



Burial and Cremation (Scotland) Act 2016

2016 asp 20

PART 1

BURIAL

Lair: restoration to use

PROSPECTIVE

35 Section 34: effect of objection

- (1) This section applies where, before the expiry of any period prescribed by virtue of section 34(3)(c), a person objects to a burial authority's proposal to restore a lair to use.
- (2) If the person is the right-holder or a relative of a person whose remains are buried in the lair—
 - (a) the authority may not proceed with its proposal, and
 - (b) section 32 does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority receives the objection.
- (3) If the person is not the right-holder or a relative of a person whose remains are buried in the lair, the authority must determine before the expiry of the prescribed period whether there is merit in the objection.
- (4) If the authority determines that there is merit in the objection—
 - (a) the authority may not proceed with its proposal, and
 - (b) section 32 does not apply in relation to the lair for the period of 10 years beginning with the day on which the authority makes its determination.
- (5) In this section, “relative”, in relation to a person, means—
 - (a) the spouse or civil partner of the person,
 - (b) an ancestor in the direct line of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Burial and Cremation (Scotland) Act 2016, Section 35. (See end of Document for details)

- (c) a descendant in the direct line of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (d) a brother of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (e) a sister of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (f) an aunt of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (g) an uncle of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (h) a nephew of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (i) a niece of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner,
 - (j) a first cousin of—
 - (i) the person,
 - (ii) the person's spouse, or
 - (iii) the person's civil partner.
- (6) Subsection (5) is to be read as if it did not contain any references (however expressed) to the spouse or civil partner of a person if the person's spouse or (as the case may be) civil partner—
- (a) is permanently separated (either by agreement or under an order of a court) from the person, or
 - (b) has deserted, or has been deserted by, the person and the desertion continues.
- (7) For the purposes of the definition of “relative” in subsection (5)—
- (a) a relationship of the half-blood is to be treated as a relationship of the whole blood, and
 - (b) references to the spouse of the person (“the deceased”) include references to a person who immediately before the deceased's death was living with the deceased as if they were married to each other and had been so living for a period of at least 6 months (or if the deceased was in hospital immediately

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before death had been so living for such period when the deceased was admitted to hospital).

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