

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 6 – Miscellaneous**

259. **Part 6** sets out various miscellaneous provisions.

#### **Guidance on funeral costs**

##### ***Section 98 – Guidance on funeral costs***

260. Subsection (1) provides the Scottish Ministers with a power to issue guidance about the costs associated with making arrangements for a funeral. Subsection (2) sets out that any such guidance may in particular cover the desirability of funeral costs being affordable. Subsection (3) requires the Scottish Ministers to consult with burial and cremation authorities and with funeral directors, as well as any persons they consider appropriate, before issuing any guidance under this section. Subsection (4) requires that guidance published under this section is laid before the Scottish Parliament.

#### **Powers to modify enactments**

##### ***Section 99 – Power to extend application of Act***

261. **Section 99** provides the Scottish Ministers with a power to make regulations which will extend the provisions of this Act (or any other enactment) so that it can apply to other specified ways of disposing of human remains in future. This will enable new and alternative methods of disposing of remains to be subject to the provisions of the Act and any regulations made by provisions contained in the Act.

##### ***Section 100 – Power to suspend or modify certain enactments***

262. **Section 100(1)** provides the Scottish Ministers with the power to make regulations to suspend or to modify any other legislation as they consider necessary or expedient for the purpose of protecting public health. The regulations may be made so that they have effect on the whole of Scotland or any part of it.

263. By virtue of subsection (2), the enactments covered by this section are this Act; any regulations made under the Act; any enactments amended by regulations made under the Act; and any other enactment relating to burial or cremation.

264. Subsection (3) sets out that the regulations may require certain persons to comply with particular provisions of the regulations or may create criminal offences which would apply to those who do not comply with the regulations.

265. Under subsection (4), the Scottish Ministers will have the power to make different provisions depending on the circumstances when making regulations, and the

*These notes relate to the Burial and Cremation (Scotland) Act  
2016 (asp 20) which received Royal Assent on 28 April 2016*

regulations may include whatever provisions the Scottish Ministers think is required or will allow the regulations to take effect more quickly in order to protect public health.

266. Subsection (5) requires that any such regulations must be laid before the Scottish Parliament. Regulations will come into force immediately, and will lapse automatically 28 days later, unless the Scottish Parliament passes a resolution approving them. The 28-day period will not include any days when the Scottish Parliament is in recess for a period or more than 4 days or when the Scottish Parliament has been dissolved for whatever reason.
267. Subsection (8) sets out that the phrase “protecting public health” has the same meaning in this section as it has in the Public Health etc. (Scotland) Act 2008.

## **Acquisition of land**

### ***Section 101 – Acquisition of land***

268. **Section 101** sets out that references to “enactment” in section 70(1) and section 71(1) of the Local Government (Scotland) Act 1973 are to be construed as if they included the Burial and Cremation (Scotland) Act 2016. This has the effect of allowing local authorities to acquire land, whether inside or outside their area, for the purposes of this Act.