



Burial and Cremation (Scotland) Act 2016

2016 asp 20

PART 3

ARRANGEMENTS

Pregnancy loss on or before 24 weeks

77 Duty of health body where pregnancy loss likely to occur

- (1) This section applies where—
 - (a) a woman is in the care of a relevant health body, and
 - (b) the relevant health body informs the woman that the relevant health body considers that it is likely that the woman's pregnancy will end before or on completion of its 24th week.
- (2) If the relevant health body considers that it would be in the woman's best interests to do so, the relevant health body must give the woman an opportunity to decide—
 - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,
 - (b) whether she 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 she 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 she wishes to authorise the 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.
- (3) For the purposes of subsection (2)(c), the relevant health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.

- (4) The relevant health body must keep a record of prescribed information.
- (5) In this section—
- “7-day period” means the period of 7 days beginning with the day on which the fetus is parted from the woman and does not breathe or show any other signs of life,
- “relevant health body”, in relation to a woman, means—
- (a) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of a Health Board, that Health Board,
 - (b) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of an independent health care service, that independent health care service.

78 Section 77: health body authorised to make arrangements

- (1) This section applies where—
- (a) a woman’s pregnancy ends before or on completion of its 24th week,
 - (b) after being parted from the woman the fetus does not breathe or show any other signs of life,
 - (c) at the time when the pregnancy ends the woman is in the care of a relevant health body, and
 - (d) the relevant health body is authorised by virtue of section 77(2)(c) to make arrangements for the remains of the fetus to be buried or cremated.
- (2) The relevant health body—
- (a) may make arrangements for the remains to be buried or cremated, and
 - (b) if by virtue of section 77(2)(c)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) The relevant health body may make the arrangements—
- (a) if the authorisation was given by virtue of section 77(2)(d)(i), as soon as practicable after the pregnancy ends,
 - (b) if the authorisation was given by virtue of section 77(2)(d)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.
- (4) In this section, “7-day period” and “relevant health body” have the meanings given by section 77(5).

79 Arrangements on pregnancy loss on or before 24 weeks

- (1) This section applies where—
- (a) a woman’s pregnancy ends before or on completion of its 24th week,
 - (b) after being parted from the woman the fetus does not breathe or show any other signs of life,
 - (c) at the time when the pregnancy ends the woman is in the care of an appropriate health authority, and
 - (d) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 84(2) for the remains of the fetus to be buried or cremated.

- (2) Before the expiry of the initial period, the appropriate health authority must give the woman an opportunity to decide—
 - (a) whether she wishes to make arrangements for the remains of the fetus to be buried or cremated,
 - (b) whether she 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 authority, or
 - (c) whether she 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.
- (3) For the purposes of subsection (2)(c), the appropriate health authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (4) Subsection (5) applies if, before the expiry of the initial period, the woman informs the appropriate health authority of a decision that she has made under subsection (2).
- (5) As soon as practicable after the woman informs the appropriate health authority of the decision the authority must—
 - (a) record the decision in the prescribed form, and
 - (b) take reasonable steps to secure the woman’s signature.
- (6) Subsection (7) applies if the woman does not inform the appropriate health authority before the expiry of the initial period of a decision that she has made under subsection (2).
- (7) As soon as practicable after the expiry of the initial period, the appropriate health authority must—
 - (a) record the matters mentioned in subsection (8) in the prescribed form, and
 - (b) take reasonable steps to secure the woman’s signature.
- (8) The matters are—
 - (a) if the woman informs the appropriate health authority of a decision she has made under subsection (2), the decision,
 - (b) if the woman does not inform the appropriate health authority of a decision she has made under that subsection, that fact.
- (9) In this section—
 - “appropriate health authority”, in relation to a woman whose pregnancy ends as mentioned in subsection (1), means—
 - (a) if at the time when the pregnancy ends the woman is in the care of an independent health care service, that independent health care service,
 - (b) if at the time when the pregnancy ends the woman is in the care of a Health Board, that Health Board,
 - “initial period” means 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.

80 Change in arrangements

- (1) This section applies if—
 - (a) an appropriate health authority has given a woman the opportunity to make a decision under section 79(2),
 - (b) the remains have not been buried or cremated, and
 - (c) the relevant period has not expired.
- (2) The woman may notify the appropriate health authority of—
 - (a) where she has previously made a decision under section 79(2), a new decision under that section replacing the decision she made previously,
 - (b) where she has not previously made a decision under that section, a decision made by her under that section.
- (3) If the woman notifies the appropriate health authority that she has made the decision mentioned in section 79(2)(c), the authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (4) As soon as practicable after receiving notice under subsection (2), the appropriate health authority must—
 - (a) record the decision in the prescribed form, and
 - (b) take reasonable steps to secure the woman's signature.
- (5) In this section—

“appropriate health authority” has the meaning given by section 79(9),
“relevant period” means the period of 5 weeks beginning with the day on which the initial period (as defined in section 79(9)) expires.

81 Individual authorised to make arrangements

- (1) This section applies if an individual is authorised under section 79(2)(b) to make arrangements for the remains of a fetus to be buried or cremated.
- (2) If the individual does not wish to make the arrangements—
 - (a) the individual may authorise the appropriate health authority to make arrangements for the remains to be buried or cremated—
 - (i) in a way specified by the individual, or
 - (ii) in a way specified by the authority, but
 - (b) otherwise may not authorise any other person to make arrangements for the remains to be buried or cremated.
- (3) If by virtue of section 79(2)(b)(i) the individual is authorised to make arrangements for the remains to be buried or cremated in a way specified by the woman, the individual must specify that way under subsection (2)(a)(i).
- (4) For the purposes of subsection (2)(a), the appropriate health authority must inform the individual if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (5) If an appropriate health authority is authorised by an individual under subsection (2)(a), it must—
 - (a) record the authorisation in the prescribed form, and

- (b) take reasonable steps to secure the individual's signature.
- (6) Subsection (7) applies if—
 - (a) under section 79(7)(a) or 80(4)(a) the appropriate health authority has recorded a decision under section 79(2)(b) to authorise an individual, and
 - (b) the individual—
 - (i) does not inform the authority that the individual has made arrangements for the remains to be buried or cremated, and
 - (ii) does not authorise the authority under subsection (2)(a) to make those arrangements.
- (7) The appropriate health authority must—
 - (a) record those facts in the prescribed form, and
 - (b) take reasonable steps to secure the individual's signature.
- (8) In this section, “appropriate health authority” has the meaning given by section 79(9).

82 Duty to transfer remains

- (1) Subsection (2) applies where by virtue of a decision made by a woman under section 79(2)(a) the arrangements for the burial or cremation of the remains of a fetus are to be made by the woman.
- (2) The appropriate health authority must give the remains to the woman.
- (3) Subsection (4) applies where by virtue of a decision made by a woman under section 79(2)(b) an individual is authorised to make the arrangements for the burial or cremation of the remains of a fetus.
- (4) The appropriate health authority must give the remains to the individual.
- (5) In this section, “appropriate health authority” has the meaning given by section 79(9).

83 Appropriate health authority authorised to make arrangements

- (1) This section applies where by virtue of section 79(2)(c), 80(2) or 81(2)(a) an appropriate health authority is authorised to make arrangements for remains to be buried or cremated.
- (2) After the expiry of the 7-day period, the appropriate health authority—
 - (a) must make arrangements for the remains to be buried or cremated, and
 - (b) if by virtue of section 79(2)(c)(i), 80(2) or 81(2)(a)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) Subsections (4) and (5) apply if the person who authorised the appropriate health authority to make the arrangements for the disposal of the remains informs the authority that the person has decided that the authority may make the arrangements before the expiry of the 7-day period.
- (4) The appropriate health authority must—
 - (a) record the person's decision in the appropriate form, and
 - (b) take reasonable steps to secure the person's signature.
- (5) The appropriate health authority—

- (a) may make arrangements for the remains to be buried or cremated before the expiry of the 7-day period, and
 - (b) if by virtue of section 79(2)(c)(i), 80(2) or 81(2)(a)(i) it is authorised to do so in a specified way, must do so in that way.
- (6) In this section—
- “7-day period” means the period of 7 days beginning with the day on which authorisation is given by virtue of section 79(2)(c), 80(2) or 81(2)(a),
 - “appropriate health authority” has the meaning given by section 79(9).

84 Duty of appropriate health authority

- (1) This section applies where—
- (a) section 79(1) applies in relation to a woman,
 - (b) the relevant period has expired, and
 - (c) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 79, 80 or 81 for the remains of the fetus to be buried or cremated.
- (2) As soon as is reasonably practicable after the expiry of the relevant period, the appropriate health authority must consider whether it would be in the best interests of the woman for the authority to contact the woman for the purpose of seeking to establish—
- (a) whether the woman wishes to decide who should make arrangements for the remains to be buried or cremated, and
 - (b) in the event that the woman would wish to authorise the authority to make those arrangements, whether the woman would wish to specify the way in which the authority should make the arrangements.
- (3) If the appropriate health authority determines by virtue of subsection (2) that it would not be in the best interests of the woman for the authority to contact her for the purpose mentioned in that subsection, the authority may make arrangements for the remains to be buried or cremated.
- (4) If the appropriate health authority determines by virtue of subsection (2) that it would be in the best interests of the woman for the authority to contact her for the purpose mentioned in that subsection, the authority must take reasonable steps to contact the woman for that purpose.
- (5) Subsection (6) applies if by virtue of subsection (2)—
- (a) the appropriate health authority is authorised by the woman to make arrangements for the remains to be buried or cremated, and
 - (b) the woman has specified the way in which the authority should make those arrangements.
- (6) The authority may—
- (a) make arrangements for the remains to be buried or cremated, and
 - (b) except where it would not be reasonably practicable to do so, must do so in the way specified by the woman.
- (7) Subsection (8) applies if, at any time after having contacted or taken reasonable steps to contact the woman under subsection (4), it appears to the appropriate health authority—

- (a) that no arrangements have been or are being made for the remains to be buried or cremated, and
 - (b) that in all the circumstances of the case it would be in the woman’s best interests for the authority to make those arrangements.
- (8) The authority may make arrangements for the remains to be buried or cremated.
- (9) In this section—
“appropriate health authority” has the meaning given by section 79(9),
“relevant period” has the meaning given by section 80(5).