



Church of Scotland (Property And Endowments) Act 1925

1925 CHAPTER 33 15 and 16 Geo 5

PART III

TRANSFER OF PARISH CHURCHES, MANSES, GLEBES AND CHURCHYARDS

32 Transfer of parish churchyards.

- (1) The property of any churchyard heretofore held by the heritors of any parish shall as at and from the passing of this Act by virtue of this Act and without the necessity of any further conveyance be transferred from the heritors and vested in the [^{F1}islands or district council] to the same effect as if the churchyard had been as at that date transferred by the heritors to the council in pursuance of subsection (6) of section thirty of the ^{M1}Local Government (Scotland) Act 1894: [^{F2}and shall on 1st April 1996 and without the necessity for further conveyance be transferred to and vested in the council within whose area that churchyard is situated, subject to the provisions aftermentioned] Provided that due regard and respect shall be had by the ^{F3}[^{F1}. . . council] to the memory of the dead and the wishes of their relatives before any ground already allocated as a burial ground shall be treated as being vacant and un-occupied ground and re-allocated by the ^{F3}[^{F1}. . . council] as the burial place for another family or for the interment of another body: Provided also that in addition to the powers and duties by the said subsection transferred from the heritors to the ^{F3}[^{F1}. . . council] the power or duty of enlarging or extending the churchyard and assessing for the cost of such enlargement or extension shall also be so transferred [^{F4}and for the purpose of providing ground for such enlargement or extension or additional accommodation in a suitable and convenient situation, the ^{F3}[^{F1}. . . council] shall have and may exercise all the powers relating to the acquisition of land for burial grounds contained in the ^{M2}Burial Grounds (Scotland) Act 1855, and the costs of providing, maintaining, and managing ground so acquired, so far as they require to be defrayed out of any rate, shall be a charge on the poor rate or the assessment under the said Act of 1855, as the ^{F3}[^{F1}. . . council] may determine]: Provided further that where any churchyard transferred to a ^{F3}[^{F1}. . . council] by or in pursuance of this Act surrounds or adjoins any church or other ecclesiastical building vested in the heritors or in the General Trustees or in any

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other body holding the same in trust for the purpose of worship or for preservation as an ancient or historic monument—

- (a) the churchyard shall be held subject to a right of access to the minister and the congregation attending the church, and such other persons as may resort thereto for the purpose of public or private worship, or of inspecting or repairing the church, or for any other lawful purpose; and
- (b) no funeral shall be allowed to take place during the usual time of the ordinary services in the church; and
- (c) any road or path through the burial ground shall be kept in good and sufficient repair by the parish council; and
- (d) where the use of part of the churchyard is required for the enlargement or repair of the church it may be so used in any case where it might lawfully have been so used if this Act had not been passed and subject to the like conditions and restrictions, and where used for the purpose of the enlargement of the church the part so used shall thereupon vest in the heritors or the General Trustees or other body holding the church as aforesaid.

(2) The provisions relating to the sale of the right of burial contained in section eighteen of the ^{M3}Burial Grounds (Scotland) Act 1855 shall apply to any churchyard transferred to a ^{F3}[^{F1} . . . council] by or in pursuance of this Act, and to any enlargement or extension thereof.

(3) ^{F5}

(4) Where the property of a churchyard is held by the kirk session of the parish the foregoing provisions of this section shall, with the necessary modifications, have effect as if the kirk session were named therein and in subsection (6) of section thirty of the ^{M4}Local Government (Scotland) Act 1894, instead of the heritors.

- (5) (a) Where a churchyard of a parish has been closed—
 - (i) either before or after the passing of this Act under the Burial Grounds (Scotland) Act 1855^{F6} . . . ^{M5F6} . . . ; or
 - (ii) before the passing of this Act by resolution of the heritors on the ground that no accommodation for further interments remains available therein; or
 - (iii) by desuetude during a period of twenty years or upwards prior to the passing of this Act;

the kirk session of the parish may, within ten years after the passing of this Act, in the case of a churchyard which has been closed before the passing of this Act, or within ten years after the date of the closing of a churchyard in the case of a churchyard closed after the passing of this Act, intimate in writing to the ^{F3}[^{F1} . . . council] . . . ^{F7} to whom the churchyard has been transferred that the kirk session desire to take over the custody, maintenance, and control of such churchyard, and the ^{F3}[^{F1} . . . council] . . . ^{F7F8} . . . shall, on receiving such intimation, transfer the custody, maintenance, and control of such churchyard to the kirk session, subject always to such conditions (if any) as the ^{F3}[^{F1} . . . council] . . . ^{F7} may appoint with respect to the public right of access to the churchyard free of charge.

(b) Where a churchyard of a parish which has been transferred to a ^{F3}[^{F1} . . . council] . . . ^{F7} has been closed, or has ceased to be used for interment, the ^{F3}[^{F1} . . . council] . . . ^{F7F8} . . . may at any time, upon the application in writing of the kirk session of the parish, transfer the custody, maintenance, and control of such churchyard to the kirk session.

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(c) Where the custody, maintenance, and control of a churchyard have, in pursuance of this subsection, been transferred to the kirk session, the kirk session shall thenceforward be responsible for such custody, maintenance, and control, and for any expense in connection therewith.

^{F9}[(6) In this section “council”, except where it firstly and secondly occurs in subsection (1), means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.]

Textual Amendments

- F1** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 27 Pt. II para. 66\(a\)](#)
- F2** Words in s. 32(1) inserted (1.4.1996) by [S.I. 1996/739, art. 7\(1\), Sch. 1 Pt. I para. 1\(4\)\(a\)](#)
- F3** Words in s. 32 repealed (1.4.1996) by [S.I. 1996/739, art. 7\(1\)\(2\), Sch. 1 Pt. I para. 1\(4\)\(b\), Sch.2](#)
- F4** Words in s. 32(1) repealed (28.12.2016 for specified purposes) by [Burial and Cremation \(Scotland\) Act 2016 \(asp 20\), s. 112\(2\), sch. 2 \(with s. 111\); S.S.I. 2016/417, reg. 2, sch.](#)
- F5** S. 32(3) repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)
- F6** Words in s. 32(5)(a)(i) repealed (1.10.2009) by [Public Health etc. \(Scotland\) Act 2008 \(Commencement No. 2, Savings and Consequential Provisions\) Order 2009 \(S.S.I. 2009/319\), art. 2, sch. 3 Pt. 1](#)
- F7** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 29](#)
- F8** Words in s. 32(5)(a)(iii)(b) repealed (1.4.1996) by [S.I. 1996/739, art. 7\(1\)\(2\), Sch. 1 Pt. I para. 1\(4\)\(c\), Sch.2](#)
- F9** S. 32(6) added (1.4.1996) by [S.I. 1996/739, art. 7\(1\), Sch. 1 Pt. I para. 1\(4\)\(d\)](#)

Marginal Citations

- M1** 1894 c. 58.
- M2** 1855 c. 68.
- M3** 1855 c. 68.
- M4** 1894 c. 58.
- M5** 1897 c. 38.

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