



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

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**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 S

### BURIAL

#### *Burial grounds*

#### 1 Meaning of “burial ground” S

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*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

## 2 Meaning of “burial authority” **S**

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 **S**

- (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 **S**

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 **S**

- (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 **S**

- (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 **S**

- (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*

VALID FROM 02/06/2023

## 8 Application to carry out burial **S**

- (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** **S**

- (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.

## VALID FROM 02/06/2023

**10 Burial register** **S**

- (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.

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## PROSPECTIVE

**11 Burial register: offence S**

- (1) A burial authority commits an offence if, without reasonable excuse, the authority contravenes section 10(1) by failing to prepare or maintain a burial register.
- (2) A burial authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PROSPECTIVE

**12 Right of burial S**

- (1) A burial 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) In this Act, “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 the ground—
    - (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) subject to section 37(5), a right to determine whose remains may be buried in the lair.
- (3) A right of burial is exercisable only by the person in whom the right is vested.
- (4) A right of burial 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.
- (5) A right of burial is subject to, and must be exercised in accordance with, any regulations under this Part.
- (6) A burial authority may refuse an application mentioned in subsection (1) if, in the opinion of the authority, it is reasonable to do so (but this subsection is subject to section 13).

## PROSPECTIVE

**13 Duty to sell right of burial S**

- (1) Where an application under section 12(1) satisfies the conditions in subsection (2) or (3), the burial authority to which the application is made must grant the application and sell a right of burial to the person making the application (the “applicant”).
- (2) The conditions are that—
  - (a) the application is made to a burial authority that is a local authority,
  - (b) the application discloses that the applicant intends the lair to be used to bury the remains of a person who, at the time the application is made, has died, and

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- (c) immediately before the person's death, the person was ordinarily resident in the area of the local authority mentioned in paragraph (a).
- (3) The conditions are that—
  - (a) the application is made to a burial authority that is a local authority,
  - (b) the application discloses that the applicant intends the lair to be used to bury the remains of—
    - (i) a still-born child, or
    - (ii) a fetus mentioned in subsection (4), and
  - (c) the applicant is ordinarily resident in the area of the local authority mentioned in paragraph (a).
- (4) The fetus is one which—
  - (a) is parted from a woman before or on completion of the 24th week of the woman's pregnancy, and
  - (b) after being so parted, does not breathe or show any other signs of life.
- (5) In subsection (3)(b)(i), “still-born child” has the meaning given by section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

PROSPECTIVE

#### 14 Duration and extension of right of burial **S**

- (1) This section applies in relation to any right of burial other than one that vests in the Commonwealth War Graves Commission.
- (2) A right of burial is extinguished at the end of the period of 25 years beginning with the day on which the right was sold.
- (3) The burial authority may, on the application of a person in whom the right of burial is vested, extend the period for which the right subsists.
- (4) An extension under subsection (3) may be granted on more than one occasion.
- (5) Where an extension is granted under subsection (3), the right is extinguished at the end of the period of 10 years beginning with the day on which the right would, but for the extension, otherwise be extinguished.
- (6) A burial authority may refuse an application mentioned in subsection (3) if, in the opinion of the authority, it is reasonable to do so.
- (7) Subsection (8) applies where—
  - (a) the person in whom a right of burial is vested dies before the right is extinguished, and
  - (b) the right does not transfer to and vest in another person by virtue of any testamentary provision, enactment or rule of law.
- (8) The right vests in, and may be exercised by, the burial authority that sold the right.
- (9) For the purposes of calculating any period of time mentioned in this section, the day on which a right of burial is sold is to be taken to be the day recorded, in respect of the right, in the appropriate register under section 17.

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## PROSPECTIVE

**15 Commonwealth War Graves Commission: right of burial S**

- (1) Subsection (2) applies where a burial authority sells a right of burial to the Commonwealth War Graves Commission.
- (2) The right subsists in perpetuity.

## PROSPECTIVE

**16 Right of burial: notification of pending extinguishment S**

- (1) Subsection (2) applies where—
  - (a) a right of burial falls to be extinguished by virtue of section 14(2) or (5), and
  - (b) the burial authority that sold the right—
    - (i) is aware of the name and address of the right-holder, or
    - (ii) can, after reasonable enquiry, ascertain them.
- (2) At least 3 months before the day on which the right of burial falls to be extinguished, the burial authority must notify the right-holder—
  - (a) of the date on which the right falls to be extinguished,
  - (b) of the right-holder's right to apply for an extension of the right under section 14(3),
  - (c) that, where no such application is made, the right will be extinguished, and
  - (d) that the right will be extinguished if such an application is refused under section 14(6).
- (3) In this section, “right-holder”, in relation to a lair, means the person in whom the right of burial in the lair is vested.

**17 Register of rights of burial S**

- (1) This section applies where a burial authority sells a right of burial in a burial ground for which it is the burial authority.
- (2) The burial authority must, in relation to each such burial ground, prepare and maintain a register containing—
  - (a) information about lairs in the burial ground in which rights of burial have been sold by the authority,
  - (b) the date on which the rights were sold by the authority,
  - (c) the names and addresses of persons to whom the authority sold the rights, and
  - (d) subject to subsection (3), the names and addresses of persons in whom the right of burial vests (where such persons do not fall within paragraph (c)).
- (3) If the burial authority is unaware of, or is unable after reasonable enquiry to ascertain, the names and addresses of the persons mentioned in subsection (2)(d), the authority need not comply with the duty imposed by that subsection.



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- (4) The burial authority may take such steps as it considers necessary—
  - (a) to ascertain whether the information in the register is current and accurate, and
  - (b) to obtain information to enable the authority to adjust the information to ensure the register is current and accurate.
- (5) The register must be kept indefinitely.
- (6) An extract from a register maintained by a burial authority under this section, duly certified as a true copy by the burial authority, is in relation to matters contained in the extract sufficient evidence of those matters for the purposes of any court proceedings.

#### Commencement Information

**18** S. 17 in force at 28.12.2016 by S.S.I. 2016/417, reg. 2, sch. (with reg. 4)

PROSPECTIVE

#### **18** Registers under section 17: offence **S**

- (1) A burial authority commits an offence if, without reasonable excuse, the authority contravenes section 17(2) by failing to prepare or maintain a register as required under that section.
- (2) A burial authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PROSPECTIVE

#### **19** Right to erect headstone **S**

- (1) The person in whom a right of burial in a lair in a burial ground 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.
- (2) A burial authority may refuse such an application if, in the opinion of the authority, it is reasonable to do so.
- (3) A right conferred by the granting of such an application is subject to, and must be exercised in accordance with, any regulations under this Part.
- (4) Subsection (5) applies where a right of burial in a lair is extinguished (including at the end of any period for which it is extended under section 14).
- (5) A right to erect a headstone or other memorial on the lair conferred by virtue of subsection (1) on the person in whom a right of burial is vested is extinguished on the extinguishment of the right of burial.
- (6) More than one application may be made under subsection (1) by the person in whom a right of burial is vested.

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## 20 Fees for burials **S**

- (1) This section applies where a burial authority is a local authority.
- (2) The burial authority may charge such fees as the authority thinks fit in respect of—
  - (a) burials carried out in burial grounds for which it is the burial authority,
  - (b) the sale of a right to erect a building or other structure under section 7,
  - (c) the sale of a right of burial under section 12 or 13, and
  - (d) the extension of a right of burial under section 14.
- (3) The burial authority must publish fees mentioned in subsection (2) in accordance with subsection (4).
- (4) The fees must be published—
  - (a) in paper form, and
  - (b) on the website of the burial authority.
- (5) A burial authority may display the fees in any place it considers appropriate.
- (6) The burial authority must keep under review fees mentioned in subsection (2).

### Commencement Information

**19** [S. 20](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [regs. 4, 5](#))

VALID FROM 02/06/2023

## 21 Burial authority: code of practice **S**

- (1) A burial authority must comply with any code of practice issued by the Scottish Ministers about the carrying out of functions conferred on the authority by or under this Act in relation to the management of a burial ground (a “burial code”).
- (2) Before issuing any burial code, the Scottish Ministers must consult—
  - (a) burial authorities, and
  - (b) other persons appearing to the Scottish Ministers to have an interest.
- (3) After taking account of any representations received by them by virtue of subsection (2), the Scottish Ministers must lay a draft of the burial code before the Scottish Parliament.
- (4) The Scottish Ministers may not issue a burial code unless a draft of the code is approved by resolution of the Scottish Parliament.
- (5) The Scottish Ministers must publish a burial code in such manner as they consider appropriate.
- (6) The Scottish Ministers must keep under review a burial code.
- (7) In this section, references to a burial code include references to a burial code as revised from time to time by the Scottish Ministers.

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VALID FROM 02/06/2023

### *Private burial*

## **22 Private burial** **S**

- (1) The Scottish Ministers may by regulations make provision for or in connection with private burials.
- (2) In this Part, “private burial” means the burial of human remains in a place other than a burial ground.
- (3) A person who proposes to carry out a private burial may do so only if the burial is authorised by the relevant local authority.
- (4) In carrying out a private burial, a person must comply with any requirements imposed by or under regulations under subsection (1).
- (5) Regulations under subsection (1) may in particular—
  - (a) make provision about applications to carry out private burials,
  - (b) specify the form and content of applications,
  - (c) enable applications to be made in respect of burials of persons who, at the time of making the application, are not deceased,
  - (d) make provision about documents to be submitted with, or in relation to, applications,
  - (e) make provision for the time at which such documents are to be submitted,
  - (f) make provision about persons, or a description of persons, who are required to submit such documents,
  - (g) make provision for or in connection with the charging of fees by local authorities in respect of applications to carry out private burials,
  - (h) specify persons or a description of persons—
    - (i) from whom consent to proposed private burials is to be obtained, and
    - (ii) by whom consent to proposed private burials is to be signified as having been obtained in, or in relation to, applications to carry out private burials,
  - (i) require persons making such applications to provide the local authority to which the application is made with any further information in connection with the application that the authority considers necessary,
  - (j) specify the circumstances in which a local authority receiving an application to carry out a private burial—
    - (i) must authorise the carrying out of the burial,
    - (ii) may authorise the carrying out of the burial,
    - (iii) must not authorise the carrying out of the burial,
    - (iv) must or may authorise the carrying out of the burial subject to conditions specified by the authority or in the regulations,
  - (k) make provision for or in connection with—
    - (i) notices by local authorities of the authorities' decisions relating to applications to carry out private burials,

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- (ii) notices relating to those notices by persons making the applications or by such other persons, or other persons of such descriptions, as may be specified in the regulations,
  - (l) specify the form and content of notices mentioned in paragraph (k),
  - (m) make provision for reviews of or appeals against—
    - (i) decisions of the local authority to authorise the carrying out of private burials,
    - (ii) decisions of the local authority to refuse to authorise the carrying out of private burials,
    - (iii) any conditions subject to which a private burial is authorised, or
  - (n) make provision for or in connection with—
    - (i) the size of any area of land on which private burials may be carried out,
    - (ii) by reference to any such size, the maximum number of private burials that may be carried out on the land,
    - (iii) minimum distances between lairs on such land.
- (6) In this section—
- “human remains” does not include—
    - (a) human remains that have been cremated, or
    - (b) the remains of a fetus mentioned in subsection (7),
  - “relevant local authority”, in relation to land on which a private burial is proposed to be carried out, means the local authority for the area in which the land is situated.
- (7) The fetus is one which—
- (a) is parted from a woman before or on completion of the 24th week of the woman's pregnancy, and
  - (b) after being so parted, does not breathe or show any other signs of life.

## 23 Private burial register **S**

- (1) Each local authority must prepare and maintain a register of private burials authorised by the authority under section 22(3) (a “private burial register”).
- (2) The Scottish Ministers may by regulations—
  - (a) require a private burial register to be in a specified form and kept in a specified manner,
  - (b) require specified information to be recorded in a private burial register,
  - (c) make provision about when such information is to be recorded, or
  - (d) make such other provision relating to a private burial register as they consider appropriate.
- (3) A local authority must make arrangements for its private burial register 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 local authority must make arrangements for copies of entries in its private burial register to be supplied, on request, to members of the public on payment of such reasonable charge (if any) as the authority may determine.

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- (5) A private burial register must be kept indefinitely.
- (6) An extract from a private burial register kept by a local authority, duly certified as a true copy by the local authority, is sufficient evidence of the private burial entered in it for the purposes of any court proceedings.
- (7) In subsection (2), “specified” means specified in the regulations.

PROSPECTIVE

#### 24 Private burial: offences **S**

- (1) A person commits an offence if the person contravenes section 22(3) by knowingly carrying out a private burial that is not authorised by the relevant local authority.
- (2) A person commits an offence if, without reasonable excuse, the person fails to comply with the requirement imposed by section 22(4).
- (3) A person commits an offence if the person—
  - (a) provides information in, or in connection with, an application made by virtue of regulations under section 22 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.
- (4) 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.
- (5) A person who commits an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In subsection (1), “relevant local authority” is to be construed in accordance with section 22(6).

PROSPECTIVE

#### 25 Private burial register: offence **S**

- (1) A local authority commits an offence if, without reasonable excuse, the authority contravenes section 23(1) by failing to prepare or maintain a private burial register.
- (2) A local authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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PROSPECTIVE

### *Offence*

#### **26 Burial other than in burial ground: offence** **S**

- (1) It is an offence for a person knowingly to bury human remains unless—
  - (a) the burial is carried out in a burial ground in accordance with section 8, or
  - (b) the burial is a private burial carried out in accordance with section 22.
- (2) 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.

VALID FROM 02/06/2023

### *Exhumation*

#### **27 Exhumation of human remains** **S**

- (1) The Scottish Ministers may by regulations make provision for or in connection with the exhumation of human remains.
- (2) Regulations under subsection (1) may in particular—
  - (a) make provision about applications to carry out exhumations,
  - (b) specify the form and content of applications,
  - (c) specify persons, or a description of persons, who may make applications,
  - (d) provide for applications to be made to—
    - (i) inspectors of burial appointed under section 89(1), or
    - (ii) such other persons as may be specified,
  - (e) confer discretion on a person mentioned in, or specified under, paragraph (d) to consider applications from persons other than those specified, or falling within a description specified, under paragraph (c),
  - (f) make provision about the procedure to be followed in relation to applications,
  - (g) impose requirements on specified persons, or persons of a specified description, in relation to applications,
  - (h) enable a person to whom an application is made to—
    - (i) grant the application,
    - (ii) refuse the application, or
    - (iii) grant the application subject to any conditions the person thinks appropriate, or
  - (i) provide for circumstances in which the regulations (or specified provisions of the regulations)—
    - (i) do not apply,
    - (ii) apply with specified modifications.

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

- (3) Regulations under subsection (1) may not make provision modifying or having the effect of modifying an enactment which enables or requires the exhumation of human remains.
- (4) Regulations under subsection (1) may not make provision which affects any procedure applicable in relation to the exhumation of human remains in connection with—
- (a) the investigation of a crime that has been, or is suspected of having been, committed,
  - (b) criminal proceedings,
  - (c) investigations of deaths under the authority of the Lord Advocate, or
  - (d) inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.
- (5) In this section—
- “enactment” does not include a provision of this Act or any regulations made under it,
- “specified” means specified in the regulations.

PROSPECTIVE

## 28 Exhumation application: offences **S**

- (1) A person commits an offence if the person—
- (a) provides information in, or in connection with, an application made by virtue of regulations under section 27 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.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PROSPECTIVE

## 29 Appeal to sheriff **S**

- (1) This section applies where an application to carry out an exhumation of human remains is made by virtue of regulations under section 27(1).
- (2) A person mentioned in subsection (3) may appeal to the sheriff against—
- (a) a decision to grant the application,
  - (b) a decision to refuse the application, or
  - (c) any conditions subject to which the application is granted.
- (3) The person is—
- (a) the person who made the application, or
  - (b) any other person who, by virtue of regulations under section 27(1), would have been entitled to make the application.

*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

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- (4) An appeal must be made before the expiry of the period of 21 days beginning with the day on which the decision to which the appeal relates was made.
- (5) Where an appeal is against a decision to grant the application without conditions, the sheriff may—
  - (a) uphold the decision,
  - (b) uphold the decision and impose such conditions in relation to the exhumation as the sheriff thinks fit, or
  - (c) quash the decision and refuse the application with effect from the date of the decision.
- (6) Where an appeal is against a decision to grant the application subject to conditions, the sheriff may—
  - (a) uphold the decision, or
  - (b) quash the decision and refuse the application with effect from the date of the decision.
- (7) In upholding a decision under subsection (6), the sheriff may—
  - (a) confirm, vary or remove any of the conditions subject to which the application was granted, and
  - (b) impose such other conditions in relation to the exhumation as the sheriff thinks fit.
- (8) Where an appeal is against a decision to refuse the application, the sheriff may—
  - (a) uphold the decision,
  - (b) quash the decision and grant the application with effect from the date of the decision, or
  - (c) quash the decision, grant the application with effect from the date of the decision and impose such conditions in relation to the exhumation as the sheriff thinks fit.
- (9) Where an appeal is against conditions subject to which the application was granted, the sheriff may—
  - (a) confirm, vary or remove any of the conditions, and
  - (b) impose such other conditions in relation to the exhumation as the sheriff thinks fit.
- (10) In this section, references to an appeal are to an appeal under subsection (2).

### **30 Exhumation register** **S**

- (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 exhumations of human remains carried out in the burial ground.
- (2) Each local authority must prepare and maintain a register containing prescribed information about exhumations of human remains the private burial of which was authorised by the authority under section 22(3).
- (3) In this section, a register prepared and maintained under subsection (1) or (2) is referred to as an “exhumation register”.



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- (4) The Scottish Ministers may by regulations—
- (a) require an exhumation register to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to an exhumation register as they consider appropriate.
- (5) The appropriate authority must make arrangements for its exhumation register to be made available for inspection by members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (6) The appropriate authority must make arrangements for copies of entries in its exhumation register to be supplied, on request, to members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (7) An exhumation register must be kept indefinitely.
- (8) An extract from an exhumation register, duly certified as a true copy by the appropriate authority, is sufficient evidence of the exhumation entered in it for the purposes of any court proceedings.
- (9) In this section—
- “appropriate authority”—
- (a) in relation to an exhumation register maintained under subsection (1), means a burial authority,
  - (b) in relation to an exhumation register maintained under subsection (2), means a local authority,
- “specified” means specified in the regulations.

PROSPECTIVE

### 31 Exhumation register: offence **S**

- (1) An appropriate authority commits an offence if, without reasonable excuse, the authority contravenes section 30(1) or (2) by failing to prepare or maintain an exhumation register.
- (2) An appropriate authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section, “appropriate authority” has the meaning given by section 30(9).

*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

VALID FROM 02/06/2023

*Lair: restoration to use*

PROSPECTIVE

**32 Restoration to use of lair: consultation S**

- (1) This section applies where it appears to a burial authority in relation to a lair in a burial ground that—
  - (a) the lair is in a poor state of maintenance and repair or that there are no indications that any person is taking an interest in the lair,
  - (b) there has not been a burial in the lair during the relevant period, and
  - (c) it might be practicable for the authority to restore the lair to use by extinguishing the right-holder's right of burial in the lair and making the lair available for burials.
- (2) The burial authority may—
  - (a) carry out excavations of the lair,
  - (b) open or move any tomb or other structure that is in or on the lair.
- (3) The burial authority may not exhume any human remains that are buried in the lair.
- (4) The burial authority must consult each person mentioned in subsection (5) about its proposal to restore the lair to use.
- (5) The persons are—
  - (a) persons having appropriate knowledge and qualifications to advise on any archaeological aspects of the proposal,
  - (b) the Commonwealth War Graves Commission,
  - (c) any other person the burial authority thinks appropriate.
- (6) If by virtue of subsection (4) a person objects to the authority's proposal to restore the lair to use—
  - (a) the authority may not proceed with its proposal, and
  - (b) this section does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority receives the objection.
- (7) In this section, “relevant period”, in relation to a lair, means—
  - (a) where the lair contains any human remains, the period of 100 years beginning with the day on which the last burial took place,
  - (b) where the lair does not contain any human remains, the period of 50 years beginning with the day on which the right of burial in the lair was last sold.

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**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

## PROSPECTIVE

**33 Notification: right-holder S**

- (1) This section applies where none of the persons consulted under section 32(4) objects to a burial authority's proposal to restore a lair to use.
- (2) If the burial authority is aware of the name and address of the right-holder or able, after reasonable enquiry, to ascertain them, the authority must give notice to the right-holder of the matters mentioned in subsection (3).
- (3) The matters are—
  - (a) the authority's proposal to restore the lair to use,
  - (b) the right-holder's right to consent or object to the proposal by giving notice in writing to the authority of the consent or objection within the prescribed time limit,
  - (c) any prescribed documents which the right-holder should give to the authority,
  - (d) an explanation of the consequences of consenting or objecting to the proposal,
  - (e) the right-holder's obligations in relation to the maintenance of the lair, and
  - (f) any costs for which the right-holder is liable in respect of maintenance.
- (4) Notice under subsection (2) must be given in the prescribed form and the prescribed manner.
- (5) If by virtue of subsection (3)(b) the burial authority receives notice of the right-holder's objection to the authority's proposal to restore the lair to use—
  - (a) the authority may not proceed with its proposal, and
  - (b) section 32 does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority receives the notice.

## PROSPECTIVE

**34 Notification where right-holder cannot be found S**

- (1) This section applies where—
  - (a) a burial authority gives notice under subsection (2) of section 33 but does not receive notice from the right-holder by virtue of subsection (3)(b) of that section, or
  - (b) a burial authority is unaware of, or unable to ascertain, the name and address of the right-holder for the purpose of giving notice under subsection (2) of that section.
- (2) The burial authority must give notice in the prescribed form and the prescribed manner of the authority's proposal to restore the lair to use.
- (3) A notice under subsection (2) must—
  - (a) contain prescribed information,
  - (b) comply with prescribed requirements, and

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- (c) specify a prescribed period within which a person may object to the authority's proposal to restore the lair to use.

PROSPECTIVE

### 35 Section 34: effect of objection **S**

- (1) This section applies where, before the expiry of any period prescribed by virtue of section 34(3)(c), a person objects to a burial authority's proposal to restore a lair to use.
- (2) If the person is the right-holder or a relative of a person whose remains are buried in the lair—
  - (a) the authority may not proceed with its proposal, and
  - (b) section 32 does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority receives the objection.
- (3) If the person is not the right-holder or a relative of a person whose remains are buried in the lair, the authority must determine before the expiry of the prescribed period whether there is merit in the objection.
- (4) If the authority determines that there is merit in the objection—
  - (a) the authority may not proceed with its proposal, and
  - (b) section 32 does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority makes its determination.
- (5) In this section, “relative”, in relation to a person, means—
  - (a) the spouse or civil partner of the person,
  - (b) an ancestor in the direct line of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (c) a descendant in the direct line of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (d) a brother of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (e) a sister of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (f) an aunt of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,

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- (g) an uncle of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (h) a nephew of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (i) a niece of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner,
  - (j) a first cousin of—
    - (i) the person,
    - (ii) the person's spouse, or
    - (iii) the person's civil partner.
- (6) Subsection (5) is to be read as if it did not contain any references (however expressed) to the spouse or civil partner of a person if the person's spouse or (as the case may be) civil partner—
- (a) is permanently separated (either by agreement or under an order of a court) from the person, or
  - (b) has deserted, or has been deserted by, the person and the desertion continues.
- (7) For the purposes of the definition of “relative” in subsection (5)—
- (a) a relationship of the half-blood is to be treated as a relationship of the whole blood, and
  - (b) references to the spouse of the person (“the deceased”) include references to a person who immediately before the deceased's death was living with the deceased as if they were married to each other and had been so living for a period of at least 6 months (or if the deceased was in hospital immediately before death had been so living for such period when the deceased was admitted to hospital).

PROSPECTIVE

### 36 Extinguishment of right **S**

- (1) This section applies where—
- (a) a burial authority gives notice to the right-holder under section 33(2) and the conditions in subsection (2) are met, or
  - (b) a burial authority gives notice under section 34(2) and one of the conditions in subsection (3) is met.
- (2) The conditions are that—
- (a) the authority has received notice by virtue of section 33(3)(b) of the right-holder's consent to the proposal, and

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- (b) the right-holder agrees to the proposed extinguishment of the right-holder's right of burial.
- (3) The conditions are that—
  - (a) the authority has not received an objection by virtue of section 34(3)(c), or
  - (b) the authority has received an objection by virtue of that section but has determined under section 35(3) that there is no merit in it.
- (4) The authority must—
  - (a) extinguish the right-holder's right of burial in the lair, and
  - (b) give notice of the extinguishment in the prescribed form and the prescribed manner.

PROSPECTIVE

### 37 Restoration to use **S**

- (1) This section applies where under section 36(4) a burial authority has extinguished the right-holder's right of burial in a lair.
- (2) The burial authority must establish whether it would be practicable for the authority to make the lair available for burials.
- (3) For the purposes of subsection (2), the authority may—
  - (a) carry out excavations of the lair,
  - (b) open or move any tomb or other structure that is in or on the lair,
  - (c) exhume any human remains that are buried in the lair.
- (4) Before selling a right of burial in the lair, the burial authority must exhume any human remains that are buried in the lair.
- (5) If the authority exhumes any human remains under subsection (3) or (4), it must rebury them in the lair as soon as practicable after their exhumation.

PROSPECTIVE

### 38 Restoration to use without extinguishment of right **S**

- (1) This section applies where—
  - (a) a burial authority has given notice under section 33(2) or, as the case may be, 34(2) in relation to a lair,
  - (b) the right-holder informs the authority that the right-holder—
    - (i) agrees with the authority's proposal that the lair be restored to use, but
    - (ii) wishes to retain the right-holder's right of burial in the lair.
- (2) The authority must establish whether it would be practicable for the authority to make the lair available for burials.
- (3) For the purposes of subsection (2), the authority may—

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- (a) carry out excavations of the lair,
  - (b) open or move any tomb or other structure that is in or on the lair,
  - (c) exhume any human remains that are buried in the lair.
- (4) If the authority exhumes any human remains under subsection (3), it must rebury them in the lair as soon as practicable after their exhumation.
- (5) The right-holder is liable for—
- (a) any costs incurred by the burial authority by virtue of subsections (2) to (4), and
  - (b) any costs incurred by the burial authority in making the lair available for burials.

PROSPECTIVE

### 39 Right-holder's right to object **S**

- (1) This section applies where—
- (a) a burial authority proposes to restore a lair to use in pursuance of section 32, and
  - (b) at any time before the authority sells a right of burial in the lair by virtue of section 36(4) the right-holder objects to the authority's proposal to restore the lair to use.
- (2) The burial authority may not proceed with its proposal.
- (3) If by virtue of section 36(4) the burial authority has extinguished the right-holder's right of burial in the lair, the burial authority must confer a right of burial in the lair on the right-holder.
- (4) Section 32 does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority receives the objection.
- (5) In this section, “right-holder” includes a person whose right of burial in the lair has been extinguished by virtue of section 36(4).

PROSPECTIVE

### 40 Restoration to use on request of right-holder **S**

- (1) This section applies where—
- (a) a burial authority is not proposing in pursuance of section 32 to restore to use a particular lair in a burial ground, but
  - (b) the right-holder proposes to the burial authority—
    - (i) that the lair be restored to use, and
    - (ii) that the right-holder retain the right-holder's right of burial in the lair.
- (2) Subsections (2) to (6) of section 32 apply in relation to a proposal under subsection (1)(b) as they apply in relation to a proposal under that section.

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- (3) If none of the persons consulted by virtue of subsection (2) objects to the proposal, the burial authority must establish whether it would be practicable for the authority to make the lair available for burials.
- (4) Subsections (3) to (5) of section 38 apply for the purposes of subsection (3) as they apply for the purposes of that section.

PROSPECTIVE

#### 41 Headstones **S**

- (1) This section applies where—
  - (a) by virtue of section 37, 38 or 40 a burial authority exhumes human remains from a lair, and
  - (b) immediately before the exhumation is carried out, there is on the lair a headstone or other memorial which relates to the remains.
- (2) Except where it would be impracticable to do so, the burial authority must take all reasonable steps to ensure that the headstone or other memorial is returned to its place on the lair as soon as practicable after the authority reburies the remains.

#### 42 Register of restored lairs **S**

- (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 things done by the authority for the purposes of, or in connection with, the functions conferred on the authority by sections 32 to 41 (a “register of restored lairs”).
- (2) The Scottish Ministers may by regulations—
  - (a) require a register of restored lairs to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to a register of restored lairs as they consider appropriate.
- (3) A burial authority must make arrangements for each of its registers of restored lairs to be made 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 registers of restored lairs 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 register of restored lairs must be kept indefinitely.
- (6) An extract from a register of restored lairs kept by a burial authority, duly certified as a true copy by the burial authority, is in relation to the matters contained in the extract sufficient evidence of those matters for the purposes of any court proceedings.
- (7) In subsection (2), “specified” means specified in the regulations.



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## PROSPECTIVE

**43 Register of restored lairs: offence S**

- (1) A burial authority commits an offence if, without reasonable excuse, the authority contravenes section 42(1) by failing to prepare or maintain a register of restored lairs.
- (2) A burial authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**44 Guidance S**

- (1) Each burial authority must have regard to any guidance issued by the Scottish Ministers about—
  - (a) the carrying out of functions conferred on them by or under sections 32 to 42, and
  - (b) the restoration to use of lairs.
- (2) Before issuing any such guidance, the Scottish Ministers must consult—
  - (a) burial authorities, and
  - (b) any other persons they consider appropriate.

VALID FROM 04/04/2019

**PART 2 S**

## CREMATION

*Cremation***45 Meaning of “cremation” and “ashes” S**

- (1) In this Act, “cremation” means the burning of human remains; and includes—
  - (a) where a grinding process is applied to the burnt human remains, that process, and
  - (b) where any other process is applied to the burnt human remains, that other process.
- (2) In this Act, “ashes” means the material (other than any metal) to which human remains are reduced by cremation.
- (3) In this section—

“coffin” includes any type of receptacle,

“human remains” includes, where remains are clothed, in a coffin or with any other thing, the clothing, coffin or other thing.

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#### **46 Provision of crematorium: local authority** **S**

- (1) A local authority may—
  - (a) provide a crematorium,
  - (b) enter into arrangements with another person for the provision by that other person of a crematorium.
- (2) In subsection (1), “crematorium” means a building fitted with equipment for the carrying out of cremations; and includes land (other than a burial ground) pertaining to such a building.

#### **47 Cremation authority: duties** **S**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the management and operation of crematoriums,
  - (b) the maintenance of crematoriums,
  - (c) the operation of equipment for the carrying out of cremations,
  - (d) persons employed by cremation authorities (including in relation to training, qualifications and membership of professional bodies).
- (2) A cremation authority must comply with any requirement imposed on it by regulations under subsection (1).
- (3) A cremation authority which knowingly contravenes subsection (2) commits an offence.
- (4) A person who commits an offence under subsection (3) 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.
- (5) In this section, “cremation authority”, in relation to a crematorium, means the person having responsibility for the management of the crematorium.

#### **48 Application for cremation** **S**

- (1) A person who wishes a cremation to be carried out in a crematorium must submit an application to the cremation authority for the crematorium.
- (2) The Scottish Ministers may by regulations make provision for or in connection with an application 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

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- (f) make provision for reviews of, or appeals against, decisions of a cremation authority—
  - (i) to grant an application,
  - (ii) to refuse to grant an application.

#### 49 Section 48: offences **S**

- (1) A person commits an offence if the person—
  - (a) provides information in, or in connection with, an application under section 48(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.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### 50 Requirements for carrying out cremation **S**

- (1) A person may not carry out a cremation unless—
  - (a) the person is a cremation authority,
  - (b) the cremation authority has granted an application made under section 48 in respect of the cremation, and
  - (c) the cremation is carried out in a crematorium.
- (2) A person who knowingly contravenes subsection (1) commits an offence.
- (3) A person who commits an offence under subsection (2) 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) In subsection (1)(c), “crematorium” means a building fitted with equipment for the carrying out of cremations.

#### *Handling of ashes*

#### 51 Duty of cremation authority before carrying out cremation **S**

- (1) This section applies where—
  - (a) a person (“the applicant”) submits an application to a cremation authority for a cremation to be carried out, and
  - (b) the authority proposes to carry out the cremation.
- (2) Before carrying out the cremation, the cremation authority must take reasonable steps to ascertain in which of the ways mentioned in subsection (3) the applicant wishes the ashes from the cremation to be dealt with.
- (3) The ways are—
  - (a) for the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by the applicant,

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- (b) for the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose,
- (c) for the ashes to be disposed of by the cremation authority in a specified manner or in a manner indicated by the applicant.

(4) In this section, “specified” means specified in regulations under section 56(1).

## 52 Duty of cremation authority following cremation **S**

(1) This section applies where a cremation has been carried out by a cremation authority.

(2) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(a) of that section, the cremation authority must—

- (a) retain the ashes during the specified period, and
- (b) make the ashes available for collection before the expiry of that period by the applicant.

(3) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(b) of that section, the cremation authority must—

- (a) retain the ashes during the specified period, and
- (b) make the ashes available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose.

(4) Where, by virtue of subsection (2) of section 51, the cremation authority has ascertained that the applicant wishes the ashes from the cremation to be dealt with in the way mentioned in subsection (3)(c) of that section, the cremation authority must dispose of the ashes—

- (a) in a specified manner, or
- (b) where the applicant has indicated the manner in which the ashes are to be disposed of, in that manner.

(5) In this section—

“applicant”, in relation to a cremation, means the person who submitted the application under section 48(1) by virtue of which the cremation was carried out,

“specified” has the meaning given by section 51(4).

## 53 Failure to collect ashes **S**

(1) This section applies where—

- (a) a cremation authority has complied with the duties in subsection (2) of section 52, but the applicant has failed to collect the ashes from the cremation authority before the expiry of the period specified for the purposes of that subsection, or
- (b) a cremation authority has complied with the duties in subsection (3) of section 52, but the funeral director has failed to collect the ashes from the

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cremation authority before the expiry of the period specified for the purposes of that subsection.

- (2) The cremation authority must take reasonable steps to ascertain whether the applicant wishes—
- (a) the ashes to be retained by the cremation authority during such further period as may be specified and made available for collection before the expiry of that period by the applicant,
  - (b) the ashes to be retained by the cremation authority during such further period as may be specified and made available for collection before the expiry of that period by a funeral director appointed by the applicant for that purpose, or
  - (c) the ashes to be disposed of by the cremation authority in a specified manner.
- (3) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (a) of that subsection, the cremation authority must—
- (a) retain the ashes during the period mentioned in that paragraph, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (4) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (b) of that subsection, the cremation authority must—
- (a) retain the ashes during the period mentioned in that paragraph, and
  - (b) make the ashes available for collection before the expiry of that period by the funeral director appointed for that purpose by the applicant.
- (5) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (c) of that subsection, the cremation authority must dispose of the ashes in the specified manner.
- (6) Where, despite having taken the steps mentioned in subsection (2), the cremation authority does not know in which of the ways mentioned in that subsection the applicant wishes the ashes to be dealt with, the cremation authority must—
- (a) retain the ashes, or
  - (b) dispose of the ashes in the specified manner.
- (7) In this section—
- “applicant” has the meaning given by section 52(5),
- “specified” has the meaning given by section 51(4).

#### **54 Power of funeral director in relation to ashes S**

- (1) This section applies where—
- (a) by virtue of section 52(3), a funeral director has collected ashes from a cremation authority, and
  - (b) the applicant has failed to collect the ashes from the funeral director before the expiry of the specified period.
- (2) The funeral director must take reasonable steps to ascertain whether the applicant wishes—

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- (a) to collect the ashes from the funeral director before the expiry of such period as may be agreed between the funeral director and the applicant, or
  - (b) the funeral director to return the ashes to the cremation authority.
- (3) Where, by virtue of subsection (2), the funeral director has ascertained that the applicant wishes to collect the ashes as mentioned in paragraph (a) of that subsection, the funeral director must make the ashes available to the applicant for collection during the period agreed by virtue of that subsection.
- (4) Where the applicant—
- (a) makes known to the funeral director that the applicant wishes to collect the ashes as mentioned in subsection (2)(a), but
  - (b) does not collect the ashes from the funeral director before the expiry of the period agreed by virtue of that subsection,
- the funeral director may return the ashes to the cremation authority.
- (5) Where, by virtue of subsection (2), the funeral director has ascertained that the applicant wishes the funeral director to return the ashes to the cremation authority, the funeral director must so return them.
- (6) Where, despite having taken the steps mentioned in subsection (2), the funeral director does not know in which of the ways mentioned in that subsection the applicant wishes the funeral director to deal with the ashes, the funeral director may return the ashes to the cremation authority.
- (7) In this section—
- “applicant” has the meaning given by section 52(5),
  - “specified” has the meaning given by section 51(4).

## **55 Duties of cremation authority where ashes returned** S

- (1) This section applies where, by virtue of section 54(5), a funeral director returns ashes to a cremation authority.
- (2) The cremation authority must take reasonable steps to ascertain whether the applicant wishes—
- (a) the ashes to be retained by the cremation authority during the specified period and made available for collection before the expiry of that period by the applicant, or
  - (b) the ashes to be disposed of by the cremation authority in a specified manner.
- (3) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (a) of that subsection, the cremation authority must—
- (a) retain the ashes during the specified period, and
  - (b) make the ashes available for collection before the expiry of that period by the applicant.
- (4) Where, by virtue of subsection (2), the cremation authority has ascertained that the applicant wishes the ashes to be dealt with in the way mentioned in paragraph (b) of that subsection, the cremation authority must dispose of the ashes in the specified manner.

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- (5) Where, despite having taken the steps mentioned in subsection (2), the cremation authority does not know in which of the ways mentioned in that subsection the applicant wishes the ashes to be dealt with, the cremation authority must—
- (a) retain the ashes, or
  - (b) dispose of the ashes in the specified manner.
- (6) In this section—
- “applicant” has the meaning given by section 52(5),
- “specified” has the meaning given by section 51(4).

## 56 Handling of ashes: regulations **S**

- (1) The Scottish Ministers may by regulations make further provision about—
- (a) the retention, return and disposal of ashes by a cremation authority, or
  - (b) the retention and return of ashes by a funeral director.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
- (a) collection of ashes by an applicant or a funeral director,
  - (b) failure to collect ashes by an applicant or a funeral director,
  - (c) time periods in relation to collection of ashes by an applicant or a funeral director,
  - (d) notices that must or may be given—
    - (i) by a cremation authority to an applicant or a funeral director, or
    - (ii) by a funeral director to an applicant,
  - (e) time periods within which a response to such a notice is to be given,
  - (f) information such a response is to contain,
  - (g) steps a cremation authority or funeral director must or may take if such a response is not given (or is not given timeously),
  - (h) ascertaining how an applicant wishes ashes to be disposed of, or
  - (i) taking steps mentioned in section 51(2), 53(2), 54(2) or 55(2).
- (3) In this section, “applicant” has the meaning given by section 52(5).

### *Register*

## 57 Cremation register **S**

- (1) Each cremation authority must prepare and maintain for each crematorium for which it is the cremation authority a register containing prescribed information about cremations carried out in the crematorium (a “cremation register”).
- (2) The Scottish Ministers may by regulations—
- (a) require a cremation register to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to a cremation register as they consider appropriate.

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- (3) A cremation authority must make arrangements for each of its cremation 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 cremation authority must make arrangements for copies of entries in its cremation 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 cremation register must be kept indefinitely.
- (6) An extract from a cremation register kept by a cremation authority, duly certified as a true copy by the cremation authority, is sufficient evidence of the cremation entered in it for the purposes of any court proceedings.
- (7) In this section, “specified” means specified in the regulations.

#### **58 Cremation register: offence** S

- (1) A cremation authority commits an offence if, without reasonable excuse, the authority contravenes section 57(1) by failing to prepare or maintain a cremation register.
- (2) A cremation authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Crematorium: further requirements*

#### **59 New crematorium: notice** S

- (1) This section applies where a person proposes to establish a crematorium.
- (2) The person must give an inspector of cremation notice of the day on which the person proposes to determine the first application made under section 48(1) for a cremation to be carried out in the crematorium (the “first application”).
- (3) Notice under subsection (2)—
  - (a) must be given at least 3 months before the day on which the person proposes to determine the first application, and
  - (b) must be in writing.
- (4) The person may not determine the first application unless—
  - (a) an inspector of cremation has given notice in writing to the person that the person may determine the first application on or after a day specified in the notice, and
  - (b) the determination is made on or after that day.

#### **60 Section 59: offences** S

- (1) A person commits an offence if, without reasonable excuse, the person contravenes subsection (4) of section 59 by determining the first application—
  - (a) without notice having been given to the person under that subsection, or
  - (b) where notice is given to the person under that subsection, before the day specified in the notice.



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(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In subsection (1), “first application” has the meaning given by section 59(2).

PROSPECTIVE

## 61 Closure of crematorium **S**

(1) Where a crematorium is to close, the cremation authority for the crematorium must give an inspector of cremation notice in accordance with subsection (2) of the day on which the crematorium is to close.

(2) Notice under subsection (1)—

(a) must be given—

(i) where practicable, at least 3 months before the day on which the crematorium is to close, or

(ii) otherwise, on the first day before the crematorium is to close on which it is practicable to give notice, and

(b) must be in writing.

(3) The Scottish Ministers may by regulations make further provision for or in connection with the closure of crematoriums.

(4) Regulations under subsection (3) may in particular make provision requiring a cremation authority—

(a) to provide specified information to an inspector of cremation,

(b) to comply with specified requirements about the transfer of specified information, or

(c) to comply with specified requirements about other matters relating to the closure of a crematorium.

(5) In this section, “specified” means specified in the regulations.

PROSPECTIVE

## 62 Section 61: offence **S**

(1) A cremation authority commits an offence if, without reasonable excuse, the authority contravenes subsection (1) of section 61 by failing to give notice under that subsection in accordance with subsection (2)(a) of that section.

(2) A cremation authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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### *Fees*

#### **63 Fees for cremation and other services** **S**

- (1) This section applies where the cremation authority for a crematorium is a local authority.
- (2) The cremation authority may charge such fees as the authority thinks fit in respect of—
  - (a) a cremation carried out in the crematorium, and
  - (b) any other services provided by the authority relating to cremation.
- (3) The cremation authority must publish fees mentioned in subsection (2)—
  - (a) in paper form, and
  - (b) on the website of the cremation authority.
- (4) The cremation authority may display the fees in any place it considers appropriate.
- (5) The cremation authority must keep under review fees mentioned in subsection (2).

VALID FROM 02/06/2023

### *Code of practice*

#### **64 Cremation authority: code of practice** **S**

- (1) A cremation authority must comply with any code of practice issued by the Scottish Ministers about the carrying out of functions conferred on the authority by or under this Act in relation to the management of a crematorium (a “cremation code”).
- (2) Before issuing any cremation code, the Scottish Ministers must consult—
  - (a) cremation authorities, and
  - (b) other persons appearing to the Scottish Ministers to have an interest.
- (3) After taking account of any representations received by them by virtue of subsection (2), the Scottish Ministers must lay a draft of the cremation code before the Scottish Parliament.
- (4) The Scottish Ministers may not issue a cremation code unless a draft of the code is approved by resolution of the Scottish Parliament.
- (5) The Scottish Ministers must publish a cremation code in such manner as they consider appropriate.
- (6) The Scottish Ministers must keep under review a cremation code.
- (7) In this section, references to a cremation code include references to a cremation code as revised from time to time by the Scottish Ministers.

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VALID FROM 04/04/2019

## PART 3 **S**

### ARRANGEMENTS

#### *Adults and children*

#### **65 Arrangements on death of adult **S****

- (1) This section applies where an adult dies and—
  - (a) the adult has not made an arrangements on death declaration, or
  - (b) the adult has made an arrangements on death declaration but it would not be reasonably practicable to give effect to it.
- (2) The nearest relative of the adult may make arrangements for the adult's remains to be buried or cremated.
- (3) The nearest relative is the person who immediately before the adult's death was—
  - (a) the adult's spouse or civil partner,
  - (b) neither married to nor in a civil partnership with the adult but was living with the adult as if they were married to each other and had been so living for a period of at least 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital),
  - (c) the adult's child,
  - (d) the adult's parent,
  - (e) the adult's brother or sister,
  - (f) the adult's grandparent,
  - (g) the adult's grandchild,
  - (h) the adult's uncle or aunt,
  - (i) the adult's cousin,
  - (j) the adult's niece or nephew,
  - (k) a friend of long standing of the adult.
- (4) If the adult's spouse or civil partner—
  - (a) is permanently separated (either by agreement or under an order of a court) from the adult, or
  - (b) has deserted, or has been deserted by, the adult and the desertion continues, subsection (3) is to be read as if paragraph (a) were omitted.
- (5) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as modified by subsection (4))—
  - (a) a relationship of the half-blood is to be treated as a relationship of the whole blood,
  - (b) the stepchild of an adult is to be treated as the child of the adult.
- (6) Where more than one person falls within a paragraph of subsection (3)—

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- (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (7) For the purposes of subsection (3), a person's relationship with the adult is to be left out of account if—
- (a) immediately before the adult's death the person was under 16 years of age,
  - (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
  - (c) it is not reasonably practicable to communicate with the person in the time available.
- (8) In this section—
- “adult” means a person who is 16 years of age or over,
  - “arrangements on death declaration” means a declaration by an adult specifying the person by whom the adult wishes the arrangements to be made for the burial or cremation of the adult's remains on the adult's death.
- (9) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

## **66 Arrangements on death of child S**

- (1) This section applies where a child dies.
- (2) The nearest relative of the child may make arrangements for the child's remains to be buried or cremated.
- (3) The nearest relative, in relation to the child, is the person who immediately before the death was—
- (a) the child's parent or a person who had parental rights and parental responsibilities in relation to the child (but who is not a local authority),
  - (b) the child's brother or sister,
  - (c) the child's grandparent,
  - (d) the child's uncle or aunt,
  - (e) the child's cousin,
  - (f) the child's niece or nephew,
  - (g) a friend of long standing of the child.
- (4) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection a relationship of the half-blood is to be treated as a relationship of the whole blood.
- (5) Where more than one person falls within a paragraph of subsection (3)—
- (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (6) For the purposes of subsection (3), a person's relationship with the child is to be left out of account if—
- (a) except in the case of the child's parent, the person, immediately before the child's death, was under 16 years of age,

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- (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
- (c) it is not reasonably practicable to communicate with the person in the time available.

(7) In this section, “child” means a person (other than a still-born child) who is under 16 years of age.

(8) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

#### **67 Arrangements under sections 65 and 66** **S**

(1) This section applies where a person is entitled by virtue of section 65(2) or 66(2) to make the arrangements for the remains of an adult or child to be buried or cremated.

(2) The person may decide whether the remains are to be buried or cremated.

(3) In making a decision for the purposes of subsection (2), the person must, so far as known to the person, have regard to—

- (a) any wishes that the adult or child expressed as to the burial or cremation of the remains, and
- (b) whether the adult or child is of a particular religion or belief.

(4) In this section—

“adult” has the meaning given by section 65(8),

“belief” has the meaning given by section 10(2) of the Equality Act 2010,

“child” has the meaning given by section 66(7),

“religion” has the meaning given by section 10(1) of the Equality Act 2010.

(5) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

#### **68 Sections 65 and 66: application to sheriff** **S**

(1) On the application of any person claiming an interest, the sheriff may make an order declaring that the person specified in the order is entitled to make arrangements for the burial or cremation of the remains of the deceased person specified in the order—

- (a) by virtue of an arrangements on death declaration made by the deceased, or
- (b) by virtue of section 65(2) or 66(2).

(2) An order under subsection (1) may include such other provision as the sheriff considers necessary or expedient.

(3) No application may be made under subsection (1) in relation to the remains of a deceased person where—

- (a) an application for an order under section 93(1) of the Public Health etc. (Scotland) Act 2008 (power of sheriff to order removal of body to mortuary or disposal) in respect of the remains has been made and not disposed of, or
- (b) an order under that section has been made in respect of the remains.

(4) In this section, “arrangements on death declaration” has the meaning given by section 65(8).

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### *Pregnancy loss after 24 weeks*

#### **69 Arrangements on termination of pregnancy after 24 weeks** **S**

- (1) This section applies where a woman's pregnancy is to be terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967.
- (2) If the appropriate health body considers that it would be in the woman's best interests to do so, the appropriate health body must give the woman an opportunity to decide—
  - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise the appropriate health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) if she wishes to authorise the body under paragraph (b), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the pregnancy is terminated, or
    - (ii) after the expiry of the 7-day period.
- (3) For the purposes of subsection (2)(b), the appropriate health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (4) The appropriate health body must keep a record of prescribed information.
- (5) In this section—
 

“7-day period” means the period of 7 days beginning with the day on which the pregnancy is terminated,

“appropriate health body”, in relation to a woman whose pregnancy is to be terminated as mentioned in subsection (1), means—

  - (a) if the woman is in the care of a Health Board as regards the termination, that Health Board,
  - (b) if the woman is in the care of an independent health care service as regards the termination, that independent health care service,

“Health Board” means a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

“independent health care service” is to be construed in accordance with section 10F of the National Health Service (Scotland) Act 1978.

#### **70 Section 69: health body authorised to make arrangements** **S**

- (1) This section applies where—
  - (a) a woman's pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) an appropriate health body is authorised by virtue of section 69(2)(b) to make arrangements for the remains of the fetus to be buried or cremated.
- (2) The appropriate health body—
  - (a) may make arrangements for the remains to be buried or cremated, and

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- (b) if by virtue of section 69(2)(b)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) The appropriate health body may make the arrangements—
  - (a) if the authorisation was given by virtue of section 69(2)(c)(i), as soon as practicable after the pregnancy is terminated,
  - (b) if the authorisation was given by virtue of section 69(2)(c)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.
- (4) In this section, “appropriate health body” and “7-day period” have the meanings given by section 69(5).

## 71 Section 69: no arrangements **S**

- (1) This section applies where—
  - (a) a woman's pregnancy is terminated after its 24th week by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 69(2) for the remains of the fetus to be buried or cremated.
- (2) The appropriate health authority must give the woman an opportunity to decide—
  - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated, or
  - (b) whether she wishes to authorise the appropriate health authority to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority.
- (3) For the purposes of subsection (2)(b), the appropriate health authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (4) Subsection (5) applies if—
  - (a) the woman informs the appropriate health authority that she does not wish to make arrangements for the remains of the fetus to be buried or cremated,
  - (b) the woman is unable to make a decision under subsection (2), or
  - (c) the woman does not inform the appropriate health authority of a decision that she has made under subsection (2).
- (5) The appropriate health authority may make arrangements for the remains to be buried or cremated.
- (6) The appropriate health authority must keep a record of prescribed information.
- (7) In this section, “appropriate health authority”, in relation to a woman whose pregnancy is terminated as mentioned in subsection (1), means—
  - (a) if the time when the pregnancy is terminated the woman is in the care of a Health Board, that Health Board,
  - (b) if at the time when the pregnancy is terminated the woman is in the care of an independent health care service, that independent health care service.

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## 72 Duty of health body where still-birth likely to occur **S**

- (1) This section applies where an appropriate health body informs a woman that the appropriate health body considers that it is likely that the woman's pregnancy will end with a still-birth (other than in consequence of the termination of the pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967).
- (2) If the appropriate health body considers that it would be in the woman's best interests to do so, the appropriate health body must give the woman an opportunity to decide—
  - (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise the appropriate health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) if she wishes to authorise the body under paragraph (b), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the still-birth occurs, or
    - (ii) after the expiry of the 7-day period.
- (3) For the purposes of subsection (2)(b), the appropriate health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (4) The appropriate health body must keep a record of prescribed information.
- (5) In this section—
 

“7-day period” means the period of 7 days beginning with the day on which the still-birth occurs,

“appropriate health body”, in relation to a woman, means—

  - (a) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of a Health Board, that Health Board,
  - (b) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of an independent health care service, that independent health care service.

## 73 Section 72: health body authorised to make arrangements **S**

- (1) This section applies where—
  - (a) a still-birth occurs other than in consequence of the termination of a woman's pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) the appropriate health body is authorised by virtue of section 72(2)(b) to make arrangements for the remains of the fetus to be buried or cremated.
- (2) The appropriate health body—
  - (a) may make arrangements for the remains to be buried or cremated, and
  - (b) if by virtue of section 72(2)(b)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) The appropriate health body may make the arrangements—



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- (a) if the authorisation was given by virtue of section 72(2)(c)(i), as soon as practicable after the still-birth occurs,
  - (b) if the authorisation was given by virtue of section 72(2)(c)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.
- (4) In this section, “7-day period” and “appropriate health body” have the meanings given by section 72(5).

## 74 Arrangements on still-birth **S**

- (1) This section applies where—
- (a) a still-birth occurs other than in consequence of the termination of a woman's pregnancy by virtue of section 1(1)(b), (c) or (d) of the Abortion Act 1967, and
  - (b) it appears to the appropriate health body that no arrangements have been or are being made by virtue of section 72(2) for the remains of the fetus to be buried or cremated.
- (2) The nearest relative of the still-born child may make arrangements for the remains of the still-born child to be buried or cremated.
- (3) The nearest relative, in relation to the still-born child, is the person who immediately before the still-birth was—
- (a) the still-born child's parent,
  - (b) the still-born child's brother or sister,
  - (c) the still-born child's grandparent,
  - (d) the still-born child's uncle or aunt,
  - (e) the still-born child's cousin,
  - (f) the still-born child's niece or nephew.
- (4) The nearest relative—
- (a) may authorise the appropriate health body to make arrangements for the remains of the still-born child to be buried or cremated—
    - (i) in a way specified by the nearest relative, or
    - (ii) in a way specified by the body, but
  - (b) otherwise may not authorise any other person to make arrangements for the remains of the still-born child to be buried or cremated.
- (5) For the purposes of subsection (4)(a), the appropriate health body must inform the nearest relative if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (6) The appropriate health body must keep a record of prescribed information.
- (7) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection a relationship of the half-blood is to be treated as a relationship of the whole blood.
- (8) Where more than one person falls within a paragraph of subsection (3)—
- (a) each such person ranks equally for the purpose of the paragraph, and
  - (b) either (or any) person falling within the paragraph may be the nearest relative.

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(9) For the purposes of subsection (3), a person's relationship with the still-born child is to be left out of account if—

- (a) except in the case of the still-born child's parent, the person, immediately before the child's death, was under 16 years of age,
- (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or
- (c) it is not reasonably practicable to communicate with the person in the time available.

(10) In this section, “appropriate health body”, in relation to a woman, means—

- (a) if at the time when the still-birth occurs the woman is in the care of a Health Board, that Health Board,
- (b) if at the time when the still-birth occurs the woman is in the care of an independent health care service, that independent health care service.

#### **75 Section 74: power of appropriate health body** **S**

(1) This section applies where the appropriate health body is authorised under section 74(4)(a) to make arrangements for the remains of a still-born child to be buried or cremated.

(2) After the expiry of the 7-day period, the appropriate health body may make arrangements for the remains to be buried or cremated.

(3) Subsections (4) and (5) apply if the person who authorised the appropriate health body to make the arrangements for the burial or cremation of the remains informs the body that the person has decided that the body may make the arrangements before the expiry of the 7-day period.

(4) The appropriate health body must—

- (a) record the person's decision in the prescribed form, and
- (b) take reasonable steps to secure the person's signature.

(5) The appropriate health body—

- (a) may make arrangements for the remains to be buried or cremated before the expiry of the 7-day period, and
- (b) if by virtue of section 74(4)(a)(i) it is authorised to do so in a specified way, must do so in that way.

(6) In this section—

“7-day period” means the period of 7 days beginning with the day on which authorisation is given under section 74(4)(a),

“appropriate health body” has the meaning given by section 74(10).

#### **76 Section 74: general power of appropriate health body** **S**

(1) This section applies where it appears to the appropriate health body that no arrangements have been or are being made under section 74(2) or (4) for the remains of a still-born child to be buried or cremated.

(2) The appropriate health body may make arrangements for the remains to be buried or cremated.

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(3) In this section, “appropriate health body” has the meaning given by section 74(10).

*Pregnancy loss on or before 24 weeks*

**77 Duty of health body where pregnancy loss likely to occur** **S**

- (1) This section applies where—
- (a) a woman is in the care of a relevant health body, and
  - (b) the relevant health body informs the woman that the relevant health body considers that it is likely that the woman's pregnancy will end before or on completion of its 24th week.
- (2) If the relevant health body considers that it would be in the woman's best interests to do so, the relevant health body must give the woman an opportunity to decide—
- (a) whether she wishes to make the arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise an individual of or over 16 years of age to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (c) whether she wishes to authorise the relevant health body to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the body,
  - (d) if she wishes to authorise the body under paragraph (c), whether she wishes to authorise the body to make those arrangements—
    - (i) as soon as practicable after the pregnancy ends, or
    - (ii) after the expiry of the 7-day period.
- (3) For the purposes of subsection (2)(c), the relevant health body must inform the woman if it would not be reasonably practicable for the body to arrange for the remains to be buried or cremated in a particular way.
- (4) The relevant health body must keep a record of prescribed information.
- (5) In this section—
- “7-day period” means the period of 7 days beginning with the day on which the fetus is parted from the woman and does not breathe or show any other signs of life,
- “relevant health body”, in relation to a woman, means—
- (a) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of a Health Board, that Health Board,
  - (b) if at the time when the woman is informed of the matter mentioned in subsection (1) the woman is in the care of an independent health care service, that independent health care service.

**78 Section 77: health body authorised to make arrangements** **S**

- (1) This section applies where—

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- (a) a woman's pregnancy ends before or on completion of its 24th week,
  - (b) after being parted from the woman the fetus does not breathe or show any other signs of life,
  - (c) at the time when the pregnancy ends the woman is in the care of a relevant health body, and
  - (d) the relevant health body is authorised by virtue of section 77(2)(c) to make arrangements for the remains of the fetus to be buried or cremated.
- (2) The relevant health body—
- (a) may make arrangements for the remains to be buried or cremated, and
  - (b) if by virtue of section 77(2)(c)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) The relevant health body may make the arrangements—
- (a) if the authorisation was given by virtue of section 77(2)(d)(i), as soon as practicable after the pregnancy ends,
  - (b) if the authorisation was given by virtue of section 77(2)(d)(ii) and not withdrawn before the expiry of the 7-day period, after the expiry of that period.
- (4) In this section, “7-day period” and “relevant health body” have the meanings given by section 77(5).

## **79 Arrangements on pregnancy loss on or before 24 weeks** S

- (1) This section applies where—
- (a) a woman's pregnancy ends before or on completion of its 24th week,
  - (b) after being parted from the woman the fetus does not breathe or show any other signs of life,
  - (c) at the time when the pregnancy ends the woman is in the care of an appropriate health authority, and
  - (d) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 84(2) for the remains of the fetus to be buried or cremated.
- (2) Before the expiry of the initial period, the appropriate health authority must give the woman an opportunity to decide—
- (a) whether she wishes to make arrangements for the remains of the fetus to be buried or cremated,
  - (b) whether she wishes to authorise an individual of or over 16 years of age to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority, or
  - (c) whether she wishes to authorise the appropriate health authority to make those arrangements—
    - (i) in a way specified by the woman, or
    - (ii) in a way specified by the authority.
- (3) For the purposes of subsection (2)(c), the appropriate health authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.

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- (4) Subsection (5) applies if, before the expiry of the initial period, the woman informs the appropriate health authority of a decision that she has made under subsection (2).
- (5) As soon as practicable after the woman informs the appropriate health authority of the decision the authority must—
  - (a) record the decision in the prescribed form, and
  - (b) take reasonable steps to secure the woman's signature.
- (6) Subsection (7) applies if the woman does not inform the appropriate health authority before the expiry of the initial period of a decision that she has made under subsection (2).
- (7) As soon as practicable after the expiry of the initial period, the appropriate health authority must—
  - (a) record the matters mentioned in subsection (8) in the prescribed form, and
  - (b) take reasonable steps to secure the woman's signature.
- (8) The matters are—
  - (a) if the woman informs the appropriate health authority of a decision she has made under subsection (2), the decision,
  - (b) if the woman does not inform the appropriate health authority of a decision she has made under that subsection, that fact.
- (9) In this section—
 

“appropriate health authority”, in relation to a woman whose pregnancy ends as mentioned in subsection (1), means—

  - (a) if at the time when the pregnancy ends the woman is in the care of an independent health care service, that independent health care service,
  - (b) if at the time when the pregnancy ends the woman is in the care of a Health Board, that Health Board,

“initial period” means the period of 7 days beginning with the day on which a fetus, having been parted from the woman whose pregnancy has ended, does not breathe or show any other signs of life.

## 80 Change in arrangements **S**

- (1) This section applies if—
  - (a) an appropriate health authority has given a woman the opportunity to make a decision under section 79(2),
  - (b) the remains have not been buried or cremated, and
  - (c) the relevant period has not expired.
- (2) The woman may notify the appropriate health authority of—
  - (a) where she has previously made a decision under section 79(2), a new decision under that section replacing the decision she made previously,
  - (b) where she has not previously made a decision under that section, a decision made by her under that section.
- (3) If the woman notifies the appropriate health authority that she has made the decision mentioned in section 79(2)(c), the authority must inform the woman if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.

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- (4) As soon as practicable after receiving notice under subsection (2), the appropriate health authority must—
- (a) record the decision in the prescribed form, and
  - (b) take reasonable steps to secure the woman's signature.
- (5) In this section—
- “appropriate health authority” has the meaning given by section 79(9),
- “relevant period” means the period of 5 weeks beginning with the day on which the initial period (as defined in section 79(9)) expires.

## **81 Individual authorised to make arrangements S**

- (1) This section applies if an individual is authorised under section 79(2)(b) to make arrangements for the remains of a fetus to be buried or cremated.
- (2) If the individual does not wish to make the arrangements—
- (a) the individual may authorise the appropriate health authority to make arrangements for the remains to be buried or cremated—
    - (i) in a way specified by the individual, or
    - (ii) in a way specified by the authority, but
  - (b) otherwise may not authorise any other person to make arrangements for the remains to be buried or cremated.
- (3) If by virtue of section 79(2)(b)(i) the individual is authorised to make arrangements for the remains to be buried or cremated in a way specified by the woman, the individual must specify that way under subsection (2)(a)(i).
- (4) For the purposes of subsection (2)(a), the appropriate health authority must inform the individual if it would not be reasonably practicable for the authority to arrange for the remains to be buried or cremated in a particular way.
- (5) If an appropriate health authority is authorised by an individual under subsection (2)(a), it must—
- (a) record the authorisation in the prescribed form, and
  - (b) take reasonable steps to secure the individual's signature.
- (6) Subsection (7) applies if—
- (a) under section 79(7)(a) or 80(4)(a) the appropriate health authority has recorded a decision under section 79(2)(b) to authorise an individual, and
  - (b) the individual—
    - (i) does not inform the authority that the individual has made arrangements for the remains to be buried or cremated, and
    - (ii) does not authorise the authority under subsection (2)(a) to make those arrangements.
- (7) The appropriate health authority must—
- (a) record those facts in the prescribed form, and
  - (b) take reasonable steps to secure the individual's signature.
- (8) In this section, “appropriate health authority” has the meaning given by section 79(9).

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## 82 Duty to transfer remains **S**

- (1) Subsection (2) applies where by virtue of a decision made by a woman under section 79(2)(a) the arrangements for the burial or cremation of the remains of a fetus are to be made by the woman.
- (2) The appropriate health authority must give the remains to the woman.
- (3) Subsection (4) applies where by virtue of a decision made by a woman under section 79(2)(b) an individual is authorised to make the arrangements for the burial or cremation of the remains of a fetus.
- (4) The appropriate health authority must give the remains to the individual.
- (5) In this section, “appropriate health authority” has the meaning given by section 79(9).

## 83 Appropriate health authority authorised to make arrangements **S**

- (1) This section applies where by virtue of section 79(2)(c), 80(2) or 81(2)(a) an appropriate health authority is authorised to make arrangements for remains to be buried or cremated.
- (2) After the expiry of the 7-day period, the appropriate health authority—
  - (a) must make arrangements for the remains to be buried or cremated, and
  - (b) if by virtue of section 79(2)(c)(i), 80(2) or 81(2)(a)(i) it is authorised to do so in a specified way, must do so in that way.
- (3) Subsections (4) and (5) apply if the person who authorised the appropriate health authority to make the arrangements for the disposal of the remains informs the authority that the person has decided that the authority may make the arrangements before the expiry of the 7-day period.
- (4) The appropriate health authority must—
  - (a) record the person's decision in the appropriate form, and
  - (b) take reasonable steps to secure the person's signature.
- (5) The appropriate health authority—
  - (a) may make arrangements for the remains to be buried or cremated before the expiry of the 7-day period, and
  - (b) if by virtue of section 79(2)(c)(i), 80(2) or 81(2)(a)(i) it is authorised to do so in a specified way, must do so in that way.
- (6) In this section—

“7-day period” means the period of 7 days beginning with the day on which authorisation is given by virtue of section 79(2)(c), 80(2) or 81(2)(a),

“appropriate health authority” has the meaning given by section 79(9).

## 84 Duty of appropriate health authority **S**

- (1) This section applies where—
  - (a) section 79(1) applies in relation to a woman,
  - (b) the relevant period has expired, and

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- (c) it appears to the appropriate health authority that no arrangements have been or are being made by virtue of section 79, 80 or 81 for the remains of the fetus to be buried or cremated.
- (2) As soon as is reasonably practicable after the expiry of the relevant period, the appropriate health authority must consider whether it would be in the best interests of the woman for the authority to contact the woman for the purpose of seeking to establish—
- (a) whether the woman wishes to decide who should make arrangements for the remains to be buried or cremated, and
  - (b) in the event that the woman would wish to authorise the authority to make those arrangements, whether the woman would wish to specify the way in which the authority should make the arrangements.
- (3) If the appropriate health authority determines by virtue of subsection (2) that it would not be in the best interests of the woman for the authority to contact her for the purpose mentioned in that subsection, the authority may make arrangements for the remains to be buried or cremated.
- (4) If the appropriate health authority determines by virtue of subsection (2) that it would be in the best interests of the woman for the authority to contact her for the purpose mentioned in that subsection, the authority must take reasonable steps to contact the woman for that purpose.
- (5) Subsection (6) applies if by virtue of subsection (2)—
- (a) the appropriate health authority is authorised by the woman to make arrangements for the remains to be buried or cremated, and
  - (b) the woman has specified the way in which the authority should make those arrangements.
- (6) The authority may—
- (a) make arrangements for the remains to be buried or cremated, and
  - (b) except where it would not be reasonably practicable to do so, must do so in the way specified by the woman.
- (7) Subsection (8) applies if, at any time after having contacted or taken reasonable steps to contact the woman under subsection (4), it appears to the appropriate health authority—
- (a) that no arrangements have been or are being made for the remains to be buried or cremated, and
  - (b) that in all the circumstances of the case it would be in the woman's best interests for the authority to make those arrangements.
- (8) The authority may make arrangements for the remains to be buried or cremated.
- (9) In this section—
- “appropriate health authority” has the meaning given by section 79(9),
  - “relevant period” has the meaning given by section 80(5).



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*Pregnancy losses: general*

**85 Duty to keep register** **S**

- (1) Each health authority must prepare and maintain a register containing—
  - (a) prescribed information about the burial or cremation, in pursuance of sections 69 to 84, of the remains of a fetus, and
  - (b) other prescribed information.
- (2) The Scottish Ministers may by regulations—
  - (a) require a register kept under this section to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to such a register as they consider appropriate.
- (3) A register kept under this section must be kept indefinitely.
- (4) In this section—

“health authority” means a Health Board or an independent health care service,  
“specified” means specified in the regulations.

PROSPECTIVE

**86 Register under section 85: offence** **S**

- (1) A health authority commits an offence if, without reasonable excuse, the authority contravenes section 85(1) by failing to prepare or maintain a register as required under that section.
- (2) A health authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section, “health authority” means a Health Board or an independent health care service.

*Local authority functions*

**87 Burial or cremation: duty of local authority** **S**

- (1) This section applies where—
  - (a) a person dies or is found dead within the area of a local authority, and
  - (b) it appears to the authority that no arrangements have been or are being made under section 65(2) or 66(2) or otherwise for the remains to be buried or cremated.
- (2) The local authority must make arrangements for the remains to be buried or cremated (but subject to subsections (3) and (4)).
- (3) If the person is a child who, immediately before the death, was being looked after by another local authority, that other local authority must make arrangements for the remains to be buried or cremated.

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- (4) If the person is not a child and, immediately before the death, the person was in the care of, or receiving assistance from, another local authority, that other local authority must make arrangements for the remains to be buried or cremated.
- (5) In making arrangements under subsection (2), (3) or (4), the local authority must, so far as known to the authority, have regard to—
  - (a) any wishes that the person expressed as to means of disposal of the person's remains, and
  - (b) whether the person was of a particular religion or belief.
- (6) The local authority may recover from the estate of the person expenses incurred under subsection (2), (3) or (4).
- (7) In this section—
  - “belief” has the meaning given by section 10(2) of the Equality Act 2010,
  - “child” has the meaning given by section 93(2)(a) of the Children (Scotland) Act 1995,
  - “religion” has the meaning given by section 10(1) of the Equality Act 2010.
- (8) In this section, references to a child who is “looked after” by a local authority are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.

## **88 Expenses of attending funeral S**

- (1) This section applies where—
  - (a) a child dies and, immediately before the death, the child was being looked after by a local authority, or
  - (b) a person other than a child dies and, immediately before the death, the person was in the care of, or receiving assistance from, a local authority.
- (2) If it appears to the local authority that the conditions in subsection (3) are met, the authority may make payments to a relevant person in respect of travelling, subsistence or other expenses incurred by the relevant person for the purpose of attending the funeral of the child or other person who has died.
- (3) The conditions are—
  - (a) that if the local authority did not make a payment to the relevant person under this section the relevant person would not be able to attend the funeral without undue hardship, and
  - (b) that the circumstances warrant the making of the payment.
- (4) In this section—
  - “child” has the meaning given by section 93(2)(a) of the Children (Scotland) Act 1995,
  - “relevant person”—
    - (a) in the case where a child has died, means—
      - (i) a relative of the child, or
      - (ii) some other person connected with the child,
    - (b) in the case where a person other than a child has died, means—
      - (i) a relative of the person, or
      - (ii) some other person connected with the person who has died.

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

(5) In this section, references to a child who is “looked after” by a local authority are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.

## PART 4 **S**

### INSPECTION

#### 89 Appointment of inspectors **S**

- (1) The Scottish Ministers may appoint such persons as they think fit to be—
  - (a) inspectors of burial,
  - (b) inspectors of cremation,
  - (c) inspectors of funeral directors.
- (2) A person appointed under subsection (1) is referred to in this Part as an “inspector”.
- (3) The Scottish Ministers must pay to an inspector such remuneration as the Scottish Ministers may determine.
- (4) An inspector is to be appointed on such other terms and conditions as the Scottish Ministers may determine.
- (5) The Scottish Ministers may in the case of such of the inspectors as they may determine—
  - (a) pay such pensions, allowances or gratuities to or in respect of them as may be so determined,
  - (b) make such payments towards the provision of pensions, allowances or gratuities to or in respect of any of them as may be so determined, or
  - (c) provide and maintain such schemes (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of them as may be so determined.
- (6) In this section, “funeral director” has the meaning given by section 31(1) of the Certification of Death (Scotland) Act 2011.

#### Commencement Information

**I10** S. 89(1)(a)(c)(2)-(6) in force at 28.12.2016 by [S.S.I. 2016/417](#), reg. 2, [sch.](#) (with [reg. 4](#))

VALID FROM 02/06/2023

#### 90 Inspections: regulations **S**

- (1) The Scottish Ministers may by regulations make provision for or in connection with—
  - (a) the carrying out of inspections of burial grounds and burial authorities by inspectors of burial appointed under section 89(1),
  - (b) the carrying out of inspections of crematoriums and cremation authorities by inspectors of cremation so appointed,

*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

- (c) the carrying out of inspections of funeral directors by inspectors of funeral directors so appointed.
- (2) In subsection (3), burial authorities, cremation authorities and funeral directors are referred to as “relevant bodies”.
- (3) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) other functions of inspectors in relation to inspections,
  - (b) circumstances in which inspections are to be carried out,
  - (c) the frequency of inspections,
  - (d) reports by inspectors in relation to inspections,
  - (e) steps that may be taken by inspectors for the purpose of ensuring compliance with—
    - (i) requirements or conditions contained in enactments, codes of practice or guidance applicable to relevant bodies, or
    - (ii) conditions in any licence necessary to operate as a relevant body,
  - (f) steps that may be taken by inspectors to enforce such requirements or conditions,
  - (g) the procedure to be followed, and timescales applicable, in relation to such steps,
  - (h) where by virtue of paragraph (e) or (f) an inspector proposes to suspend the operation of activities of relevant bodies, or suspend or revoke any licence necessary to operate as a relevant body—
    - (i) recommendations by inspectors to the Scottish Ministers in relation to the proposal,
    - (ii) information to be provided by inspectors in connection with such recommendations,
    - (iii) decisions of the Scottish Ministers in relation to such recommendations,
  - (i) reviews of or appeals against—
    - (i) decisions of inspectors made by virtue of the regulations, and
    - (ii) decisions of the Scottish Ministers mentioned in paragraph (h)(iii),
  - (j) investigations of complaints against relevant bodies (in particular or in general) and the procedure to be followed in relation to such investigations, or
  - (k) sanctions inspectors may impose in relation to such investigations.

PROSPECTIVE

## 91 Powers of entry and inspection **S**

- (1) An inspector may if authorised to do so by the Scottish Ministers—
  - (a) enter any premises (other than a dwelling-house) associated with the carrying out of any function of—
    - (i) a burial authority,
    - (ii) a cremation authority,
    - (iii) a funeral director, or

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

- (iv) a health authority,
  - (b) require the production of any documents, records or registers which a person mentioned in paragraph (a) is required to have or maintain under or by virtue of this Act, and
  - (c) inspect and take copies of such documents, records or registers.
- (2) The powers in subsection (1) may be exercised by an inspector only for the purposes of—
- (a) ascertaining whether an offence under or by virtue of this Act has been or is being committed,
  - (b) carrying out any function conferred on the inspector by virtue of regulations under this Act, or
  - (c) (in the case of the power conferred by subsection (1)(a)(iv)) determining whether a health authority is complying with requirements relating to records or registers imposed on it by this Act.
- (3) If an inspector exercises a power of entry by virtue of subsection (1), the inspector may take onto the premises such other persons, and such materials and equipment, as the inspector considers necessary.
- (4) A power of entry under subsection (1) must be exercised at a reasonable hour.
- (5) An inspector who proposes to exercise a power conferred under subsection (1) must, if so required, produce evidence of the inspector's identity and authorisation before exercising the power.
- (6) In this section, “health authority” means a Health Board or an independent health care service.

PROSPECTIVE

## 92 Section 91: offences **S**

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a requirement made by an inspector under section 91(1)(b) to produce a document, record or register.
- (2) A person commits an offence if the person wilfully obstructs an inspector in the exercise of—
- (a) the power of entry conferred under section 91(1)(a),
  - (b) the power to inspect or take copies of documents, records or registers conferred under section 91(1)(c), or
  - (c) a power conferred by virtue of regulations under section 90.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## 93 Reports **S**

- (1) Each inspector must prepare and publish annual reports.
- (2) The first annual report prepared by an inspector under subsection (1)—

*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

- (a) is to be published before the expiry of the period of 12 months beginning with the day on which the inspector is appointed, and
  - (b) is to relate to that period.
- (3) Each subsequent annual report—
- (a) is to be published no later than 12 months after publication of the preceding annual report, and
  - (b) is to relate to the period beginning with publication of the preceding annual report and ending with publication of the subsequent annual report.
- (4) An annual report by an inspector—
- (a) must contain information about the activities carried out by the inspector during the period to which the report relates,
  - (b) may contain recommendations that the inspector considers would, if implemented—
    - (i) improve the services provided by cremation authorities, burial authorities or (as the case may be) funeral directors, or
    - (ii) improve the keeping of relevant documents, records or registers.
- (5) In subsection (4)(b)(ii), “relevant documents, records or registers” means documents, records or registers which a person mentioned in section 91(1)(a) is required, under or by virtue of this Act, to have or maintain.
- (6) As soon as reasonably practicable after publication, annual reports must be laid before the Scottish Parliament.
- (7) An inspector may, at any time the inspector thinks appropriate, prepare a report about any matters relating to the inspector's functions (an “ad hoc report”).
- (8) If an inspector prepares an ad hoc report, the inspector—
- (a) must send a copy of the report to the Scottish Ministers,
  - (b) may, if the inspector thinks it appropriate—
    - (i) publish the report,
    - (ii) lay the report before the Scottish Parliament.

#### **Commencement Information**

**III** S. 93 in force at 28.12.2016 for specified purposes by S.S.I. 2016/417, reg. 2, sch. (with reg. 4)

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

VALID FROM 24/03/2021

## PART 5 **S**

### FUNERAL DIRECTORS

VALID FROM 02/06/2023

#### 94 Funeral directors' businesses: licensing **S**

- (1) The Scottish Ministers may make a scheme for the licensing of funeral directors' businesses.
- (2) A person may not carry on business as a funeral director unless the person holds a licence issued under the scheme in relation to the business.
- (3) Where a person carries on more than one business as a funeral director, the person must hold a separate licence in respect of each such business.

VALID FROM 02/06/2023

#### 95 Licensing scheme: regulations **S**

- (1) The Scottish Ministers may by regulations make provision for or in connection with a scheme mentioned in section 94(1).
- (2) Regulations under subsection (1) may in particular—
  - (a) specify who is to administer the scheme (in this section, the “licensing authority”),
  - (b) make provision about applications for licences under the scheme,
  - (c) specify the form and content of applications,
  - (d) make provision about the procedure to be followed in relation to applications,
  - (e) make provision about documents to be submitted with applications,
  - (f) require persons making applications to provide the licensing authority with any further information in connection with the application that the authority considers necessary,
  - (g) enable the licensing authority—
    - (i) to grant an application,
    - (ii) to refuse an application, or
    - (iii) to grant an application subject to any conditions the authority considers appropriate,
  - (h) specify the circumstances in which the licensing authority may or must—
    - (i) grant an application,
    - (ii) refuse an application, or

*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

- (iii) grant an application subject to such conditions as may be specified in the regulations,
- (i) make provision for timescales applicable in relation to applications,
- (j) make provision for the duration and expiry of licences under the scheme,
- (k) make provision about applications to renew licences, including provision to the same effect as that which may be made under paragraphs (c) to (i) in respect of applications for licences,
- (l) make provision in relation to—
  - (i) suspension and revocation of licences, and
  - (ii) the circumstances in which the licensing authority may suspend or revoke licences,
- (m) in relation to a person whose application for, or for renewal of, a licence has been refused, or whose licence has been suspended or revoked, make provision for the timescales applicable to any further such applications by the person,
- (n) make provision for appeals against—
  - (i) decisions of the licensing authority to grant an application for, or for renewal of, a licence,
  - (ii) decisions of the licensing authority to refuse such applications,
  - (iii) any conditions subject to which such applications are granted, or
  - (iv) decisions to suspend or revoke licences,
- (o) make provision for the period within which such appeals are to be made, or
- (p) make provision in relation to fees for applications for, and for renewal of, licences.

PROSPECTIVE

## 96 Licence for funeral director's business: offences **S**

- (1) A person commits an offence if the person knowingly carries on business as a funeral director at any time when the person does not hold a licence issued under a scheme made under section 94(1) in relation to the business.
- (2) For the purposes of subsection (1), a person does not hold a licence in relation to a business at any time when—
  - (a) no licence has been issued as mentioned in subsection (1) in relation to the business,
  - (b) a licence so issued in relation to the business has, in accordance with regulations under section 95—
    - (i) expired without being renewed,
    - (ii) been suspended, or
    - (iii) been revoked.
- (3) A person commits an offence if the person—
  - (a) provides information in, or in connection with, an application made by virtue of section 95 which the person knows to be false or misleading in a material way, or



**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

- (b) recklessly provides information in, or in connection with, such an application which is false or misleading in a material way.
- (4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### 97 **Funeral director: code of practice** **S**

- (1) A funeral director must comply with any code of practice issued by the Scottish Ministers about the carrying out of a funeral director's functions (a “funeral director's code”).
- (2) Before issuing any funeral director's code, the Scottish Ministers must consult—
  - (a) persons appearing to the Scottish Ministers to be representative of the interests of funeral directors in Scotland, and
  - (b) other persons appearing to the Scottish Ministers to have an interest.
- (3) After taking account of any representations received by them by virtue of subsection (2), the Scottish Ministers must lay a draft of the funeral director's code before the Scottish Parliament.
- (4) The Scottish Ministers may not issue a funeral director's code unless a draft of the code is approved by resolution of the Scottish Parliament.
- (5) The Scottish Ministers must publish a funeral director's code in such manner as they consider appropriate.
- (6) The Scottish Ministers must keep under review a funeral director's code.
- (7) In this section, references to a funeral director's code include references to a funeral director's code as revised from time to time by the Scottish Ministers.

## PART 6 **S**

### MISCELLANEOUS

VALID FROM 01/06/2018

#### *Guidance on funeral costs*

#### 98 **Guidance on funeral costs** **S**

- (1) The Scottish Ministers may publish guidance on the costs associated with making arrangements for a funeral.
- (2) The guidance may in particular cover the desirability of such costs being affordable.
- (3) Before issuing such guidance, the Scottish Ministers must consult—
  - (a) burial authorities,
  - (b) cremation authorities,
  - (c) funeral directors,

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*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

(d) any other persons they consider appropriate.

(4) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.

### *Powers to modify enactments*

VALID FROM 04/04/2019

#### **99 Power to extend application of Act S**

(1) The Scottish Ministers may by regulations provide that specified provisions of this Act or any other enactment apply, subject to any specified modifications, in relation to specified ways of disposing of human remains.

(2) In this section, “specified” means specified in the regulations.

#### **100 Power to suspend or modify certain enactments S**

(1) The Scottish Ministers may, as regards the whole or any part of Scotland, by regulations make such provision suspending, or modifying, an enactment mentioned in subsection (2) as they consider necessary or expedient for the purpose of protecting public health.

(2) The enactments are—

- (a) this Act,
- (b) any regulations made under this Act,
- (c) any enactment amended by regulations made under this Act,
- (d) any other enactment relating to burial or cremation.

(3) Regulations under subsection (1) may include provision—

- (a) requiring specified persons to comply with specified provisions, or
- (b) creating criminal offences to be triable summarily and punishable with a fine not exceeding level 3 on the standard scale.

(4) Regulations under subsection (1)—

- (a) may make different provision for different purposes or circumstances,
- (b) may include such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(5) Regulations under subsection (1) (other than regulations to which subsection (6) applies) cease to have effect on the expiry of the period of 28 days beginning with the day on which they are made unless, before the expiry of that period, the regulations are approved by resolution of the Scottish Parliament.

(6) This subsection applies to regulations made under subsection (1) consisting only of—

- (a) provision revoking earlier regulations made by virtue of subsection (1), or
- (b) such provision and provision made by virtue of subsection (4)(b).

(7) In calculating the period of 28 days mentioned in subsection (5), no account is to be taken of any period during which the Scottish Parliament is—

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

- (a) dissolved, or
- (b) in recess for more than 4 days.

(8) In this section—

“protecting public health” has the meaning given by section 1(2) of the Public Health etc. (Scotland) Act 2008,

“specified” means specified in the regulations.

### *Acquisition of land*

#### **101 Acquisition of land** S

In the Local Government (Scotland) Act 1973, in section 70(1) (acquisition of land by agreement) and section 71(1) (acquisition of land compulsorily), “enactment” is to be construed as if it included the Burial and Cremation (Scotland) Act 2016.

#### **Commencement Information**

**112** [S. 101](#) in force at 28.12.2016 by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [reg. 4](#))

## **PART 7** S

### GENERAL

PROSPECTIVE

#### **102 Information and registers to be kept in electronic form** S

- (1) Subsection (2) applies where a person—
  - (a) is required under or by virtue of this Act to keep any information, or
  - (b) is required under this Act to prepare and maintain a register.
- (2) The person must keep the information or the register in electronic form.

VALID FROM 04/04/2019

#### **103 Offences by bodies corporate etc.** S

- (1) Subsection (2) applies where—
  - (a) an offence under this Act has been committed by—
    - (i) a body corporate,
    - (ii) a Scottish partnership, or
    - (iii) an unincorporated association other than a Scottish partnership, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
    - (i) a relevant individual, or

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*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

- (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate (other than a limited liability partnership)—
    - (i) a director, manager, secretary or similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, a member,
  - (b) in relation to a limited liability partnership, a member,
  - (c) in relation to a Scottish partnership, a partner,
  - (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

#### 104 Regulations: consultation requirements **S**

- (1) Before making any regulations under section 6(1), 8(2), 10(1) or (2), 33(3)(b) or (c) or (4), 34(2) or (3), 35(3), 36(4)(b) or 42, the Scottish Ministers must consult—
  - (a) burial authorities, and
  - (b) any other persons the Scottish Ministers consider appropriate.
- (2) Before making any regulations under section 22(1) or 23(2), the Scottish Ministers must consult—
  - (a) local authorities, and
  - (b) any other persons the Scottish Ministers consider appropriate.
- (3) Before making any regulations under section 27(1), the Scottish Ministers must consult—
  - (a) burial authorities,
  - (b) cremation authorities,
  - (c) inspectors, and
  - (d) any other persons the Scottish Ministers consider appropriate.
- (4) Before making any regulations under Part 2, the Scottish Ministers must consult—
  - (a) cremation authorities, and
  - (b) any other persons the Scottish Ministers consider appropriate.
- (5) Before making any regulations under section 90, the Scottish Ministers must consult—
  - (a) burial authorities,
  - (b) cremation authorities,
  - (c) persons appearing to the Scottish Ministers to be representative of the interests of funeral directors in Scotland, and
  - (d) any other persons the Scottish Ministers consider appropriate.
- (6) Before making any regulations under section 99(1), the Scottish Ministers must consult any persons they consider appropriate.

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

### Commencement Information

**I13** S. 104(1) in force at 28.12.2016 for specified purposes by S.S.I. 2016/417, reg. 2, sch. (with reg. 4)

VALID FROM 02/06/2023

### 105 Regulations under section 95(1): requirements **S**

- (1) Before laying a draft of a Scottish statutory instrument containing regulations under section 95(1) before the Scottish Parliament, the Scottish Ministers must—
  - (a) prepare a draft of the regulations,
  - (b) consult the persons mentioned in subsection (2) about the draft regulations, and
  - (c) in preparing the draft Scottish statutory instrument, have regard to any representations received by them by virtue of paragraph (b).
- (2) The persons are—
  - (a) persons appearing to the Scottish Ministers to be representative of the interests of funeral directors in Scotland, and
  - (b) any other persons the Scottish Ministers consider appropriate.
- (3) When laying a draft of a Scottish statutory instrument containing regulations under section 95(1) before the Scottish Parliament, the Scottish Ministers must also lay before the Parliament a document which—
  - (a) summarises any representations received by them by virtue of subsection (1) (b), and
  - (b) describes any changes made to the draft regulations prepared under subsection (1)(a) whether as a result of those representations or otherwise.

### 106 Regulations: parliamentary procedure **S**

- (1) Regulations under this Act may—
  - (a) make different provision for different purposes,
  - (b) include such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (2) Regulations under sections 6(1), 27(1), 47(1), 90(1), 95(1) and 99(1) are subject to the affirmative procedure.
- (3) Regulations under section 108(1) that amend or repeal a provision of an Act (whether alone or with other provision) are subject to the affirmative procedure.
- (4) Otherwise, regulations under this Act are subject to the negative procedure.
- (5) This section does not apply to regulations under section 100(1) or 112(2).

### 107 Interpretation **S**

- (1) In this Act—
 

“ashes” has the meaning given by section 45(2),

*Status: Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)*

“burial authority” has the meaning given by section 2,  
 “burial ground” (other than in sections 3 and 5) has the meaning given by section 1,  
 “burial register” has the meaning given by section 10(1),  
 “cremation” has the meaning given by section 45(1); and “cremated” is to be construed accordingly,  
 “cremation authority” has the meaning given by section 47(5),  
 “cremation register” has the meaning given by section 57(1),  
 “crematorium” (other than in section 50) has the meaning given by section 46(2),  
 “exhumation register” is to be construed in accordance with section 30(3),  
 “fetus” includes embryo,  
 “funeral director” has the meaning given by section 89(6),  
 “Health Board” has the meaning given by section 69(5),  
 “independent health care service” has the meaning given by section 69(5),  
 “inspector” is to be construed in accordance with section 89(2),  
 “inspector of cremation” means an inspector of cremation appointed under section 89(1),  
 “prescribed” means prescribed by the Scottish Ministers by regulations,  
 “private burial” has the meaning given by section 22(2),  
 “private burial register” has the meaning given by section 23(1),  
 “register of restored lairs” has the meaning given by section 42(1),  
 “right of burial” has the meaning given by section 12(2),  
 “right-holder” has the meaning given by section 16(3),  
 “still-birth” and “still-born child” have the meanings given by section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

- (2) Any references in this Act (other than in section 12(2)(b)) to burial (or reburial) include references to burial (or reburial) on or above the ground.
- (3) Any references in this Act (however expressed) to selling a right to a person include references to conferring the right on the person by any means other than sale.

## 108 Ancillary provision **S**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to this Act.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

VALID FROM 04/04/2019

## 109 Minor and consequential amendments **S**

Schedule 1 contains minor amendments and amendments consequential on the provisions of this Act.

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

## 110 Repeals **S**

The enactments mentioned in the first column in schedule 2 (which include enactments that are spent) are repealed to the extent specified in the second column.

### Commencement Information

**I14** S. 110 in force at 28.12.2016 for specified purposes by S.S.I. 2016/417, reg. 2, sch. (with reg. 4)

VALID FROM 04/04/2019

## 111 Crown application **S**

- (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (2) Despite subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

## 112 Commencement **S**

- (1) This section and sections 100, 106 to 108 and 113 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) Regulations under subsection (2) may contain transitory or transitional provision or savings.

## 113 Short title **S**

The short title of this Act is the Burial and Cremation (Scotland) Act 2016.

**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the *Burial and Cremation (Scotland) Act 2016*. (See end of Document for details)

VALID FROM 04/04/2019

## SCHEDULE 1 S

*(introduced by section 109)*

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Social Work (Scotland) Act 1968*

1 In section 29 (power of local authority to defray expenses of certain persons in visiting persons or attending funerals)—

- (a) in the title, for the words from “expenses” to the end substitute “ certain travelling expenses ”, and
- (b) after subsection (1) insert—

“(1A) In subsection (1), “child” has the meaning given by section 93(2) (a) of the Children (Scotland) Act 1995.

(1B) In subsection (1), the reference to a child who is “looked after” by a local authority is to be construed in accordance with section 17(6) of that Act of 1995.”.

#### *Public Health etc. (Scotland) Act 2008*

2 In the Public Health etc. (Scotland) Act 2008, in section 92(1)(b) (application for order in relation to bodies retained in premises)—

- (a) after “are” insert “—
  - (i) is satisfied that no arrangements have been or are being made under section 65(2) or 66(2) of the Burial and Cremation (Scotland) Act 2016 for disposal of the body; or
  - (ii)”,
  - and
- (b) after “not” insert “ otherwise ”.

## SCHEDULE 2 S

*(introduced by section 110)*

### REPEALS

#### **Commencement Information**

**I15** Sch. 2 in force at 28.12.2016 for specified purposes by [S.S.I. 2016/417](#), [reg. 2](#), [sch.](#) (with [regs. 3](#), [4](#))

#### ***Enactment***

Burial Grounds (Scotland) Act 1855

#### ***Extent of repeal***

The whole Act.



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**Status:** Point in time view as at 28/12/2016. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016. (See end of Document for details)

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Cremation Act 1902	The whole Act.
Scottish Board of Health Act 1919	Section 4(1)(e).
Church of Scotland (Property and Endowments) Act 1925	In section 32(1), in the second proviso, the words from “and”, where it third occurs, to the end.
Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947	Section 1(4)(a).
National Assistance Act 1948	Section 50.
Cremation Act 1952	The whole Act.
Local Government and Miscellaneous Financial Provisions (Scotland) Act 1958	In section 12(1), paragraph (b); and the words from “, and in” to “State” where it second occurs.
Town and Country Planning (Scotland) Act 1959	In Schedule 4, in paragraph 2, the entries relating to the Burial Ground (Scotland) Act 1855 and the Cremation Act 1902.
Registration of Births, Deaths and Marriages (Scotland) Act 1965	In section 24A, in subsection (8)(b), the words “be exercised so as to”; and, in subsection (9), paragraph (a) and the word “and” immediately following it.
Social Work (Scotland) Act 1968	Section 28. Section 29(2) and (3).
Local Government (Scotland) Act 1973	Section 169(1). Section 236(2)(a) and (c).
Local Government etc. (Scotland) Act 1994	In Schedule 13, paragraphs 3(2) and 92(52).
Children (Scotland) Act 1995	In Schedule 4, in paragraph 15, sub-paragraph (12); and in sub-paragraph (13), paragraphs (b) and (c).
Public Health etc. (Scotland) Act 2008	Section 93(4).
Certification of Death (Scotland) Act 2011	In schedule 2, paragraph 1(3) and (4).
Social Care (Self-directed Support) (Scotland) Act 2013	Section 1(5)(b).

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**Changes to legislation:**

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