

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Arrangements

Pregnancy loss after 24 weeks

Section 71 – Section 69: no arrangements

187. Subsection (1) sets out a duty on a health authority following a post-24 week termination where it appears to the health authority that no arrangements for burial or cremation of the remains are being made by virtue of subsection 69(2). This may arise because the health body did not consider it to be in the woman's best interests to give her the opportunity to decide what should happen before the loss occurred, as per section 69(2). It may also arise where the woman was given the opportunity under section 69(2) but did not indicate her decision.
188. Subsection (2) provides that the health authority must give the woman the opportunity to decide whether she wishes to make arrangements for the burial or cremation of the remains or whether she wishes to authorise the health authority to make arrangements in a way specified by the woman or in a way specified by the health authority. Where the woman authorises the health authority to make the arrangements in a way specified by her, subsection (3) requires the health authority to inform her if the way she has specified is not reasonably practicable.
189. By virtue of subsection (4), subsection (5) applies where a woman informs the health authority that she does not wish to make arrangements, is unable to make a decision or does not inform the health authority of a decision under subsection (2). In this case, subsection (5) allows the health authority to make arrangements for the remains to be buried or cremated. Subsection (6) requires the health authority to record information that is prescribed by the Scottish Ministers by regulations.