

# **BURIAL AND CREMATION (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 – Burial**

#### **Private burial**

#### ***Section 22 – Private burial***

61. Subsection (1) of section 20 allows the Scottish Ministers to make regulations for or in connection with private burials. Subsection (2) provides that a “private burial” is a burial of human remains (other than cremated remains or the remains of a fetus) – see subsection (6)) in a place other than a burial ground. Subsection (3) provides that a private burial can take place only if it has been authorised by a relevant local authority (“relevant local authority” is defined by subsection (6) as meaning the local authority in whose area the burial will take place). The effect of this is to establish a legal framework for burials that are carried out in a place that is not a burial ground (as defined by the Act). This may be, for example, land a person owns or a family burial ground on an estate.
62. Subsection (4) requires that a person carrying out a private burial must do so in compliance with any requirements imposed by regulations made under subsection (1).
63. Subsections (5)(a) to (n) sets out what regulations under subsection (1) may, in particular, do. This includes: making provision about applications to carry out private burials and the fees that may be charged for administering the applications; specifying the form and content of applications; enabling applications to be made in respect of burials of persons who, at the time of making the application, are not deceased; making provision about documents to be submitted with, or in relation to, applications; making provision for the time at which such documents are to be submitted; making provisions about persons, or a description of persons, who are required to submit such documents; and specifying persons, or a description of persons, from whom consent to proposed private burials is to be obtained and by whom consent to proposed private burials is to be signified as having been obtained in, or in relation to, applications to carry out private burials.
64. Regulations made under section 22 may require persons making such applications to provide the local authority to which the application is made with any further information in connection with the application that the authority considers necessary. Regulations may also specify the circumstances in which a local authority receiving an application to carry out a private burial must authorise the burial, may authorise the burial, must not authorise the burial and must or may authorise the burial subject to conditions specified by the authority or in the regulations.

65. Regulations may make provision for or in connection with notices to be given by local authorities of decisions relating to applications to carry out private burials. Regulations may also make provision about notices to be made by local authorities of their decision about applications and in connection with notices to be given by persons making the applications or by such other persons as may be specified in the regulations. Regulations may also specify the form and content of any such notices.
66. The regulations may provide for review of or appeals against decisions of the local authority to authorise the carrying out of private burials, decisions of the local authority to refuse to authorise the carrying out of private burials and any conditions subject to which a private burial is authorised.
67. The regulations may make provision for or in connection with the size of any area of land on which private burials may be carried out; by reference to any such size, the maximum number of private burials that may be carried out on the land; and minimum distances between lairs on such land.
68. By virtue of subsection (6), the burial of ashes somewhere other than a burial ground is not regarded as a private burial, and does not require an application to be made to the local authority. Similarly, the burial of the remains of a fetus somewhere other than a burial ground is not regarded as a private burial and does not require an application to the local authority.

### ***Section 23 – Private burial register***

69. **Section 23** requires each local authority to prepare and maintain a register of private burials.
70. Subsection (2) provides that regulations may require the register to be kept in a particular form; and specify the information to be recorded, and the time at which it is to be recorded, in a register and make such other provision relating to a register of private burials as the Scottish Ministers consider appropriate.
71. Subsection (3) requires a local authority to make the register of private burials available to the public. Local authorities may make a reasonable charge for doing so. Any charge will be determined by the local authority.
72. Subsection (4) provides that a local authority must provide copies of entries in the register and may make a reasonable charge for doing so. Where a local authority decides to charge for this, it must determine the level of the charge.
73. Subsection (5) requires the local authority to keep the register of private burials indefinitely.
74. Subsection (6) provides that a certified copy extract of the register will be considered to be sufficient for the purposes of evidence in any court proceedings in respect of the information contained in the extract.
75. Subsection (7) makes clear that “specified” where it is used in subsection 23(2) is to be construed as meaning specified in the regulations made under this section.

### ***Section 24 – Private burial: offences***

76. This section establishes offences in relation to private burials. Subsection (1) provides that anyone who carries out a private burial knowing that it has not been authorised by the relevant local authority (which has the same meaning as that used in section 22(6), i.e. the local authority in whose area the burial will be carried out), contravenes section 22(3) and commits an offence. Subsection (2) sets out that a person who fails to comply, without reasonable excuse, with the requirements imposed by section 22(4) commits an offence. Subsection (3) sets out that a person commits an offence by providing information that the person knows to be false or misleading in a material way

*These notes relate to the Burial and Cremation (Scotland) Act  
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in, or in connection with, a private burial application under section 22, or by recklessly providing information that is false or misleading in a material way in, or in connection with, such an application.

77. By virtue of subsection (4), a person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a period of no more than 12 months or to a fine not exceeding level 3 on the standard scale or both.
78. By virtue of subsection (5), a person who commits an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

***Section 25 – Private burial register: offence***

79. This section provides that a local authority commits an offence if it fails, without reasonable excuse, to prepare and maintain a register of private burials as required by section 23. The local authority will be liable on summary conviction for a fine up to level 3 on the standard scale.