

POLICY NOTE

THE BURIAL AND CREMATION (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 3, TRANSITIONAL, SAVING AND TRANSITORY PROVISIONS) REGULATIONS 2018

SSI 2018/380 (C. 24)

The above instrument is made under sections 112(2), (3) and (4) of the Burial and Cremation (Scotland) Act 2016 (“the Act”). It is laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

Regulation 2 provides that those provisions listed in the schedule of the Regulations will come into force on 4th April 2019. These provisions concern in the main the regulatory framework for cremations in Scotland (Part 2 of the Act) and new provisions for the making of arrangements on the death of a person (Part 3 of the Act).

Cremations are currently regulated under the Cremation Acts 1902 and 1952 and the Cremation (Scotland) Regulations 1935 (“the 1935 Regulations”). The repeal of the Cremation Acts 1902 and 1952 will come into force at the same time as the new provisions of the 2016 Act come into force. The 1935 Regulations are made under the Cremation Act 1902 and will therefore cease to have effect (subject to savings provisions in these Regulations) at the same time.

These Regulations also bring into force some provisions in other Parts of the Act (in some cases so far as not already in force).

The repeal of the Cremation Acts 1902 and 1952 (with the revocation of the 1935 Regulations) is being brought into force to avoid running parallel regulatory regimes. The Regulations therefore make savings provision to preserve the requirements under the 1935 Regulations in cases where actions have commenced before 4th April 2019.

In addition, in order to retain existing rights and duties regarding the inspection and closure of crematoriums, transitory provisions are made in these Regulations.

Provisions coming into force on 4th April 2019

Part 2 of the Act makes provision to regulate cremations in Scotland. Part 2 includes definitions of “cremation”, “ashes” and “cremation authorities” and makes provision for, among other things, the application process for cremations, duties of cremation authorities in carrying out cremations and disposal of ashes.

With the exception of sections 61 and 62 (in connection with closure of crematoria) and section 64 (cremation authority: code of practice) which will be brought into force at a later date, these Regulations bring Part 2 of the Act into force on 4th April 2019.

Regulations made under section 47 of the Act will create the new regulatory framework for cremations and cremation authorities regarding the maintenance and operation of crematoriums and applications for cremation which cremation authorities must comply with.

In particular sections 51 to 56 create a detailed framework of duties and processes where ashes must be retained and arrangements for their collection made.

Part 3 of the Act provides for authority for individuals to make arrangements on the death of an adult, a child (sections 65 to 68). There are also further detailed provisions about arrangements for pregnancy losses and stillbirths, providing authority for either individuals or hospital authorities to be given authority to make arrangements (sections 69 to 84)

Section 85, which requires health authorities to keep a confidential register of pregnancy loss, is brought into force. Section 86, which introduces offences for failing to prepare or maintain a register will be brought into force at a later date.

In Part 4 of the Act section 87, which places local authorities under a duty to make arrangements in certain circumstances on the death of a person, is brought into force as is section 88 which provides for further local authority duties regarding payment of expenses for attending funerals.

In Part 5 of the Act section 89(1)(a) and (c), which provide powers to appoint Inspectors of Burial and Inspectors of Funeral Directors, came into effect on 28th December 2016 together with subsections (2) to (6) which make provision about the appointment process. These Regulations now bring into force section 89(1)(b) for the appointment of Inspectors of Cremation. Section 93, which places inspectors under a duty to prepare and publish annual reports, comes into force in order to apply to Inspectors of Cremation.

The Regulations also bring into force section 99 in Part 6 of the Act (power to extend the permitted methods of disposal of remains).

Certain miscellaneous provisions are also commenced such as provisions about offences, Crown application, consultation requirements for making regulations and repeals and minor and consequential amendments.

Transitory, Saving and Transitional Provisions

These Regulations make a transitory provision in relation to Inspectors of Cremation pending the coming into force of section 91(1)(a)(ii) of the Act which confers powers to enter premises associated with the carrying out of functions of cremation authorities. Those powers will be brought into force at a later date and these Regulations therefore make provision for the powers of entry and inspection for inspectors appointed under section 89 of the Act (regulation 3).

Under the Act a cremation cannot be carried out unless an application for cremation has been submitted (sections 48 to 50). The 1935 Regulations also make provision about cremation applications. Where an application for cremation has been made before 4th April 2019, the 1935 Regulations will continue to apply (regulation 4).

For all cremations which are carried out before 4th April 2019, the 1935 Regulations will continue to apply for the recording of information about the cremation in a cremation register (regulation 5).

The 1935 Regulations provide for notice to be given where a crematorium is to be opened and when it is to be closed. For the opening of crematoriums, notice must be given to the Scottish Ministers under regulation 1 of the 1935 Regulations. Under the Act section 59 provides that 3 months' notice must be given in writing to an Inspector of Cremation before the first cremation application under section 48(1) of the Act is considered. The cremation application cannot be determined unless an Inspector of Cremation has given written notice allowing them to do so. In cases where notice has been given to the Scottish Ministers under the 1935 Regulations before 4th April 2019, the requirements under section 59 will not apply (regulation 6).

New procedures for closure of a crematorium are contained in sections 61 and 62 which as noted above will be commenced at a later date. Section 61(3) provides a regulation making power about the closure of crematoriums. A consultation process about the content of such regulations will be undertaken and those Regulations will be brought into force when section 61 is commenced. These Regulations make transitory and saving provision pending the coming into force of section 61 of the Act (regulation 7). Where a crematorium is to be closed notice must be given by advert in a newspaper and by written notice to the Scottish Ministers. When the crematorium is then closed Ministers must be notified of this. The 1935 Regulations provide for notice requirements and where that process been complied with before 22nd December 2017, the requirements under regulation 7(1) and (2) will not apply.

Section 51 of the Act requires cremation authorities to take reasonable steps to ascertain the ways in which the person who makes a cremation application wishes the ashes to be dealt with. These include a choice as to whether the applicant wishes the cremation authority to retain the ashes for a specified period and made available for collection either by the applicant or a funeral director within that period. The "specified period" is defined in the Cremation (Scotland) Regulations 2019 which are laid with these Regulations and will apply in respect of all applications made under the Cremation (Scotland) Regulations 2019. Sections 52 to 55 then make further provision regarding retention and disposal of ashes which apply after a cremation has been carried out. These Regulations make a saving provision in respect of the duties under the 1935 Regulations regarding the disposal of ashes for all cremations which are carried out before 4th April 2019 with the effect that sections 51 to 55 of the Act will apply to cremations which are carried out on or after that date (regulation 8).

Consultation

No formal consultation was carried out in relation to these Regulations. However formal consultation in respect of the Bill for the Act was carried out prior to its introduction with the policy intentions subject to full scrutiny, debate and the approval of the Parliament. Further consultation and engagement with stakeholders continues during the implementation process.

Impact Assessment and Financial Effects

Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were undertaken for the Bill for the Act prior to its introduction to Parliament.

Scottish Government
Directorate for Population Health Improvement
18th December 2018