

Provincial Act
amending the 1985 Upper Austria Funeral Services Act
(2024 Amendment to the Upper Austria Funeral Services Act)

The Upper Austrian Landtag (Provincial Parliament) resolves as follows:

Article I

The 1985 Upper Austria Funeral Services Act, Provincial Law Gazette (LGBl.) No 40/1985, as worded by the Provincial Act LGBl. No 131/2021, is amended as follows:

1. *§ 1(1) second sentence shall read:*

'Stillbirths as defined in § 8(1) subparagraph (2) of the Midwifery Act, Federal Law Gazette (BGBl.) No 310/1994, as worded by the Federal Act BGBl. I No 65/2022, shall also be subject to a body inspection.'

2. *In § 3(3), the words 'and miscarriages' are deleted.*

3. *In § 3(4), the words 'licensed funeral services companies' [German: konzessionierte Leichenbestattungsunternehmen] are replaced by the word 'undertakers' [German: Bestattungsunternehmen].*

4. *§ 4 to § 8 shall read:*

§ 4

General rules of conduct

(1) All individuals are required to assist the body inspector in the exercise of their official duties by providing truthful information about any circumstances which are relevant to establishing the cause of death. This applies, in particular, to the doctors who last treated the deceased.

(2) All individuals are required to follow any instructions issued by the body inspector in relation to the body inspection.

§ 5

Moving the body and prohibition on altering the body

(1) Before the body inspection is carried out, the body may be moved from the place of death or place of discovery to another place suitable for the body inspection, if:

1. the body inspector has no doubt that, in order to establish the cause of death, it is not necessary for the body to remain at the place of death or place of discovery and consents to the body being moved; or

2. a doctor licensed to practise medicine or to carry out emergency medical activities in Austria determines, according to the current state of medical science, that death has occurred, has no doubt that, in order to establish the cause of death, it is not necessary for the body to remain at the place of death or place of discovery, consents to the body being moved and certifies the death. Written confirmation must be sent to the body inspector.

(2) Alterations to the body, in particular cleaning, as well as dressing, laying out and placing in a coffin, may only be made before the body inspection is carried out with the consent of the body inspector or the doctor referred to in paragraph (1) subparagraph 2. The latter must document this by written confirmation for the body inspector.

(3) By way of derogation from paragraphs (1) and (2), the body is to be kept in an unaltered position pending the carrying out of official investigations or orders, if the doctor who has determined that death has occurred expresses specific concerns that it is an unnatural death. This does not apply if the position needs to be altered for compelling reasons.

§ 6

Performance of the body inspection

(1) The body inspector shall perform the body inspection within 24 hours of receiving the death notification.

(2) The body inspector must determine, according to the current state of medical science, whether death has occurred, whether the results of their inspection match the information provided by the relatives or carers or the information provided by doctors who last treated the deceased, and finally whether any suspicion of third-party involvement in the death can be ruled out.

§ 7

Measures in the event of particular deaths

(1) If an unnatural death is suspected, the body inspector shall immediately report this to the competent prosecutor's office or to the criminal police.

(2) If the circumstances are not as referred to in paragraph (1), the body inspector shall report the death to the authority as soon as possible if:

1. the cause of death cannot be established and there is no reasonable presumption as to the cause of death; or
2. there are other circumstances that make an official autopsy of the body appear necessary (§ 10(1)).

(3) In the case of deaths following a notifiable, communicable disease, the doctor referred to in § 5(1) must notify the undertaker of this and inform those present about immediately desirable hygiene measures.

§ 8

Body inspection certificate

(1) The body inspector shall issue a body inspection certificate for the body inspection carried out. The following must be clear from the body inspection certificate:

1. the identity of the deceased (at least first and last name, gender and date of birth);
2. the established or presumed cause of death;
3. the place of death or discovery of the body;
4. the established or presumed time at which the death occurred;
5. whether it has been established that the body is infectious;
6. whether and what sanitary concerns prevent the transfer of the body (e.g. due to the risk of disease).

(2) In the cases referred to in § 7(1) and (2), the body inspection certificate may not be issued before the court or authority has declared that it has no reason to intervene.

(3) Each of the following shall receive a body inspection certificate:

1. the municipality in which the death occurred or the body was discovered;
2. the operator of the funeral facility in which the funeral is to take place (§ 18(2) and § 20(2)).

(4) The body inspector shall hand over the body inspection certificate referred to in paragraph (3)2 to the responsible undertaker or arrange for it to be handed over. The undertaker shall send the body inspection certificate to the operator of the funeral facility concerned.

(5) The body inspection certificate shall be kept by the municipality for at least ten years. The municipality shall, upon request, grant the nearest relatives (§ 10(5)) access to the body inspection certificate, who may make copies of it or have such copies produced at their expense.'

5. § 10(1) and (2) shall read:

'(1) If the conditions for the prosecutor's office to order an autopsy are not met, the authority shall order an autopsy of the body if an autopsy is necessary to clarify the cause of death for important reasons relating to public health care and the cause of death cannot be established in any other way.

(2) The provisions on autopsies in hospitals (§ 49 of the 1997 Upper Austria Hospitals Act) and the provisions relating to autopsies for criminal proceedings shall not be affected by this Act.'

6. The third sentence of § 10(5) is deleted.

7. In § 13(1), the words '(e.g. heart puncture, opening of blood vessels)' are deleted.

8. § 14 shall read:

§ 14

Thanatopraxy

Thanatopractic treatment may only be carried out in suitable rooms after the body inspection. The carrying out of thanatopraxy shall be reported by the undertaker to the operator of the funeral facility where the body is to be interred or cremated.'

9. § 15 shall read:

§ 15

Mandatory interment

(1) All bodies shall be interred after 48 hours and before 96 hours have passed since the death occurred. If suitable refrigeration or preservation facilities are available, the body shall be interred before ten days have passed since the death occurred. Later interment may only be carried out if a body is provided to an anatomical university institute or with the permission of the mayor. Permission shall be granted if there are no sanitary concerns preventing such later interment and respect for the deceased is ensured. If necessary in order to avoid risks to health and to ensure respect for the deceased, appropriate constraints and conditions shall be attached to the permission.

(2) Irrespective of who is required to cover the funeral expenses, the nearest relatives of the deceased must take care of the burial. If there are no nearest relatives or if they fail to fulfil their duty in due time, the burial must be arranged by the municipality in which the death occurred, or if this cannot be determined, by the municipality in which the body was discovered. The municipality may notify an anatomical university institute in Austria that it may collect the body at its own expense, unless this is prohibited under the provisions of paragraph (3).

(3) Providing a body to an anatomical university institute is prohibited if:

1. the municipality has received a written declaration from the deceased or their legal representative, in which such provision is expressly ruled out;
2. such provision would thwart any autopsy that may be ordered; or
3. sanitary concerns prevent such provision.

(4) The persons referred to in § 10(5) shall be deemed to be the nearest relatives for the purposes of paragraph (2). The obligation to take care of the burial is incumbent upon them in the order they are listed in § 10(5).

(5) If, pursuant to paragraph (2), the municipality has arranged the burial, it may take recourse against the person who is responsible for the burial under paragraph (4). If the obligation under paragraph (4) applies to several persons, they shall be jointly and severally liable. If the expenses are not paid after a corresponding request by the municipality, these may be imposed by official decision.

(6) The burial obligation also exists for stillbirths and miscarriages, parts of dead bodies and severed human body parts. These must be handed over to the undertaker by the doctor who provided the treatment or by the management of the hospital. In all other respects, paragraph (2) shall apply, *mutatis mutandis*.

(7) By way of derogation from paragraph (6), stillbirths and miscarriages, parts of dead bodies and severed human body parts may be kept in a hygienic manner in the context of medical practice or operation of a hospital and then sent for collective burial in accordance with § 17(3).'

10. The following sentence is added to § 16(1):

'The laying out of the body in the place of death shall be permitted without the consent of the body inspector until no more than 24 hours after the death occurred.'

11. § 17 shall be amended to read:

'§ 17

Determination of type of burial and place of burial

(1) The types of burial that are possible are inhumation (burying in the ground or interment in a tomb) or cremation.

(2) The type and place of burial shall be according to the will of the deceased. If there is no clearly identifiable will of the deceased or if it is infeasible to carry out, the person who, on the basis of the obligation laid down in § 15(2) and (4), actually arranges the burial, may determine the type and place of burial.

(3) For stillbirths or miscarriages, parts of dead bodies and severed human body parts, collective burial (inhumation or cremation) is permitted, but burial together with another body is prohibited.

(4) By way of derogation from paragraph (3), collective burial of a stillbirth or miscarriage with the mother who also died shall be permitted.'

12. The heading for § 18 shall read:

'Inhumation'

13. § 20(2) to (4) shall read:

(2) A body may only be incinerated if cremation has been determined as the type of burial and the body inspection certificate has been produced.

(3) The entire remains of an incinerated body must be contained in an urn. This must be labelled in such a way that the body from which the ashes come can be determined.

(4) The provision laid down in the second sentence of paragraph (3) shall not apply to collective burials pursuant to § 17(3) or to ashes of separately incinerated parts of dead bodies and severed human body parts.'

14. The following paragraph (5) shall be added after § 20(4):

'(5) Unless the deceased has made an instruction to the contrary, the cremation company may, at the request of the spouse, civil partner, cohabiting partner, a child or a parent, take a small fraction of the ashes from the urn and hand them over to the relative in memory of the deceased. Even in the event of several requests to have some of the ashes, only a small fraction may be taken in total.'

15. § 21 shall read:

'§ 21

**Interment of urns and scattering of ashes
in cemeteries and at urn sites**

(1) The urn containing the ashes shall be interred in a cemetery or an urn site, unless an exception is permitted under § 21a. The urn is to be handed over by the cremation company directly to the operator of the funeral facility concerned or the authorised undertaker.

(2) By way of derogation from paragraph (1), the urn may be handed over directly to the person responsible for the interment if confirmation of the handover is made to the operator of the cemetery or urn site.

(3) The urn is to be kept with dignity and respect until the interment.

(4) The interment of an urn in a body of water shall be permitted only if:

1. the cemetery or urn grove is located directly on the bank of a flowing waterway and from there the urn is sunk into the water; and
2. the nature of the urn and the waterway ensures immediate and complete sinking of the urn; and
3. the urn is made of material that dissolves quickly in water.

(5) The scattering of ashes shall be permitted only in a meadow designated for this purpose in a cemetery or urn grove.'

16. After § 21, the following § 21a shall be inserted:

'§ 21a

**Interring and keeping the urn
outside cemeteries and urn sites**

(1) The interment or keeping of an urn outside a burial facility referred to in § 21(1) requires authorisation from the municipality in which the urn is to be interred or kept. The authorisation shall be issued, with the necessary constraints and conditions attached to it, if:

1. the handover of the urn and the method of interring or keeping the urn corresponds to the will of the deceased as documented in writing or the applicant produces the mutual written consent of the spouse, civil partner, cohabiting partner, children, siblings and parents of the deceased, provided that obtaining such consent is reasonable; and
2. the intended interment or keeping of the urn treats the deceased with dignity and respect, in particular the urn is not interred or kept in a generally accessible place.

(2) The urn shall be handed over by the cremation company to the person who has been granted authorisation pursuant to paragraph (1) or a corresponding authorisation in accordance with other provincial legislation, upon presentation of the authorisation notice. If the interment of the urn outside a burial facility is not subject to authorisation in a federal province, the urn may also be handed over to the persons responsible for taking care of the interment.

(3) In the event of a transfer to a State where there is no obligation for urns to be in a cemetery, a corresponding confirmation (e.g. from the embassy or consular representation) must be provided to the cremation company before the urn is handed over.

(4) Sinking the urn into a watercourse or scattering the ashes is not permitted.

(5) A fraction of ashes taken in accordance with § 20(5) shall not be stored, buried or scattered outside a burial facility in generally accessible places.'

17. In § 22(1), after the words 'an autopsy pursuant to § 10(4)' the words 'or thanatopraxy' are inserted.

18. § 22(3) is deleted.

19. § 22(5) shall read:

'(5) With respect to transferring bodies abroad, reference is made to the provisions of the International Convention on the Transportation of Corpses, BGBl. No 118/1958, and the Agreement on the Carriage of Corpses, BGBl. No 515/1978.'

20. In § 22(7), the words 'funeral services company' are replaced by the word 'undertaker' and the last sentence is deleted.

21. In § 24(1), the (1) designation is deleted and the words 'licensed funeral services companies' are replaced by the word 'undertakers'.

22. § 24(2) is deleted.

23. § 25(2) second sentence shall read:

'The pass for the transshipment of a dead body and the death certificate shall be handed over to the requesting undertaker.'

24. § 25(3) shall read:

'(3) The undertaker carrying out the transfer of the body shall, after receipt of the body at the place of destination, send the pass for the transshipment of a dead body to the authority that is competent for this place.'

25. In § 25(4), the spelling of the German word for pass for the transshipment of a dead body is changed from 'Leichenpaß' to 'Leichenpass'.

26. In § 27, the reference '§ 22(3) to (7)' is replaced by the reference '§ 22(4) to (7)' and the reference '§ 24(1)' is replaced by the reference '§ 24'.

27. § 29a is deleted.

28. § 31(1) and (2) shall read:

'(1) The establishment, substantial modification and the partial or complete discontinuation of a burial facility must be approved by the authority.

(2) The following documents must be attached to the application for establishment or substantial modification, one copy being sufficient in the case of electronic submission:

1. a floor plan and layout plan to scale in duplicate;
2. a description of the project by an authorised construction expert in duplicate;
3. proof of permanent right of disposal if the property is not owned by the applicant;
4. in the case of cemeteries, a geological report on soil and groundwater conditions to verify compliance with the conditions laid down in paragraph (3) subparagraph 6; and
5. in the case of cremation facilities, a description of the operation, which shall in any event contain detailed information on the process of incineration through to storage of the ashes.'

29. The introductory part of the sentence in § 31(3) shall read:

'Authorisation to establish or substantially modify shall be issued, with the necessary constraints and conditions attached to it, if:'

30. § 31(3) subparagraphs 6 to 9 shall read:

- '6. in the case of cemeteries, the soil quality is suitable with regard to decomposition conditions and no impairment of groundwater, in particular used drinking water supply facilities, is to be expected;

7. in the case of cemeteries or cremation facilities, there is a morgue (mortuary) or the use of such is ensured by contractual agreement in accordance with § 32(2);
8. in the case of cremation facilities, technology must ensure compliance with emission limit values, emission reduction measures and emission monitoring, reflecting the state of the art at the time of authorisation;
9. proper disposal of waste is ensured.'

31. After § 31(4), the following paragraph (4a) is inserted:

'(4a) The authorisation holder shall keep records of emission monitoring, shall keep them for five years and submit them to the authority at the authority's request.'

32. The following sentence is added to § 31(6):

'The above provisions shall also apply to the transfer of the permanent right of disposal.'

33. The following paragraph (8) is added after § 31(7):

'(8) The authority has the right to verify at any time and without notice that burial facilities and morgues (mortuaries) are complying with the provisions of this Provincial Act. If deficiencies are found, the authorisation holder shall be requested in writing to rectify them within a reasonable time.'

34. § 32 (1) shall read as follows:

'(1) The establishment and substantial modification of a morgue (mortuary) requires authorisation from the authority. The authorisation shall be issued, with the necessary constraints and conditions attached to it, if:

1. the morgue (mortuary) meets the requirements of dignity and respect;
2. there are no sanitary concerns;
3. the morgue (mortuary) is large enough that, with mortality at usual rates, all dead bodies which may not be laid out in another place, may be laid out therein; and
4. the morgue (mortuary) is located at least in the vicinity of the cemetery or the cremation facility.'

35. In § 33(1), the last sentence is deleted.

36. In § 33(2) subparagraph 2, the word 'kinsmen' is replaced by the word 'relatives'.

37. In § 33(3), the last sentence is deleted.

38. *In § 39(1), the amount 'EUR 220' is replaced by the amount 'EUR 3 000' and the last sentence is deleted.*

39. *§ 40 subparagraph 2 shall read:*

'2. the participation of the municipality in the carrying out of the autopsy (§ 11(2)) and the participation of the body inspector in the carrying out of the autopsy (§ 11(1));'

40. *§ 41 shall be amended to read:*

'§ 41

Provision on interpretation

Insofar as provisions of this Provincial Act concern the Federal Government's sphere of competence, in particular in matters of trade law, epidemic law, war victims' welfare or criminal law, they shall be interpreted as having no legal effect beyond the competence of the Province.'

Article II

This Provincial Act shall enter into force at the end of the day on which it is promulgated in the Provincial Law Gazette for Upper Austria (Landesgesetzblatt für Oberösterreich).