POLICY NOTE

THE BURIAL (MANAGEMENT) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by section 6(1) of the Burial and Cremation (Scotland) Act 2016. The instrument is subject to the affirmative procedure.

Summary Box

This instrument makes provision for the management and maintenance of burial grounds in Scotland, applicable to all burial authorities (both local authority and non-local authority).

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 requires all burial authorities to maintain their burial grounds in good order and clarifies the powers that burial authorities have to meet this requirement.

Burial management plans

Each burial authority will be required to prepare and maintain a publicly accessible burial management plan. Many burial authorities already have a management plan and this instrument sets out the minimum information that must be included in it. Management plans aim to increase transparency around how a burial authority operates, how it provides burial services, contingency planning and the maintenance of burial grounds. Burial authorities must review their management plan on an annual basis to ensure that it remains accurate and up to date.

Maintenance and repair

Burial authorities will be required to maintain their burial grounds in good order and this regulation sets out what actions a burial authority can take for the proper management and maintenance of its burial grounds.

Safety of headstones and other memorials

Burial authorities will be required to carry out regular, scheduled inspections of headstones and memorials within their burial grounds to ensure they are in safe order. The frequency of scheduled inspections is not specified in regulations as this decision will depend on the nature of each burial ground. However, the frequency and procedures for carrying out scheduled inspections are to be set out in the burial management plan for the burial ground.

Prior to carrying out scheduled inspections, the burial authority must take steps to notify the public of the dates on which the inspections will occur and what steps may be taken to make headstones safe. Burial authorities will have discretion on how best to raise awareness for their local communities. The requirement to notify the public of scheduled inspections does not prevent a burial authority from making direct contact with a right-holder about an individual headstone and any required remedial action.

The requirement to carry out scheduled inspections does not prevent burial authorities from carrying out inspections at other times as needed, nor from taking measures to keep headstones or other memorials safe in the interim.

Removal of unauthorised headstones or other memorials
Burial authorities will be able to remove any unauthorised headstone or other memorial and this instrument sets out who is liable for costs.

Training
Staff are required to be adequately trained in relation to their day-to-day duties and the burial authority will have a duty to keep a written record of all such training undertaken.

Designation for use by faith, religious or belief groups
Burial authorities will have the power to designate areas of a burial ground for use by particular faith, religious or belief groups.

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 Management (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

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

Consultation
The regulations were developed in collaboration with the Burial Regulations Working Group. A public consultation[1] was undertaken in relation to 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.

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[1] Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland - https://www.gov.scot/publications/management-burial-grounds-application-burial-exhumation-private-burial-restoration-lairs-regulation-scotland/pages/5/

[2] Executive Summary - Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs - regulation: consultation analysis - https://www.gov.scot/publications/scottish-governments-consultation-management-burial-grounds-application-burial-exhumation-private-burial-restoration-lairs-regulation-scotland-consultation-analysis-report/pages/1/

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 on legislation.gov.uk. 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.

Scottish Government
Directorate for Population Health
November 2024