

The Burial and Cremation (Scotland) Act 2016

Cheryl Paris
cheryl.paris@gov.scot



Background

- Burial Grounds (Scotland) Act 1855
- Cremation Act 1902
- Cremation (Scotland) Regulations 1935
- Burial and Cremation Review Group (2008)
- Certification of Death (Scotland) Act 2011
- Mortonhall Investigation Report (2014)
- Infant Cremation Commission (2014)
- National Cremation Investigation Report (2016)

The 2016 Act

Part 1: Burial

- Burial grounds
- Burial in a burial ground
- Burial authority: code of practice
- Private burial
- Offences
- Exhumation of human remains
- Lair restoration to use

Part 2: Cremation

- Cremation
- Handling of ashes
- Register
- Fees
- Cremation authority: code of practice

Part 3: Arrangements

- Adults and children
- Pregnancy loss after 24 weeks
- Pregnancy loss on or before 24 weeks
- Pregnancy losses: general
- Local authority functions

The 2016 Act

Part 4: Inspection

- Appointment
- Regulations
- Powers of entry and inspection
- Offences
- Reports

Part 5: Funeral Directors

- Funeral directors' businesses: licensing
- Funeral directors: code of practice

Part 6: Miscellaneous

- Guidance on funeral costs
- Powers to modify enactments
- Acquisition of land
- Including providing for new methods for disposal of remains

Part 7: General

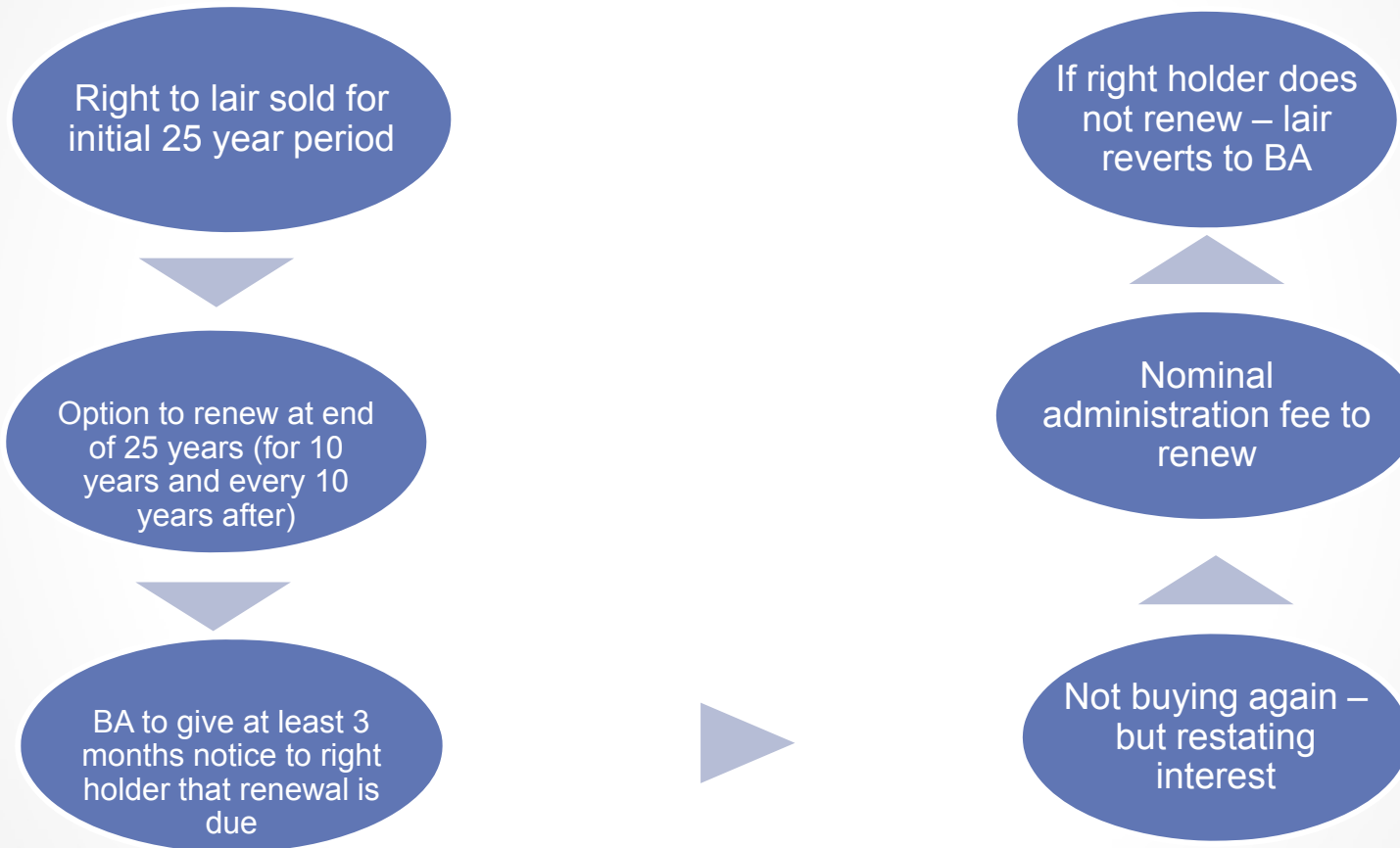
- Electronic registers
- Regulations – consultation requirements and parliamentary procedure



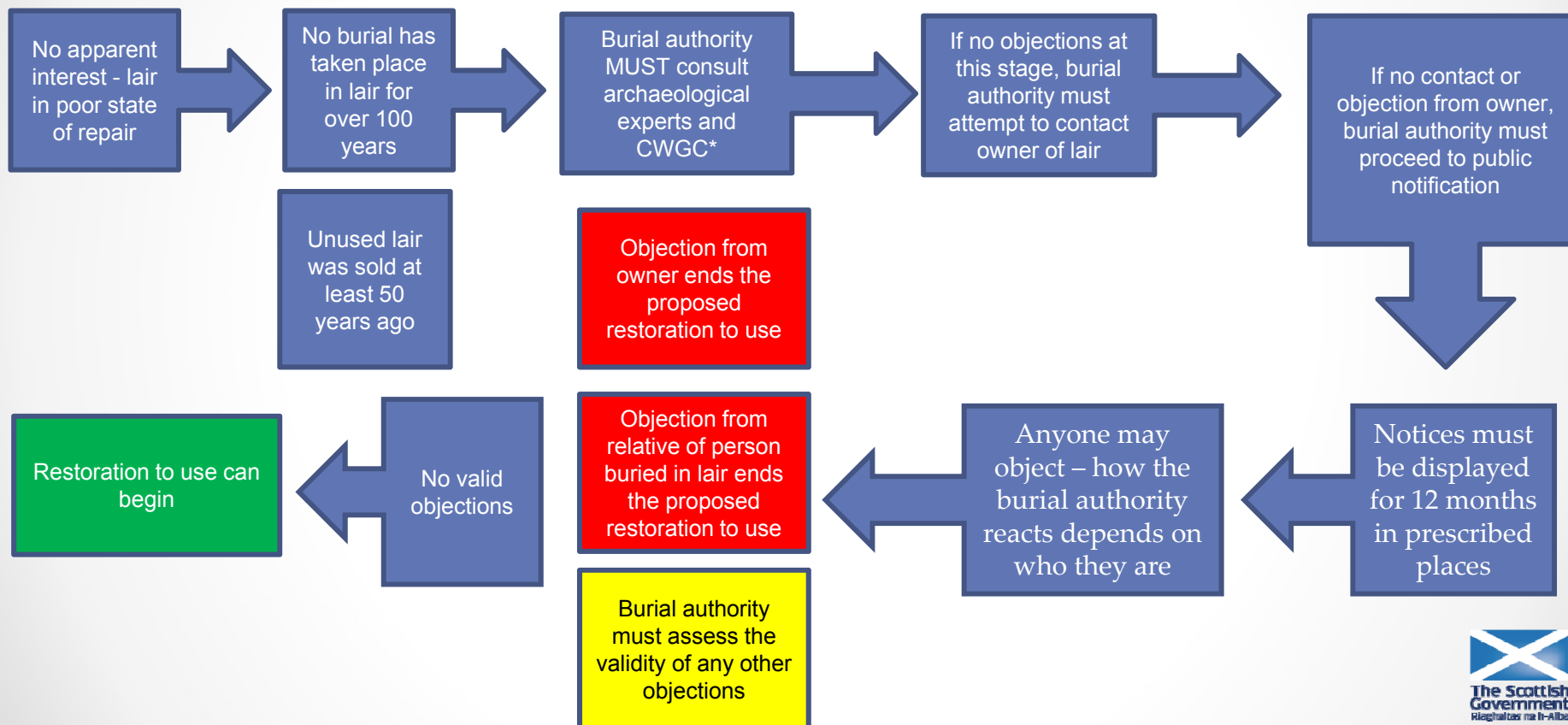
Burial

- **Burial Ground** – land used, or intended to be used, primarily for the burial of human remains and in respect of which a charge for such burials is made.
- Includes land that was, but is no longer, used primarily for the burial of human remains and that had been provided for that purpose.
- Does not include private burial (ie, burial that takes place outwith a recognised burial ground)
- **Burial Authority** – the person having responsibility for the management of a burial ground
- Scottish Ministers may introduce regulations in connection with
 - The maintenance of burial grounds (and buildings, walls, fences or other structures erected in grounds)
 - Access to and within grounds including the maintenance of roads and paths
 - Maintenance and repair of memorials, buildings and other structures within the grounds (including duty to make them safe)

Right of burial



Lair Restoration to Use



Meaning of “cremation” and “ashes”

- (1) In this Act, “cremation” means the burning of human remains; and includes –
 - a) where a grinding process is applied to the burnt human remains, that process and
 - b) where any other process is applied to the burnt human remains, that other process.
- (2) In this Act, “ashes” means the material (other than any metal) to which human remains are reduced by cremation.
- (3) In this section –

“coffin” includes any type of receptacle,
“human remains” includes, where remains are clothed, in a coffin or with any other thing, the clothing, coffin or other thing.

Cremation application forms

- Relevant questions; simple language
- Cremation application form will require applicant to state what they want to happen to ashes
- Cremation cannot take place if this information is missing
- Applicant will only be able to choose options available at a given crematorium
- Applicant will sign form to declare that they understand their options, and what they mean
- **Form will set out what will happen if ashes are not collected as indicated, including timescales**

Cremation Regulations

Cremation authority duties

- Management, operation and maintenance
- Cremation authority employees (training and qualifications)

Cremation application

- Form and content
- Who can approve and apply
- Accompanying documents

Handling of ashes

- Retention, return, disposal of ashes
- Failure to collect, time periods

Cremation register

- Form and manner
- What happened to ashes

Closure of crematorium

- Notice period
- Retention of registers and records

Pregnancy loss on or before 24 weeks

Health Body must give the woman the opportunity to make a decision about arrangements for burial or cremation

- Choose to make the arrangements
- Authorise another person to make arrangements
- Authorise the hospital to make arrangements
- Decide not to be involved
- Give no instructions

WOMAN

If no arrangements have been made 6 weeks after the loss occurring, the Health Body may choose to make arrangements, but does not need to if it feels the woman may still make a decision

If authorised to make the arrangements, the Health Body must wait 7 days (but the woman may instruct them not to)

Inspection

- Scottish Ministers may appoint
 - Inspectors of burial
 - Inspectors of cremation
 - Inspectors of funeral directors
- Inspectors will have the power, on authority of Scottish Ministers, to enter any of the following premises and inspect
 - a burial authority
 - a cremation authority
 - a funeral director or
 - a health authority
- Require the production of any documents, records or registers
- Make recommendations to improve practices and re-inspect to ensure improvements have been made and take steps to ensure compliance and suspend operations where necessary
- Inspect and take copies of documents, records and registers

Licensing

- Scottish Ministers may make a scheme for the licensing of funeral directors' businesses
- A person may not carry on business as a funeral director unless the person holds a licence
- Where a person carries on more than one business as a funeral director, the person must hold a separate licence in respect of each business

Minimum distance

Section 5, Cremation Act 1902

‘No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority.’

New Methods

Section 99 – ‘Scottish Ministers may by regulations provide that specified provisions of this Act or any other enactment apply, subject to any specified modifications, in relation to specified ways of disposing of human remains’

Provisional Implementation Timetable

2016

- commencement of sections of Part one of the 2016 Act
- Commenced section which enable Ministers to appoint Inspectors

2017

- Initial focus on cremation regulations and Part 3 of the 2016 Act
- Extended powers for inspector of cremation
- Appointment of inspector of funeral directors

2018

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

2018 – 19 and beyond

- Licensing of funeral directors
- Inspector of burial