



# Burial and Cremation (Scotland) Act 2016

## 2016 asp 20

### PART 1

#### BURIAL

##### *Burial grounds*

#### **1 Meaning of “burial ground”**

In this Act, “burial ground”—

- (a) means land—
  - (i) used, or intended to be used, primarily for the burial of human remains, and
  - (ii) in respect of which a charge for such burials is made, and
- (b) includes land that was, but is no longer, used primarily for the burial of human remains and that—
  - (i) was provided for that purpose in pursuance of a function conferred by an enactment or an obligation imposed by rule of law, or
  - (ii) is specified in regulations made by the Scottish Ministers.

#### **2 Meaning of “burial authority”**

In this Act, “burial authority”, in relation to a burial ground, means the person having responsibility for the management of the burial ground.

#### **3 Provision of burial ground: local authority**

- (1) Each local authority—
  - (a) must provide one burial ground within the area of the local authority, and
  - (b) may provide other burial grounds within that area.
- (2) In subsection (1), “burial ground” has the meaning given in section 1 except that it does not include land mentioned in paragraph (b) of that section.

#### **4 Provision of burial ground outwith local authority area**

A local authority may provide a burial ground that is situated wholly or partly outwith the area of the authority.

#### **5 Joint provision of burial ground**

- (1) Any two or more local authorities may make arrangements to provide jointly a burial ground within the area of one or more of the authorities.
- (2) If a burial ground which is provided jointly by two or more local authorities under subsection (1) is wholly within the area of one of the authorities, that authority is deemed to have complied with section 3(1)(a).
- (3) Subsection (4) applies where a burial ground is provided jointly under subsection (1) by two or more local authorities that are burial authorities.
- (4) Any functions exercisable under, or by virtue of, this Act or any other enactment by a burial authority in relation to a burial ground are to be exercised—
  - (a) jointly by the local authorities in relation to the burial ground, and
  - (b) in accordance with such arrangements as may be made between the authorities in relation to the burial ground.
- (5) In this section, “burial ground” has the meaning given by section 1 except that it does not include land mentioned in paragraph (b) of that section.

#### **6 Management of burial ground**

- (1) The Scottish Ministers may by regulations make provision for or in connection with the management, regulation and control by a burial authority of burial grounds.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) the maintenance of—
    - (i) burial grounds, and
    - (ii) buildings, walls, fences or other structures erected on burial grounds,
  - (b) enclosing, laying out and embellishing burial grounds,
  - (c) access to and within burial grounds, including the construction, repair, maintenance and improvement of roads and paths,
  - (d) the maintenance and repair of memorials, buildings and other structures on burial grounds (including for the purpose of making them safe),
  - (e) the charging of fees by burial authorities which are local authorities in respect of such matters as may be specified in the regulations,
  - (f) persons employed by burial authorities (including in relation to training, qualifications and membership of professional bodies),
  - (g) conditions relating to the erection of a memorial, building or other structure on burial grounds,
  - (h) the imposition by burial authorities of such restrictions and conditions as they think necessary or appropriate in relation to—
    - (i) the layout of burial grounds (including in relation to the size of, and distance between, lairs),

- (ii) the right to erect a memorial, building or other structure on burial grounds (including in relation to materials, construction, size, maintenance and liability for costs in respect of work carried out by burial authorities),
  - (i) the depth at which human remains may be buried,
  - (j) the designation of part of a burial ground for use by particular faiths or religious bodies,
  - (k) the provision of buildings for the use of persons of particular faiths or belonging to particular religious bodies,
  - (l) creating criminal offences to be triable summarily and punishable by a fine not exceeding level 3 on the standard scale, or
  - (m) defences and evidential matters relating to such offences.

## **7 Right to erect building**

- (1) A burial authority may sell a right to erect a building or other structure on a burial ground for which it is the burial authority.
- (2) Any such right is exercisable only by the person in whom the right is vested.
- (3) A right 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.
- (4) Such a right is subject to, and must be exercised in accordance with, any regulations under this Part.

### *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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.

### *Private burial*

## **22 Private burial**

- (1) The Scottish Ministers may by regulations make provision for or in connection with private burials.
- (2) In this Part, “private burial” means the burial of human remains in a place other than a burial ground.
- (3) A person who proposes to carry out a private burial may do so only if the burial is authorised by the relevant local authority.
- (4) In carrying out a private burial, a person must comply with any requirements imposed by or under regulations under subsection (1).
- (5) Regulations under subsection (1) may in particular—
  - (a) make provision about applications to carry out private burials,
  - (b) specify the form and content of applications,
  - (c) enable applications to be made in respect of burials of persons who, at the time of making the application, are not deceased,
  - (d) make provision about documents to be submitted with, or in relation to, applications,
  - (e) make provision for the time at which such documents are to be submitted,
  - (f) make provision about persons, or a description of persons, who are required to submit such documents,
  - (g) make provision for or in connection with the charging of fees by local authorities in respect of applications to carry out private burials,
  - (h) specify persons or a description of persons—
    - (i) from whom consent to proposed private burials is to be obtained, and
    - (ii) by whom consent to proposed private burials is to be signified as having been obtained in, or in relation to, applications to carry out private burials,
  - (i) require persons making such applications to provide the local authority to which the application is made with any further information in connection with the application that the authority considers necessary,

- (j) specify the circumstances in which a local authority receiving an application to carry out a private burial—
    - (i) must authorise the carrying out of the burial,
    - (ii) may authorise the carrying out of the burial,
    - (iii) must not authorise the carrying out of the burial,
    - (iv) must or may authorise the carrying out of the burial subject to conditions specified by the authority or in the regulations,
  - (k) make provision for or in connection with—
    - (i) notices by local authorities of the authorities’ decisions relating to applications to carry out private burials,
    - (ii) notices relating to those notices by persons making the applications or by such other persons, or other persons of such descriptions, as may be specified in the regulations,
  - (l) specify the form and content of notices mentioned in paragraph (k),
  - (m) make provision for reviews of or appeals against—
    - (i) decisions of the local authority to authorise the carrying out of private burials,
    - (ii) decisions of the local authority to refuse to authorise the carrying out of private burials,
    - (iii) any conditions subject to which a private burial is authorised, or
  - (n) make provision for or in connection with—
    - (i) the size of any area of land on which private burials may be carried out,
    - (ii) by reference to any such size, the maximum number of private burials that may be carried out on the land,
    - (iii) minimum distances between lairs on such land.
- (6) In this section—
- “human remains” does not include—
    - (a) human remains that have been cremated, or
    - (b) the remains of a fetus mentioned in subsection (7),
  - “relevant local authority”, in relation to land on which a private burial is proposed to be carried out, means the local authority for the area in which the land is situated.
- (7) 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.

## **23 Private burial register**

- (1) Each local authority must prepare and maintain a register of private burials authorised by the authority under section 22(3) (a “private burial register”).
- (2) The Scottish Ministers may by regulations—
  - (a) require a private burial register to be in a specified form and kept in a specified manner,
  - (b) require specified information to be recorded in a private burial register,

- (c) make provision about when such information is to be recorded, or
  - (d) make such other provision relating to a private burial register as they consider appropriate.
- (3) A local authority must make arrangements for its private burial register 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 local authority must make arrangements for copies of entries in its private burial register 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 private burial register must be kept indefinitely.
- (6) An extract from a private burial register kept by a local authority, duly certified as a true copy by the local authority, is sufficient evidence of the private burial entered in it for the purposes of any court proceedings.
- (7) In subsection (2), “specified” means specified in the regulations.

## **24 Private burial: offences**

- (1) A person commits an offence if the person contravenes section 22(3) by knowingly carrying out a private burial that is not authorised by the relevant local authority.
- (2) A person commits an offence if, without reasonable excuse, the person fails to comply with the requirement imposed by section 22(4).
- (3) A person commits an offence if the person—
- (a) provides information in, or in connection with, an application made by virtue of regulations under section 22 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.
- (4) 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.
- (5) A person who commits an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In subsection (1), “relevant local authority” is to be construed in accordance with section 22(6).

## **25 Private burial register: offence**

- (1) A local authority commits an offence if, without reasonable excuse, the authority contravenes section 23(1) by failing to prepare or maintain a private burial register.
- (2) A local authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Offence***26 Burial other than in burial ground: offence**

- (1) It is an offence for a person knowingly to bury human remains unless—
  - (a) the burial is carried out in a burial ground in accordance with section 8, or
  - (b) the burial is a private burial carried out in accordance with section 22.
- (2) 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.

*Exhumation***27 Exhumation of human remains**

- (1) The Scottish Ministers may by regulations make provision for or in connection with the exhumation of human remains.
- (2) Regulations under subsection (1) may in particular—
  - (a) make provision about applications to carry out exhumations,
  - (b) specify the form and content of applications,
  - (c) specify persons, or a description of persons, who may make applications,
  - (d) provide for applications to be made to—
    - (i) inspectors of burial appointed under section 89(1), or
    - (ii) such other persons as may be specified,
  - (e) confer discretion on a person mentioned in, or specified under, paragraph (d) to consider applications from persons other than those specified, or falling within a description specified, under paragraph (c),
  - (f) make provision about the procedure to be followed in relation to applications,
  - (g) impose requirements on specified persons, or persons of a specified description, in relation to applications,
  - (h) enable a person to whom an application is made to—
    - (i) grant the application,
    - (ii) refuse the application, or
    - (iii) grant the application subject to any conditions the person thinks appropriate, or
  - (i) provide for circumstances in which the regulations (or specified provisions of the regulations)—
    - (i) do not apply,
    - (ii) apply with specified modifications.
- (3) Regulations under subsection (1) may not make provision modifying or having the effect of modifying an enactment which enables or requires the exhumation of human remains.
- (4) Regulations under subsection (1) may not make provision which affects any procedure applicable in relation to the exhumation of human remains in connection with—
  - (a) the investigation of a crime that has been, or is suspected of having been, committed,

- (b) criminal proceedings,
- (c) investigations of deaths under the authority of the Lord Advocate, or
- (d) inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

(5) In this section—

“enactment” does not include a provision of this Act or any regulations made under it,

“specified” means specified in the regulations.

## **28 Exhumation application: offences**

(1) A person commits an offence if the person—

- (a) provides information in, or in connection with, an application made by virtue of regulations under section 27 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.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **29 Appeal to sheriff**

(1) This section applies where an application to carry out an exhumation of human remains is made by virtue of regulations under section 27(1).

(2) A person mentioned in subsection (3) may appeal to the sheriff against—

- (a) a decision to grant the application,
- (b) a decision to refuse the application, or
- (c) any conditions subject to which the application is granted.

(3) The person is—

- (a) the person who made the application, or
- (b) any other person who, by virtue of regulations under section 27(1), would have been entitled to make the application.

(4) An appeal must be made before the expiry of the period of 21 days beginning with the day on which the decision to which the appeal relates was made.

(5) Where an appeal is against a decision to grant the application without conditions, the sheriff may—

- (a) uphold the decision,
- (b) uphold the decision and impose such conditions in relation to the exhumation as the sheriff thinks fit, or
- (c) quash the decision and refuse the application with effect from the date of the decision.

(6) Where an appeal is against a decision to grant the application subject to conditions, the sheriff may—

- (a) uphold the decision, or

- (b) quash the decision and refuse the application with effect from the date of the decision.
- (7) In upholding a decision under subsection (6), the sheriff may—
- (a) confirm, vary or remove any of the conditions subject to which the application was granted, and
  - (b) impose such other conditions in relation to the exhumation as the sheriff thinks fit.
- (8) Where an appeal is against a decision to refuse the application, the sheriff may—
- (a) uphold the decision,
  - (b) quash the decision and grant the application with effect from the date of the decision, or
  - (c) quash the decision, grant the application with effect from the date of the decision and impose such conditions in relation to the exhumation as the sheriff thinks fit.
- (9) Where an appeal is against conditions subject to which the application was granted, the sheriff may—
- (a) confirm, vary or remove any of the conditions, and
  - (b) impose such other conditions in relation to the exhumation as the sheriff thinks fit.
- (10) In this section, references to an appeal are to an appeal under subsection (2).

### **30 Exhumation 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 exhumations of human remains carried out in the burial ground.
- (2) Each local authority must prepare and maintain a register containing prescribed information about exhumations of human remains the private burial of which was authorised by the authority under section 22(3).
- (3) In this section, a register prepared and maintained under subsection (1) or (2) is referred to as an “exhumation register”.
- (4) The Scottish Ministers may by regulations—
- (a) require an exhumation register to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to an exhumation register as they consider appropriate.
- (5) The appropriate authority must make arrangements for its exhumation register to be made available for inspection by members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (6) The appropriate authority must make arrangements for copies of entries in its exhumation register to be supplied, on request, to members of the public on payment of such reasonable charge (if any) as the authority may determine.
- (7) An exhumation register must be kept indefinitely.

- (8) An extract from an exhumation register, duly certified as a true copy by the appropriate authority, is sufficient evidence of the exhumation entered in it for the purposes of any court proceedings.
- (9) In this section—
- “appropriate authority”—
    - (a) in relation to an exhumation register maintained under subsection (1), means a burial authority,
    - (b) in relation to an exhumation register maintained under subsection (2), means a local authority,
  - “specified” means specified in the regulations.

### **31 Exhumation register: offence**

- (1) An appropriate authority commits an offence if, without reasonable excuse, the authority contravenes section 30(1) or (2) by failing to prepare or maintain an exhumation register.
- (2) An appropriate authority which commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In this section, “appropriate authority” has the meaning given by section 30(9).

*Lair: restoration to use*

### **32 Restoration to use of lair: consultation**

- (1) This section applies where it appears to a burial authority in relation to a lair in a burial ground that—
- (a) the lair is in a poor state of maintenance and repair or that there are no indications that any person is taking an interest in the lair,
  - (b) there has not been a burial in the lair during the relevant period, and
  - (c) it might be practicable for the authority to restore the lair to use by extinguishing the right-holder’s right of burial in the lair and making the lair available for burials.
- (2) The burial authority may—
- (a) carry out excavations of the lair,
  - (b) open or move any tomb or other structure that is in or on the lair.
- (3) The burial authority may not exhume any human remains that are buried in the lair.
- (4) The burial authority must consult each person mentioned in subsection (5) about its proposal to restore the lair to use.
- (5) The persons are—
- (a) persons having appropriate knowledge and qualifications to advise on any archaeological aspects of the proposal,
  - (b) the Commonwealth War Graves Commission,
  - (c) any other person the burial authority thinks appropriate.

- (6) If by virtue of subsection (4) a person objects to the authority’s proposal to restore the lair to use—
- (a) the authority may not proceed with its proposal, and
  - (b) this section 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.
- (7) In this section, “relevant period”, in relation to a lair, means—
- (a) where the lair contains any human remains, the period of 100 years beginning with the day on which the last burial took place,
  - (b) where the lair does not contain any human remains, the period of 50 years beginning with the day on which the right of burial in the lair was last sold.

### **33 Notification: right-holder**

- (1) This section applies where none of the persons consulted under section 32(4) objects to a burial authority’s proposal to restore a lair to use.
- (2) If the burial authority is aware of the name and address of the right-holder or able, after reasonable enquiry, to ascertain them, the authority must give notice to the right-holder of the matters mentioned in subsection (3).
- (3) The matters are—
- (a) the authority’s proposal to restore the lair to use,
  - (b) the right-holder’s right to consent or object to the proposal by giving notice in writing to the authority of the consent or objection within the prescribed time limit,
  - (c) any prescribed documents which the right-holder should give to the authority,
  - (d) an explanation of the consequences of consenting or objecting to the proposal,
  - (e) the right-holder’s obligations in relation to the maintenance of the lair, and
  - (f) any costs for which the right-holder is liable in respect of maintenance.
- (4) Notice under subsection (2) must be given in the prescribed form and the prescribed manner.
- (5) If by virtue of subsection (3)(b) the burial authority receives notice of the right-holder’s objection to the authority’s proposal to restore the lair to use—
- (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 notice.

### **34 Notification where right-holder cannot be found**

- (1) This section applies where—
- (a) a burial authority gives notice under subsection (2) of section 33 but does not receive notice from the right-holder by virtue of subsection (3)(b) of that section, or
  - (b) a burial authority is unaware of, or unable to ascertain, the name and address of the right-holder for the purpose of giving notice under subsection (2) of that section.



- (2) The burial authority must give notice in the prescribed form and the prescribed manner of the authority's proposal to restore the lair to use.
- (3) A notice under subsection (2) must—
  - (a) contain prescribed information,
  - (b) comply with prescribed requirements, and
  - (c) specify a prescribed period within which a person may object to the authority's proposal to restore the lair to use.

### **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,
  - (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 before death had been so living for such period when the deceased was admitted to hospital).

### **36 Extinguishment of right**

- (1) This section applies where—
  - (a) a burial authority gives notice to the right-holder under section 33(2) and the conditions in subsection (2) are met, or
  - (b) a burial authority gives notice under section 34(2) and one of the conditions in subsection (3) is met.
- (2) The conditions are that—
  - (a) the authority has received notice by virtue of section 33(3)(b) of the right-holder’s consent to the proposal, and
  - (b) the right-holder agrees to the proposed extinguishment of the right-holder’s right of burial.

- (3) The conditions are that—
  - (a) the authority has not received an objection by virtue of section 34(3)(c), or
  - (b) the authority has received an objection by virtue of that section but has determined under section 35(3) that there is no merit in it.
- (4) The authority must—
  - (a) extinguish the right-holder’s right of burial in the lair, and
  - (b) give notice of the extinguishment in the prescribed form and the prescribed manner.

### **37 Restoration to use**

- (1) This section applies where under section 36(4) a burial authority has extinguished the right-holder’s right of burial in a lair.
- (2) The burial authority must establish whether it would be practicable for the authority to make the lair available for burials.
- (3) For the purposes of subsection (2), the authority may—
  - (a) carry out excavations of the lair,
  - (b) open or move any tomb or other structure that is in or on the lair,
  - (c) exhume any human remains that are buried in the lair.
- (4) Before selling a right of burial in the lair, the burial authority must exhume any human remains that are buried in the lair.
- (5) If the authority exhumes any human remains under subsection (3) or (4), it must rebury them in the lair as soon as practicable after their exhumation.

### **38 Restoration to use without extinguishment of right**

- (1) This section applies where—
  - (a) a burial authority has given notice under section 33(2) or, as the case may be, 34(2) in relation to a lair,
  - (b) the right-holder informs the authority that the right-holder—
    - (i) agrees with the authority’s proposal that the lair be restored to use, but
    - (ii) wishes to retain the right-holder’s right of burial in the lair.
- (2) The authority must establish whether it would be practicable for the authority to make the lair available for burials.
- (3) For the purposes of subsection (2), the authority may—
  - (a) carry out excavations of the lair,
  - (b) open or move any tomb or other structure that is in or on the lair,
  - (c) exhume any human remains that are buried in the lair.
- (4) If the authority exhumes any human remains under subsection (3), it must rebury them in the lair as soon as practicable after their exhumation.
- (5) The right-holder is liable for—
  - (a) any costs incurred by the burial authority by virtue of subsections (2) to (4), and

- (b) any costs incurred by the burial authority in making the lair available for burials.

### **39 Right-holder’s right to object**

- (1) This section applies where—
  - (a) a burial authority proposes to restore a lair to use in pursuance of section 32, and
  - (b) at any time before the authority sells a right of burial in the lair by virtue of section 36(4) the right-holder objects to the authority’s proposal to restore the lair to use.
- (2) The burial authority may not proceed with its proposal.
- (3) If by virtue of section 36(4) the burial authority has extinguished the right-holder’s right of burial in the lair, the burial authority must confer a right of burial in the lair on the right-holder.
- (4) 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.
- (5) In this section, “right-holder” includes a person whose right of burial in the lair has been extinguished by virtue of section 36(4).

### **40 Restoration to use on request of right-holder**

- (1) This section applies where—
  - (a) a burial authority is not proposing in pursuance of section 32 to restore to use a particular lair in a burial ground, but
  - (b) the right-holder proposes to the burial authority—
    - (i) that the lair be restored to use, and
    - (ii) that the right-holder retain the right-holder’s right of burial in the lair.
- (2) Subsections (2) to (6) of section 32 apply in relation to a proposal under subsection (1) (b) as they apply in relation to a proposal under that section.
- (3) If none of the persons consulted by virtue of subsection (2) objects to the proposal, the burial authority must establish whether it would be practicable for the authority to make the lair available for burials.
- (4) Subsections (3) to (5) of section 38 apply for the purposes of subsection (3) as they apply for the purposes of that section.

### **41 Headstones**

- (1) This section applies where—
  - (a) by virtue of section 37, 38 or 40 a burial authority exhumes human remains from a lair, and
  - (b) immediately before the exhumation is carried out, there is on the lair a headstone or other memorial which relates to the remains.

- (2) Except where it would be impracticable to do so, the burial authority must take all reasonable steps to ensure that the headstone or other memorial is returned to its place on the lair as soon as practicable after the authority reburies the remains.

#### **42 Register of restored lairs**

- (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 things done by the authority for the purposes of, or in connection with, the functions conferred on the authority by sections 32 to 41 (a “register of restored lairs”).
- (2) The Scottish Ministers may by regulations—
- (a) require a register of restored lairs to be in a specified form and kept in a specified manner, or
  - (b) make such other provision relating to a register of restored lairs as they consider appropriate.
- (3) A burial authority must make arrangements for each of its registers of restored lairs to be made 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 registers of restored lairs 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 register of restored lairs must be kept indefinitely.
- (6) An extract from a register of restored lairs kept by a burial authority, duly certified as a true copy by the burial authority, is in relation to the matters contained in the extract sufficient evidence of those matters for the purposes of any court proceedings.
- (7) In subsection (2), “specified” means specified in the regulations.

#### **43 Register of restored lairs: offence**

- (1) A burial authority commits an offence if, without reasonable excuse, the authority contravenes section 42(1) by failing to prepare or maintain a register of restored lairs.
- (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.

#### **44 Guidance**

- (1) Each burial authority must have regard to any guidance issued by the Scottish Ministers about—
- (a) the carrying out of functions conferred on them by or under sections 32 to 42, and
  - (b) the restoration to use of lairs.
- (2) Before issuing any such guidance, the Scottish Ministers must consult—
- (a) burial authorities, and
  - (b) any other persons they consider appropriate.