



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 1

#### BURIAL

##### *Burial in burial ground*

#### **8 Application to carry out burial**

- (1) A person may not carry out a burial of human remains in a burial ground unless—
  - (a) the person has submitted to the burial authority for the burial ground an application to carry out the proposed burial, and
  - (b) the application has been granted.
- (2) The Scottish Ministers may by regulations make provision for or in connection with applications mentioned in subsection (1).
- (3) In making such an application, a person must comply with any requirements imposed by or under regulations under subsection (2).
- (4) Regulations under subsection (2) may in particular—
  - (a) specify the form and content of applications,
  - (b) specify persons, or a description of persons, who may issue forms on which applications are to be made,
  - (c) prohibit such persons from altering the forms other than in such ways as may be specified in the regulations,
  - (d) specify persons, or a description of persons, who may submit applications,
  - (e) make provision about documents to be submitted with applications, or
  - (f) make provision for reviews of, or appeals against, decisions of a burial authority—
    - (i) to grant an application, or
    - (ii) to refuse to grant an application.

## **9 Unauthorised burial: offences**

- (1) A person commits an offence if the person contravenes section 8(1) by knowingly carrying out a burial in respect of which no application has been granted.
- (2) A person commits an offence if the person—
  - (a) provides information in, or in connection with, an application mentioned in section 8(1) which the person knows to be false or misleading in a material way, or
  - (b) recklessly provides information in, or in connection with, such an application which is false or misleading in a material way.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 3 on the standard scale or to both.
- (4) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **10 Burial register**

- (1) Each burial authority must prepare and maintain for each burial ground for which it is the burial authority a register containing prescribed information about burials that have taken place in the burial ground (a “burial register”).
- (2) The Scottish Ministers may by regulations—
  - (a) require a burial register to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to a burial register as they consider appropriate.
- (3) A burial authority must make arrangements for each of its burial registers to be available for inspection by members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (4) A burial authority must make arrangements for copies of entries in its burial registers to be supplied, on request, to members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (5) A burial register must be kept indefinitely.
- (6) An extract from a burial register kept by a burial authority, duly certified as a true copy by the burial authority, is sufficient evidence of the burial entered in it for the purposes of any court proceedings.
- (7) In subsection (2), “specified” means specified in the regulations.

## **11 Burial register: offence**

- (1) A burial authority commits an offence if, without reasonable excuse, the authority contravenes section 10(1) by failing to prepare or maintain a burial register.
- (2) A burial authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **12 Right of burial**

- (1) A burial authority may, on the application of any person, sell a right of burial in a lair in a burial ground for which it is the burial authority.
- (2) In this Act, “right of burial”, in relation to a lair, means—
  - (a) a right to be buried in the lair,
  - (b) where human remains are to be buried on or above the ground—
    - (i) a right to place a tomb on the lair, and
    - (ii) a right to erect a structure associated with the tomb on the lair, and
  - (c) subject to section 37(5), a right to determine whose remains may be buried in the lair.
- (3) A right of burial is exercisable only by the person in whom the right is vested.
- (4) A right of burial sold by a burial authority under subsection (1) is to be exercised subject to such terms, and on such conditions, as the burial authority may determine.
- (5) A right of burial is subject to, and must be exercised in accordance with, any regulations under this Part.
- (6) A burial authority may refuse an application mentioned in subsection (1) if, in the opinion of the authority, it is reasonable to do so (but this subsection is subject to section 13).

## **13 Duty to sell right of burial**

- (1) Where an application under section 12(1) satisfies the conditions in subsection (2) or (3), the burial authority to which the application is made must grant the application and sell a right of burial to the person making the application (the “applicant”).
- (2) The conditions are that—
  - (a) the application is made to a burial authority that is a local authority,
  - (b) the application discloses that the applicant intends the lair to be used to bury the remains of a person who, at the time the application is made, has died, and
  - (c) immediately before the person’s death, the person was ordinarily resident in the area of the local authority mentioned in paragraph (a).
- (3) The conditions are that—
  - (a) the application is made to a burial authority that is a local authority,
  - (b) the application discloses that the applicant intends the lair to be used to bury the remains of—
    - (i) a still-born child, or
    - (ii) a fetus mentioned in subsection (4), and
  - (c) the applicant is ordinarily resident in the area of the local authority mentioned in paragraph (a).
- (4) The fetus is one which—
  - (a) is parted from a woman before or on completion of the 24th week of the woman’s pregnancy, and
  - (b) after being so parted, does not breathe or show any other signs of life.

- (5) In subsection (3)(b)(i), “still-born child” has the meaning given by section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

#### **14 Duration and extension of right of burial**

- (1) This section applies in relation to any right of burial other than one that vests in the Commonwealth War Graves Commission.
- (2) A right of burial is extinguished at the end of the period of 25 years beginning with the day on which the right was sold.
- (3) The burial authority may, on the application of a person in whom the right of burial is vested, extend the period for which the right subsists.
- (4) An extension under subsection (3) may be granted on more than one occasion.
- (5) Where an extension is granted under subsection (3), the right is extinguished at the end of the period of 10 years beginning with the day on which the right would, but for the extension, otherwise be extinguished.
- (6) A burial authority may refuse an application mentioned in subsection (3) if, in the opinion of the authority, it is reasonable to do so.
- (7) Subsection (8) applies where—
- (a) the person in whom a right of burial is vested dies before the right is extinguished, and
  - (b) the right does not transfer to and vest in another person by virtue of any testamentary provision, enactment or rule of law.
- (8) The right vests in, and may be exercised by, the burial authority that sold the right.
- (9) For the purposes of calculating any period of time mentioned in this section, the day on which a right of burial is sold is to be taken to be the day recorded, in respect of the right, in the appropriate register under section 17.

#### **15 Commonwealth War Graves Commission: right of burial**

- (1) Subsection (2) applies where a burial authority sells a right of burial to the Commonwealth War Graves Commission.
- (2) The right subsists in perpetuity.

#### **16 Right of burial: notification of pending extinguishment**

- (1) Subsection (2) applies where—
- (a) a right of burial falls to be extinguished by virtue of section 14(2) or (5), and
  - (b) the burial authority that sold the right—
    - (i) is aware of the name and address of the right-holder, or
    - (ii) can, after reasonable enquiry, ascertain them.
- (2) At least 3 months before the day on which the right of burial falls to be extinguished, the burial authority must notify the right-holder—
- (a) of the date on which the right falls to be extinguished,

- (b) of the right-holder’s right to apply for an extension of the right under section 14(3),
  - (c) that, where no such application is made, the right will be extinguished, and
  - (d) that the right will be extinguished if such an application is refused under section 14(6).
- (3) In this section, “right-holder”, in relation to a lair, means the person in whom the right of burial in the lair is vested.

## **17 Register of rights of burial**

- (1) This section applies where a burial authority sells a right of burial in a burial ground for which it is the burial authority.
- (2) The burial authority must, in relation to each such burial ground, prepare and maintain a register containing—
- (a) information about lairs in the burial ground in which rights of burial have been sold by the authority,
  - (b) the date on which the rights were sold by the authority,
  - (c) the names and addresses of persons to whom the authority sold the rights, and
  - (d) subject to subsection (3), the names and addresses of persons in whom the right of burial vests (where such persons do not fall within paragraph (c)).
- (3) If the burial authority is unaware of, or is unable after reasonable enquiry to ascertain, the names and addresses of the persons mentioned in subsection (2)(d), the authority need not comply with the duty imposed by that subsection.
- (4) The burial authority may take such steps as it considers necessary—
- (a) to ascertain whether the information in the register is current and accurate, and
  - (b) to obtain information to enable the authority to adjust the information to ensure the register is current and accurate.
- (5) The register must be kept indefinitely.
- (6) An extract from a register maintained by a burial authority under this section, duly certified as a true copy by the burial authority, is in relation to matters contained in the extract sufficient evidence of those matters for the purposes of any court proceedings.

## **18 Registers under section 17: offence**

- (1) A burial authority commits an offence if, without reasonable excuse, the authority contravenes section 17(2) by failing to prepare or maintain a register as required under that section.
- (2) A burial authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **19 Right to erect headstone**

- (1) The person in whom a right of burial in a lair in a burial ground is vested may apply to the burial authority for the burial ground for the right to erect a headstone or other memorial on the lair.

- (2) A burial authority may refuse such an application if, in the opinion of the authority, it is reasonable to do so.
- (3) A right conferred by the granting of such an application is subject to, and must be exercised in accordance with, any regulations under this Part.
- (4) Subsection (5) applies where a right of burial in a lair is extinguished (including at the end of any period for which it is extended under section 14).
- (5) A right to erect a headstone or other memorial on the lair conferred by virtue of subsection (1) on the person in whom a right of burial is vested is extinguished on the extinguishment of the right of burial.
- (6) More than one application may be made under subsection (1) by the person in whom a right of burial is vested.

## **20 Fees for burials**

- (1) This section applies where a burial authority is a local authority.
- (2) The burial authority may charge such fees as the authority thinks fit in respect of—
  - (a) burials carried out in burial grounds for which it is the burial authority,
  - (b) the sale of a right to erect a building or other structure under section 7,
  - (c) the sale of a right of burial under section 12 or 13, and
  - (d) the extension of a right of burial under section 14.
- (3) The burial authority must publish fees mentioned in subsection (2) in accordance with subsection (4).
- (4) The fees must be published—
  - (a) in paper form, and
  - (b) on the website of the burial authority.
- (5) A burial authority may display the fees in any place it considers appropriate.
- (6) The burial authority must keep under review fees mentioned in subsection (2).

## **21 Burial authority: code of practice**

- (1) A burial authority must comply with any code of practice issued by the Scottish Ministers about the carrying out of functions conferred on the authority by or under this Act in relation to the management of a burial ground (a “burial code”).
- (2) Before issuing any burial code, the Scottish Ministers must consult—
  - (a) burial authorities, and
  - (b) other persons appearing to the Scottish Ministers to have an interest.
- (3) After taking account of any representations received by them by virtue of subsection (2), the Scottish Ministers must lay a draft of the burial code before the Scottish Parliament.
- (4) The Scottish Ministers may not issue a burial code unless a draft of the code is approved by resolution of the Scottish Parliament.

- (5) The Scottish Ministers must publish a burial code in such manner as they consider appropriate.
- (6) The Scottish Ministers must keep under review a burial code.
- (7) In this section, references to a burial code include references to a burial code as revised from time to time by the Scottish Ministers.