

Newsletter 1 – December 2016

THE BURIAL AND CREMATION (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 1, TRANSITORY AND TRANSITIONAL PROVISION) REGULATIONS 2016

REGULATION NUMBER: SSI 2016/417

On 28 December 2016 a number of sections of the Burial and Cremation (Scotland) Act 2016 (“the 2016 Act”) will come into force. While the commencement of these sections will not make fundamental changes to the way in which you work, it is important that you are aware of these changes to legislation. The changes primarily concern the regulatory framework for burials in Scotland. Burials are currently regulated by the Burial Grounds (Scotland) Act 1855 (“the 1855 Act”). On 28 December 2016 the 1855 Act will be repealed and will be replaced by sections of the 2016 Act or other transitional and transitory arrangements. The repeal of the 1855 Act is necessary to avoid running parallel regulatory regimes. In addition, these Regulations will also enable Scottish Ministers to appoint Inspectors of Funeral Directors and Inspectors of Burial.

Transitional and transitory provisions

The 2016 Act will be commenced in stages. These Regulations, therefore, make transitory arrangements to ensure that burial authorities can continue to perform their role in relation to burial. This will ensure that burial authorities can continue to sell lairs and rights to erect headstones, charge fees and maintain burial registers. These arrangements will remain in place until the rest of the burial provisions come into force.

Commencing the 2016 Act

From 28 December 2016 a number of sections of the Burial and Cremation (Scotland) Act 2016 will apply. Page 2 details the sections that are being commenced by this regulation.

Scottish Government Burial
and Cremation Legislation
Team contact details

If you have any queries,
would like more information
or are interested in being
involved in any part of the
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Burial

In relation to burial grounds, these sections provide new definitions to cover all burial grounds (local authority as well as private) and a new definition for burial authorities. They also make provision for the powers and duties of burial authorities regarding the provision of burial grounds. Section 7 provides the power to burial authorities to sell a right to erect a building or other structure on a burial ground. Section 17 ensures that burial authorities must continue to maintain a register of the sale of rights of burial.

Section 18 of the Act, which makes it an offence not to prepare and maintain a register of sale of right of burial, **will not be commenced** at this stage and will be introduced at a later date. Similarly, section 102, the requirement to keep information and registers in electronic form, **will also be introduced at a later date**. Staggering the commencement of these sections will provide burial authorities with an opportunity to ensure that they are complying with the changes to legislation.

Section 20 will be partially commenced to ensure that burial authorities can continue to set and charge fees for burial and **will place a duty on burial authorities to publish their fees**.

A list of the relevant burial sections that will be commenced and what is contained in each section is set out in the table to the right.

Sections that will come into force on 28 December 2016

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Provisions of the 2016 Act	Subject matter
Section 1	Meaning of "burial ground"
Section 2	Meaning of "burial authority"
Section 3	Provision of burial ground: local authority
Section 4	Provision of burial ground outwith local authority area
Section 5	Joint provision of burial ground
Section 6	Management of burial ground
Section 7	Right to erect building
Section 17	Register of rights of burial
Section 20(1), (2)(a) and (b), (3), (4), (5) and (6)	Fees for Burial

Appointing Inspectors

In 2015 Scottish Ministers appointed an Inspector of Crematoria. While existing cremation legislation enabled Scottish Ministers to appoint the Inspector of Crematoria, there were no similar powers in legislation to enable Scottish Ministers to appoint Inspectors of Burial or Funeral Directors. From 28 December 2016 Scottish Ministers will have the powers to appoint Inspectors of Burial and Inspectors of Funeral Directors.

There are no immediate plans to appoint an Inspector of Burial. Scottish Ministers will, however, appoint an Inspector of Funeral Directors early in 2017. This post is currently being advertised and the full job specification can be found at -

<http://www.gov.scot/Topics/Health/Policy/BurialsCremation/InspectorFuneralDirectors>

The sections of the 2016 Act that relate to the appointment of inspectors and which will come into force on 28 December are set out in the table to the right.

*Section 89(1)(b) (Inspectors of Cremation) will be brought into force when the provisions regulating cremation at Part 2 of the Act are commenced later in 2017.

Sections that will
come into force on
28 December 2016

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Provisions of the 2016 Act	Subject matter
*Section 89(1)(a) and (c)	allows the Scottish Ministers to appoint Inspectors of Burial and Inspectors of Funeral Directors
Section 93	Makes provision about the preparation and publication of reports

Other Provisions and indicative future implementation timetables

On 28 December 2016 a number of other, more technical, areas of the 2016 Act will be commenced. These have been set out below.

Provisions of the 2016 Act	Subject matter
Section 101	Acquisition of land
Section 104(1)	Regulations and consultation requirements – so far as it applies to section 6
Section 110	Repeals
Schedule 2	Repeals Burial Grounds (Scotland) Act 1855 Where they reference the 1855 Act: Scottish Board of Health Act 1919 Church of Scotland (Property and Endowments) Act 1925 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 Local Government etc. (Scotland) Act 1994

Indicative future implementation timescales

Different parts of the 2016 Act will be commenced at different times. Where Regulations are to be made, they will be designed in collaboration with stakeholders and will be subject to public and stakeholder consultation. The timescales below are high level and indicative only.

2016/17:

- Pregnancy loss and cremation, including the commencement of Part 3 of the 2016 Act (Arrangements)
- Draft regulations for consultation
- Public consultation
- Submit regulations to parliament
- New powers for Inspector of Cremation

2017/18:

- Burial application process, private burial and exhumation
- Lair restoration to use
- Burial ground management regulations

2018/19 and beyond:

- Regulation of funeral directors
- Inspector of Burial