

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Arrangements

Pregnancy loss on or before 24 weeks

Section 84 – Duty of appropriate health authority

222. This section applies where a pregnancy loss has occurred in the circumstances set out at section 79(1) and more than 6 weeks has elapsed since the loss and it appears to the health authority that no arrangements are being or have been made under section 79, 80 or 81 for the burial or cremation of the remains of the fetus.
223. In this case, the health board or independent health service (the “health authority”) caring for the woman when her pregnancy ended must decide if it would be in the best interests of the woman to contact her again to try and ascertain her views and if so, whether she would wish to decide who should make arrangements for the disposal of the remains of the fetus. If the health authority is of the view that it would not be in her best interests to contact the woman, it must make arrangements for the disposal of the remains. This prevents a health authority contacting a woman at this stage where she has earlier indicated that she does not wish to be involved in arrangements for burial or cremation. This discretion allows the health authority not to contact the woman where doing so is considered to be contrary to her wishes and best interests.
224. Subsection (2) sets out the procedure to be followed by a health authority once the relevant period, as defined in section 80(5), has expired and no arrangements have been made. As soon as possible after that, the health authority must consider whether it would be in the best interests of the woman to contact her to attempt to ascertain whether she wishes to decide who should make the arrangements and if she wishes to specify the manner of disposal to be used if she authorises the health authority to make the arrangements.
225. Subsection (3) set out the procedure to be followed where the health authority considers it would not be in the woman’s best interests to seek her views in terms of subsection (2). In these circumstances, the health authority may make the arrangements for disposal.
226. Subsection (4) details the steps to be taken by a health authority where it has decided that it would be in the woman’s best interest to consult her in terms of subsection (2). The health authority should take reasonable steps to to ascertain her wishes.
227. Subsections (5) and (6) set out the procedure to be followed where the health authority has been authorised by the woman to make the arrangements on her behalf and she has specified the manner in which the remains are to be disposed of. The health authority may proceed to make the arrangements and must do so in the manner specified by the woman, unless it would be impractical to make those arrangements.

*These notes relate to the Burial and Cremation (Scotland) Act
2016 (asp 20) which received Royal Assent on 28 April 2016*

228. Subsections (7) and (8) enable the health authority to make the arrangements where no arrangements are otherwise being made and it would not be in the woman's best interest to attempt to ascertain her wishes.
229. Guidance will be provided to support this process. The intention is that this process will have been explained to the woman when the health authority discusses options with her as required by the Act, so that no woman should be unaware of the various possible outcomes.
230. This approach allows a health authority to base its decision on its relationship with the woman who has experienced the loss. In some instances, a health authority may know that a woman is still trying to make a decision, in which case the authority will be expected not to make arrangements for the disposal of the remains of the fetus under this section, pending the woman's decision. In other cases, the woman may have had no contact with the health authority since the loss occurred. The health authority may conclude that the woman does not wish to have any involvement in making arrangements and decide that it should make arrangements for the disposal. This section provides sufficient flexibility to ensure that a health authority can always make a decision about how to proceed in the context of the woman's best interests, including avoiding unnecessary involvement in this process where the woman does not wish to be involved.