



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 22nd March 2016 and received Royal Assent on 28th April 2016**

An Act of the Scottish Parliament to restate and amend the law relating to burial and cremation; to make provision about exhumation of human remains; to make provision in relation to the inspection and regulation of burial authorities, cremation authorities and funeral directors; to enable provision to be made for the licensing of funeral directors; and for connected purposes.

### PART 1

#### BURIAL

##### *Burial grounds*

#### 1 Meaning of “burial ground”

In this Act, “burial ground”—

- (a) means land—
  - (i) used, or intended to be used, primarily for the burial of human remains, and
  - (ii) in respect of which a charge for such burials is made, and
- (b) includes land that was, but is no longer, used primarily for the burial of human remains and that—
  - (i) was provided for that purpose in pursuance of a function conferred by an enactment or an obligation imposed by rule of law, or
  - (ii) is specified in regulations made by the Scottish Ministers.

#### Commencement Information

- II** [S. 1](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [reg. 4](#))

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Burial and Cremation (Scotland) Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## 2 Meaning of “burial authority”

In this Act, “burial authority”, in relation to a burial ground, means the person having responsibility for the management of the burial ground.

### Commencement Information

I2 [S. 2](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), reg. 2, [sch.](#) (with reg. 4)

## 3 Provision of burial ground: local authority

- (1) Each local authority—
  - (a) must provide one burial ground within the area of the local authority, and
  - (b) may provide other burial grounds within that area.
- (2) In subsection (1), “burial ground” has the meaning given in section 1 except that it does not include land mentioned in paragraph (b) of that section.

### Commencement Information

I3 [S. 3](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), reg. 2, [sch.](#) (with reg. 4)

## 4 Provision of burial ground outwith local authority area

A local authority may provide a burial ground that is situated wholly or partly outwith the area of the authority.

### Commencement Information

I4 [S. 4](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), reg. 2, [sch.](#) (with reg. 4)

## 5 Joint provision of burial ground

- (1) Any two or more local authorities may make arrangements to provide jointly a burial ground within the area of one or more of the authorities.
- (2) If a burial ground which is provided jointly by two or more local authorities under subsection (1) is wholly within the area of one of the authorities, that authority is deemed to have complied with section 3(1)(a).
- (3) Subsection (4) applies where a burial ground is provided jointly under subsection (1) by two or more local authorities that are burial authorities.
- (4) Any functions exercisable under, or by virtue of, this Act or any other enactment by a burial authority in relation to a burial ground are to be exercised—
  - (a) jointly by the local authorities in relation to the burial ground, and
  - (b) in accordance with such arrangements as may be made between the authorities in relation to the burial ground.
- (5) In this section, “burial ground” has the meaning given by section 1 except that it does not include land mentioned in paragraph (b) of that section.

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#### Commencement Information

**I5** [S. 5](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [reg. 4](#))

## 6 Management of burial ground

- (1) The Scottish Ministers may by regulations make provision for or in connection with the management, regulation and control by a burial authority of burial grounds.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) the maintenance of—
    - (i) burial grounds, and
    - (ii) buildings, walls, fences or other structures erected on burial grounds,
  - (b) enclosing, laying out and embellishing burial grounds,
  - (c) access to and within burial grounds, including the construction, repair, maintenance and improvement of roads and paths,
  - (d) the maintenance and repair of memorials, buildings and other structures on burial grounds (including for the purpose of making them safe),
  - (e) the charging of fees by burial authorities which are local authorities in respect of such matters as may be specified in the regulations,
  - (f) persons employed by burial authorities (including in relation to training, qualifications and membership of professional bodies),
  - (g) conditions relating to the erection of a memorial, building or other structure on burial grounds,
  - (h) the imposition by burial authorities of such restrictions and conditions as they think necessary or appropriate in relation to—
    - (i) the layout of burial grounds (including in relation to the size of, and distance between, lairs),
    - (ii) the right to erect a memorial, building or other structure on burial grounds (including in relation to materials, construction, size, maintenance and liability for costs in respect of work carried out by burial authorities),
  - (i) the depth at which human remains may be buried,
  - (j) the designation of part of a burial ground for use by particular faiths or religious bodies,
  - (k) the provision of buildings for the use of persons of particular faiths or belonging to particular religious bodies,
  - (l) creating criminal offences to be triable summarily and punishable by a fine not exceeding level 3 on the standard scale, or
  - (m) defences and evidential matters relating to such offences.

#### Commencement Information

**I6** [S. 6](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [reg. 4](#))

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## 7 Right to erect building

- (1) A burial authority may sell a right to erect a building or other structure on a burial ground for which it is the burial authority.
- (2) Any such right is exercisable only by the person in whom the right is vested.
- (3) A right sold by a burial authority under subsection (1) is to be exercised subject to such terms, and on such conditions, as the burial authority may determine.
- (4) Such a right is subject to, and must be exercised in accordance with, any regulations under this Part.

### Commencement Information

**I7** [S. 7](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), reg. 2, [sch.](#) (with reg. 4)

## *Burial in burial ground*

PROSPECTIVE

## 8 Application to carry out burial

- (1) A person may not carry out a burial of human remains in a burial ground unless—
  - (a) the person has submitted to the burial authority for the burial ground an application to carry out the proposed burial, and
  - (b) the application has been granted.
- (2) The Scottish Ministers may by regulations make provision for or in connection with applications mentioned in subsection (1).
- (3) In making such an application, a person must comply with any requirements imposed by or under regulations under subsection (2).
- (4) Regulations under subsection (2) may in particular—
  - (a) specify the form and content of applications,
  - (b) specify persons, or a description of persons, who may issue forms on which applications are to be made,
  - (c) prohibit such persons from altering the forms other than in such ways as may be specified in the regulations,
  - (d) specify persons, or a description of persons, who may submit applications,
  - (e) make provision about documents to be submitted with applications, or
  - (f) make provision for reviews of, or appeals against, decisions of a burial authority—
    - (i) to grant an application, or
    - (ii) to refuse to grant an application.

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## PROSPECTIVE

### 9 Unauthorised burial: offences

- (1) A person commits an offence if the person contravenes section 8(1) by knowingly carrying out a burial in respect of which no application has been granted.
- (2) A person commits an offence if the person—
  - (a) provides information in, or in connection with, an application mentioned in section 8(1) which the person knows to be false or misleading in a material way, or
  - (b) recklessly provides information in, or in connection with, such an application which is false or misleading in a material way.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 3 on the standard scale or to both.
- (4) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PROSPECTIVE

### 10 Burial register

- (1) Each burial authority must prepare and maintain for each burial ground for which it is the burial authority a register containing prescribed information about burials that have taken place in the burial ground (a “burial register”).
- (2) The Scottish Ministers may by regulations—
  - (a) require a burial register to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to a burial register as they consider appropriate.
- (3) A burial authority must make arrangements for each of its burial registers to be available for inspection by members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (4) A burial authority must make arrangements for copies of entries in its burial registers to be supplied, on request, to members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (5) A burial register must be kept indefinitely.
- (6) An extract from a burial register kept by a burial authority, duly certified as a true copy by the burial authority, is sufficient evidence of the burial entered in it for the purposes of any court proceedings.
- (7) In subsection (2), “specified” means specified in the regulations.