
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

The Cremation (Scotland) Regulations 2019

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Cremation (Scotland) Regulations 2019 and come into force on 4 April 2019.

(2) In these Regulations—

“the Act” means the Burial and Cremation (Scotland) Act 2016,

“adult” means a person who is 16 years of age or over,

“child” means a person (other than a still-born child) who is under 16 years of age,

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000⁽¹⁾ and similar expressions are to be construed accordingly,

“joint cremation” has the meaning given in regulation 6(3), and

“shared cremation” has the meaning given in regulation 7(3).

(3) A form set out in a schedule of these Regulations may be communicated electronically.

(4) A signature required as shown on a form set out in a schedule of these Regulations must, where—

(a) an electronic form is used or a form is an electronic communication, be—

(i) a signature in digital ink, or

(ii) an image of a signature,

(b) a paper form is used, be a signature in ink,

and must be the signatory’s handwritten signature.

Management and operation of crematoriums

Management of crematoriums

2.—(1) Each cremation authority must—

(a) prepare and maintain a Crematorium Management Plan in accordance with paragraph (3) (“the Plan”) in relation to each crematorium for which it is the cremation authority, and

(b) ensure that the crematorium is managed and operated in accordance with the Plan.

(2) A cremation authority must make arrangements for the Plan to be available for inspection by—

(a) a person appointed under section 89(1)(b) (inspectors of cremation) of the Act, and

(1) 2000 c.7. Section 15 was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

(b) members of the public.

(3) For the purposes of this regulation a Crematorium Management Plan is a document which is prepared and maintained by the cremation authority with responsibility for the management of the crematorium and which contains provision about the matters specified in paragraph (4).

(4) The matters are—

(a) the name, address and business hours of the crematorium,

(b) procedures for—

(i) the carrying out of cremations,

(ii) dealing with any unexpected increase in the number of cremations,

(iii) the operation, and servicing, of all equipment used in the cremation process,

(iv) the disposal of cremation residues,

(v) the disposal of ashes, and

(vi) contingency arrangements for any unexpected disruption to, or loss of, services,

(c) the review of the Plan.

(5) The Plan must be—

(a) prepared within 6 months from the date these Regulations come into force, and

(b) reviewed at least every 12 months thereafter.

(6) In paragraph (4)(a) “address” includes the email address (if any) of the crematorium.

Records

3.—(1) For each cremation it carries out each cremation authority must retain for a period of 50 years beginning with the date on which the cremation is carried out the cremation application form submitted in accordance with regulation 8 and any accompanying documentation or certificates.

(2) All documentation retained under paragraph (1) must be treated by the cremation authority as confidential.

(3) The cremation authority must ensure that all documentation retained under paragraph (1) is at all times kept in an accessible form in secure conditions and that all appropriate measures are taken to prevent theft, unauthorised disclosure, damage, loss or destruction.

Maintenance and operation of crematoriums

4.—(1) The cremation authority must, in respect of each crematorium for which it is the cremation authority, ensure—

(a) the equipment installed at each crematorium is maintained—

(i) in efficient working order,

(ii) in good repair, and

(iii) in a clean and orderly condition,

(b) staff are trained in the operation of the equipment installed at the crematorium, and

(c) the equipment is regularly serviced.

(2) The cremation authority must prepare and maintain a written record of—

(a) all training undertaken by staff operating at the crematorium, and

(b) each service check carried out in accordance with paragraph (1)(c).

Operation of cremator

- 5.—(1) This regulation applies where a cremation is carried out.
- (2) A cremation authority must ensure that—
- (a) the remains of only one adult, child, still-born child or fetus are placed in the cremator, and
 - (b) at the end of the burning process the remains are raked into the cooling tray before the remains of another adult, child, still born child or fetus are placed in the cremator for cremation.
- (3) Paragraph (2)(a) does not apply to—
- (a) a joint cremation, or
 - (b) a shared cremation.

Joint cremations

- 6.—(1) Where paragraph (2) applies a cremation authority may—
- (a) cremate together the remains of two adults,
 - (b) cremate the remains of one adult together with one, or more than one, child, still-born child or fetus, or
 - (c) cremate together the remains of more than one child, still-born child or fetus.
- (2) This paragraph applies where, in the circumstances described in—
- (a) paragraph (1)(a), written permission has been given by the authorised person for the cremation together of each adult,
 - (b) paragraph (1)(b), written permission has been given by the authorised person for the cremation together of the adult and each child, still-born child or fetus, or
 - (c) paragraph (1)(c), written permission has been given by the authorised person for the cremation together of each child, still-born child or fetus.
- (3) A cremation carried out in accordance with this regulation is to be known as a joint cremation.
- (4) In paragraph (2) “the authorised person” is—
- (a) for an adult, a person who may submit an application for cremation in respect of the adult by virtue of regulation 8(2)(a),
 - (b) for a child, a person who may submit an application for cremation in respect of the child by virtue of regulation 8(2)(b),
 - (c) for a still-born child or fetus, a person who may submit an application for cremation in respect of the still-born child or fetus by virtue of regulation 8(2)(c).

Shared cremations

- 7.—(1) Where paragraph (2) applies a cremation authority may cremate together the remains of more than one fetus.
- (2) This paragraph applies where—
- (a) an application is made under regulation 8(3)(d) in the form set out in schedule 4 for the cremation together of the remains of more than one fetus, and
 - (b) the application is made by the health body or authority which is authorised to make arrangements for the cremation of each fetus by virtue of section 77(2)(c), 79(2)(c), 80(2), 81(2) or 84(2) of the Act.

(3) A cremation carried out in accordance with this regulation is to be known as a shared cremation.

Cremation applications

Application for cremation

8.—(1) An application under section 48(1) of the Act (application for cremation) is to be made in accordance with this regulation.

- (2) An application for cremation may be submitted where—
- (a) the deceased is an adult by—
 - (i) the person specified by the adult in an arrangements on death declaration⁽²⁾ made by the adult,
 - (ii) any person who may make arrangements on the death of the adult by virtue of section 65(2), 68 or 87 of the Act,
 - (iii) a person employed in the provision of, or managing the provision of, a care home service at which the deceased was living at the time of his or her death, or
 - (iv) the managers of the hospital in which the deceased died or any officer or person designated for that purpose by the managers,
 - (b) the deceased is a child, by a person who may make arrangements on the death of the child by virtue of section 66(2), 68 or 87 of the Act,
 - (c) the remains to be cremated are those of a still-born child or fetus, by the mother, or the person with authority to make arrangements in relation to the remains of that still-born child or fetus by virtue of Part 3 of the Act, or
 - (d) the body or any body part or body parts of the deceased have undergone anatomical examination, by a person licensed under section 3(2) of the Anatomy Act 1984⁽³⁾.
- (3) An application for—
- (a) the cremation of an adult or child (other than an application made by a local authority) must be in the form set out in schedule 1 and contain the information and documents specified in sections 1 to 4 of that form,
 - (b) the cremation of a still-born child must be in the form set out in schedule 2 and contain the information and documents specified in sections 1 to 4 of that form,
 - (c) the cremation of a fetus where an individual is making arrangements for the cremation of the fetus, must be in the form set out in schedule 3 and contain the information and documents specified in sections 1 to 4, of that form,
 - (d) the cremation of a fetus where a person other than an individual is making arrangements for the cremation under Part 3 of the Act must be in the form set out in schedule 4 and contain the information and documents specified in section 1 of that form,
 - (e) the cremation of an adult or child made by a local authority by virtue of section 87 of the Act (burial or cremation: duty of local authority) must be in the form set out in schedule 5 and contain the information and documents specified in sections 1 to 4 of that form,
 - (f) the cremation of a body part or parts following a post-mortem examination (other than a post-mortem examination carried out for the purposes of the functions, or under the

(2) An “arrangements on death declaration” is defined in section 65(8) of the Burial and Cremation (Scotland) Act 2016 asp 20.

(3) 1984 c.14.

- authority, of the procurator fiscal) must be in the form set out in schedule 6 and contain the information and documents specified in section 3 that form,
- (g) the cremation of a body, body part or body parts following anatomical examination where authority was given under—
- (i) section 4A(1), or
 - (ii) section 4(2),
- of the Anatomy Act 1984 for the person’s body to be used for anatomical examination must be in the form set out in schedule 6 and contain the information and documents specified for the cremation of a whole body, in section 1 of that form or, for the cremation of a body part or body parts, in section 2 of that form,
- (h) the cremation of a body part or parts following anatomical examination where the deceased died before 14th February 1988 must be in the form set out in schedule 7 and contain the information specified in section 1 of that form.
- (4) In paragraph (2)(a)(iii) “care home service” means a care home service within the meaning of paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(4).
- (5) In paragraph (2)(a)(iv) “managers” in relation to a hospital means—
- (a) in relation to a hospital vested in the Scottish Ministers under the National Health Service (Scotland) Act 1978(5) (“the 1978 Act”) the Health Board, or Special Health Board, responsible for the administration of that hospital,
 - (b) in the case of a hospital vested in a National Health Service trust established under section 12A of the 1978(6) Act the directors of the trust,
 - (c) in the case of an independent health care service which is registered under section 10Q(1) of the 1978 Act the person identified under section 10P(2)(b)(7) of that Act in the application for registration, and
 - (d) in the case of a state hospital—
 - (i) where the Scottish Ministers have delegated the management of the hospital to a Health Board, Special Health Board, National Health Service or the Common Services Agency for the Scottish Health Service, that Board, trust or agency,
 - (ii) where the management of the hospital has not been so delegated, the Scottish Ministers.

Deaths investigated by the procurator fiscal: requirements for cremation

9. Where the death of a person has been investigated by the procurator fiscal a certificate in the form of Form E1 set out in schedule 8 confirming that the remains of the deceased may be cremated is specified for the purpose of section 27A(2)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965(8) for the disposal of the remains of that person by cremation.

Cremation following warrant to disinter

- 10.—(1) This regulation applies where—
- (a) a cremation authority receives an application for cremation under regulation 8, and

(4) 2010 asp 8.

(5) 1978 c.29.

(6) Section 12A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 31

(7) Sections 10Q and 10P were inserted by the Public Services Reform (Scotland) Act 2010 (asp 8), section 108.

(8) 1965 c.49.

(b) the person who submits the application referred to in sub-paragraph (a) informs the cremation authority that a warrant to disinter has been granted by the sheriff in respect of the remains of the deceased specified on the application form.

(2) The cremation authority may only carry out the cremation after the warrant to disinter has been received by the cremation authority.

Cremation applications: further inquiry

11. A cremation authority may make any inquiry in respect of an application made under regulation 8 and any accompanying documentation, evidence or certificates.

Handling of ashes

Handling of ashes: notices

12.—(1) Where, by virtue of section 52(3) (duty of cremation authority following cremation) of the Act, a funeral director has collected ashes from a cremation authority, the funeral director must as soon as reasonably practicable after collecting the ashes from the cremation authority give written notice to the applicant that the ashes are available for collection by the applicant from the funeral director.

(2) Paragraph (3) applies where, by virtue of section 54(5) (power of funeral director in relation to ashes) of the Act, a funeral director returns ashes to a cremation authority.

(3) For the purpose of section 55(2) (duties of cremation authority where ashes returned) of the Act the cremation authority must as soon as reasonably practicable after the ashes are returned to the cremation authority by the funeral director give written notice to the applicant 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 during that period by the applicant, or
- (b) the ashes to be disposed of by the cremation authority in the specified manner.

(4) In this regulation—

“applicant” has the meaning given by section 52(5) of the Act,

“specified” has the meaning given by section 51(4) of the Act⁽⁹⁾.

(5) In this regulation reference to a written notice includes an electronic communication.

Handling of ashes: time periods for collection of ashes (specified period)

13.—(1) For the purposes of sections 51(3)(a) and (b) (duty of cremation authority before carrying out cremation) and 52(2) and (3) (duty of cremation authority following cremation) of the Act the specified period during which ashes are to be retained by the cremation authority and made available for collection is 4 weeks beginning with the day after the day on which the cremation took place.

(2) For the purposes of section 53(2)(a) and (b) (failure to collect ashes) of the Act the further period is 4 weeks beginning with the day after the end of the specified period mentioned in paragraph (1).

(3) For the purposes of section 54(1)(b) (power of funeral director in relation to ashes) of the Act the specified period for the applicant to collect the ashes from the funeral director is 4

(9) Regulation 13(4) makes provision for the specified period for the purpose of section 55(2)(a) and (3) of the Act. Regulation 14 makes provision for the specified manner of disposal of ashes for the purpose of section 55 (and sections 51 and 53) of the Act.

weeks beginning with the day written notice is given to the applicant by the funeral director under regulation 12(1).

(4) For the purposes of section 55(2)(a) and (3) (duties of cremation authority where ashes returned) of the Act the specified period during which ashes are to be retained by the cremation authority and made available for collection is 4 weeks beginning with the day written notice is given to the applicant by the cremation authority under regulation 12(3).

(5) In this regulation “applicant” has the meaning given by section 52(5) of the Act.

Disposal of ashes by cremation authority (specified manner)

14. For the purposes of section 51(3)(c) (disposal of ashes by cremation authority), 53(6)(b) (failure to collect ashes) and 55(2)(b), (4) and (5)(b) (duties of cremation authorities where ashes returned) of the Act the specified manner for the disposal of ashes by the cremation authority is the burial or scattering of the ashes by the cremation authority.

Cremation register

Cremation register

15.—(1) For the purpose of section 57(1) of the Act a cremation register must—

- (a) for the cremation of an adult or child, be in the form set out in schedule 9 and contain the information specified in that form,
- (b) for the cremation of a body part, or body parts, be in the form set out in schedule 10 and contain the information specified in that form, and
- (c) for the cremation of a fetus or still-born child, be in the form set out in schedule 11 and contain the information specified in that form.

(2) The information in respect of each cremation must be entered on the register as soon as practicable after the cremation.

(3) The cremation authority must—

- (a) review each register from time to time, and
- (b) ensure that the information in each register is accurate and up to date.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers