

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Arrangements

164. Part 3 of the Act sets out who has the right to instruct the burial or cremation of human remains. Burial and cremation of several distinct groups are considered: adults, children, stillborn babies and pregnancy losses.

Adults and children

Section 65 – Arrangements on death of adult

165. **Section 65** applies when arrangements are to be made following the death of an adult who has not made any arrangements about who is to decide what is to happen to his or her remains. The phrase “arrangements on death declaration” refers to any wishes expressed by the deceased while alive regardless of whether they were made in writing or verbally. This section also applies where the adult who has died did make such arrangements but it would not be reasonably practicable to carry out those arrangements. Subsection (2) allows the nearest relative of the adult to make the arrangements, but that person is not obliged to make the arrangements if they do not wish to do so (or are unable to do so).
166. Subsection (3) establishes a hierarchy of people who meet the definition of nearest relative. This is set out in paragraphs (a) to (k) of subsection (3). Subsection (4) makes provision for a situation where the spouse or civil partner of the deceased was permanently separated or deserted from the adult.
167. Any relative that falls within one of the categories set out in this section will rank equally with any other relative in the same category and may be considered to be the nearest relative (subsection (6)). For example two siblings are treated as having equal rank. Stepchildren of the adult who has died will be treated as if they were a natural child of the adult. Any half-blood sibling will have the same rights as a whole-blood sibling (subsection (5)).
168. Subsection (7) provides that someone who is under 16 years of age is regarded as a child and will not be eligible to instruct the disposal of the adult’s remains. Anyone who would otherwise be eligible but does not wish to or is unable to make the arrangements or is unable to make the arrangements for any reason, will not be included. This ensures that no-one will be required to take on responsibility for making such arrangements.
169. Subsection (7)(c) provides that if it is not reasonably practicable to communicate with the relative in the time available they may also be excluded and will not be called upon to make the arrangements, even if the person would have wished to do so. In this case, the responsibility falls to the next person in the hierarchy established at paragraphs (a) to (k) of subsection (3).

170. Subsection (9) provides that this section is subject to section 92 of the Public Health etc. (Scotland) Act 2008, which would take effect if there was any risk to public health from the body. This would mean that the local authority would be able to take steps to minimise the risk to health, including disposing of the body without having to consider the requirements of this section.

Section 66 – Arrangements on death of child

171. **Section 66** applies in respect of the arrangements to be made following the death of a child. A child is someone who is under 16 years of age.
172. Subsection (2) provides that the nearest relative may make the arrangements for the burial or cremation of their remains. As with section 65, the nearest relative is not obliged to make the arrangements if they do not wish to do so, or are unable to do so.
173. Subsection (3) sets out the order of priority of the nearest relative who may instruct the disposal of the remains and the nearest relative is defined in paragraphs (a) to (g) of subsection (3). Subsection (3)(g) refers to ‘a friend of long standing of the child’. This is intended to allow adults who had a relationship with the child to make a decision even if they do not fall into any of the familial categories set out at paragraphs (a) to (f) of subsection (3). Subsection (4) provides that the relatives will rank in the order of those paragraphs.
174. A relative who is a half-blood relation will be treated in the same way as a relative who is of the whole-blood. Subsection (5) provides that where there is more than one person of the same rank in any of the paragraphs, each of them will rank equally with the others in the same paragraph. This is the same process as for section 46, but the hierarchy established by paragraphs (a) to (g) of subsection (3) takes account of the different relationships a child would have as opposed to the relationships of an adult.
175. Subsection (6) provides that a child who is under 16 years of age immediately prior to the death will not be eligible to instruct the burial or cremation of the remains unless they are the parent of the child who has died. This will ensure that anyone under the age of 16 who is a parent will not be excluded from making the decision. Anyone who would otherwise be eligible under paragraphs (a) to (g) of subsection (3), but does not wish to make the arrangements or is unable to make the arrangements for any reason will not be included. This ensures that no one can be forced to take on responsibility for making such arrangements.
176. Subsection (6)(c) sets out that where it is not reasonably practicable to communicate with the person in the time available they will be excluded and will not be called upon to make the arrangements. This will apply even if the person would have wished to make the arrangements.
177. This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008, which will apply if there is any risk to public health as a result of the presence of a person’s body in premises other than a mortuary or hospital.

Section 67 – Arrangements under sections 65 and 66

178. **Section 67** provides that the person who is making arrangements for the disposal of the remains by virtue of being the “nearest relative” under section 65(2) or 66(2) is free to choose the method of disposal (i.e. burial or cremation). Nevertheless the nearest relative should take account of any wishes expressed by the deceased. Subsection (3) requires that the person who makes the decision must have regard to any wishes about the disposal method that the deceased expressed, as far as the person is aware of any such wishes. They must also have regard to the deceased’s religion or belief (as far as known) when deciding whether to bury or cremate those remains. “Belief” and “religion” have the meanings given by the Equality Act 2010. The only limit on the

nearest relative making the decision would be if there was a risk to public health posed by a particular method of disposal under the Public Health etc. (Scotland) Act 2008.

Section 68 – Sections 65 and 66: application to sheriff

179. Sections 65 and 66 set out who has the right to instruct the disposal of remains. Section 68 provides for the resolution of disputes – for example where two people each claim to have the right. Subsection (1) permits anyone who claims they are entitled to make arrangements for disposal to make an application to the sheriff. The sheriff can make an order setting out who is entitled to make the arrangements. The sheriff may make the order based on an “arrangements on death declaration” made by the deceased or based on who is the nearest relative. For the purposes of the Act, the phrase “arrangements on death declaration” means any statement (whether verbal or written) the deceased made while alive which specified the person whom the deceased wished to make the arrangements for the disposal of his or her remains. Subsection (2) allows the sheriff to also make any other provision that is considered appropriate or necessary when making an order.
180. In certain circumstances an application may not be made under this section. Subsection (5) allows that such restrictions apply in cases where there is a risk to public health from the remains of the deceased and where either an application for an order under section 93(1) of the Public Health etc (Scotland) Act 2008 has been made and not disposed of, or an order under that section has been made in respect of the remains.

Pregnancy loss after 24 weeks

Section 69 – Arrangements on termination of pregnancy after 24 weeks

181. This section applies where a pregnancy is to be terminated after its 24th week under the Abortion Act 1976. The effect of the section is to allow decisions about burial or cremation to be made before the termination takes place. If a health body considers that it is in the woman’s best interests, it must give the woman the opportunity to decide whether she wishes to make arrangements for the burial or cremation of the remains herself or whether she wishes to authorise the health body to make the arrangements.
182. Where the woman authorises the health body to make the arrangements, subsection (2) (b) allows her to specify the method of disposal or she may choose to allow the health body to specify the method.
183. Subsection (2)(c) allows the woman to authorise the health body to make arrangements as soon as practicable after the termination or to wait 7 days. This is to allow the woman to change her decision about what she wishes to happen to the remains. Subsection (3) requires the health body to inform the woman if it is unable to dispose of the remains in a particular way. The effect of this is to ensure that only those methods which the health body can arrange are agreed.
184. Subsection (4) requires the health body to keep a record of information that is prescribed by the Scottish Ministers by regulations in relation to section 69.
185. Subsection (5) provides a definition of an “appropriate health body”. Where a woman is in the care of a Health Board in relation to the termination, “appropriate health body” means that Health Board. In turn, “health board” is defined as a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978. If a woman is in the care of an independent health service in relation to the termination, “appropriate health body” means that independent health service. The meaning of “independent health service” is to be construed in accordance with section 10F of the National Health Service (Scotland) Act 1978.

Section 70 – Section 69: health body authorised to make arrangements

186. This section applies in relation to a post 24-week termination where a health body has been authorised under section 69(2)(b) to make arrangements for the remains to be buried or cremated. The health body may make arrangements for the disposal of the remains, and must do so in the way specified by the woman if she has specified a method under section 69(2)(b)(i). If authorisation was given by virtue of section 69 (2)(c)(i), subsection (3) of section 70 requires the health body to make the arrangements as soon as practicable after the termination has taken place. If authorisation was given by virtue of section 69(2)(c)(ii) and not withdrawn before the expiry of the 7-day period, the health body must not make arrangements for disposal until the expiry of the 7-day period. Subsection (4) sets out that the 7-day period means the 7 days from the day on which the pregnancy was terminated.

Section 71 – Section 69: no arrangements

187. Subsection (1) sets out a duty on a health authority following a post-24 week termination where it appears to the health authority that no arrangements for burial or cremation of the remains are being made by virtue of subsection 69(2). This may arise because the health body did not consider it to be in the woman's best interests to give her the opportunity to decide what should happen before the loss occurred, as per section 69(2). It may also arise where the woman was given the opportunity under section 69(2) but did not indicate her decision.
188. Subsection (2) provides that the health authority must give the woman the opportunity to decide whether she wishes to make arrangements for the burial or cremation of the remains or whether she wishes to authorise the health authority to make arrangements in a way specified by the woman or in a way specified by the health authority. Where the woman authorises the health authority to make the arrangements in a way specified by her, subsection (3) requires the health authority to inform her if the way she has specified is not reasonably practicable.
189. By virtue of subsection (4), subsection (5) applies where a woman informs the health authority that she does not wish to make arrangements, is unable to make a decision or does not inform the health authority of a decision under subsection (2). In this case, subsection (5) allows the health authority to make arrangements for the remains to be buried or cremated. Subsection (6) requires the health authority to record information that is prescribed by the Scottish Ministers by regulations.

Section 72 – Duty of health body where still-birth likely to occur

190. This section sets out the procedure to be followed by a health body where it is known that a woman's pregnancy will end in a stillbirth (but not as a consequence of a post-24 week termination). Subsection (2) provides that where a health body considers that it would be in the woman's best interests to do so, it must give the woman the opportunity to decide whether she wishes to make arrangements for the burial or cremation of the remains, or whether she wishes to authorise the health body to make the arrangements in a way specified by the woman or in a way specified by the health body.
191. Where the woman wishes to authorise the health body to make the arrangements, she must indicate whether she wishes the arrangements to be made as soon as is practicable after the stillbirth occurs or whether the health body should wait 7 days after the stillbirth occurs before making arrangements. Where the woman authorises the health authority to make the arrangements in a way she specifies, subsection (3) requires the health authority to inform her if the way she has specified is not reasonably practicable.
192. Subsection (4) requires the health authority to keep a record of information prescribed by the Scottish Ministers by regulations in relation to section 72.
193. Subsection (5) provides definitions for the purposes of this Act.

Section 73 – Section 72: health body authorised to make arrangements

194. This section applies where a still-birth occurs other than as a consequence of the pregnancy being terminated, and where the appropriate health body is authorised by virtue of section 72(2)(b) to make arrangements for the remains of the fetus to be buried or cremated. Subsection (2) enables the health body to make arrangements for the disposal. If the woman has chosen a specific manner for disposal, the health body must use that method. Subsection (3)(a) requires the health body to make the arrangements as soon as practicable after the still-birth occurs; subsection (3)(b) requires the health body to wait 7 days after the still-birth occurs before making the arrangements. This is dependent on what the woman indicates she wishes to happen. Subsection (4) provides definitions for the purposes of this section.

Section 74 – Arrangements on still-birth

195. This section applies in respect of the arrangements to be made for burial or cremation following a still-birth (other than as a result of a post-24 week termination) and it appears to the health body that no other arrangements have been or are being made by virtue of section 72(2).
196. By virtue of subsection (2), the nearest relative of the still-born child may make arrangements for the disposal of the remains. Subsection (3) sets out a list of nearest relatives and the order of priority. The nearest relative is firstly the parent of the stillborn child. If neither parent is able (or wishes) to make a decision about the disposal the right then moves to the next nearest relative on the list. This process continues until someone exercises the right. As well as making the arrangements themselves, subsection (4)(a) enables the person making the decision to authorise the health body to make the arrangements in a manner chosen by the person or chosen by the health body. Subsection (4)(b) clarifies that the person making the decision is not permitted to authorise any other person to make arrangements.
197. Subsection (5) requires the health body to inform the nearest relative if a method of disposal they specify cannot be provided. Subsection (6) requires the health body to record information prescribed by the Scottish Ministers by regulations in relation to section 74. Subsections (7) to (9) set out the order of priority of nearest relative and make clear those who will be discounted, for example, if they are under 16 years of age. Subsection (10) provides definitions for the purposes of this section.

Section 75 – Section 74: power of appropriate health body

198. This section sets out what a health body must do when it is authorised to make arrangements for the burial or cremation of a stillborn child. Before making any arrangements, subsection (2) requires the health body to wait 7 days after being authorised. Subsection (3) provides that the 7-day period need not apply if the person who authorised the health body does not wish it to apply.
199. The health body will be required to record the decision in an appropriate form and must attempt to obtain the signature of the person who is making the decision.

Section 76 – Section 74: general power of appropriate health body

200. This section applies where it appears to the health body that no arrangements have been or are being made for the disposal of the remains following a still-birth. The health body may make arrangements for burial or cremation of the remains. This section ensures that arrangements can always be made for the burial or cremation of such remains.

Pregnancy loss on or before 24 weeks

Section 77 – Duty of health body where pregnancy loss likely to occur

201. This section applies where a woman is in the care of a relevant health body and the health body informs her that it considers it likely that the woman's pregnancy will end before or on completion of its 24th week. By virtue of subsection (2), where a health body considers that it would be in the woman's best interests to do so, it must give the woman the opportunity to decide whether she wishes to make arrangements for the burial or cremation of the remains, or whether she wishes to authorise the health body to make the arrangements in a way specified by the woman or in a way specified by the health body.
202. Where the woman authorises the health body to make the arrangements, she must indicate whether she wishes the arrangements to be made as soon as is practicable after the loss occurs or whether the health body should wait 7 days after the loss occurs before making arrangements. Where the woman authorises the health body to make the arrangements in a way she specifies, subsection (3) requires the health body to inform her if the way she has specified is not reasonably practicable. Subsection (4) requires the health body to record information prescribed by the Scottish Ministers by regulations. Subsection (5) provides definitions for the purposes of this section.

Section 78 – Section 77: health body authorised to make arrangements

203. This section provides various powers for health bodies where they have been authorised to make arrangements by virtue of section 77.
204. By virtue of subsection (1), the section applies where certain conditions are met: a pregnancy ends before or on completion of the 24th week; the fetus did not breathe or show any other signs of life after being parted from the woman; at the time of the loss the woman was in the care of a relevant health body; and the relevant health body is authorised to make arrangements for the remains of the fetus to be buried or cremated.
205. Subsection (2) enables the health body to make the arrangements. If the woman has chosen a specific manner for disposal, the health body must use that method. Subsection (3) requires the health body to wait 7 days before making arrangements, if the woman has requested this. Otherwise, the health body must make arrangements for the disposal as soon as possible after the loss occurs.

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 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.

Section 80 – Change in arrangements

211. Subsection (1) sets out that section 80 applies where an appropriate health authority has given a woman the opportunity to make a decision under section 79(2), the remains have not been buried or cremated and the relevant period has not expired. The “relevant period” for the purposes of this section is defined by subsection (5) as meaning the period of 5 weeks after the expiry of the 7 day initial period set out in section 79(9).
212. As with the process set out in section 79, 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. Similarly, under subsection (4), the health authority must record the decision and take reasonable steps to secure the woman's signature. Subsection (5) provides that “appropriate health authority” has the same definition as in section 79(9).

Section 81 – Individual authorised to make arrangements

213. Subsection (1) of section 81 sets out that the section applies where an individual has been authorised to make arrangements for the disposal of remains under section 79(2) (b). Subsection (2) allows the individual to decline to make arrangements and authorise the appropriate health authority to do so in a way specified by the individual or the health authority. The individual may not authorise any other person to make arrangements.
214. Subsection (3) requires the person who has been authorised to make the arrangements on behalf of the woman to dispose of the remains in the manner specified by the woman.
215. Subsection (4) requires the health authority to inform the individual if it is not practicable to arrange the disposal in a way chosen by the individual.
216. Where the individual authorises the health authority to make arrangements, subsection (5) requires the health authority to record that information in the prescribed form and to take reasonable steps to secure the individual's signature.
217. Subsection (6) provides that subsection (7) applies if the health authority has recorded a decision to authorise an individual made under section 79(2)(b) and the individual does not inform the health authority that he or she has made arrangements for the disposal of the remains and does not authorise the health authority to make the arrangements. Subsection (6) requires the health authority to record those facts in a prescribed form

and take reasonable steps to secure the individual's signature. Subsection (8) provides that "appropriate health authority" has the same definition as in section 79(9).

Section 82 – Duty to transfer remains

218. This section provides that where a woman chooses to make her own arrangements for the burial or cremation of the remains of a pregnancy loss, the health authority must give the remains to the woman. Where the woman authorises another person to make arrangements and that person wishes to make his or her own arrangements, the health authority must give the remains to that person. Subsection (5) provides that "appropriate health authority" has the same definition as in section 79(9).

Section 83 – Appropriate health authority authorised to make arrangements

219. **Section 83** applies when a health authority has been authorised by the woman who experienced the pregnancy loss or her nominated representative to make the arrangements for the burial or cremation of the remains of the fetus. It requires the health authority to make arrangements for burial or cremation of the remains after the expiry of the period of 7 days beginning with the day on which the woman or her nominated representative informed the health authority to make arrangements to dispose of the remains.
220. The health authority is required to carry out the disposal in accordance with the manner agreed by virtue of sections 79(2)(c)(i), 80(2) or 81(2)(a)(i). These sections cover the range of situations where the health authority is making arrangements, whether because they have been authorised to do so by the woman or her nominated representative, or because no decision has otherwise been made.
221. Subsection (3) enables the person who authorises the health authority to specify that they do not wish the health authority to wait 7 days before making arrangements for the disposal of the remains. If this is not done, the health authority will be required to wait for 7 days from being authorised to make the disposal arrangements. The delay allows the person who authorises the health authority to change his or her decision before arrangements are made for the burial or cremation of the remains.

Section 84 – Duty of appropriate health authority

222. This section applies where a pregnancy loss has occurred in the circumstances set out at section 79(1) and more than 6 weeks has elapsed since the loss and it appears to the health authority that no arrangements are being or have been made under section 79, 80 or 81 for the burial or cremation of the remains of the fetus.
223. In this case, the health board or independent health service (the "health authority") caring for the woman when her pregnancy ended must decide if it would be in the best interests of the woman to contact her again to try and ascertain her views and if so, whether she would wish to decide who should make arrangements for the disposal of the remains of the fetus. If the health authority is of the view that it would not be in her best interests to contact the woman, it must make arrangements for the disposal of the remains. This prevents a health authority contacting a woman at this stage where she has earlier indicated that she does not wish to be involved in arrangements for burial or cremation. This discretion allows the health authority not to contact the woman where doing so is considered to be contrary to her wishes and best interests.
224. Subsection (2) sets out the procedure to be followed by a health authority once the relevant period, as defined in section 80(5), has expired and no arrangements have been made. As soon as possible after that, the health authority must consider whether it would be in the best interests of the woman to contact her to attempt to ascertain whether she wishes to decide who should make the arrangements and if she wishes to specify the manner of disposal to be used if she authorises the health authority to make the arrangements.

225. Subsection (3) set out the procedure to be followed where the health authority considers it would not be in the woman's best interests to seek her views in terms of subsection (2). In these circumstances, the health authority may make the arrangements for disposal.
226. Subsection (4) details the steps to be taken by a health authority where it has decided that it would be in the woman's best interest to consult her in terms of subsection (2). The health authority should take reasonable steps to to ascertain her wishes.
227. Subsections (5) and (6) set out the procedure to be followed where the health authority has been authorised by the woman to make the arrangements on her behalf and she has specified the manner in which the remains are to be disposed of. The health authority may proceed to make the arrangements and must do so in the manner specified by the woman, unless it would be impractical to make those arrangements.
228. Subsections (7) and (8) enable the health authority to make the arrangements where no arrangements are otherwise being made and it would not be in the woman's best interest to attempt to ascertain her wishes.
229. Guidance will be provided to support this process. The intention is that this process will have been explained to the woman when the health authority discusses options with her as required by the Act, so that no woman should be unaware of the various possible outcomes.
230. This approach allows a health authority to base its decision on its relationship with the woman who has experienced the loss. In some instances, a health authority may know that a woman is still trying to make a decision, in which case the authority will be expected not to make arrangements for the disposal of the remains of the fetus under this section, pending the woman's decision. In other cases, the woman may have had no contact with the health authority since the loss occurred. The health authority may conclude that the woman does not wish to have any involvement in making arrangements and decide that it should make arrangements for the disposal. This section provides sufficient flexibility to ensure that a health authority can always make a decision about how to proceed in the context of the woman's best interests, including avoiding unnecessary involvement in this process where the woman does not wish to be involved.

Pregnancy losses: general

Section 85 – Duty to keep a register

231. Each Health Board and independent health care service is required to keep and maintain a register relating to the disposal of pregnancy losses, which must be kept indefinitely. The register will contain information that has been prescribed in regulations made by the Scottish Ministers. The regulations may also set out the form and manner in which the register is to be maintained.

Section 86 – Register under section 85: offence

232. A health authority commits an offence if it fails to prepare and maintain, without reasonable excuse, a register as required by section 85. On summary conviction, the penalty is a fine up to level 3 on the standard scale if convicted of the offence.

Local authority functions

Section 87 – Burial or cremation: duty of local authority

233. **Section 87** places a responsibility on a local authority where someone has been found dead in the local authority area and it appears to the authority that no arrangements have been or are being made under sections 65(2) or 66(2) for the disposal of their remains.

Under subsection (2) the local authority must make the arrangements for disposal of the remains either by cremation or burial in such circumstances.

234. Subsections (3) and (4) provide that a local authority that looked after a child who has died or cared for or provided assistance to an adult who has died must make arrangements for that person's remains to be buried or cremated if no other arrangements are being made for the disposal of the remains.
235. Subsection (5) requires that when making such arrangements the local authority should have regard to any wishes the deceased person had about the method of disposal, if those wishes are known to the local authority. They must also have regard (as far as known to the authority) to the deceased's religion or belief when deciding whether to bury or cremate the remains. "Belief" and "religion" have the meanings given by section 10 of the Equality Act 2010. The local authority is entitled to recover any expenses it incurs in making arrangements for the burial or cremation under subsection (2) from the deceased's estate.

Section 88 – Expenses of attending funeral

236. Subsection (1) provides that this section applies where a child dies and was being looked after by a local authority immediately before their death, or an adult dies who was in the care of, or receiving assistance from, a local authority immediately before death. As per subsection (2), in such cases the local authority may pay the expenses for attending a funeral in certain circumstances. Expenses can cover the cost of travelling to the funeral, and other costs incurred by the person attending.
237. Expenses may be paid only where the person meets the conditions set out in subsection (3). These are that the person (referred to as a "relevant person") would not be able to attend the funeral without suffering undue hardship if the local authority did not make the payment, and that the circumstances justify the payment being made, in the opinion of the local authority.
238. Where a child has died, a "relevant person" is a relative of the child or another person connected with the child. Where a person other than a child has died, a "relevant person" is a relative of the child or some other person connected with the person who has died. Subsection (5) defines a child who is "looked after" by a local authority as being construed in accordance with section 17(6) of the Children (Scotland) Act 1995.