

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Burial

Burial in burial ground

Section 14 – Duration and extension of right of burial

41. **Section 14** makes provision for the duration of right of burial and the extension of that right. By virtue of subsection (1), this section does not apply to Commonwealth war graves which are dealt with by section 15. Subsection (2) provides that a right of burial lasts for 25 years, beginning on the day on which the right was granted (as recorded in the register of rights of burial under section 17). This period applies regardless of whether a burial is made in the lair to which the right applies during the 25-year period. Subsection (3) allows the burial authority to extend the period for which the right exists on the application of the owner of the right. Subsection (4) allows the right to be extended more than once. Under subsection (5), such an extension expires after 10 years, beginning on the day that the right was originally due to expire. The right can be extended again at the end of the 10-year period. This has the effect of allowing a right of burial to be extended every 10 years without limit.
42. Subsection (6) allows a burial authority to refuse an application for an extension under subsection (3) if it considers it reasonable to do so.
43. Subsection (7) provides that subsection (8) applies where the owner of a right dies before the right expires and the right does not transfer to another person. This is likely to happen only where the owner who has died did not leave a will and has no family to which the right would otherwise pass in line with succession law. Subsection (8) provides that in this situation, the right vests in, and may be exercised by, the burial authority that sold (or otherwise granted – see section 107(3) of the Act) the right.
44. Under subsection (9), the day on which the right was sold (or otherwise granted) is the day recorded in the register of rights of burial created under section 17.
45. If the right of burial is not extended, it is automatically extinguished. Where this happens with an unused lair, the burial authority may sell the right of burial in that lair.