



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Crematorium Ordinance 6 of 1971
section 10

**Regulations relating to Crematoria and
the Cremation of Human Remains**

Government Notice 331 of 1975

(OG 3503)

came into force on date of publication: 17 November 1975

as amended by

Government Notice 139 of 1978 (OG 3503)

came into force on date of publication: 1 June 1978

ARRANGEMENT OF REGULATIONS

[The individual regulations have no headings, but are grouped under part headings.]

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1. In these regulations, unless the context otherwise indicates.

“medical referee” shall mean the medical referee or deputy medical referee appointed in terms of regulation 5;

“Ordinance” shall mean the Crematorium Ordinance, 1971 (Ordinance 6 of 1971);

“registrar” shall mean a registrar appointed by the proprietor of a crematorium in terms of regulation 18;

“Executive Committee” shall mean the Administrator-in-Executive Committee referred to in section 6 of the South West Africa Constitution Act, 1968 (Act 39 of 1968),

and any other words and expressions shall have the same meanings as those assigned to them in the Ordinance.

ESTABLISHMENT OF CREMATORIA

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2. (1) Any application for approval to establish or construct a crematorium and any application for a certificate of registration in respect of a crematorium shall be addressed in writing to the Secretary for South West Africa and such application shall be accompanied by -

- (a) a plan of locality on a scale of 1 : 1000 showing the exact position of the site of the proposed crematorium in relation to the boundaries of the land upon which it is proposed to erect it and also all public roads, streets, thoroughfares or public places and all privately owned properties situated within 200 metres from any boundary of such site;
- (b) detailed plans and specifications of the proposed crematorium together with complete information on the equipment and appliances to be installed and the methods to be used in the cremation of human remains;
- (c) unless it is to be established in a cemetery under the management and control of a local authority, the written consent of every owner and occupier of land, the boundaries of which are situate within 200 metres from any boundary of the site of establishment of the proposed crematorium;
- (d) proof of the nature of the title under which the land intended for the purposes of a crematorium is held and whether such land is subject to any mortgage charge or trust.

(2) Every application for approval to establish or construct a crematorium shall furnish the full name and address of the prospective proprietor of the proposed crematorium.

3. Upon receipt of an application for approval for the establishment of a crematorium the Executive Committee may, if it deems it expedient to do so, require the applicant to advertise his intention to establish a crematorium once in the *Official Gazette* and once in a newspaper circulating in the Territory of South West Africa in the form prescribed hereunder:

NOTICE OF INTENTION TO ESTABLISH A CREMATORIUM

I (full name and surname)

of (complete residential and business address)

intend to establish a crematorium at (complete address and particulars of site, local authority area and district)

A plan of locality of the site and also plans and specifications of the proposed crematorium lie open for inspection at

Any objections to the proposed crematorium should be lodged with the Secretary for South West Africa within thirty days from the date of publication of this advertisement.

3.A. No departure from the approved plans and specifications shall be permitted without the prior consent of the Executive Committee.

**[Regulation 3A is numbered as such in the initial *Official Gazette*.
It was not added as an amendment.]**

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MANAGEMENT CONTROL AND MAINTENANCE OF CREMATORIA

4. (1) Every crematorium shall be open for inspection by an inspector at all reasonable times and the proprietor shall aid and render assistance to such inspector to enable him to carry out a proper inspection.

(2) Every crematorium and all equipment, appliances and fittings forming part of it and used in connection therewith, shall be kept in good and proper working order and also be kept in a clean and orderly manner.

(3) The proprietor of such crematorium shall maintain adequate staff to ensure that every cremation is performed in accordance with the provisions of the Ordinance and the regulations.

APPOINTMENT OF MEDICAL REFEREE

5. (1) The proprietor of a crematorium shall appoint a medical referee and one or more but not more than three deputy medical referees, who shall act as medical referee in case of the absence of the medical referee or in any case in which the medical referee has been the physician of the deceased.

(2) Every medical referee and deputy medical referee shall be a registered medical practitioner of not less than five years practical experience.

(3) No appointment as medical referee or deputy medical referee shall be made without the prior approval of the Executive Committee and in making application for such approval the proprietor shall furnish the Executive Committee with particulars concerning the name, address qualifications and experience of the medical practitioner whom he intends to appoint as medical referee or deputy medical referee, as the case may be.

CONDITIONS SUBJECT TO WHICH CREMATIONS SHALL BE PERFORMED

6. (1) No cremation of human remains may be performed save in accordance with the provisions of the Ordinance and these regulations.

(2) No provision herein contained shall be deemed to exempt the proprietor of a crematorium from any duty to comply with the regulations, which shall not be in conflict with the Ordinance or these regulations, of the local authority within whose area of jurisdiction such crematorium is situated or any other relevant act.

APPLICATION FOR AUTHORITY TO CREMATE HUMAN REMAINS

7. (1) Every application to cremate human remains shall be made to the registrar in the form, prescribed in Schedule A hereto and the particulars stated therein shall be confirmed by way of a solemn declaration as provided therein.

(2) Every such application and solemn declaration shall be made by the estate of the deceased or by the nearest surviving blood relation of the deceased or, if the application and solemn declaration cannot be made by such executive or nearest surviving blood relation, the person doing so shall furnish to the register a satisfactory reason for his making such application and shall prove to the satisfaction of the register that he is competent to make such application.

ADDITIONAL DOCUMENTS REQUIRED

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8. (1) Every application made in terms of regulation 7 shall be accompanied by -
- (a) a burial order issued in terms of the provisions of the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963);
 - (b) a certificate in the form prescribed in Schedule B hereto issued by the medical practitioner who attended the deceased during his last illness, saw and identified his body after death and who can issue a certificate as to the cause of death;
 - (c) a confirmatory medical certificate prescribed in Schedule C hereto issued after examination of the body by a medical practitioner other than the medical practitioner referred to in paragraph (b) who shall possess the qualifications prescribed in regulation 10:

Provided that, in lieu of the certificates referred to in paragraphs (b) and (c), such application may be accomplished by a certificate in a form prescribed in Schedule hereto furnished after a post-mortem examination of the body by a medical practitioner who is a specialist in pathology or who is on the staff of a department of pathology of a university or who is on the staff of a Government institution where he is required to conduct post-mortem examinations or who is a district surgeon and has been assigned by the proprietor or by a magistrate.

(2) If the medical referee has personally investigated the cause of death he may issue the certificate required in terms of subregulation (1)(c) and if he has held the post-mortem examination, he may issue the certificate required in terms of the provision to subregulation (1).

AUTHORITY FOR CREMATION

9. (1) No cremation shall take place unless the proprietor has received a written authority to that end from the medical referee in the form prescribed in Schedule E hereto.

(2) No human remains shall be presented for cremation or be expected for cremation by the proprietor unless such remains are in a coffin manufactured as prescribed in subregulation (3) and so covered or enclosed that it causes no nuisance of offence.

[The word "of" should be "or" in the closing phrase "nuisance or offence".]

- (3) (a) Every coffin in which human remains are presented for cremation shall not exceed 2,2 meters in length, 8,85 meters in width and 0.5 meters in depth and shall be manufactured from readily combustible wood.
- (b) Metal nails and screws shall not be used in such coffin and pitch, sawdust or any other material which is not easily combustible shall not be present therein.
- (c) The coffin may be polished and may have handles and a breast plate which, unless they consist of readily combustible material, shall be so fitted to ensure that it can easily be removed.

[The pronoun "it" should be "they" to accord with the subject "handles and a breast plate".]

- (d) There shall be no crossbars or projections at all under the base or on the bottom of the coffin and all dowels in this part of the coffin shall be countersunk.

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- (e) If necessary, a thin zinc lining may be inserted in the coffin, but no metal other than zinc shall be used.
- (4) The proprietor shall refuse to cremate the human remains if the coffin containing such remains does not comply with the provisions of subregulation (3).
- (5) (a) Notwithstanding anything to the contrary in this regulation, human remains may be presented and accepted for cremation in an inner coffin complying with the provisions of subregulation (3) and which are enclosed in a suitable outer coffin: Provided that the executor or nearest blood relation or other person responsible for the payment of the costs of cremation shall give to the proprietor of the crematorium a written statement that he is aware that such outer coffin shall not be incinerated and that he shall remove such outer coffin from the crematorium building immediately after the cremation has taken place.
- (b) The registrar or a senior official of the crematorium appointed by him, shall in every case endorse the application for cremation form with the steps taken in regard to the outer coffin.
- (6) No human remains presented for the purpose of cremation shall be removed from a coffin or where they are in an inner coffin enclosed in an outer coffin, from such inner coffin and no coffin or inner coffin, as the case may be, shall be opened at a crematorium except where the proprietor, an authorised official of the crematorium, an inspector appointed in terms of section 7 of the Ordinance or a police officer duly authorised thereto so requires or unless it takes place in terms of regulation 11(1)(g)

[The full stop is missing at the end of subregulation (6) in the *Official Gazette*.]

- (7) No person shall be allowed into the furnace chamber of a crematorium unless the written consent of the proprietor or of an official of the crematorium authorised thereto by the proprietor has been obtained beforehand.
- (8) The register or a responsible official of the crematorium shall at all times be present during cremations at the crematorium.

CONFIRMATORY MEDICAL CERTIFICATE

10. The confirmatory medical certification referred to in regulation 8(1)(c) shall, if not issued by the medical referee, be issued by a medical practitioner with at least five years experience who is not a blood relation of the deceased nor a blood relation, partner or assistant of the medical practitioner who issued the certificate referred to in regulation 8(1)(b).

WHEN CREMATIONS ARE NOT AUTHORISED

- 11.** (1) The medical referee shall not authorise any cremation -
- (a) if the deceased left a written instruction to the contrary;
- (b) if the human remains in respect of which the application has been made, have not been identified;
- (c) if the burial order referred to in regulation 8(1)(a) is not produced;

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- (d) unless he has ascertained after examination that the application and certificates required by these regulations have been handed in and that they comply with the requirements of these regulations and that the examination by the persons issuing the certificates, has been adequate: Provided that he may, for this purpose, as he deems fit, conduct any examination in respect of the application and certificates;
- (e) unless he is satisfied that the application is made by the executor or nearest blood relation of the deceased, or, if it is made by some other person that a satisfactory explanation has been given as to why the application cannot be made by the executor or nearest surviving blood relation and that the person making such application is capable of acting;
- (f) unless he is satisfied that the fact and cause of death have been ascertained beyond reasonable doubt;
- (g) if he has reason to believe that the cause of death was poisoning, violence, criminal neglect, an unlawful operation, privation or negligence or if any suspicious circumstances in connection with the death of the deceased exist whether revealed in any certificate or otherwise coming to his knowledge.

(2) Where the medical referee refuses to grant authority for the cremation of any human remains he shall not be under any obligation to state his reasons for such refusal.

PERSONS DYING OUTSIDE SOUTH WEST AFRICA

12. In the case of an application for authority to cremate a person who has died outside the Territory of South West Africa, the medical referee may accept a sworn affidavit or a solemn declaration containing the particulars set out in Schedule A hereto if such declaration is made before any person having in that place authority to administer an oath or to take a declaration and he may accept certificates in the forms set out in Schedules B, C and D hereto if such certificates are signed by medical practitioners who have, to his satisfaction, furnished proof that they possess qualifications substantially equivalent to those prescribed for medical practitioners issuing such certificates in terms of regulation 8.

CREMATION WHERE REMAINS WERE BURIED FOR MORE THAN ONE YEAR

13. (1) Regulations 7, 8, 10, 11 and 12 shall not apply to the cremation of the remains of a deceased who has been buried for not less than one year.

(2) Such remains may only be cremated with the written approval of the Executive Committee given on the conditions which the Executive Committee may deem fit to impose.

(3) Any person failing to comply with such conditions shall be guilty of an offence.

PERSONS DYING FROM NOTIFIABLE OR INFECTIOUS DISEASES

14. Subject to the provisions of Chapter II and III of the Public Health Act, 1919 (Act 36 of 1919) as applied to the Territory of South West Africa and for this purpose amended by the Public Health Proclamation, 1920 (Proclamation 36 of 1920) and any regulations promulgated thereunder, the medical referee may, if he is satisfied that death was caused by a modifiable or infectious disease as defined in the said Act as so applied, dispense with any of the requirements of regulations 7, 8, 10, 11 and 12.

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[The Public Health Act 36 of 1919 has been replaced
by the Public and Environmental Health Act 1 of 2015.]

15. Notwithstanding the provisions of regulations 7, 8, 10, 11 and 12, the medical referee may permit the cremation of the remains of a stillborn child if a registered medical practitioner, after examination of the body, has certified that such child was stillborn and if the medical referee, after such examination as he deems necessary, is satisfied that the child was stillborn and that there is no reasons for closer examination.

DISPOSAL OF ASHES

16. (1) After the cremation of any human remains, the ashes shall be entrusted to the charge of the person who applied for the cremation, if such person so desires; if not, they shall be retained by the proprietor and in the absence of any special arrangement regarding their disposal in a cemetery be interred, placed or kept in a building, niche or other facilities approved by the Executive Committee at the crematorium reserved for the storage, preservation or burial of ashes.

(2) In the case of ashes temporarily entrusted to the proprietor and not removed within a reasonable time, a fortnight's notice shall be given to the person who applied for the cremations before the ashes are disposed of in terms of subregulation (1).

REGISTRATION OF CREMATIONS, ETC.

17. (1) The proprietor of every crematorium shall appoint a registrar who shall keep a register in the form prescribed in Schedule F of all Cremations carried out in such crematorium.

(2) The registrar shall make the entries in relation to every cremation immediately after every cremation except the entry in the last column which shall be done as soon as the ashes are handed over to the blood relations or otherwise disposed of as provided in the regulations.

18. All applications, certificates, declarations and other documents relating to every cremation shall be marked with a number corresponding with the number in the registrar and shall be filed in sequence and carefully preserved by the proprietor.

19. When a crematorium is closed in terms of section 9 of the Ordinance, the proprietor shall send to the Secretary for South West Africa all registers and documents relating to the cremations which have taken place therein, or dispose thereof as instructed by the Executive Committee.

RECORDS RELATIVE TO CREMATORIUMS

20. The Secretary for South West Africa shall cause to keep records of every crematorium in the Territory and of the names and addresses of the proprietors thereof, including particulars of the certificates of registration granted by the Executive Committee in respect of such crematorium and any conditions prescribed at the issue of such certificates.

DUTIES OF INSPECTORS

21. Whenever an inspector, at an inspection of a crematorium, is of the opinion that circumstances in connection with any matter in the Ordinance are such that they should be brought to the attention of the Executive Committee, or if he has knowledge that any provisions of the Ordinance or these regulations or any conditions prescribed at the issue of the certificate of

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registration in respect of a crematorium are not being observed or complied with, he shall report to the Secretary for South West Africa accordingly.

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SCHEDULE A

APPLICATION FOR CREMATION, WITH DECLARATION

I, (Name of applicant)

(Address)

(Occupation)

apply to the

to undertake the cremation of the remains of (name of deceased)

.....

(Address)

(Occupation)

(age) (Sex)

(Whether married, widow, widower, divorced or unmarried)

.....

The following questions have to be answered:

1. Are you the executor or nearest surviving blood relation of the deceased?
 2. If not, state—
 - (a) Your relationship to the deceased
 -
 - (b) The reason why the application is made by you and not by the executor or nearest blood relation
 -
 3. Did the deceased leave any written directions as to the mode of disposal of his remains? If so, what were the directions
 -
 4. Has any near blood relation* of the deceased been informed of the proposed cremation?
 -
- *The term “near blood relation” as used here includes widow or widower, parents, children above the age of 16 years, and any other blood relation who usually resided with the deceased.
5. Has any near blood relation of the deceased expressed any objections to the proposed cremation? If so, on what grounds
 -
 6. What was the date and hour of the death of the deceased
 7. Where did the deceased die? (Give address and say whether own residence, lodgings, hotel, hospital, nursing, home, etc.)
 -
 8. Do you know, or do you have any reason to suspect that the death of the deceased was directly or indirectly due to—
 - (a) poisoning;
 - (b) violence;
 - (c) criminal neglect;
 - (d) an unlawful operation;
 - (e) privation;
 - (f) negligence; or
 - (g) any other suspicious circumstances
 9. Do you know of or do you have any reason to suspect that a post mortem on the remains of the deceased may be desirable?
 -

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10. Give name and address of the usual medical physician of the deceased

.....

11. Give names and addresses of the medical practitioners who attended the deceased during his last illness

.....

I do hereby solemnly and sincerely declare that all the particulars stated above are true, and that to the best of my knowledge and belief no material particular has omitted, and I make this solemn declaration conscientiously believing the same to be true.

.....

SIGNATURE

*Declared at on this the
..... day of 19

before me.

.....

COMMISSIONER OF OATHS

* This declaration must be made before a Commissioner of Oaths

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SCHEDULE B

CERTIFICATE OF MEDICAL PRACTITIONER

I am informed that application is about to be made for the cremation of the remains of—
(Name of deceased)
(Address)
(Occupation)

Having attended the deceased before death, and seen and identified the body after death, I give the following answers to the questions set out below:

1. On what date and at what hour did he or she die?
2. What was the place where the deceased died? (Give address and say whether own residence, lodging, hotel, hospital, nursing home, etc.)
3. Are you a blood relation of the deceased? If so, state the relationship
4. Have you, so far as you are aware, any pecuniary interest in the estate of the deceased?
5. Were you the ordinary medical practitioner of the deceased? If so, for how long?
6. Did you attend the deceased during his or her last illness? If so, for how long?
7. When did you last see the deceased alive? (Say how many days or hours before death)
8. How soon after death did you see the body, and what examination of it did you name?
9. What was the cause of death?
Primary/Secondary (Specify the disease, injury, etc. and if possible, distinguish the primary from the secondary cause as in the death certificate.)
10. Was there any other cause which contributed to or accelerated death?
If so, state it, and if more than one other cause, state them all
11. What was the mode of death? (Say whether syncope, coma, exhaustion, convulsions, etc.) What was its duration in days, hours or minutes.
12. Did the deceased undergo any operation during the final illness or within a year before death? If so, what was its nature and who performed it?
13. By whom was the deceased nursed during his or her last illness? (Give names and say whether professional nurse, relation, etc.) If the illness was a long one this question should be answered with reference to the period of four weeks before the death)
14. Who were the persons (if any) present at the moment of death?
15. State how far the answers to questions 1 to 14 are the result of your own observations, or are based on statements made by others. If based on statements made by others, say by whom

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- 16. In view of your knowledge of the deceased s habits and constitution, do you feel any doubt whatever as to the character of the disease or the cause of death?
- 17. Do you know, or have you any reason to suspect, that the death of the deceased was directly or indirectly. due to–
 - (a) poisoning;
 - (b) Violence:
 - (c) criminal neglect;
 - (d) an unlawful operation;
 - (e) privation:
 - (f) negligence: or
 - (g) any other suspicious circumstances?
- 18. Have you any reason whatsoever to consider a further examination of the body to be desirable?
- 19. Have you any reason whatsoever to consider a further examination of the body to be desirable?

I hereby certify that the answers given above are true and accurate to the best of my knowledge and belief, that there is no circumstance known to me which can give rise to any suspicion that the death was due wholly or in part to any other cause than disease/accident and that there is no circumstance of any sort known to me which makes it undesirable that the body should be cremated.

(Signature)

(Address)

(Registered qualifications)

(Date)

NOTE: The certificate must be handed or sent in a closed envelope by the medical practitioner who signs it to the medical practitioner who is to give the confirmatory certificate.

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SCHEDULE C

CONFIRMATORY MEDICAL CERTIFICATE.

Having examined the body of the deceased and the relevant medical certificate issued by the medical practitioner who treated him during his last illness, I have also made personal enquiry as stated in my answers to questions below:

1. When and where did you examine the body of the deceased?
.....
.....
.....
2. Have you carefully examined the body externally
3. Have you made a post-mortem examination?
4. Have you seen and questioned the medical practitioner who gave the medical certificate?
5. Have you seen and questioned any other medical practitioner who attended the deceased?
6. Have you seen and questioned any person who nursed the deceased during his last illness or who was present at the death?
7. Have you seen and questioned any of the relatives of the deceased
8. Have you seen and questioned any other person?

(On the answers to questions 5, 6, 7 and 8, give names and addresses of the persons and say whether you saw them alone).

I am satisfied that the cause of death was
and I certify that I know of no circumstance which can give rise to any suspicion that death was due wholly or in part to any other cause than disease/ accident, and that there is no circumstance of any sort known to me which makes it undesirable that the body should be cremated.

(Signature)
(Address)
(Registered qualifications)
(Office)
(Date)

NOTE: This certificate and the certificate issued by the medical practitioner who treated the deceased during his last illness must be handed in a closed envelope to the medical referee by one or other of the medical practitioners by whom they were issued.

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SCHEDULE D

[Schedule D substituted by GN 139/1978]

CERTIFICATE AFTER POST-MORTEM EXAMINATION

NAME
IDENTITY NO.....
ADDRESS
OCCUPATION

(COMPLETE PART A OR PART B)

PART A

I hereby certify that I have conducted a post-mortem examination on the body of the above-mentioned person.

The body has been identified to me by
..... of

The result of the examination was as follows:

.....
.....

I am convinced that death was due entirely to natural causes viz.
.....
and that no reason exists to notify this case in terms of section 2 of the Inquests Act, 1959.

I have identified the body to
..... of

(Delete if not applicable)

Signature:

.....

NAME IN BLOCK LETTERS

DATE

ADDRESS

REGISTERED

DATE OF QUALIFICATION:

PART B

I hereby certify that I have, at the request of the magistrate of
conducted a post-mortem examination on the body of the above-mentioned person. The body was
identified to me by of

(i) I am convinced that death was due entirely to natural causes viz.
.....

(ii) No death certificate can be issued in this case as death was not due to natural causes.

.....

SIGNATURE

.....

NAME IN BLOCK LETTERS

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DATE

ADDRESS

REGISTERED QUALIFICATIONS.....

DATE OF QUALIFICATION

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SCHEDULE E

AUTHORITY TO CREMATE

WHEREAS application has been made for the cremation of the remains of-

(Name)*

(Address)

(Occupation)

AND WHEREAS I have satisfied myself that all the requirements of the Cremation Ordinance, 1971 (Ordinance 6 of 1971) and of the regulations made in pursuance of that Ordinance have been complied with, that the cause of death has been definitely ascertained, that there exists no reason for any further enquiry or examination and that there is no circumstance of any nature making it undesirable for the remains to be cremated:

NOW THEREFORE I hereby authorise the proprietor of the crematorium at
..... to cremate the said remains.

(Signature)

Medical referee top the

(Date)

NOTE: This authority should be signed in duplicate. One copy to be retained with certificate and the other sent by the medical referee to the proprietor of the crematorium.

* In the case of stillborn child, in place of the name, address and occupation, insert a description sufficient to identify the body, and in place of the words "that the cause of death has been definitely ascertained" insert the words "that the child was stillborn."

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SCHEDULE F

REGISTER OF CREMATIONS

Carried out by

At the Crematorium at

No.

Date of Cremation

Name, Residence
and Occupation
of Deceased

Age and Sex

Whether married
or Unmarried

Date of Death

Name and
address of
person who
applied
for cremation

Names and
addresses of
persons signing
Certificates

District where
Death
has been
Registered

How Ashes were
Disposed of

Note: Additional particulars may be added in the Form of Register by the Cremation Authority.