



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 2

#### CREMATION

##### *Cremation*

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

- (1) In this Act, “cremation” means the burning of human remains; and includes—
  - (a) where a grinding process is applied to the burnt human remains, that process, and
  - (b) where any other process is applied to the burnt human remains, that other process.
- (2) In this Act, “ashes” means the material (other than any metal) to which human remains are reduced by cremation.
- (3) In this section—
  - “coffin” includes any type of receptacle,
  - “human remains” includes, where remains are clothed, in a coffin or with any other thing, the clothing, coffin or other thing.

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

- (1) A local authority may—
  - (a) provide a crematorium,
  - (b) enter into arrangements with another person for the provision by that other person of a crematorium.
- (2) In subsection (1), “crematorium” means a building fitted with equipment for the carrying out of cremations; and includes land (other than a burial ground) pertaining to such a building.

**47 Cremation authority: duties**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the management and operation of crematoriums,
  - (b) the maintenance of crematoriums,
  - (c) the operation of equipment for the carrying out of cremations,
  - (d) persons employed by cremation authorities (including in relation to training, qualifications and membership of professional bodies).
- (2) A cremation authority must comply with any requirement imposed on it by regulations under subsection (1).
- (3) A cremation authority which knowingly contravenes subsection (2) commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 3 on the standard scale or to both.
- (5) In this section, “cremation authority”, in relation to a crematorium, means the person having responsibility for the management of the crematorium.

**48 Application for cremation**

- (1) A person who wishes a cremation to be carried out in a crematorium must submit an application to the cremation authority for the crematorium.
- (2) The Scottish Ministers may by regulations make provision for or in connection with an application mentioned in subsection (1).
- (3) In making such an application, a person must comply with any requirements imposed by or under regulations under subsection (2).
- (4) Regulations under subsection (2) may in particular—
  - (a) specify the form and content of applications,
  - (b) specify persons, or a description of persons, who may issue forms on which applications are to be made,
  - (c) prohibit such persons from altering the forms other than in such ways as may be specified in the regulations,
  - (d) specify persons, or a description of persons, who may submit applications,
  - (e) make provision about documents to be submitted with applications, or
  - (f) make provision for reviews of, or appeals against, decisions of a cremation authority—
    - (i) to grant an application,
    - (ii) to refuse to grant an application.

**49 Section 48: offences**

- (1) A person commits an offence if the person—
  - (a) provides information in, or in connection with, an application under section 48(1) which the person knows to be false or misleading in a material way, or

- (b) recklessly provides information in, or in connection with, such an application which is false or misleading in a material way.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **50 Requirements for carrying out cremation**

- (1) A person may not carry out a cremation unless—
- (a) the person is a cremation authority,
  - (b) the cremation authority has granted an application made under section 48 in respect of the cremation, and
  - (c) the cremation is carried out in a crematorium.
- (2) A person who knowingly contravenes subsection (1) commits an offence.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 3 on the standard scale or to both.
- (4) In subsection (1)(c), “crematorium” means a building fitted with equipment for the carrying out of cremations.

### *Handling of ashes*

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

- (1) This section applies where—
- (a) a person (“the applicant”) submits an application to a cremation authority for a cremation to be carried out, and
  - (b) the authority proposes to carry out the cremation.
- (2) Before carrying out the cremation, the cremation authority must take reasonable steps to ascertain in which of the ways mentioned in subsection (3) the applicant wishes the ashes from the cremation to be dealt with.
- (3) The ways are—
- (a) for the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by the applicant,
  - (b) for the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose,
  - (c) for the ashes to be disposed of by the cremation authority in a specified manner or in a manner indicated by the applicant.
- (4) In this section, “specified” means specified in regulations under section 56(1).

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

- (1) This section applies where a cremation has been carried out by a cremation authority.

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- (2) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(a) of that section, the cremation authority must—
- (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (3) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(b) of that section, the cremation authority must—
- (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose.
- (4) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(c) of that section, the cremation authority must dispose of the ashes—
- (a) in a specified manner, or
  - (b) where the applicant has indicated the manner in which the ashes are to be disposed of, in that manner.
- (5) In this section—
- “applicant”, in relation to a cremation, means the person who submitted the application under section 48(1) by virtue of which the cremation was carried out,
- “specified” has the meaning given by section 51(4).

### **53 Failure to collect ashes**

- (1) This section applies where—
- (a) a cremation authority has complied with the duties in subsection (2) of section 52, but the applicant has failed to collect the ashes from the cremation authority before the expiry of the period specified for the purposes of that subsection, or
  - (b) a cremation authority has complied with the duties in subsection (3) of section 52, but the funeral director has failed to collect the ashes from the cremation authority before the expiry of the period specified for the purposes of that subsection.
- (2) The cremation authority must take reasonable steps to ascertain whether the applicant wishes—
- (a) the ashes to be retained by the cremation authority during such further period as may be specified and made available for collection before the expiry of that period by the applicant,
  - (b) the ashes to be retained by the cremation authority during such further period as may be specified and made available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose, or
  - (c) the ashes to be disposed of by the cremation authority in a specified manner.

- (3) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (a) of that subsection, the cremation authority must—
  - (a) retain the ashes during the period mentioned in that paragraph, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (4) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (b) of that subsection, the cremation authority must—
  - (a) retain the ashes during the period mentioned in that paragraph, and
  - (b) make the ashes available for collection before the expiry of that period by the funeral director appointed for that purpose by the applicant.
- (5) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (c) of that subsection, the cremation authority must dispose of the ashes in the specified manner.
- (6) Where, despite having taken the steps mentioned in subsection (2), the cremation authority does not know in which of the ways mentioned in that subsection the applicant wishes the ashes to be dealt with, the cremation authority must—
  - (a) retain the ashes, or
  - (b) dispose of the ashes in the specified manner.
- (7) In this section—
  - “applicant” has the meaning given by section 52(5),
  - “specified” has the meaning given by section 51(4).

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

- (1) This section applies where—
  - (a) by virtue of section 52(3), a funeral director has collected ashes from a cremation authority, and
  - (b) the applicant has failed to collect the ashes from the funeral director before the expiry of the specified period.
- (2) The funeral director must take reasonable steps to ascertain whether the applicant wishes—
  - (a) to collect the ashes from the funeral director before the expiry of such period as may be agreed between the funeral director and the applicant, or
  - (b) the funeral director to return the ashes to the cremation authority.
- (3) Where, by virtue of subsection (2), the funeral director has ascertained that the applicant wishes to collect the ashes as mentioned in paragraph (a) of that subsection, the funeral director must make the ashes available to the applicant for collection during the period agreed by virtue of that subsection.
- (4) Where the applicant—
  - (a) makes known to the funeral director that the applicant wishes to collect the ashes as mentioned in subsection (2)(a), but

- (b) does not collect the ashes from the funeral director before the expiry of the period agreed by virtue of that subsection,  
the funeral director may return the ashes to the cremation authority.
- (5) Where, by virtue of subsection (2), the funeral director has ascertained that the applicant wishes the funeral director to return the ashes to the cremation authority, the funeral director must so return them.
- (6) Where, despite having taken the steps mentioned in subsection (2), the funeral director does not know in which of the ways mentioned in that subsection the applicant wishes the funeral director to deal with the ashes, the funeral director may return the ashes to the cremation authority.
- (7) In this section—  
“applicant” has the meaning given by section 52(5),  
“specified” has the meaning given by section 51(4).

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

- (1) This section applies where, by virtue of section 54(5), a funeral director returns ashes to a cremation authority.
- (2) The cremation authority must take reasonable steps to ascertain whether the applicant wishes—
  - (a) the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by the applicant, or
  - (b) the ashes to be disposed of by the cremation authority in a specified manner.
- (3) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (a) of that subsection, the cremation authority must—
  - (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (4) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (b) of that subsection, the cremation authority must dispose of the ashes in the specified manner.
- (5) Where, despite having taken the steps mentioned in subsection (2), the cremation authority does not know in which of the ways mentioned in that subsection the applicant wishes the ashes to be dealt with, the cremation authority must—
  - (a) retain the ashes, or
  - (b) dispose of the ashes in the specified manner.
- (6) In this section—  
“applicant” has the meaning given by section 52(5),  
“specified” has the meaning given by section 51(4).

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

- (1) The Scottish Ministers may by regulations make further provision about—
  - (a) the retention, return and disposal of ashes by a cremation authority, or
  - (b) the retention and return of ashes by a funeral director.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) collection of ashes by an applicant or a funeral director,
  - (b) failure to collect ashes by an applicant or a funeral director,
  - (c) time periods in relation to collection of ashes by an applicant or a funeral director,
  - (d) notices that must or may be given—
    - (i) by a cremation authority to an applicant or a funeral director, or
    - (ii) by a funeral director to an applicant,
  - (e) time periods within which a response to such a notice is to be given,
  - (f) information such a response is to contain,
  - (g) steps a cremation authority or funeral director must or may take if such a response is not given (or is not given timeously),
  - (h) ascertaining how an applicant wishes ashes to be disposed of, or
  - (i) taking steps mentioned in section 51(2), 53(2), 54(2) or 55(2).
- (3) In this section, “applicant” has the meaning given by section 52(5).

### *Register*

## **57 Cremation register**

- (1) Each cremation authority must prepare and maintain for each crematorium for which it is the cremation authority a register containing prescribed information about cremations carried out in the crematorium (a “cremation register”).
- (2) The Scottish Ministers may by regulations—
  - (a) require a cremation register to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to a cremation register as they consider appropriate.
- (3) A cremation authority must make arrangements for each of its cremation registers to be available for inspection by members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (4) A cremation authority must make arrangements for copies of entries in its cremation registers to be supplied, on request, to members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (5) A cremation register must be kept indefinitely.
- (6) An extract from a cremation register kept by a cremation authority, duly certified as a true copy by the cremation authority, is sufficient evidence of the cremation entered in it for the purposes of any court proceedings.
- (7) In this section, “specified” means specified in the regulations.

**58 Cremation register: offence**

- (1) A cremation authority commits an offence if, without reasonable excuse, the authority contravenes section 57(1) by failing to prepare or maintain a cremation register.
- (2) A cremation authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Crematorium: further requirements***59 New crematorium: notice**

- (1) This section applies where a person proposes to establish a crematorium.
- (2) The person must give an inspector of cremation notice of the day on which the person proposes to determine the first application made under section 48(1) for a cremation to be carried out in the crematorium (the “first application”).
- (3) Notice under subsection (2)—
  - (a) must be given at least 3 months before the day on which the person proposes to determine the first application, and
  - (b) must be in writing.
- (4) The person may not determine the first application unless—
  - (a) an inspector of cremation has given notice in writing to the person that the person may determine the first application on or after a day specified in the notice, and
  - (b) the determination is made on or after that day.

**60 Section 59: offences**

- (1) A person commits an offence if, without reasonable excuse, the person contravenes subsection (4) of section 59 by determining the first application—
  - (a) without notice having been given to the person under that subsection, or
  - (b) where notice is given to the person under that subsection, before the day specified in the notice.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In subsection (1), “first application” has the meaning given by section 59(2).

**61 Closure of crematorium**

- (1) Where a crematorium is to close, the cremation authority for the crematorium must give an inspector of cremation notice in accordance with subsection (2) of the day on which the crematorium is to close.
- (2) Notice under subsection (1)—
  - (a) must be given—
    - (i) where practicable, at least 3 months before the day on which the crematorium is to close, or



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- (ii) otherwise, on the first day before the crematorium is to close on which it is practicable to give notice, and
- (b) must be in writing.
- (3) The Scottish Ministers may by regulations make further provision for or in connection with the closure of crematoriums.
- (4) Regulations under subsection (3) may in particular make provision requiring a cremation authority—
  - (a) to provide specified information to an inspector of cremation,
  - (b) to comply with specified requirements about the transfer of specified information, or
  - (c) to comply with specified requirements about other matters relating to the closure of a crematorium.
- (5) In this section, “specified” means specified in the regulations.

## **62 Section 61: offence**

- (1) A cremation authority commits an offence if, without reasonable excuse, the authority contravenes subsection (1) of section 61 by failing to give notice under that subsection in accordance with subsection (2)(a) of that section.
- (2) A cremation authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Fees*

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

- (1) This section applies where the cremation authority for a crematorium is a local authority.
- (2) The cremation authority may charge such fees as the authority thinks fit in respect of—
  - (a) a cremation carried out in the crematorium, and
  - (b) any other services provided by the authority relating to cremation.
- (3) The cremation authority must publish fees mentioned in subsection (2)—
  - (a) in paper form, and
  - (b) on the website of the cremation authority.
- (4) The cremation authority may display the fees in any place it considers appropriate.
- (5) The cremation authority must keep under review fees mentioned in subsection (2).

### *Code of practice*

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

- (1) A cremation authority must comply with any code of practice issued by the Scottish Ministers about the carrying out of functions conferred on the authority by or under this Act in relation to the management of a crematorium (a “cremation code”).

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- (2) Before issuing any cremation code, the Scottish Ministers must consult—
  - (a) cremation authorities, and
  - (b) other persons appearing to the Scottish Ministers to have an interest.
- (3) After taking account of any representations received by them by virtue of subsection (2), the Scottish Ministers must lay a draft of the cremation code before the Scottish Parliament.
- (4) The Scottish Ministers may not issue a cremation code unless a draft of the code is approved by resolution of the Scottish Parliament.
- (5) The Scottish Ministers must publish a cremation code in such manner as they consider appropriate.
- (6) The Scottish Ministers must keep under review a cremation code.
- (7) In this section, references to a cremation code include references to a cremation code as revised from time to time by the Scottish Ministers.