

Burial Grounds (Scotland) Act 1855

1855 c.68 *18_and_19_Vict*

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An Act to amend the Laws concerning the Burial of the Dead in Scotland.

[23rd July 1855]

Act excluded by Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42), s. 1(4) (a)

Functions of parochial boards under this Act now exercisable by islands or district councils: Local Government (Scotland) Act 1895 (c. 52), ss. 21, 22, Local Government (Scotland) Act 1929 (c. 25), ss. 1(1), 2(1) (e) and Local Government (Scotland) Act 1973 (c. 65), s. 169(1).

Short title.

1. This Act may be cited as "The Burial Grounds (Scotland) Act 1855."

Parochial board to carry into execution this Act.

2. In the execution of this Act in parishes not within the limits prescribed or established under the Lands Valuation (Scotland) Act 1854 of any burgh sending or contributing to send a member to Parliament, "parochial board" shall be held to signify the parochial board for the management of the poor, where such parishes are not combined for such management, and where such parishes are so combined, the parochial board under this Act shall signify and be composed of such members of the combined board as are assessed for relief of the poor, either in respect of occupancy or ownership, within each parish respectively; and the manner of holding and of transacting business at meetings of such parochial boards under this Act shall be similar to the manner in use in respect of the management of the poor; and in parishes within the aforesaid limits of any burgh aforesaid the town council of the burgh shall be held to be the parochial board of such parish under this Act: Provided always, that where, within the aforesaid limits of any burgh aforesaid, there is included a burgh of regality, the magistrates of such burgh of regality, shall, notwithstanding anything herein-before enacted, be held to be the parochial board of any parish within or forming part of such burgh of regality.

1854 c. 91.

3.

S. 3 repealed by Local Government (Scotland) Act 1929 (c. 25), Sch. 9.

Proceedings on complaints of danger to health.

4. It shall be lawful for any two members of the parochial board of any parish in Scotland, or for any ten [persons (being ratepayers or persons liable to pay council tax)] residing] within such parish, or for any two householders residing within one hundred yards of any burial ground or proposed burial ground, to present a petition to the sheriff of the county within which such burial ground or proposed burial ground is situated, setting forth that a burial ground within such parish or such distance is or would be dangerous to health, or offensive or contrary to decency; and the sheriff shall thereupon fix a day, being not less than ten nor more than twenty days after such petition is presented, for inquiring into the allegations contained therein, and shall appoint intimation thereof to be made by advertisement in the

Edinburgh Gazette, and in such newspapers of local circulation as he shall deem fitting, and on hearing the petition shall permit all parties whom he shall judge to have an interest to appear and be heard in such manner as he shall deem fitting; and if on such hearing he shall be of opinion that any of the aforesaid allegations are true, he shall pronounce an interlocutor to such effect, and shall transmit a copy thereof to one of her Majesty's Principal Secretaries of State: Provided, that it shall not be competent to present any such petition to the sheriff, except with concurrence of the procurator fiscal, till after the lapse of five years from the date of any petition to the like effect having been dismissed.

S. 4 amended by Public Health (Scotland) Act 1897 (c. 38), s. 146(2)

Words substituted by S.I. 1952/1334 (1952 II, P. 2029)

Words in s. 4 substituted (S.) (4.1.1995) by 1994 c. 39, s. 180(1), Sch. 13 para. 3 (2); S.I. 1994/2850, art. 3(c)

On representation of Secretary of State, Her Majesty in Council may restrain the opening of new burial grounds, and order discontinuance of burials in specified places.

5. It shall be lawful for her Majesty, from time to time, by Order in Council, upon the representation of one of her Principal Secretaries of State that a copy of such interlocutor of a sheriff has been received by him, in pursuance thereof to order that no new burial ground shall be opened within certain limits specified in such Order, save with the previous approval of one of such Secretaries of State, or (as the case may require) that after a time mentioned in the order burials within certain limits, or in certain burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, provided always, that notice of such representation, and of the time it shall please her Majesty to order the same to be taken into consideration by the Privy Council, shall be transmitted to the Crown agent in Edinburgh and the sheriff clerk of the county in which such burial ground is situated; and the same shall be by them respectively published in the Edinburgh Gazette, and fixed on the doors of the church of or on some other conspicuous places within the parishes affected by such representation, one month before such representation is so considered.

Words repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), Sch. 1 Pt. XII

Penalties.

6. Every person who shall after the time mentioned in such Order in Council bury any body or in anywise act or assist in or permit the burial of any body in any way contrary to such Order shall be liable for each such offence to be imprisoned for any period not exceeding two calendar months, or to pay a penalty not exceeding [level 1 on the standard scale].

Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289C(4), 289F, 289G, 457A

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

7. No such Order in Council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or grounds of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such Order, or shall be deemed to extend to any non-parochial burial ground, being the property of any private person, unless the same be expressly mentioned in such Order.

Saving of certain rights to bury in vaults, &c.

8. Provided always, that, notwithstanding any such Order in Council, where at the time of the passing of this Act any person shall be entitled to any right of interment in or under any church or chapel or within any churchyard or burial ground affected by such Order, it shall be lawful for one of her Majesty's Principal Secretaries of State, from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such Secretary of State may think fit; but such licence shall be revocable at any time, and shall not give to the holder of such right, or to any other party, any other power than he would have had if this Act had not been passed.

Upon requisition of ratepayers or members of parochial board, meeting of parochial board to be convened to determine whether burial ground shall be provided.

9. Although no burial ground in the parish has been closed by Order in Council [the proper officer of the islands or district council shall be bound upon the requisition of ten or more [persons (being ratepayers or persons liable to pay council tax)]] or upon the requisition in writing of any two or more members of the parochial board of the parish, to convene a special meeting of the parochial board of such parish, for the purpose of determining whether a burial ground shall be provided under this Act for the parish; and if a majority of such meeting of the parochial board shall resolve that a burial ground shall be provided under this Act for the parish, such new burial ground shall be provided in the same manner as if an old burial ground had been closed by Order in Council.

Words substituted by virtue of S.R. & O. 1930/1026 (Rev. XII, p. 577: 1930, p. 864) and Local Government (Scotland) Act 1973 (c. 65), Sch. 27 Part I, para. 2(1)

Words in s. 9 substituted (S.) (4.1.1995) by 1994 c. 39, s. 180(1), Sch. 13 para. 3 (2); S.I. 1994/2850, art. 3(c)

When burial grounds are closed by Order in Council, board to provide suitable burial grounds, &c.

10. Whenever any burial ground shall have been closed by Order in Council, the parochial board shall forthwith proceed to provide a suitable and convenient burial ground for the parish, and to make arrangements for facilitating interments therein; and in the event of a suitable burial ground not being provided by the parochial board within six months after such Order of requisition as aforesaid, it shall be lawful for such board or for any ten or more [persons (being ratepayers or persons liable to pay council tax)] residing] in the parish, or

any two or more members of the parochial board, to apply by summary petition to the sheriff to have a suitable portion of land designated for the purpose of a burial ground; and the sheriff shall examine such witnesses and make such inquiry as he shall think proper, and shall keep a note of such evidence as may be adduced, and, if he thinks fit, shall thereupon proceed to designate and set apart such portion as he may deem necessary of any lands in such parish suitable for the purpose, not being part of any policy, pleasure ground, or garden attached to any dwelling house: Provided always, that due intimation shall have been given of not less than ten days to the owner of such lands, that he may be heard for his interest before such designation is actually made, subject always to an appeal to the Court of Session, whose decision shall be final, such appeal always being presented within fourteen days of the date of the sheriff's judgement: and on such land being so designated the parochial board shall proceed to acquire the same in manner herein-after provided.

Words substituted by S.I. 1952/1334 (1952 II, P. 2029)

Words in s. 10 substituted (S.) (4.1.1995) by 1994 c. 39, s. 180(1), Sch. 13 para. 3 (2); S.I. 1994/2850, art. 3(c)

Words in s. 10 repealed (S.) (4.1.1995) by 1994 c. 39, s. 180(1)(2), Sch. para. 3(3), Sch. 14; S.I. 1994/2850, art. 3(d)

Consent of owners of houses to new burial grounds where necessary.

11. Any burial ground may be provided under this Act either within or without the limits of the parish for which the same is provided; FN1 . . .

FN1 Words in s. 11 repealed (4.1.1995) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 3(4) Sch. 14; S.I. 1994/2850, art. 3(d)

Board may purchase land for cemeteries, or contracts with cemetery companies. FN1

12. For the providing such burial ground, it shall be lawful for the parochial board of the parish to contract for and purchase or take any lands and buildings thereon, for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves and other subsisting rights which may have been previously granted therein: Provided always, that it shall be lawful for such board in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms, as the parochial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish.

FN1 S. 12 applied by Church of Scotland (Property and Endowments) Act 1925 (c. 33), s. 32.

Certain provisions of 8 & 9 Vict. c. 19. incorporated with this Act. FN1

13. The Lands Clauses Consolidation (Scotland) Act 1845 except the provisions of that Act "with respect to the provisions to be made for affording access to the special Act by all

parties interested," shall be incorporated with this Act; and, for the purposes of this Act, the expression "the promoters of the under-taking," wherever used in the FN2 said Lands Clauses Consolidation (Scotland) Act 1845 shall mean any parochial board under this Act: Provided always, that the provisions in the said Act "with respect to the purchase and taking of lands otherwise than by agreement" shall have effect only in respect of such lands as the sheriff of the county shall have designated as fitting for a burial ground in manner aforesaid: Provided further, that the provisions in the said Act "with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," shall be held to apply only to such lands or portions thereof in which no burial shall have taken place, and such provisions shall not be restricted in operation to any fixed period after the purchase of such lands.

FN2 1845 c. 19.

FN1 S. 13 applied by Church of Scotland (Property and Endowments) Act 1925 (c. 33), s. 13

Parochial boards may concur in providing a burial ground for the common use of their parishes.

14. The parochial boards of any parishes which shall have respectively resolved to provide burial grounds under this Act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this Act, as they shall mutually agree on, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes; . . . FN1 ; and, according and subject to the terms which shall have been so agreed on, the parochial boards for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint board for all such parishes, and may have a joint office, clerk, and offices, and all the provisions of the Act shall apply to such joint board accordingly.

FN1 Words repealed with savings by Local Government (Scotland) Act 1947 (c. 43), s. 381(1), Sch. 14

Burial ground to be the burial ground of the parish or parishes for which it is provided.

15. When any burial ground shall have been provided in terms of this Act, such burial ground shall, from and after such time as the sheriff of the county shall appoint, be deemed the burial ground, or part thereof, of the parish for which the same is provided; and where the same is provided for two or more parishes, such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and the parishioners and inhabitants of such parish, or of each of such parishes, shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject to the provisions herein contained.

Liabilities of old burial grounds transferred to new burial grounds.

16. Where any burial ground shall be closed in terms of this Act, and a new burial ground provided in place thereof, the whole burdens upon and liabilities attaching to the burial ground so closed shall be transferred to and become burdens upon the burial ground provided in room thereof; and the revenues of the new burial ground shall be liable for the same, in like manner as the revenues of the burial ground so closed were liable.

Management to be vested in parochial boards.

17. The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of this Act and the regulations to be made thereunder, be vested in and exercised by the respective parochial boards providing the same.

Boards may sell exclusive rights of burial, and right to erect monuments, &c. FN1

18. Any parochial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in such parts of any burial ground provided by such board as may with the sanction of the sheriff be appropriated to that purpose, and also the right of constructing any chapel, vault, or place of burial, with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground: . . . FN2

FN1 S. 18 applied by Church of Scotland (Property and Endowments) Act 1925 (c. 33), s. 32.

FN2 Words repealed by Burial Grounds (Scotland) Amendment Act 1886 (c. 21), s. 1

Boards may make arrangements for facilitating the conveyance of bodies to burial grounds

19. Any parochial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this Act, or to any other place of burial, subject to the provisions of this Act and the regulations to be made thereunder; and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

Places may be provided for reception of bodies until interment.

20. It shall be lawful for any parochial board, subject to the provisions of this Act and the regulations to be made thereunder, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein; and for providing such places such boards may exercise the powers vested in them under this Act for providing burial grounds.

Secretary of State may make regulations as to burial grounds, &c.

21. It shall be lawful for one of her Majesty's Principal Secretaries of State from time to time to make such regulations, in relation to the burial grounds and places of reception of bodies previous to interment which may be provided under this Act, as to him may seem proper for the protection of the public health and the maintenance of public decency; and the parochial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.

Exemption of burials from toll.

22. No funeral procession, or carriage in such procession, and no foot passenger, shall, while going to or returning from the place of interment on the occasion of any interment, be liable in any toll or pontage.

Board may lay out and embellish burial ground.

23. It shall be lawful for any parochial board to enclose, lay out, and embellish any burial ground provided by such board, in such manner as may be fitting and proper.

Board to fix payments for interments in burial ground.

24. Every parochial board under this Act shall . . . FN1 fix and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and from time to time revise and alter such fees and payments . . . FN1

FN1 Words repealed by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 41, Sch. 4

Certain provisions of 10 & 11 Vict. c 65. incorporated with this Act.

25. The provisions of the Cemeteries Clauses Act 1847 with respect to the protection of the cemetery, shall be incorporated with this Act, and be applicable to any burial ground provided under this Act; and "the company" in these clauses shall signify the parochial board under this Act. FN1

FN1 The provisions of the Cemeteries Clauses Act 1847 (c. 65) referred to are comprised in s. 59 which is set out below:

59. Every Person who shall play at any Game or Sport, or discharge Fire-arms, save at a Military Funeral, in the Cemetery, or who shall wilfully and unlawfully disturb any Persons assembled in the Cemetery for the Purpose of burying any Body therein, or who shall commit any Nuisance within the Cemetery, shall forfeit to the Company for every such Offence a Sum not exceeding[FN1 level 1 on the standard scale].

S. 25: by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G, the reference to "Five Pounds" in section 59 of the Cemeteries Clauses Act 1847 (set out under s. 25) should now read "level 1 on the standard scale"

Expenses to be paid by assessments.

26. The expenses incurred by the parochial board of any parish in carrying this Act into execution, in so far as the sums received for exclusive right of burial or as fees or other payments in respect of interments shall be insufficient, shall be raised by assessment, . . . FN1

FN1 Words repealed with savings by Local Government (Scotland) Act 1947 (c. 43), s. 381(1), Sch. 14

Power to borrow money.

27. Provided always, that it shall be lawful for the parochial board to borrow any money required for providing and laying out any burial ground under this Act, . . . FN1

FN1 Words repealed with savings by Local Government (Scotland) Act 1947 (c. 43), s. 381(1), Sch. 14

28. FN1

FN1 S. 28 repealed by Burial Grounds (Scotland) Act 1857 (c. 42), s. 1

29, 30. FN1

FN1 Ss. 29, 30 repealed with savings by Local Government (Scotland) Act 1947 (c. 43), s.381(1), Sch.14

Register of burials to be kept in every ground provided under this Act. Registers to be evidence.

31. All burials within any burial ground provided under this Act shall be registered in a register book, to be provided by the parochial board providing such ground, and kept for that purpose; and such register book shall be so kept by some officer appointed by the said board to that duty; and in such register books shall be distinguished in what parts of the burial ground the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts purporting to be thereof, shall be received in all courts as evidence of the burials entered therein.

Sheriffs' decisions to be final.

32. No interlocutor or deliverance of a sheriff under this Act, excepting as herein provided, shall be in any way subject to review, or to be set aside by reason of any defect of form therein, or in the procedure on which it followed.