**As of 8th April 2020**

**Coronavirus Act 2020**

**SCHEDULE 28**

## **Transportation, storage and disposal of dead bodies etc**

### **PART 1**

### **Information about capacity**

**Part 1 request of information from a person**

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.

**This requirement of a person 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).

**Criminal liability**

It is an offence for a person:

(a) to fail, without reasonable excuse, to comply with the above requirement;

(b) knowingly or recklessly to give false information in response to the above requirement

**Limitation of use of information**

A local authority or other person who holds information which has at any time been provided under the above requirement:

(a) may use it if, and only if, the use is for the purpose mentioned;

(b) may disclose it to another person if, and only if, the disclosure is either for the purpose mentioned or for the purpose of complying with any enactment.

**Summary conviction**
It is an offence for a person who holds information which has at any time been provided under the above mentioned requirements to use or disclose it otherwise than as authorised.

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.

**Part 1 request by a national authority of a local authority**

1. **The appropriate national authority may require a local authority** to provide information for the purposes of ascertaining the capacity nationally, or within a particular area, to deal with the transportation, storage or disposal of dead bodies or other human remains.

**This requirement of a local authority 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).

A local authority must comply with the above-mentioned requirement.

**Limitations on use of information**

The appropriate national authority or any other person who holds information which has at any time been provided under the above requirement:

(a) may use it if, and only if, the use is for the purpose mentioned;

(b) may disclose it to another person if, and only if, the disclosure is for the purpose mentioned or for the purpose of complying with any enactment.

**Criminal liability**

It is an offence for a person who holds information which has at any time been provided under the above-mentioned requirement to use or disclose it otherwise than as authorised.

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. **Data Protection legislation**

 A duty or power to disclose information under this Part of Schedule 28 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.

In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

**CORONAVIRUS BILL** - EXPLANATORY NOTES

1. “Part 1 of the Schedule ensures that Local Authorities and National Authorities have the powers to require persons (and in the case of National Authorities, to require Local Authorities) to provide information to enable Local and National Authorities to ascertain capacity in areas to effectively manage the transportation, storage and disposal of dead bodies and other human remains. This may include information from private companies (such as private funeral homes or crematoria) on their capacity and operational status. They may direct that this information is shared with other actors who require this information (for example neighbouring Local Authorities who are searching for spare capacity in the region).
2. Paragraph 1 outlines that information shared under these information-sharing powers must be used only for the purpose of ascertaining capacity to manage the transportation, storage and disposal of dead bodies and other human remains.
3. This information sharing provision is needed to inform decisions to designate a local authority so that directions can be made to enable changes in the death management system where there is or is likely to be insufficient capacity in that area as a result of deaths from Covid-19. It will give visibility of the system and help to prevent the system from becoming overwhelmed. The death management system is highly fragmented, involving many different organisations in the public and private sector as well as faith and other groups.
4. Restrictions are placed on the use and disclosure of the information provided and offences are created in relation to failing to comply with a requirement to provide information, using or disclosing information in contravention of provisions, or knowingly or recklessly providing false information. These provisions are there to ensure compliance with the information sharing provisions”.

<https://publications.parliament.uk/pa/bills/lbill/58-01/110/5801110en.pdf>

### **PART 2**

### **Directions and other measures to address lack of capacity**

#### **CAPACITY ISSUES**

#### **4. Designation where there is insufficient capacity to deal with dead bodies etc**

 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

(b) the powers conferred by this Part of this Schedule are likely to be an effective means of addressing that lack of capacity.

1. Revoke designation

If, having made a designation the appropriate national authority ceases to be of the above-mentioned view the appropriate national authority must revoke the designation but this does not limit the future exercise of the power in relation to the same local authority.

1. Mayoral combined authority

If a mayoral combined authority is designated under the above power, 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 the above paragraph “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 as above only.

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

1. **Designated local authority**

**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. Appropriate national authority**

**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, 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.

**3. A direction 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;

(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 by a designated local authority lapses on the revocation of the designation of the local authority that gave the direction.

11. A direction a national authority lapses if there are no designated local authorities.

#### **6. Power of ministers etc to step in**

If the appropriate national authority considers that a designated local authority is failing to exercise its powers following a direction properly, it may give any direction under paragraph [5(1)](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-5-1) that could have been given by the designated local authority (and paragraph [5](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-5) applies with any necessary modifications).

#### **Appropriate national authority directions to prevail**

If there is a conflict between:

(a) a direction given by a designated local authority under paragraph [5(1)](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-5-1), and

(b) a direction given by the appropriate national authority under paragraph [5(2)](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-5-2) or in reliance on paragraph [6](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-6),

the direction given by the local authority is of no effect to the extent of that conflict.

#### **Compensation where directions given**

1. The appropriate national authority must publish a scheme for the making of payments to persons to whom directions are given under paragraph [5](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-5).

2. The scheme must include provision for a person to whom a direction is given under paragraph [5](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-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)](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-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](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-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)](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-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](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-4).

#### **Guidance**

The appropriate national authority may give guidance as to the exercise by designated local authorities of functions under this Part of this Schedule.

Designated local authorities must have regard to any guidance given under this paragraph.

#### **General provisions about directions and schemes**

A direction or scheme under this Part of this Schedule may:

(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**

A power to give directions under this Part of this Schedule includes power to vary or revoke the directions.

A direction under this Part of this Schedule must be given in writing.

**CORONAVIRUS BILL** - EXPLANATORY NOTES

### **“**509  Part 2 allows National Authorities to designate a Local Authority area where, as a result of Covid-19, there is likely to be insufficient capacity within that area to transport, store or dispose of dead bodies or other human remains. Once an area is designated a Local Authority can give directions to companies or corporations. In addition a National Authority can give the same directions where a regional or national response is more appropriate. The trigger point of this will be a ministerial decision in the relevant nation. The flexibility to direct locally, regionally or nationally provides that powers are only used where necessary, but also used most effectively and in a proportionate way.

510  The directions that can be given are broadly defined, as flexibility as to what may be required to deal with the situation is necessary. However it is expected the following directions may be required: direction to a private company to, for example, extend crematoria operating hours or use their vehicle to transport deceased bodies. The power to direct also includes a power to make directions in relation to a body within an area to be moved to another area.

511  Personal choice for body disposal will be respected as far as possible, however, only where there is no suitable alternative (for example if safe storage limits were likely to be breached and out of area alternatives were not available), the power to direct may be used to direct whether a body is buried or cremated. In this respect it has been necessary to disapply section 46(3) of the Public Health (Control of Disease) Act 1984 which prohibits cremation against the wishes of the deceased. Similar provisions are disapplied in Northern Ireland. Scotland’s legislation only requires due regard to be had to the deceased’s wishes so no equivalent disapplication is needed.

512  There is a step in power for the appropriate National Authority to make a direction in place of a Local Authority where the Local Authority has failed to exercise its functions properly.

513  To the extent that any Local Authority directions conflict with a National Authority direction, the National Authority direction prevails”.

<https://publications.parliament.uk/pa/bills/lbill/58-01/110/5801110en.pdf>

### **PART 3**

### **Power to direct local authorities etc**

**12. Power to direct local authorities etc**

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).

The appropriate national authority may give the local authority directions as to the exercise of its functions in connection with any of those matters.

A direction under this paragraph must be given in writing.

The power to give directions under this paragraph includes power to vary or revoke the directions.

A local authority must comply with a direction under this paragraph.

**CORONAVIRUS BILL** - EXPLANATORY NOTES

“514  Part 3 confers powers on National Authorities to give directions to Local Authorities as to the exercise of their functions where they have failed to exercise functions in relation to dead bodies generally. This allows for central Government to intervene if the Local Authority is not effectively managing the excess deaths in their area.

515  The Schedule comes into effect on Royal Assent, meaning the information powers are available immediately; however, the Direction making powers in Part 2 only are exercisable on designation by a National Authority.”

<https://publications.parliament.uk/pa/bills/lbill/58-01/110/5801110en.pdf>

### **PART 4**

### **Deceased’s wishes etc – cremation & burial**

1. Deceased’s wishes etc

1. Obligations upon local authorities and appropriate national authorities

 In carrying out its functions 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. Obligations upon designated local authorities

 In carrying out its functions 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. National authority must give guidance

 The appropriate national authority must give guidance as to the discharge by local authorities of duties under this paragraph which local authorities must have regard to.

4. Legislation which does not apply to designated local authorities

 It is important to note that the following do not apply to a designated local authority:

a) 13 (4) (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) 13 (4) (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) 13 (4) (c)regulations 6 and 13(a) of the Cremation (Belfast) Regulations (Northern Ireland) 1961 ([S.R. & O. (N.I.) 1961 No. 61](http://www.legislation.gov.uk/id/nisro/1961/61)) (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)](http://www.legislation.gov.uk/ukpga/2020/7/schedule/28/enacted#schedule-28-paragraph-13-5).

7. In this paragraph “designated local authority” means a local authority for the time being designated under paragraph 4.

**CORONAVIRUS BILL** - EXPLANATORY NOTES

“516  Part 4 provides that in carrying out functions under Schedule 28, Local and National Authorities must have regard to the deceased person’s wishes, religion and belief, where known, of the method used for their final committal (i.e. burial or cremation). It also disapplies legislation in paragraph 13(4) prohibiting cremation against the wishes of the deceased, instead requiring authorities to have regard for wishes, where known. In other words, while powers of direction may be used to direct whether a body is buried or cremated, the appropriate Local or National Authority must have regard for the deceased’s wishes.

517  In Scotland, legislation only requires due regard to be had to the deceased’s wishes so no equivalent disapplication is needed. It also requires the appropriate national authority to give guidance to local authorities on discharging their duties under paragraph 13A, and that local authorities must have regard to that guidance.

518  A devolved minister can activate the powers in their country without needing the approval of the other nations.

519  The territorial extent and application of this clause and Schedule is England, Wales, Scotland and Northern Ireland. The powers will be activated within each nation by their respective Ministers if required. The ministers who can activate the powers in the provision are set out in paragraph 14.

<https://publications.parliament.uk/pa/bills/lbill/58-01/110/5801110en.pdf>