

# Crown Office and Procurator Fiscal Service

Procurator Fiscal's Office  
10 Ballater Street, Glasgow, G5 9PS



## Scottish Fatalities Investigation Unit

Date: 17 May 2016

Dear Colleague,

### Electronic completion of Form E1 by the Procurator Fiscal

#### **Purpose**

1. I write to you to confirm the position regarding completion and communication of the Form E1 issued to crematoria by Procurators Fiscal following a request to cremate a deceased person whose death has been reported to the Procurator Fiscal. This approach has been discussed with the Chief Medical Officer's office.

2. The Form E1 will primarily be completed and communicated electronically by the Procurator Fiscal to the relevant crematoria or funeral director. There is no legal requirement for a Form E1 to be signed in person and delivered by the Procurator Fiscal's office by letter prior to a cremation taking place.

#### **Background**

3. As you are aware, where there is to be a cremation of a person, whose death has been reported to the Procurator Fiscal, the Procurator Fiscal will complete a Form E1 (an E1 form). This form is sent by the Procurator Fiscal to the nominated crematorium to confirm that the Procurator Fiscal is satisfied that there are no circumstances which render necessary any further examination of the deceased's body. Funeral arrangements thereafter are properly a matter for the nearest relatives to determine in consultation with the crematorium and funeral directors.

4. Despite the Procurator Fiscal issuing the vast majority of E1 forms across Scotland by email with an electronic signature attached, I have been advised that on rare occasions crematoria have declined to accept an E1 form communicated in this way. The reason I am told is that this is contrary to the law.

5. The reason for the Procurator Fiscal e-mailing E1s is to expedite our communications with crematoria to ensure that they securely receive the appropriate documentation well within time and avoid the seemingly unnecessary step of funeral directors or other family representatives having to attend at a PF's office in person to uplift E1 documentation. The purpose of this is clearly to minimise disruption, distress and unnecessary costs to relatives. I can assure you that these emails will only come from recognised secure addresses of the Scottish Fatalities Investigation Unit (SFIU) of COPFS and will end in "@copfs.gsi.gov.uk". Where the funeral director involved is known they will also normally be copied into this communication.

## Legal requirements

6. Regulation 8 of the Cremation (Scotland) Regulations 1935/247 (at Annex A) provides that the Procurator Fiscal shall provide permission in writing in an E1 that a cremation can take place in a death reported to the Procurator Fiscal. Although this provision was drafted some 80 years ago it does not on the face of it preclude advances in technology and electronic communication. COPFS' position is that an electronically communicated Form E1 with an accompanying electronic signature is within the meaning of writing, as prescribed.

7. As you are also aware COPFS is the sole prosecuting authority for offences which are committed in Scotland. Section 8 of the Cremation Act 1902 (at Annex B) provides that persons breaching the current cremation regulations can be liable, on conviction, to criminal penalties. However if the Procurator Fiscal has given permission for the cremation to take place (by issuing the E1 form electronically) it is clearly the case that the Procurator Fiscal would under no circumstances raise criminal proceedings against an individual for the reason alone of an E1 having been accepted by them by electronic means.

8. Therefore to alleviate any concerns crematoria may have with regard to acceptance of electronic E1s, I am therefore authorised as a representative of the Lord Advocate to issue this letter. The purpose of which is to confirm that in any death where the Procurator Fiscal has issued an E1 form to crematoria electronically that no criminal proceedings will be instituted against them for contraventions of the Cremation Act 1902, Section 8 for receiving such a form by this method.

9. Accordingly to ensure a consistency of service across Scotland which seeks to minimise distress to nearest relatives, I would be grateful if all crematoria could now receive my assurances above and accept E1s issued electronically to them by the Procurator Fiscal.

10. I attach copies of regulation 8 of the Cremation (Scotland) Regulations 1935/247 and Section 8 of the Cremation Act 1902, at Annexes A and B, for convenience

Yours sincerely



David Green  
Head of the Scottish Fatalities Investigation Unit (SFIU)  
Crown Office and Procurator Fiscal Service

## Annex A

### Cremation (Scotland) Regulations 1935/247 Conditions under which Cremations may take place.

This version in force from: **May 13, 2015** to **present**

#### 8.

Except as otherwise provided in these Regulations, no cremation shall be allowed to take place unless—

[...] <sup>1</sup>

(c) permission in writing in [Form E \(1\) in the Schedule](#) hereto has been given by the Procurator Fiscal of the district in which death occurred [.] <sup>2</sup>

[...] <sup>3</sup>

[...] <sup>2</sup>

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#### Notes

1.

Revoked by Certification of Death (Scotland) Act 2011 (Consequential Provisions) Order 2015/164 (Scottish SI) [art.4](#) (May 13, 2015)

2.

Revoked by Certification of Death (Scotland) Act 2011 (Consequential Provisions) Order 2015/164 (Scottish SI) [art.4](#) (May 13, 2015: revocation has effect subject to transitional provisions as specified in SSI 2015/164 art.12)

3.

Revoked by Cremation (Scotland) Amendment Regulations 1967/398 [reg.11\(c\)](#) (May 1, 1967)

## Annex B

### Cremation Act 1902

This version in force from: **May 13, 2015** to **present**

Scotland

#### 8.— Penalties for breach of regulations,

(1) Every person who shall contravene any such regulation as aforesaid, or shall knowingly carry out or procure or take part in the burning of any human remains except in accordance with such regulations and the provisions of this Act, shall (in addition to any liability or penalty which he may otherwise incur [ other than an offence under [section 27A\(1\)](#) of the [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(c. 49\)](#) (offence of disposal of body without authorisation)]<sup>1</sup> ) be liable, on summary conviction, to a penalty not exceeding [level 3 on the standard scale]<sup>2</sup>. [...]<sup>3</sup>

(2) Every person who shall wilfully make any false[...] <sup>4</sup> representation, or sign or utter any false certificate, with a view to procuring the burning of any human remains, shall (in addition to any penalty or liability which he may otherwise incur) be liable to imprisonment,[...] <sup>5</sup> not exceeding two years.

(3) Every person who, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body, or, with such intent, makes any [application] <sup>6</sup> or gives any certificate under this Act, shall be liable to conviction on indictment to [imprisonment] <sup>7</sup> for a term not exceeding five years. [] <sup>8</sup>

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#### Notes

1.

Words inserted by Certification of Death (Scotland) Act 2011 asp 11 (Scottish Act) [Sch.2 para.1\(4\)](#) (May 13, 2015)

2.

Words substituted by virtue of (England, Wales) Criminal Justice Act 1982 (c.48), ss. 38, 46 and (Scotland) Criminal Procedure (Scotland) Act 1975 (c.21), ss. 289F, 289G

3.

Words repealed by Statute Law (Repeals) Act 1993 c. 50 [Sch.1\(I\) para.1](#) (November 5, 1993)

4.

Words repealed by Prejudice Act 1911 (c. 6) Sch. and False Oaths (Scotland) Act 1933 (c. 20). Sch.

5.

Words omitted by virtue of Criminal Justice Act 1948 (c. 58), s. 1(2) and Criminal Justice (Scotland) Act 1949 (c. 94), s. 16(2)

6.

Word substituted by Cremation Act 1952 (c. 31), s. 2(3)

7.

Word substituted by virtue of Criminal Justice Act 1948 (c. 58), s. 1(1) and Criminal Justice (Scotland) Act 1949 (c. 94) s. 16(2)

8.

Repealed by Criminal Law Act 1967 (c. 58), Sch. 3 Pt. III