



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 1

#### BURIAL

##### *Burial grounds*

#### **1 Meaning of “burial ground”**

In this Act, “burial ground”—

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

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

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

#### **3 Provision of burial ground: local authority**

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

#### **4 Provision of burial ground outwith local authority area**

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

#### **5 Joint provision of burial ground**

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

#### **6 Management of burial ground**

- (1) The Scottish Ministers may by regulations make provision for or in connection with the management, regulation and control by a burial authority of burial grounds.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) the maintenance of—
    - (i) burial grounds, and
    - (ii) buildings, walls, fences or other structures erected on burial grounds,
  - (b) enclosing, laying out and embellishing burial grounds,
  - (c) access to and within burial grounds, including the construction, repair, maintenance and improvement of roads and paths,
  - (d) the maintenance and repair of memorials, buildings and other structures on burial grounds (including for the purpose of making them safe),
  - (e) the charging of fees by burial authorities which are local authorities in respect of such matters as may be specified in the regulations,
  - (f) persons employed by burial authorities (including in relation to training, qualifications and membership of professional bodies),
  - (g) conditions relating to the erection of a memorial, building or other structure on burial grounds,
  - (h) the imposition by burial authorities of such restrictions and conditions as they think necessary or appropriate in relation to—
    - (i) the layout of burial grounds (including in relation to the size of, and distance between, lairs),

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*Status: This is the original version (as it was originally enacted).*

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- (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.

## **7 Right to erect building**

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