



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 1

#### BURIAL

##### *Exhumation*

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

- (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.

- (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.

## **28 Exhumation application: offences**

- (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.

## **29 Appeal to sheriff**

- (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.
- (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**

- (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”.
- (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.

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

- (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).