

Insight

## Coronavirus: Powers to direct between burials and cremation

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This is a fast-moving issue and should be read as correct at the date of publication (27.03.20).

The Government's new emergency powers might have consequences for conducting funerals.

In particular, there are concerns that the new powers, which were enacted on 25 March, could result in a body being cremated against the wishes of the deceased or their family. Cremation is against the requirements of some religions. The Government [says that this isn't what's intended](#).

This Insight will explain the new emergency powers in relation to how deaths might be managed during the Covid-19 pandemic.

### Why did the Government need new powers for dealing with deaths?

The Government anticipates that local death management systems could become overwhelmed during the Covid-19 pandemic. The [Coronavirus Act 2020](#) (the Act), which became law on 25 March 2020, includes new powers to deal with this possibility.

### What are the new powers?

The Act is intended to enable the Government to manage the effects of the pandemic and to respond to an emergency situation.

Among other things, the Act contains broadly defined powers for national and local authorities to direct matters related to the transportation, storage and disposal of dead bodies.

These powers can be used only if a Government Minister in the relevant nation decides to activate them.

If the powers are activated, the Government foresees that local authorities may choose, for example, to direct local funeral directors, mortuaries owners, crematoria owners and others, to streamline the death management process.

This may include an increase in the operating times of crematoria, directing companies to use their vehicles to move bodies, or directing others not directly involved in the funeral sector, to provide necessary support.

## Powers to decide between burial or cremation

One of the powers in the Act would enable a local or national authority to direct whether a deceased person must be buried or cremated.

Following an amendment to the legislation as it passed through Parliament, the Act now specifies that any local or national authority exercising this power (if it is activated) must “have regard to the desirability of” disposing of a dead person’s body in accordance with the person’s wishes, or otherwise in accordance with the person’s religion or beliefs, if known.

Local authorities will have to follow guidance issued by national authorities when exercising their power.

Under existing public health legislation, local authorities must not arrange for a body to be cremated if contrary to the wishes of the deceased. Under the new powers, this would be suspended. However, the Government has stated that personal choice for body disposal will be respected as far as possible.

## When might the new powers be used?

The Act 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 the deceased.

Once an area is designated, a local authority will be able to exercise the power to give directions on how deaths will be managed. Where a regional or national response is more appropriate, a national authority could give the same directions itself, rather than leaving it to individual local authorities to give directions.

The Government has said that the powers of direction will be used “only in the most extreme situations where there is a risk to public health”, and only “when scientific evidence and operational advice suggests that it is necessary.”

In this instance, the powers would be activated to “ensure the local death management system continues to work effectively to protect public health and the dignity of the deceased.”

## Could this mean enforced cremation?

Some faith groups, including Muslims and Jews, for whom burial, rather than cremation, is a religious requirement, have raised concerns about the prospect of cremation against the wishes of the deceased and their families.

This issue was raised in both Houses of Parliament in debates on the new law. For example, Lord Sheik (Conserative) stressed that, “Islam strictly forbids cremation of the

deceased in any circumstances.” Yasmin Qureshi (Labour) questioned the wording of the legislation. She suggested it could state clearly that if somebody does not wish to be cremated, they will not be cremated.

In the House of Commons, Penny Mordaunt, the Paymaster General, replied on behalf of the Government. The Minister said she could not foresee any circumstances in which a person would be cremated against their wishes. She also said the Government had worked with faith groups on the issue.

In the House of Lords, Lord Bethell, a junior Minister at the Department of Health and Social Care, stressed that local authorities will have discretion, “to make arrangements with the communities that they know best.”

Lord Bethell said that faith communities will be involved in drawing up the statutory guidance that will be issued before any direction affecting burial or cremation is made.


## Further reading

[Coronavirus Bill: Managing the deceased](#), *House of Commons Library*.

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