

POLICY NOTE

THE BURIAL AND CREMATION (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 1, TRANSITORY AND TRANSITIONAL PROVISION) REGULATIONS 2016

SSI 2016/417 (C. 43)

The above instrument is made under sections 112(2), (3) and (4) of the Burial and Cremation (Scotland) Act 2016 (“the Act”). It is not subject to any parliamentary procedure.

Policy Objectives

Regulation 2 provides that those provisions listed in the Schedule to the Regulations will come into force on 28th December 2016. These provisions concern the regulatory framework for burials in Scotland. Burials are currently regulated by the Burial Grounds (Scotland) Act 1855 (“the 1855 Act”). The repeal of that enactment will come into force at the same time as the new provisions are commenced along with the repeals set out in the table to the Schedule which refer to the 1855 Act. The Regulations also bring into effect two provisions relating to the appointment of inspectors.

The repeal of the 1855 Act is being brought into force to avoid running parallel regulatory regimes. In order to retain existing rights and duties regarding the sale of lairs and rights to erect headstones, the charging of fees and the maintenance of a burials register, pending the coming into force of the rest of the burial provisions under the Act, transitory provisions are made in these Regulations.

Sections 1 to 7 of the Act provide new definitions to cover all burial grounds (public as well as private) and a new definition for burial authorities. They also make provision for the powers and duties of burial authorities regarding the provision of burial grounds. Section 7 provides the power to burial authorities to sell a right to erect a building or other structure on a burial ground. In addition section 17 provides a duty to maintain a register of rights of burial which have been sold whilst section 20 provides a power for burial authorities, which are local authorities, to charge fees .

Regulation 3 makes a transitory provision to preserve the requirement for local authorities which are burial authorities to maintain a register of all burials. That provision has effect until section 10 of the Act is brought into force. The policy intention is to update and enhance the requirements for the keeping of such registers. Section 10(2) provides a regulation making power to specify the form and content of the register and to make additional provision. A consultation process about the content of such regulations will be undertaken during 2017 and those regulations will be brought into force when section 10 is commenced.

Section 18 of the 1855 Act allows the sale of lairs, the right to erect a chapel or vault and to place a monument, gravestone, table or inscription in the burial ground. The right to sell grounds is re-enacted as section 12 of the Act whilst section 19 provides for the right to apply for the right to erect a headstone or other memorial on the lair. Sections 12 to 16 create a new framework regarding the selling of lairs and, in particular, the duration of the right. Those provisions will be brought into force following further engagement with burial authorities to ensure their readiness for the new regime and the rules which will apply. Regulation 4 therefore provides a transitory provision to ensure that the right to sell the lair and to erect a tombstone or other monument continues until sections 12 and 19 come into force.

Section 89(1)(a) allows the Scottish Ministers to appoint inspectors of burial; section 89(1)(c) provides the power to appoint inspectors of funeral directors. Section 93 makes provision about the preparation and publication of reports by such inspectors within 12 months following their appointment. Section 89(1)(b) (inspectors of cremation) will be brought into force when the provisions regulating cremation at Part 2 of the Act are commenced.

Consultation

No formal consultation was carried out in relation to these Regulations. However formal consultation in respect of the Bill for the Act was carried out prior to its introduction with the policy intentions subject to full scrutiny, debate and the approval of the Parliament. Informal consultation and engagement with stakeholders continues during the implementation process.

Impact Assessment and Financial Effects

Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were undertaken for the Bill for the Act prior to its introduction to Parliament.

Directorate for Population Health
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