

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7 – General**

269. Part 7 of the Act sets out general provisions.

#### ***Section 102 – Information and registers to be kept in electronic form***

270. This section provides that anyone who is required to keep any information or prepare and maintain a register under this Act must keep that information or register in electronic form.

#### ***Section 103 – Offences by bodies corporate etc.***

271. This section makes provision about liability where an offence has been committed under this Act by a body corporate, a Scottish partnership or an unincorporated association which is not a Scottish partnership. If it is proved that an individual who holds a managerial role in the organisation which has committed the offence had knowledge of the offence being committed or was negligent, they will be considered to have committed the offence also. They will then be liable to the penalty attached to that offence.

#### ***Section 104 – Regulations: consultation requirements***

272. [Section 104](#) sets out the requirements for the Scottish Ministers to consult before making any regulations under this Act. The section sets out who the Scottish Ministers must consult when making regulations under particular sections – this ensures that relevant persons are consulted before any regulations are made.

#### ***Section 105 – Regulations under [section 95\(1\)](#): requirements***

273. This section places requirements on the Scottish Ministers before making any regulations under subsection 95(1). Subsection (1) requires that before laying a draft of a Scottish statutory instrument containing the regulations before the Scottish Parliament, the Scottish Ministers must prepare a draft of the regulations, consult persons listed at subsection (2) (persons representative of the interests of funeral directors and any other persons the Scottish Ministers consider appropriate) and when preparing the draft to be laid before the parliament, have regard to any representations made during the consultation.

274. When laying a draft of any regulations before the Scottish Parliament, subsection (3) requires the Scottish Ministers to also lay a document that summarises any representations made during consultation and describes any changes made to the draft as a result of those representations or otherwise.

***Section 106 – Regulations: parliamentary procedure***

275. This section provides that regulations made under this Act may make different provision for different purposes and may include supplementary, incidental, consequential and transitional provisions. Regulations made under sections 6(1), 27(1), 47(1), 90(1), 95(1) and 99(1) of the Act will be subject to the affirmative procedure. Regulations made under section 108(1) that amend or repeal a provision of an Act will also be subject to the affirmative procedure. Any other regulations made under the Act will be subject to the negative procedure. Subsection (5) provides that this section does not apply to regulations made under sections 100(1) or 112(2), which are either subject to special procedure (in the case of section 100(1)) or no procedure (in the case of section 112(2)).

***Section 107 – Interpretation***

276. This section defines various terms used in the Act.

***Section 108 – Ancillary provision***

277. **Section 108** provides the Scottish Ministers with the power to make, by regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to the Act. An order under this section may modify this, or any other, enactment (including this Act).

***Section 109 – Minor and consequential amendments***

278. Minor and consequential modifications are set out in schedule 1.

***Section 110 – Repeals***

279. This section introduces schedule 2 (repeals).

***Section 111 – Crown application***

280. **Section 111** provides that no contravention by the Crown of any provision made by or under the Act makes the Crown criminally liable. However, it makes clear that the provisions of the Act apply to persons in the public service of the Crown as they apply to other persons.

***Section 112 – Commencement***

281. This section and sections 100, 106, 107, 108 and 113 come into force on the day after Royal Assent. The other provisions in this Act come into force on the date or dates determined by the Scottish Ministers in regulations. Different provisions of the Act may be brought into effect on different days by these regulations.

***Section 113 – Short title***

282. This section establishes that the short title of this Act is the Burial and Cremation (Scotland) Act 2016.