

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,664 of 3rd July, 2008

B. 13/08

CREMATORIA ACT 2008

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BILL

FOR

AN ACT to make provision for the management and operation of crematoria and for the regulation of cremations of human remains in Gibraltar.

ENACTED by the Legislature of Gibraltar.

**PART I
PRELIMINARY AND INTERPRETATION**

Title and commencement.

1. This Act may be cited as the Crematoria Act 2008 and comes into operation on the day of publication.

Interpretation.

2. In this Act and unless the context otherwise requires—

“authorised officer” means a person designated by the Minister as an authorised officer under this Act;

“Competent Authority” means such person or persons as the Minister may appoint for the purposes of this Act;

“cremated human remains” means—

- (a) a corpse of a human being (including a corpse of a still-born child) which has been cremated in a crematorium;

(b) body parts which have been cremated in a crematorium;

“cremation approval” means an approval to cremate bodily remains at a crematorium granted by the Registrar of Births and Deaths under this Act;

“crematorium” means a building or structure fitted with appliances for the purposes of cremating bodily remains and approved for the purposes of cremation pursuant to the provisions of this Act;

“Minister” means the Minister responsible for the environment;

“place of interment” means a grave, vault, mausoleum, niche wall or any other structure or plot used for the interment of cremated human remains;

“public grave” means a grave for multiple interments in which more than one person may be interred and in respect of which more than one person may be granted a right of interment that permits one interment only and no re-use of the grave by the holder of the right of interment;

“registered medical practitioner” means a medical practitioner registered under the Medical and Health Act 1997;

“Registrar of Births and Deaths” shall be construed in accordance with the provisions of the Births and Deaths Registration Act.

PART II CREMATORIA

Applications for, and approval of, licences to operate a crematorium.

3.(1) An applicant for a licence to act as or hold himself, herself or itself out as an operator of a crematorium must submit to the Minister—

- (a) the site and building plans for the crematorium;
- (b) a document signed by an engineer approved for the purposes of this Act by the Minister that certifies that—

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- (i) the crematorium is constructed in accordance with the plans referred to in paragraph (a),
 - (ii) a test of the operation of the crematorium has been completed and the test demonstrated that the crematorium operates in accordance with the manufacturer's specifications; and in full compliance with Gibraltar and EU provisions applicable from time to time touching upon the operation and management of such plant, and
 - (iii) the engineer has the necessary knowledge, skill and experience to certify this document;
- (c) if the applicant is a corporation,
- (i) the names of all the directors, senior officers, and beneficial owners of the voting shares of the corporation, and
 - (ii) copies of the most recent financial statements or, if a newly incorporated company is the applicant, a statement of the proposed financial organisation of the company;
- (d) if the applicant is a partnership, the full name and address of each partner in the partnership;
- (e) if the applicant is a sole proprietorship, the full name and address of the proprietor;
- (f) unless a different fee is required by the Minister, the prescribed fee.

(2) Where the Minister receives an application pursuant to subsection (1), he may, in his discretion, approve the application subject to such conditions as he may, from time to time, deem fit to impose.

(3) Without prejudice to the generality of subsection (2), conditions subject to which a licence is issued may include the following—

-
- (a) emissions limits and controls to any discharges to air, land and water and requiring;
 - (i) the monitoring of such emissions,
 - (ii) the keeping of records of such emissions, the length of time that these records are to be kept, and the manner and frequency in which these records have to be provided to the Competent Authority;
 - (b) the maintenance and upgrading requirements of any plant, equipment and building;
 - (c) the provision of adequate stocks of spares and consumables to ensure that any breakdowns are rapidly rectified;
 - (d) the material to be used in the construction of caskets and coffins used to contain corpse;
 - (e) restricting the materials of garments and other articles that may be cremated with any corpses;
 - (f) the fuel to be used for the cremations;
 - (g) training requirements of staff operating the crematorium;
 - (h) the requirement to notify the Competent Authority if there is any intention to change any aspect of the crematoria which may affect the substances or concentration or amount of substances being discharged to air, land or water.

Obligations of crematorium operator.

4.(1) Operators shall ensure that—

- (a) all necessary precautions are taken to prevent unauthorised cremations being carried out at the crematorium;
- (b) cremations are conducted in accordance with such conditions as the Competent Authority may, from time to time, impose pursuant to section 3; and

- (c) the plant complies at all times with all relevant statutory provisions or rules of law including rules established by the European Communities.

(2) Before an operator of a crematorium adds an appliance that is not covered by the operator's licence or modifies or replaces an appliance for that crematorium, the operator must apply to the Competent Authority for approval.

(3) To apply for approval in the circumstances described in subsection (2), an operator must submit a certified statement of an engineer approved by the Minister for the purposes of this Act that the appliance added, modified or replaced, as the case may be, is suitable for the cremation of human remains.

(4) This section does not apply to the annual or other routine maintenance recommended by the manufacturer of the appliance.

Records related to cremation.

5.(1) An operator of a crematorium must keep records of each cremation performed at the crematorium in such form as the Competent Authority may require to include—

- (a) the name, identity number, address, age, occupation, sex and marital status of the deceased;
- (b) the date of death;
- (c) the date and serial number of the cremation and the times at which the cremation started and ended;
- (d) the name, identity number and mailing address of a person who had a kinship relationship with the deceased, and who applied for the cremation;
- (e) the name, designation and address of the person issuing the certificate of the cause of death of each person cremated;
- (f) the person to whom the cremated remains were released, or the manner in which the remains were disposed of;

- (g) a copy of any written authorisation or approval required under this Act;
- (h) the type of container used for the cremation; and
- (i) such other information as the Minister may from time to time prescribe by notice in the Gazette.

(2) Before or at the time that an operator of a crematorium ceases to carry on business, the operator—

- (a) must notify the Minister of this fact, and
- (b) must provide, in a manner satisfactory to the Competent Authority, for the safekeeping of the records required to be kept under this section.

PART III CREMATION

Cremation generally

Interment of cremated human remains.

6. Subject to this Act, cremated human remains may be interred or disposed of in a public cemetery, but are not required to be interred or disposed of in a public cemetery.

Unlawful cremation.

7. Subject to regulations made by the Minister under section 36, a person must not cremate bodily remains or assist in the cremation of bodily remains at any place other than—

- (a) at a crematorium approved under Part II; and
- (b) in accordance with any conditions attached to the approval,

in default of which the person responsible will be liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or both.

Offence to cremate without cremation authorisation.

8.(1) A person must not cremate bodily remains or assist in the cremation of bodily remains unless the Registrar of Births and Deaths has granted a cremation authorisation for the cremation.

(2) A person responsible for any act or omission contrary to subsection (1) will be liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or both.

Cremation authorisation

Application for cremation authorisation.

9.(1) A person who wishes bodily remains to be cremated may apply to the Registrar of Births and Deaths for a cremation authorisation.

(2) An application for a cremation authorisation must be in the prescribed form and may be made by any of the following—

- (a) the executor or nearest surviving relative of the deceased or a person duly authorised thereby;
- (b) any other person giving sufficient reason as to why the application is not made by a person referred to in paragraph (a).

(3) An application for a cremation authorisation must be accompanied by any of the following—

- (a) a certificate of a registered medical practitioner stating that there is no impediment to cremation in the prescribed form;
- (b) a certificate from the Coroner under the Coroner Act certifying that he has no objection to cremation;
- (c) if the deceased person died in another State or Territory or overseas, an authority to cremate under the hand of the Coroner or other person permitted by the law of the jurisdiction where the deceased died to the effect that he has no objection to cremation;

- (d) if the cremation authorisation is for a still-born child—
 - (i) a notice of still-birth under the Births and Deaths Registration Act; or
 - (ii) if the still-birth occurred in another State or Territory or overseas, a document corresponding to a notice of still-birth under the Births and Deaths Registration Act from the jurisdiction where the still-birth occurred.

Offence to make false statement in application for cremation authorisation.

10. A person must not make a false statement in an application for a cremation authorisation, in default of which the person responsible will be liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or both.

Grant of cremation authorisation.

11.(1) The Registrar of Births and Deaths must not grant a cremation authorisation unless he is satisfied that the requirements of this Part have been met in relation to that application.

(2) The Registrar of Births and Deaths must not grant a cremation authorisation where the deceased has left wishes to the contrary in a testamentary instrument or act within the meaning of the Wills Act.

Minister may grant cremation approval.

12. The Minister may grant written approval for the cremation of bodily remains at a crematorium if the requirements of this Part cannot be met due to special circumstances, subject to such conditions as he may deem fit to impose.

Offence to make false statement in applications.

13. A person must not make a false statement in any application to which this Part relates, in default of which the person responsible will be liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or both.

Signing of certificate by a registered medical practitioner authorising cremation.

14. For the purposes of this Part, a certificate of a registered medical practitioner stating that there is no impediment to cremation must be signed by a registered medical practitioner who is not the registered medical practitioner who signed the notice as required under section 21 of the Births and Deaths Registration Act in respect of the death of the deceased person who is to be cremated.

Refusal to sign certificate of registered medical practitioner.

15. If a registered medical practitioner refuses to sign a certificate under section 14, he or she must clearly endorse that fact on the certificate.

Offence to make false statement in certificate of registered medical practitioner.

16. A person must not make a false statement in a certificate of a registered medical practitioner under section 14, in default of which the person responsible will be liable on summary conviction to a fine at level 5 on the standard scale or 6 months imprisonment or both.

Offence to inter cremated human remains in public cemetery without authority.

17.(1) Subject to the provisions of Part IV, a person must not inter cremated human remains or assist in the interment of cremated human remains in a public cemetery unless the Superintendent of the Cemetery has authorised the interment with the consent of the Registrar of Births and Deaths, in default of which the person responsible will be liable on summary conviction to a fine at level 5 on the standard scale.

(2) The Minister may, by regulations, make provision for fees relative to the interment of cremated human remains in a public cemetery.

**PART IV
CREMATION AND BURIAL OF UNCLAIMED HUMAN REMAINS**

Prescribed person may apply for order.

18. The Registrar of Births and Deaths may apply to the Magistrates' Court or a Coroner for an order under this Part.

Magistrates' Court may make order.

19. The Magistrates' Court or a Coroner may make an order requiring the Registrar of Births and Deaths –

- (a) to cremate the remains of any person;
- (b) inter those cremated human remains free of charge in the public cemetery; and
- (c) to–
 - (i) place a plaque on the place of interment setting out the following information, or
 - (ii) ensure the following information is placed in a register maintained by such person and in such form as the Minister may see fit–

the name, date of birth or age at death and date of death of the deceased person (if known),

where it appears to the court or Coroner that the person has no next of kin or the next of kin are unable or unwilling to assume responsibility for such human remains.

Order to generally specify cremation.

20.(1) An order under this Part must include a direction requiring the Registrar of Births and Deaths to arrange for the cremation of the bodily remains of the person unless he is satisfied that–

- (a) the wishes or religious beliefs of the deceased person in relation to cremation are unknown;
- (b) cremation was contrary to the wishes or religious beliefs of the deceased person; or
- (c) it is not practicable for the bodily remains to be cremated.

(2) The Registrar of Births and Deaths must comply with an order made under this Part.

PART V ENFORCEMENT

Enforcement powers

Appointment of authorised officers.

21. The Minister, by notice in the Gazette, may designate as an authorised officer any person or persons he deems fit and proper for the purpose.

Identity card.

22.(1) The Minister must issue an identity card to each authorised officer.

(2) An identity card must contain a photograph of the authorised officer to whom it is issued.

Requirement to produce identity card.

23. An authorised officer must produce his or her identity card for inspection—

- (a) before exercising a power under this Part; and
- (b) at any time during the exercise of the power under this Part if asked to do so.

Powers of entry and inspection.

24.(1) For the purposes of monitoring compliance with this Act, an authorised officer, without a warrant or consent and with such assistance as he or she thinks necessary, may—

- (a) enter any place being used as a crematorium or where a cremation is taking place;
- (b) inspect and take copies of or take extracts from any documents relating to the crematorium or the cremation taking place;
- (c) require a specified person at the place—
 - (i) to answer a question to the best of that person's knowledge, information and belief,
 - (ii) to take reasonable steps to produce documents;
- (d) test any equipment or facility at the place;
- (e) seize any document or equipment at the place, if the authorised officer believes on reasonable grounds that the document or equipment relates to a contravention of this Act.

(2) An authorised officer must not enter or search any place under subsection (1) unless, before that entry or search, the authorised officer—

- (a) has produced his or her identity card for inspection; and
- (b) has informed the occupier of the purpose of the entry or search.

(3) An authorised officer may only exercise powers under this section during normal business hours.

(4) If, under subsection (1)(c), an authorised officer requires any person to answer a question to the best of that person's knowledge, information and belief or to take reasonable steps to produce documents, the authorised officer must advise the person that it is a reasonable excuse for that person to refuse to comply with the request if it would tend to incriminate that person.

Retention and return of seized documents or equipment.

25. If an authorised officer seizes any document or equipment under section 24, he or she must—

- (a) give notice of the seizure to—
 - (i) the person apparently in charge of the document or equipment, or
 - (ii) an occupier of the place; and
- (b) return the document or equipment to that person or the place within 2 business days after seizing it, unless the document or equipment is brought before the Magistrates' Court within that period.

Search warrants.

26.(1) An authorised officer or a member of the police force may apply to a magistrate for the issue of a search warrant in relation to a particular premises or a place if the authorised officer or the member of the police force believes on reasonable grounds that an offence against this Act has been committed.

(2) If a magistrate is satisfied, by the evidence on oath or by affidavit of the authorised officer or the member of the police force (as the case requires), that there are reasonable grounds for believing that an offence against this Act has been committed, the magistrate may issue a search warrant, authorising an authorised officer or a member of the police force named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—

- (a) to enter the premises or place specified in the warrant, if necessary by force; and
- (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;

- (iii) secure against interference;
- (iv) examine and inspect;
- (v) make copies of or take extracts from—

a thing or things of a particular kind named or described in the warrant and which the authorised officer or the member of the police force believes, on reasonable grounds, to be connected with the commission of an offence against this Act.

(3) A search warrant issued under this section must state—

- (a) the purpose for which the search is required;
- (b) any conditions to which the warrant is subject;
- (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
- (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

Announcement before entry.

27.(1) On executing a search warrant, the person executing it—

- (a) must announce that he or she is authorised by the warrant to enter the premises or place; and
- (b) if the authorised officer or the member of the police force has been unable to obtain unforced entry, must give any person at the premises or place an opportunity to allow entry to the premises or place.

(2) An authorised officer or a member of the police force need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises or place is required to ensure—

- (a) the safety of any person; or

- (b) that the effective execution of the search warrant is not frustrated.

Details of warrant to be given to occupier.

28.(1) If the occupier is present at the premises or a place where a search warrant is being executed, the person executing the warrant must—

- (a) identify himself or herself to the occupier; and
- (b) give a copy of the warrant to the occupier.

(2) If the occupier is not present at the premises or a place where a search warrant is being executed, the person executing the warrant must—

- (a) identify himself or herself to a person at the premises or place; and
- (b) give a copy of the warrant to the person.

Copies of seized documents.

29.(1) If an authorised officer or a member of the police force retains possession of a document taken or seized from a person under a warrant, the authorised officer or the member of the police force (as the case requires) must give the person a copy of the document certified as correct by the authorised officer or the member of the police force (as the case requires).

(2) A copy of a document certified under subsection (1) must be given within 21 days of the seizure.

(3) A copy of a document certified under subsection (1) is to be received in all courts as evidence of equal validity to the original.

Refusal or failure to comply with requirement.

30. A person must not refuse or fail, without reasonable excuse, to comply with a requirement of an authorised officer under this Part, in default of which he will be liable on summary conviction to a fine at level 5 on the standard scale.

Offence to hinder or obstruct authorised officer.

31. A person must not, without reasonable excuse, hinder or obstruct an authorised officer exercising a power under this Part, in default of which he will be liable on summary conviction to a fine at level 5 on the standard scale.

Offence to give false or misleading information.

32.(1) A person must not give information to an authorised officer under this Part that the person believes to be false or misleading in any material particular.

(2) A person must not produce a document to an authorised officer under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

(3) Any person found guilty of any act or omission contrary to this section is liable on summary conviction to 12 months imprisonment and to a fine at level 5 on the standard scale.

Protection against self-incrimination.

33. It is a reasonable excuse for a natural person to refuse to answer a question of an authorised officer or give information or produce a document to an authorised officer or do any other thing that the person is required to do by or under this Part if the answering of the question, giving of the information, production of the document or the doing of the thing will serve to incriminate the person.

Offence to dispose of falsely identified bodily remains.

34.(1) A person must not knowingly cremate or arrange for the cremation of falsely identified bodily remains.

(2) Any person found guilty of any act or omission contrary to this section is liable on conviction on indictment to 5 years imprisonment and to a fine.

Offences by bodies corporate.

35. If a body corporate is guilty of an offence against this Act, any person who is concerned in or takes part in the management of that body corporate who knowingly authorised or permitted the contravention is also guilty of that offence and liable to the penalty for that offence.

Regulations.

36.(1) The Minister may make regulations prescribing anything required to be prescribed and generally for the effective administration of this Act.

(2) Without prejudice to the generality of the foregoing, regulations made under this section may make provision for such fees and forms as the Minister may deem appropriate.

EXPLANATORY MEMORANDUM

This Bill makes provision for the licensing and regulation of crematoria and cremations. Provision is also made for the procedure necessary prior to cremation. Finally, provision is made for offences and enforcement.

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