



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

VALID FROM 04/04/2019

### PART 3

#### ARRANGEMENTS

##### *Adults and children*

#### **65 Arrangements on death of adult**

- (1) This section applies where an adult dies and—
  - (a) the adult has not made an arrangements on death declaration, or
  - (b) the adult has made an arrangements on death declaration but it would not be reasonably practicable to give effect to it.
- (2) The nearest relative of the adult may make arrangements for the adult's remains to be buried or cremated.
- (3) The nearest relative is the person who immediately before the adult's death was—
  - (a) the adult's spouse or civil partner,
  - (b) neither married to nor in a civil partnership with the adult but was living with the adult as if they were married to each other and had been so living for a period of at least 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital),
  - (c) the adult's child,
  - (d) the adult's parent,
  - (e) the adult's brother or sister,
  - (f) the adult's grandparent,
  - (g) the adult's grandchild,
  - (h) the adult's uncle or aunt,
  - (i) the adult's cousin,
  - (j) the adult's niece or nephew,

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- (k) a friend of long standing of the adult.
- (4) If the adult's spouse or civil partner—
  - (a) is permanently separated (either by agreement or under an order of a court) from the adult, or
  - (b) has deserted, or has been deserted by, the adult and the desertion continues, subsection (3) is to be read as if paragraph (a) were omitted.
- (5) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as modified by subsection (4))—
  - (a) a relationship of the half-blood is to be treated as a relationship of the whole blood,
  - (b) the stepchild of an adult is to be treated as the child of the adult.
- (6) Where more than one person falls within a paragraph of subsection (3)—
  - (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (7) For the purposes of subsection (3), a person's relationship with the adult is to be left out of account if—
  - (a) immediately before the adult's death the person was under 16 years of age,
  - (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
  - (c) it is not reasonably practicable to communicate with the person in the time available.
- (8) In this section—
  - “adult” means a person who is 16 years of age or over,
  - “arrangements on death declaration” means a declaration by an adult specifying the person by whom the adult wishes the arrangements to be made for the burial or cremation of the adult's remains on the adult's death.
- (9) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

## **66 Arrangements on death of child**

- (1) This section applies where a child dies.
- (2) The nearest relative of the child may make arrangements for the child's remains to be buried or cremated.
- (3) The nearest relative, in relation to the child, is the person who immediately before the death was—
  - (a) the child's parent or a person who had parental rights and parental responsibilities in relation to the child (but who is not a local authority),
  - (b) the child's brother or sister,
  - (c) the child's grandparent,
  - (d) the child's uncle or aunt,
  - (e) the child's cousin,
  - (f) the child's niece or nephew,

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(g) a friend of long standing of the child.

(4) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection a relationship of the half-blood is to be treated as a relationship of the whole blood.

(5) Where more than one person falls within a paragraph of subsection (3)—

- (a) each such person ranks equally for the purpose of the paragraph, and
- (b) either (or any) person falling within the paragraph may be the nearest relative.

(6) For the purposes of subsection (3), a person's relationship with the child is to be left out of account if—

- (a) except in the case of the child's parent, the person, immediately before the child's death, was under 16 years of age,
- (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
- (c) it is not reasonably practicable to communicate with the person in the time available.

(7) In this section, “child” means a person (other than a still-born child) who is under 16 years of age.

(8) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

#### **67 Arrangements under sections 65 and 66**

(1) This section applies where a person is entitled by virtue of section 65(2) or 66(2) to make the arrangements for the remains of an adult or child to be buried or cremated.

(2) The person may decide whether the remains are to be buried or cremated.

(3) In making a decision for the purposes of subsection (2), the person must, so far as known to the person, have regard to—

- (a) any wishes that the adult or child expressed as to the burial or cremation of the remains, and
- (b) whether the adult or child is of a particular religion or belief.

(4) In this section—

- “adult” has the meaning given by section 65(8),
- “belief” has the meaning given by section 10(2) of the Equality Act 2010,
- “child” has the meaning given by section 66(7),
- “religion” has the meaning given by section 10(1) of the Equality Act 2010.

(5) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

#### **68 Sections 65 and 66: application to sheriff**

(1) On the application of any person claiming an interest, the sheriff may make an order declaring that the person specified in the order is entitled to make arrangements for the burial or cremation of the remains of the deceased person specified in the order—

- (a) by virtue of an arrangements on death declaration made by the deceased, or
- (b) by virtue of section 65(2) or 66(2).

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- (2) An order under subsection (1) may include such other provision as the sheriff considers necessary or expedient.
- (3) No application may be made under subsection (1) in relation to the remains of a deceased person where—
  - (a) an application for an order under section 93(1) of the Public Health etc. (Scotland) Act 2008 (power of sheriff to order removal of body to mortuary or disposal) in respect of the remains has been made and not disposed of, or
  - (b) an order under that section has been made in respect of the remains.
- (4) In this section, “arrangements on death declaration” has the meaning given by section 65(8).

*Pregnancy loss after 24 weeks*

**69 Arrangements on termination of pregnancy after 24 weeks**

- (1) This section applies where a woman's pregnancy is to be terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967.
- (2) If the appropriate health body considers that it would be in the woman's best interests to do so, the appropriate health body must give the woman an opportunity to decide—
  - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise the appropriate health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) if she wishes to authorise the body under paragraph (b), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the pregnancy is terminated, or
    - (ii) after the expiry of the 7-day period.
- (3) For the purposes of subsection (2)(b), the appropriate health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (4) The appropriate health body must keep a record of prescribed information.
- (5) In this section—
  - “7-day period” means the period of 7 days beginning with the day on which the pregnancy is terminated,
  - “appropriate health body”, in relation to a woman whose pregnancy is to be terminated as mentioned in subsection (1), means—
    - (a) if the woman is in the care of a Health Board as regards the termination, that Health Board,
    - (b) if the woman is in the care of an independent health care service as regards the termination, that independent health care service,
  - “Health Board” means a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

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“independent health care service” is to be construed in accordance with section 10F of the National Health Service (Scotland) Act 1978.

#### **70 Section 69: health body authorised to make arrangements**

- (1) This section applies where—
  - (a) a woman's pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) an appropriate health body is authorised by virtue of section 69(2)(b) to make arrangements for the remains of the fetus to be buried or cremated.
- (2) The appropriate health body—
  - (a) may make arrangements for the remains to be buried or cremated, and
  - (b) if by virtue of section 69(2)(b)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) The appropriate health body may make the arrangements—
  - (a) if the authorisation was given by virtue of section 69(2)(c)(i), as soon as practicable after the pregnancy is terminated,
  - (b) if the authorisation was given by virtue of section 69(2)(c)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.
- (4) In this section, “appropriate health body” and “7-day period” have the meanings given by section 69(5).

#### **71 Section 69: no arrangements**

- (1) This section applies where—
  - (a) a woman's pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 69(2) for the remains of the fetus to be buried or cremated.
- (2) The appropriate health authority must give the woman an opportunity to decide—
  - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated, or
  - (b) whether she wishes to authorise the appropriate health authority to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority.
- (3) For the purposes of subsection (2)(b), the appropriate health authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (4) Subsection (5) applies if—
  - (a) the woman informs the appropriate health authority that she does not wish to make arrangements for the remains of the fetus to be buried or cremated,
  - (b) the woman is unable to make a decision under subsection (2), or

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- (c) the woman does not inform the appropriate health authority of a decision that she has made under subsection (2).
- (5) The appropriate health authority may make arrangements for the remains to be buried or cremated.
- (6) The appropriate health authority must keep a record of prescribed information.
- (7) In this section, “appropriate health authority”, in relation to a woman whose pregnancy is terminated as mentioned in subsection (1), means—
  - (a) if the time when the pregnancy is terminated the woman is in the care of a Health Board, that Health Board,
  - (b) if at the time when the pregnancy is terminated the woman is in the care of an independent health care service, that independent health care service.

## 72 Duty of health body where still-birth likely to occur

- (1) This section applies where an appropriate health body informs a woman that the appropriate health body considers that it is likely that the woman's pregnancy will end with a still-birth (other than in consequence of the termination of the pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967).
- (2) If the appropriate health body considers that it would be in the woman's best interests to do so, the appropriate health body must give the woman an opportunity to decide—
  - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise the appropriate health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) if she wishes to authorise the body under paragraph (b), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the still-birth occurs, or
    - (ii) after the expiry of the 7-day period.
- (3) For the purposes of subsection (2)(b), the appropriate health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (4) The appropriate health body must keep a record of prescribed information.
- (5) In this section—
  - “7-day period” means the period of 7 days beginning with the day on which the still-birth occurs,
  - “appropriate health body”, in relation to a woman, means—
    - (a) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of a Health Board, that Health Board,
    - (b) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of an independent health care service, that independent health care service.

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### **73 Section 72: health body authorised to make arrangements**

- (1) This section applies where—
  - (a) a still-birth occurs other than in consequence of the termination of a woman's pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) the appropriate health body is authorised by virtue of section 72(2)(b) to make arrangements for the remains of the fetus to be buried or cremated.
- (2) The appropriate health body—
  - (a) may make arrangements for the remains to be buried or cremated, and
  - (b) if by virtue of section 72(2)(b)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) The appropriate health body may make the arrangements—
  - (a) if the authorisation was given by virtue of section 72(2)(c)(i), as soon as practicable after the still-birth occurs,
  - (b) if the authorisation was given by virtue of section 72(2)(c)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.
- (4) In this section, “7-day period” and “appropriate health body” have the meanings given by section 72(5).

### **74 Arrangements on still-birth**

- (1) This section applies where—
  - (a) a still-birth occurs other than in consequence of the termination of a woman's pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) it appears to the appropriate health body that no arrangements have been or are being made by virtue of section 72(2) for the remains of the fetus to be buried or cremated.
- (2) The nearest relative of the still-born child may make arrangements for the remains of the still-born child to be buried or cremated.
- (3) The nearest relative, in relation to the still-born child, is the person who immediately before the still-birth was—
  - (a) the still-born child's parent,
  - (b) the still-born child's brother or sister,
  - (c) the still-born child's grandparent,
  - (d) the still-born child's uncle or aunt,
  - (e) the still-born child's cousin,
  - (f) the still-born child's niece or nephew.
- (4) The nearest relative—
  - (a) may authorise the appropriate health body to make arrangements for the remains of the still-born child to be buried or cremated—
    - (i) in a way specified by the nearest relative, or
    - (ii) in a way specified by the body, but

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- (b) otherwise may not authorise any other person to make arrangements for the remains of the still-born child to be buried or cremated.
- (5) For the purposes of subsection (4)(a), the appropriate health body must inform the nearest relative if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (6) The appropriate health body must keep a record of prescribed information.
- (7) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection a relationship of the half-blood is to be treated as a relationship of the whole blood.
- (8) Where more than one person falls within a paragraph of subsection (3)—
  - (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (9) For the purposes of subsection (3), a person's relationship with the still-born child is to be left out of account if—
  - (a) except in the case of the still-born child's parent, the person, immediately before the child's death, was under 16 years of age,
  - (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
  - (c) it is not reasonably practicable to communicate with the person in the time available.
- (10) In this section, “appropriate health body”, in relation to a woman, means—
  - (a) if at the time when the still-birth occurs the woman is in the care of a Health Board, that Health Board,
  - (b) if at the time when the still-birth occurs the woman is in the care of an independent health care service, that independent health care service.

## **75 Section 74: power of appropriate health body**

- (1) This section applies where the appropriate health body is authorised under section 74(4)(a) to make arrangements for the remains of a still-born child to be buried or cremated.
- (2) After the expiry of the 7-day period, the appropriate health body may make arrangements for the remains to be buried or cremated.
- (3) Subsections (4) and (5) apply if the person who authorised the appropriate health body to make the arrangements for the burial or cremation of the remains informs the body that the person has decided that the body may make the arrangements before the expiry of the 7-day period.
- (4) The appropriate health body must—
  - (a) record the person's decision in the prescribed form, and
  - (b) take reasonable steps to secure the person's signature.
- (5) The appropriate health body—
  - (a) may make arrangements for the remains to be buried or cremated before the expiry of the 7-day period, and



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(b) if by virtue of section 74(4)(a)(i) it is authorised to do so in a specified way, must do so in that way.

(6) In this section—

“7-day period” means the period of 7 days beginning with the day on which authorisation is given under section 74(4)(a),

“appropriate health body” has the meaning given by section 74(10).

## **76 Section 74: general power of appropriate health body**

(1) This section applies where it appears to the appropriate health body that no arrangements have been or are being made under section 74(2) or (4) for the remains of a still-born child to be buried or cremated.

(2) The appropriate health body may make arrangements for the remains to be buried or cremated.

(3) In this section, “appropriate health body” has the meaning given by section 74(10).

### *Pregnancy loss on or before 24 weeks*

## **77 Duty of health body where pregnancy loss likely to occur**

(1) This section applies where—

(a) a woman is in the care of a relevant health body, and

(b) the relevant health body informs the woman that the relevant health body considers that it is likely that the woman's pregnancy will end before or on completion of its 24th week.

(2) If the relevant health body considers that it would be in the woman's best interests to do so, the relevant health body must give the woman an opportunity to decide—

(a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,

(b) whether she wishes to authorise an individual of or over 16 years of age to make those arrangements—

(i) in a way specified by the woman, or

(ii) in a way specified by the body,

(c) whether she wishes to authorise the relevant health body to make those arrangements—

(i) in a way specified by the woman, or

(ii) in a way specified by the body,

(d) if she wishes to authorise the body under paragraph (c), whether she wishes to authorise the body to make those arrangements—

(i) as soon as practicable after the pregnancy ends, or

(ii) after the expiry of the 7-day period.

(3) For the purposes of subsection (2)(c), the relevant health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.

(4) The relevant health body must keep a record of prescribed information.

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(5) In this section—

“7-day period” means the period of 7 days beginning with the day on which the fetus is parted from the woman and does not breathe or show any other signs of life,

“relevant health body”, in relation to a woman, means—

- (a) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of a Health Board, that Health Board,
- (b) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of an independent health care service, that independent health care service.

## **78 Section 77: health body authorised to make arrangements**

(1) This section applies where—

- (a) a woman's pregnancy ends before or on completion of its 24th week,
- (b) after being parted from the woman the fetus does not breathe or show any other signs of life,
- (c) at the time when the pregnancy ends the woman is in the care of a relevant health body, and
- (d) the relevant health body is authorised by virtue of section 77(2)(c) to make arrangements for the remains of the fetus to be buried or cremated.

(2) The relevant health body—

- (a) may make arrangements for the remains to be buried or cremated, and
- (b) if by virtue of section 77(2)(c)(i) it is authorised to do so in a specified way, must do so in that way.

(3) The relevant health body may make the arrangements—

- (a) if the authorisation was given by virtue of section 77(2)(d)(i), as soon as practicable after the pregnancy ends,
- (b) if the authorisation was given by virtue of section 77(2)(d)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.

(4) In this section, “7-day period” and “relevant health body” have the meanings given by section 77(5).

## **79 Arrangements on pregnancy loss on or before 24 weeks**

(1) This section applies where—

- (a) a woman's pregnancy ends before or on completion of its 24th week,
- (b) after being parted from the woman the fetus does not breathe or show any other signs of life,
- (c) at the time when the pregnancy ends the woman is in the care of an appropriate health authority, and
- (d) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 84(2) for the remains of the fetus to be buried or cremated.

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- (2) Before the expiry of the initial period, the appropriate health authority must give the woman an opportunity to decide—
  - (a) whether she wishes to make arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise an individual of or over 16 years of age to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority, or
  - (c) whether she wishes to authorise the appropriate health authority to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority.
- (3) For the purposes of subsection (2)(c), the appropriate health authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (4) Subsection (5) applies if, before the expiry of the initial period, the woman informs the appropriate health authority of a decision that she has made under subsection (2).
- (5) As soon as practicable after the woman informs the appropriate health authority of the decision the authority must—
  - (a) record the decision in the prescribed form, and
  - (b) take reasonable steps to secure the woman's signature.
- (6) Subsection (7) applies if the woman does not inform the appropriate health authority before the expiry of the initial period of a decision that she has made under subsection (2).
- (7) As soon as practicable after the expiry of the initial period, the appropriate health authority must—
  - (a) record the matters mentioned in subsection (8) in the prescribed form, and
  - (b) take reasonable steps to secure the woman's signature.
- (8) The matters are—
  - (a) if the woman informs the appropriate health authority of a decision she has made under subsection (2), the decision,
  - (b) if the woman does not inform the appropriate health authority of a decision she has made under that subsection, that fact.
- (9) In this section—

“appropriate health authority”, in relation to a woman whose pregnancy ends as mentioned in subsection (1), means—

  - (a) if at the time when the pregnancy ends the woman is in the care of an independent health care service, that independent health care service,
  - (b) if at the time when the pregnancy ends the woman is in the care of a Health Board, that Health Board,

“initial period” means the period of 7 days beginning with the day on which a fetus, having been parted from the woman whose pregnancy has ended, does not breathe or show any other signs of life.

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## **80 Change in arrangements**

- (1) This section applies if—
  - (a) an appropriate health authority has given a woman the opportunity to make a decision under section 79(2),
  - (b) the remains have not been buried or cremated, and
  - (c) the relevant period has not expired.
- (2) The woman may notify the appropriate health authority of—
  - (a) where she has previously made a decision under section 79(2), a new decision under that section replacing the decision she made previously,
  - (b) where she has not previously made a decision under that section, a decision made by her under that section.
- (3) If the woman notifies the appropriate health authority that she has made the decision mentioned in section 79(2)(c), the authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (4) As soon as practicable after receiving notice under subsection (2), the appropriate health authority must—
  - (a) record the decision in the prescribed form, and
  - (b) take reasonable steps to secure the woman's signature.
- (5) In this section—
  - “appropriate health authority” has the meaning given by section 79(9),
  - “relevant period” means the period of 5 weeks beginning with the day on which the initial period (as defined in section 79(9)) expires.

## **81 Individual authorised to make arrangements**

- (1) This section applies if an individual is authorised under section 79(2)(b) to make arrangements for the remains of a fetus to be buried or cremated.
- (2) If the individual does not wish to make the arrangements—
  - (a) the individual may authorise the appropriate health authority to make arrangements for the remains to be buried or cremated—
    - (i) in a way specified by the individual, or
    - (ii) in a way specified by the authority, but
  - (b) otherwise may not authorise any other person to make arrangements for the remains to be buried or cremated.
- (3) If by virtue of section 79(2)(b)(i) the individual is authorised to make arrangements for the remains to be buried or cremated in a way specified by the woman, the individual must specify that way under subsection (2)(a)(i).
- (4) For the purposes of subsection (2)(a), the appropriate health authority must inform the individual if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (5) If an appropriate health authority is authorised by an individual under subsection (2)(a), it must—
  - (a) record the authorisation in the prescribed form, and

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(b) take reasonable steps to secure the individual's signature.

(6) Subsection (7) applies if—

(a) under section 79(7)(a) or 80(4)(a) the appropriate health authority has recorded a decision under section 79(2)(b) to authorise an individual, and

(b) the individual—

(i) does not inform the authority that the individual has made arrangements for the remains to be buried or cremated, and

(ii) does not authorise the authority under subsection (2)(a) to make those arrangements.

(7) The appropriate health authority must—

(a) record those facts in the prescribed form, and

(b) take reasonable steps to secure the individual's signature.

(8) In this section, “appropriate health authority” has the meaning given by section 79(9).

## **82 Duty to transfer remains**

(1) Subsection (2) applies where by virtue of a decision made by a woman under section 79(2)(a) the arrangements for the burial or cremation of the remains of a fetus are to be made by the woman.

(2) The appropriate health authority must give the remains to the woman.

(3) Subsection (4) applies where by virtue of a decision made by a woman under section 79(2)(b) an individual is authorised to make the arrangements for the burial or cremation of the remains of a fetus.

(4) The appropriate health authority must give the remains to the individual.

(5) In this section, “appropriate health authority” has the meaning given by section 79(9).

## **83 Appropriate health authority authorised to make arrangements**

(1) This section applies where by virtue of section 79(2)(c), 80(2) or 81(2)(a) an appropriate health authority is authorised to make arrangements for remains to be buried or cremated.

(2) After the expiry of the 7-day period, the appropriate health authority—

(a) must make arrangements for the remains to be buried or cremated, and

(b) if by virtue of section 79(2)(c)(i), 80(2) or 81(2)(a)(i) it is authorised to do so in a specified way, must do so in that way.

(3) Subsections (4) and (5) apply if the person who authorised the appropriate health authority to make the arrangements for the disposal of the remains informs the authority that the person has decided that the authority may make the arrangements before the expiry of the 7-day period.

(4) The appropriate health authority must—

(a) record the person's decision in the appropriate form, and

(b) take reasonable steps to secure the person's signature.

(5) The appropriate health authority—

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- (a) may make arrangements for the remains to be buried or cremated before the expiry of the 7-day period, and
- (b) if by virtue of section 79(2)(c)(i), 80(2) or 81(2)(a)(i) it is authorised to do so in a specified way, must do so in that way.

(6) In this section—

“7-day period” means the period of 7 days beginning with the day on which authorisation is given by virtue of section 79(2)(c), 80(2) or 81(2)(a),  
 “appropriate health authority” has the meaning given by section 79(9).

#### **84 Duty of appropriate health authority**

(1) This section applies where—

- (a) section 79(1) applies in relation to a woman,
- (b) the relevant period has expired, and
- (c) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 79, 80 or 81 for the remains of the fetus to be buried or cremated.

(2) As soon as is reasonably practicable after the expiry of the relevant period, the appropriate health authority must consider whether it would be in the best interests of the woman for the authority to contact the woman for the purpose of seeking to establish—

- (a) whether the woman wishes to decide who should make arrangements for the remains to be buried or cremated, and
- (b) in the event that the woman would wish to authorise the authority to make those arrangements, whether the woman would wish to specify the way in which the authority should make the arrangements.

(3) If the appropriate health authority determines by virtue of subsection (2) that it would not be in the best interests of the woman for the authority to contact her for the purpose mentioned in that subsection, the authority may make arrangements for the remains to be buried or cremated.

(4) If the appropriate health authority determines by virtue of subsection (2) that it would be in the best interests of the woman for the authority to contact her for the purpose mentioned in that subsection, the authority must take reasonable steps to contact the woman for that purpose.

(5) Subsection (6) applies if by virtue of subsection (2)—

- (a) the appropriate health authority is authorised by the woman to make arrangements for the remains to be buried or cremated, and
- (b) the woman has specified the way in which the authority should make those arrangements.

(6) The authority may—

- (a) make arrangements for the remains to be buried or cremated, and
- (b) except where it would not be reasonably practicable to do so, must do so in the way specified by the woman.

(7) Subsection (8) applies if, at any time after having contacted or taken reasonable steps to contact the woman under subsection (4), it appears to the appropriate health authority—

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- (a) that no arrangements have been or are being made for the remains to be buried or cremated, and
  - (b) that in all the circumstances of the case it would be in the woman's best interests for the authority to make those arrangements.
- (8) The authority may make arrangements for the remains to be buried or cremated.
- (9) In this section—
- “appropriate health authority” has the meaning given by section 79(9),
  - “relevant period” has the meaning given by section 80(5).

#### *Pregnancy losses: general*

### **85 Duty to keep register**

- (1) Each health authority must prepare and maintain a register containing—
- (a) prescribed information about the burial or cremation, in pursuance of sections 69 to 84, of the remains of a fetus, and
  - (b) other prescribed information.
- (2) The Scottish Ministers may by regulations—
- (a) require a register kept under this section to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to such a register as they consider appropriate.
- (3) A register kept under this section must be kept indefinitely.
- (4) In this section—
- “health authority” means a Health Board or an independent health care service,
  - “specified” means specified in the regulations.

PROSPECTIVE

### **86 Register under section 85: offence**

- (1) A health authority commits an offence if, without reasonable excuse, the authority contravenes section 85(1) by failing to prepare or maintain a register as required under that section.
- (2) A health authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section, “health authority” means a Health Board or an independent health care service.

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### *Local authority functions*

#### **87 Burial or cremation: duty of local authority**

- (1) This section applies where—
  - (a) a person dies or is found dead within the area of a local authority, and
  - (b) it appears to the authority that no arrangements have been or are being made under section 65(2) or 66(2) or otherwise for the remains to be buried or cremated.
- (2) The local authority must make arrangements for the remains to be buried or cremated (but subject to subsections (3) and (4)).
- (3) If the person is a child who, immediately before the death, was being looked after by another local authority, that other local authority must make arrangements for the remains to be buried or cremated.
- (4) If the person is not a child and, immediately before the death, the person was in the care of, or receiving assistance from, another local authority, that other local authority must make arrangements for the remains to be buried or cremated.
- (5) In making arrangements under subsection (2), (3) or (4), the local authority must, so far as known to the authority, have regard to—
  - (a) any wishes that the person expressed as to means of disposal of the person's remains, and
  - (b) whether the person was of a particular religion or belief.
- (6) The local authority may recover from the estate of the person expenses incurred under subsection (2), (3) or (4).
- (7) In this section—
  - “belief” has the meaning given by section 10(2) of the Equality Act 2010,
  - “child” has the meaning given by section 93(2)(a) of the Children (Scotland) Act 1995,
  - “religion” has the meaning given by section 10(1) of the Equality Act 2010.
- (8) In this section, references to a child who is “looked after” by a local authority are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.

#### **88 Expenses of attending funeral**

- (1) This section applies where—
  - (a) a child dies and, immediately before the death, the child was being looked after by a local authority, or
  - (b) a person other than a child dies and, immediately before the death, the person was in the care of, or receiving assistance from, a local authority.
- (2) If it appears to the local authority that the conditions in subsection (3) are met, the authority may make payments to a relevant person in respect of travelling, subsistence or other expenses incurred by the relevant person for the purpose of attending the funeral of the child or other person who has died.
- (3) The conditions are—



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- (a) that if the local authority did not make a payment to the relevant person under this section the relevant person would not be able to attend the funeral without undue hardship, and
  - (b) that the circumstances warrant the making of the payment.
- (4) In this section—
- “child” has the meaning given by section 93(2)(a) of the Children (Scotland) Act 1995,
  - “relevant person”—
    - (a) in the case where a child has died, means—
      - (i) a relative of the child, or
      - (ii) some other person connected with the child,
    - (b) in the case where a person other than a child has died, means—
      - (i) a relative of the person, or
      - (ii) some other person connected with the person who has died.
- (5) In this section, references to a child who is “looked after” by a local authority are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.

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