

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Arrangements

Pregnancy loss on or before 24 weeks

Section 79 – Arrangements on pregnancy loss on or before 24 weeks

206. Subsection (1) provides that section 79 applies where certain conditions are met: a pregnancy loss occurs before or on completion of its 24th week; the fetus does not breathe or show any other signs of life; the woman is in the care of an “appropriate health authority” at the time when the pregnancy ends; and it appears to the health authority that no arrangements for the burial or cremation of the remains are being or have been made. Subsection (9) defines an “appropriate health authority” to mean an independent health service or Health Board caring for the woman at the time when her pregnancy ended.
207. Subsection (2) requires the health authority to attempt to ascertain the woman’s wishes before the expiry of the “initial period”, which is defined at subsection (9) as being within 7 days of the pregnancy loss occurring. Following the loss of a pregnancy, some women may choose not to engage with the health authority, or may be physically unable to do so. As such, the health authority is expected to try to find out the woman’s wishes, but is not under an obligation to establish her wishes. This should ensure no woman is pressured into making a decision.
208. Subsection (3) provides that, where the woman authorises the appropriate health authority to make the arrangements for the burial or cremation of the remains of the fetus, the authority must inform the woman if it would not be reasonably practicable for it to arrange for the remains to be disposed of in a particular way. If the woman decides the health authority should make the arrangements, the woman may still choose the method of disposal. Where the woman chooses the method of disposal, subsection (3) requires the health authority to inform the woman if it is not possible to dispose of the remains in that way.
209. Subsections (4) and (5) set out the procedure to be followed when a woman indicates her wishes before the expiry of the initial period (i.e. within 7 days of the end of the pregnancy). The health authority must record the decision and take reasonable steps to obtain the signature of the woman making the decision.
210. Subsection (6) provides that subsection (7) applies where a woman does not inform the health authority of her decision before the initial period has expired. Subsection (7) requires the health authority to record the woman’s decision or the fact that she did not inform the health authority of a decision. The health authority must record this information as soon as is practicable after the expiry of the initial period. The

*These notes relate to the Burial and Cremation (Scotland) Act
2016 (asp 20) which received Royal Assent on 28 April 2016*

health authority must take reasonable steps to have the woman acknowledge her choice (including not making a decision) by signing the record, but is not under a duty to have her sign. Again, the woman may not be able to sign or may choose not to do so.