

**REVIEW OF LOCAL STATUTORY PROVISIONS  
LOCAL GOVERNMENT ETC (SCOTLAND) ACT 1994: SECTION 59  
APPLICATION FOR EXEMPTION OR POSTPONEMENT FROM REPEAL**

**1. Title of Provision**

Management Rules for the Management of all Cemeteries and Burial Grounds.

**2. Effect and extent**

These Management Rules are effective from 1st April, 1994 and regulate entitlement to burial plots within Council owned Burial Grounds and further detailed provisions regarding burial.

**3. Has the Council reviewed this provision and concluded that it is still required beyond 31 December 1999?**

The Council has reviewed these provisions and concluded that they are required beyond 31st December, 1999.

**4. Does the Council seek (i) exemption from repeal or (ii) postponement of repeal of the provision?**

The Council is considering amendment of these Management Rules and would accept postponement of repeal of the Management Rules for two years from 31st December, 1999. This would give the Council a reasonable time to adjust and implement new Management Rules.

**5. Is the content of the provision appropriate to contemporary needs?**

See comments at 4 above. The Rules were not found to be working in certain areas and amendment is proposed.

**6. Does the provision apply to the whole of the Council's area? If not, why is it considered appropriate to continue to limit its application to the area in question?**

The Rules apply to the whole Council area.

**7. Is it confirmed that the provision does not duplicate matters in public statute?**

It is confirmed that the Rules do not duplicate matters contained within public statute.

**8. If exemption is sought, why is it considered inappropriate to re-enact the provision, e.g. no changes required to existing legislation?**

N/A.

**9. If postponement is sought, when will a Provisional Order be deposited re-enacting the provision?**

It is anticipated that the new Management Rules will be proposed within the next two years.

**10. Any other factors or information which the Council considers relevant.**

N/A.

# MORAY DISTRICT COUNCIL

## CIVIC GOVERNMENT (SCOTLAND) ACT 1982

### RULES FOR THE MANAGEMENT OF ALL CEMETERIES AND BURIAL GROUNDS

By virtue and in terms of the powers conferred on them by Section 112 of the Civic Government (Scotland) Act 1982, Moray District Council hereby make the following rules for the management of all cemeteries and burial grounds under the control of the Council:-

#### 1. INTERPRETATION OF TERMS

In the construction of these rules the following expressions shall have the meanings hereby assigned to them, that is to say,

- (i) "The Council" means the Moray District Council as constituted by the Local Government (Scotland) Act 1973.
- (ii) "The Certificate" means the Certificate of Right of Burial granted by the Council, or its predecessors in title as proprietors of the cemetery.
- (iii) "The Owner" means the person to whom the Certificate is granted and his heirs.
- (iv) "The Lair" means the piece of ground the exclusive right of burial in which is granted by the Certificate.
- (v) "Registrar" means the Director of Leisure and Libraries, or any other person(s) appointed by the Director, being the Officer authorised by the Council to act as Registrar of Cemeteries and Burial Grounds.

#### 2. EXCLUSIVE RIGHT OF BURIAL

- (a) The exclusive right of burial in a lair will, subject to these rules, be secured to the purchaser and his or her successors. The Registrar shall furnish the purchaser with a lair certificate describing the lair. A lair holder duly registered in the books of the Council shall have exclusive right of permitting the lair to be opened and the production of the certificate will be held as sufficient authority. One person only shall be registered as the holder of a lair or lairs, except in the case of Trustees. No lair holder shall be entitled to transfer any or all of their lairs without the sanction of the Council. The Registrar may on application and after due enquiry, issue a duplicate certificate in the

name of the registered lair holder as indicated in the Council's books on such terms and conditions as seem appropriate.

- (b) On the death of the lair holder, notwithstanding the place of his domicile at his or her death, the right of succession to the lair will be governed by the Law of Scotland. The lair is capable of bequest, subject to the proviso that if more than one beneficiary is entitled to claim in terms of the Will, the Executors appointed thereunder or in the absence of any Executors, the beneficiaries shall nominate one of their number as the lair holder.

In the event that the lair holder dies intestate the lair forms part of the estate of the lair holder and falls to be distributed in accordance with the terms of the Succession (Scotland) Act 1964, as amended and all relevant regulations made thereunder.

The transfer shall be made by an appropriate entry in the Council's books. A memorandum of the transfer may be endorsed upon the lair certificate. The entry in the Council's books shall be conclusive as to the ownership of the right of burial.

- (c) The owner shall not be entitled to sell the right granted by the certificate except to the Council.
- (d) No heir of the owner or transferee shall have any right or interest in the lair or liberty to use same until evidence of title is exhibited to the Council and all purchase and burial dues have been paid.
- (e) The person instructing the burial is personally liable for all burial dues and fees.

### 3. NOTICE OF BURIAL

- (a) Notice of an internment, whether of coffin or of cremated remains, must be given to the Registrar on the approved form to allow not less than two clear working days between the receipt of the notification following the production of satisfactory evidence of title to the lair and the burial. If the applicant wishes to choose a new lair, the two clear working days will commence from the time of choosing the lair. A Saturday may count as a working day on a weekend of a public holiday, but not otherwise. The necessary order for digging the grave, for which a charge will be made, as determined from time to time by the District Council, will then be issued on confirmation of the funeral arrangements and on receipt of an internment instruction form. No internment shall take place outwith normal working hours unless in the case of urgency and then only with the consent of the Registrar.

- (b) All burials must be authorised by the Registrar prior to funeral arrangements being publicly announced.
- (c) Arrangements for burials can be made during normal Office hours within the Registrar's Office, District Headquarters, High Street, Elgin or any local District Council Sub-Office at Forres, Lossiemouth, Keith and Buckie. Arrangements during out of Office hours and public holidays are as agreed from time to time with local Funeral Directors.
- (d) If the Certificate of Right of Burial cannot be produced, the Registrar will require that an indemnity form be completed by the member of the family or Executor arranging the burial.
- (e) Application for the interment of cremated remains must be made to the Registrar and the same information supplied as in the case of the burial of a coffin.
- (f) If the Certificate of Right of Burial cannot be produced the Registrar may at his or her sole discretion, allow the burial to take place on such terms and conditions as may seem appropriate, including the provision of indemnities and/or caution by the person instructing the burial and no liability shall be incurred by the Council, its Officers, or employees whatsoever.

#### 4. BURIALS

- (a) No owner shall be entitled to have the lair opened to a greater depth than 2.13m (7'). Only a maximum of three adult burials will be permitted at any time in any lair but any combination, subject to the maximum relating to adult burials, of adult and child burials and cremation caskets may be permitted at the discretion of the Registrar and no burials shall be made without there being at least 914mm(3') of soil between the surface of the ground and a casket.
- (b) The Council shall have the sole authority to declare a lair to be full. No further burials shall be permitted in any such lair so declared to be full.
- (c) The digging of graves, the infilling of graves and the preparation for the laying of foundations for monuments shall be effected by the employees of the Council only.
- (d) Memorial wreaths shall be removed at such times as the Council in its discretion consider appropriate.
- (e) No burials will be permitted where the body has not been placed in a coffin.

- (f) No animals or pets will be permitted to be buried in any cemetery or burial ground in the Council's ownership.

5. **BURIALS OF CREMATED REMAINS**

- (a) Cremated remains shall not be scattered in any part of a cemetery or burial ground without prior consent of the Registrar, and shall be carried out in the presence of the burial ground foreman.
- (b) No cremation caskets to be interred in a lair without there being at least 3' of soil between the surface of the ground and the casket.

6. **MONUMENTS**

- (a) A lair holder shall be entitled to have a monument erected. Such monument shall not protrude in any way over the part of the lair to be opened for burial or outwith the confines of the lair and to be erected in accordance with the Code of Working Practice of the National Association of Memorial Masons. No erection of or inscription on any monument shall be permitted until approval of the Registrar to whom a specific written statement with a drawing of what is proposed is submitted. Kerbs, copes, corner stones, etc. shall not be permitted. Monuments may be erected only at such times as are permitted by the Registrar. The lair holder is liable for the risks of any damage by or to any monument or memorial on the lair.
- (b) The lair holder shall keep headstones or monuments in a neat, safe and proper condition of which the Registrar shall be the sole judge. Failing attention to this requirement within fourteen days after written notice to the lair holder at their last known address the Council shall be entitled, at the lair holder's expense either to repair the memorials or to cause to have them moved and until the cost of such repairs or removal is paid the right to use the lair shall be withheld.
- (c) Nothing shall be planted or placed on a lair. Planting in the headstone area is permitted with the prior approval of the Registrar. In granting such permission the Registrar will take into account the type of plant, its location and ascertain whether or not herbicide has been applied. Any plant or bush planted without permission, if considered unsuitable, may be removed on the authority of the Registrar. The Council will not be responsible for the maintenance of any plants or shrubs.
- (d) Lair holders will be permitted to place one vase or suitable container for flowers in the head ground to the grave. Such container to be of stone or metal and any container constructed of a material considered to be unsuitable may be removed immediately by the Cemetery staff.

- (e) The Council does not accept any liability for loss or damage to memorial wreaths, flowers, vases or similar receptacles as may be permitted in terms of para.(iv) above.

7. **GENERAL**

- (a) The Council will keep registers in which will be entered every burial specifying the lair, the depth of grave, the date of burial, the name and age of the person buried and all other necessary information. Such registers being available for public inspection during normal working hours and without any payment being made therefor.
- (b) The burial grounds shall be opened to the public daily, during such hours and subject to such restrictions as the Council may apply from time to time.
- (c) Visitors should confine themselves to paths where provided and should not interfere with headstones, monuments, ornaments, floral tributes or plant material belonging to others.
- (d) Visitors must not pull flowers, or in any way damage shrubs or trees, and the Registrar or other person in charge for the time being, shall be entitled to remove any person inebriated or who may conduct him or herself improperly or who may cause damage and to prevent any person entering except during permitted hours.
- (e) With the exception of guide dogs for the blind under the control of their owners no person shall permit any dog belonging to them or in their charge to enter or remain in any Cemetery or Burial Ground unless it be led on a leash and restricted to recognised paths or to foul any Cemetery or Burial Ground or to damage or destroy any grass, flower, plant, tree or shrub in any Cemetery or Burial Ground.
- (f) Other than with the express permission of the Authorised Officer the public use of radios, compact disc or cassette players and other such sound emitting equipment is forbidden unless used with a personal headset.
- (g) Children under 12 years of age are not permitted in burial grounds or cemeteries unless accompanied by an adult.
- (h) Apart from vehicles necessary for the performance of a trade associated with the cemetery management, only disabled persons are permitted vehicular access, or other vehicles should be parked outwith the burial ground or, where applicable, confined to designated parking areas within the burial ground/cemetery.

- (i) The patrons are advised that herbicides will be applied to unplanted open ground around the headstones to control seasonal weed growth. In order to ensure survival of any new plant material, the top 250mm of soil should be replaced around the headstone prior to planting, or containers should be used to accommodate the plant material.
- (j) The Council reserves the right from time to time to repair subsidence in lairs without any prior notification to the lair-holder.
- (k) The Council shall be at liberty from time to time to alter these rules and enforce such others as they may consider appropriate for the proper or better management of the cemeteries/burial grounds.
- (l) The Council shall be at liberty, from time to time, to vary the charges made for burials and allied services.
- (m) These Management Rules supersede any Rules or Regulations however described previously issued by the Council and its predecessors entitle as proprietors of the cemeteries under its control.
- (n) These Management Rules shall be cited as the Moray District Council (Cemeteries and Burial Grounds) Management Rules 1993.
- (o) These Management Rules shall come into force on the date of their execution and shall remain in force thereafter unless revoked or amended.

#### 8. RIGHT OF APPEAL

Any person wishing to appeal against a decision taken in terms of these Management Rules must do so in writing to the Director of Administration and Law within 14 days of that decision.

#### 9. RULES NOT TO AFFECT EMPLOYEES IN THE PERFORMANCE OF THEIR DUTIES

Any act necessary to the proper execution of his/her duty in the premises by any officer of the Council or by any person employed by the Council shall not be deemed an offence against these rules.

#### NOTES

Copies of these rules can be inspected free at the Council's Department of Administration and Law, District Headquarters, Elgin or any Area Office or Library within Moray.

Any person contravening any of these Management Rules shall be subject to the penalties imposed by sections 116, 117 and 118 of the Civic Government (Scotland) Act 1982 exigible from time to time in terms of the relevant sections of the aforementioned Act.

Certified that these Management Rules are a true copy of those made by Moray District Council and are effective from 1st April, 1994.

Director of Administration and Law  
Moray District Council