

WEST DUNBARTONSHIRE COUNCIL

Report by Strategic Lead – Regulatory/Roads & Neighbourhood

Infrastructure, Regeneration and Economic Growth: 16 September 2020

Subject: Proposed Revisals to the Rules and Regulations for the Management of West Dunbartonshire Cemeteries

1. Purpose

- 1.1** The purpose of this report is to seek Committee's approval for the proposed changes to the Rules and Regulations for Management of West Dunbartonshire Cemeteries (**APPENDIX. 1**).

2. Recommendations

- 2.1** It is recommended that Committee approve the revised Rules and Regulations for the Management of West Dunbartonshire Cemeteries following on from public consultation.

3. Background

- 3.1** Following a report to this Committee on 15 May 2019, the proposed revised Rules and Regulations for the Management of West Dunbartonshire Cemeteries were publicly advertised on 4 June 2019. In addition other interested parties were asked for their comments/views, including Community Councils, Clergy and Funeral Directors. No comments were received.
- 3.2** Under the Civic Government (Scotland) Act 1982, a Local Authority can make Rules and Regulations for the management of its Cemeteries. The current Rules and Regulations require to be reviewed and officers have extensively looked at the current terms of the Rules.
- 3.3** In this review, officers have considered how these rules can be updated in a modern context to be clearer and more user-friendly. Accordingly, the proposed draft Rules have been updated to reflect recent legislative changes.

4. Main Issues

- 4.1** Since the last review of the Rules and Regulations there has been a legislative change with the introduction of the Burial and Cremation (Scotland) Act 2016. The 2016 Act has consolidated various Acts dating from the mid-nineteenth century onwards, to provide for one authoritative piece of legislation covering burial, cremation and associated arrangements.

4.2 Funeral Arrangements

Arranging a funeral is always a very difficult and emotional task. For some families, however, there is the added complexity of determining the contentious question of who actually has the right to make arrangements for the body and the funeral. Historically this highly sensitive issue has triggered family disputes.

While many people choose to include their funeral wishes within their Will, this is not binding on their Executors or family. Although in most cases individuals will want to fulfil the wishes of the deceased, conflicts can and do arise. This is particularly the case where the instructions provided in the Will can no longer be reasonably achieved, such as if the church or crematorium no longer exists. Where no instructions are left at all, this can also lead to arguments. The 2016 Act provides welcome clarity in this area.

Going forward, where an adult dies and either leaves no indication of their intended arrangements on death, or these arrangements cannot reasonably be achieved, the legislation confirms that the deceased's 'nearest relative' is entitled to make the necessary funeral arrangements. The 2016 Act provides a hierarchy of individuals who may fall within the definition of nearest relative. The person's spouse or civil partner tops the list, followed by other adult relations ranked in order of priority. Should the person have no surviving adult relations who are over the age of 16, or none who wish to take responsibility for attending to arrangements, a longstanding friend can step in.

Although the legislation does not remove the possibility of disputes arising, it does provide a clear answer to the question of who can take control of the funeral arrangements. Ultimately, if a dispute arises between individuals with an interest, such as two relatives who rank equally under the new Act, a claim can be brought before the Sheriff Court in order to resolve the matter.

4.3 Burial Rights

The 2016 Act includes new provisions regarding the right to burial. This will affect arrangements following a death as well as those wishing to put in place a pre-paid funeral plan setting out their wishes.

The legislation introduces the concept of a 'burial right'. This is essentially the right to be buried in a particular plot of land. Burial Authorities, being the Local Authority for the particular region, are given the power to sell a right of burial in/to a plot or lair within a burial ground. This right includes a right to be buried in that plot and also to determine who else may be buried there.

While this may sound similar to the previous system, the important point to note is that the burial right is no longer indefinite. The right now remains in force for a period of 25 years, after which it expires unless an application to extend the period is made and granted. An extension is valid for a further 10 years. This change reflects a need for burial space and limits the likelihood of lairs remaining empty when a person is buried elsewhere.

It should also be noted that a burial right does not include the right to erect a headstone and a separate application requires to be made to the Burial Authority for this.

4.4 Cremation

There have been a number of scandals in recent years concerning cremation and the disposal of ashes. The 2016 Act addresses this matter, particularly the concerns voiced by the Infant Cremation Commission following historical practices at some crematoriums. While much of the new provisions are aimed specifically at crematoriums, the Act also makes provision for how ashes are to be dealt with following a cremation.

While this may sound unlikely, it is not unheard of that ashes are left with either the crematorium or funeral director after the funeral. This can arise due to a family misunderstanding where one family member thinks that another has collected them, or simply where no one knows what is to happen to the ashes. In some cases ashes can be held by funeral directors or crematoriums for a number of years.

Where ashes are not collected, the legislation imposes an obligation on the crematorium or funeral director to undertake reasonable investigation to ascertain from the person who registered the deceased for cremation whether the ashes are to be picked up. If they continue to be left following further communication, the ashes can be returned to the crematorium (if not already there) and ultimately disposed of by the crematorium staff.

- 4.5** The purpose of the management rules in addition to the 2106 Act is to set out rules that are particular for West Dunbartonshire.

5. People Implications

- 5.1** There are no people implications associated with this report.. The administration of the revised Rules and Regulations will continue to be absorbed within existing staff resources.

6. Financial and Procurement Implications

- 6.1** There are no financial or procurement implications. The administration of the revised Rules and Regulations will continue to be absorbed within existing revenue budgets.

7. Risk Analysis

- 7.1** Rules and Regulations are in place for the proper administration of West Dunbartonshire Cemeteries and are required to be consulted upon and approved by Members. There is a risk of legal challenge if these Rules and Regulations are not revised.

8. Equalities Impact Assessment (EIA)

- 8.1** An initial screening confirms that there is no adverse impact.

9. Consultation

9.1 A full public consultation on the Rules and Regulations has been carried out. No comments were received as a result of the consultation.

10. Strategic Assessment

10.1 This report supports the following Council Strategic objectives:

- Meaningful community engagement with active empowered and informed citizens who feel safe and engaged.
- Open, accountable and accessible local government.
- Efficient and effective frontline services that improve the everyday lives of residents.

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Appendices: Appendix.1 - Rules and Regulations for the Management of West Dunbartonshire Cemeteries

Background Papers: None

Wards Affected: All