

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Burial

Burial grounds

Section 1 – Meaning of “burial ground”

6. **Section 1** defines “burial ground” for the purposes of the Act. A burial ground is defined as land that is used or intended to be used primarily for the burial of human remains and for which a fee is charged.
7. The definition also includes land that was used primarily for this purpose and was provided under any enactment or obligation imposed in law, but is no longer used for burial; in other words, a closed burial ground. This ensures that burial grounds that were provided by a local authority (or a predecessor body) under a statutory or common law obligation or under a statutory power, but which are no longer actively used for burial, are included within this definition.
8. The Act will also apply to burial grounds that are provided by private companies, including such burial grounds that are no longer actively used for burial. Section 1 allows the Scottish Ministers to make regulations to specify burial grounds that are no longer actively used. This means that Ministers may make regulations which specify particular burial grounds as burial grounds for the purposes of the Act. The effect of this section is to exclude private burial grounds as mentioned in section 22(2) from the application of Part 1 of the Act.

Section 2 – Meaning of “burial authority”

9. **Section 2** defines “burial authority” for the purposes of the Act. A burial authority is defined as a person who has responsibility for the management of a burial ground. This means that both local authorities and private companies who have responsibility for the management of a burial ground are regarded as burial authorities for the purposes of the Act. This is a change from previous arrangements, where only local authorities were burial authorities. “Person” has the meaning given by Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010, so includes “a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland”.

Section 3 – Provision of burial ground: local authority

10. This section sets out a local authority’s duty to provide a burial ground.
11. Subsection (1)(a) provides that a local authority must provide at least one burial ground within its area. Subsection (1)(b) allows a local authority to provide more than one burial ground within its area.

12. By virtue of subsection (2), a closed burial ground (as mentioned in section 1(b)) is not a burial ground for the purpose of this duty.

Section 4 – Provision of burial ground outwith local authority area

13. This section allows a burial authority which is a local authority to provide a burial ground partly or wholly in another local authority area.

Section 5 – Joint provision of burial ground

14. Subsection (1) allows two or more local authority burial authorities to provide a burial ground jointly. The burial ground may be located entirely within the area of one or more of those local authority areas. Where that is the case the local authority within whose area the burial ground is located is deemed to have met its duty under section 3(1)(a) to provide at least one burial ground within its area.
15. Any functions exercisable under or by virtue of this Act or any other enactment by a burial authority in relation to a burial ground must be carried out jointly by all local authorities who are providing the burial ground, and in accordance with any arrangements that may be made between those local authorities in relation to the burial grounds.
16. The effect of this is that all local authorities providing a burial ground jointly are jointly responsible for that burial ground. However, the management arrangements for the burial ground can be agreed between the local authorities, which may result in management being undertaken by a single local authority.
17. Subsection (5) provides that this section does not apply to burial grounds that are closed (as mentioned in section 1(b)).

Section 6 – Management of burial ground

18. **Section 6** gives the Scottish Ministers power to make regulations for or in connection with the management, regulation and control of a burial ground by a burial authority.
19. Subsection (2) lists the matters that any regulations made under subsection (1) may include.
20. The regulations will set out the framework for the management of burial grounds for burial authorities.

Section 7 – Right to erect building

21. This section allows a burial authority to sell the right to erect a building in a burial ground for which it is the burial authority. This is most likely to be used in relation to the creation of chapels, mausoleums and so on, but may also allow the erection of a memorial to people who are not necessarily buried in that burial ground – for example to commemorate people from a particular community who died in combat. Subsection (1) allows a burial authority to sell the right to erect a building or other structure on any burial ground which it provides. The effect of this is to allow a person who has such a right to erect a building or other structure, even if that person does not own a right of burial in that burial ground. The burial authority may attach conditions to the exercise of the right. The right is subject to, and must be exercised in accordance with, any regulations under Part 1 of the Act.