



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 2

#### CREMATION

##### *Handling of ashes*

#### **51 Duty of cremation authority before carrying out cremation**

- (1) This section applies where—
  - (a) a person (“the applicant”) submits an application to a cremation authority for a cremation to be carried out, and
  - (b) the authority proposes to carry out the cremation.
- (2) Before carrying out the cremation, the cremation authority must take reasonable steps to ascertain in which of the ways mentioned in subsection (3) the applicant wishes the ashes from the cremation to be dealt with.
- (3) The ways are—
  - (a) for the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by the applicant,
  - (b) for the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose,
  - (c) for the ashes to be disposed of by the cremation authority in a specified manner or in a manner indicated by the applicant.
- (4) In this section, “specified” means specified in regulations under section 56(1).

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#### **Commencement Information**

**II** S. 51 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with regs. 4, 8)

*Status: Point in time view as at 25/03/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016, Cross Heading: Handling of ashes. (See end of Document for details)*

## 52 Duty of cremation authority following cremation

- (1) This section applies where a cremation has been carried out by a cremation authority.
- (2) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(a) of that section, the cremation authority must—
  - (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (3) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(b) of that section, the cremation authority must—
  - (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose.
- (4) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(c) of that section, the cremation authority must dispose of the ashes—
  - (a) in a specified manner, or
  - (b) where the applicant has indicated the manner in which the ashes are to be disposed of, in that manner.
- (5) In this section—
 

“applicant”, in relation to a cremation, means the person who submitted the application under section 48(1) by virtue of which the cremation was carried out,

“specified” has the meaning given by section 51(4).

### Commencement Information

**I2** S. 52 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with regs. 5, 8)

## 53 Failure to collect ashes

- (1) This section applies where—
  - (a) a cremation authority has complied with the duties in subsection (2) of section 52, but the applicant has failed to collect the ashes from the cremation authority before the expiry of the period specified for the purposes of that subsection, or
  - (b) a cremation authority has complied with the duties in subsection (3) of section 52, but the funeral director has failed to collect the ashes from the cremation authority before the expiry of the period specified for the purposes of that subsection.
- (2) The cremation authority must take reasonable steps to ascertain whether the applicant wishes—
  - (a) the ashes to be retained by the cremation authority during such further period as may be specified and made available for collection before the expiry of that period by the applicant,

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- (b) the ashes to be retained by the cremation authority during such further period as may be specified and made available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose, or
  - (c) the ashes to be disposed of by the cremation authority in a specified manner.
- (3) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (a) of that subsection, the cremation authority must—
- (a) retain the ashes during the period mentioned in that paragraph, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (4) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (b) of that subsection, the cremation authority must—
- (a) retain the ashes during the period mentioned in that paragraph, and
  - (b) make the ashes available for collection before the expiry of that period by the funeral director appointed for that purpose by the applicant.
- (5) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (c) of that subsection, the cremation authority must dispose of the ashes in the specified manner.
- (6) Where, despite having taken the steps mentioned in subsection (2), the cremation authority does not know in which of the ways mentioned in that subsection the applicant wishes the ashes to be dealt with, the cremation authority must—
- (a) retain the ashes, or
  - (b) dispose of the ashes in the specified manner.
- (7) In this section—
- “applicant” has the meaning given by section 52(5),
  - “specified” has the meaning given by section 51(4).

#### **Commencement Information**

**I3** S. 53 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with regs. 5, 8)

## **54 Power of funeral director in relation to ashes**

- (1) This section applies where—
- (a) by virtue of section 52(3), a funeral director has collected ashes from a cremation authority, and
  - (b) the applicant has failed to collect the ashes from the funeral director before the expiry of the specified period.
- (2) The funeral director must take reasonable steps to ascertain whether the applicant wishes—
- (a) to collect the ashes from the funeral director before the expiry of such period as may be agreed between the funeral director and the applicant, or
  - (b) the funeral director to return the ashes to the cremation authority.

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- (3) Where, by virtue of subsection (2), the funeral director has ascertained that the applicant wishes to collect the ashes as mentioned in paragraph (a) of that subsection, the funeral director must make the ashes available to the applicant for collection during the period agreed by virtue of that subsection.
- (4) Where the applicant—
  - (a) makes known to the funeral director that the applicant wishes to collect the ashes as mentioned in subsection (2)(a), but
  - (b) does not collect the ashes from the funeral director before the expiry of the period agreed by virtue of that subsection,
 the funeral director may return the ashes to the cremation authority.
- (5) Where, by virtue of subsection (2), the funeral director has ascertained that the applicant wishes the funeral director to return the ashes to the cremation authority, the funeral director must so return them.
- (6) Where, despite having taken the steps mentioned in subsection (2), the funeral director does not know in which of the ways mentioned in that subsection the applicant wishes the funeral director to deal with the ashes, the funeral director may return the ashes to the cremation authority.
- (7) In this section—
  - “applicant” has the meaning given by section 52(5),
  - “specified” has the meaning given by section 51(4).

#### Commencement Information

**I4** S. 54 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with regs. 5, 8)

## 55 Duties of cremation authority where ashes returned

- (1) This section applies where, by virtue of section 54(5), a funeral director returns ashes to a cremation authority.
- (2) The cremation authority must take reasonable steps to ascertain whether the applicant wishes—
  - (a) the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by the applicant, or
  - (b) the ashes to be disposed of by the cremation authority in a specified manner.
- (3) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (a) of that subsection, the cremation authority must—
  - (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (4) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (b) of that subsection, the cremation authority must dispose of the ashes in the specified manner.

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- (5) Where, despite having taken the steps mentioned in subsection (2), the cremation authority does not know in which of the ways mentioned in that subsection the applicant wishes the ashes to be dealt with, the cremation authority must—
- (a) retain the ashes, or
  - (b) dispose of the ashes in the specified manner.
- (6) In this section—
- “applicant” has the meaning given by section 52(5),
  - “specified” has the meaning given by section 51(4).

**Commencement Information**

**I5** S. 55 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with regs. 5, 8)

**56 Handling of ashes: regulations**

- (1) The Scottish Ministers may by regulations make further provision about—
- (a) the retention, return and disposal of ashes by a cremation authority, or
  - (b) the retention and return of ashes by a funeral director.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
- (a) collection of ashes by an applicant or a funeral director,
  - (b) failure to collect ashes by an applicant or a funeral director,
  - (c) time periods in relation to collection of ashes by an applicant or a funeral director,
  - (d) notices that must or may be given—
    - (i) by a cremation authority to an applicant or a funeral director, or
    - (ii) by a funeral director to an applicant,
  - (e) time periods within which a response to such a notice is to be given,
  - (f) information such a response is to contain,
  - (g) steps a cremation authority or funeral director must or may take if such a response is not given (or is not given timeously),
  - (h) ascertaining how an applicant wishes ashes to be disposed of, or
  - (i) taking steps mentioned in section 51(2), 53(2), 54(2) or 55(2).
- (3) In this section, “applicant” has the meaning given by section 52(5).

**Commencement Information**

**I6** S. 56 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

**Status:**

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**Changes to legislation:**

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