

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Cremation

Cremation

Section 45 – Meaning of “cremation” and “ashes”

124. **Section 45** defines “cremation” for the purposes of the Act. By virtue of subsection (1), “cremation” means the burning of human remains. By virtue of subsection (1)(a), where those burnt remains are then reduced by grinding (for example, through cremulation), that process is regarded as part of the cremation. By virtue of subsection (1)(b), where any other process is applied (whether or not any grinding process has been applied) to the burnt remains (for example, cooling) that process is also regarded as part of the cremation.
125. Subsection (2) provides that, for the purposes of the Act, “ashes” are defined as the material to which human remains are reduced by cremation, other than any metal that is left. Where the remains are clothed, in a coffin (meaning any type of receptacle) or with any other thing, subsection (3) means that all of these things (ie, clothing, the coffin and any other thing) are regarded as human remains for the purpose of defining “cremation” and “ashes”.
126. The effect of this is that where human remains are burnt and those remains are subsequently cremulated, the end result will be ashes. Where the human remains are burnt and are not subsequently cremulated, those remains will also be regarded as ashes. This might be the case where the bones are not cremulated because of cultural or religious reasons, or because the burnt remains are too delicate to be cremulated (for example, in the case of a pregnancy loss, stillborn child or very young baby). The effect of the definition of “cremation” is that everything that remains (apart from metal) is regarded as ashes, even where cremulation does not take place.

Section 46 – Provision of crematorium: local authority

127. This section provides that a local authority may provide a crematorium, or enter into arrangements with another person to provide a crematorium on behalf of the local authority.
128. “Crematorium” is defined as a building that is fitted with equipment for the carrying out of cremations, and includes land (other than a burial ground) pertaining to such a building.

Section 47 – Cremation authority: duties

129. Subsection (1) allows the Scottish Ministers to make regulations which make provision about the management and operation of crematoriums; the maintenance of crematoriums; the operation of any cremation equipment used in a crematorium; and persons employed by cremation authorities (including in relation to training, qualifications and membership of professional bodies). Subsection (2) requires cremation authorities to comply with any requirements imposed by virtue of subsection (1).
130. Subsection (3) provides that it is an offence for a cremation authority to knowingly contravene requirements set out in regulations. Subsection (4) provides that on summary conviction such an offence attracts imprisonment for no more 12 months, a fine not exceeding level 3 on the standard scale or both.
131. [Section 47\(5\)](#) defines a “cremation authority” as a person having responsibility for the management of a crematorium.

Section 48 – Application for cremation

132. This section sets out the process for making an application for a cremation. Subsection (1) provides that a person must apply for a cremation to the cremation authority where the cremation is to be carried out. Subsection (2) gives the Scottish Ministers the power to make regulations in respect of the application process. Those regulations may specify the form and content of applications, specify who may issue application forms, prohibit the alteration of any forms set out by the regulations, specify who may apply for a cremation, make provision about documents that must be submitted with an application and make provision for reviews and appeals. A person, in making an application for a cremation, must comply with any requirements set out in those regulations.

Section 49 – Section 48: offences

133. [Section 49](#) sets out offences related to the application for a cremation. It is an offence for a person to knowingly provide information which is false or misleading in a material way, in, or in connection with, an application for a cremation. It is also an offence to recklessly provide information that is false or misleading in a material way in, or in connection with, such an application.
134. Subsection (2) provides that on summary conviction, these offences are punishable by a fine not exceeding level 3 on the standard scale.

Section 50 – Requirements for carrying out cremation

135. This section sets out restrictions on the carrying out of a cremation. Subsection (1) provides that a person may not carry out a cremation unless the person is a cremation authority, an application for cremation has been granted and the cremation is carried out in a crematorium. For the purposes of this section “crematorium” is defined as a building fitted with equipment for the carrying out of cremations. This definition is distinct from that at section 46 in that it does not include land pertaining to the building. The effect of this is that a cremation cannot lawfully take place anywhere other than inside a crematorium building.
136. Subsection (2) provides that it is an offence to knowingly contravene these requirements. Subsection (3) provides that, on summary conviction, contravention attracts imprisonment for a term not exceeding 12 months, a fine not exceeding level 3 on the standard scale or both.