

# **Guidance Cremation (Scotland) Regulations 2019**

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## Introduction

1. The Burial and Cremation (Scotland) Act 2016<sup>1</sup> (the 2016 Act) provides Scottish Ministers with the power to make regulations setting out how procedures for cremations are carried out in Scotland. The 2016 Act provides the basic structure for cremation. Regulations supplement this structure and provide a detailed framework for the provision of cremation services. The Cremation (Scotland) Regulations 2019 update and supersede the Cremation (Scotland) Regulations 1935 and all subsequent amendment regulations. This guidance is intended to help understanding of what the regulations do, what the legal requirements are and what is not permitted. The numbers in brackets throughout the guidance are the corresponding regulation numbers.

### Updates to the guidance (September 2019)

2. Updates on the following have been added to this version of the guidance:
- completion of the cremation application form,
  - date and time of cremation and hold-over,
  - electronic transfer,
  - Certificate of Registration of Death (Form 14)
  - order of priority in who can make the application,
  - cross border cremation,
  - scattering and splitting ashes,
  - hazards and
  - joint cremation.

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

## The regulations

### Regulation 1 – Citation, commencement and interpretation

3. Regulation 1 states the date on which the regulations come into force (1(1)). From 4 April 2019 all cremations and applications for cremations must be carried out in accordance with the requirements of these regulations. Any previous regulations relating to cremation are no longer applicable from that date. **Application forms received by a cremation authority on or after 4 April 2019 must be one of the new cremation application forms which are set out in these regulations.** Old cremation forms are no longer valid and must not be accepted by crematoriums from that date.

4. Regulation 1 also sets out the definitions used in the regulations (1(2)).

4.1. An “adult” is someone who is 16 or older and a “child” is someone who is under 16.

4.2. These regulations allow for cremation application forms to be sent electronically as long as the signature requirements are met (see paragraphs 5 and 6). They may be sent via email or other electronic means. The definition of “electronic communication” is defined in the Electronic Communications Act 2000<sup>2</sup>.

4.3. A “joint cremation” is when more than one person is cremated together. This can be two adults, an adult and child, stillborn baby or fetus or the cremation of more than one child, stillborn baby or fetus.

4.4. A “shared cremation” is when the remains of more than one fetus (pregnancy loss) are cremated together, and will only be applied for by a health body. Shared cremation is only for pregnancy losses that occur before the end of 24 weeks gestation. It does not apply for the cremation of stillborn babies.

5. The new forms can be either paper or electronic application forms (1(3)). All application forms must be completed and signed by the applicant (see regulation 8 for who can apply). Paper forms must include the applicant’s handwritten signature which is in ink.

6. Regulation (1(4)) sets out the requirements for using an electronic signature when sending a cremation application form electronically. The form being sent electronically must include an electronic signature that is either in digital ink or is a scanned copy of an original signature (e.g. a jpeg). **A typed signature is not acceptable as the signature must be identifiable.**

### Regulation 2 – Management of crematoriums

#### *Crematorium Management Plan*

7. Regulation 2 requires each cremation authority to prepare and maintain a management plan for each crematorium for which it is the cremation authority (2(1)). The plan is essentially the crematorium’s operating manual. The plan should be made available for inspection by the Inspector of Cremation. It should also be made available to be viewed by any member of the public who asks to see it (2(2)). It need only be made available to the public at a time convenient to the cremation authority (such as during usual operating hours).

8. The regulations specify the procedures and processes which must be included in the plan to enable a crematorium to run effectively (2(3)). The cremation authority must include these in the plan as a minimum but may also include anything else that is considered relevant to the individual crematorium. The content of a plan can vary for each crematorium as long as the information required by these regulations is included.

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2000/7/contents>

#### *Contact information (2(4)(a))*

9. The plan should include the name and address of the crematorium, including email address. The operating hours when the public are able to visit should also be included.

#### *Procedures for the carrying out of cremation (2(4)(b)(i))*

10. This section requires details of the procedures for how cremations are carried out. This means the whole cremation process from application and receipt of the body/ body part/ pregnancy loss to disposal of ashes. The information can be set out in whatever format the cremation authority considers appropriate; for example it may be a flow chart. The management plan should also include details of the procedure for dealing with a hold-over for cremation, where the cremation is unable to be done on the same day as the service, and how this will be recorded to ensure a clear audit trail.

#### *Procedures for dealing with an unexpected increase in the number of cremations (2(4)(b)(ii))*

11. Information about what will be done if there is an unexpected increase in the number of cremations. This may occur for a number of reasons. For example, if another crematorium in the area is unable to operate or there is a sudden increase in winter deaths due to cold weather.

12. This section should also include what procedures would be put in place should there be a large increase in the number of cremations due to an event such as a pandemic. The cremation authority should identify how it would cope in such situations and have details of who to contact when preparing for a mass fatality event, such as government, Scottish Environment Protection Agency (SEPA), NHS.

#### *Procedures for operation and servicing of equipment (2(4)(b)(iii))*

13. The plan must include details of the operation of all equipment as well as how and when it will be serviced. This could be by setting out in the plan where the relevant information can be found rather than including every detail in the plan itself. For example, stating where the operating manual or the service log for a cremator are located and who has responsibility for maintaining equipment and ensuring it is serviced regularly.

14. Information about authorisation to operate from SEPA could be included in this section, including contact details and information about inspections and reports.

#### *Procedures for disposal of cremation residues (2(4)(b)(iv))*

15. The term 'cremation residue' has been used in the regulations to ensure that everything that may come from a cremator is provided for. This includes: ashes, bones, metal, dust and any other residues found in the cremator. The plan should state how any metals will be disposed of and whether they will be recycled.

#### *Procedures for disposal of ashes (2(4)(b)(v))*

16. The plan must include details of what the cremation authority's policy is for disposal of ashes, taking into consideration the requirements to notify the applicant about collecting ashes and the restrictions on how long ashes must be held before they can be disposed of. The requirements

are set out in Part 2 of the 2016 Act and in regulation 13 of these regulations. The plan should set out what options are available for disposal of ashes, such as burial, scattering, columbarium.

#### *Contingency arrangements (2(4)(b)(vi))*

17. The plan should include details of resilience or contingency planning. This is different from dealing with an increase in numbers of cremation (see para 11 above). For example, this section should include what would be done when dealing with a disruption to service such as a breakdown of machinery, or a sustained power cut, or any other unexpected disruption to, or loss of, services.

18. Contingency plans should consider what arrangements would be put in place if there is a lack of staff available to carry out cremations in the event of absenteeism. There should also be consideration given to ensuring how the crematorium will continue to operate if there is a pandemic or other unexpected increase in number of cremations.

#### *Review of the plan (2(5))*

19. If there is not one already, cremation authorities should ensure that a plan is in place for each crematorium within six months of these regulations coming into force (4 April 2019). All crematoriums should have a plan in place by October 2019. If a plan is already in place it should be reviewed to ensure it complies with these regulations. The plan should be reviewed at least annually to ensure it is up to date and relevant. It should be updated as required. Any additional information that a cremation authority considers relevant to the crematorium which the plan is for can be added at any time.

### **Regulation 3 – Records**

20. The plan must set out the cremation authority's retention policy for records. The 2016 Act requires the cremation authority to keep all cremation application forms for 50 years (3(1)). The date from when the 50 years starts is the date of the cremation. All cremation application forms are to be held confidentially and there is no requirement to make them available to the public (3(2)). The regulations do not specify the manner in which the records are to be held. That is for each cremation authority to decide. The regulations require that records are kept securely. The plan should state how the records will be held (paper or electronic) and what is being done to ensure they are kept securely (3(3)).

21. If the records are held electronically the plan should detail what method of electronic storage is used and how that is maintained to ensure ongoing accessibility and security of the information held (3(3)).

### **Regulation 4 – Maintenance and operation of crematoriums**

22. The regulations set out the requirement for cremation authorities, to ensure that all equipment installed at each crematorium is maintained in efficient working order and in good repair (4(1)(a)). The regulations also include a requirement to ensure that the equipment is regularly checked/serviced in accordance with the manufacturer's servicing guidelines (4(1)(c)). The cremation authority must keep a record of the maintenance record of any equipment and ensure it is kept up to date (4(2)(b)).

23. Cremation authorities are obliged to ensure that staff are provided with adequate training in the operation of the equipment installed at the crematorium (4(1)(b)) that they will use. A record

must be kept of all training offered and undertaken by staff working at the crematorium. The cremation authority must ensure that these records are kept up to date (4(2)(a)).

### **Regulation 5 – Operation of cremator**

24. The cremation authority must ensure that only one body is burned in a cremator at any time (5(2)(a)) unless express consent has been given by the applicant for a joint cremation, or a shared cremation is applied for by a hospital/ health body (5(3)). At the end of the burning process the cremation residue must be raked into the cooling tray before another body is placed in the cremator (5(2)(b)).

### **Regulation 6 – Joint cremations**

25. A joint cremation can be done where the applicant asks for it and if the crematorium is able to facilitate it. This may depend on the size of the cremator or whether there are any other operational restrictions. Regulation 11 makes clear that the cremation authority can ask for further details in order to consider the request. **If the cremation authority is unable to offer a joint cremation they have the option under the 2016 Act to refuse the application.**

26. A joint cremation can occur when two adults, an adult and child, stillborn baby or fetus are to be cremated together, for example when a parent and child have died together (6(1)(a) and 6(3)). It can also be used when two or more children are to be cremated together or a child will be cremated with a pregnancy loss or stillborn baby (6(1)(b) and 6(3)). Both sets of remains can be cremated in the same coffin or in separate coffins.

27. The applicant will need to complete a separate application form for each individual adult, child, stillborn baby and pregnancy loss (6(2)(a) and (6(2)(b)).

28. Any application for a joint cremation can only be made by an “authorised person” (6(4)). Regulation 8 sets out who is authorised to make the application. This is in accordance with the relevant sections of the 2016 Act (*Part 3 Arrangements*).

29. Application forms should be registered in the cremation register as “individuals who have been cremated jointly” and the details held in such a way as to allow the individuals to be identified. The application forms should be kept in accordance with Regulation 3. The cremation authority also needs to ensure that the cremation number(s) for a joint cremation is/are recorded correctly in the cremation register to enable individuals to be identified.

#### *Pregnancy losses*

30. When pregnancy losses are to be cremated together it is a “joint cremation” if an individual/ family member applies and a “shared cremation” if a hospital/health body applies (see next section on shared cremation). An individual applying for joint cremation of a pregnancy loss will complete an application form for each pregnancy loss.

## **Regulation 7 – Shared cremations (of pregnancy losses)**

31. “Shared cremation” means the cremation of the remains of more than one pregnancy loss together, and the application is made by a health provider, or other authorised authority (7(1) and 7(3)). **It is only a hospital or other health provider who can apply for a shared cremation (7(2)).** This form is also to be used when application is for the cremation of an individual pregnancy loss **by a health provider.**

32. Although shared cremation of pregnancy losses already takes place in Scotland, the 2016 Act makes specific provision for the burial or cremation of pregnancy losses under 24 weeks’ gestation for the first time. The 2016 Act makes clear what the requirements are when health providers arrange shared cremation. The 2016 Act and the regulations clarify the paperwork required and what information is to be recorded in the cremation register.

## **Regulation 8 – Application for cremation**

**33. The application forms are statutory forms. The content of the forms, the wording on the forms and the questions must not be altered, deleted or added to (unless an amendment is provided for in this guidance).**

34. The regulations set out the application forms for each type of remains to be cremated, detailed in the table below (8(2) and 8(3)). Cremation authorities can add their stamp/ logo and the cremation number to the front of the forms.

### *Date and time of cremation*

35. The section for date and time of cremation on the front page of the application forms is to record the date and time of the service. It is acceptable for this information to be completed by the funeral director when arranging the funeral. Should the cremation not take place on the same day as the service and is held over, a note should be added to the cremation authority’s records to account for the different dates. If the application is for a direct cremation and there will be no service, the date will be the date of the actual cremation.

### *Supplementary forms*

36. Any additional questions/ information required to carry out a cremation service must not be added to the statutory application form but should be included in a separate supplementary form (e.g. order of service, music). Each cremation authority can use their own supplementary form and include on it any information that is relevant to individual crematoriums and the carrying out of cremations.

### *Who can complete the application form?*

37. It is acceptable for an application form to be completed on a tablet or other electronic device with typed answers. The applicant’s and funeral director’s signatures must never be typed versions (see para 5 and 6 above).

38. Where the deceased made a will or other testamentary writing nominating someone to arrange their funeral, that named person takes precedence over the hierarchy in the 2016 Act of who can apply. If the nominated person does not wish to make the arrangements or there is no nominated person, the hierarchy then applies.



39. As with the previous legislation governing cremation, the cremation application form should be completed by the applicant. The 2016 Act sets out the hierarchy of who can apply for a cremation in sections 65, 66 and 74. It is understood that there will be times where an applicant will be unable to complete the form themselves. In such circumstances, the funeral director can act as a scribe for the applicant and complete the answers to the questions on the form. This should only be done in the presence of the applicant and the funeral director should go through each question with the applicant before writing down the applicant's answer.

#### *Why the applicant should complete the application form*

40. There is a legal declaration next to the applicant's signature box and in signing the form the applicant is acknowledging they agree to that declaration. An applicant is potentially liable to a fine of £1,000 if any information on the application form is knowingly false. The applicant should have the opportunity to review the questions and answers and they should be made aware that they are signing a legal declaration. **In no circumstances should a funeral director complete the form in advance of meeting with the applicant, or on behalf of the applicant, then merely get the applicant to sign the form.** Anyone (who is not the applicant) but signs an application form using the applicant's name, as the applicant, is knowingly putting false information on a statutory form and, if convicted, is liable to a fine of up to £1,000.

#### *Age of applicant*

41. An application for cremation can usually only be applied for by someone who is 16 years old or older. If the applicant is the parent of a deceased child or has had a stillbirth or pregnancy loss, they can make the application even if they are younger than 16. The order of priority of who can apply is set out in the notes which accompany each application form. It is for the applicant to declare on the application form that they are entitled to make the application and they must sign the declaration on the form confirming this. Should there be a dispute amongst relatives, the cremation authority or funeral director is not required to arbitrate on who should complete the form.

42. An application form should be completed by the applicant and not by a third party. If the person who is highest in the order of priority does not want to make the application or has nominated someone else to make the application on their behalf, the nominated person becomes the applicant. If any applicant is not capable physically of completing the form they can authorise someone to complete it on their behalf and act as their scribe, which should be done in their presence.

43. Regulation 8(2)(a) provides for instances where an adult dies in a care home 8(2)(a)(iii) or hospital 8(2)(a)(iv) and there is no one who is able or willing to make the arrangements. In these cases, a person (member of staff or manager) authorised by the care home (8(4)) or hospital (8(5)) may make the application.

44. If there is any reason why a cremation cannot go ahead at a crematorium and has to be moved to another crematorium, a new application form should be completed.

#### *What happens if there is a change in the instructions?*

45. Where an applicant wishes to change their original instructions before the cremation takes place (either via the funeral director or directly to the crematorium) the change of instruction must be signed by the applicant. The change can be notified to the crematorium on a "change of instructions" form or by email from the applicant's email (or forwarded on from the funeral

director's email). Whatever method is used it must include a jpeg or digital ink signature. It is crucial that an applicant's change of instruction is passed to the cremation authority as quickly as possible. It is not necessary to complete a new application form as long as the cremation authority is satisfied there is a clear audit trail of the instructions and any subsequent changes.

46. Procedures for handling ashes are provided for in the 2016 Act and these regulations and are set out in the flow chart at the back of this guidance. Any changes to instructions by the applicant for disposal of ashes (after the cremation has taken place) also need to be recorded on a "change of instructions" form or in an email, as above, and must have the applicant's signature. Again, there is no need to complete a new application form but the cremation authority must be given sufficient information to provide a clear audit trail of changes to instructions.

47. Where the applicant instructs a change of crematorium or it is necessary to change to a different crematorium to accommodate the cremation, a new application form should be completed.

*When can corrections be made to an application form?*

48. If a significant correction is required to the application form, such as if the details of the deceased/ applicant are materially incorrect, a new application form should be submitted.

49. There will be occasions where minor corrections are necessary and some flexibility should be allowed to ensure a cremation is not delayed unnecessarily. A minor correction can be made on a form and initialled by the funeral director (or applicant) as long as it has been agreed by the applicant and there is an audit trail to verify the correction. Examples of a minor corrections are where date of birth and age don't match (wrongly calculated) or where the name has a slight spelling error e.g. Mac and Mc. It is acceptable that details of minor corrections are emailed to or given to the crematorium in writing (in advance of the cremation). Whatever method is used the correction, reason for it and authorisation from the applicant must be recorded to ensure there is an audit trail.

50. Crematorium staff should not be asked to make corrections on the statutory application form. Instead they should be provided with a correction to the instruction in writing (email) either from the applicant or via the funeral director. The cremation authority should then attach the correction instruction to the application form and file together.

*Can information that was not available at the time of completing the form be sent to the crematorium after the application form has been submitted?*

51. Every effort should be made to complete the application form in full before sending it to the crematorium. In circumstances where information has to be forwarded on after the application has been submitted, the funeral director must alert the crematorium that the information will follow. Examples of this would be where the weight of the coffin and deceased needs to be confirmed.

52. Funeral directors and cremation authorities should satisfy themselves that they have kept a clear audit trail which shows that any instructions and changes to instructions originated with and have been authorised by the applicant.

*Does the weight of coffin question have to be answered?*

53. Providing information about weight is a new requirement under these regulations and it is anticipated that it may take a few months for providing the combined weight to become an established procedure. All cremation authorities and funeral directors should work collaboratively to ensure a smooth transition. It is recommended that funeral directors operating in Scotland should take steps as soon as possible to enable them to obtain access to suitable weighing equipment to complete the question on weight as accurately as possible. (see also para 68 – 72).

*If an application form is sent to the crematorium electronically does the original have to be sent too?*

54. No, as long as the electronic version/scanned copy is a completed form and the signatures are in the correct format there is no need to send the original form to the crematorium.

#### Certificate of Registration of Death (Form 14)

55. The Certificate of Registration of Death (Form 14) is normally issued in paper format by a registrar when the death is registered. Currently where the Medical Certificate of Cause of Death (Form 11) is selected for review by the Death Certification Review Service (DCRS), registrars may be willing to email a scanned version of the Form 14 to the funeral director to help avoid any delays to the cremation. In this situation, it is imperative that the funeral director who has been sent the Form 14, confirms to the registrar that they have received it.

56. National Records of Scotland (NRS), the Association of Registrars of Scotland (ARoS), the Scottish Government and the Inspector of Cremation have agreed that it is acceptable for the Form 14 to be sent to crematoriums electronically (via email) from the funeral director or the applicant (if the services of a funeral director are not being used).

57. The informant<sup>3</sup> will attend the registrar's office to register the death and the registrar will issue Form 14 (paper original) to the informant<sup>4</sup>. The informant then gives the Form 14 along with the cremation application form to the funeral director who is arranging the cremation to send to the crematorium. The funeral director can scan the paper Form 14 and email the scanned version with the cremation application form and any other accompanying documents to the crematorium. It is important that the cremation authority send an acknowledgement of receipt of Form 14 to the funeral director: providing the funeral director and the cremation authority with an audit trail.

58. Once the acknowledgement is received from the cremation authority there is no need for the funeral director to keep the original paper Form 14 and the funeral director should then destroy it. The scanned version becomes the "version of record" and is kept by the cremation authority along with the application form and they are retained for 50 years in accordance with the requirements of Regulation 3 of the 2019 Regulations.

59. The right of cremation authorities to make further enquiries about an application form is not affected by this change in procedure (Regulation 11 of the 2019 Regulations). The cremation authority always has the option to make further enquiries before agreeing to accept the application.

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<sup>3</sup> The term "informant" is used here as a generic term (it may be the next of kin or another person who registers the death).

<sup>4</sup> Registrars may offer to email a scanned Form 14 to a funeral director if the Form 11 (death certificate) has been selected for review. Each registrar will be able to confirm if they are able to do this. If a registrar is able to do this, the funeral director must acknowledge to the registrar that they have received the Form 14. This can be done via email.

## Hazards

60. The application forms include a section asking about hazards and notifiable, infectious diseases. In most cases the funeral director will not know what the nature of a notifiable disease is. While the rights of individuals under data protection legislation cease on death, patient confidentiality continues after death, including medical records and there is no obligation on the health provider or family to inform the funeral director what the notifiable disease is, only whether there is a notifiable disease present. If someone died of something which was significantly infectious, such as Ebola, the hospital would not release the body in the normal way and enhanced protection measures would have been put in place before releasing the body to a funeral director.

## The application forms

61. All the application forms are provided by the Scottish Government in editable electronic format which can be completed electronically or can be downloaded by funeral directors, cremation authorities and individuals and completed by hand. Responses to the questions on the application forms can be in typed format on a tablet or other device but the signature must be identifiable and must comply with the requirements set out in para 5 and 6 above. Signatures must never be typed.

62. There are seven different application forms and each one relates to a specific type of remains. The table details the forms and who should complete them. The relevant parts of regulation 8 are included in the right hand column for ease of reference if needed.

<b>Form</b>	<b>To apply for cremation of:</b>	<b>Used by:</b>	<b>Regulation</b>
A1	Adult or child (also body part of either)	Relative or nominated individual	8(2)(a) or (b) and 8(3)(a)
A2	Stillborn baby	Parent or nominated individual <b>OR</b> health body/ hospital	8(2)(c) and 8(3)(b)
A3	Pregnancy loss on or before 24 weeks gestation	Woman or nominated individual	8(2)(c) and 8(3)(c)
A4	Pregnancy loss(es) on or before 24 weeks gestation	Health body/ hospital	8(2)(c) and 8(3)(d)
A5	Adult or child (section 87 application)	Local authority	8(2)(a) and 8(3)(e)
A6	Body <b>OR</b> body parts after anatomical examination <b>OR</b> body parts after hospital arranged post mortem	Hospital <b>OR</b> university anatomy school	8(2)(a) and 8(3)(f) or (g)
A7	Body parts after anatomical examination (where person died before the Anatomy Act 1984 came into force)	University anatomy school	8(2)( a) and 8(3)(h)

63. The details provided by applicants on the application form are not to be used for any other purpose, such as marketing.

### *Form A1: Application for cremation of an adult or a child*

64. The cremation of an adult or a child is applied for using Form A1 and can be completed by the executor or any other person named in the will (if there is one). If there is no named person or executor, section 65(1) of the 2016 Act provides for this and it is then the nearest relative who can

make the application. There is a list of order of priority of nearest relatives in the guidance notes which accompany Form A1.

65. If the application is for the cremation of a child who has died and the parent is under the age of 16 they are still entitled to make the application and complete the application form. They also have the option to nominate someone else to make the application if they wish.

66. Form A1 should also be used where an individual (nominated person) is applying for the cremation of a body part of a deceased adult or child.

#### Death in England or Wales

67. The forms checklist on A1, sets out the forms that are required if the deceased died in England or Wales. In some cases not all the forms will be available. The table below sets out the forms to be submitted along with the Form A1.

<b>Forms from England - checklist for cremation in Scotland</b>			
	<b>Replaced Form</b>	<b>Coroner involvement</b>	<b>No Coroner involvement</b>
Form 103 (out of England)		Yes	Yes
# Cremation 4 - Medical Certificate	B	No	Yes
# Cremation 5 - Confirmatory Medical Certificate	C	No	Yes
# Cremation 6 - Coroner Certificate	E	Yes	No
Certificate of Registration (Green Form) not issued if coroner involved. Also may not always be issued even if no coroner involvement.		No	Yes (if issued)

# Forms 4 and 5 **OR** Form 6 are required depending on involvement of coroner

#### **Combined weight of coffin and deceased**

68. Funeral directors, cremation authorities and burial authorities have a statutory duty under section 2 of the Health and Safety at Work etc. Act 1974 to protect the health, safety and welfare of their employees and others who may be affected by their business.

69. Other relevant legislation includes:

- Management of Health and Safety Regulations 1992
- Manual Handling Operations Regulations 1992
- Occupiers' Liability (Scotland) Act 1960
- Provision and use of work equipment regulations 1998

70. Knowing the combined weight of a coffin and deceased ensures that any necessary adjustments, including number of staff needed, can be made in advance of the cremation, reducing the possibility for distress for families on the day of a cremation service. This information also allows cremation authorities to better plan for the timing of cremations to ensure that larger coffins can be cremated when the cremator is at the correct temperature<sup>5</sup>.

<sup>5</sup> Weighing equipment should comply with the Non-automatic Weighing Instruments Regulations 2016 (Regulation 3(c)). <http://www.legislation.gov.uk/ukxi/2016/1152/made>

71. Coffin manufacturers can provide the weight of the coffin and it may be possible to source the weight of the deceased from the care home, family or mortuary. Every effort should be made to provide the weight but if a funeral director has no way of knowing the combined weight they should give an estimated figure on the form. This will alert the cremation authority who may opt to discuss the matter further with the funeral director before proceeding with the arrangements for the cremation (see also para 50 above).

72. Funeral directors should complete the parts of the form they are required to complete to the best of their knowledge. The cremation authority always has the option to make further enquiries about any information on an application form and to ask further questions about the weight to ensure the cremation can go ahead.

*Form A2: Application for cremation of a stillborn baby (a baby delivered or terminated after 24 weeks gestation without showing any signs of life)*

73. Prior to submitting a Form A2 or A3, the nearest relative or nominated person will have completed an authorisation form which will have been discussed with them by the health body caring for the woman who has experienced the loss. The authorisation form is an internal form which is retained by the health body as part of their records. Cremation authorities and funeral directors are not entitled to demand sight of the authorisation form and a cremation should not be refused because the authorisation form is not provided with the cremation application form. Details of the required papers to accompany the application forms are listed on Forms A2 and A3.

74. Form A2 can be completed by a hospital or health body as well as by the nearest relative or nominated person.

75. If the applicant is someone who is under 16 but is the parent of the stillborn baby they are entitled to make the application and complete the application form or they can nominate someone else to make the application.

*Form A3: Application for cremation of a pregnancy loss on or before 24 weeks*

76. Form A3 is used only by the nearest relative or nominated person and is used for any pre-24 week pregnancy loss. The form is **not** to be used by a hospital or other health provider, who should use Form A4.

77. If the applicant is a girl who is under 16 and has had a pregnancy loss she is entitled to make the application and complete the application form herself or she can nominate someone else to make the application.

78. If the pregnancy loss is from a multiple pregnancy and there are any questions about how the cremation(s) should be applied for, the funeral director or cremation authority can contact the Inspector of Cremation or email [burialandcremation@gov.scot](mailto:burialandcremation@gov.scot) for advice.

*Form A4: Application for cremation of pregnancy loss on or before 24 weeks made by a hospital or health provider*

79. As with A2 and A3 above, the health provider will have discussed the options for burial or cremation with the woman who has experienced the loss. There is no requirement for the authorisation form to be provided to the cremation authority. Form A4 is only to be used by hospitals/ health providers. The form is used when applying for the cremation of one pregnancy loss

or multiple pregnancy losses (shared cremation). The form includes a section for the unique identifying number for each pregnancy loss as well as the container number.

*Form A5: Application for the cremation of an adult or child made by a local authority*

80. Section 87 of the Burial and Cremation (Scotland) Act 2016 sets out the duties of local authorities in Scotland to provide a funeral when there is no one to make the arrangements. The duty was previously set out in the National Assistance Act 1948 and the Social Work (Scotland) Act 1968 which have been replaced by section 87 of the 2016 Act. When an adult or child dies and there is no one to make the arrangements, the local authority is obliged to bury or cremate that person under section 87. Form A5 should be used in these circumstances (there is separate guidance dealing with local authority liability to provide this type of funeral).

*Form A6: Application for the cremation of body parts following post-mortem examination OR a whole body or body parts following anatomical examination*

81. Form A6 will be accompanied by a Form M (authorising release of a body for disposal) or a Form N (authorising release of body part(s) for disposal). Form M or Form N will be signed by a doctor, pathologist or licensed teacher of anatomy. Form A6 can be completed by a person who has been authorised by the doctor, pathologist or licensed teacher of anatomy who completed Form M or Form N.

- 81.1. Following a **hospital arranged post mortem** and the hospital is applying for the cremation of any retained **body parts**.
- 81.2. Following an **anatomical examination** by one of the Scottish universities and the university is applying for the cremation of a **whole body**.
- 81.3. Following an **anatomical examination** by one of the Scottish universities and the university is applying for the cremation of retained **body parts**.

82. It is not necessary for the cremation authority to verify that the person is authorised as the person completing the cremation application form will declare on the form that they have the right to make the application. However, the cremation authority is entitled to make any enquiries about the application form considered necessary in order to be satisfied that the cremation can go ahead.

83. The form does not include a section for cremation of a whole body after a hospital arranged post mortem as the body is returned to the next of kin to make the arrangements, which they would do using Form A1, if cremation is the chosen method. Also, if a body/ body part has been returned to a family after anatomical examination and the family (or nominated person) is applying for the cremation they will do so using Form A1.

84. When the application is for cremation after an anatomical examination it should be completed by a representative of the university's anatomy school (Form A6). When a body is sent for cremation from an anatomy school, the cremation authority should **not** accept a Form A1 (or an old Form A) which has previously been completed by the next of kin at the time the body was donated to the university. The anatomy school can have possession of a body for up to 3 years and it is the anatomy school's representative who is applying for the cremation, not the next of kin.

*Form A7: Application for the cremation of body parts following anatomical examination where the deceased died before 14 February 1988*

85. It is anticipated that there will be few applications for this type of cremation. Some body parts held by anatomy schools from before that date cannot be identified and the 2016 Act has made provision for these to be able to be cremated. Form A7 will only be used where there are

body parts, including those which cannot be identified, which came into the possession of the anatomy school before 14 February 1988. This is the date that the relevant changes to legislation on anatomy came into effect<sup>6</sup>. Where any remains are in such a condition that they cannot be cremated, cremation authorities can refuse to accept them or can return them to the anatomy school for alternative disposal (burial).

#### *Application forms – decisions about ashes*

86. To ensure that there is clarity about how ashes are disposed of, the cremation application forms include a section which sets out what is to happen to the ashes following cremation. The options for ashes vary depending on which application form is completed. Where options for ashes are included, this section of the application form must be completed by the applicant before the cremation takes place.

87. Cremation application forms A1 (adult or child), A2 (stillborn baby) and A3 (pregnancy loss arranged by family) have options for disposal of ashes (section 5 on each form) and the instructions say to only tick one box. The options are:

- A – applicant or representative to collect ashes
- B – funeral director to collect ashes
- C – crematorium to disperse ashes

#### Ashes – Option D

88. There is an option D on the forms with a tick box which has caused some confusion. This is not an option for disposal of ashes but is a supplementary question which only applies when the cremation authority has been instructed to disperse the ashes (option C). It should not be considered as a fourth separate option.

89. Where the applicant wishes the remains/ bones to be returned to them before they are cremated, this should be recorded in the “Special Instructions” box in the “Disposal of Ashes” section of the application form.

90. A cremation authority may offer to split ashes into two or more lots. A request to do this should be recorded in the “special instructions” section of the application form. Only one Certificate of Cremation will be issued. This is usually to the applicant, unless the cremation authority has been instructed otherwise. The cremation authority may charge an additional fee for splitting ashes which should be made clear to the applicant in advance.

#### **Regulation 9 – Deaths investigated by the procurator fiscal**

91. If the Crown Office and Procurator Fiscal Service (COPFS) has been involved in reviewing the circumstances around a death, the cremation cannot take place until the Scottish Fatalities Investigation Unit (SFIU), in COPFS, issues a Form E1 releasing the remains for cremation. The completed Form E1 can be sent electronically to the cremation authority directly by SFIU or it can be sent along with the cremation application form by the applicant. The cremation authority should refuse to carry out a cremation until Form E1 is received (if SFIU have been involved). A revised and updated Form E1 is set out in schedule 8 of the regulations.

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<sup>6</sup> The Anatomy Act 1984, as amended by the Human Tissue (Scotland) Act 2006



## Regulation 10 – Cremation following warrant to disinter

92. Where there is an application for cremation of disinterred remains, the warrant to disinter<sup>7</sup> must be sent by the applicant to the cremation authority along with the application form. The cremation cannot take place until the warrant has been received (10(2))<sup>8</sup>.

## Regulation 11 – Cremation applications: further inquiry

93. A cremation authority has the right to make any inquiries about the information provided on an application for cremation which are considered necessary to ensure the cremation is carried out lawfully. The cremation authority can request any necessary documentation is submitted in support of the application. For example, if a form has been incorrectly filled out, or other documentation or information is missing the cremation authority can refuse to carry out the cremation until the missing information is provided by the applicant or a revised correct form is submitted.

## Regulation 12 – Handling of ashes: written notice

94. This regulation details the two specific instances when a funeral director and a cremation authority are required to give written notification to applicants that they hold the ashes and they are available for collection. **The written notice can be sent electronically, such as via email.**

95. Firstly, when a funeral director has collected ashes from a crematorium on behalf of the applicant, the funeral director should give written notice to the applicant that the ashes are ready for collection from the funeral director. The written notice should be sent as soon as reasonably practical once the ashes have been collected from the crematorium by the funeral director (12(1)).

96. Secondly, if ashes have not been collected from the funeral director by the applicant and have been returned to the crematorium, the cremation authority must give written notice to the applicant that the ashes have been returned to the crematorium and ask the applicant what is to be done with the ashes. The written notice should be sent as soon as reasonably practical to do so after the ashes have been returned by the funeral director to the crematorium (12(3)). The options are:

- The cremation authority should hold onto the ashes for collection (for a minimum of 4 weeks) (12(3)(a)) or
- The ashes are to be disposed of by the cremation authority in a manner that the cremation authority offers (12(3)(b)).

97. The written notice may be sent electronically, e.g. email (12(5)).

98. Regulation 12 refers to “specified period” (12(4)). The “specified period” is the minimum amount of time that ashes should be retained before taking further action, which is four weeks (see also Regulation 13).

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<sup>7</sup> This will currently be a warrant from the sheriff court. When regulations for burial grounds are done this is likely to change. These notes will be updated and reissued at that time.

<sup>8</sup> Review of all exhumation procedures is part of the regulations on burial and will be developed during 2019-20. Once the burial regulations are completed this guidance will be updated.

### **Regulation 13 – Handling of ashes: time period for collection of ashes (specified period)**

99. Where the applicant has instructed the cremation authority to dispose of the ashes on the application form (option C) there is no requirement for the cremation authority to wait for four weeks before doing so.

100. There are various references to time periods relating to the handling of ashes in the regulations. Where time periods are specified the **minimum periods** that must be observed before the next step can or should be taken **are four weeks following on from the last action taken.**

101. In nearly all circumstances the time periods can be longer than the minimum and the cremation authority or funeral director can decide on a case by case basis how long to delay taking the next step as long as it is longer than the 4 week minimum. The table below shows each stage and the minimum time periods cremation authorities and funeral directors are to hold ashes for.

102. All minimum periods start on the day after the date of cremation or the day after the end of the previous four week period has ended. The only instance where there is no minimum is when a funeral director has collected ashes on behalf of an applicant and the applicant instructs the funeral director to return ashes to a crematorium for collection or for the cremation authority to dispose of them. The ashes are to be returned immediately.

103. The “specified period” is the period of four weeks referred to in regulations 12(4) and 13(1). A flow chart setting out the procedures and minimum time periods for handling ashes is attached at the end of these guidance notes

S	DUTY ON	TO	BECAUSE	HOLD FOR	
51	Cremation authority (CA) (pre cremation)	Check that Form A states what is to happen to ashes 13(1)	Ashes to be collected by applicant or by funeral director (FD) on behalf of applicant		<b>OR</b> – Form A requests CA to dispose of ashes – CA may do so immediately
52	CA (after cremation)	Make ashes available for collection 13(1)	Ashes to be collected by applicant or FD	CA holds ashes for 4 weeks 13(1)	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 13(2)	Collection by applicant or by FD on behalf of applicant <b>OR</b> – CA to dispose of ashes
53	CA	Dispose of uncollected ashes (option)	Applicant has failed to collect ashes from CA after the additional period	The additional 4 weeks have passed 13(2)	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 additional 4 weeks 13(3)	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 13(4)	<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

#### **Regulation 14 – Disposal of ashes by cremation authority (specified manner)**

104. Following the procedures for handling of ashes mentioned above, and after any minimum time periods have passed, 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.

#### **Regulation 15 – Cremation registers**

105. The Act requires each cremation authority to hold cremation registers for each crematorium for which it is the cremation authority. There are three registers (schedules 9, 10 and 11 in the regulations): for adults and children (15(1)(a)); for body parts (15(1)(b)); and for stillbirths and pregnancy losses (15(1)(c)).

106. The three registers detail every cremation carried out at each crematorium and must be kept indefinitely. The cremation authority is to make the registers available to the public and may charge for providing extracts from it. The exception being in the case of cremation of a stillborn baby or a pregnancy loss, where the information held on this register will be anonymised and will, therefore, not be identifiable.

107. The information for each cremation must be entered on the appropriate register as soon as practicable after the cremation (15(2)). The cremation authority must ensure that the information in the registers is accurate and up to date (15(3)).

#### *Register of cremation of stillbirth and pregnancy loss*

108. Stillbirths were previously recorded in the whole body register but there was strong feeling that it would be more appropriate to have information about all types of pregnancy losses in one register. Doing so helps ensure that privacy and anonymity is easier for cremation authorities to manage while giving reassurance to families that their information will be held securely.

109. The information to be entered onto this register by the cremation authority varies depending on who the applicant is. If the applicant is a health provider/ hospital, columns (a) and (c) should be completed. Column (a) is the unique identifier given by the health provider/ hospital, to a stillborn baby or pregnancy loss. Column (c) is the address of the health provider/ hospital, as applicant.

110. If the applicant is an individual, such as a woman who experienced a pregnancy loss, a unique identifier will not have been allocated by the health provider/ hospital, so the applicant will not be able to provide this on the application form. Column (c) should be left blank where an individual has applied. This preserves their anonymity on a public register. If an individual wants their details to be included in column (c) that can be done by the cremation authority with a note made in the register that this was done at the request of the applicant.

111. Column (b) is the name and may or may not be necessary for the cremation of a stillborn baby (A2) or family arranged pregnancy loss (A3) depending on whether a name has been given. Column (c) can be left blank if the applicant is an individual to preserve anonymity.

## The schedules

Schedule	Application form	For the cremation of	Used by
1	A1	Adult or child	Individual
2	A2	Stillborn baby	Individual or health body
3	A3	Pregnancy loss on or before 24 weeks	Individual
4	A4	Pregnancy loss(es) on or before 24 weeks	Health body
5	A5	Adult or child	Local authority (section 87)
6	A6	Body parts after post-mortem exam or a whole body or body parts following an anatomical exam	Person authorised by the doctor, pathologist or anatomy teacher who has completed Form M or Form N
7	A7	Body parts following anatomical exam where the deceased died before 14 February 1988	Person authorised by anatomy teacher who has completed Form N
8	E1	Authority to cremate following investigation by procurator fiscal	COPFS
9	B1	Cremation register – whole bodies	Cremation authority
10	B2	Cremation register – body parts	Cremation authority
11	B3	Cremation register – stillbirth and pregnancy loss	Cremation authority

112. The schedules to the regulations set out the statutory application forms (Forms A1 to A7), the form authorising cremation after the death has been investigated by the SFIU (Form E1) and the cremation registers (B1, B2 and B3). **These forms are all statutory and must not be amended to either remove or add questions or information.**

113. There are intentionally a number of different application forms; one for each category of cremation. This is to ensure that all categories are provided for and also ensures that applicants are not required to look through one very large form in order to only complete the sections that are relevant.

# Handling of Ashes – all timescales are minimum and can be extended

## Before Cremation

Applicant chooses one of the options on the cremation application form to instruct what is to happen to the ashes.

## After Cremation

CA makes ashes available for collection by applicant, their representative or FD (unless CA instructed to disperse ashes).

