of the Act sets out provisions relating to cremation.

#### **Cremation**

##### ***Section 45 – Meaning of “cremation” and “ashes”***

124. **Section 45** defines “cremation” for the purposes of the Act. By virtue of subsection (1), “cremation” means the burning of human remains. By virtue of subsection (1)(a), where those burnt remains are then reduced by grinding (for example, through cremulation), that process is regarded as part of the cremation. By virtue of subsection (1)(b), where any other process is applied (whether or not any grinding process has been applied) to the burnt remains (for example, cooling) that process is also regarded as part of the cremation.

125. Subsection (2) provides that, for the purposes of the Act, “ashes” are defined as the material to which human remains are reduced by cremation, other than any metal that is left. Where the remains are clothed, in a coffin (meaning any type of receptacle) or with any other thing, subsection (3) means that all of these things (ie, clothing, the coffin and any other thing) are regarded as human remains for the purpose of defining “cremation” and “ashes”.

126. The effect of this is that where human remains are burnt and those remains are subsequently cremulated, the end result will be ashes. Where the human remains are burnt and are not subsequently cremulated, those remains will also be regarded as ashes. This might be the case where the bones are not cremulated because of cultural or religious reasons, or because the burnt remains are too delicate to be cremulated (for example, in the case of a pregnancy loss, stillborn child or very young baby). The effect of the definition of “cremation” is that everything that remains (apart from metal) is regarded as ashes, even where cremulation does not take place.

##### ***Section 46 – Provision of crematorium: local authority***

127. This section provides that a local authority may provide a crematorium, or enter into arrangements with another person to provide a crematorium on behalf of the local authority.

128. “Crematorium” is defined as a building that is fitted with equipment for the carrying out of cremations, and includes land (other than a burial ground) pertaining to such a building.

***Section 47 – Cremation authority: duties***

129. Subsection (1) allows the Scottish Ministers to make regulations which make provision about the management and operation of crematoriums; the maintenance of crematoriums; the operation of any cremation equipment used in a crematorium; and persons employed by cremation authorities (including in relation to training, qualifications and membership of professional bodies). Subsection (2) requires cremation authorities to comply with any requirements imposed by virtue of subsection (1).
130. Subsection (3) provides that it is an offence for a cremation authority to knowingly contravene requirements set out in regulations. Subsection (4) provides that on summary conviction such an offence attracts imprisonment for no more 12 months, a fine not exceeding level 3 on the standard scale or both.
131. [Section 47\(5\)](#) defines a “cremation authority” as a person having responsibility for the management of a crematorium.

***Section 48 – Application for cremation***

132. This section sets out the process for making an application for a cremation. Subsection (1) provides that a person must apply for a cremation to the cremation authority where the cremation is to be carried out. Subsection (2) gives the Scottish Ministers the power to make regulations in respect of the application process. Those regulations may specify the form and content of applications, specify who may issue application forms, prohibit the alteration of any forms set out by the regulations, specify who may apply for a cremation, make provision about documents that must be submitted with an application and make provision for reviews and appeals. A person, in making an application for a cremation, must comply with any requirements set out in those regulations.

***Section 49 – Section 48: offences***

133. [Section 49](#) sets out offences related to the application for a cremation. It is an offence for a person to knowingly provide information which is false or misleading in a material way, in, or in connection with, an application for a cremation. It is also an offence to recklessly provide information that is false or misleading in a material way in, or in connection with, such an application.
134. Subsection (2) provides that on summary conviction, these offences are punishable by a fine not exceeding level 3 on the standard scale.

***Section 50 – Requirements for carrying out cremation***

135. This section sets out restrictions on the carrying out of a cremation. Subsection (1) provides that a person may not carry out a cremation unless the person is a cremation authority, an application for cremation has been granted and the cremation is carried out in a crematorium. For the purposes of this section “crematorium” is defined as a building fitted with equipment for the carrying out of cremations. This definition is distinct from that at section 46 in that it does not include land pertaining to the building. The effect of this is that a cremation cannot lawfully take place anywhere other than inside a crematorium building.
136. Subsection (2) provides that it is an offence to knowingly contravene these requirements. Subsection (3) provides that, on summary conviction, contravention attracts imprisonment for a term not exceeding 12 months, a fine not exceeding level 3 on the standard scale or both.

## **Handling of ashes**

### ***Section 51 – Duty of cremation authority before carrying out cremation***

137. This section places a duty on a cremation authority to take reasonable steps to ascertain how an applicant wants the ashes to be dealt with before carrying out the cremation. The options for what may be done with ashes are set out in subsection (3). These are for the cremation authority to keep the ashes for the applicant to collect; keep the ashes for the funeral director to collect; or dispose of the ashes in a way indicated by the applicant or as specified in regulations made by the Scottish Ministers.
138. An applicant will be required to indicate what he or she wishes to be done with the ashes when applying for a cremation. A cremation will not be able to take place if the applicant does not provide this information. A cremation authority is expected to discuss the options with an applicant, including advising where particular options are not available (for example, where an applicant wishes the cremation authority to scatter or bury ashes while the applicant is present).
139. An applicant will be able to specify a way in which ashes should be handled (from particular options) but may also authorise the cremation authority to dispose of the ashes in a way specified in regulations made by the Scottish Ministers. The Scottish Ministers will prescribe ways that are considered appropriate for ashes to be disposed of by a cremation authority.

### ***Section 52 – Duty of cremation authority following cremation***

140. [Section 52](#) requires a cremation authority to comply with the applicant's stated wishes about how ashes are to be disposed of as per [section 51](#).

### ***Section 53 – Failure to collect ashes***

141. This section sets out the procedure to be followed by a cremation authority where it has retained ashes in line with [section 52\(2\)](#) or [\(3\)](#) but the applicant or funeral director has not collected the ashes as agreed. The cremation authority must take reasonable steps to ascertain whether the applicant wishes the ashes to be retained for longer to enable the applicant or a funeral director to collect the ashes. The cremation authority may agree with the applicant a timescale within which the ashes must be collected in this instance. The applicant may also authorise the cremation authority to dispose of the ashes in a specified manner.
142. Subsections [\(3\)](#) and [\(4\)](#) provide that the options available to the applicant are for the cremation authority to retain the ashes for a further agreed period, for the ashes to be collected by the applicant, or for the funeral director or for the cremation authority to dispose of the ashes in an agreed manner.
143. If the cremation authority is unable to ascertain the wishes of the applicant, subsection [\(6\)](#) enables the cremation authority to either retain or dispose of the ashes in a manner specified in regulations made by the Scottish Ministers.

### ***Section 54 – Power of funeral director in relation to ashes***

144. This section sets out the options available to a funeral director when they have collected ashes from the crematorium on behalf of the applicant but the applicant has subsequently failed to collect them from the funeral director as agreed. Subsection [\(2\)](#) requires the funeral director to take further steps to ascertain the wishes of the applicant. The applicant may ask the funeral director to retain the ashes for a further period before collecting them. Where the applicant provides further instructions to the funeral director, the funeral director is obliged to comply with those instructions. If the applicant then does not collect the ashes as agreed, the funeral director may return them to the crematorium. If the applicant informs the funeral director that he or she wishes the

funeral director to return the ashes to the cremation authority, the funeral director must do so. If the applicant does not provide any further instructions, the funeral director may return the ashes to the crematorium.

### ***Section 55 – Duties of cremation authority where ashes returned***

145. **Section 55** places duties on a cremation authority where a funeral director has returned ashes to the cremation authority by virtue of section 54(5). Subsection (2) requires the cremation authority to take reasonable steps to ascertain whether the applicant wishes the cremation authority to retain the ashes for a period specified in regulations made by the Scottish Ministers for collection or for the cremation authority to dispose of them in a manner specified in regulations made by the Scottish Ministers.
146. Subsection (3) requires the cremation authority to retain the ashes for a period specified in regulations made by the Scottish Ministers until they are collected by the applicant, if that is what the applicant indicates under subsection (2).
147. Subsection (4) requires the cremation authority to dispose of the ashes in a manner specified in regulations made by the Scottish Ministers if the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in that way.
148. Subsection (5) provides that where the cremation authority has taken reasonable steps to ascertain the views of the applicant regarding the way in which the applicant wishes the ashes to be dealt with but does not know the applicant's wishes, the cremation authority may retain the ashes or dispose of the ashes in a manner specified by the Scottish Ministers in regulations where the applicant does not give further indication of his or her wishes as per subsection (2). The cremation authority has discretion to dispose of them in a manner specified in regulations made by the Scottish Ministers.

### ***Section 56 – Handling of ashes: regulations***

149. This section confers power on the Scottish Ministers to make regulations relating to the retention, return and disposal of ashes by cremation authorities or the retention and return of ashes by funeral directors.

## **Register**

### ***Section 57 – Cremation register***

150. **Section 57** requires each cremation authority to prepare and maintain a register for each crematorium it operates. The register will be known as the cremation register. The section sets out the requirements for the register.
151. Subsection (2) allows the Scottish Ministers to make regulations to set out the form of the cremation register and how it must be kept, as well as other provisions.
152. The cremation register is to be a public document, and subsection (4) sets out that a cremation authority must provide access to the register, and may impose a reasonable charge for doing so. The cremation authority may make arrangements to supply copies of entries in the register to members of the public on request for a reasonable charge. Subsection (6) provides that any extract from the register certified as a true copy by the cremation authority is sufficient evidence of the cremation for the purpose of any court proceedings.

### ***Section 58 – Cremation register: offence***

153. **Section 58** makes it an offence for a cremation authority to fail to prepare or maintain a cremation register without reasonable excuse. A summary conviction will lead to a fine not exceeding level 3 on the standard scale.

## **Crematorium: further requirements**

### ***Section 59 – New crematorium: notice***

154. **Section 59** sets out the requirements placed on a person who proposes to establish a crematorium. Subsection (1) requires the person to notify an inspector of cremation of the day on which the person proposes to begin to determine applications for cremation. Subsection (3) sets out that a notice given by virtue of subsection (2) must be given at least 3 months before the day on which the person proposes to determine the first cremation application and must be in writing. Subsection (4) provides that the person may not determine the first application unless an inspector has given the person notice that he or she may determine the first application on or after a day specified in the notice. The determination may not take place before the day specified by the inspector in the notice.

### ***Section 60 – Section 59: offences***

155. This section provides that a person commits an offence if they contravene subsection 59(4) by determining the first application without having received notice from an inspector of cremation or determining the first application before the date specified in the notice from the inspector. On summary conviction, the penalty for such an offence is a fine not exceeding level 3 on the standard scale.

### ***Section 61 – Closure of crematorium***

156. Subsection (1) requires a cremation authority to give written notice of the intended closure to the inspector of cremation. Subsection (2)(a)(i) states that the period of notice should be 3 months where practicable. Subsection (2)(a)(ii) sets out that the cremation authority must give written notice on the first day on which it is practicable to give notice, where it is not able to give 3 months' notice. This approach allows various situations to be covered, including where a cremation authority decides to close a crematorium and where the closure is not voluntary (e.g. closure due to insolvency).
157. Subsection (3) gives the Scottish Ministers the power to make further provision in regulations in connection with the closure of crematoriums. By virtue of subsection (4) regulations may make provision obliging a cremation authority to comply with requirements about the provision of information to an inspector of cremation and to comply with any requirements about any other matters relating to the closure.

### ***Section 62 – Section 61: offence***

158. A cremation authority commits an offence if it fails to give notice to an inspector of cremation as required to do by subsection 61(2)(a). On summary conviction, the penalty for this is a fine not exceeding level 3 on the standard scale.

## **Fees**

### ***Section 63 – Fees for cremation and other services***

159. This section allows a cremation authority that is local authority to charge such fees as it thinks fit in respect of a cremation and any other services it provides in relation to cremation. The authority must keep these fees under review. This section applies only to local authority cremation authorities as they require a statutory power to charge fees. Private cremation authorities are able to charge fees for cremations and services relating to cremation without the need for statutory provision.
160. Subsection (3) requires a cremation authority which is a local authority to publish its fees in paper form and on the cremation authority's website. Subsection (4) also allows the cremation authority to publish its fees in any other place it considers appropriate.

## **Code of practice**

### ***Section 64 – Cremation authority: code of practice***

161. Subsection (1) provides that a cremation authority must comply with any new or revised code of practice which may be issued by the Scottish Ministers in relation to the management of a crematorium.
162. Under subsection (2), the Scottish Ministers will be required to consult with cremation authorities and any other relevant parties before issuing such a code of practice or revising an existing code of practice.
163. A code of practice may not be issued until it has been approved by a resolution of the Scottish Parliament. The Scottish Ministers must keep any code of practice under review and must publish it in whatever manner they consider appropriate.