

2016 No. 417 (C. 43)

BURIAL

CREMATION

**The Burial and Cremation (Scotland) Act 2016 (Commencement
No. 1, Transitory and Transitional Provisions) Regulations 2016**

<i>Made</i> - - - -	<i>13th December 2016</i>
<i>Laid before the Scottish Parliament</i>	<i>14th December 2016</i>
<i>Coming into force</i> - -	<i>28th December 2016</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 112(2), (3) and (4) of the Burial and Cremation (Scotland) Act 2016^(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Burial and Cremation (Scotland) Act 2016 (Commencement No. 1, Transitory and Transitional Provisions) Regulations 2016 and come into force on 28th December 2016.

(2) In these Regulations “the Act” means the Burial and Cremation (Scotland) Act 2016.

Appointed day

2. 28th December 2016 is the day appointed for the coming into force of the provisions of the Act specified in column 1 of the table in the schedule (the subject matter of which is specified in column 2 of that table) but where a purpose is specified in column 3 of that table in relation to a provision in column 1, that provision comes into force only for that purpose.

Transitional and transitory provision: register of burials

3.—(1) Despite the repeal of section 31 of the Burial Grounds (Scotland) Act 1855^(b) (register of burials) each local authority must continue to prepare and maintain for each burial ground for which it is the burial authority a register of all the burials within a burial ground maintained by that authority.

(2) The register must include a record identifying those areas of ground to distinguish where remains have been buried.

(3) Subject to paragraph (4) paragraphs (1) and (2) have effect until section 10 of the Act (burial register) comes into force.

(a) 2016 asp 20.

(b) 1855 c.68.

(4) An extract from a burial register kept by a local authority in accordance with paragraphs (1) and (2), or under section 31 of the Burial Grounds (Scotland) Act 1855, duly certified as a true copy by that authority, is sufficient evidence of the burial entered in it for the purposes of any court proceedings.

Transitory provision: right of burial and right to erect headstone

4.—(1) A burial authority which is a local authority may, on the application of any person, sell a right of burial in a lair in a burial ground for which it is the burial authority.

(2) A person in whom a right of burial in a lair is vested may apply to the burial authority for the burial ground for the right to erect a headstone or other memorial on the lair.

(3) In this regulation “right of burial”, in relation to a lair, means—

- (a) a right to be buried in the lair;
- (b) where human remains are to be buried on or above ground—
 - (i) a right to place a tomb on the lair; and
 - (ii) a right to erect a structure associated with the tomb on the lair; and
- (c) a right to determine whose remains may be buried in the lair.

(4) A right of burial sold by a burial authority under paragraph (1) is to be exercised subject to such terms and conditions as the burial authority may determine.

(5) A burial authority may refuse an application mentioned in paragraph (1) or (2) if, in the opinion of the authority, it is reasonable to do so.

(6) A right of burial is exercisable only by the person in whom the right is vested.

(7) This regulation has effect until sections 12 (right of burial) and 19 (right to erect headstone) of the Act come into force.

Sale of right of burial: fees

5.—(1) A burial authority may charge such fees as the authority thinks fit in respect of the sale of a right of burial under regulation 4(1) and section 20(3) to (6) of the Act (fees for burials) applies subject to the modifications specified in paragraph (2).

(2) In section 20(3) and (6) of the Act omit “mentioned in subsection (2)”.

AILEEN CAMPBELL

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
13th December 2016

SCHEDULE

Regulation 2

Provisions of the Act coming into force on 15th December 2016

<i>Column 1</i> <i>Provisions of the 2016 Act</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 1	Meaning of “burial ground”	
Section 2	Meaning of “burial authority”	
Section 3	Provision of burial ground: local authority	
Section 4	Provision of burial ground outwith local authority area	
Section 5	Joint provision of burial ground	
Section 6	Management of burial ground	
Section 7	Right to erect building	
Section 17	Register of rights of burial	
Section 20	Burial fees	
Section 89(1)(a) and (c) and (2) to (6)	Appointment of inspectors	
Section 93	Reports	So far as it applies to an appointment made under section 89(1)(a) (inspectors of burials) or (c) (inspectors of funeral directors)
Section 101	Acquisition of land	
Section 104(1)	Regulations and consultation requirements	So far as it applies to section 6
Section 110 and schedule 2	Repeals	For the purpose of bringing into force the repeals specified in the table in this Schedule

TABLE - REPEALS

<i>Enactment</i>
Burial Grounds (Scotland) Act 1855(a)
Scottish Board of Health Act 1919(b)
Church of Scotland (Property and Endowments) Act 1925(c)
Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(d)
Local Government etc. (Scotland) Act 1994(e)

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- (a) 1855 c.68.
 (b) 1919 c.20.
 (c) 1925 c.33.
 (d) 1947 c.42.
 (e) 1994 c.39.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force certain provisions of the Burial and Cremation (Scotland) Act 2016 (“the Act”) which make provision as regards burial grounds in Scotland (sections 1 to 7, 17 and 20) and the appointment of inspectors for burials and funeral directors (sections 89(1)(a) and (c) and (2) to (6) and 93). They also bring into force the repeal of the Burial Grounds (Scotland) Act 1855 (“the 1855 Act”) and make transitional and transitory provision.

Regulation 2 appoints 28th December 2016 as the day appointed for the coming into force of the provisions mentioned above. Regulation 3 makes transitional and transitory provision to ensure that, notwithstanding the repeal of the 1855 Act, local authorities continue to prepare and maintain burial registers for all burial grounds in respect of which they are the burial authority pending the coming into force of section 10 of the Act. Regulation 3(4) provides that an extract from a burial register kept under the 1855 Act, or under the transitory provision in these Regulations, will continue to be sufficient evidence of a burial in court proceedings where certified as a true copy by the local authority.

Regulation 4 makes transitory provision to confer a right to sell a right of burial in a lair in respect of burial authorities and the right to apply for a right to erect a tombstone or other memorial. That provision remains in force until sections 12 and 19 of the Act come into force. Regulation 5 allows local authorities to charge fees in respect of sales made under regulation 4 and applies subsections (3) to (6) of section 20 of the Act to such sales.

The Bill for the Act received Royal Assent on 28th April 2016. By virtue of section 112(1) of the Act, sections 100 (power to suspend or modify enactments), 106 (regulations: parliamentary procedure), 107 (interpretation), 108 (ancillary provision), 112 (commencement) and 113 (short title) came into force on the day after Royal Assent.

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