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Contents

The Cremation (Scotland) Regulations 2019 [draft]	1
Purpose of the instrument	1
Committee consideration	3

Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



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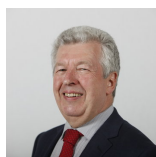


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The Cremation (Scotland) Regulations 2019 [draft]

The Committee reports to the Parliament as follows-

1. The Cremation (Scotland) Regulations 2019 [draft] was laid before the Scottish Parliament under section 106(2) of the Burial and Cremation (Scotland) Act 2016 on 20 December 2018 and referred to the Health and Sport Committee.
2. The Cremation (Scotland) Regulations 2019 [draft] is subject to the affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to Parliament whether the Regulations should be approved.

Purpose of the instrument

3. The instrument is made in exercise of the powers conferred by sections 47(1), 48(2) and (4), 56(1) and (2), 57(1) and (2) and 106(1)(a) of the Burial and Cremation (Scotland) Act 2016 (“the 2016 Act”) and section 27A(2) and (6)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.
4. The instrument makes detailed provision in relation to cremation in Scotland, building on the framework in the 2016 Act in particular. Together they take forward the recommendations of various groups and committees which considered how to improve the way that cremation is dealt with in Scotland as well as addressing specific problems that had been uncovered, such as the handling of ashes.
5. The instrument covers management and operation of crematoriums and how cremations are carried out. It also makes comprehensive provision for cremation application forms and registers. Cremation authorities will be required to keep application forms for 50 years and to ensure they are kept confidential
6. These Regulations make provision regarding cremations in Scotland, in particular in respect of the management and operation of crematoriums, applications for cremation, the handling of ashes and cremation registers. The Burial and Cremation (Scotland) Act 2016 (“the Act”) repeals and replaces the Cremation Acts 1902 and 1952 as they apply to Scotland. The Act makes provision to regulate cremation and places duties on cremation authorities.
7. Regulations 2 to 4 concern the operation and management of crematoriums. Regulation 2 provides that cremation authorities must prepare and maintain a management plan to be known as a Crematorium Management Plan which must make provision about matters specified in regulation 2(4). The Plan must be regularly reviewed and available for inspection by members of the public or an inspector of cremation. Regulation 3 makes provision about documentation which must be retained by the authorities for a period of 50 years on a confidential basis. A person appointed as an inspector of cremation will have powers to enter premises to investigate compliance with these Regulations and provisions under the Act. Regulation 4 makes provision imposing duties on cremation authorities in connection with maintenance and operation of crematoriums.

8. Regulations 5 to 7 make provision regarding the operation of cremators. Cremation authorities must ensure that cremations are not combined to ensure the remains of only one adult, child, still-born child or fetus are cremated each time (regulation 5). This does not apply to a joint cremation or a shared cremation as defined in regulations 6 and 7. A joint cremation is the cremation of the remains of one adult together with one, or more than one, child, still-born child or fetus; or the cremation of the remains of more than one child, still-born child or fetus and may only be carried out with the written permission of each person who has authority to make arrangements for the cremation. A shared cremation is the cremation of the remains of more than one fetus following an application by a health authority or body which is authorised to make arrangements for cremation by virtue of Part 3 of the Act.
9. Regulations 8 to 11 concern the application process for cremations. Applications must be in a prescribed form and contain the information specified in the relevant form (regulation 8 and schedules 1 to 7). Regulation 9 and schedule 8 and regulation 10 make provision for circumstances where additional documentation is required (authority from the procurator fiscal where the death has been investigated by the fiscal and a warrant to disinter for exhumed remains). Regulation 11 provides that cremation authorities may make inquiries in relation to any application or accompanying documents.
10. Sections 51 to 56 of the Act make provision about the handling of ashes by cremation authorities and funeral directors, including arrangements for retention, collection and disposal of ashes.
11. The duties regarding the retention of ashes are set out in sections 52 to 55 of the Act. Where by virtue of section 52(3) of the Act a funeral director has collected ashes from a cremation authority regulation 12(1) makes provision about notice to be given by the funeral director to the applicant. Where by virtue of section 54(5) of the Act a funeral director returns ashes to a cremation authority regulation 12(3) makes provision about notice to be given by the cremation authority to the applicant. Section 26 (service of documents) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) applies in relation to notices to be given under regulation 12. Regulation 13(1) specifies 4 weeks beginning with the day after the day on which cremation took place, for the purposes of sections 51(3)(a) and (b) and 52(2) and (3) (initial period for retention of ashes by the cremation authority). Where the ashes are not collected, the cremation authority must ascertain whether the applicant wishes the ashes to be retained for a further period: regulation 12(2) specifies 4 weeks beginning with the day after the end of the specified period mentioned in regulation 13(1) as the further period for retention, for the purposes of section 53(2)(a) and (b). Regulation 13(3) specifies 4 weeks beginning with the day notice is given to the applicant under regulation 12(1) for the purpose of section 54(1)(b) (period for collection of ashes from funeral director by the applicant). Regulation 13(4) specifies 4 weeks beginning with the day on which the cremation authority has given notice to the applicant under regulation 12(3) for the purposes of section 55(2)(a) and (3) (period for collection of ashes from cremation authority following return by funeral director).
12. For the purposes of sections 51, 53 and 55 of the Act regulation 14 provides that the specified method of disposal of ashes is burial or scattering.

13. Regulation 15 prescribes the form of, and the information which must be recorded in, cremation registers and places a duty on cremation authorities to review each register and ensure that the information is accurate and up to date.
14. The full range of impact assessments were carried out in relation to the Bill for the 2016 Act. No further impact assessments have been completed specifically for this instrument as it does not impose any additional impact beyond what was envisaged when the Bill for the 2016 Act was introduced.

Committee consideration

15. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 15 January 2019 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

[Delegated Powers and Law Reform Committee, 4th Report, 2019 \(Session 5\)](#)

16. At the Health and Sport Committee's 2nd meeting, on 22 January 2019, the Committee took evidence on The Cremation (Scotland) Regulations 2019 [draft] from—
 - Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing;
 - Robert Swanson QPM, Inspector of Crematoria;
 - Johanna Irvine, Legal Directorate; and
 - Cheryl Paris, Burial and Cremation Team, all Scottish Government.
17. Motion S5M-15440 was lodged by Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing. Following the evidence session, Joe FitzPatrick moved motion S5M-15440—

That the Health and Sport Committee recommends that The Cremation (Scotland) Regulations 2019 [draft] be approved.

The motion was agreed to without division.

18. The evidence taken and debated can be found in the Official Report for 22 January 2019.

19. The Health and Sport Committee recommends to the Parliament that The Cremation (Scotland) Regulations 2019 [draft] be approved.

