

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Burial

Lair: restoration to use

Section 32 – Restoration to use of lair: consultation

93. Sections 32 to 44 set out the process that must be followed by a burial authority to restore burial lairs to use in particular circumstances. Section 32 sets out the initial steps that must be taken by a burial authority in choosing to restore a lair to use. Subsection (1) establishes a range of criteria that must be met to enable a burial authority to begin the restoration process. These are that it appears to the burial authority that the lair is in a poor state of maintenance and repair or that there is no indication that anyone is taking an interest in the lair; that there has not been a burial in the lair during the relevant period (i.e. 100 years where the lair contains human remains or 50 years where the lair does not contain human remains); and that it might be practicable for the burial authority to restore the lair to use. All three criteria must be met.
94. Subsection (2) allows the burial authority to carry out excavations in a lair, and to open or move any tomb or other structure in which human remains are placed above ground, to establish the feasibility of restoring the lair to use, but, by virtue of subsection (3), it may not exhume any remains buried in the lair at this point. Exhumation may take place only where the entire restoration to use process has been followed and the burial authority has decided to restore the lair to use. Exhumations for this purpose are carried out by virtue of section 37(3)(c) or section 38(3)(c).
95. Subsection (4) establishes that the burial authority must consult a range of people about the proposed restoration of the lair. The people who must be consulted at this stage are listed in subsection (5) and include archaeologists, the Commonwealth War Graves Commission and any other person the burial authority considers appropriate. Subsection (6) provides that if there is any objection from any of these persons at this stage, the lair cannot be restored to use and must not be considered again for reuse for 10 years.