

Guidance Cremation (Scotland) Regulations 2019

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Introduction

1. The Burial and Cremation (Scotland) Act 2016¹ (the 2016 Act) provides the power for Scottish Ministers to make regulations setting out how procedures for cremations are carried out in Scotland. The 2016 Act provides the basic structure for cremation. Regulations supplement this structure and provide a detailed framework for the provision of cremation services. The Cremation (Scotland) Regulations 2019 update and supersede the Cremation (Scotland) Regulations 1935 and all subsequent amendment regulations. These guidance notes are intended to help understanding of what the regulations do, what the legal requirements are and what is not permitted. The numbers in brackets throughout the guidance notes are the corresponding regulation numbers.

The regulations

Regulation 1 – Citation, commencement and interpretation

2. Regulation 1 states the date on which the regulations come into force (1(1)). From 4 April 2019 all cremations and applications for cremations must be carried out in accordance with the requirements of these regulations. Any previous regulations about cremation are no longer applicable from that date. **Application forms received by a cremation authority on or after 4 April 2019 must be one of the new cremation application forms which are set out in these regulations.** Old cremation forms are no longer valid and must not be accepted by crematoriums from that date.

3. If an old style application form has been received before 4 April 2019 but the cremation has not taken place until after that date there is no need to submit an additional new application form.

4. Regulation 1 also sets out the definitions used in the regulations (1(2)).

4.1. An “adult” is someone who is 16 or older and a “child” is someone who is under 16.

4.2. The definition of “electronic communication” is defined in the Electronic Communications Act 2000². These regulations allow for cremation application forms to be sent electronically as long as the signature requirements are met (see paragraphs 5 and 6). They may be sent via email or other electronic means.

4.3. A “joint cremation” is when more than one person is cremated together. This can be two adults, an adult and child, stillborn baby or fetus or the cremation of more than one child, stillborn baby or fetus.

4.4. A “shared cremation” is when the remains of more than one fetus (pregnancy loss) are cremated together, and will only be applied for by a health body. Shared cremation is only for pregnancy losses that occur before the end of 24 weeks gestation. It does not apply for stillborn babies.

5. The new forms can be either paper or electronic application forms (1(3)). All application forms must be completed and signed by the applicant (see regulation 8 for who can apply). Paper forms must include the applicant’s handwritten signature which is in ink.

6. Regulation (1(4)) sets out the requirements for using an electronic signature when sending a cremation application form electronically. The form being sent electronically must include an electronic signature that is either in digital ink or is a scanned copy of an original signature (jpeg). A typed signature is **not** acceptable as the signature has to be identifiable.

¹ <http://www.legislation.gov.uk/asp/2016/20/contents/enacted>

² <https://www.legislation.gov.uk/ukpga/2000/7/contents>

Regulation 2 – Management of crematoriums

Crematorium Management Plan

7. Regulation 2 requires each cremation authority to prepare and maintain a management plan for each crematorium for which it is the cremation authority (2(1)). The plan is essentially the crematorium's operating manual. The plan should be made available for inspection by the Inspector of Cremation. It should also be made available to be viewed by any member of the public who asks to see it (2(2)). It need only be made available to the public at a time convenient to the cremation authority (such as during usual operating hours).

8. The regulations specify the procedures and processes which must be included in the plan to enable a crematorium to run effectively (2(3)). The cremation authority must include these in the plan as a minimum but may also include anything else that is considered relevant to the individual crematorium. The content of a plan can vary for each crematorium as long as the information required by these regulations is included.

Contact information (2(4)(a))

9. The plan should include the name and address of the crematorium, including email address. The operating hours when the public are able to visit should also be included.

Procedures for the carrying out of cremation (2(4)(b)(i))

10. This section requires details of the procedures for how cremations are carried out. This means the whole cremation process from application and receipt of the body/ body part/ pregnancy loss to disposal of ashes. The information can be set out in whatever format the cremation authority considers appropriate, for example it may be a flow chart.

Procedures for dealing with unexpected increase in the number of cremations (2(4)(b)(ii))

11. Information about what will be done if there is an unexpected increase in the number of cremations. This may occur for a number of reasons. For example, if a neighbouring crematorium is unable to operate or there is a sudden increase in winter deaths due to cold weather in the area.

12. This section should also include what procedures would be put in place should there be a large increase in the number of cremations due to an event such as a pandemic. The cremation authority should identify how it would cope in such situations and have details of who to contact when preparing for a mass fatality event, such as government, SEPA, NHS.

Procedures for operation and servicing of equipment (2(4)(b)(iii))

13. The plan must include details of the operation of all equipment as well as how and when it will be serviced. This could be by setting out in the plan where the relevant information can be found rather than including every detail in the plan itself. For example, stating where the operating manual or the service log for a cremator are located and who has responsibility for maintaining equipment.

14. Information about authorisation to operate from SEPA could be included in this section, including contact details and information about inspections and reports.

Procedures for disposal of cremation residues (2(4)(b)(iv))

15. The term ‘cremation residue’ has been used in the regulations to ensure that everything that may come from a cremator is provided for. This includes: ashes, bones, metal, dust and any other residues found in the cremator. The plan should state how any metals will be disposed of and whether they will be recycled.

Procedures for disposal of ashes (2(4)(b)(v))

16. The plan must include details of what the cremation authority’s policy is for disposal of ashes, taking into consideration the requirements to notify the applicant about collecting ashes and the restrictions on how long ashes must be held before they can be disposed of. The requirements are set out in Part 2 of the 2016 Act and in regulation 13 of these regulations. The plan should set out what options are available for disposal of ashes, such as burial, scattering, columbarium. Further detail on disposal of ashes can be found at paragraph 60.

Contingency arrangements (2(4)(b)(vi))

17. The plan should include details of resilience or contingency planning. This is different from dealing with an increase in numbers of cremation (see para 11 above). For example, this section should include what would be done when dealing with a disruption to service such as a breakdown of machinery, or a sustained power cut, or any other unexpected disruption to, or loss of, services.

18. Contingency plans should consider what arrangements would be made if there is a lack of staff available to carry out cremations in the event of absenteeism. There should also be consideration given to ensuring how the crematorium will continue to operate if there is a pandemic or other unexpected increase in number of cremations, as mentioned above (see para 11).

Review of the plan (2(5))

19. If there is not one already, cremation authorities should ensure that a plan is in place for each crematorium within six months of these regulations coming into force (4 April 2019). If a plan is already in place it should be reviewed to ensure it complies with these regulations. The plan should be reviewed at least annually to ensure it is up to date and relevant. It should be updated as required. Any additional information that a cremation authority considers relevant to the crematorium the plan is for can be added at any time.

Regulation 3 – Records

20. The plan must set out the cremation authority’s retention policy for records. The 2016 Act requires the cremation authority to keep all cremation application forms for 50 years (3(1)). The date from when the 50 years starts is the date of the cremation. All cremation application forms are to be held confidentially and there is no requirement to make them available to the public (3(2)). The regulations do not specify the manner in which the records are to be held. That is for each cremation authority to decide. The regulations require that records are kept securely. The plan should state how the records will be held (paper or electronic) and what is being done to ensure they are kept securely (3(3)).

21. If the records are held electronically the plan should detail what method of electronic storage is used and how that is maintained to ensure ongoing accessibility and security of the information held (3(3)).

Regulation 4 – Maintenance and operation of crematoriums

22. The regulations set out the requirement for cremation authorities, to ensure that all equipment installed at each crematorium is maintained in efficient working order and in good repair (4(1)(a)). The regulations also include a requirement to ensure that the equipment is regularly checked/serviced in accordance with the manufacturer’s servicing guidelines (4(1)(c)). The cremation authority must keep a record of the maintenance record of any equipment and ensure it is kept up to date (4(2)(b)).

23. Cremation authorities are obliged to ensure that staff are provided with adequate training in the operation of the equipment installed at the crematorium (4(1)(b)). A record must be kept of all training offered and undertaken by staff operating at the crematorium. The cremation authority must ensure that these records are kept up to date (4(2)(a)).

Regulation 5 – Operation of cremator

24. The cremation authority must ensure that only one body is burned in a cremator at any time (5(2)(a)) unless express consent has been given by the applicant for a joint cremation, or a shared cremation is applied for by a hospital/ health body (5(3)). At the end of the burning process the cremation residue must be raked into the cooling tray before another body is placed in the cremator (5(2)(b)).

Regulation 6 – Joint cremations

25. A joint cremation can be done where the applicant asks for it and if the crematorium is able to facilitate it. This may depend on the size of the cremator or whether there are any other operational restrictions. Regulation 11 makes clear that the cremation authority can ask for further details in order to consider the request. **If the cremation authority is unable to offer a joint cremation they have the option under the 2016 Act to refuse the application.**

26. A joint cremation can occur when two adults, an adult and child, stillborn baby or fetus are to be cremated together, for example when a parent and child have died together (6(1)(a) and 6(3)). It can also be used when two or more children are to be cremated together or a child will be cremated with a pregnancy loss or stillborn baby (6(1)(b) and 6(3)). Both sets of remains can be cremated in the same coffin or separate coffins.

27. The applicant will need to complete a separate application form for each individual adult, child, stillborn baby and pregnancy loss (6(2)(a) and (6(2)(b)).

28. Any application for a joint cremation can only be made by an “authorised person” (6(4)). Regulation 8 sets out who is authorised to make the application. This is in accordance with the relevant sections of the 2016 Act (*Part 3 Arrangements*).

29. Application forms should be registered in the cremation register as “individuals who have been cremated jointly” and the details held in such a way as to allow the individuals to be identified. The application forms should be kept in accordance with Regulation 3.

30. When it is pregnancy losses that are to be cremated together it is a “joint cremation” if the family apply and a “shared cremation” if a hospital/health body apply (see next section on shared cremation).

Regulation 7 – Shared cremations (of pregnancy losses)

31. “Shared cremation” means the cremation of the remains of more than one pregnancy loss together, and the application is made by a health body, or other authorised authority (7(1) and 7(3)). It is only a hospital or other health provider who can apply for a shared cremation (7(2)). This form is to be used when application is for the cremation of an individual pregnancy loss or a number of pregnancy losses.

32. Although shared cremation of pregnancy losses already takes place in Scotland, the 2016 Act makes specific provision for the burial or cremation of pregnancy losses under 24 weeks’ gestation. The 2016 Act makes clear what the requirements are for health authorities to arrange shared cremation. The 2016 Act and the regulations clarify the paperwork required and what information is to be recorded in the cremation register.

Regulation 8 – Application for cremation

33. The application forms are statutory forms and the content of the forms and the wording of the questions must not be altered, deleted or added to.

34. The regulations set out the application forms for each type of remains to be cremated, detailed in the table below (8(2) and 8(3)). Cremation authorities can add their stamp/ logo and reference number to the front of the forms. The section for date and time of cremation on the front page of the application form is to record the day on which the cremation service is to take place. This information can be completed by either the funeral director or the cremation authority once the information is known.

35. Any additional questions/ information which is required to carry out a cremation service must be included in a separate supplementary form (e.g. order of service, music). Each cremation authority can use their own supplementary form and include on it any information that is relevant to individual crematoriums and the carrying out of cremations.

Who can complete the application form?

36. As with the previous legislation governing cremation, the cremation application form is to be completed by the applicant. The 2016 Act sets out the hierarchy of who can apply for a cremation in sections 65, 66 and 74, where there is no named person already. It is accepted that there will be times where an applicant is unable to complete the form themselves. In such circumstances, the funeral director can act as a scribe for the applicant and write the answers to the questions on the form. This should only be done in the presence of the applicant and the funeral director should go through each question with the applicant before writing down the applicant’s answer.

37. There is a legal declaration next to the applicant’s signature box and in signing the form the applicant is agreeing to that declaration. An applicant is potentially liable to a fine of £1,000 on conviction if any information on the application form is knowingly false. The applicant should have the opportunity to review the questions and answers and they should be made aware that they are signing a legal declaration. **In no circumstances should a funeral director complete the form in advance of meeting, or on behalf of the applicant, then merely get the applicant to sign the form.**

38. An application for cremation can usually only be applied for by someone who is 16 years old or older. If the applicant is a parent, they can make the application even if they are younger than 16. The order of priority of who can apply is set out in the notes which accompany the application form. It is for the applicant to declare on the application form that they are entitled to make the

application and they must sign the declaration on the form confirming this. Should there be a dispute amongst relatives, the cremation authority or funeral director is not required to arbitrate on who should complete the form.

39. Regulation 8(2)(a) provides for instances where an adult dies in a care home 8(2)(a)(iii) or hospital 8(2)(a)(iv) and there is no one who is able or willing to make the arrangements. In these cases, a person (member of staff or manager) authorised by the care home (8(4)) or hospital (8(5)) may make the application.

40. An application form should be completed by the applicant and not by a third party. If the person who is highest in the order of priority does not want to make the application or has nominated someone else to make the application on their behalf, the nominated person becomes the applicant. If any applicant is not capable physically of completing the form they can authorise someone to complete it on their behalf, which should be done in their presence. The form must be signed by the applicant.

41. If there is any reason why a cremation cannot go ahead at a crematorium and has to be moved to another crematorium, a new application form should be completed.

What happens if there is a change in the instructions?

42. Where an applicant is instructing a change to their original instructions before the cremation takes place (either via the funeral director or directly to the crematorium) the change of instruction must be signed by the applicant. This could be on a “change of instructions” form or via an email from the applicant’s email which includes a jpeg or digital ink signature. Whatever format is used, the applicant’s signature is required. It is crucial that an applicant’s change of instruction is passed to the cremation authority as quickly as possible.

43. Procedures for handling ashes are provided for in the 2016 Act and the cremation regulations which is set out in the flow chart at the back of the guidance notes. Any changes to instructions by the applicant for disposal of ashes (after the cremation has taken place) also needs to be recorded on a “change of instructions form” and must have the applicant’s signature.

44. Where the applicant instructs a change of crematorium or it is necessary to change to a different crematorium to accommodate the cremation, a new application form should be completed.

When can corrections be made to an application form?

45. If a significant change is required to the application form, such as if the details of the deceased/ applicant are materially incorrect, a new application form should be submitted. This scenario is less likely to occur where the applicant has completed the form themselves.

46. There will be occasions where minor changes are necessary and some flexibility should be allowed to ensure a cremation is not delayed unnecessarily. A minor change/ correction can be made on a form and initialled by the funeral director as long as it has been agreed by the applicant and there is an audit trail to verify the change. An example of a minor change is where date of birth and age don’t match (wrongly calculated) or where the name has a slight spelling error e.g. Mac and Mc. It is acceptable that details of minor changes are emailed to or given to the crematorium in writing (in advance of the cremation). Whatever method is used the change and reason for it must be recorded to ensure there is an audit trail kept detailing what the changes are.

47. Crematorium staff should not be asked to make corrections on the statutory application form itself, unless the applicant is present. Instead they should obtain the instruction in writing (email) either from the applicant or the funeral director. They should then attach the correction instruction to the application form and file together.

Can information that was not available at the time of completing the form be sent to the crematorium after the application form has been sent?

48. Every effort should be made to complete the application form in full before sending it to the crematorium. In circumstances where information has to be forwarded on afterwards, the funeral director must alert the crematorium that the information will follow. Examples of this would be where the weight of the coffin and deceased needs to be confirmed.

49. Funeral directors and cremation authorities should satisfy themselves that they have kept a clear audit trail which shows that any instructions and changes to instructions originated with the applicant or in the case of minor corrections made to the form by the funeral director (see above) are justified.

Does the weight of coffin question have to be answered?

50. Providing an approximate weight is a new requirement under these regulations and it is anticipated that it may take a few months for providing the combined weight to become an established procedure. All cremation authorities and funeral directors should work collaboratively to ensure a smooth transition. It is recommended that funeral directors operating in Scotland should take steps as soon as possible to enable them to obtain access to suitable weighing equipment to complete the question on weight as accurately as possible. (see also para 58 – 62)

If an application form is sent to the crematorium electronically does the original have to be sent too?

51. No, as long as the electronic version/scanned copy is a completed form and the signatures are in the correct format there is no need to send the original form to the crematorium.

The application forms

52. All the application forms will be provided by the Scottish Government in editable electronic format which will be able to be completed electronically or can be downloaded by funeral directors, cremation authorities and individuals and completed by hand.

53. There are seven different application forms and each one relates to a specific type of remains. The table details the forms and who should complete them. The relevant parts of regulation 8 are included in the right hand column for ease of reference if needed.

Form	To apply for cremation of:	Used by:	Regulation
A1	Adult or child (also body part of either)	Relative or nominated individual	8(2)(a) or (b) and 8(3)(a)
A2	Stillborn baby	Parent or nominated individual OR health body/ hospital	8(2)(c) and 8(3)(b)
A3	Pregnancy loss on or before 24 weeks gestation	Woman or nominated individual	8(2)(c) and 8(3)(c)
A4	Pregnancy loss(es) on or before 24 weeks gestation	Health body/ hospital	8(2)(c) and 8(3)(d)
A5	Adult or child (section 87 application)	Local authority	8(2)(a) and 8(3)(e)
A6	Body OR body parts after anatomical examination OR body parts after hospital arranged post mortem	Hospital OR university anatomy school	8(2)(a) and 8(3)(f) or (g)
A7	Body parts after anatomical examination (where person died before the Anatomy Act 1984 came into force)	University anatomy school	8(2)(a) and 8(3)(h)

54. The details provided by applicants on the application form are not to be used for any other purpose, such as marketing.

Form A1: Application for cremation of an adult or a child

55. The cremation of an adult or a child is applied for using Form A1 and can be completed by the executor or any other person named in the will if there is one. If there is no named person or executor, section 65(1) of the 2016 Act provides for this and it is then the nearest relative who can make the application. There is a list of order of priority of nearest relatives in the guidance notes which accompany Form A1.

56. If the application is for the cremation of a child who has died and the parent is under the age of 16 they are still entitled to make the application and complete the application form. They have the option to nominate someone else to make the application if they wish.

57. Form A1 should also be used where an individual (nominated person) is applying for the cremation of a body part of a deceased adult or child.

Combined weight of coffin and deceased

58. Funeral directors, cremation authorities and burial authorities have a statutory duty under section 2 of the Health and Safety at Work etc. Act 1974 to protect the health, safety and welfare of their employees and others who may be affected by their business.

59. Other relevant legislation includes:
- Management of Health and Safety Regulations 1992
 - Manual Handling Operations Regulations 1992
 - Occupiers' Liability (Scotland) Act 1960
 - Provision and use of work equipment regulations 1998

60. Knowing the approximate combined weight of a coffin and deceased ensures that any necessary adjustments, including number of staff needed, can be made in advance of the cremation, reducing the possibility for distress for families on the day of a cremation. This information also allows cremation authorities to better plan for the timing of cremations to ensure that larger coffins can be cremated when the cremator is at the correct temperature.

61. Coffin manufacturers can provide the weight of the coffin and it may be possible to source the weight of the deceased from the care home, family or mortuary. Every effort should be made to provide the weight but if a funeral director has no way of knowing the combined weight they should give an estimated figure on the form. This will alert the cremation authority who may opt to discuss the matter further with the funeral director (see also paragraph 50 above).

62. As long as the funeral director is completing the part of the form they are required to complete to the best of their knowledge, and are not deliberately giving false information, that is acceptable. The cremation authority always has the option to make further enquiries about any information on an application form and to ask further questions about the weight, or any other issues before the day of cremation.

Form A2: Application for cremation of a stillborn baby (a baby delivered or terminated after 24 weeks gestation without showing any signs of life)

63. Prior to submitting a Form A2 or A3, the nearest relative or nominated person will have completed an authorisation form which will have been discussed with them by the health body caring for the woman who has experienced the loss. The authorisation form is an internal form which is retained by the health body as part of their records. Cremation authorities and funeral directors are not entitled to demand sight of the authorisation form and a cremation should not be refused because the authorisation form is not provided with the cremation application form. Details of the required papers to accompany the cremation application forms are listed on Form A2 and A3.

64. Form A2 can be completed by a hospital or health body as well as by the nearest relative or nominated person.

65. If the applicant is someone who is under 16 but is the parent of the stillborn baby they are entitled to make the application and complete the application form or nominate someone else to make the application.

Form A3: Application for cremation of a pregnancy loss on or before 24 weeks.

66. Form A3 is used only by the nearest relative or nominated person and is used for any pre-24 week pregnancy loss. The form is **not** to be used by a hospital or other health provider, who should use Form A4.

67. If the applicant is a girl who is under 16 and has had a pregnancy loss she is entitled to make the application and complete the application form herself or she can nominate someone else to make the application.

Form A4: Application for cremation of pregnancy loss on or before 24 weeks made by a hospital or health provider

68. As with A2 and A3 above, the health provider will have discussed the options for burial or cremation with the woman who has experienced the loss. There is no requirement for the authorisation form to be provided to the cremation authority. Form A4 is only to be used by hospitals/ health providers. The form is used when applying for the cremation of one pregnancy loss or multiple pregnancy losses. The form includes a section for the unique identifying number for each pregnancy loss as well as the container number.

Form A5: Application for the cremation of an adult or child made by a local authority

69. Section 87 of the Burial and Cremation (Scotland) Act 2016 sets out the duties of local authorities in Scotland to provide a funeral when there is no one to make the arrangements. The duty was previously set out in the National Assistance Act 1948 and the Social Work (Scotland) Act 1968 which have been replaced by section 87 of the 2016 Act. When an adult or child dies and there is no one to make the arrangements, the local authority is obliged to bury or cremate that person under section 87. Form A5 should be used in these circumstances (there is a separate guidance note dealing with local authority liability to provide this type of funeral).

Form A6: Application for the cremation of body parts following post-mortem examination OR a whole body or body parts following anatomical examination

70. Form A6 will be accompanied by a Form M (authorising release of a body for disposal) or a Form N (authorising release of body part(s) for disposal). Form M or Form N will be signed by a doctor, pathologist or licensed teacher of anatomy. Form A6 can be completed by a person who has been authorised by the doctor, pathologist or licensed teacher of anatomy who has completed Form M or Form N.

- 70.1. Following a **hospital arranged post mortem** and the hospital is applying for the cremation of any retained **body parts**.
- 70.2. Following an **anatomical examination** by one of the Scottish universities and the university is applying for the cremation of a **whole body**.
- 70.3. Following an **anatomical examination** by one of the Scottish universities and the university is applying for the cremation of retained **body parts**.

71. It is not necessary for the cremation authority to verify that the person is authorised as the person completing the cremation application form will declare on the form that they have the right to make the application. However, the cremation authority is entitled to make any enquiries considered necessary in order to be satisfied that the cremation can go ahead.

72. The form does not include a section for cremation of a whole body after a hospital arranged post mortem as the body is returned to the next of kin to make the arrangements, which they would do using Form A1. Also, if a body/ body part has been returned to a family after anatomical examination and the family (or nominated person) is applying for the cremation they will do so using Form A1.

73. When the application is for cremation after an anatomical examination it should be completed by a representative of the university's anatomy school (Form A6). When a body is sent for cremation from an anatomy school, the cremation authority should **not** accept a Form A1 (or an old Form A) which has previously been completed by the next of kin at the time the body was

donated to the university. The anatomy school can have possession of a body for up to 3 years and it is the anatomy school's representative who is applying for the cremation, not the next of kin.

Form A7: Application for the cremation of body parts following anatomical examination where the deceased died before 14 February 1988

74. It is anticipated that there will not be many applications for this type of cremation. Form A7 will only be used where there are body parts, including those which cannot be identified, which came into the possession of the anatomy school before 14 February 1988. This is the date that the relevant changes to legislation on anatomy came into effect.

75. Some body parts held by anatomy schools from before that date cannot be identified and the 2016 Act has made provision for these to be able to be cremated. Where any remains are in such a condition that they cannot be cremated, cremation authorities can refuse to accept them or can return them to the anatomy school for alternative disposal (burial).

Application forms – decisions about ashes

76. To ensure that there is clarity about how ashes are disposed of, the cremation application forms include a section which sets out what is to happen to the ashes following cremation. The options for ashes varies depending on what type of cremation is being applied for. Where included, this section of the application form must be completed by the applicant before the cremation takes place.

77. Cremation application forms A1 (adult or child), A2 (stillborn baby) and A3 (pregnancy loss arranged by family) have options for disposal of ashes (section 5 on each form) and the instructions say to only tick one box. The options are:

- A – applicant or representative to collect ashes
- B – funeral director to collect ashes
- C – crematorium to disperse ashes

78. There is an option D on the forms with a tick box which has caused some confusion. This is not an option for disposal of ashes but is a supplementary question which only applies when the cremation authority has been instructed to disperse the ashes (option C). It should not be considered as a fourth separate option.

79. Where the applicant wishes the remains/ bones to be returned to them before they are cremated, this should be recorded in the "Special Instructions" box in the "Disposal of Ashes" section of the application form.

Regulation 9 – Deaths investigated by the procurator fiscal

80. If the Crown Office and Procurator Fiscal Service (COPFS) has been involved in reviewing the circumstances around a death, the cremation cannot take place until the Scottish Fatalities Investigation Unit (SFIU) issues a Form E1 releasing the remains for cremation. Completed Form E1 can be sent electronically to the cremation authority directly by SFIU or it can be sent along with the cremation application form by the applicant. The cremation authority should refuse to carry out a cremation until Form E1 is received (if SFIU have been involved). A revised and updated Form E1 is set out in schedule 8.

Regulation 10 – Cremation following warrant to disinter

81. Where there is an application for cremation of disinterred remains, the warrant to disinter³ must be sent by the applicant to the cremation authority along with the application form. The cremation cannot take place until the warrant has been received (10(2)).

Regulation 11 – Cremation applications: further inquiry

82. A cremation authority has the right to make any inquiries about applications for cremation which are considered necessary to ensure the cremation is carried out lawfully. The cremation authority can request any necessary documentation is submitted in support of the application. For example, if a form has been incorrectly filled out, or other documentation or information is missing the cremation authority can refuse to carry out the cremation until the missing information is provided by the applicant or a revised correct form is submitted.

Regulation 12 – Handling of ashes: written notice

83. This regulation details the only two specific instances when a funeral director and a cremation authority are required to give written notification to applicants that they hold the ashes and they are available for collection. **The written notice can be sent electronically, such as via email.**

84. Firstly, when a funeral director has collected ashes from a crematorium on behalf of the applicant, the funeral director should give written notice to the applicant that the ashes are ready for collection from the funeral director. The written notice should be sent as soon as reasonably practical once the ashes have been collected from the crematorium by the funeral director (12(1)).

85. Secondly, if ashes are not collected from the funeral director by the applicant and have been returned to the crematorium, the cremation authority must give written notice to the applicant that the ashes have been returned to the crematorium and ask the applicant what is to be done with the ashes. The written notice should be sent as soon as reasonably practical to do so after the ashes have been returned by the funeral director (12(3)). The options are:

- The cremation authority should hold onto the ashes for collection (for a minimum of 4 weeks) (12(3)(a)) or
- The ashes are to be disposed of by the cremation authority in a manner that the cremation authority offers (12(3)(b)).

86. The written notice may be sent electronically, e.g. email (12(5)).

87. Regulation 12 refers to “specified period” (12(4)). The “specified period” is the minimum amount of time that ashes should be retained before taking further action, which is four weeks (see also Regulation 13).

Regulation 13 – Handling of ashes: time period for collection of ashes (specified period)

88. There are various references to time periods relating to the handling of ashes in the regulations. All the time periods specified are **minimum periods** that must be observed before the next step can or should be taken. **All minimum time periods are four weeks following on from the last action taken.**

³ This will currently be a warrant from the sheriff court. When regulations for burial grounds are done this is likely to change. These notes will be updated and reissued at that time.

89. In nearly all circumstances the time periods can be longer than the minimum and the cremation authority or funeral director can decide on a case by case basis how long to delay taking the next step as long as it is longer than the 4 week minimum. The table below shows each stage and the minimum time periods cremation authorities and funeral directors are to hold ashes for.

90. All minimum periods start on the day after the date of cremation or the day after the end of the previous four week period has ended. The only instance where there is no minimum is when a funeral director has collected ashes on behalf of an applicant and the applicant instructs the funeral director to return ashes to a crematorium for collection or for the cremation authority to dispose of them. The ashes are to be returned immediately.

91. The “specified period” is the period of four weeks referred to in regulations 12(4) and 13(1). A flow chart setting out the procedures and minimum time periods for handling ashes is attached at the end of these guidance notes

S	DUTY ON	TO	BECAUSE	HOLD FOR	
51	Cremation authority (CA) (pre cremation)	Check that Form A states what is to happen to ashes 13(1)	Ashes to be collected by applicant or by funeral director (FD) on behalf of applicant		OR – Form A requests CA to dispose of ashes – CA may do so immediately
52	CA (after cremation)	Make ashes available for collection 13(1)	Ashes to be collected by applicant or FD	CA holds ashes for 4 weeks 13(1)	Collection by applicant or by FD on behalf of applicant
53	CA	Retain ashes and find out applicant’s wishes	Ashes have not been collected from CA as indicated on Form A during initial 4 weeks	CA to hold ashes for an additional 4 weeks 13(2)	Collection by applicant or by FD on behalf of applicant OR – CA to dispose of ashes
53	CA	Dispose of uncollected ashes (option)	Applicant has failed to collect ashes from CA after the additional period	The additional 4 weeks have passed 13(2)	CA can retain the ashes for a further period or can dispose of ashes immediately
54	FD – after collecting ashes from CA	Retain ashes and find out applicant’s wishes	Ashes have not been collected from FD as indicated on Form A	FD holds ashes for additional 4 weeks 13(3)	Collection by applicant OR return to CA at request of applicant
54	FD – after collecting ashes from CA	Must return ashes to CA	Applicant has instructed FD to return ashes to CA for collection or disposal	immediate	Applicant to collect from CA OR – CA to dispose of ashes
54	FD – after collecting ashes from CA	May return ashes to CA	Applicant has failed to collect ashes from FD after the additional period	After additional 4 weeks	Applicant to collect from CA OR – CA to dispose of ashes
55	CA – after uncollected ashes returned by FD	Retain ashes and find out applicant’s wishes	Applicant to collect from CA	Additional 4 weeks 13(4)	OR – CA to dispose of ashes – may do so without delay if this is applicant’s choice
56	CA – after uncollected ashes returned by FD	May dispose of uncollected ashes	Applicant has failed to collect ashes from CA after additional period	The additional 4 weeks have passed	CA can retain the ashes for a further period or can dispose of immediately

Regulation 14 – Disposal of ashes by cremation authority (specified manner)

92. Following the procedures for handling of ashes mentioned above, and after any minimum time periods have passed, ashes which have not been collected by the applicant from a funeral director may be returned to the crematorium for scattering or interring. The funeral director can retain the ashes for a further period if they wish to give the applicant longer to collect them.

Regulation 15 – Cremation registers

93. The Act requires each cremation authority to hold cremation registers for each crematorium for which it is the cremation authority. There are three registers (schedules 9, 10 and 11 in the regulations): for adults and children (15(1)(a)); for body parts (15(1)(b)); and for stillbirths and pregnancy losses (15(1)(c)).

94. The three registers detail every cremation carried out at each crematorium and must be kept indefinitely. The cremation authority is to make the registers available to the public and may charge for providing extracts from it. The exception being in the case of cremation of stillbirth and pregnancy loss, where the information held on this register will be anonymised and will, therefore, not be identifiable.

95. The information for each cremation must be entered on the appropriate register as soon as practicable after the cremation (15(2)). The cremation authority must ensure that the information in the registers is accurate and up to date (15(3)).

Register of cremation of stillbirth and pregnancy loss

96. Stillbirths were previously recorded in the whole body register but there was strong feeling that it would be more appropriate to have information about all types of pregnancy losses in one register. Doing so helps ensure that privacy and anonymity is easier for cremation authorities to manage while giving reassurance to families that their information will be held securely.

97. The information to be entered onto this register by the cremation authority varies depending on who the applicant is. If the applicant is a health provider/ hospital, columns (a) and (c) should be completed. Column (a) is the unique identifier given by the health provider/ hospital, to a stillborn baby or pregnancy loss. Column (c) is the address of the health provider/ hospital, as applicant.

98. If the applicant is an individual, such as a woman who experienced a pregnancy loss, a unique identifier will not have been allocated by the health provider/ hospital, so the applicant will not be able to provide this on the application form. Column (c) should be left blank where an individual has applied. This preserves their anonymity on a public register. If an individual wants their details to be included in column (c) that can be done by the cremation authority with a note made in the register that this was done at the request of the applicant.

99. Column (b) may or may not be necessary for the cremation of a stillborn baby (A2) or family arranged pregnancy loss (A3). Column (c) can be left blank if the applicant is an individual to preserve anonymity.

The schedules

Schedule	Application form	For the cremation of	Used by
1	A1	Adult or child	Individual
2	A2	Stillborn baby	Individual or health body
3	A3	pregnancy loss on or before 24 weeks	Individual
4	A4	pregnancy loss(es) on or before 24 weeks	health body
5	A5	Adult or child	Local authority (section 87)
6	A6	body parts after post-mortem exam or a whole body or body parts following an anatomical exam	Person authorised by the doctor, pathologist or anatomy teacher who has completed Form M or Form N
7	A7	body parts following anatomical exam where the deceased died before 14 February 1988	Person authorised by anatomy teacher who has completed Form N
8	E1	Authority to cremate following investigation by procurator fiscal	COPFS
9	B1	Cremation register – whole bodies	Cremation authority
10	B2	Cremation register – body parts	Cremation authority
11	B3	Cremation register – stillbirth and pregnancy loss	Cremation authority

100. The schedules to the regulations set out the statutory application forms (Forms A1 to A7), the form authorising cremation after the death has been investigated by the SFIU (Form E1) and the cremation registers (B1, B2 and B3). **These forms are all statutory and must not be amended to either remove or add questions or information.**

101. There are intentionally a number of different application forms; one for each category of cremation. This is to ensure that all categories are provided for and also ensures that applicants are not required to look through one very large form in order to only complete the sections that are relevant.

Handling of Ashes – all timescales are minimum and can be extended

Before Cremation

Applicant chooses one of the options on the cremation application form to instruct what is to happen to the ashes.

After Cremation

CA makes ashes available for collection by applicant, their representative or FD (unless CA instructed to disperse ashes).

