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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**The Cremation (Scotland) Regulations 2019**

*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<sup>(1)</sup> 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<sup>(2)</sup>.
- (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,

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

(2) 1984 c.14.

- (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 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<sup>(3)</sup>.
- (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<sup>(4)</sup> (“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<sup>(5)</sup> 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)<sup>(6)</sup> 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<sup>(7)</sup> for the disposal of the remains of that person by cremation.

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(3) 2010 asp 8.

(4) 1978 c.29.

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

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

(7) 1965 c.49.

### **Cremation following warrant to disinter**

**10.**—(1) This regulation applies where—

- (a) a cremation authority receives an application for cremation under regulation 8, and
- (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.