

SCHEDULES

SCHEDULE 28

Section 58

TRANSPORTATION, STORAGE AND DISPOSAL OF DEAD BODIES ETC

PART 1

INFORMATION ABOUT CAPACITY

- 1 (1) A local authority may require a person to provide information for the purposes of ascertaining the capacity within its area to deal with the transportation, storage or disposal of dead bodies or other human remains.
- (2) A requirement under sub-paragraph (1) must be in writing and must specify—
 - (a) whether the information is to be provided to the local authority or to some other specified person,
 - (b) how the information is to be provided (and may in particular specify the form in which and means by which it is to be provided), and
 - (c) when the information is to be provided (and may in particular specify the time or times at or before which it is to be provided).
- (3) It is an offence for a person—
 - (a) to fail, without reasonable excuse, to comply with a requirement under sub-paragraph (1);
 - (b) knowingly or recklessly to give false information in response to a requirement under sub-paragraph (1).
- (4) A local authority or other person who holds information which has at any time been provided under sub-paragraph (1)—
 - (a) may use it if, and only if, the use is for the purpose mentioned in that sub-paragraph;
 - (b) may disclose it to another person if, and only if, the disclosure is either for the purpose mentioned in that sub-paragraph or for the purpose of complying with any enactment.
- (5) It is an offence for a person who holds information which has at any time been provided under sub-paragraph (1) to use or disclose it otherwise than as authorised by sub-paragraph (4).
- (6) A person guilty of an offence under this paragraph is liable on summary conviction—
 - (a) in England and Wales, to a fine;
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- 2 (1) The appropriate national authority may require a local authority to provide information for the purposes of ascertaining the capacity nationally, or within a

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particular area, to deal with the transportation, storage or disposal of dead bodies or other human remains.

- (2) A requirement under sub-paragraph (1) must be in writing and must specify—
 - (a) whether the information is to be provided to the appropriate national authority or to some other specified person,
 - (b) how the information is to be provided (and may in particular specify the form in which and means by which it is to be provided), and
 - (c) when the information is to be provided (and may in particular specify the time or times at or before which it is to be provided).
 - (3) A local authority must comply with a requirement under sub-paragraph (1).
 - (4) The appropriate national authority or any other person who holds information which has at any time been provided under sub-paragraph (1)—
 - (a) may use it if, and only if, the use is for the purpose mentioned in that sub-paragraph;
 - (b) may disclose it to another person if, and only if, the disclosure is for the purpose mentioned in that sub-paragraph or for the purpose of complying with any enactment.
 - (5) It is an offence for a person who holds information which has at any time been provided under sub-paragraph (1) to use or disclose it otherwise than as authorised by sub-paragraph (4).
 - (6) A person guilty of an offence under this paragraph is liable on summary conviction—
 - (a) in England and Wales, to a fine;
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- 3
- (1) A duty or power to disclose information under this Part of this Schedule does not operate to require or authorise the disclosure of information which—
 - (a) would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation);
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
 - (2) In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

PART 2

DIRECTIONS AND OTHER MEASURES TO ADDRESS LACK OF CAPACITY

Designation where there is insufficient capacity to deal with dead bodies etc

- 4 (1) The appropriate national authority may designate a local authority for the purposes of this Part of this Schedule if of the view that—
 - (a) as a result of coronavirus disease there is, or is likely to be, insufficient capacity within the area of that local authority to transport, store or dispose of dead bodies or other human remains, and

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- (b) the powers conferred by this Part of this Schedule are likely to be an effective means of addressing that lack of capacity.
- (2) If, having made a designation under this paragraph, the appropriate national authority ceases to be of the view mentioned in sub-paragraph (1), the appropriate national authority must revoke the designation (but this does not limit the future exercise of the power in sub-paragraph (1) in relation to the same local authority).
- (3) If a mayoral combined authority is designated under sub-paragraph (1), the designation may make provision for its functions under this Part of this Schedule to be exercisable only by the mayor.
- (4) A designation or revocation under this paragraph—
 - (a) takes effect when published online, and
 - (b) must, as soon as reasonably practicable after it is made, also be published in the appropriate Gazette.
- (5) In sub-paragraph (4)(b) “the appropriate Gazette” means—
 - (a) where the designation or revocation relates to a local authority in England or Wales, the London Gazette;
 - (b) where the designation or revocation relates to a local authority in Scotland, the Edinburgh Gazette;
 - (c) where the designation or revocation relates to a local authority in Northern Ireland, the Belfast Gazette.
- (6) In this Part of this Schedule “designated local authority” means a local authority for the time being designated under this paragraph.

Directions to do things calculated to facilitate dealing with dead bodies etc

- 5
- (1) A designated local authority may give a direction requiring a person to do anything calculated to facilitate the transportation, storage or disposal of dead bodies or other human remains in the local authority’s area or from its area.
 - (2) The appropriate national authority may give a direction requiring a person to do anything calculated to facilitate the transportation, storage or disposal of dead bodies or other human remains if—
 - (a) one or more local authorities are designated under paragraph 4, and
 - (b) the appropriate national authority considers that, in respect of any matter, a regional or national response is appropriate, instead of leaving it to individual local authorities to give directions under sub-paragraph (1).
 - (3) A direction under this paragraph may, in particular—
 - (a) require a person to provide services;
 - (b) require a person to provide facilities, premises, vehicles, equipment or anything else within the person’s possession or under the person’s control;
 - (c) require a person to exercise any right they have to require others to do things (including things within other paragraphs of this sub-paragraph);
 - (d) direct whether a dead body or other human remains must be buried by the person or cremated by the person;
 - (e) make provision about how or where a person is to bury or cremate a dead body or other human remains;

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- (f) in the case of a direction by a local authority, require a person to do things outside the local authority’s area;
 - (g) make provision about how or when things are to be done in accordance with the direction;
 - (h) make provision about the supervision of anything required to be done in accordance with the direction;
 - (i) require a person to provide information about things done in response to a direction.
- (4) A direction may require a person to do things even if they would involve the person breaching a contract or incurring other liabilities (but the right of any other person to claim damages for such a breach or to enforce such a liability is not affected by the direction).
- (5) A direction under this paragraph may not be given to—
- (a) an individual, or
 - (b) a public authority.
- (6) In exercising its functions under this paragraph a designated local authority or the appropriate national authority must have regard to the effect that any direction is likely to have on the ability of any person to carry on their normal business.
- (7) Designated local authorities and the appropriate national authority must keep such records relating to directions under this paragraph for such time as they consider appropriate.
- (8) A person commits an offence if the person fails without reasonable excuse to comply with a direction under this paragraph.
- (9) A person guilty of an offence under this paragraph is liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (10) A direction under sub-paragraph (1) lapses on the revocation of the designation under paragraph 4 of the local authority that gave the direction.
- (11) A direction under sub-paragraph (2) lapses if there are no designated local authorities.

Power of ministers etc to step in

- 6 If the appropriate national authority considers that a designated local authority is failing to exercise its powers under paragraph 5(1) properly, it may give any direction under paragraph 5(1) that could have been given by the designated local authority (and paragraph 5 applies with any necessary modifications).

Appropriate national authority directions to prevail

- 7 If there is a conflict between—
- (a) a direction given by a designated local authority under paragraph 5(1), and
 - (b) a direction given by the appropriate national authority under paragraph 5(2) or in reliance on paragraph 6,
- the direction given by the local authority is of no effect to the extent of that conflict.

Compensation where directions given

- 8 (1) The appropriate national authority must publish a scheme for the making of payments to persons to whom directions are given under paragraph 5.
- (2) The scheme must include provision for a person to whom a direction is given under paragraph 5 to be paid—
- (a) a reasonable sum in respect of anything provided by the person in accordance with the direction, and
 - (b) compensation in respect of—
 - (i) any losses,
 - (ii) any liabilities to pay damages for breach of contract, or
 - (iii) any other liabilities,incurred by the person as a result of the direction.
- (3) The scheme may include provision for payments in respect of other matters.
- (4) The scheme may include provision designed to prevent double recovery (for example, by reducing a payment in respect of a liability for which a person is entitled to be indemnified under an insurance policy).
- (5) A payment under the scheme—
- (a) in relation to a direction given by a local authority under paragraph 5(1), is to be paid by that local authority;
 - (b) in relation to a direction given by the appropriate national authority in reliance on paragraph 6, is to be paid by the local authority that it considered to be failing to exercise functions properly;
 - (c) in relation to a direction under paragraph 5(2), is to be paid by the appropriate national authority.
- (6) The scheme may include provision about procedural matters, including provision—
- (a) imposing time limits for the making of a claim or other steps under the scheme;
 - (b) about the calculation of amounts and how they are to be determined;
 - (c) permitting or requiring the review of decisions under the scheme.
- (7) The scheme may confer discretions or other functions on public authorities.
- (8) The appropriate national authority may vary a scheme under this paragraph.
- (9) The appropriate national authority need not make a scheme under this paragraph unless or until it has designated a local authority under paragraph 4.

Guidance

- 9 (1) The appropriate national authority may give guidance as to the exercise by designated local authorities of functions under this Part of this Schedule.
- (2) Designated local authorities must have regard to any guidance given under this paragraph.

General provisions about directions and schemes

- 10 A direction or scheme under this Part of this Schedule may—

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- (a) make provision that applies generally or only in specified circumstances or for a specified purpose;
- (b) make different provision for different purposes;
- (c) contain incidental, supplemental, consequential or transitional provision.

Procedure

- 11 (1) A power to give directions under this Part of this Schedule includes power to vary or revoke the directions.
- (2) A direction under this Part of this Schedule must be given in writing.

PART 3

POWER TO DIRECT LOCAL AUTHORITIES ETC

- 12 (1) This paragraph applies if the appropriate national authority considers that a local authority—
- (a) has failed properly to exercise any of its functions as a burial authority or a cremation authority, or
 - (b) has failed properly to exercise any of its other functions in connection with the transport, storage or disposal of dead bodies or other human remains (whether under this Schedule or otherwise).
- (2) The appropriate national authority may give the local authority directions as to the exercise of its functions in connection with any of those matters.
- (3) A direction under this paragraph must be given in writing.
- (4) The power to give directions under this paragraph includes power to vary or revoke the directions.
- (5) A local authority must comply with a direction under this paragraph.

PART 4

DECEASED'S WISHES ETC

- 13 (1) In carrying out functions under this Schedule, local authorities and the appropriate national authorities must have regard to the desirability of disposing of a dead person's body or other remains—
- (a) in accordance with the person's wishes, if known, or
 - (b) otherwise in a way that appears consistent with the person's religion or beliefs, if known.
- (2) In carrying out functions under the legislation listed in sub-paragraph (3), designated local authorities must have regard to the desirability of disposing of a dead person's body or other remains—
- (a) in accordance with the person's wishes, if known, or
 - (b) otherwise in a way that appears consistent with the person's religion or beliefs, if known.
- (3) The legislation is—

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- (a) section 46(1) or (2) of the Public Health (Control of Disease) Act 1984 (local authority to arrange burial or cremation where no other suitable arrangements being made);
 - (b) section 25(1) of the Welfare Services Act (Northern Ireland) 1971 (corresponding provision for Northern Ireland).
- (4) The following do not apply to a designated local authority—
- (a) section 46(3) of the Public Health (Control of Disease) Act 1984 (local authority not to cause body to be cremated under that section contrary to the wishes of the deceased);
 - (b) in section 25(5) of the Welfare Services Act (Northern Ireland) 1971, the words from “and a body” to the end (corresponding provision for Northern Ireland);
 - (c) regulations 6 and 13(a) of the Cremation (Belfast) Regulations (Northern Ireland) 1961 (*S.R. & O. (N.I.) 1961 No. 61*) (which provide that the remains of a person must not be cremated if it is known that the person has left a written direction to the contrary).
- (5) The appropriate national authority must give guidance as to the discharge by local authorities of duties under this paragraph.
- (6) Local authorities must have regard to any guidance given under sub-paragraph (5).
- (7) In this paragraph “designated local authority” means a local authority for the time being designated under paragraph 4.

PART 5

INTERPRETATION

- 14 In this Schedule—
- “the appropriate national authority” means—
 - (a) in relation to local authorities and areas in England, the Secretary of State or the Minister for the Cabinet Office,
 - (b) in relation to local authorities and areas in Wales, the Welsh Ministers,
 - (c) in relation to local authorities and areas in Scotland, the Scottish Ministers, and
 - (d) in relation to local authorities and areas in Northern Ireland, a Northern Ireland department;
 - “burial authority” means—
 - (a) a burial authority for the purposes of section 214 of the Local Government Act 1972,
 - (b) a burial authority for the purposes of the Burial and Cremation (Scotland) Act 2016 (*asp 20*) (see section 2 of that Act), or
 - (c) a district council in Northern Ireland exercising its functions under Part 3 of the Public Health (Ireland) Act 1878;
 - “combined authority” means a combined authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009;
 - “cremation authority” means—

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- (a) a cremation authority for the purposes of the Burial and Cremation (Scotland) Act 2016 (see section 47(5) of that Act), or
 - (b) a district council in Northern Ireland providing and maintaining a crematorium under Article 17 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (S.I. 1985/1208) (N.I. 15);
- “English local authority” means—
- (a) a combined authority,
 - (b) a county council,
 - (c) a district council,
 - (d) a London borough council,
 - (e) the Greater London Authority,
 - (f) the Common Council of the City of London in its capacity as a local authority, or
 - (g) the Council of the Isles of Scilly;
- “local authority” means—
- (a) an English local authority,
 - (b) a county council in Wales or a county borough council,
 - (c) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or
 - (d) a district council in Northern Ireland;
- “mayoral combined authority” has the meaning given by section 107A(8) of the Local Democracy, Economic Development and Construction Act 2009.