

# The Cremation (Scotland) Regulations 2017

## Consultation

### Introduction

1. The Burial and Cremation (Scotland) Act 2016<sup>1</sup> provides a modern, comprehensive legislative framework for burial and cremation. The existing legislation was outdated and increasingly unfit for purpose. Many of the Act's provisions are rooted in recommendations made by various review groups, particularly the Infant Cremation Commission<sup>2</sup> and the Burial and Cremation Review Group<sup>3</sup>.

2. The Burial and Cremation (Scotland) Act 2016 received Royal Assent in April 2016. The Act provides the powers for Scottish Ministers to prescribe in regulations procedures for how cremations will be carried out in Scotland.

3. The purpose of this consultation is to seek views on draft regulations being made under the 2016 Act. The contents of the draft regulations are a culmination of many years of work and have been informed by the Parliamentary Bill procedure, stakeholder working groups, more general stakeholder engagement and the Inspector of Crematoria. The law on cremation is currently set out in the Cremation Act 1902 and various regulations. Once the 2016 Act is fully implemented the 1902 Act will no longer have effect in Scotland. The main regulations are the Cremation (Scotland) Regulations 1935 which have been amended by various other sets of subsequent regulations<sup>4</sup>. There has not been a comprehensive modernisation of the legislation until now.

4. Regulations relating to procedures for burial, restoration to use, exhumation, inspectors and licensing of funeral directors are not included here and will be consulted on separately.

### The regulations

5. The 2016 Act provides the basic structure for cremation in Scotland. Regulations are required to supplement this structure and provide a detailed framework for the provision of burial and cremation services. The 2016 Act requires the Scottish Government to consult with interested parties before the regulations are considered by the Scottish Parliament. The regulations on cremation are subject to the affirmative parliamentary procedure which ensures a higher level of scrutiny before the regulations can be approved.

6. We have included some questions on specific issues that we are seeking your views on but you are welcome to comment on any other part of the content of the regulations as well.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2016/20/contents/enacted>

<sup>2</sup> <http://www.gov.scot/Publications/2014/06/8342>

<sup>3</sup> <http://www.gov.scot/Publications/2008/03/25113621/0>

<sup>4</sup> Cremation (Scotland) Amendment Regulations 1952, 1967, 1985 and 2003.

### *Management of crematoriums*

7. The regulations will require each cremation authority to prepare and maintain a management plan for each crematorium for which it is the cremation authority. This could be called the Crematorium Operational Procedures Document (COPD). The document will set out the procedures and processes which enable a crematorium to run effectively. The COPD should be made available by the cremation authority for inspection by the Inspector of Cremation.

8. The COPD should include details of working practices and procedures, including, for example:

- the name, address and contact details of the crematorium, including email;
- the procedures for:
  - carrying out of cremations;
  - dealing with any sudden increase in cremations;
  - applications for cremations in an emergency;
  - operation and servicing of all equipment used in the cremation process;
  - disposal of ashes;
  - scattering or interment of ashes;
  - SEPA requirements and what is being done to meet these;
  - review of the COPD: and
  - resilience plan for continuity of business.

9. We have not suggested what the format of the COPD should be, and it will be for cremation authorities to decide what is appropriate for the crematoriums they operate. We believe a period of 6 months from these regulations coming into force will be sufficient time for cremation authorities who do not already have one in place to prepare a COPD. The regulations will require cremation authorities to review their COPD annually and update it as required.

10. It is worth noting that guidance containing advice on the level of detail that should be contained in the COPD will be issued by the Scottish Government.

**Q1: Do you have any comments on what should be included in the COPD? Do you think that the suggested time scales are reasonable? Do you have any comments on the title?**

### *Maintenance and operation of crematoriums*

11. The regulations will set out the requirement for cremation authorities, to ensure that all equipment installed at each crematorium is maintained in good working order, for all crematoriums for which they are the cremation authority. The regulations will also include a requirement to ensure that the equipment is regularly checked. We believe this should be in accordance with the manufacturer's servicing guidelines/ recommendations but would welcome views on whether this is the appropriate basis. The cremation authority must prepare and maintain a written record of the maintenance record of any equipment.

12. Cremation authorities are obliged to ensure that staff are provided with training in the operation of the equipment installed at the crematorium. It will be a requirement to

record all training offered and undertaken by staff operating at the crematorium and ensure that the record is kept current.

**Q2: Do you have any comments on the basis for which equipment is to be maintained or the training to be provided to staff?**

*Operation of cremators*

13. In line with the recommendation made by Dame Elish Angiolini's National Cremation Investigation the cremation authority must ensure that only one body is cremated in a cremator at any time unless express consent has been given by the next of kin for a joint cremation. The regulations will make clear that at the end of the burning process the remains are raked into the cooling tray before the body of another person is placed in the cremator.

*Joint cremation*

14. Where a joint cremation is to take place the procedure for a single cremation will not apply. An application form for the cremation of each individual will be required and should be registered individually in the cremation register and recorded as individuals who are cremated together.

15. A joint cremation of two or more children, infants, stillborn babies or pregnancy losses (which is applied for by the family) will continue to be an option, if the cremation authority is able to offer this service. Again an application form for each individual will be required.

*Shared cremation of pregnancy loss*

16. Shared cremation of pregnancy losses already takes place in Scotland. The 2016 Act itself makes provision for the unusual circumstance where no decision has been made for the disposal of a pregnancy loss under 24 weeks' gestation and gives health authorities powers to arrange for a shared cremation to take place.

17. Hospital arranged shared cremation of pregnancy losses will continue as currently happens and the regulations will restate the existing provisions and clarify the paperwork required and what information is to be recorded in the cremation register.

*Application for cremation*

18. Part 3 of the 2016 Act details who has the right to apply for the cremation of an adult, child, stillborn baby or pregnancy loss<sup>5</sup>. The schedules to the regulations will set out the required application form for for each category. Applications for cremation are currently provided for in the 1935 Regulations (Form A for bodies) and the 2003 Regulations for

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<sup>5</sup> Pre 24 week terminations under the Abortion Act 1964 are included in pregnancy loss for the purpose of this paper. Stillbirth means where the baby was delivered after the 24<sup>th</sup> week of pregnancy and did not breathe or show any other sign of life. Post 24 week terminations are classed as stillbirths.

cremation of body parts (Form AA). Any application for cremation under section 48(1)<sup>6</sup> of the 2016 Act will in future be made in accordance with the 2017 Regulations. Applications will be able to be submitted in paper or electronic formats.

19. We are also taking this opportunity to ensure that all other types of cremation are provided for. These are detailed below in the schedules section of this consultation paper.

20. The application forms will be provided by the Scottish Government in electronic format which can be completed electronically or downloaded by funeral directors, cremation authorities and individuals and completed by hand.

#### *Retention of information*

21. The 1935 regulations require that records, such as application forms, are retained for 15 years before being destroyed. The cremation register is to be retained indefinitely. One of the recommendations of the Infant Cremation Commission was that other papers, such as application forms, should be retained for 50 years which we suggest should be the time set out in these regulations.

#### **Q3: Do you have any views on the proposed time scale for retention of information?**

#### *Electronic signatures*

22. The regulations will make no comment on the practical application of electronic signatures. Advice on the use of electronic signatures will be covered in guidance.

#### **Q4: Do you have any views on the provision and acceptance of electronic documents and signatures?**

#### *Handling of ashes*

23. The regulations will ensure there is no ambiguity with regards to what should happen to ashes following a cremation. The cremation application form will now include a section which will set out how the ashes should be handled following cremation. This section must be completed by the person applying for the cremation before the cremation can take place.

24. Sections 51 to 56 of the 2016 Act set out what the procedures are for funeral directors and cremation authorities when ashes have not been collected. The 2016 Act does not set out the time periods that ashes must be held for. The regulations will make clear what minimum time periods will apply for each situation and how long ashes will need to be retained and we are seeking views on what those time periods should be.

25. Section 51 sets out the three options available for the disposal of ashes. The applicant must enter on the application form whether they will either collect the ashes from

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<sup>6</sup> "A person who wishes a cremation to be carried out in a crematorium must submit an application to the cremation authority for the crematorium."

the crematorium or from the funeral director or they can request the cremation authority to dispose of them using a method they offer.

26. For the purpose of this consultation the table below shows the relevant section of the 2016 Act and suggested time periods for which cremation authorities or funeral directors will need to hold ashes for collection.

### HANDLING OF ASHES

	DUTY ON	TO	BECAUSE	HOLD FOR	
51	Cremation authority (CA) (before cremation)	Check that Form A states what is to happen to ashes	Ashes to be collected by applicant or by a nominated person or funeral director (FD) on behalf of applicant	CA holds ashes for 4 weeks	<b>OR</b> – Form A requests CA to dispose of ashes – CA may do so without delay
52	CA (after cremation)	Make ashes available for collection	Ashes to be collected by applicant, nominated person or FD	CA holds ashes for 4 weeks	Collection by applicant or by FD on behalf of applicant
53	CA	Retain ashes and find out applicant's wishes	Ashes have not been collected from CA as indicated on Form A during initial 4 weeks	CA to hold ashes for an additional 4 weeks	Collection by applicant or by FD on behalf of applicant <b>OR</b> – CA to dispose of ashes
53	CA	May dispose of uncollected ashes	Applicant has failed to collect ashes from CA after the additional period	The additional 4 weeks have passed	CA can retain the ashes for a further period or can dispose of ashes immediately
54	FD – after collecting ashes from CA	Retain ashes and find out applicant's wishes	Ashes have not been collected from FD as indicated on Form A	FD holds ashes for an additional 4 weeks	Collection by applicant <b>OR</b> return to CA at request of applicant
54	FD – after collecting ashes from CA	<b>Must</b> return ashes to CA	Applicant has instructed FD to return ashes to CA for collection or disposal	immediate	Applicant to collect from CA <b>OR</b> – CA to dispose of ashes
54	FD – after collecting ashes from CA	<b>May</b> return ashes to CA	Applicant has failed to collect ashes from FD after the additional period	After additional 4 weeks	Applicant to collect from CA <b>OR</b> – CA to dispose of ashes
55	CA – after uncollected ashes returned by FD	Retain ashes and find out applicant's wishes	Applicant to collect from CA	Additional 4 weeks	<b>OR</b> – CA to dispose of ashes – may do so without delay if this is applicant's choice
56	CA – after uncollected ashes returned by FD	May dispose of uncollected ashes	Applicant has failed to collect ashes from CA after additional period	The additional 4 weeks have passed	CA can retain the ashes for a further period or can dispose of immediately

27. The intention in the 2016 Act is to enable funeral directors and cremation authorities to sensitively dispose of uncollected ashes after certain procedures have been followed and a set period of time has passed. Following the procedures outlined above, ashes which have not been collected by the applicant from a funeral director may be returned to the

crematorium for scattering or interring. The funeral director can retain the ashes for a further period if they wish to give the applicant longer to collect them.

28. Ashes which have not been collected from the crematorium by the applicant can be scattered or interred. The cremation authority is not obliged to dispose of the ashes but the 2016 Act and these regulations make clear that they may legally do so, as long as all the necessary checks have been carried out.

29. These options mean that cremation authorities and funeral directors have clear guidance on the options available to them and the required time periods allow the applicant time to make arrangements for collection.

**Q5: Do you think the suggested minimum time limits are long enough? If not, what minimum time limits would you suggest and why?**

#### *Historic ashes*

30. The arrangements set out above for the disposal of ashes do not apply retrospectively and therefore do not apply to ashes that are already held by crematoriums or funeral directors. The arrangements for the disposal of ashes that are currently held by funeral directors and cremation authorities will be dealt with separately.

#### *Cremation register*

31. The content of the cremation register was originally set out in the 1935 Regulations, for Form G. Form GG was introduced by the 2003 Regulations. However, as the 1902 Act and all previous cremation regulations are being repealed (to the extent they apply to Scotland) it is necessary to set out the content of the register anew in the 2017 Regulations. In addition, the existing legislation does not set out any specific requirements regarding what information should be registered in the case of cremating a pregnancy loss. Setting new regulations provides an opportunity to specify what information is to be recorded on the cremation register for cremation of pregnancy loss.

32. The 2016 Act requires each cremation authority to hold a cremation register for each crematorium that they operate. The register details every cremation carried out at each crematorium and must be kept indefinitely. The cremation authority must make the register available to the public and may charge for providing extracts from it.

33. The 2016 Act enables Scottish Ministers to set out in regulation what information the cremation register will contain and how that information should be set out. Stakeholders have expressed a preference that the register should be held in three parts. Part 1 will replicate the content of the register as required by the 1935 Regulations (previously Form G); Part 2 will be for body parts (Form GG); and Part 3 will be for pregnancy loss. The information for each cremation must be entered on the register as soon as practicable after the cremation. The cremation authority must ensure that the information in the register is accurate and up to date and should review the register periodically. The section on the schedules below sets out what information the registers are to contain.

34. It is important to note that in the case of cremation of pregnancy loss under 24 week's gestation, each pregnancy loss will be registered separately however the information held on the register will be anonymised and will, therefore, not be identifiable.

35. Given the significant changes that will be made to all burial and cremation legislation there is no compelling reason to retain the existing titles of the forms. These regulations will create revised forms for applications for cremation which will be "A" forms. We will also take this opportunity to rename the cremation register forms "B" forms, to ensure consistency in the new regulations.

## The schedules

36. The schedules to the 2017 Regulations will set out the statutory forms for applying for cremation and for the entries in the cremation register.

### *Application for cremation – forms*

37. Applications for cremation are currently made using Form A as prescribed by the Cremation (Scotland) Regulations 1935. The form is statutory and has been amended a number of times since it was introduced. The current form does not adequately cover every category of cremation, although in practice it is used for all cremations. These regulations provide a legal framework for the revised forms which will cover all types of cremations. A key improvement to the form is that it requires the section on disposal of ashes to be completed, ensuring that there is no ambiguity, which could lead to ashes being lost.

38. A sub-group of the National Committee on Infant Cremation was tasked with reviewing the existing cremation application forms and making changes/ improvements to ensure that they are suitable and cover all categories. The group has spent considerable time revising and agreeing the forms. For example, while we initially considered one Form A for every type of cremation, it was agreed that this would be an extremely large form which would not be practical. Stakeholders also pointed out that such a form would be insensitive when being completed by the family. The Local Government and Regeneration Committee, when considering the Burial and Cremation (Scotland) Bill agreed with this view and stated its preference for separate forms.

39. The new application forms have been created with consideration given to those who will be required to complete them. We believe the forms contain the necessary information to allow the person applying to make a fully informed decision on what their options are.

40. The forms will be made available in electronic format and cremation authorities will only be permitted to add their own logo. The applicant will be able to complete an electronic version and email it to the cremation authority or the form can be printed and submitted that way.

41. The schedules to the regulations will set out the forms for all categories:

- Schedule 1 – Form A1 – adult or child
- Schedule 2 – Form A2 – stillborn baby
- Schedule 3 – Form A3 – pre 24 week pregnancy loss – family arranged
- Schedule 4 – Form A4 – pregnancy loss – individual or shared – health body arranged
- Schedule 5 – Form A5 – adult or child – local authority arranged – national assistance
- Schedule 6 – Form A6 – body parts – following anatomical exam or hospital arranged post mortem
- Schedule 7 – Form A7 – body parts – after anatomical exam pre Anatomy Act 1984

42. The versions of the forms attached have been created in Word and will be professionally styled and formatted. We would be grateful, therefore, if you would focus your comments on the content of the forms. Once the content of the forms has been agreed the style, layout and length will be considered.

**Q6: Do you have any comments on the forms and their content? If you think any of the information included is unnecessary please tell us what and why you think so. Do you think that a countersignatory is necessary on the authorisation to cremate section?**

*Application for cremation – body parts donated before the Anatomy Act 1984*

43. A number of Scottish universities with medical schools have, within their care, body parts which were donated before the Anatomy Act 1984 came into force. Prior to the 1984 Act coming into force there was no requirement to keep records of body parts, which has resulted in universities storing body parts which cannot be traced. Universities are now faced with storing body parts which are very old and have deteriorated to the extent that they can no longer be used for the purposes of medical science. Until now the only option for disposal of these body parts has been to bury the remains. Given the number of body parts held it is felt that sensitive cremation would be a more appropriate means of disposal. Discussions on this issue have been held with the Crown Office and Procurator Fiscal Service (COPFS). COPFS is content that cremation as a means of disposal for this specific category should be permitted. Form A7 will cater for this category.

**Q7: Do you have any comments on Form A7?**

*Cremation register*

44. The version attached here will be professionally styled and formatted so there is no requirement to comment on the layout.

- Schedule 8 – cremation register – whole body
- Schedule 9 – cremation register – body parts
- Schedule 10 – cremation register – pregnancy loss

45. We are open to views whether it should be one register or separate registers for each category. What is key, regardless of whether it is one or three registers, is that information is accurate, can be analysed and that confidentiality is maintained for pregnancy loss.

46. The 1935 Regulations require the cremation register (Form G for whole bodies) to hold the following information:

- Cremation number
- Date of cremation
- Name, residence and occupation of deceased
- Age and sex
- Marital status
- Date of death
- Name and address of person applying for cremation
- Name and address of person signing certificates (doctor and cremation authority)
- District where death has been registered
- How ashes were disposed of

47. A number of suggestions have been made for updating the information held in the register. For example, whether the occupation of the deceased could be removed and

whether the details of the funeral director should be included. Also, rather than recording the age of deceased it would be more helpful to show their date of birth (which is asked for on Form A).

48. The Cremation (Scotland) Amendment Regulations 2003 introduced the cremation register for body parts (Form GG). The information to be recorded is:

- Cremation number
- Date of cremation
- Name, residence and occupation of deceased
- Age and sex
- Date of death
- Date and place of burial or cremation of body
- Body part(s) being cremated
- Name and address of person applying for cremation
- Name and address of person signing certificates (doctor and cremation authority)

*Shared cremation – pregnancy loss – hospital arranged*

49. The 2017 regulations will set out the information to be recorded when a shared cremation is carried out. The information held will be in such a way that the identity of the woman who experienced the pregnancy loss is not disclosed.

**Q8: Do you have any views on the content of the cremation register? Do you think anything should be added or removed? Would you prefer one register or three?**

## **Hospital arranged post-mortems and retained organs**

50. The process for authorising a hospital post-mortem is set out in the Human Tissue (Scotland) Act 2006. When authorising a hospital post-mortem the authoriser can give permission for organs to be retained by the hospital for diagnostic purposes. An individual themselves can authorise a post-mortem in advance of death. In other cases the next of kin will authorise a post-mortem.

51. When a hospital carries out a post-mortem, there are three options for disposal of any retained organs. These are:

- Hospital arranged respectful disposal of organs,
- Delay the funeral until the organs have been returned to the body, or
- Next of kin to make arrangements with a funeral director to dispose of the organs.

52. In the vast majority of cases, authorisation is given to the hospital to respectfully dispose of the organs. Where cremation is available, this is usually done by shared cremation and no ashes are offered to families. The forms used by hospitals to record authorisation for post-mortems are national forms, issued by the Scottish Government. We intend to update the hospital post-mortem authorisation forms to clarify that where organs retained following a hospital post-mortem are to be cremated, this will be done by shared cremation with the ashes being scattered by the crematorium in line with their local procedures. This is in line with the anatomy examination bequest forms, which state that any retained organs will be disposed of by a shared cremation and no ashes will be returned to the next of kin.

**Q9: Do you agree that the form authorising a hospital arranged post mortem should be updated to reflect the wording above? If not, please tell us why?**

## Questions

### *The regulations*

Q1: Do you have any comments on what should be included in the COPD? Do you think that the suggested time scales are reasonable? Do you have any comments on the title?

Q2: Do you have any comments on the basis for which equipment is to be maintained or the training to be provided to staff?

Q3: Do you have any views on the proposed time scale for retention of information?

### *The cremation application forms*

Q4: Do you have any views on the provision and acceptance of electronic documents and signatures?

Q5: Do you think the suggested minimum time limits are long enough? If not, what minimum time limits would you suggest and why?

Q6: Do you have any comments on the forms and their content? If you think any of the information included is unnecessary please tell us what and why you think so. Do you think that a countersignatory is necessary on the authorisation to cremate section?

Q7: Do you have any comments on Form A7?

### *The cremation register*

Q8: Do you have any views on the content of the cremation register? Do you think anything should be added or removed? Would you prefer one register or three?

### *Hospital arranged post-mortem*

Q9: Do you agree that the form authorising a hospital arranged post mortem should be updated to reflect the wording above? If not, please tell us why?

## Responding to the consultation

1. We welcome any comments you have on the questions raised about the regulations, the cremation application forms and the cremation register.
2. Please email your response to [BurialandCremation@gov.scot](mailto:BurialandCremation@gov.scot) **The closing date for responses is Friday 9 June 2017.**
3. If you require any additional information please contact Katrina McNeill at [Katrina.McNeill@gov.scot](mailto:Katrina.McNeill@gov.scot) or on 0131 244 3097.
4. Responses can also be sent in writing to the Burial and Cremation Legislation Team, Area 3 East, St Andrew's House, Regent Road, Edinburgh, EH1 3DG.