



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 7

#### GENERAL

PROSPECTIVE

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

- (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.

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

- (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
    - (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,

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- (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.

#### Commencement Information

- I1** S. 103 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

### 104 Regulations: consultation requirements

- (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.

#### Commencement Information

- I2** S. 104(1) in force at 28.12.2016 for specified purposes by S.S.I. 2016/417, reg. 2, sch. (with reg. 4)
- I3** S. 104(1) in force at 4.4.2019 in so far as not already in force by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)
- I4** S. 104(2)-(6) in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

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

- (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.

### Commencement Information

I5 [S. 105](#) in force at 2.6.2023 by [S.S.I. 2023/145](#), reg. 2, [sch.](#)

## 106 Regulations: parliamentary procedure

- (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

- (1) In this Act—
  - “ashes” has the meaning given by section 45(2),
  - “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),

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“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

- (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).

## 109 Minor and consequential amendments

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

### Commencement Information

I6 S. 109 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

## 110 Repeals

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.

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#### Commencement Information

- I7** S. 110 in force at 28.12.2016 for specified purposes by S.S.I. 2016/417, reg. 2, sch. (with reg. 4)  
**I8** S. 110 in force at 4.4.2019 in so far as not already in force by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

### 111 Crown application

- (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.

#### Commencement Information

- I9** S. 111 in force at 4.4.2019 by S.S.I. 2018/380, reg. 2, sch. (with reg. 8)

### 112 Commencement

- (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

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

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