



Llywodraeth Cymru
Welsh Government

Section 58 and Schedule 28 to the Coronavirus Act 2020:

Local death management

Statutory guidance for local authorities on Schedule 28 and the powers in relation to transportation, storage and disposal of the deceased.

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Section 1: About this guidance

This section sets out the purpose and the status of this guidance. It explains briefly the policy background and what relevant powers in the Coronavirus Act 2020 will be covered, as well as how the guidance should be used.

Background on section 58 and Schedule 28

- 1.1. Section 58 of and Schedule 28 to the Coronavirus Act 2020¹ (“the Act”) introduce new powers relating to the transportation, storage and disposal of dead bodies and other human remains. These powers were included in the Act to ensure the UK is prepared for a reasonable worst case of deaths caused by COVID-19.
- 1.2. If advice indicates that the number of people who might die from COVID-19 is likely to significantly exceed the capacity to locally or nationally manage the deceased and other contingency measures have been deployed, local and national government will have the ability to take control of a component or components of the death management process.
- 1.3. The powers of direction will only be used where there is a significant risk to public health and when scientific evidence and operational advice suggests that it is necessary. Activating the directions powers will help ensure the local death management system continues to work effectively to protect public health and the dignity of the deceased. Personal choice will be respected as far as possible, including local and national authorities having due regard to handling the deceased in a manner that is consistent with the deceased’s wishes, religion or belief if known or otherwise in a way that appears consistent with the person’s religion or beliefs, if known.
- 1.4. The powers in Schedule 28 to the Act are:
 - **Part 1: Information on capacity.** These powers enable local and national authorities to require persons (and in the case of national authorities, to require local authorities) to provide information for the purposes of ascertaining capacity (locally and nationally) to deal with transportation, storage and disposal of dead bodies and other human remains. See section 2 of this guidance where this is covered in more detail
 - **Part 2: Directions and other measures to address lack of capacity.** These powers enable national authorities to “designate” a local authority where, as a result of COVID-19, there is, or is likely to be, insufficient capacity within the local authority area to transport, store or dispose of dead bodies or other human remains. Once designated, a local authority can give directions to companies or corporations (but not individuals or public authorities). In addition, a national authority can give directions where it considers a national response is more appropriate. See section 3 of this guidance where this is covered in more detail.

¹ Coronavirus Act 2020 - <http://www.legislation.gov.uk/ukpga/2020/7/contents>

- **Part 3: Power to direct local authorities.** These powers enable national authorities to give directions to local authorities where they have failed to exercise their functions properly (either as a burial or cremation authority, or in connection with the transportation, storage or disposal of deceased bodies). See section 4 of this guidance where this is covered in more detail
 - **Part 4: Deceased's wishes.** The powers create a legal obligation for local and national authorities to have regard to the deceased person's wishes, religion and belief, where known, of the method used of their final committal (i.e. burial or cremation), when carrying out functions under Schedule 28 or under the legislation listed in paragraph 13(3) of Schedule 28. See section 5 of this guidance where this is covered in more detail
 - **Part 5: Interpretation.** This part clarifies definitions of terms used in Schedule 28.
- 1.5. This guidance sets out the framework and principles for local authorities exercising these powers.
 - 1.6. The Act includes a number of other provisions aimed at relieving pressure in the death management system and to allow funerals to take place more quickly. Please click [here](#) (or type the address provided in the footnote² into your browser) for further information on the additional provisions.

When does the legislation come into effect?

- 1.7. The Coronavirus Act 2020 received Royal Assent on 25 March 2020. The information-sharing powers can be used now to assist in the COVID-19 emergency. However, as the powers of direction (in Part 2 of the Schedule) are extraordinary measures, they have to be 'switched on' by the appropriate national authority designating a local authority before that local authority can use them. The process for this is outlined later in the guidance.

Who is this guidance for?

- 1.8. This guidance is for local authorities in Wales. A list of what constitutes a local authority for the purposes of Schedule 28 is covered in Part 5 of that Schedule. National authorities also have additional powers under these provisions, however, this guidance has been developed for local authorities. Throughout this guidance 'the Welsh Government' has been used in places to refer to the national authority for Wales. The legislation defines the appropriate national authority for Wales as the Welsh Ministers.
- 1.9. The guidance will also be of interest to individuals and organisations involved or with an interest in local death management.

² Further Details - <https://www.gov.uk/government/publications/coronavirus-bill-what-it-will-do/what-the-coronavirus-bill-will-do#managing-the-deceased-with-respect-and-dignity>

- 1.10. This guidance is relevant for Wales only. Although the provisions in section 58 and Schedule 28 apply across the whole of the UK, the respective administrations will develop their own guidance on these powers.

How should this guidance be used?

- 1.11. The purpose of the guidance is to assist local authorities in understanding and utilising powers in section 58 of and Schedule 28 to the Act by setting out the principles and good practice to follow when exercising those provisions. Local authorities should refer to this guidance when using the relevant powers, recognising the guidance has been written to reflect diversity of local processes and therefore may use hypothetical situations that do not apply in some local authorities.
- 1.12. This guidance does not impose additional legal obligations on parties seeking to make use of the powers, nor is it an authoritative statement of the law. This is statutory guidance which local authorities must have regard to when exercising functions under Schedule 28. The phrase ‘must have regard’, when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.
- 1.13. This guidance should be read alongside other guidance for local authorities on death management: including the “Framework for Planners Preparing to Manage Excess Deaths”³ and “[guidance for care of the deceased with suspected or confirmed coronavirus](#)” – details of further guidance is available at GOV.WALES.

Status of this guidance

- 1.14. This is statutory guidance issued by the Welsh Ministers under paragraphs 9 and 13(5) of Schedule 28 to the Act. It is issued through publication on GOV.WALES.
- 1.15. The guidance is valid from publication and will be kept under review and updated as necessary. It will remain valid as long as the powers in the Act are in force.

³ Guidance provided to LRFs via ResilienceDirect March 2020

Section 2: Information about capacity

This section sets out guidance on using the information-sharing powers in Part 1 of Schedule 28 to the Act.

- 2.1. The powers in Part 1 of the Schedule enable local and national authorities to require persons (and in the case of national authorities, to require local authorities) to provide information to assist those authorities to ascertain the capacity to deal with transportation, storage or disposal of dead bodies and other human remains, in a particular area.
- 2.2. Local Resilience Forums (LRFs) are the principal forums for collecting information on capacity in local death management systems and provide the structures to facilitate effective information sharing between public and private organisations. This coordinated understanding of capacity is vital for managing pressures within the system. The powers in this Part of the Schedule can be used to support and enhance this process and for effective planning and reporting on a local, regional and national level. All organisations involved in the local death management system should have already been identified and included in LRF planning. A template for local authority use to request information will be published shortly.
- 2.3. Part 1 of Schedule 28 to the Act has been reproduced in the text box below:

<i>PART 1 Information about capacity</i>	
1	<p><i>(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.</i></p> <p><i>(2) A requirement under sub-paragraph (1) must be in writing and must specify—</i></p> <ul style="list-style-type: none"><i>(a) whether the information is to be provided to the local authority or to some other specified person,</i><i>(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</i><i>(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).</i> <p><i>(3) It is an offence for a person—</i></p> <ul style="list-style-type: none"><i>(a) to fail, without reasonable excuse, to comply with a requirement under sub-paragraph (1);</i><i>(b) knowingly or recklessly to give false information in response to a requirement under sub-paragraph (1).</i> <p><i>(4) A local authority or other person who holds information which has at any time been provided under sub-paragraph (1)—</i></p> <ul style="list-style-type: none"><i>(a) may use it if, and only if, the use is for the purpose mentioned in that sub-paragraph;</i><i>(b) may disclose it to another person if, and only if, the disclosure is either for the purpose mentioned in that sub-paragraph or for the purpose of complying with any enactment.</i>

(5) It is an offence for a person who holds information which has at any time been provided under sub-paragraph (1) to use or disclose it otherwise than as authorised by sub-paragraph (4).

(6) 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.

2 *(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.*

(2) A requirement under sub-paragraph (1) 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).

(3) A local authority must comply with a requirement under sub-paragraph (1).

(4) The appropriate national authority or any other person who holds information which has at any time been provided under sub-paragraph (1)—

(a) may use it if, and only if, the use is for the purpose mentioned in that sub-paragraph;

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

(5) It is an offence for a person who holds information which has at any time been provided under sub-paragraph (1) to use or disclose it otherwise than as authorised by sub-paragraph (4).

(6) 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 *(1) A duty or power to disclose information under this Part of this Schedule 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.

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

When do these powers become available?

- 2.4. The information provisions in Part 1 came into force on Royal Assent and are available to use immediately to ascertain information about capacity.

When would a request for information need to be made?

- 2.5. Information requests can be made when information is required about the death management system's capacity (including transportation, storage and disposal of deceased bodies). Information is critical for facilitating effective death management — for example, if local authorities need to understand the storage capacity in their area in order to identify whether there are, or are likely to be, capacity issues. This information will also be relevant to national authorities in determining whether a local authority should be 'designated' (see section 3 of this guidance).
- 2.6. Local authorities are able to seek the information first without using these powers, using usual methods available to them. This is likely to be the fastest method of getting the information - companies and organisations are likely going to be willing to help in this space. The information request using Schedule 28 provisions should be used if normal processes are not working. However, local authorities are able to use the Schedule 28 powers from the outset, particularly if they believe it is the most effective way to get the information needed quickly.
- 2.7. If an organisation is not cooperating with an information request it should be escalated within the LRF for the strategic coordination group's (SCGs) oversight and, where needed, involvement of the SCG chair.
- 2.8. Requests for information using the Part 1 powers could be made to assist with the following:
- to support activity coordinated by LRFs relating to local death management;
 - to assess capacity to prepare local death management plans;
 - to evaluate whether additional requests for support are needed (e.g. Military Aid to the Civil Authorities (MACA) request);
 - to feed into data or information returns for the Welsh Government;
 - to assist the Welsh Government in ascertaining capacity nationally or within a particular area, which will also help to inform decisions about designating local authorities.
- 2.9. Some examples of the type of information we would expect to be collected are:
- information from private companies (such as private funeral homes or crematoria) on their capacity, i.e. number of cremators running;
 - information from funeral homes on their operational status i.e. staff absences;
 - information on workforce, including staff training levels;
 - information on burial capacity in cemeteries;
 - information on consecrated or burial provision for certain religious and community groups;

- information on vehicles for movement of the deceased;
- information on excavation equipment for digging of graves; and
- information on PPE stocks relating to local death management processes.

Authorities can also require that information is shared with other actors who require it (for example neighbouring local authorities who are searching for spare capacity in the region) and / or can disclose it to them so long as it is for the purposes of ascertaining capacity.

- 2.10. The list in section 2.9 is not exhaustive and the scope of the provision is broad. If a local authority considers that certain information is reasonably required to ascertain capacity about the transportation, storage or disposal of deceased bodies or other human remains, these powers can be used to obtain that information (provided there are no relevant legal restrictions on the use or disclosure of that information — please see sections 2.14 – 2.16). This includes information which may be deemed commercially sensitive.

How often is it needed?

- 2.11. The frequency of information returns will depend on the nature of the information request. It will be a decision for local authorities to determine whether information is needed as a one-off return, or whether daily/weekly/fortnightly information will be required. This will depend on the timing of the request and the reason for it. The deadline for receipt of information and the frequency with which it should be provided must be outlined when the information request is made.
- 2.12. Local authorities should bear in mind the additional administrative burden their information requests may pose on organisations. They should ensure that they are not asking for information too regularly if there is a risk that higher priority requests could be delayed as a result.

How can an authority make a request for information?

- 2.13. An information request made under paragraph 1(1) of Schedule 28 must:
- be in writing – a template for local authorities to use will be published shortly.
 - specify whether the information is to be provided to the local or national authority or another specified person. For example, a local authority may request information from a crematorium and specify in the request that the information must be reported to both the local authority and the Welsh Government.
 - specify how the information is to be provided - for example, a telephone call as soon the information is available, followed up by a confirmatory email. Responses to requests are always needed in writing.
 - specify when the information is to be provided.

It may be helpful to provide an acknowledgement of receipt of information return to the information provider once they have completed the request.

EXAMPLE: Making a request for information

Local Authority A wants to ascertain the total body storage capacity in its area, including all public and private spaces available. It makes a request through local structures to engage with the organisations and agree data collection and use.

An organisation is cooperative, but does not provide the necessary information in the timeframe agreed. Attempts are made to obtain the information using normal methods, including involvement by the Strategic Coordination Group (SCG) chair.

If this intervention by the SCG chair is unsuccessful the local authority makes a request as outlined above in writing in the template and follows any enforcement action as required.

Restrictions on use and disclosure of information

- 2.14. Information provided under Part 1 of Schedule 28 can only be used for the purposes of ascertaining information to deal with the transportation, storage or disposal of dead bodies or other human remains. It can also only be disclosed to a third party if it is for this specific purpose or for the purpose of complying with any other enactment.
- 2.15. Information provided in a response to a request under Part 1 of Schedule 28 must be processed in accordance with data protection laws. Data of the deceased is not personal data for the purposes of the data protection legislation. However, where data is shared that includes personal data (we would expect that the most likely personal data being shared will be next of kin details), the commissioning authority is a data controller and responsible for ensuring processing is compliant with the data protection legislation as defined by 3(9) of the Data Protection Act 2018⁴.
- 2.16. Confidential and market sensitive information from the industry should be treated appropriately and confidentially. Data should be handled, stored and – when appropriate - destroyed in line with data protection legislation, with reference to a data retention policy to classify and manage the retention and disposal of information⁵.

⁴ Data Protection Act 2018 - <http://www.legislation.gov.uk/ukpga/2018/12/contents>

⁵ Information Commissioners Office - <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/storage-limitation/>

Which authorities can make use of the powers?

- 2.17. Requests for information can be made by local authorities and national authorities. The guidance below applies to information requested by both national and local authorities.
- 2.18. For the purposes of Schedule 28, local and national authority are defined in Part 5 as being:
- 2.18.1. 'local authority' means "*a county council in Wales or a county borough council*".
 - 2.18.2. The '*appropriate national authority*' means "*in relation to local authorities and areas in Wales, the Welsh Ministers*".

How will these powers be enforced?

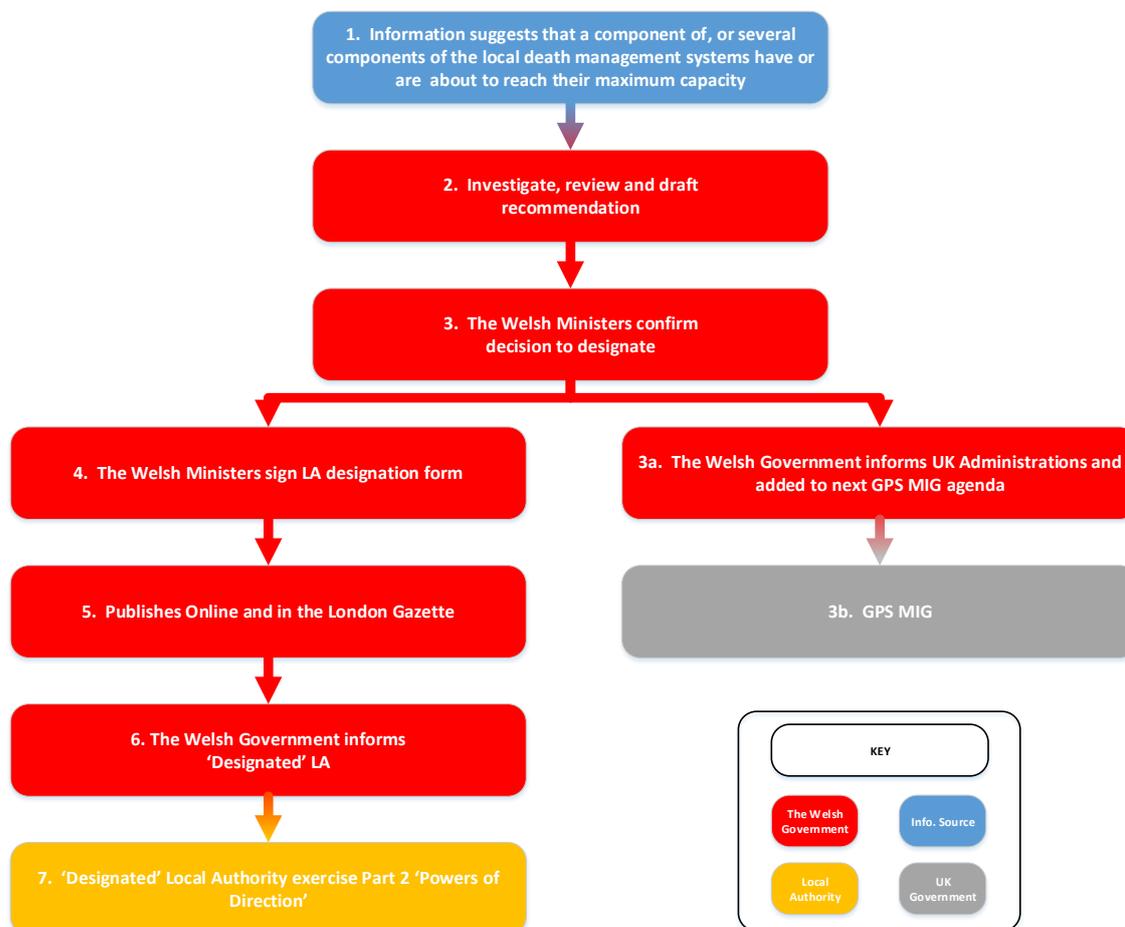
- 2.19. If a local partner fails to provide information requested under Part 1 within the specified timeframe the request should be followed up highlighting that it is a legal requirement to comply with the request unless an exception applies. If a request is not met this should be escalated within the LRF for the Strategic Coordination Group's (SCG) oversight and, where needed, involvement of the SCGs chair.
- 2.20. It is an offence if a request for information by the local authority made under paragraph 1(1) of Schedule 28 is not complied with without reasonable excuse, or to knowingly or recklessly give false information in response to a requirement under paragraph 1(1). It is also an offence for a person to use or disclose information for non-authorized purposes. However, a requirement to provide information under paragraph 1(1) does not require or authorise the disclosure of information which would contravene data protection legislation, such as knowingly or recklessly re-identifying information that has been de-identified without the consent of the controller who de-identified the data contrary to section 171 of the Data Protection Act 2018, or that is prohibited by Parts 1 to 7 or Chapter 1 or Part 9 of the Investigatory Powers Act 2016⁶. In Wales, a person guilty of any of the offences listed in Part 1 of Schedule 28 is liable, on summary conviction, to a fine.

⁶ Investigatory Powers Act 2016 is available from - <http://www.legislation.gov.uk/ukpga/2016/25/contents>

Section 3: Directions and other measures to address lack of capacity

This section provides guidance on Part 2 of Schedule 28, which provides powers of direction to local and national authorities in order to manage capacity in the death management system. It sets out how these powers can be activated by the Welsh Government and how we expect they will be used by local authorities. Templates that local authorities should use to issue, vary or revoke directions under this Part are included at Annex A.

- 3.1. The powers of direction enable local and national authorities to address capacity issues in the death management system, through making directions which facilitate the transportation, storage and disposal of the deceased. Before a local or national authority can make directions under Part 2 of Schedule 28, a local authority must be 'designated'.
- 3.2. The flowchart below outlines the process of how the Local Authority powers of direction will be activated (i.e. Designation Process) by the Welsh Government.



3.3. Part 2 of Schedule 28 to the Act has been reproduced in the text box below:

PART 2

Directions and other measures to address lack of capacity

Designation where there is insufficient capacity to deal with dead bodies etc

- 4 (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.*
- (2) If, having made a designation under this paragraph, the appropriate national authority ceases to be of the view mentioned in sub-paragraph (1), the appropriate national authority must revoke the designation (but this does not limit the future exercise of the power in sub-paragraph (1) in relation to the same local authority).*
- (3) If a mayoral combined authority is designated under sub-paragraph (1), 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 sub-paragraph (4)(b) “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 under this paragraph.*

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

- 5 (1) *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) 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 under paragraph 4, 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 under sub-paragraph (1).*
- (3) A direction under this paragraph 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 under sub-paragraph (1) lapses on the revocation of the designation under paragraph 4 of the local authority that gave the direction.

(11) A direction under sub-paragraph (2) lapses if there are no designated local authorities.

Power of ministers etc to step in

6 *If the appropriate national authority considers that a designated local authority is failing to exercise its powers under paragraph 5(1) properly, it may give any direction under paragraph 5(1) that could have been given by the designated local authority (and paragraph 5 applies with any necessary modifications).*

Appropriate national authority directions to prevail

7 *If there is a conflict between—*

- (a) a direction given by a designated local authority under paragraph 5(1), and

(b) a direction given by the appropriate national authority under paragraph 5(2) or in reliance on paragraph 6,

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

Compensation where directions given

8 *(1) The appropriate national authority must publish a scheme for the making of payments to persons to whom directions are given under paragraph 5.*

(2) The scheme must include provision for a person to whom a direction is given under 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), 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, 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), 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.

Guidance

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

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

General provisions about directions and schemes.

- 10 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

- 11 (1) A power to give directions under this Part of this Schedule includes power to vary or revoke the directions.
- (2) A direction under this Part of this Schedule must be given in writing.

What is a designation?

- 3.4. A designation is the legal mechanism by which the appropriate national authority ‘activates’ the direction powers in Part 2 of Schedule 28 to the Act. Once designated, these powers are ‘switched on’ and available for that local authority to use. A designation takes effect when published online, and can be revoked at any time.

When would a designation be triggered?

- 3.5. The Welsh Ministers will only designate a local authority where they consider that as a result of Coronavirus (i) there is, or likely to be, insufficient capacity in that authority’s area to transport, store or dispose of deceased bodies or human remains and (ii) the powers of direction are likely to be an effective means of addressing those capacity issues.
- 3.6. A designation could take two forms: a general designation or a limited designation:
- **A general designation** - allows local authorities to have full use of the powers of directions to address a range of issues in the death management space. This will be used where a range of actions may be required to address capacity issues.
 - **A limited designation** – this limits the power to direct to a specific capacity issue, for example transportation of bodies. The Welsh Ministers would specify that the powers should be used only to address this issue (e.g. transportation of bodies). The local authority should then use the powers of direction to address the issue, and should not use them more widely than that purpose. A limited designation would only be used where there was clear evidence that directions were only needed in the specific area(s) covered by the designation, and that this would not inhibit a local authority’s ability to manage capacity issues effectively.

- 3.7. LRFs are the principal forum for collecting information on capacity within local death management systems. The Welsh Government is already working closely with local areas to monitor and assess capacity. These structures are designed to identify potential capacity issues at an early point so that the Welsh Government can support local authorities to meet additional capacity requirements. However, the Part 2 powers of direction are an important additional tool to manage capacity, and information on current or forecasted capacity provided through LRFs will inform decisions on designations.
- 3.8. Forecasted capacity issues should be raised within the LRFs' response structure to the Strategic Coordination Group, where the strategic leadership can jointly consider whether additional powers may be an appropriate course of action, and where it may be appropriate to put the case forward for a ministerial decision. The Welsh Government Liaison Officer (WGLO) will be involved in this assessment and can provide a view on the appropriateness of the request.
- 3.9. A national authority's decision about whether there is, or likely to be, insufficient capacity within a local authority's area will be based on a number of factors which could include (but are not restricted to) the following:
- Local capacity for managing deaths as identified in returns submitted by LRF including Part 1 information
 - Advice from Public Health Wales or local public health directors
 - Advice from Scientific Advisory Group for Emergencies (SAGE)
 - A direct ask from a local authority or group of authorities
 - Feedback from Welsh Government Liaison Officers in the area
 - Non-compliance of organisations to take appropriate action within their area that assists capacity.
 - Information from the Chief Coroner's Office on coronial capacity
 - An assessment by the Welsh Government of the national capacity picture and predicted trajectory
 - Information from the sector (e.g. funeral directors)
 - NHS capacity data (including hospital mortuary capacity).
- 3.10. In assessing whether a designation is required, the Welsh Government will also consider how directions could be used to address capacity issues in the local death management system, and will only make a designation if the direction powers would be an effective way of addressing the capacity issues. For example, if a factor driving local capacity issues relates to hospital practices which can be addressed by changing processes or providing additional resources to the hospital, a designation may not be required.
- 3.11. If information suggests that the conditions set out in paragraph 4(1) of Schedule 28 to the Act are met, the Welsh Ministers will make the decision to designate a local authority. In appreciation of the fact that in reaching this point means that swift action is urgently required to address the issue/s the Welsh Ministers will complete this as quickly as possible.

- 3.12. If the Welsh Ministers decide to designate, the Welsh Government will inform the local authority of the designation and the decision will be published on GOV.WALES. The designation will take effect at the point at which it is published online. The designation will also be published in the London Gazette as soon as practicable after the direction is made.
- 3.13. The decision to designate will be recorded by the Welsh Government along with the rationale, justification, the capacity issue/s the designation is seeking to address and the intended use for the local authority. These will be shared with the local authority and will inform any decisions to maintain or revoke a designation.
- 3.14. As set out in section 3.6, previously, a local authority can only then use the powers of direction for the issues to be addressed by the designation.

Can a local authority request a designation?

- 3.15. If a local authority wishes to request a designation this should be raised to the Welsh Government via LRF reporting structures, including the SCG. Local authorities will already be working with LRFs and the support of Government to manage capacity and put plans in place to avoid reaching the point where these powers are required. A designation can only be made when the Welsh Government consider that the two conditions set out in paragraph 4(1) of Schedule 28 to the Act are met.

What if a local authority is not content with a proposed designation?

- 3.16. We anticipate that decisions on capacity will be taken with the support of and in collaboration with local authorities. Local authority views on whether the designation is an appropriate response will be an important part of the decision-making process. However, the Welsh Government will proceed with a designation if it believes it is necessary to address a lack of capacity, in line with the two conditions in paragraph 4(1) of Schedule 28 to the Act.

Which authorities could be designated?

- 3.17. For the purposes of Schedule 28 a local authority is defined in Part 5 as follows:
 - 3.17.1. 'local authority' means "*a county council in Wales or a county borough council*":
- 3.18. Provided the criteria for designation have been met, the local authority/authorities who are considered most effectively placed to use the powers to coordinate excess death functions and address capacity issues will be the authority that is designated.
- 3.19. All councils in an area subject to a direction would be expected to cooperate with the designated authority. Designated authorities should ensure any local burial authorities are considered and involved where necessary.

3.20. The powers of direction will be assigned to the local authority. It will be for the local authority to decide who should be directed to complete actions under Part 2 powers in the Act. However it is recommended that the Head of Paid Service ensures that Head of Legal is consulted to ensure actions are lawful, and the relevant elected individual is involved.

What is the practical effect of a designation – how can the powers be used by a local authority?

What types of activity could a direction cover?

3.21. Once designated, a local authority can give directions to support local death management systems. Consideration should be given to how these can be used alongside the provisions contained in sections 18-21 of the Act⁷ to streamline the process for registration of deaths. The directions that can be given are broadly defined, as flexibility as to what may be required to deal with the situation is necessary.

3.22. The actions taken by a designated local authority could include (but are not limited to):

- directing whether to bury or cremate a deceased person, having had regard to the legal duties in Part 4 of Schedule 28 to the Act about the deceased's wishes;
- directing crematoria to operate longer hours;
- directing funeral directors to have shorter services or to manage the deceased even if they are not the preferred funeral director;
- directing a person to use their vehicles to transport bodies or resources;
- directing a shorter time for body storage;
- directing those with excavation equipment to dig burial spaces under the supervision of those with relevant authority/qualifications; and
- directing when an action needs to be taken.

3.23. There may be circumstances where it may not be appropriate for a direction to apply to certain case(s). For example if the direction would impede a police investigation or breach health and safety legislation. Local authorities should limit the directions to exclude these.

Who can be directed using these powers?

3.24. The directions can be given to companies or corporations only, but cannot be given to individuals or public authorities. Therefore they cannot, for example, be used to direct the military or NHS. The only exception to this is that a National Authority may direct a local authority under Part 3 of Schedule 28 to the Act. There are no further restrictions on which organisations can be directed, provided that the

⁷ Registration of Deaths and Still-births, available at:
<http://www.legislation.gov.uk/ukpga/2020/7/part/1/crossheading/registration-of-deaths-and-stillbirths-etc/enacted>

activity required by the direction is for the purpose of facilitating the transportation, storage or disposal of deceased bodies or other human remains. There are, however, important considerations for local authorities to take into account when making directions under paragraph 5(1) of Schedule 28 (see below).

How should a local authority issue a direction?

3.25. The powers in Part 2 of Schedule 28 provide local authorities with the flexibility to direct local actors as they consider necessary to facilitate effective death management capacity in their area. However, in making directions, local authorities must ensure they are using the powers effectively and in line with the requirements of the Act. Local authorities:

- **Must have due regard to the desirability of disposing of a person's body in accordance with their wishes, religion or beliefs if known or otherwise in a way that appears consistent with their religion or beliefs, if known as set out in Part 4 of Schedule 28.** This is critical and local authorities will need to be able to demonstrate how they have met this legal requirement. Further guidance is included in Section 5 of this guidance.
- **Must consider the effect that any direction is likely to have on the ability of the organisation to carry on their normal business as set out in paragraph 5 of Schedule 28.** If an organisation sits outside the death management sector and has a critical role in the wider COVID-19 response, for example refrigeration vehicles, and has indicated they do not have sufficient capacity local authorities should avoid issuing directions unless absolutely necessary. In these scenarios it should be raised to within the LRFs response structures to determine the overall impact on the COVID-19 response and agree a final decision on the appropriateness of the direction.
- **More generally must have regard to whether certain groups will be disproportionately affected by the action they are considering under the Public Sector Equality Duty.**
- **Should discuss requirements with their LRFs**, as the principal forum for monitoring capacity within local death management systems. It may also be useful to engage further with local organisations involved, for example local crematoriums or funeral directors, to assess potential actions that may be required to facilitate effective death management.
- **Should apply fairness.** The actions taken should be those deemed most effective to address capacity in the area which will inevitably mean extra pressure or requirements on part of the sector or organisations. However, a local authority should be able to justify how activities have been undertaken fairly, as far as practicable. For example, if a crematorium's opening hours were extended, a local authority would need to be able to justify why it had been selected over others.
- **Should cooperate with surrounding areas.** It is recommended that, where appropriate, local authorities work together to share capacity, particularly in

highly populated cities. If a local authority deems that it is necessary to issue a direction outside of their area, this should be raised through the relevant LRF(s).

- **Should ensure that those they direct to take on certain activities are safe**, for example providing those transporting bodies with PPE. All action should be in line with the appropriate Public Health guidance.
- **Should not apply directions that are outside the scope of the designation** from the national authority. As stated previously if a local authority is unclear about this they should raise this with the Welsh Government.
- **Should consider the effect this direction is likely to have on any other priority sector areas of work.** Local authorities will need to ensure that if they are directing a company to use their vehicles to transport bodies or resources it is not negatively impacting upon another priority sector e.g. food supply.

3.26. Once requirements from local actors are identified, local authorities should submit the direction in writing – a template which should be used for issuing directions is included at Annex A.

Record keeping

3.27. As part of this process, designated local authorities and national authorities making directions must keep records. This should include:

- a log of decisions made and rationale for those decisions;
- information on local partners who were consulted in making the decision;
- who was directed and what the direction was
- any equalities impacts; and
- how they adhered to Part 4 legal duties (wishes of the deceased).

A template which should be used for keeping a record has been provided at Annex B.

3.28. The appropriate period for which records need to be kept is a minimum of three years. However, under GDPR regulations personal data, such as next of kin details, should not be kept for longer than it is needed⁸.

3.29. Local authorities must submit records to the Welsh Government if requested. This will ensure transparency and central oversight. Local authorities should also share with other relevant authorities if there has been cross-boundary working, for example if the direction applied to a company which operated primarily in another area.

⁸ See GDPR guidance: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/storage-limitation/>

Monitoring

- 3.30. When a designation is triggered, local authorities should work closely with the Welsh Government and LRFs as the powers are used. When directions are made by a local authority, copies of the direction forms should be copied to the Welsh Government when these are made – contact details will be provided.
- 3.31. The Welsh Government will also keep in regular review (i) whether local authorities are using the powers correctly and appropriately, including the points set out in paragraph 3.25 above; and (ii) What impact the powers are having – ongoing capacity returns will be used to determine whether a change of approach or revocation of the designation is required.

When would government make directions?

- 3.32. A national authority has the power to make directions under Schedule 28 in three different scenarios:
- i. **If the national authority considers that a regional or national response is appropriate**, instead of leaving it to a local authority. This can only be utilised if one or more local authorities are designated under paragraph 4 of Schedule 28 (see paragraph 5(2) of Schedule 28). This course of action may be considered if there is a judgement from the national authority that a national or regional approach is the most appropriate solution. An example of this would be where several local authorities are asking for powers of directions to direct a company to use their vehicles. Instead of designating multiple local authorities in this case, it might be more suitable for the national power to direct the company instead.
 - ii. **If the national authority considers a designated local authority is failing to exercise its powers under paragraph 5(1) of Schedule 28 properly.** In this situation, the national authority can give any direction under paragraph 5(1) that the designated local authority could have given (see paragraph 6 of Schedule 28).
 - iii. **If the national authority considers that a local authority has failed properly to exercise its functions as (a) a burial or cremation authority or (b) in connection with the transport, storage or disposal of dead bodies or other human remains.** The national authority can give the local authority directions as to the exercise of its functions in connection with the above matters under the powers included in Part 3 of the Act (see section 4 of this guidance).
- 3.33. Options ii. and iii. may be considered if ongoing monitoring suggests that powers are not being used correctly or appropriately. Indicators include:
- If a local authority is not issuing directions in line with guidance. E.g. they are not sharing direction forms or providing details when requested.
 - If a local authority is not moving at a pace required to manage the capacity issues.
 - If a local authority issues directions outside of the scope of their designation.

- 3.34. In these cases, the Welsh Government will clearly communicate what is happening at national level to local authorities.
- 3.35. If a direction made by government conflicts with a direction made by a local authority, the government direction takes precedence to the extent of the conflict in the directions and must be followed (see paragraph 7 of Schedule 28). It is also possible a combination of the directions powers in both paragraph 5(1) and 5(2) could be an effective means of addressing the capacity issue(s), i.e. both a local authority and national authority may issue directions concurrently.

Compensation for affected parties

- 3.36. Where a direction has been given, companies and corporations affected may be entitled to compensation (see paragraph 8 of Schedule 28). This compensation could be for:
- costs associated with anything provided in accordance with a direction made under Schedule 28; and
 - losses or liabilities incurred in complying with a direction made under Schedule 28.

The compensation will be paid by the authority making the direction.

- 3.37. The Welsh Government will publish a separate scheme setting out the arrangements for compensation.

What happens in the event of non-compliance?

- 3.38. If the company or corporation fails to comply with a direction, without reasonable excuse, it is an offence and they may be liable, on summary conviction, to a fine. A reasonable excuse may be that they are unable to act as in doing so they would breach GDPR requirements or duties of care under Health & Safety legislation.

Revoking the designation

- 3.39. A designation must be revoked when the Welsh Government stops being of the view that the requirements in paragraph 4(1) of Schedule 28 are met (regarding the threshold for designating a local authority). As part of the monitoring regime the Welsh Government will keep a designation under regular review.
- 3.40. The decision to revoke the designation will be communicated to the local authority before the formal revocation, so that the local authority can prepare for the powers to be withdrawn. Revocation takes effect when the decision is published online, and will be published in the London Gazette as soon as practicable after the revocation is made. The effect of the revocation is that the local authority is no longer “designated” and therefore the powers of direction in Part 2 are not available to it to be used and any existing / ongoing directions would lapse. Local authorities

should ensure that suitable records have been maintained and that all persons affected by 'live' directions are informed of the revocation.

- 3.41. A revocation does not prevent a local authority from being designated again under paragraph 4(1) in Schedule 28.
- 3.42. The powers of direction will only be available whilst the powers in Schedule 28 are in force. Once the Act has been 'sunsetting' these powers will no longer be available.

Section 4: Powers to direct local authorities

This section outlines the powers in Part 3 of Schedule 28, which give national authorities the ability to direct local authorities, and explains when they may be used.

- 4.1. The powers included in Part 3 of Schedule 28 differ from the Welsh Government 'stepping in' as outlined above in options (i) and (ii) of section 3.32 in this guidance. In that case it would be exercising the powers of direction instead of the local authority.
- 4.2. The Part 3 provisions give the Welsh Government the ability to give directions to local authorities (such as outlined in option (iii) of section 3.32 in this guidance) about how the local authority should exercise *their* functions in relation to transportation, storage or disposal of dead bodies or human remains both generally and under the Act and also as burial and cremation authorities.
- 4.3. Part 3 of Schedule 28 to the Act has been reproduced in the text box below:

<i>PART 3</i> <i>Power to direct local authorities etc</i>	
12	<p><i>(1) This paragraph applies if the appropriate national authority considers that a local authority—</i></p> <p style="padding-left: 20px;"><i>(a) has failed properly to exercise any of its functions as a burial authority or a cremation authority, or</i></p> <p style="padding-left: 20px;"><i>(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).</i></p> <p><i>(2) The appropriate national authority may give the local authority directions as to the exercise of its functions in connection with any of those matters.</i></p> <p><i>(3) A direction under this paragraph must be given in writing.</i></p> <p><i>(4) The power to give directions under this paragraph includes power to vary or revoke the directions.</i></p> <p><i>(5) A local authority must comply with a direction under this paragraph.</i></p>

When would government direct a local authority?

- 4.4. The powers under Part 3 would apply when the Welsh Government deems the local authority has failed to deliver its functions in the death management system.
- 4.5. The most likely scenario where this would be used is when a local authority is not willing to use the powers of direction in Part 2. In this case, the Welsh Government could direct the local authority to do so. This would mean The Welsh Government

does not step in and direct on the local authority's behalf, but instructs the local authority to do so.

- 4.6. The decision to give direction to local authorities will be made by the Welsh Ministers.
- 4.7. The Welsh Government would give direction to local authorities in writing. The directions must be specific and be related to the transport, storage, and disposal of deceased bodies or human remains.
- 4.8. The directions given to local authorities will be revoked in writing when the Welsh Government assesses they have been fulfilled or no longer required. This assessment would be made based on information received from the LRF, Welsh Government Liaison Officer, reports from the death management industry, national information reporting mechanisms, and scientific advice (see section 3.39 Revoking the Designation).

Section 5: Deceased's wishes

This section of the guidance explains Part 4 of Schedule 28 and the obligations placed on a local authority when considering a deceased person's wishes, religion and / or beliefs, where known, of the method used for their final committal (i.e. burial or cremation).

- 5.1. The powers in Part 2 of Schedule 28 enable local authorities to direct organisations as necessary to relieve pressures in the death management system and ensure effective working of the system. Local and National authorities are under a legal obligation to have regard to the deceased's wishes, religion and / or beliefs where known or otherwise in a way that appears consistent with their religion or belief, if known. This is specifically to ensure that their preferred method of final committal. Including any requirements they had in relation to their religion and / or belief (i.e. burial or cremation) are followed.
- 5.2. These matters are very sensitive for both individuals and communities of religion and belief. Whether the deceased should be buried or cremated is of the utmost importance to many people, including those of certain religions and / or beliefs. As such, religion and belief groups have been consulted in the drafting of this section of the Act, and of this guidance, and it must be understood by local authorities before the powers of direction are used.
- 5.3. Local authorities should undertake relevant consultations as early as possible with local religion and belief organisations.
- 5.4. Part 4 of Schedule 28 to the Act has been reproduced in the text box below:

<i>PART 4 Deceased's wishes etc</i>	
13	<p><i>(1) In carrying out functions under this Schedule, local authorities and the appropriate national authorities must have regard to the desirability of disposing of a dead person's body or other remains—</i></p> <p style="padding-left: 40px;"><i>(a) in accordance with the person's wishes, if known, or</i> <i>(b) otherwise in a way that appears consistent with the person's religion or beliefs, if known.</i></p> <p><i>(2) In carrying out functions under the legislation listed in sub-paragraph (3), designated local authorities must have regard to the desirability of disposing of a dead person's body or other remains—</i></p> <p style="padding-left: 40px;"><i>(a) in accordance with the person's wishes, if known, or</i> <i>(b) otherwise in a way that appears consistent with the person's religion or beliefs, if known.</i></p> <p><i>(3) The legislation is—</i></p> <p style="padding-left: 40px;"><i>(a) section 46(1) or (2) of the Public Health (Control of Disease) Act 1984 (local authority to arrange burial or cremation where no other suitable arrangements being made);</i> <i>(b) section 25(1) of the Welfare Services Act (Northern Ireland) 1971 (corresponding provision for Northern Ireland).</i></p>

(4) The following do not apply to a designated local authority—

(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) 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) regulations 6 and 13(a) of the Cremation (Belfast) Regulations (Northern Ireland) 1961 (S.R. & O. (N.I.) 1961 No. 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).

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

What does this practically mean for local authorities when issuing directions?

- 5.5. This means that local authorities should make a reasonable attempt to ascertain the deceased’s wishes, by:
- Contacting and consulting with their Next of Kin or family members to understand the deceased’s wishes;
 - Consulting any publically available record of the deceased’s wishes, such as an “advance directive”, or hospital notes taken if the individual died in hospital.
- 5.6. If unable to locate the deceased’s Next of Kin or family members, local authorities shall, where relevant, contact a religion and / or belief group for which the deceased is a member, if membership of that group was publicly known. Local authorities will be expected to take into account their consultations with relevant religion and / or belief groups and follow the guidance given as this could provide a reasonable inference of the deceased’s preferred method of committal (i.e. burial or cremation).
- 5.7. If the deceased’s wishes for their final committal are ascertained, the local authority should make directions under their powers in paragraph 5 of Part 2 of Schedule 28 to ensure that they receive their preferred method of committal, subject to the further guidance provided in sections 5.14 and 5.15 below.
- 5.8. If the steps in sections 5.5 and 5.6 above have been followed, and the local authority has been unable to discover the deceased individual’s wishes, then the local authority will have made reasonable attempts to discover those wishes, and they may issue a direction for committal of the deceased.
- 5.9. Local authorities should also, where possible consider personal preferences for other aspects of the death process, in addition to method of final committal. These considerations must be balanced with operational requirements and the capacity

of mortuaries. Government guidance for care of the deceased with suspected or confirmed coronavirus must be followed⁹.

5.10. Where possible, local authorities should:

- Bury or cremate a body in line with the deceased, or the family's wishes if the wishes of the deceased are not known.
- Bury a body or intern cremated ashes in the appropriate section of a specified burial ground or cemetery based on the wishes of the deceased, including any requirements they had in relation to their religion and / or belief (e.g. to be buried in particular religious / non-religious or woodland section).

How should local authorities demonstrate implementation of Part 4?

5.11. As set out in paragraph 3.27 previously, local authorities must keep records of the decisions made and the rationale. This must include demonstrating having due regard to individuals' wishes. This should include:

- recording the steps made to find out the deceased's wishes, religion or beliefs;
- recording the steps taken to comply with the deceased's wishes, religion or beliefs; and
- recording the decisions taken, including the rationale, for departing from the deceased's wishes, religion or belief (if that has become necessary – see sections 5.14 – 5.15) made as a result of knowing this information, or not knowing this information.

5.12. The appropriate period for which records need to be kept is a minimum of three years. However, under GDPR (as implemented by the Data Protection Act 2018) personal data, such as next of kin details, should not be kept for longer than it is needed¹⁰

5.13. Local authorities must submit records to the Welsh Government if requested. This will support transparency and central oversight.

Are there any circumstances for which local authorities can make a direction that goes against an individual's wishes, religion or belief?

5.14. Making a direction for cremation or burial that would go against an individual's wishes, religion or belief must be the last resort and only used if there is a severe

⁹ Caring for the deceased with suspected or confirmed coronavirus - <https://www.gov.uk/government/publications/covid-19-guidance-for-care-of-the-deceased/guidance-for-care-of-the-deceased-with-suspected-or-confirmed-coronavirus-covid-19>

¹⁰ See GDPR guidance: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/storage-limitation/>

public health risk in not doing so, for example if there was no body storage available and no way of alleviating the pressure through other means.

5.15. Before this extreme measure is considered, local authorities must nonetheless have regard to the deceased's wishes and demonstrate they have:

- considered whether cremation or burial capacity can be increased using other measures e.g. using burial sites outside of the local area, ensuring full utilisation of religious burial sites, creating new burial sites, lengthening crematoria operating hours
- whether Part 2 Powers of direction can be used to increase cremation or burial capacity
- whether the body can be stored for longer, embalmed or frozen until it can be committed in line with the deceased's wishes. This is only an option if it complies with public health guidance on storing and handling the deceased and with the understanding that some religion and belief groups require rapid disposal of the body after death
- whether the body can be committed in line with the deceased's wishes in an area outside of the local region
- consulted local community and religious groups to understand whether there are any alternative mitigations available
- sought out best practice and assistance from other local authorities and industry partners.

Section 6 - Interpretation

6.1 Part 5 of Schedule 28 provides definitions for terms used in the legislation, this has been reproduced in the text box below:

<p><i>PART 5</i> <i>Interpretation</i></p>
<p>14 <i>In this Schedule—</i></p>
<p><i>“the appropriate national authority” means—</i></p>
<ul style="list-style-type: none"><i>(a) in relation to local authorities and areas in England, the Secretary of State or the Minister for the Cabinet Office,</i><i>(b) in relation to local authorities and areas in Wales, the Welsh Ministers,</i><i>(c) in relation to local authorities and areas in Scotland, the Scottish Ministers, and</i><i>(d) in relation to local authorities and areas in Northern Ireland, a Northern Ireland department;</i>
<p><i>“burial authority” means—</i></p>
<ul style="list-style-type: none"><i>(a) a burial authority for the purposes of section 214 of the Local Government Act 1972,</i><i>(b) a burial authority for the purposes of the Burial and Cremation (Scotland) Act 2016 (asp 20) (see section 2 of that Act), or</i><i>(c) a district council in Northern Ireland exercising its functions under Part 3 of the Public Health (Ireland) Act 1878;</i>
<p><i>“combined authority” means a combined authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009;</i></p>
<p><i>“cremation authority” means—</i></p>
<ul style="list-style-type: none"><i>(a) a cremation authority for the purposes of the Burial and Cremation (Scotland) Act 2016 (see section 47(5) of that Act), or</i><i>(b) a district council in Northern Ireland providing and maintaining a crematorium under Article 17 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (S.I. 1985/1208) (N.I. 15));</i>
<p><i>“English local authority” means—</i></p>
<ul style="list-style-type: none"><i>(a) a combined authority,</i><i>(b) a county council,</i><i>(c) a district council,</i><i>(d) a London borough council,</i><i>(e) the Greater London Authority,</i><i>(f) the Common Council of the City of London in its capacity as a local authority, or</i><i>(g) the Council of the Isles of Scilly;</i>
<p><i>“local authority” means—</i></p>
<ul style="list-style-type: none"><i>(a) an English local authority,</i><i>(b) a county council in Wales or a county borough council,</i><i>(c) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or</i><i>(d) a district council in Northern Ireland;</i>
<p><i>“mayoral combined authority” has the meaning given by section 107A(8) of the Local Democracy, Economic Development and Construction Act 2009.</i></p>

Annex A: Directions Templates

Local Authority Templates

Part 2 of Schedule 28 to the Act provides powers of direction to local authorities in order to manage capacity in the death management system. This annex provides 3 templates local authorities should use to i) issue, ii) vary or iii) revoke directions.

Footnotes have been included in all templates to clarify what is required and should be removed when the templates are completed and prior to their issue.

i) Issuing a Direction

[NAME OF THE LOCAL AUTHORITY]

Coronavirus Act 2020 Transportation, storage and disposal of dead bodies or other human remains [insert addressee¹¹ (No. [x¹²])] Direction

[insert name of LOCAL AUTHORITY] (“the Authority”), in exercise of the powers conferred by section 58 of and paragraphs 5(1) and 10 of Part 2 of Schedule 28 to the Coronavirus Act 2020¹³ (“the Act”), gives the following direction.

The **Welsh Ministers** are of the view that:-

- (a) as a result of coronavirus disease, there is or is likely to be, insufficient capacity within the area of the Authority to transport, store or dispose of dead bodies or other human remains; and
- (b) the powers conferred by Part 2 of Schedule 28 to the Act are likely to be an effective means of addressing that lack of capacity,

and the **Welsh Ministers** have made a designation to that effect on [insert DATE];

Before giving this direction the Authority has had regard to—

- (c) the effect that this direction is likely to have on the ability of any person to carry on their normal business;
- (d) The effect this direction is likely to have on any other priority sector areas of work; and
- (e) the desirability of disposing of a dead person’s body or other remains in accordance with the person’s wishes, if known, or otherwise in a way that appears consistent with the person’s religion or beliefs, if known.

DIRECTION

Person directed

1. This direction is given to [insert NAME OF PERSON] (“the addressee”).

Directed actions

2. The addressee must:
 - a. [provide the following service(s)¹⁴
 - b. Provide in the manner specified in this direction the following [insert as appropriate¹⁵ services/facilities/premises/vehicles/equipment]

¹¹ Name of ‘person’ to whom the direction is addressed

¹² Important to number as a ‘person’ could receive multiple directions

¹³ 2020 c. 7.

¹⁴ List what services you require the addressee to provide, be specific and precise so that the addressee knows what is required of them.

¹⁵ These are only examples taken from the wording of the Act, but should not be considered as an exclusive list. List here clearly and specifically what you want the addressee to provide and how they are to provide that, for example be clear about the extent of any premises, where vehicles or equipment are required to be taken or if they will be collected etc.

c. [to bury or cremate a dead body or other human remains in the manner and location specified] ¹⁶

Record keeping

3. The addressee must keep a record of the steps it has taken in response to the direction in paragraph 2 and retain [those] records for a period of three years from the date of the steps taken.

Provision of information

4. The addressee must, if requested to do so by the Welsh Ministers or the Authority, provide information to the Welsh Ministers or the Authority about the steps taken in response to the directed actions set out paragraph 2. The information must be provided within 7 days of the date on which the addressee receives the request.

Conflicts

5. For the avoidance of doubt, and as set out in paragraph 7 of Schedule 28 to the Act if this direction conflicts with any direction given by the Welsh Ministers under either paragraph 5(2) of Part 2 of Schedule 28 to the Act (powers of Ministers to direct regional or national response), or paragraph 6 of Part 2 of Schedule 28 to the Act (“powers of Ministers to step in”), this direction is of no effect to the extent of that conflict.

Duration

6. The direction has effect until the earlier of—
 - (a) its revocation by the Authority by a further direction under paragraph 5(1) of Part 2 of Schedule 28 to the Act, or
 - (b) the revocation of the designation of the Authority under paragraph 4 of Part 2 of Schedule 28 to the Act.

Signed by, or on the authority of, [LOCAL AUTHORITY]
[NAME IN PRINT AND JOB TITLE]

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¹⁶ Specify whether it is a direction to bury or cremate and where.

ii) Varying a Direction

[NAME OF THE LOCAL AUTHORITY]

Coronavirus Act 2020 Transportation, storage and disposal of dead bodies or other human remains [insert addressee] (Variation) [(No.[x])] Direction

[insert name of LOCAL AUTHORITY] (“the Authority”), in exercise of the powers conferred by section 58 of and paragraphs 5(1), 10 and 11 of Part 2 of Schedule 28 to the Coronavirus Act 2020 (“the Act”), gives the following direction.

The **Welsh Ministers** are of the view that:-

- (a) as a result of coronavirus disease, there is or is likely to be, insufficient capacity within the area of the Authority to transport, store or dispose of dead bodies or other human remains; and
- (b) the powers conferred by Part 2 of Schedule 28 to the Act are likely to be an effective means of addressing that lack of capacity,

and the **Welsh Ministers** have made a designation to that effect on [insert DATE];

Before giving this direction the Authority has had regard to—

- (c) the effect that this direction is likely to have on the ability of any person to carry on their normal business;
- (d) The effect this direction is likely to have on any other priority sector areas of work; and
- (e) the desirability of disposing of a dead person’s body or other remains in accordance with the person’s wishes, if known, or otherwise in a way that appears consistent with the person’s religion or beliefs, if known.

DIRECTIONS

1. This direction varies the direction [insert title of original direction here] on [insert original direction DATE].
2. The earlier direction [mentioned in paragraph 1] is varied as follows:
[The following table is to be deleted and is only provided for the purposes of the guidance.]

Action	Text to be used
REPLACE - to replace an existing provision with a new one	For paragraph [x], substitute: [new text of paragraph [x]].
REPLACE – to replace the body of a direction with extensively revised text	Omit from paragraph [a] to [f] and insert as follows “[text of new paragraphs]”
DELETE – to omit an existing provision without replacement	Omit paragraph [y]
NEW - to insert a new provision	After paragraph [z] insert: “[text of new provisions]”

[INCIDENTAL ETC. PROVISION]¹⁷

Signed by, or on the authority of, [LOCAL AUTHORITY]
[NAME IN PRINT AND JOB TITLE] [DATE ON WHICH VARIATION DIRECTION MADE]

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¹⁷ Include here any information necessary as a result of the variation.

lii) Revoking a Direction

[NAME OF THE LOCAL AUTHORITY]

Coronavirus Act 2020 Transportation, storage and disposal of dead bodies or other human remains (Revocation) Directions.

[LOCAL AUTHORITY], in exercise of the powers conferred by section 58 of and paragraphs 5(1) and 11 of Part 2 of Schedule 28 to the Coronavirus Act 2020, hereby revokes the following direction(s):

REVOCATION

1. [insert name of Direction] on [*insert date of direction*].
2. [insert name of Direction] on [*insert date of direction*].
3. [insert name of Direction] on [*insert date of direction*].
4. This revocation takes effect on [*insert DATE*].

Signed by, or on the authority of, [LOCAL AUTHORITY]
[NAME IN PRINT AND JOB TITLE] [DATE MADE]

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Annex B: Record Keeping Template

The following form has been provided for Local Authority use to support the record keeping requirements set out in paragraphs 3.27-3.29 and 5.11-5.13 in the guidance.

Completed copies of this form should be filed alongside the appropriate Direction form.

[NAME OF THE LOCAL AUTHORITY]

Coronavirus Act 2020 Transportation, storage and disposal of dead bodies or other human remains Directions – Record Keeping.

Record of Direction

Title of Direction / Reference No.	
Date	
Description of Direction:	Please include detail of who was directed and what the direction was

Rationale for Direction

Please describe the rationale for the direction, including;

- the decisions made and rationale for those decisions, including how the direction addresses the issue in the reason for the Designation;
- information on local partners and stakeholders who were consulted in making the decision;

Impact on Business

Set out how the effect of the direction on carrying out normal business has been considered.

This should include any discussions held with LRFs or government on this issue.

Due Regard to Individuals' wishes, religion or beliefs

Set out how regard to the deceased's wishes, religion and beliefs have been considered, in line with guidance set out in Section 5. This should include:

- recording the steps taken to find out an individual's wishes, religion or beliefs;

- recording the steps taken to comply with an individual's wishes, religion or beliefs;
- recording the decisions taken, including the rationale, for departing from the deceased's wishes, religion or beliefs (if that has become necessary – see paragraphs 5.14- 5.15 of guidance).

Public Sector Equality Duty

Set out any considerations relating to requirements of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This requires the local authorities to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics which should be considered are:

- age
- disability
- sex
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sexual orientation.

Other Information

Please use this section to any other information relevant to the designation. This could include:

- *Discussions with other local authorities where a designation has affected another area.*
- *How safety considerations have been taken into account, in line with Public Health Guidance.*
 - *Any discussion with government or LRFs relating to the designation.*