

POLICY NOTE

THE CREMATION (SCOTLAND) REGULATIONS 2019

SSI 2019/xxx

1. The above instrument was made in exercise of the powers conferred by sections 47(1), 48(2) and (4), 56(1) and (2), 57(1) and (2) and 106(1)(a) of the Burial and Cremation (Scotland) Act 2016 (“the 2016 Act”) and section 27A(2) and (6)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965. The instrument is subject to affirmative procedure.

Policy Objectives

2. The instrument makes detailed provision in relation to cremation in Scotland, building on the framework in the 2016 Act in particular. Together they take forward the recommendations of various groups and committees which considered how to improve the way that cremation is dealt with in Scotland as well as addressing specific problems that had been uncovered, such as the handling of ashes.

3. The instrument covers management and operation of crematoriums and how cremations are carried out. It also makes comprehensive provision for cremation application forms and registers. Cremation authorities will be required to keep application forms for 50 years and to ensure they are kept confidential.

Management and operation of crematoriums

4. Most crematoriums already have management plans. The instrument sets out what a management plan must include, detailing the work of the cremation authority, what it is doing to provide cremation services and ensure the safe running of the crematorium. Cremation authorities are also required to keep a written record of staff training and maintenance of equipment. Cremation authorities must review their management plan on an annual basis to ensure that it is up to date and that it is accurate.

Joint and shared cremation

5. In nearly all cases remains are cremated separately. In some cases there can be a joint cremation; such as two siblings or an adult and a small child. The instrument gives clarity on when a joint cremation can take place. Where there is to be a joint cremation a separate application form is required for each adult, child, still-born child or fetus to be cremated and written permission must be given by the person authorised to submit each application for the remains to be cremated together.

6. A shared cremation is the term used when two or more fetuses are cremated together following pre-24 week pregnancy loss and the application for cremation is made by a health body or authority using a single application form. If an individual wants to apply for a joint cremation of two or more fetuses following a pre-24 week pregnancy loss one form is required for each fetus and written permission must be given by the person authorised to submit each application for the remains to be cremated together.

Application for cremation

7. A cremation application form (Form A1 to A7) must be completed by the applicant and submitted to the cremation authority. The application form requires information about the applicant and the remains to be cremated. Forms A1 to A7 replace Form A and Form AA originally prescribed in the Cremation (Scotland) Regulations 1935. Those forms have often been amended by cremation authorities to add information. This has led to inconsistency in the forms used by different cremation authorities. Also there was confusion about whether Form A was relevant for stillbirth. These regulations provide revised Forms A1 to A7 for different types of application giving consistent statutory forms to be used by all cremation authorities.

Handling of ashes

8. The 2016 Act defines “ashes” and sets out in detail the obligations on cremation authorities, funeral directors and individuals for the handling and return of ashes to the family. The 2016 Act also enables regulations to be made to add further detail about certain matters in relation to ashes. This instrument makes provision about certain notices to be given to applicants about ashes held by cremation authorities and funeral directors and sets periods for which ashes must be retained by and made available for collection from cremation authorities and funeral directors. The instrument also provides that in certain circumstances where the 2016 Act empowers cremation authorities to dispose of ashes, including ashes that remain uncollected, burial or scattering is to be the manner of disposal of those ashes by the cremation authority.

Cremation Registers

9. Currently a cremation register is kept at each crematorium to record cremations of bodies and body parts carried out at the crematorium. Taken together cremation registers provide a country wide historic record of all cremations. Under the 2016 Act, it will continue to be the case that cremation authorities are required to keep such cremation registers. The instrument makes provision about the form in which such cremation registers are to be kept and the information to be contained in them, updating the information to make it more relevant. It also creates a new type of cremation register to be kept by cremation authorities to accurately record the cremation of pregnancy losses and stillbirths, again making provision about the form and content of that register.

Consultation

10. To comply with the requirements of section 104(4) of the 2016 Act, a public consultation on the content of the instrument including cremation forms was carried out. Responses were in broad agreement with the content proposed in the consultation. Details of those consulted and who agreed to the release of this information was attached to the consultation report published on the Scottish Government website¹.

¹ <http://www.gov.scot/Topics/Health/Policy/BurialsCremation/BurialandCremation-Scotland-Act2016/CremationRegConsultation>

11. The Cremation Regulations Working Group was formed in 2016 to develop the regulations. The Group also took forward the work of the National Committee on Infant Cremation² sub-group updating the forms and records. The Cremation Regulations Working Group comprised representative stakeholders: including public and private cremation authorities; representative bodies and funeral directors.

Impact Assessments

12. The full range of impact assessments were carried out in relation to the Bill for the 2016 Act. No further impact assessments have been completed specifically for this instrument as it does not impose any additional impact beyond what was envisaged when the Bill for the 2016 Act was introduced.

Financial Effects

13. A Business and Regulatory Impact Assessment (BRIA) has not been completed in relation to this instrument. The Minister for Public Health agreed that as a BRIA was carried out in relation to the Bill for the 2016 Act, a further BRIA was not required.

Scottish Government
Directorate for Population Health Improvement
18th December 2018

² <http://www.gov.scot/Topics/Health/Policy/BurialsCremation/NCIC>