

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Arrangements

Adults and children

Section 68 – Sections 65 and 66: application to sheriff

179. Sections 65 and 66 set out who has the right to instruct the disposal of remains. Section 68 provides for the resolution of disputes – for example where two people each claim to have the right. Subsection (1) permits anyone who claims they are entitled to make arrangements for disposal to make an application to the sheriff. The sheriff can make an order setting out who is entitled to make the arrangements. The sheriff may make the order based on an “arrangements on death declaration” made by the deceased or based on who is the nearest relative. For the purposes of the Act, the phrase “arrangements on death declaration” means any statement (whether verbal or written) the deceased made while alive which specified the person whom the deceased wished to make the arrangements for the disposal of his or her remains. Subsection (2) allows the sheriff to also make any other provision that is considered appropriate or necessary when making an order.
180. In certain circumstances an application may not be made under this section. Subsection (5) allows that such restrictions apply in cases where there is a risk to public health from the remains of the deceased and where either an application for an order under section 93(1) of the Public Health etc (Scotland) Act 2008 has been made and not disposed of, or an order under that section has been made in respect of the remains.