



Burial and Cremation (Scotland) Act 2016

2016 asp 20

PART 1

BURIAL

VALID FROM 02/06/2023

Private burial

22 Private burial

- (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,

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- (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,
 - (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.

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23 Private burial register

- (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.
- (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

- (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.

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(6) In subsection (1), “relevant local authority” is to be construed in accordance with section 22(6).

PROSPECTIVE

25 Private burial register: offence

- (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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