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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 384**

**The Burial and Cremation (Pregnancy Loss Prescribed Information and Forms) (Scotland) Regulations 2018**

*General*

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Burial and Cremation (Pregnancy Loss Prescribed Information and Forms) (Scotland) Regulations 2018 and come into force on 4 April 2019.

(2) In these Regulations unless otherwise specified, references to a section are to a section of the Burial and Cremation (Scotland) Act 2016.

(3) In these Regulations—

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

“patient identifier” means a patient’s—

- (a) community health index number, or
- (b) where that number is not known, any other number or other indicator which from time to time may be used to identify a patient individually.

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

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

(a) where 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, or

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

and must be the signatory’s handwritten signature.

*Pregnancy loss after 24 weeks*

**Pregnancy to be terminated after 24 weeks: prescribed information for section 69(4)**

2.—(1) The information in paragraph (2) is prescribed information for the purpose of section 69(4) (arrangements where woman’s pregnancy is to be terminated after 24 weeks: appropriate health body record of prescribed information).

(2) The information is—

- (a) the woman’s name,
- (b) the woman’s home address,
- (c) the woman’s patient identifier,

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

- (d) the gestational age of pregnancy,
  - (e) any decision by the appropriate health body that it is not in the woman’s best interests to be given an opportunity to decide on the matters in paragraph (3),
  - (f) where the appropriate health body considers that it is in the woman’s best interests to give the woman an opportunity to decide on the matters in paragraph (3)—
    - (i) that the woman made no decision on the matters, or
    - (ii) the decision of the woman on the matters,
  - (g) where the woman decides she wishes to authorise the appropriate health body to make arrangements for the remains of the fetus to be buried or cremated—
    - (i) the name of the individual to whom the decision is communicated by the woman,
    - (ii) the position held in the appropriate health body by the individual to whom the decision is communicated by the woman, and
    - (iii) the date on which the decision is communicated to the individual by the woman, and
  - (h) where the woman decides she wishes to authorise the appropriate health body to make arrangements for the remains of the fetus to be buried or cremated in a way specified by the woman, the way specified.
- (3) The matters are—
- (a) whether the woman wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether the woman wishes to authorise the appropriate health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) if the woman wishes to authorise the appropriate health body under paragraph (b), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the pregnancy is terminated, or
    - (ii) after the expiry of the 7-day period.

(4) In this regulation references to “the woman” are to the woman whose pregnancy is to be terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967(2), as mentioned in section 69(1).

(5) In this regulation “7-day period” and “appropriate health body” have the meanings given in section 69(5).

**No arrangements under section 69: prescribed information for section 71(6)**

3.—(1) The information in paragraph (2) is prescribed information for the purpose of section 71(6) (arrangements where woman’s pregnancy is terminated after 24 weeks and no arrangements under section 69: appropriate health authority record of prescribed information).

- (2) The information is—
- (a) the woman’s name,
  - (b) the woman’s home address,

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(2) 1967 c.87. Section 1 was amended by the Health Services Act 1980 (c.53), sections 1 and 2 and schedule 1, paragraph 17(1); the National Health Service and Community Care Act 1990 (c.19), section 66(1) and schedule 9, paragraph 8; the Human Fertilisation and Embryology Act 1990 (c.37), section 37; the Health and Social Care (Community Health and Standards) Act 2003 (c.43), schedule 4, paragraph 10; the National Health Service (Consequential Provisions) Act 2006 (c.43), schedule 1, paragraph 30; and the Health and Social Care Act 2012, schedule 5, paragraph 9 and by S.I. 2000/90.

- (c) the woman’s patient identifier,
  - (d) the gestational age of pregnancy,
  - (e) where the woman does not make a decision on the matters in paragraph (3), that the woman made no decision on those matters,
  - (f) where the woman makes a decision on the matters in paragraph (3), the decision,
  - (g) where the woman decides she wishes to authorise the appropriate health authority to make arrangements for the remains of the fetus to be buried or cremated—
    - (i) the name of the individual to whom the decision is communicated by the woman,
    - (ii) the position held in the appropriate health authority by the individual to whom the decision is communicated by the woman, and
    - (iii) the date on which the decision is communicated to the individual by the woman,
  - (h) where the woman decides she wishes to authorise the appropriate health authority to make arrangements for the remains of the fetus to be buried or cremated in a way specified by the woman, the way specified, and
  - (i) where section 71(5) applies, the arrangements made by the appropriate health authority for the remains to be buried or cremated.
- (3) The matters are—
- (a) whether the woman wishes to make the arrangements for the remains of the fetus to be buried or cremated, or
  - (b) whether the woman wishes to authorise the appropriate health authority to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority.
- (4) In this regulation references to “the woman” are to the woman whose pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, as mentioned in section 71(1).
- (5) In this regulation “appropriate health authority” has the meaning given in section 71(7).

**Still-birth likely to occur: prescribed information for section 72(4)**

4.—(1) The information in paragraph (2) is prescribed information for the purpose of section 72(4) (arrangements where woman’s pregnancy likely to end with a still-birth: appropriate health body record of prescribed information).

- (2) The information is—
- (a) the woman’s name,
  - (b) the woman’s home address,
  - (c) the woman’s patient identifier,
  - (d) the gestational age of pregnancy,
  - (e) any decision by the appropriate health body that it is not in the woman’s best interests to be given an opportunity to decide on the matters in paragraph (3),
  - (f) where the appropriate health body considers that it is in the woman’s best interests to give the woman an opportunity to decide on the matters in paragraph (3)—
    - (i) that the woman made no decision on the matters, or
    - (ii) the decision of the woman on the matters,

- (g) where the woman decides she wishes to authorise the appropriate health body to make arrangements for the remains of the fetus to be buried or cremated—
    - (i) the name of the individual to whom the decision is communicated by the woman,
    - (ii) the position held in the appropriate health body by the individual to whom the decision is communicated by the woman, and
    - (iii) the date on which the decision is communicated to the individual by the woman, and
  - (h) where the woman decides she wishes to authorise the appropriate health body to make arrangements for the remains of the fetus to be buried or cremated in a way specified by the woman, the way specified.
- (3) The matters are—
- (a) whether the woman wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether the woman wishes to authorise the appropriate health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) if the woman wishes to authorise the appropriate health body under paragraph (b), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the still-birth occurs, or
    - (ii) after the expiry of the 7-day period.

(4) In this regulation references to “the woman” are to the woman who has been informed by the appropriate health body that the appropriate health body considers that it is likely that her pregnancy will end in still-birth (other than in consequence of the termination of the pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967), mentioned in section 72(1).

(5) In this regulation “7-day period” and “appropriate health body” have the meanings given in section 72(5).

#### **No arrangements under section 72: prescribed information for section 74(6)**

5.—(1) The information in paragraph (2) is prescribed information for the purpose of section 74(6) (arrangements where still-birth occurs and no arrangements under section 72: appropriate health body record of prescribed information).

- (2) The information is—
- (a) the woman’s name,
  - (b) the woman’s home address,
  - (c) the woman’s patient identifier,
  - (d) the gestational age of pregnancy,
  - (e) the name of the nearest relative of the still-born child,
  - (f) the relationship of the nearest relative to the still-born child,
  - (g) whether the nearest relative of the still-born child decides that they will make arrangements for the remains of the still-born child to be buried or cremated,
  - (h) where the nearest relative decides not to make arrangements for the remains of the still-born child to be buried or cremated, the decision of the nearest relative on the matter in paragraph (3),

- (i) where the nearest relative makes a decision to authorise the appropriate health body to make arrangements for the remains of the still-born child to be buried or cremated—
    - (i) the name of the individual to whom the decision is communicated by the nearest relative,
    - (ii) the position held in the appropriate health body by the individual to whom the decision is communicated by the nearest relative, and
    - (iii) the date on which the decision is communicated to the individual by the nearest relative, and
  - (j) where the nearest relative decides they wish to authorise the appropriate health body to make arrangements for the remains of the still-born child to be buried or cremated in a way specified by the nearest relative, the way specified.
- (3) The matter is whether the nearest relative authorises the appropriate health body to make arrangements for the remains of the still-born child to be buried or cremated—
- (a) in a way specified by the nearest relative, or
  - (b) in a way specified by the body.
- (4) In this regulation references to “the woman” are to the woman whose pregnancy has ended in still-birth (other than in consequence of the termination of the pregnancy by virtue of section 1(1) (b), (c) or (d) of the Abortion Act 1967), mentioned in section 74(1).
- (5) In this regulation—
- “appropriate health body” has the meaning given in section 74(10), and
  - “nearest relative” is to be construed in accordance with section 74(3) (read with section 74(7) to (9)).

**Appropriate health body authorised to make arrangements under section 74(4)(a): record of decision that arrangements may be made before expiry of 7 day period**

6. For the purposes of section 75(4)(a) the record of the decision under section 75(3) (record of decision of nearest relative that appropriate health body may make arrangements under section 74(4) (a) before expiry of 7-day period<sup>(3)</sup>) must be in the form set out in schedule 1.

*Pregnancy loss on or before 24 weeks*

**Pregnancy likely to end on or before 24th week: prescribed information for section 77(4)**

7.—(1) The information in paragraph (2) is prescribed information for the purpose of section 77(4) (arrangements where woman’s pregnancy likely to end before, or on completion of, 24th week: relevant health body record of prescribed information).

- (2) The information is—
  - (a) the woman’s name,
  - (b) the woman’s home address,
  - (c) the woman’s patient identifier,
  - (d) gestational age of pregnancy,
  - (e) any decision by the relevant health body that it is not in the woman’s best interests to be given an opportunity to decide on the matters in paragraph (3),

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(3) Section 75(6) defines the 7-day period as the period of 7 days beginning with the day on which the authorisation is given under section 74(4)(a).

- (f) where the relevant health body considers that it is in the woman’s best interests to give the woman an opportunity to decide on the matters in paragraph (3)—
    - (i) that the woman made no decision on the matters, or
    - (ii) the decision of the woman on the matters,
  - (g) where the woman decides she wishes to authorise the relevant health body to make arrangements for the remains of the fetus to be buried or cremated—
    - (i) the name of the individual to whom the decision is communicated by the woman,
    - (ii) the position held in the relevant health body by the individual to whom the decision is communicated by the woman, and
    - (iii) the date on which the decision is communicated to the individual by the woman,
  - (h) where the woman decides she wishes to authorise an individual of or over 16 years of age to make arrangements for the remains of the fetus to be buried or cremated, the name of the individual and the individual’s relationship to the woman, and
  - (i) where the woman decides she wishes to authorise an individual of or over 16 years of age or the relevant health body to make arrangements for the remains of the fetus to be buried or cremated in a way specified by the woman, the way specified.
- (3) The matters are—
- (a) whether the woman wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether the woman wishes to authorise an individual of or over 16 years of age to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) whether the woman wishes to authorise the relevant health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (d) if the woman wishes to authorise the relevant health body under paragraph (c), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the pregnancy ends, or
    - (ii) after the expiry of the 7-day period.

(4) In this regulation references to “the woman” are to the woman who has been informed by the relevant health body that the relevant health body considers that it is likely that her pregnancy will end before or on completion of its 24th week, mentioned in section 77(1).

(5) In this regulation “7-day period” and “relevant health body” have the meanings given in section 77(5).

### **Pregnancy ends before or on completion of 24th week: arrangements**

**8.—(1)** For the purposes of section 79(5)(a) a decision under section 79(2) made before the expiry of the initial period<sup>(4)</sup> (decision by woman: arrangements for fetus to be buried or cremated) must be recorded—

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(4) Section 79(9) defines “initial period” as the period of 7 days beginning with the day on which a fetus, having been parted from the woman whose pregnancy has ended, does not breathe or show any other signs of life.

- (a) in Section B of the form set out in schedule 2 where the decision is a decision under section 79(2)(c)(ii) (decision to authorise the appropriate health authority to make arrangements for the remains of the fetus to be buried or cremated in a way specified by the authority) and the woman has declined to discuss further those arrangements,
  - (b) in all other cases in Section A of the form set out in schedule 2.
- (2) For the purposes of section 79(7)(a)—
- (a) the matter mentioned in section 79(8)(a) (decision under section 79(2): arrangements for fetus to be buried or cremated) must be recorded in Section A of the form set out in schedule 2,
  - (b) the matter mentioned in section 79(8)(b) (no decision by woman after expiry of the initial period: arrangements for fetus to be buried or cremated) must be recorded in Section E of the form set out in schedule 2.
- (3) For the purposes of section 80(4)(a)—
- (a) a decision under section 80(2)(a) (change of decision under section 79(2)) must be recorded in Section C of the form set out in schedule 2,
  - (b) a decision under section 80(2)(b) (decision under section 79(2) not previously made) must be recorded in Section A of the form set out in schedule 2.
- (4) For the purposes of section 83(4)(a) a decision under section 83(3) to authorise the appropriate health authority to make arrangements for the remains of the fetus to be buried or cremated before the expiry of the 7-day period must be recorded in Section D of the form set out in schedule 2 where the appropriate health authority is authorised to make arrangements by virtue of section 79(2) or 80(2).

**Pregnancy ends before or on completion of 24th week: individual authorised to make arrangements**

9.—(1) For the purposes of section 81(5)(a) the authorisation under section 81(2)(a) (individual authorises appropriate health body to make arrangements for remains to be buried or cremated) must be recorded in Section A of the form set out in schedule 3.

(2) For the purposes of section 81(7)(a) the record of the facts in section 81(6) (individual does not inform the appropriate health body of arrangements made or authorise the appropriate health authority to make arrangements) must be recorded in Section C of the form set out in schedule 3.

(3) For the purposes of section 83(4)(a) a decision under section 83(3) to authorise the appropriate health authority to make arrangements for the remains of the fetus to be buried or cremated before the expiry of the 7-day period must be recorded in Section B of the form set out in schedule 3 where the appropriate health authority is authorised to make arrangements by virtue of section 81(2)(a).

**Pregnancy losses: health authority register**

10.—(1) For the purpose of section 85(1) (duty of health authority to keep register)—

- (a) where paragraph (2) applies, the prescribed information is the information in Part 1 of schedule 4, and
- (b) where paragraph (3) applies the prescribed information is the information in Part 2 of schedule 4.

(2) This paragraph applies where, by virtue of the provisions mentioned in column 1 of the following table the health authority (as appropriate health body within the meaning of the provision mentioned in column 2 of the table) is authorised to make arrangements for the remains of the fetus to be buried or cremated

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<i>Column 1</i> Provision by virtue of which the health authority is authorised to make arrangements for burial or cremation	<i>Column 2</i> Appropriate health body	<i>Column 3</i> Reference to “woman” in schedule 4
section 69(2)(b)	as appropriate health body within the meaning of section 69(5)	the woman whose pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 71(2)(b)	as appropriate health authority within the meaning of section 69(5)	the woman whose pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 72(2)(b)	as appropriate health body within the meaning of section 72(5)	the woman whose pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 74(4)(a)	as appropriate health body within the meaning of section 74(10)	the woman whose pregnancy ends in still-birth other than in consequence of the termination of the pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 77(2)(c)	as relevant health body within the meaning of section 77(5)	the woman whose pregnancy ends in still-birth other than in consequence of the termination of the pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 79(2)(c)	as appropriate health authority within the meaning of section 79(9)	the woman whose pregnancy ends on or before completion of its 24th week
section 81(2)(a)	as appropriate health authority within the meaning of section 79(9)	the woman whose pregnancy ends on or before completion of its 24th week
section 84(2)	as appropriate health authority within the meaning of section 79(9)	the woman whose pregnancy ends on or before completion of its 24th week.



(3) This paragraph applies where, by virtue of the provisions mentioned in column 1 of the following table the health authority (as the appropriate health authority or health body within the meaning of the provision mentioned in column 2 of the table) is authorised to make arrangements for the remains of the fetus to be buried or cremated

<i>Column 1</i> Provision by virtue of which the health authority is authorised to make arrangements for burial or cremation	<i>Column 2</i> Appropriate health body	<i>Column 3</i> Reference to “woman” in schedule 4
section 71(5)	as appropriate health authority within the meaning of section 69(5)	the woman whose pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 76(2)	as appropriate health body within the meaning of section 74(10)	the woman whose pregnancy ends in still-birth other than in consequence of the termination of the pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967
section 84(3)	as appropriate health authority within the meaning of section 79(9)	the woman whose pregnancy ends on or before completion of its 24th week.

(4) In this regulation and in schedule 4—

- (a) “health authority” (other than when it appears in the phrase “appropriate health authority”) has the meaning given in section 85(4),
- (b) “nearest relative” is to be construed in accordance with section 74(3) (read with section 74(7) to (9)), and
- (c) references to “the woman” are to be construed in accordance with the description in column 3 of the tables in paragraphs (2) and (3).

St Andrew’s House,  
Edinburgh  
18th December 2018

*JOE FITZPATRICK*  
Authorised to sign by the Scottish Ministers