

# Who has the authority to make Funeral Arrangements in Scotland

Losing a loved one, whether family or friend, is a painfully difficult time in our lives. Many people find themselves cast into a place of great chaos. This is not only as they begin to grieve personally but also as they reckon with the great practical burden that comes in the aftermath of a bereavement. A funeral should be a time to allow for all those affected by the loss to come together in unity to mourn and support one another. To help provide clarity in this time of uncertainty, this document provides an outline of guidance for funeral directors in Scotland. We focus on who has the authority to make funeral arrangements, based on the Burial and Cremation (Scotland) Act 2016, particularly [Section 65](#), and other relevant sections. It also includes practical considerations and references to notable cases.

## 1. Overview of Authority to Arrange Funerals in Scotland

- **Primary Legislation:** The Burial and Cremation (Scotland) Act 2016 came into force on the 28<sup>th</sup> of December 2016.
- This Act governs funeral arrangements. It was introduced to modernise the law in Scotland, and it aims to provide some clarity to what previously had been highlighted as a particularly uncertain area of law. Section 65 specifically addresses the authority to make arrangements for the disposal of the deceased.
- **Key Principle:** The person with the closest connection to the deceased typically has the authority to arrange the funeral, unless there is an executor or other legal representative appointed in the deceased's will and instructed to make the necessary arrangements on death.
- Traditionally, the key element that the law seeks to establish is whether the deceased made an "Arrangement on Death Declaration" during their lifetime. This is a declaration by an individual stating who should be responsible for implementing their funeral instructions. A declaration can take many forms (written or verbal) but most often this will be included within an individual's Will. Where someone sets out funeral wishes in their Will but does not specify who should implement them, such wishes will not qualify as an 'Arrangements on Death Declaration'. The Burial and Cremation (Scotland) Act clarifies what should happen in the absence of an 'Arrangements on Death Declaration' being made.
- The Act does not take into account more modern families. Issues could arise in the absence of a death declaration if an adult was married (but not yet divorced). This may leave a new co-habiting partner or children (possibly from a relationship other than the marriage) out in the cold when it comes to arranging the funeral if the surviving spouse does not decline to assume responsibility for the funeral.

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## 2. Hierarchy of Authority to Make Funeral Arrangements

- **Executor of the Will:** Even if there is a will, the executor **does not** the primary right to make funeral arrangements. The Executor will only have the ability to do so if an 'Arrangements on Death Declaration' can be established in their favour.
- A practical example of this in a Will may be "*I direct my **Executors** that it is my wish be buried and for my **Executors** to make all necessary arrangements in this regard*".
- In absence of the above, the Burial and Cremation Act 2016 will always dictate the hierarchy for the "nearest relative" who shall have authority.
- **Nearest Relative:** The hierarchy for determining the 'nearest relative' provided for by the Act is as follows:
  1. Spouse or civil partner
  2. Co-habitant
  3. Children (including adopted & step)
  4. Parents
  5. Siblings
  6. Grandparents
  7. Grandchildren
  8. Uncles/aunts
  9. Cousins
  10. Niece's and nephew
  11. Longstanding Friends
- Whilst the Act will not prevent disputes arising in relation to arranging a funeral, it does provide much needed clarity as to who should make the funeral arrangements, in the absence of instructions to the contrary. If there is more than one person in a group (e.g. children) then they should make decisions collectively. If they cannot agree, then a claim can be brought before a sheriff.

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## • 3. Funeral Arrangements in the Absence of a Will or Next of Kin

- If no family members or next of kin can be identified or are willing to arrange the funeral, a friend or other person with a connection to the deceased can make arrangements, provided they are willing to take on the responsibility and associated costs.
- **Council Responsibility:** If no one comes forward to arrange the funeral, the local council may take responsibility under [Section 87](#) of the Act. This is typically done in cases where there are no known relatives, or the relatives are unable or unwilling to make arrangements.
- **Funeral Payment:** The person who arranges the funeral is usually responsible for the costs, unless otherwise stipulated by the Will or other provisions.

## 4. Disputes Over Funeral Arrangements

- **Family Disputes:** In cases where there is a dispute among family members or between an executor and family members about funeral arrangements, the ['Arrangement on Death Declaration'](#) or ['Nearest Relative'](#) will prevail. However, disputes can be resolved by mutual agreement or, failing that, by court intervention.
- **Court Orders:** If a dispute cannot be resolved, parties may seek a court order to enforce the right to make funeral arrangements. Funeral directors should pause all arrangements until the dispute is settled.

## 5. Funeral Directors' Role in Cases of Dispute

- **Interim Measures:** Funeral directors should halt all arrangements if there is any indication of a dispute or if an objection is raised by a person who has a legal interest (e.g., an executor or a next of kin).
- **Documenting Decisions:** Keep detailed records of all communications and decisions, including written objections, agreements, or court orders.
- **Professional Advice:** In contentious situations, seek legal advice or guidance from professional bodies such as the [Scottish Association of Independent Funeral Directors](#) (SAIF).

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## 6. Authority in Cases of Pre-Paid Funeral Plans

- **Pre-Paid Funeral Plans:** If there is a pre-paid funeral plan, the person designated on the plan as the representative typically has authority to make the arrangements, unless overridden by a Will containing an 'Arrangements on Death Declaration'
- **Contacting Representatives:** Funeral directors must make reasonable efforts to contact the representative named in a funeral plan before proceeding with arrangements.

## 7. Other Considerations for Funeral Directors

- **Verifying Authority:** Always verify the authority of the person instructing the funeral. Obtain copies of the Will, any executor documents (such as valid I.D and proof of address), or other relevant legal documentation.
- **Handling Sensitive Information:** Maintain confidentiality and handle all personal information in accordance with the Data Protection Act 2018 and GDPR regulations.
- **Dealing with Multiple Executors or Next of Kin:** If there are multiple executors with authority through an 'Arrangement on Death Declaration' or Nearest Relatives, ensure all parties agree on whether one will take the lead in arranging the funeral or if this will be jointly administered responsibility. Obtain written consent where possible.
- **Time Constraints:** Be mindful of legal and practical time constraints, such as those related to burial or cremation processes. If necessary, seek guidance from local authorities or legal advisors.
- **Children:** There are similar provisions in place when you are dealing with the funeral of children (anyone under the age of 16) found in [Section 66](#) of the Act. A child cannot leave an 'Arrangements on Death Declaration', despite being able to sign a Will at the age of 12. The Act provides the following hierarchy for defining the "nearest relative" for a child:
  1. Parent or person who held parental rights and responsibilities.
  2. Siblings.
  3. Grandparent.
  4. Uncle or Aunt.
  5. Cousin.
  6. Niece or nephew.
  7. Longstanding friends.

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## 8. Conclusion

Understanding who has the authority to make funeral arrangements in Scotland is essential for funeral directors to ensure compliance with the law and to manage sensitive situations effectively. Always prioritize clear communication, legal verification, and seek professional advice in cases of uncertainty or dispute.