



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 3

#### ARRANGEMENTS

##### *Adults and children*

#### **65 Arrangements on death of adult**

- (1) This section applies where an adult dies and—
  - (a) the adult has not made an arrangements on death declaration, or
  - (b) the adult has made an arrangements on death declaration but it would not be reasonably practicable to give effect to it.
- (2) The nearest relative of the adult may make arrangements for the adult's remains to be buried or cremated.
- (3) The nearest relative is the person who immediately before the adult's death was—
  - (a) the adult's spouse or civil partner,
  - (b) neither married to nor in a civil partnership with the adult but was living with the adult as if they were married to each other and had been so living for a period of at least 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital),
  - (c) the adult's child,
  - (d) the adult's parent,
  - (e) the adult's brother or sister,
  - (f) the adult's grandparent,
  - (g) the adult's grandchild,
  - (h) the adult's uncle or aunt,
  - (i) the adult's cousin,
  - (j) the adult's niece or nephew,
  - (k) a friend of long standing of the adult.
- (4) If the adult's spouse or civil partner—

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- (a) is permanently separated (either by agreement or under an order of a court) from the adult, or
  - (b) has deserted, or has been deserted by, the adult and the desertion continues,
- subsection (3) is to be read as if paragraph (a) were omitted.
- (5) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as modified by subsection (4))—
- (a) a relationship of the half-blood is to be treated as a relationship of the whole blood,
  - (b) the stepchild of an adult is to be treated as the child of the adult.
- (6) Where more than one person falls within a paragraph of subsection (3)—
- (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (7) For the purposes of subsection (3), a person’s relationship with the adult is to be left out of account if—
- (a) immediately before the adult’s death the person was under 16 years of age,
  - (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
  - (c) it is not reasonably practicable to communicate with the person in the time available.
- (8) In this section—
- “adult” means a person who is 16 years of age or over,
  - “arrangements on death declaration” means a declaration by an adult specifying the person by whom the adult wishes the arrangements to be made for the burial or cremation of the adult’s remains on the adult’s death.
- (9) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

## **66 Arrangements on death of child**

- (1) This section applies where a child dies.
- (2) The nearest relative of the child may make arrangements for the child’s remains to be buried or cremated.
- (3) The nearest relative, in relation to the child, is the person who immediately before the death was—
- (a) the child’s parent or a person who had parental rights and parental responsibilities in relation to the child (but who is not a local authority),
  - (b) the child’s brother or sister,
  - (c) the child’s grandparent,
  - (d) the child’s uncle or aunt,
  - (e) the child’s cousin,
  - (f) the child’s niece or nephew,
  - (g) a friend of long standing of the child.

- (4) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection a relationship of the half-blood is to be treated as a relationship of the whole blood.
- (5) Where more than one person falls within a paragraph of subsection (3)—
  - (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (6) For the purposes of subsection (3), a person’s relationship with the child is to be left out of account if—
  - (a) except in the case of the child’s parent, the person, immediately before the child’s death, was under 16 years of age,
  - (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
  - (c) it is not reasonably practicable to communicate with the person in the time available.
- (7) In this section, “child” means a person (other than a still-born child) who is under 16 years of age.
- (8) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

#### **67 Arrangements under sections 65 and 66**

- (1) This section applies where a person is entitled by virtue of section 65(2) or 66(2) to make the arrangements for the remains of an adult or child to be buried or cremated.
- (2) The person may decide whether the remains are to be buried or cremated.
- (3) In making a decision for the purposes of subsection (2), the person must, so far as known to the person, have regard to—
  - (a) any wishes that the adult or child expressed as to the burial or cremation of the remains, and
  - (b) whether the adult or child is of a particular religion or belief.
- (4) In this section—
  - “adult” has the meaning given by section 65(8),
  - “belief” has the meaning given by section 10(2) of the Equality Act 2010,
  - “child” has the meaning given by section 66(7),
  - “religion” has the meaning given by section 10(1) of the Equality Act 2010.
- (5) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

#### **68 Sections 65 and 66: application to sheriff**

- (1) On the application of any person claiming an interest, the sheriff may make an order declaring that the person specified in the order is entitled to make arrangements for the burial or cremation of the remains of the deceased person specified in the order—
  - (a) by virtue of an arrangements on death declaration made by the deceased, or
  - (b) by virtue of section 65(2) or 66(2).
- (2) An order under subsection (1) may include such other provision as the sheriff considers necessary or expedient.

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- (3) No application may be made under subsection (1) in relation to the remains of a deceased person where—
- (a) an application for an order under section 93(1) of the Public Health etc. (Scotland) Act 2008 (power of sheriff to order removal of body to mortuary or disposal) in respect of the remains has been made and not disposed of, or
  - (b) an order under that section has been made in respect of the remains.
- (4) In this section, “arrangements on death declaration” has the meaning given by section 65(8).