POLICY NOTE

THE BURIAL AND CREMATION (PREGNANCY LOSS PRESCRIBED INFORMATION AND FORMS) (SCOTLAND) REGULATIONS 2018

SSI 2018/384

1. The above instrument was made in exercise of the powers conferred by sections 69(4), 71(6), 72(4), 74(6), 75(4)(a), 77(4), 79(5)(a) and (7)(a), 80(4)(a), 81(5)(a) and (7)(a), 85(1) and 106(1) of the Burial and Cremation (Scotland) Act 2016 ("the 2016 Act"). The instrument is subject to negative procedure.

Policy Objectives

2. The purpose of this intsrument is to:

- specify information that must be recorded by Health Authorities when an individual makes a decision about the burial or cremation of their pregnancy loss (before or on completion of its 24th week) or of a still-born child,

- set out prescribed forms that must be used by Health Authorities to record an individual's decision to authorise a Health Authority to arrange the burial or cremation of a pregnancy loss (before or on completion of its 24 week) or of a still-born child; to record a change in decision; to record authorisation to arrange the burial or cremation within 7 days; to record where the Health Authority has not been informed by a woman of her decision,

- set out the information that health authorities must record and keep indefinitly in a register.

3. Part 3 of the 2016 Act sets out the procedural steps and time frames which health authorities must follow when a pregnancy loss or still-birth occurs. The Act and the information and forms prescribed in these Regulations are designed to ensure that each Health Authority in Scotland collects and records consistent information about decisions made in relation to the burial or cremation of a pregnancy loss or still-born baby and secures the signature of the woman, next of kin or authorised individual. This instrument implements recommendations set out by Lord Bonomy's Infant Cremation Commssion which examined the policies, practices and legislation related to the cremation of infants in Scotland.

Specified information

4. The 2016 Act enables the Scottish Ministers to prescribe specific information that health authorities must record in relation to key decisons taken by the woman/ next of kin/ an authorised individual about the burial or cremation of a pregnancy loss or still-born baby. This instrument sets out the information as required by Part 3 of the 2016 Act.

Prescribed forms

5. This instrument prescribes three forms that must be used by health authorities to record decisions taken by mothers, next of kin or authorised individuals in specified circumstances. These circumstances are:

- Schedule 1 (Form 1). This form is to be completed by the nearest relative of a still-born baby, when the nearest relative is authorising the hospital to arrange the burial or cremation of the stillborn baby which may take place within 7 days.
- Schedule 2 (Form 2). This form is used to record a woman's wishes for the burial or cremation of her pregnancy loss where the pregnancy ended before, or on completion of, its 24th week, the pregnancy loss has been parted from the woman and does not show any signs of life and where it appears to the health authority that, at this time, no arrangements for burial or cremation are being made.

- Schedule 3 (Form 3) This form is to be completed by an authorised individual who is 16 years or older where that authorised individual is making arrangements on a woman's behalf following a pregnancy loss before or on completion of its 24th week. The form records the individual's decision to make arrangements or to authorise the health authority to make arrangements. Where the authorised individual does not inform the health authority of the arrangements (and the health authority is not authorised to make arrangements) the health authority must record this in the form.

6. Form 2 is a composite form for decisions to make arrangements for pregnancy losses. It is used to record decisions made following the steps which are taken when section 79 of the Act applies or where there has been a change of decision. Section 79 applies where, following the pregnancy loss, it appears to the health authority that no arrangements have been made. The health authority must give the woman an opportunity, during a period of 7 days, to decide whether she wishes to make her own arrangements or if she wishes to authorise an individual (of or over 16 years) or the health authority to make arrangements on her behalf. The decision made by the woman must be recorded in the form including any details of how she wishes the arrangements to be made. If, after the expiry of 7 days, there is a decision, no decision or there is a change of decision, the health authority must record this information also on the form. The form has been designed in this way to support its implementation by health authorities and to limit the number of forms that health authorities are required to use, thereby limiting the risk that forms are completed in circumstances when they should not be.

Register

7. The 2016 Act places a duty on health authorities to keep a register of pregnancy loss indefinitly and gives the Scottish Ministers powers to set out the information that must be recorded in the register. This instrument sets out the information that health authorities must record in the register of pregnancy loss. Maintaining a register of authorisations of pregnancy loss was an important reccomendation of Lord Bonomy's Infant Cremation Commssion . The purpose of the register is to ensure traceability of audit trail between baby and ashes.

Consultation

8. The 2016 Act does not set out a requirement to consult on the the content of these regulations. However, given the nature of the subject matter extensive stakeholder

consultation was carried out to determine what information should be recorded by health authorities and in particular the content and structure of the forms.

9. The consultation took place over a period of approximately 18 months and included health authorities and parents groups. As a result there is broad agreement on the content of the specified information, forms and register.

Impact Assessments

10. The full range of impact assessments were carried out at the time of introducing the Bill. No further impact assessments have been completed specifically for this instrument as it does not impose any additional impact beyond what was envisaged when the Bill for the 2016 Act was introduced.

Financial Effects

11. A Business and Regulatory Impact Assessment (BRIA) has not been completed in relation to this instrument. The specified information will simply update the information currently collected and recorded by health authorities and the forms will replace existing forms used by health authorities.

Scottish Government
Directorate for Population Health Improvement
18th December 2018