

# Implementation of the Burial and Cremation (Scotland) Act 2016

Winter 2018 - Newsletter No. 4

## **Implementation of the Burial and Cremation (Scotland) Act 2016 continues with the Cremation Regulations, Pregnancy Loss Regulations and third set of Commencement Regulations having now been laid in the Scottish Parliament.**

We expect these regulations to take effect on **4 April 2019**. This means that, if passed by the Scottish Parliament, cremation authorities and the NHS will be required to comply with the regulations and use the new application forms from 4 April 2019. The Scottish Government Burial and Cremation Team will ensure that you are kept up to date with parliamentary timescales and procedures.

### **Summary**

Parliament is now scrutinising the third set of Commencement Regulations which will commence the majority of Part 2 of the 2016 Act on Cremation and Part 3 of the 2016 Act on Arrangements. Parliament is also scrutinising the associated Cremation (Scotland) Regulations 2019 (which include the new cremation application forms) and the Pregnancy Loss Regulations (including the new authorisation forms for burial or cremation following a pregnancy loss or stillbirth).

Once these regulations take effect the existing legislation will be repealed. Details of the legislation which will be repealed can be found in schedule 2 of the Commencement Regulations.

All sections of the 2016 Act that will come into force on 4 April 2019 are listed below. For reference, the full 2016 Act can be viewed [here](#).

Summary of proposed implementation timescales\*

#### December 2018

Cremation, Pregnancy Loss and third Commencement Regulations laid in Scottish Parliament

Inspection Regulations Working Group – Meeting 1

National Memorial Safety Guidance Working Group – Meeting 1

#### January/February 2019

National Committee on Burial and Cremation

Parliamentary scrutiny of the regulations

Consultation on Funeral Director Code of Practice

Circulation to relevant stakeholders of revised Anatomy Code of Practice

#### March/April 2019

Regulations come into force

Publication of National Memorial Safety Guidance

Substantive work on Burial regulations as set out in 2016 Act begins.

\*please note that these are suggested dates and are subject to Parliamentary timescales (therefore, may change).

## 2019 Regulations - Cremation

### **Cremation**

The Cremation (Scotland) Regulations 2019, which include the new application forms, will be scrutinised by parliamentary committees and can be viewed here:

<http://www.legislation.gov.uk/sdsi/2019/9780111040416/contents>. Committees MAY seek evidence from interested parties. There will be a public call for evidence if this is the case.

The new cremation application forms will be formatted and be editable PDF documents, allowing the cremation authority to add their own logo to the form. The structure of forms must not be altered in any other way by the cremation authority or funeral director.

The new forms will be available on the Scottish Government website and will be circulated to cremation authorities prior to the date they are to be used from. Once published, these should be added to each cremation authority's own website and be made available for download.

Guidance notes on the Cremation Regulations have been developed and will be issued to all cremation authorities in the New Year. The guidance notes will be available to others on request by contacting [burialandcremation@gov.scot](mailto:burialandcremation@gov.scot).

### **Training**

If you wish for your organisation to receive/arrange training or you require further information on how and when the new statutory forms are to be completed, please contact [burialandcremation@gov.scot](mailto:burialandcremation@gov.scot).

*The sections of the 2016 Act that relate to cremation and will take effect from 4 April 2019 are listed below:*

<b><i>Provisions of the Burial and Cremation (Scotland) Act 2016</i></b>	<b><i>Subject matter</i></b>
Section 45	Meaning of "cremation" and "ashes"
Section 46	Provision of crematorium: local authority
Section 47	Cremation authority: duties
Section 48	Application for cremation
Section 49	Section 48: offences
Section 50	Requirements for carrying out cremation
Section 51	Duty of cremation authority before carrying out cremation
Section 52	Duty of cremation authority following cremation
Section 53	Failure to collect ashes
Section 54	Power of funeral director in relation to ashes

Section 55	Duties of cremation authority where ashes returned
Section 56	Handling of ashes: regulations
Section 57	Cremation register
Section 58	Cremation register: offence
Section 59	New crematorium: notice
Section 60	Section 59: offences
Section 63	Fees for cremation and other services

## 2018 Regulations – Pregnancy Loss and Stillbirth

### **Pregnancy Loss and Stillbirth**

The Pregnancy Loss and Stillbirth (Prescribed Information and Forms) (Scotland) Regulations 2018 will introduce three authorisation forms which health providers will be required to use in specific circumstances when a woman, next of kin or an individual is authorising a health authority to make the arrangements for the burial or cremation of a pregnancy loss or a stillbirth. The forms will record the woman, next of kin or authorised individual's wishes for burial or cremation.

In addition, the regulations set out a list of information that hospitals must record in relation to authorisation for burial or cremation and the information that will form each health authority's Register of Pregnancy Loss. The regulations can be viewed here:

<http://www.legislation.gov.uk/ssi/2018/384/contents/made>

These regulations are subject to negative parliamentary procedure and will be scrutinised by the Delegated Powers and Law Reform Committee which will check for legal competence. They will not be subject to any calls for evidence.

Guidance notes on the Pregnancy Loss and Stillbirth regulations have been developed and will be issued to all health authorities in the New Year. The guidance notes will be available to others on request by contacting [burialandcremation@gov.scot](mailto:burialandcremation@gov.scot).

### **Training**

If you wish for your organisation to receive/arrange training or you require further information on these regulations, please contact [burialandcremation@gov.scot](mailto:burialandcremation@gov.scot).

*The sections of the 2016 Act that relate to 'Arrangements' and will take effect from 4 April 2019 are listed below:*

<b><i>Provisions of the Burial and Cremation (Scotland) Act 2016</i></b>	<b><i>Subject matter</i></b>
Section 65	Arrangements on death of adult
Section 66	Arrangements on death of child
Section 67	Arrangements under sections 65 and 66
Section 68	Sections 65 and 66: application to sheriff
Section 69	Arrangements on termination of pregnancy after 24 weeks
Section 70	Section 69: health body authorised to make arrangements
Section 71	Section 69: no arrangements
Section 72	Duty of health body where still-birth likely to occur
Section 73	Section 72: health body authorised to make arrangements
Section 74	Arrangements on still-birth
Section 75	Section 74: power of appropriate health body
Section 76	Section 74: general power of appropriate health body
Section 77	Duty of health body where pregnancy loss likely to occur
Section 78	Section 77: health body authorised to make arrangements
Section 79	Arrangements on pregnancy loss on or before 24 weeks
Section 80	Change in arrangements
Section 81	Individual authorised to make arrangements
Section 82	Duty to transfer remains
Section 83	Appropriate health authority authorised to make arrangements
Section 84	Duty of appropriate health authority
Section 85	Duty to keep register
Section 87	Burial or cremation: duty of local authority
Section 88	Expenses of attending funeral

## 2018 Regulations – Commencement

### Commencement

Other areas of the 2016 Act that will take effect from the 4 April 2019 are listed below. The regulations can be viewed here: <http://www.legislation.gov.uk/ssi/2018/380/contents/made>

<b><i>Provisions of the Burial and Cremation (Scotland) Act 2016</i></b>	<b><i>Subject matter</i></b>	<b><i>Purpose</i></b>
Section 89(1)(b)	Appointment of inspectors of cremation	
Section 93	Reports	So far as not already in force
Section 99	Power to extend application of Act	
Section 103	Offences by bodies corporate etc.	

Section 104	Regulations: consultation requirements	So far as not already in force
Section 109	Minor and consequential amendments	
Schedule 1	Minor and consequential amendments	
Section 110	Repeals	So far as not already in force
Schedule 2	Repeals	So far as not already in force
Section 111	Crown application	

# Ongoing work-streams

## Inspection

***Part 4 of the 2016 Act (sections 89 – 93) allows for the statutory inspection of burial authorities, cremation authorities and funeral director businesses. Significant stakeholder engagement has and will continue as these regulations are drafted.***

### **Business and Regulatory Impact Assessment (BRIA)**

Engagement throughout summer and autumn of 2018 was completed with a wide range of burial authorities, cremation authorities, funeral directors' businesses and trade association representatives. This engagement was incredibly productive and informative, contributing significantly to the Scottish Government's understanding of the potential impact of regulation on authorities and businesses.

The BRIA document will be published as soon as possible.

### **Inspection Regulations Working Group**

The first meeting of this group took place Monday 3 December at St Andrew's House, Edinburgh. The Group took forward the findings of the BRIA discussions, where certain topics or procedures had been identified as requiring further, detailed, consultation with stakeholders. This group will continue to meet into 2019. As with all other consultation concerning inspection, those on the group represent all areas of the funeral industry.

### **Inspector of Cremation**

Once the above regulations are in force from 4 April 2019 the current Inspector of Crematoria will become the Inspector of Cremation, which reflects the wider duties and powers of the Inspector in relation to the whole cremation process.

### **Inspector of Burial**

Joining the Inspector of Cremation and of Funeral Directors already in post, it is expected that 2019 will see an Inspector of Burial appointed, following an open application and recruitment process by the Scottish Government. Further communication will be circulated when this process begins.

## Funeral Directors

The Inspector of Funeral Directors has now completed her 18 month assessment of the funeral director industry and has finalised her report to Scottish Ministers as to how funeral directors' businesses should be regulated, including whether licensing is necessary.

The introduction of regulation will allow for independent examination of funeral directors' businesses, improving standards of care for the deceased, consistency of service and compliance with the 2016 Act, its related regulations and code of practice.

Scottish Ministers will consider the Inspector's report and recommendations in detail before publishing a response in the New Year.

### **Funeral Director Code of Practice Consultation**

Following a number of meetings, chaired by the Inspector of Funeral Directors earlier in the year, a draft Funeral Directors' Code of Practice has been developed in collaboration with funeral director businesses and their trade association representatives. The draft Code, which focusses on standards of care for the deceased, will be the first ever national Code of Practice for funeral directors' businesses. In time, the Code will become a statutory document that will apply to every funeral director's business in Scotland.

A public consultation on this draft Code will open soon and will run for a period of 3 months.

## Burial

### **Memorial Safety Guidance**

A meeting was held recently in Glasgow with a variety of representatives with an interest across the local authority burial sector in Scotland.

This meeting generated substantive comment and discussion on a draft of the guidance on memorial safety which is being developed, in response to a recommendation made following a Fatal Accident Inquiry earlier this year into a death due to a falling memorial in a burial ground.

Further drafting and revision will continue before the guidance is published early next year for use by local authority burial authorities.

## **Burial Regulations 2019**

Upon publication of the above guidance, work will begin in earnest on consulting and the subsequent drafting of the remainder of part 1 of the 2016 Act, covering burial. Full implementation of regulation in this area will encourage greater proactive management of both historic and in use burial grounds and provide a modern legislative framework for burial.

## **Anatomy**

### **Reissuing of Anatomy Code of Practice**

Following the appointment of Professor Gordon Findlater as the new HM Inspector of Anatomy for Scotland in August 2018, a full review of current national guidelines, or code of practice, covering the practice of anatomical examination is being carried out.

A revised code of practice will be circulated to all relevant stakeholders, including licensed teachers of anatomy, in the new year.

Once this consultation is completed, this non-statutory code of practice will be formally reissued and published by the Scottish Government.

The Inspector may be contacted via [anatomy@gov.scot](mailto:anatomy@gov.scot).

### **Inspections**

Referencing this updated code of practice, Professor Findlater will then begin formal inspections of every premise that is licensed under the 1984 Anatomy Act (as amended by the Human Tissue (Scotland) Act 2006) from early spring next year to ensure high standards of anatomical facilities and practice continue.

## Indicative Future Timetables

### ***Indicative future implementation timescales***

Parts of the 2016 Act and related work will be commenced at different times. Where regulations are to be made, they will be designed in collaboration with stakeholders and will be subject to public and stakeholder consultation and scrutiny. The timescales below are high level and indicative only.

2018:

- Development of Inspection Regulations
- National Memorial Safety Guidance drafted
- Inspector of Funeral Directors recommendations to Scottish Ministers

2019 and beyond:

- Cremation and Arrangement regulations come into force
- Continued development of Inspection Regulations
- National Memorial Safety Guidance published
- Funeral Director Code of Practice consultation and publication
- Appointment of Inspector of Burial
- Burial ground management regulations
- Focus on burial application process, private burial and exhumation
- Lair restoration to use

**Scottish Government Burial and Cremation Team contact details:**

**If you have any queries, would like more information or are interested in being involved in any part of the implementation process please e-mail the team on:**

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