
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 417

The Burial and Cremation (Scotland) Act 2016 (Commencement No. 1, Transitory and Transitional Provisions) Regulations 2016

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Burial and Cremation (Scotland) Act 2016 (Commencement No. 1, Transitory and Transitional Provisions) Regulations 2016 and come into force on 28th December 2016.

(2) In these Regulations “the Act” means the Burial and Cremation (Scotland) Act 2016.

Appointed day

2. 28th December 2016 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of the table in the schedule (the subject matter of which is specified in column 2 of that table) but where a purpose is specified in column 3 of that table in relation to a provision in column 1, that provision comes into force only for that purpose.

Transitional and transitory provision: register of burials

3.—(1) Despite the repeal of section 31 of the Burial Grounds (Scotland) Act 1855⁽¹⁾ (register of burials) each local authority must continue to prepare and maintain for each burial ground for which it is the burial authority a register of all the burials within a burial ground maintained by that authority.

(2) The register must include a record identifying those areas of ground to distinguish where remains have been buried.

(3) Subject to paragraph (4) paragraphs (1) and (2) have effect until section 10 of the Act (burial register) comes into force.

(4) An extract from a burial register kept by a local authority in accordance with paragraphs (1) and (2), or under section 31 of the Burial Grounds (Scotland) Act 1855, duly certified as a true copy by that authority, is sufficient evidence of the burial entered in it for the purposes of any court proceedings.

Transitory provision: right of burial and right to erect headstone

4.—(1) A burial authority which is a local authority may, on the application of any person, sell a right of burial in a lair in a burial ground for which it is the burial authority.

(2) A person in whom a right of burial in a lair is vested may apply to the burial authority for the burial ground for the right to erect a headstone or other memorial on the lair.

(3) In this regulation “right of burial”, in relation to a lair, means—

(a) a right to be buried in the lair;

(b) where human remains are to be buried on or above ground—

(1) 1855 c.68.

- (i) a right to place a tomb on the lair; and
 - (ii) a right to erect a structure associated with the tomb on the lair; and
 - (c) a right to determine whose remains may be buried in the lair.
- (4) A right of burial sold by a burial authority under paragraph (1) is to be exercised subject to such terms and conditions as the burial authority may determine.
- (5) A burial authority may refuse an application mentioned in paragraph (1) or (2) if, in the opinion of the authority, it is reasonable to do so.
- (6) A right of burial is exercisable only by the person in whom the right is vested.
- (7) This regulation has effect until sections 12 (right of burial) and 19 (right to erect headstone) of the Act come into force.

Sale of right of burial: fees

5.—(1) A burial authority may charge such fees as the authority thinks fit in respect of the sale of a right of burial under regulation 4(1) and section 20(3) to (6) of the Act (fees for burials) applies subject to the modifications specified in paragraph (2).

(2) In section 20(3) and (6) of the Act omit “mentioned in subsection (2)”.

St Andrew’s House,
Edinburgh
13th December 2016

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers