



Burial and Cremation (Scotland) Act 2016

2016 asp 20

PART 4

INSPECTION

89 Appointment of inspectors

- (1) The Scottish Ministers may appoint such persons as they think fit to be—
 - (a) inspectors of burial,
 - (b) inspectors of cremation,
 - (c) inspectors of funeral directors.
- (2) A person appointed under subsection (1) is referred to in this Part as an “inspector”.
- (3) The Scottish Ministers must pay to an inspector such remuneration as the Scottish Ministers may determine.
- (4) An inspector is to be appointed on such other terms and conditions as the Scottish Ministers may determine.
- (5) The Scottish Ministers may in the case of such of the inspectors as they may determine—
 - (a) pay such pensions, allowances or gratuities to or in respect of them as may be so determined,
 - (b) make such payments towards the provision of pensions, allowances or gratuities to or in respect of any of them as may be so determined, or
 - (c) provide and maintain such schemes (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of them as may be so determined.
- (6) In this section, “funeral director” has the meaning given by section 31(1) of the Certification of Death (Scotland) Act 2011.

90 Inspections: regulations

- (1) The Scottish Ministers may by regulations make provision for or in connection with—

- (a) the carrying out of inspections of burial grounds and burial authorities by inspectors of burial appointed under section 89(1),
 - (b) the carrying out of inspections of crematoriums and cremation authorities by inspectors of cremation so appointed,
 - (c) the carrying out of inspections of funeral directors by inspectors of funeral directors so appointed.
- (2) In subsection (3), burial authorities, cremation authorities and funeral directors are referred to as “relevant bodies”.
- (3) Regulations under subsection (1) may in particular make provision for or in connection with—
- (a) other functions of inspectors in relation to inspections,
 - (b) circumstances in which inspections are to be carried out,
 - (c) the frequency of inspections,
 - (d) reports by inspectors in relation to inspections,
 - (e) steps that may be taken by inspectors for the purpose of ensuring compliance with—
 - (i) requirements or conditions contained in enactments, codes of practice or guidance applicable to relevant bodies, or
 - (ii) conditions in any licence necessary to operate as a relevant body,
 - (f) steps that may be taken by inspectors to enforce such requirements or conditions,
 - (g) the procedure to be followed, and timescales applicable, in relation to such steps,
 - (h) where by virtue of paragraph (e) or (f) an inspector proposes to suspend the operation of activities of relevant bodies, or suspend or revoke any licence necessary to operate as a relevant body—
 - (i) recommendations by inspectors to the Scottish Ministers in relation to the proposal,
 - (ii) information to be provided by inspectors in connection with such recommendations,
 - (iii) decisions of the Scottish Ministers in relation to such recommendations,
 - (i) reviews of or appeals against—
 - (i) decisions of inspectors made by virtue of the regulations, and
 - (ii) decisions of the Scottish Ministers mentioned in paragraph (h)(iii),
 - (j) investigations of complaints against relevant bodies (in particular or in general) and the procedure to be followed in relation to such investigations, or
 - (k) sanctions inspectors may impose in relation to such investigations.

91 Powers of entry and inspection

- (1) An inspector may if authorised to do so by the Scottish Ministers—
- (a) enter any premises (other than a dwelling-house) associated with the carrying out of any function of—
 - (i) a burial authority,
 - (ii) a cremation authority,
 - (iii) a funeral director, or

- (iv) a health authority,
 - (b) require the production of any documents, records or registers which a person mentioned in paragraph (a) is required to have or maintain under or by virtue of this Act, and
 - (c) inspect and take copies of such documents, records or registers.
- (2) The powers in subsection (1) may be exercised by an inspector only for the purposes of—
 - (a) ascertaining whether an offence under or by virtue of this Act has been or is being committed,
 - (b) carrying out any function conferred on the inspector by virtue of regulations under this Act, or
 - (c) (in the case of the power conferred by subsection (1)(a)(iv)) determining whether a health authority is complying with requirements relating to records or registers imposed on it by this Act.
- (3) If an inspector exercises a power of entry by virtue of subsection (1), the inspector may take onto the premises such other persons, and such materials and equipment, as the inspector considers necessary.
- (4) A power of entry under subsection (1) must be exercised at a reasonable hour.
- (5) An inspector who proposes to exercise a power conferred under subsection (1) must, if so required, produce evidence of the inspector’s identity and authorisation before exercising the power.
- (6) In this section, “health authority” means a Health Board or an independent health care service.

92 Section 91: offences

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a requirement made by an inspector under section 91(1)(b) to produce a document, record or register.
- (2) A person commits an offence if the person wilfully obstructs an inspector in the exercise of—
 - (a) the power of entry conferred under section 91(1)(a),
 - (b) the power to inspect or take copies of documents, records or registers conferred under section 91(1)(c), or
 - (c) a power conferred by virtue of regulations under section 90.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

93 Reports

- (1) Each inspector must prepare and publish annual reports.
- (2) The first annual report prepared by an inspector under subsection (1)—
 - (a) is to be published before the expiry of the period of 12 months beginning with the day on which the inspector is appointed, and
 - (b) is to relate to that period.

- (3) Each subsequent annual report—
 - (a) is to be published no later than 12 months after publication of the preceding annual report, and
 - (b) is to relate to the period beginning with publication of the preceding annual report and ending with publication of the subsequent annual report.
- (4) An annual report by an inspector—
 - (a) must contain information about the activities carried out by the inspector during the period to which the report relates,
 - (b) may contain recommendations that the inspector considers would, if implemented—
 - (i) improve the services provided by cremation authorities, burial authorities or (as the case may be) funeral directors, or
 - (ii) improve the keeping of relevant documents, records or registers.
- (5) In subsection (4)(b)(ii), “relevant documents, records or registers” means documents, records or registers which a person mentioned in section 91(1)(a) is required, under or by virtue of this Act, to have or maintain.
- (6) As soon as reasonably practicable after publication, annual reports must be laid before the Scottish Parliament.
- (7) An inspector may, at any time the inspector thinks appropriate, prepare a report about any matters relating to the inspector’s functions (an “ad hoc report”).
- (8) If an inspector prepares an ad hoc report, the inspector—
 - (a) must send a copy of the report to the Scottish Ministers,
 - (b) may, if the inspector thinks it appropriate—
 - (i) publish the report,
 - (ii) lay the report before the Scottish Parliament.