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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 380 (C. 24)**

**BURIAL  
CREMATION**

**The Burial and Cremation (Scotland) Act 2016  
(Commencement No. 3, Transitional, Saving  
and Transitory Provisions) Regulations 2018**

*Made* - - - - *18th December 2018*  
*Laid before the Scottish*  
*Parliament* - - - - *20th December 2018*  
*Coming into force* - - *4th April 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 112(2), (3) and (4) of the Burial and Cremation (Scotland) Act 2016<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Burial and Cremation (Scotland) Act 2016 (Commencement No. 3, Transitional, Saving and Transitory Provisions) Regulations 2018 and come into force on 4 April 2019.

(2) In these Regulations—

“the Act” means the Burial and Cremation (Scotland) Act 2016; and

“the 1935 Regulations” means the Cremation (Scotland) Regulations 1935<sup>(2)</sup>.

**Appointed day**

**2.** 4 April 2019 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of the schedule (the subject matter of which is specified in column 2 of the schedule) but, where a purpose is specified in column 3 of that table in relation to a provision in column 1, that provision comes into force only for that purpose.

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(1) 2016 asp 20.

(2) S.I. 1935/247 as amended by S.I. 1952/1639, S.I. 1967/398, S.S.I. 2003/301 and S.S.I. 2015/164.

### **Inspectors of cremation: transitory provision**

3.—(1) Each cremation authority must allow an inspector appointed under section 89(1)(b) (inspectors of cremation) of the Act access at any reasonable time to each crematorium for which it is the cremation authority and any premises (other than a dwellinghouse) associated with the carrying out of the functions of the authority.

(2) In this regulation “premises” includes any installation, container or receptacle associated with the carrying out of the function of a cremation authority.

(3) This regulation ceases to have effect on the coming into force of section 91(1)(a)(ii) (powers of entry to cremation authority premises) of the Act.

### **Application for cremation: transitional provision**

4.—(1) This regulation applies where an application for cremation is submitted to a cremation authority before the appointed day and the cremation has not taken place before that day.

(2) Regulations 7, 8, 12, 13 and 16 (conditions under which cremation may take place) of the 1935 Regulations continue to have effect in relation to the carrying out of the cremation.

(3) Sections 48 (application for cremation), 49 (section 48: offences), 50 (requirements for carrying out cremation) and 51 (duty of cremation authority before carrying out cremation) of the Act do not apply to the carrying out of that cremation.

(4) For the purposes of regulations 7, 8, 12, 13 and 16 of the 1935 Regulations, the definitions in the section entitled “Definitions” and the schedule of those Regulations continue to have effect.

### **Disposal of ashes: saving provision**

5. Where a cremation is carried out before the appointed day—

- (a) regulation 17 (disposal of ashes) of the 1935 Regulations continues to apply,
- (b) the definition of “cremation authority” in the section entitled “Definitions” in the 1935 Regulations continues to have effect for the purposes of regulation 17 of those Regulations, and
- (c) sections 52 to 55 (handling of ashes: duties of cremation authorities) of the Act have no effect.

### **Cremation register: saving provision**

6.—(1) Sections 57 (cremation register) and 58 (cremation register: offence) have no effect in respect of any cremation which is carried out before the appointed day.

(2) Regulations 18 and 19 (registration of cremations etc.) of the 1935 Regulations continue to have effect in respect of any cremation carried out before the appointed day.

(3) Where paragraph (2) applies, the definitions in the section entitled “Definitions” and the schedule of the 1935 Regulations continue to have effect for the purposes of regulations 18 and 19 of those Regulations.

### **Opening of crematoriums: transitional provision**

7. Sections 59 (new crematorium: notice) and 60 (section 59: offences) of the Act have no effect in relation to the opening of a crematorium where, before the appointed day, notice of the opening of the crematorium has been given to the Scottish Ministers in accordance with regulation 1 of the 1935 Regulations.

### **Closing of crematoriums: transitory and saving provision**

8.—(1) Where a cremation authority proposes to close a crematorium, the authority must, at least one month before the proposed date for closure—

- (a) give notice of the proposed closure in accordance with paragraph (2), and
- (b) notify the Scottish Ministers in writing of the proposed closure.

(2) A notice under paragraph (1)(a) must be—

- (a) published in a newspaper circulating in the area where the crematorium is situated, and
- (b) affixed to the entrance of the crematorium.

(3) When a crematorium is closed the cremation authority must send all registers and documents relating to the cremations which have been carried out at the crematorium to the Scottish Ministers or dispose of those registers and documents in a manner directed by the Scottish Ministers.

(4) Paragraphs (1) and (2) do not apply in relation to the closing of a crematorium where, before the appointed day, notice has been given by advertisement in two papers circulating in the locality and by written notice fixed at the entrance to the crematorium in accordance with regulation 1 of the 1935 Regulations.

(5) This regulation has effect until section 61 (closure of crematorium) of the Act comes into force.

St Andrew's House, Edinburgh  
18th December 2018

*JOE FITZPATRICK*  
Authorised to sign by the Scottish Ministers

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Regulation 2

## PROVISIONS OF THE ACT COMING INTO FORCE ON 4 APRIL 2019

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provisions of the Burial and Cremation (Scotland) Act 2016</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 45	Meaning of “cremation” and “ashes”	
Section 46	Provision of crematorium: local authority	
Section 47	Cremation authority: duties	
Section 48	Application for cremation	
Section 49	Section 48: offences	
Section 50	Requirements for carrying out cremation	
Section 51	Duty of cremation authority before carrying out cremation	
Section 52	Duty of cremation authority following cremation	
Section 53	Failure to collect ashes	
Section 54	Power of funeral director in relation to ashes	
Section 55	Duties of cremation authority where ashes returned	
Section 56	Handing of ashes: regulations	
Section 57	Cremation register	
Section 58	Cremation register: offence	
Section 59	New crematorium: notice	
Section 60	Section 59: offences	
Section 63	Fees for cremation and other services	
Section 65	Arrangements on death of adult	
Section 66	Arrangements on death of child	
Section 67	Arrangements under sections 65 and 66	
Section 68	Sections 65 and 66: application to sheriff	
Section 69	Arrangements on termination of pregnancy after 24 weeks	

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provisions of the Burial and Cremation (Scotland) Act 2016</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 70	Section 69: health body authorised to make arrangements	
Section 71	Section 69: no arrangements	
Section 72	Duty of health body where still-birth likely to occur	
Section 73	Section 72: health body authorised to make arrangements	
Section 74	Arrangements on still-birth	
Section 75	Section 74: power of appropriate health body	
Section 76	Section 74: general power of appropriate health body	
Section 77	Duty of health body where pregnancy loss likely to occur	
Section 78	Section 77: health body authorised to make arrangements	
Section 79	Arrangements on pregnancy loss on or before 24 weeks	
Section 80	Change in arrangements	
Section 81	Individual authorised to make arrangements	
Section 82	Duty to transfer remains	
Section 83	Appropriate health authority authorised to make arrangements	
Section 84	Duty of appropriate health authority	
Section 85	Duty to keep register	
Section 87	Burial or cremation: duty of local authority	
Section 88	Expenses of attending funeral	
Section 89(1)(b)	Appointment of inspectors of cremation	
Section 93	Reports	So far as not already in force

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provisions of the Burial and Cremation (Scotland) Act 2016</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 99	Power to extend application of Act	
Section 103	Offences by bodies corporate etc.	
Section 104	Regulations: consultation requirements	So far as not already in force
Section 109	Minor and consequential amendments	
Schedule 1	Minor and consequential amendments	
Section 110	Repeals	So far as not already in force
Schedule 2	Repeals	So far as not already in force
Section 111	Crown application	

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force provisions in Parts 2, 3, 4, 6 and 7 of the Burial and Cremation (Scotland) Act 2016 (“the Act”). The Regulations appoint 4 April 2019 as the day on which the provisions listed in the table in the schedule will come into force. They also make transitional, transitory and savings provision.

Part 2 of the Act makes provision in respect of cremations. These Regulations bring into force all of Part 2 with the exception of section 61 (closure of crematorium), section 62 (section 61: offence) and section 64 (cremation authority: code of practice). Part 3 of the Act makes provision for the regulatory framework for the making of arrangements on the death of a person. These Regulations bring into force all of Part 3 with the exception of section 86 (register under section 85: offence). Part 4 of the Act makes provision in relation to inspection: section 89(1)(b) (appointment of inspectors of cremation) is brought into force by these Regulations together with section 93 (reports) so far as not already in force. Part 6 of the Act makes miscellaneous provision: section 99 (power to extend application of the Act) is brought into force by these Regulations. In relation to Part 7 (general provision) of the Act these Regulations bring into force section 103 (offences by bodies corporate etc.), section 104 (regulations: consultation requirements) so far as not already in force and section 111 (Crown application). These Regulations also bring into force the consequential amendments in section 109 and schedule 1 of the Act and, so far as they are not already in force, the repeals in section 110 and schedule 2 of the Act.

Regulations 3 to 8 make transitional, transitory and saving provisions. Regulation 3 makes a transitory provision in respect of powers of entry for inspectors appointed under section 89 of the

Act. That provision has effect until the coming into force of section 91(1)(a)(ii) of the Act. Savings provisions are made where an application for a cremation has been submitted before the appointed day but the cremation has not yet been carried out (regulation 4). Where cremations are carried out before the appointed day, the Regulations make saving provisions in respect of the disposal of ashes (regulation 5) and for the keeping of a cremation register (regulation 6). Regulations 7 and 8 make provision for the opening and closing of crematoriums. Regulation 7 provides that the Act does not apply to the opening of a new crematorium where notice of the opening of the crematorium has already been provided under the Cremation (Scotland) Regulations 1935 ("the 1935 Regulations"). Regulation 8 makes transitory provision for the closing of a crematorium and saving provision where in relation to the closing of a crematorium notice has been given by advertisement in two papers circulating in the locality and by written notice fixed at the entrance to the crematorium in accordance with regulation 1 of the 1935 Regulations before the appointed day. That provision has effect until the coming into force of section 61 of the Act.

The Bill for the Act received Royal Assent on 28th April 2016. By virtue of section 112(1) of the Act, sections 100 (power to suspend or modify enactments), 106 (regulations: parliamentary procedure), 107 (interpretation), 108 (ancillary provision), 112 (commencement) and 113 (short title) came into force on the day after Royal Assent.

#### **NOTE AS TO EARLIER COMMENCEMENT REGULATIONS**

*(This note is not part of the Regulations)*

The following provisions of the Burial and Cremation (Scotland) Act 2016 have been brought into force by commencement regulations made before the date of these Regulations:—

<i>&gt;Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Sections 1 to 7	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 17	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 20	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 89(1)(a) and (c) and (2) to (6)	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 93 (partially)	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 98	1st June 2018	<a href="#">S.S.I. 2018/157</a>
Section 101	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 104(1) (partially)	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Section 110 (partially)	28th December 2016	<a href="#">S.S.I. 2016/417</a>
Schedule 2 (partially)	28th December 2016	<a href="#">S.S.I. 2016/417</a>