



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 3

#### ARRANGEMENTS

##### *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,  
“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
  - (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.

### **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

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*Status: This is the original version (as it was originally enacted).*

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- (ii) in a way specified by the body, but
  - (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

(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).