



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 4

#### INSPECTION

#### 89 Appointment of inspectors

- (1) The Scottish Ministers may appoint such persons as they think fit to be—
  - (a) inspectors of burial,
  - (b) inspectors of cremation,
  - (c) inspectors of funeral directors.
- (2) A person appointed under subsection (1) is referred to in this Part as an “inspector”.
- (3) The Scottish Ministers must pay to an inspector such remuneration as the Scottish Ministers may determine.
- (4) An inspector is to be appointed on such other terms and conditions as the Scottish Ministers may determine.
- (5) The Scottish Ministers may in the case of such of the inspectors as they may determine—
  - (a) pay such pensions, allowances or gratuities to or in respect of them as may be so determined,
  - (b) make such payments towards the provision of pensions, allowances or gratuities to or in respect of any of them as may be so determined, or
  - (c) provide and maintain such schemes (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of them as may be so determined.
- (6) In this section, “funeral director” has the meaning given by section 31(1) of the Certification of Death (Scotland) Act 2011.

#### Commencement Information

**II** S. 89(1)(a)(c)(2)-(6) in force at 28.12.2016 by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [reg. 4](#))

*Status: Point in time view as at 04/04/2019. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016, PART 4. (See end of Document for details)*

**12** S. 89(1)(b) in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with regs. 3, 8)

VALID FROM 02/06/2023

## **90 Inspections: regulations**

- (1) The Scottish Ministers may by regulations make provision for or in connection with—
  - (a) the carrying out of inspections of burial grounds and burial authorities by inspectors of burial appointed under section 89(1),
  - (b) the carrying out of inspections of crematoriums and cremation authorities by inspectors of cremation so appointed,
  - (c) the carrying out of inspections of funeral directors by inspectors of funeral directors so appointed.
- (2) In subsection (3), burial authorities, cremation authorities and funeral directors are referred to as “relevant bodies”.
- (3) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) other functions of inspectors in relation to inspections,
  - (b) circumstances in which inspections are to be carried out,
  - (c) the frequency of inspections,
  - (d) reports by inspectors in relation to inspections,
  - (e) steps that may be taken by inspectors for the purpose of ensuring compliance with—
    - (i) requirements or conditions contained in enactments, codes of practice or guidance applicable to relevant bodies, or
    - (ii) conditions in any licence necessary to operate as a relevant body,
  - (f) steps that may be taken by inspectors to enforce such requirements or conditions,
  - (g) the procedure to be followed, and timescales applicable, in relation to such steps,
  - (h) where by virtue of paragraph (e) or (f) an inspector proposes to suspend the operation of activities of relevant bodies, or suspend or revoke any licence necessary to operate as a relevant body—
    - (i) recommendations by inspectors to the Scottish Ministers in relation to the proposal,
    - (ii) information to be provided by inspectors in connection with such recommendations,
    - (iii) decisions of the Scottish Ministers in relation to such recommendations,
  - (i) reviews of or appeals against—
    - (i) decisions of inspectors made by virtue of the regulations, and
    - (ii) decisions of the Scottish Ministers mentioned in paragraph (h)(iii),
  - (j) investigations of complaints against relevant bodies (in particular or in general) and the procedure to be followed in relation to such investigations, or

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- (k) sanctions inspectors may impose in relation to such investigations.

PROSPECTIVE

## 91 Powers of entry and inspection

- (1) An inspector may if authorised to do so by the Scottish Ministers—
- (a) enter any premises (other than a dwelling-house) associated with the carrying out of any function of—
    - (i) a burial authority,
    - (ii) a cremation authority,
    - (iii) a funeral director, or
    - (iv) a health authority,
  - (b) require the production of any documents, records or registers which a person mentioned in paragraph (a) is required to have or maintain under or by virtue of this Act, and
  - (c) inspect and take copies of such documents, records or registers.
- (2) The powers in subsection (1) may be exercised by an inspector only for the purposes of—
- (a) ascertaining whether an offence under or by virtue of this Act has been or is being committed,
  - (b) carrying out any function conferred on the inspector by virtue of regulations under this Act, or
  - (c) (in the case of the power conferred by subsection (1)(a)(iv)) determining whether a health authority is complying with requirements relating to records or registers imposed on it by this Act.
- (3) If an inspector exercises a power of entry by virtue of subsection (1), the inspector may take onto the premises such other persons, and such materials and equipment, as the inspector considers necessary.
- (4) A power of entry under subsection (1) must be exercised at a reasonable hour.
- (5) An inspector who proposes to exercise a power conferred under subsection (1) must, if so required, produce evidence of the inspector's identity and authorisation before exercising the power.
- (6) In this section, “health authority” means a Health Board or an independent health care service.

PROSPECTIVE

## 92 Section 91: offences

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a requirement made by an inspector under section 91(1)(b) to produce a document, record or register.

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- (2) A person commits an offence if the person wilfully obstructs an inspector in the exercise of—
  - (a) the power of entry conferred under section 91(1)(a),
  - (b) the power to inspect or take copies of documents, records or registers conferred under section 91(1)(c), or
  - (c) a power conferred by virtue of regulations under section 90.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### 93 Reports

- (1) Each inspector must prepare and publish annual reports.
- (2) The first annual report prepared by an inspector under subsection (1)—
  - (a) is to be published before the expiry of the period of 12 months beginning with the day on which the inspector is appointed, and
  - (b) is to relate to that period.
- (3) Each subsequent annual report—
  - (a) is to be published no later than 12 months after publication of the preceding annual report, and
  - (b) is to relate to the period beginning with publication of the preceding annual report and ending with publication of the subsequent annual report.
- (4) An annual report by an inspector—
  - (a) must contain information about the activities carried out by the inspector during the period to which the report relates,
  - (b) may contain recommendations that the inspector considers would, if implemented—
    - (i) improve the services provided by cremation authorities, burial authorities or (as the case may be) funeral directors, or
    - (ii) improve the keeping of relevant documents, records or registers.
- (5) In subsection (4)(b)(ii), “relevant documents, records or registers” means documents, records or registers which a person mentioned in section 91(1)(a) is required, under or by virtue of this Act, to have or maintain.
- (6) As soon as reasonably practicable after publication, annual reports must be laid before the Scottish Parliament.
- (7) An inspector may, at any time the inspector thinks appropriate, prepare a report about any matters relating to the inspector’s functions (an “ad hoc report”).
- (8) If an inspector prepares an ad hoc report, the inspector—
  - (a) must send a copy of the report to the Scottish Ministers,
  - (b) may, if the inspector thinks it appropriate—
    - (i) publish the report,
    - (ii) lay the report before the Scottish Parliament.

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### Commencement Information

**I3** S. 93 in force at 28.12.2016 for specified purposes by S.S.I. 2016/417, reg. 2, **sch.** (with reg. 4)

**I4** S. 93 in force at 4.4.2019 in so far as not already in force by S.S.I. 2018/380, reg. 2, **sch.** (with reg. 8)

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**Changes to legislation:**

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