

Implementation of the Burial and Cremation (Scotland) Act 2016

Summer 2018 Newsletter No. 3

The implementation of the Burial and Cremation (Scotland) Act 2016 continues. As noted in our previous newsletters, each section of the Act is brought into force individually through regulations being laid in, and scrutinised by, the Scottish Parliament before becoming law.

The Burial and Cremation Team would like to say a huge thank you to those who have been involved in progressing this important work. The development of the regulations has taken longer than expected, which is in part due to the very sensitive and complex nature of the pregnancy loss regulations and consent forms. We thank you for the patience and support you have shown in relation to these delays.

Summary

Following the implementation of some of the burial sections of the 2016 Act (as noted in the December 2016 newsletter), Parliament will scrutinise the coming into force of the majority of Part 2 of the 2016 Act and the associated Cremation (Scotland) Regulations 2018 (including the new cremation application forms) as well as the vast majority of Part 3 of the 2016 Act and the associated pregnancy loss regulations (including the new forms for the consent of a burial or cremation following a pregnancy loss or stillbirth).

Commencement Regulation 3 brings Schedule 2 of the 2016 Act into force repealing old legislation not already repealed.

We hope to lay these regulations during summer recess for scrutiny in the autumn. As you know these dates are always subject to Parliamentary timescales and we will send out a further communication when these regulations are laid.

Summary of proposed implementation timescales*

May 2018

Commencement of section 98 of Act - funeral affordability - laid in Scottish Parliament

June 2018

National Committee on Burial and Cremation

Funeral Director Short Life Working Group on Care of the deceased

July/August 2018

Cremation, Arrangements and Commencement Regulation 3 laid in Scottish Parliament

Inspection Regulations - Business and Regulatory Impact Assessment working groups (BRIA)

National Memorial Safety Guidance – drafting

September /October 2018

Parliamentary scrutiny of the regulations

Inspection Regulations Working Group established

Publish consultation on Funeral Director Code of Practice

November/December 2018

Cremation, Arrangement and Commencement regulations passed by Parliament.

National Memorial Safety Guidance published

*please note that these are suggested dates and are subject to Parliamentary timescales

Cremation Regulations

The consultation on the Cremation Regulations, which closed on 9 June 2017, received 40 responses. Where permission has been given to publish a response, those responses have been published on the Scottish Government website. The responses were generally supportive of the proposals set out in the consultation and the B & C Team have carefully considered all of the responses when developing the final regulations. The responses can be accessed at the following link:

<http://www.gov.scot/Topics/Health/Policy/BurialsCremation/BurialandCremation-Scotland-Act2016/CremationRegConsultation>

Timescales

The Cremation (Scotland) Regulations 2018 will be laid in the Scottish Parliament soon. When laid these regulations, which include the new application forms, will be scrutinised by the Scottish Parliament. Parliamentary committees MAY seek evidence from interested parties. There will be a public call for evidence if this is the case.

The regulations will be scrutinised by Parliament in Autumn 2018. We will send out a further communication when these regulations are laid and will also confirm at what date the regulations will come into force.

New Cremation Application Forms

The new cremation application forms will be editable PDF documents and will allow the cremation authority to add their own logo to the top right hand corner, but must not be altered in any other way by the cremation authority or funeral directors.

The new forms will be available on the Scottish Government website and will be circulated to cremation authorities. These should then be added to each cremation authority's own website and be made available for download.

Arrangements

Part 3 of the Burial and Cremation (Scotland) Act 2016 sets out who can make the arrangements for the burial or cremation of an adult, child, still-born child and pregnancy loss. It also requires Scottish Ministers to prescribe a set of forms which are to be used by health care providers when a woman experiences a pregnancy loss or a stillbirth. The forms should be used to record the woman's wishes with regards to arrangements for burial or cremation.

Prescribed Forms

The Scottish Government has been working with NHS boards and parents' organisations to develop authorisation forms which are sensitive to the needs parents, capture the requirements of the 2016 Act and Lord Bonomy's recommendations and can be implemented by hospitals.

This has been a particularly complex process which has constituted three rounds of stakeholder consultation and many separate meetings, discussions and redrafts.

Given the nature of the subject matter it is vitally important that the forms are sensitive to parents at what can be the most difficult time and that they can be implemented by hospitals in line with the duties placed on hospitals by the 2016 Act.

Scottish Ministers will introduce three prescribed forms which all boards will be required to use.

Prescribed information

In addition to the prescribed forms, the legislation enables Scottish Ministers to set out information that hospitals must collect on their own forms. This information will be listed in the pregnancy loss regulations.

Timescales

The pregnancy loss regulations and forms will be laid in Scottish Parliament soon. When laid, these regulations, are subject to negative parliamentary procedure and will be scrutinised by the Delegated Powers and Law Reform Committee to check for legal competence but will not be subject to any calls for evidence.

We will send out a further communication when these regulations are laid and will also confirm at the point when the regulations will come into force.

Inspection

In July 2017 the Scottish Government issued a consultation containing high level proposals on the content of the Inspection Regulations. The Regulations, once finalised, will set out the powers and duties of inspectors in relation to burial and cremation authorities and funeral directors.

By the consultation deadline of 1 September 2017, 44 responses were received. Responses were received from a range of cremation and burial authorities (private and local authority), funeral directors and individuals. Where permission has been given, the responses have been published on our website: <http://www.gov.scot/Topics/Health/Policy/BurialsCremation/BurialandCremation-Scotland-Act2016/InspectionRegConsultation>

The B & C Team will carefully consider all of the responses when developing the final regulations

Business and Regulatory Impact Assessment (BRIA)

As a normal process of any legislation being implemented by Scottish Government, a BRIA is produced to assess the impact, if any, that implementing legislation may have on affected business areas.

Work has begun on this assessment for inspection regulations. Meetings are to be held with representatives of burial and cremation authorities, public and private, and with funeral director businesses and trade association representatives. These meetings will be an opportunity to discuss the impact of inspectors' powers and associated enforcement in detail, contributing to what is laid in Parliament and into law.

The B & C Team has begun arranging meetings with the first, focusing on burial and cremation authorities, confirmed for 23rd July 2018.

Inspection sections brought into force by the commencement regulations

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S	Topic
89(1)(b)	Appointment of Inspectors (Inspector of Cremation)
93	Reports

Other sections brought into force by the commencement regulations

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S	Topic
88	Expenses of attending a funeral
98	Guidance on funeral costs
99	Power to extend application of Act
103	Offences by bodies corporate etc.
104(4)	Regulations: consultation requirements (cremation)
104(5)	Regulations: consultation requirements (section 90 regulations)
104(6)	Regulations: consultation requirements (section 99(1) regulations)
109	Minor and consequential amendments
Sch 1	Minor and consequential amendments
110	Repeals
Sch 2	Repeals
111	Crown application

Funeral Directors

Inspector of Funeral Directors, Natalie McKail, is currently undertaking a wide variety of visits to and meetings with funeral directors' businesses. This will inform her deliberations on providing Scottish Ministers with a recommendation on what kind of regulation should be introduced for funeral directors, including the possibility of a licensing scheme. The Inspector will make her recommendations in late 2018.

The introduction of regulation will enable independent scrutiny of the funeral director industry, improving standards of care, consistency of service and compliance with the 2016 Act.

Regulation will be proportionate and appropriate and the Scottish Government will work with the funeral profession and Inspector to achieve this.

Engagement

As part of this commitment to ensure appropriate and proportionate standards through regulation, a number of recent meetings with funeral director representatives have taken place. Led by the Inspector, there have been four meetings so far that have covered a number of themes relevant to funeral directors, from the care and presentation of the deceased to training and qualifications provided within the profession.

The progress made by this working group will contribute to the shaping of proposed regulations and to a statutory funeral director Code of Practice, provided for within the 2016 Act.

Funeral Director Survey

On the 4 June a survey, issued jointly by the Inspector and Scottish Government, was circulated to all funeral director businesses in Scotland. It contained questions concerning both composition of the business and awareness of the Infant Cremation Code of Practice. The deadline for responses is 25 July 2018, and all are encouraged to return completed surveys to assist the Inspector in their work.



Members of the short life working group

Funeral Director Code of Practice

Section 97 of the Act allows Scottish Ministers to draft and issue a statutory Code of Practice for funeral directors in Scotland.

Following the development of a draft document, assisted by the working group, it is intended that this draft be subject to public consultation later this year to ensure as wide an audience as possible can comment on its contents. It will then be laid in the Scottish Parliament.

Burial – Memorial Safety

Sheriff Ruxton published her determination of the Craigton Cemetery Fatal Accident Inquiry on 22 January 2018. Among her findings was a recommendation for the Scottish Government to develop and publish national guidance on memorial safety in cemeteries for use by local authorities in Scotland. Sheriff Ruxton recommended that this guidance should contain specific advice on inspection methods and standards for older, larger memorials and what should be done by local authority burial authorities if these memorials were leaning.

During a meeting attended earlier this year by bereavement leads from 30 of 32 local authorities, there was unanimous support for national guidance on memorial safety. There was also a desire for this guidance to be developed and implemented in advance of the Burial and Cremation (Scotland) Act 2016 Burial Ground Regulations coming into force.

Through the Scottish Bereavement Benchmarking Group (SBBG) a number of local authorities have been invited to contribute to the drafting of this guidance. Input and comment has also been sought from relevant stakeholders, such as Historic Environment Scotland and the National Association of Memorial Masons.

Over the summer the team, working with stakeholders, will collate and draft this guidance. The intention is that once published by the end of 2018, it will lead into the beginning and assist in the implementation of the burial sections of the 2016 Act.

Provisions and indicative future implementation timetables

Indicative future implementation timescales

Different parts of the 2016 Act and related work will be commenced at different times. Where Regulations are to be made, they will be designed in collaboration with stakeholders and will be subject to public and stakeholder consultation. The timescales below are high level and indicative only.

2018:

- Business and Regulatory Impact Assessments for Inspection Regulations
- Development of Inspection Regulations and laying in Parliament
- National Memorial Safety Guidance published
- Inspector of Funeral Directors recommendations to Scottish Ministers

2019 and beyond:

- Regulation of funeral directors
 - Appointment of Inspector of Burial
 - Burial ground management regulations
 - Focus on burial application process, private burial and exhumation
 - Lair restoration to use
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Scottish Government Burial and Cremation Team contact details:

If you have any queries, would like more information or are interested in being involved in any part of the implementation process please e-mail the team on:

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