POLICY NOTE

THE BURIAL (APPLICATIONS AND REGISTER) (SCOTLAND) REGULATIONS 2024

SSI 2024/334

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 8, 10 and 106(1) of the Burial and Cremation (Scotland) Act 2016 ("the 2016 Act"). The instrument is subject to negative procedure.

Summary Box

This instrument makes provision for standardised burial application forms and information to be included in burial registers, and sets out record retention requirements.

Policy Objectives

The Scottish Government is committed to modernising the law on burial in Scotland. Prior to the Burial and Cremation (Scotland) Act 2016, the legislation around burial had not been substantially revised or amended since the nineteenth century. This instrument aims to improve the burial application process and improve record keeping across all of Scotland's burial authorities ensuring consistency of information held.

Records

Burial authorities will be required to retain burial application forms and accompanying documentation and certificates for a period of 50 years from the date of burial.

Application for burial

This instrument sets out who may submit a burial application form. It must be completed by the applicant and submitted to the burial authority. The application form requires information about the applicant and the person who is to be buried. The new forms contained in this SSI replace locally produced forms, which vary in content and structure. These regulations provide new forms for different types of application giving uniform statutory forms to be used by all burial authorities.

Burial register

Currently a burial register is kept by each burial authority to record burials of human remains at their burial grounds. Burial registers provide records of burials carried out in Scotland, although records for historic burial grounds can be limited and inaccurate. Under the 2016 Act, burial authorities are required to keep burial registers indefinitely. This SSI makes provision about the minimum information required to be contained in the registers, ensuring consistent and accurate records across all burial authorities.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the

Burial (Applications and Register) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
The draft regulations were developed in collaboration with the Burial Regulations Working Group. A public consultation[1] was undertaken in relation to the subject matters dealt with in this SSI in Autumn 2023. The consultation analysis for the 2023 public consultation has been published.[2]

Impact Assessments
The Scottish Government has considered a series of impact assessments related to these regulations:

Equality Impact Assessment – the Scottish Government is satisfied that there is no clear indication that the proposed regulations are likely to have major impacts on groups with protected characteristics. An initial screening assessment concluded that there was no need to complete a full EQIA.

Fairer Scotland Duty – The Scottish Government is satisfied a full assessment is not required. An initial screening assessment concluded that these regulations do not introduce any differential socio-economic disadvantages or exacerbate negative outcomes for individuals and households already affected by issues of low income. The regulations in themselves are not a strategic decision but stem from the 2016 Act which precedes the commencement of the Fairer Scotland Duty which came into force on 1 April 2018.

Child Rights and Wellbeing - The Scottish Government have carried out a Child Rights and Wellbeing Impact Assessment (CRWIA) and this has been published alongside the laying of these Regulations. The CRWIA has concluded that there is no impact on the rights or wellbeing of children.

Islands Communities – After an initial screening assessment, the Scottish Government is satisfied that the effect of this instrument is not anticipated to result in a disadvantage for an island community compared to the mainland or compared to another island group(s). A full assessment has therefore not been required.

Strategic Environment Assessment – After an initial screening assessment, the Scottish Government is satisfied that there is no environmental impact arising from this instrument.

Financial Effects
A full Business and Regulatory Impact Assessment was undertaken. Minor training and administrative impacts may be experienced by burial authorities and funeral directors, however these are mitigated by positive impacts to the provision of burial services.

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[1] Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland - gov.scot (www.gov.scot)
[2] Executive Summary - Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs - regulation: consultation analysis - gov.scot (www.gov.scot)

Scottish Government
Directorate for Population Health
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