

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Inspection

239. Part 4 of the Act sets out a range of provisions in relation to the inspection of various parts of the funeral industry, including crematoriums, cremation authorities, burial grounds, burial authorities and funeral directors.

Section 89 – Appointment of inspectors

240. This section gives the Scottish Ministers the power to appoint inspectors of burial, inspectors of cremation and inspectors of funeral directors. The section sets out various arrangements for such appointments, including remuneration, which the Scottish Ministers may determine (subsection (3)) and terms and conditions, including pension arrangements (subsection (5)). Subsection (4) allows the Scottish Ministers to make such appointments on such other terms and conditions as they may determine.

Section 90 – Inspections: regulations

241. **Section 90** gives the Scottish Ministers the power to make regulations about the inspection of burial grounds and burial authorities; crematoriums and cremation authorities; and funeral directors. Subsection (3) lists the matters that any regulations made under subsection (1) may include, such as the frequency of inspections, steps that can be taken by inspectors to enforce compliance with any legislative requirements, steps that can be taken by inspectors to enforce compliance requirements and conditions that can be attached to licences and timescales that apply to such activity.
242. The Scottish Ministers will be able to suspend the operation of a crematorium, burial ground or the business of a funeral director (see subsection (3)(c) and (d)). Subsection (3)(e) and (f) provide that regulations made under subsection (1) may set out the steps that may be taken by inspectors to ensure compliance with requirements or conditions contained in enactments, codes or practice or guidance applicable to burial authorities, cremation authorities or funeral directors, and enforce these requirements or conditions. Subsection (3)(i) provides that regulations may make provision about reviews of or appeals against decisions of inspectors or decisions of the Scottish Ministers in relation to recommendations to suspend or revoke any licence necessary to operate as a burial authority, cremation authority or funeral director.
243. Subsection (3)(j) provides that regulations may make provision about investigations of complaints against cremation authorities, burial authorities and funeral directors, and what sanctions inspectors may impose in relation to such investigations (subsection (3)(k)).

Section 91 – Powers of entry and inspection

244. **Section 91** gives inspectors various powers of entry in the course of carrying out inspections. Under subsection (1), if authorised to do so by the Scottish Ministers, inspectors may enter any premises (apart from a dwelling-house) associated with the carrying out of the functions of a burial authority, cremation authority, a funeral director's business or a health authority. Subsection (1)(b) allows inspectors to require the production of any documents, records or registers required by this Act, and inspect them, including taking copies (subsection (1)(c)). Subsection (2) provides that these powers can be exercised only in relation to ascertaining whether an offence under this Act has been or is being committed or in carrying out any function conferred on the inspector by virtue of regulations made under the Act.
245. The section sets out further details about these powers, including that the inspector may be accompanied by any other person the inspector considers necessary and may take into the premises any materials and equipment that the inspector considers necessary (subsection (3)). Entry under this section must take place at a reasonable hour (subsection (4)), and the inspector must produce identification and proof of authorisation if required to do so (subsection (5)).
246. By virtue of section 91, inspectors will have the power to inspect health authority records as they relate to requirements imposed by the Act.

Section 92 – Section 91: offences

247. This section makes provision for offences in relation to the powers set out at section 91. It is an offence for a person to fail to comply, without reasonable excuse, with a requirement to produce a document, record or register in the course of an inspector carrying out duties under section 91(1)(b). It is an offence for a person to wilfully obstruct an inspector in the exercise of the power of entry provided by section 91(1)(a), the power to inspect or take copies of documents, records or registers under section 91(1)(c) or any power conferred by regulations made under section 90. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 93 – Reports

248. Subsection (1) requires an inspector to prepare and publish annual reports. Under subsection (2), the first such report prepared by an inspector is to be published before the end of the inspector's first year in the role, and must cover that period. By virtue of subsection (3), each subsequent report is to be published no later than 12 months after the preceding report and is to relate to the period between the publication of the previous report and the publication of the latest report.
249. Subsection (4) sets out that reports must provide information about the activities undertaken by the inspector during the relevant period, and may make recommendations with the aim of improving the services under inspection. Inspectors may also make recommendations to improve the keeping of documents, records and registers.
250. Subsection (6) requires such reports to be laid before the Scottish Parliament as soon as reasonably practicable after publication.
251. In addition to annual reports set out at subsections (1) to (5), subsection (6) allows an inspector to produce other reports on matters he or she thinks appropriate – for example, a report on a crematorium that has serious failings. Such ad hoc reports must be sent to the Scottish Ministers (under subsection (8)(a)) and may, if the inspector considers it necessary or desirable to do so, be published and/or laid before the Scottish Parliament (under subsection (8)(b)).