

01 December 2024

## Burial Law in Scotland

East Ayrshire Council are writing as a burial authority in reply to your request for views on the below instruments:

- The Burial and Cremation (Scotland) Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2024
- The Burial (Applications and Register) (Scotland) Regulations 2024
- The Burial (Management) (Scotland) Regulations 2025
- The Burial and Cremation (Inspection) (Scotland) Regulations 2025

The Council operates 45 churchyards and cemeteries throughout the region, and process an average of approximately 700 interments each year. The Council has well established administration and operational procedures and policies related to burial services. The Council has concerns regarding the level of new resources potentially required to both develop and then implement the new regulations across administration, training, and operations and considers the impact on these areas could be significant. Chief among these are the clear and obvious potential operational impacts, i.e. from a potential increase in frequency and standard of memorial inspections.

This letter sets out feedback, concerns and outstanding questions below in response to individual questions, per your letter of 19 November 2024. They reflect the same concerns expressed in October 2023 to Scottish Government during its consultation phase. In summary; East Ayrshire Council is unlikely to be able comply with all the regulations as of 1 March 2025. Especially as the guidance notes for the new forms are yet to be issued.

If the Scottish Government intend to enforce compliance through failure notifications etc., the Council consider it would require 12-24 months to identify additional budgets, factor new requirements into service design and structures and employ and train new staff, rewrite and implement new procedures, implement new inspection and maintenance operations etc.

East Ayrshire Council continues to operate in an extremely difficult financial climate, placing significant pressure on services. The Council's view is that all additional costs to meet the new regulations requires equivalent additional annual funding by Scottish Government. These costs cannot currently be predicted accurately due to the lack of detail on what maintenance standards will be required. In the absence of any new investment by Scottish Government, we anticipate application of the regulations would result in an increase in charges/fees associated with burial, equivalent to any shortfall in Scottish Government investment. This potential increase would be challenging to our strategic position, which has been to maintain affordability for local residents. For example, in partnership with a number of local funeral directors, since 2017, we have operated a respectful funeral service, aiming to reduce funeral poverty in a dignified way.

In East Ayrshire, bereavement and cemeteries are managed within an integrated streetscene service i.e. there are no dedicated operational staff for this function.

In summary, the additional (new) workload includes:

- Development of new policies and procedures to reflect new regulations, including statutory forms;
- Development of new forms/jobs etc. within existing electronic cemeteries systems to reflect new regulations, including statutory forms;
- Development of a cemetery management plan to reflect new regulations

- Maintenance and repair of buildings, walls, fences and other structures in good order' is very open to interpretation and is of concern.
- Maintain or improve access to and within the burial ground: it is unclear what the requirement will be; and
- Programme and implement headstone and memorial inspections within a defined timescale.

1. What are your views on all or some of the provisions covered in the Burial (Management) (Scotland) Regulations 2025 in relation to the management and maintenance of burial grounds in Scotland, including:

- The requirement to prepare and maintain a publicly accessible burial management plan;

Given that 12 months are available from 1st March to produce this document, this would be achievable with minimal additional resource.

- Maintenance and repair of burial grounds

Potentially, this will require significant additional resources. At present East Ayrshire Council does not have the level of investment necessary to maintain and repair all buildings, walls, fences, and other structures erected on or enclosing its 45 burial grounds and closed churchyards. In many cases, these assets are either removed or secured with temporary fencing only. In addition, the maintenance or improvement of access to and within the council's burial grounds would require significant additional resources. At present the council does not have the level of investment to maintain and repair all roads and footpaths within burial grounds. At present the council prioritise repair those roads and footpaths that allow access to burial grounds for burial and maintenance only. Increasingly the council are looking at alternatives for pedestrian footpaths where these fall into disrepair, such as the application of bark, thus reducing the quality of public access including for wheeled users or removing these as footpaths to reduce ongoing maintenance.

With regard to maintenance of equipment, additional guidance on any specific format of maintenance record that is required would be beneficial. The council maintain equipment and keep records currently in house , with the approach being standard across all council services i.e. any unique maintenance and maintenance reporting may not be compatible with existing corporate systems and processes.

- Safety of headstones and other memorials

This will require significant additional resources and investment. Currently, the council inspect and make safe headstones/memorials temporarily, by stake and tie and notify owners of the need for repair as a health and safety risk, where they can be identified. Our inspection and maintenance schedule does not allow for inspection of all headstones within the five year timeframe (around 70,000 memorials and headstones) at current resource levels. It is also unclear as to whether the stake and tie approach will comply with the regulations, or if additional measures will be required, at additional cost and with equivalent investment.

The council consider that notification of the public that headstone inspection will take place on a specific date is not practical i.e. inspections are often carried out on little or no notice due to either notification of a safety issue or redeploying staff to progress inspections, when demand in other parts of the service allows.

- Removal of unauthorised headstones or other memorials

Additional guidance on how burial authorities can enforce recouping costs from those erecting unauthorised items would be beneficial as this will require a specific skill set and additional resources, with equivalent investment.

- Training

The council currently maintain training records for all staff. Additional guidance on if any specific format of training record is required would be beneficial i.e. any unique training records and maintenance reporting of training records may not be compatible with existing corporate systems and processes.

- Designation for use by faith, religious or belief groups.

The regulation puts no specific requirement on council with regard to designating any part of a burial ground. Therefore, the council has no comment.

2. What are your views on all or some of the provisions covered in the Burial and Cremation (Inspection) (Scotland) Regulations 2025, in relation to inspection, enforcement and appeals for burial authorities, cremation authorities and funeral directors?

The provision that inspector's findings include any failure to comply is not clear in so far as failure is not defined adequately across issues including maintenance and administration and does not provide guidance on target dates for action after failure to comply notices are issued etc. It is also unclear how any burial authority might be reasonably expected to address any failure/enforcement notice in the absence of any additional investment.

3. Do you have any specific concerns about any of the instruments outlined above?

The statutory forms which have to be adopted includes capture of significant additional details by the council. This will change both the standard forms currently in use, all associated procedures and the systems used to record the information they contain. This will require an additional administration and management resource beyond that currently available.

The timeline for implementation is unrealistic. Less than three months is not a practical timeline for the administrative, training, and operational changes required. The council have previously advised that a reasonable timescale (12-24 months) for implementation would be required to implement these changes, further to the relevant investment.

4. In your view, what financial impact could this legislation have on the delivery of burial services?

While it is difficult to determine the specific financial impact, it is anticipated the council would require additional resources to initially plan for and develop systems to allow compliance with legislation. Furthermore, the council will require additional resources to comply with the ongoing additional administration and operational pressures associated with the legislation.

In the absence of additional resources, it is anticipated the council may fail any inspection related to compliance, may not meet the required maintenance standards and/or may not fulfil its new obligations generally. This is difficult to quantify until all aspects of the new regulations are guidance are specified. In addition, it is anticipated an additional annual capital and revenue investment could be required to ensure burial grounds are maintained in good order, as many areas are currently fenced off rather than repaired due to limited Council resources. Furthermore, the large volume of outstanding historic maintenance issues that have accumulated over decades would require addressed to achieve a baseline of having burial grounds in good order. It is difficult to determine

the level of investment required in the absence of detail regarding what would constitute good order maintenance.

The authority is currently investing 100k per year over next 10 years for capital improvements dealing with current high priority issues and it is anticipated if standards were to be increased it would require significant further investment.

Within East Ayrshire Council, Greener Communities (including the integrated streetscene and bereavement services) are currently under review, and the potential implications of the new regulations will be considered as part of this, with the caveat that further detail is required, as highlighted throughout.

The latest correspondence from Scottish Government appears to include no significant detail on regulatory changes on lair rights, private burial, exhumation, or restorations lairs. The council would request clarity on what if any new responsibilities are to be imposed regarding the aforementioned as this will likely require significant additional investment above and beyond that highlighted above i.e. if new services are required to be provided and additional administrative and operational procedures are to be reviewed and updated etc.

5. The Scottish Government's business and regulatory impact assessment states that burial authorities and funeral directors may experience minor training and administrative impacts associated with the legislation. How might the additional training and administrative requirements laid out under these instruments affect the delivery of these services in practice, and how could these impacts be managed or mitigated?

The council consider the training and administrative impacts are significant, and there are also significant potential operational impacts. These impacts can be mitigated and managed by additional investment, and by providing additional guidance (particularly on maintenance) that will allow burial authorities to estimate the operational impacts and associated additional investment required to mitigate operational impacts.