

Management Rules for Burial Grounds under the control of the Council

By virtue of the powers contained in Sections 112-118 of the Civic Government (Scotland) Act 1982, the Highland Council (“the Council”) hereby make and enact the following management rules to regulate the use of and the conduct of persons while in burial grounds under the control of the Council.

These management rules shall be read in conjunction with any regulations introduced by Scottish Ministers by virtue of powers contained within the Burial and Cremation (Scotland) Act 2016.

1. Interpretation of terms

1.1 In these management rules the following words and expressions shall have the following meanings assigned to them:

- a) “Authorised Officer” means a person who is authorised by the Council, either generally or specifically, to act in manners under these rules to act in connection with these Rules.
- b) “Right of Burial” means the right to be buried in a Lair, and the right to decide whose remains may be buried in the Lair.
- c) “Casket Lair” means a Lair reserved for the burial of cremated remains only.
- d) “Lair Holder” means the owner of the exclusive Right of Burial in a Lair, and in whose name the Lair Certificate is registered
- e) “Lair” means a grave suitable for the burial of coffins and/or cremation caskets.
- f) “Memorial” means any commemorative marker placed over or upon a grave or Lair (e.g. Headstone).

2. The Exclusive Right of Burial

2.1 The Council may sell a Right of Burial in a Lair in one of its burial grounds on the application of any person. The right is only exercisable by the Lair Holder.

- 2.2 Purchased Lairs can only be allocated by an Authorised Officer. Allocations made by Funeral Directors or other persons will not be honoured, unless they have prior written permission from the Council to allocate a specific Lair. Pre-purchasing of Lairs without an associated burial will only be permitted where the anticipated capacity within a particular burial ground allows. The Council reserves the right to refuse pre-purchasing of Lairs at any time.
- 2.3 The Council shall provide the Lair Holder with a Lair certificate describing the Lair. A Lair Holder duly recorded by the council shall have exclusive right of permitting the Lair to be opened and/or apply to have a Memorial erected/altered/removed. Entry in the Council's interment books shall be conclusive as to the ownership of the Right of Burial. In the absence of any reliable record held by the Council, the production of a certificate will be held as sufficient authority.
- 2.4 With the exception of trustees, only one person shall be registered as the Lair Holder of a Lair or Lairs. Joint succession to or division of the exclusive rights for any Lair is expressly prohibited. No Lair Holder shall be entitled to transfer any or all of his/her Lair rights during his/her lifetime without the approval of the Council. The Lair right may be handed back to the Council and a refund at current Lair charge less an administrative charge if the Lair is still unused. Where, due to ground conditions, two single-depth Lairs were sold in lieu of one double-depth Lair, one double-depth charge will be refunded.
- 2.5 The exclusive Right of Burial is considered to be part of the Lair Holder's estate and shall be treated in accordance with the terms of Succession (Scotland) Act 1964 as amended and all relevant regulations made thereunder (providing they were domiciled in Scotland at the time of their death). Where a registered Lair Holder and their spouse / civil partner have died, the Lair may only be opened for burial with the permission of all legal successors, whether as an isolated event or as part of the permanent transfer of Lair rights.
- 2.6 In relation to clause 2.5 above, the written permission of all legal successors is preferred but if this is not appropriate or possible then a declaration may be made by the person applying to open the Lair that all legal successors have been informed and no objections have been made. The Council shall not be responsible for accepting in good faith this claim, or a claim of legal successorship if it is subsequently ascertained that such a claim is unfounded. This approach also applies to applications for erection of Memorials.
- 2.7 Lair rights can be transferred within or between cemeteries, subject to an administrative fee.

3. Interments

- 3.1 All burials must be authorised by the Council prior to funeral arrangements being publicly announced.
- 3.2 All requests must be made in writing. The Council will not be liable for any failure in arrangements for burial due to circumstances beyond its control.

- 3.3 Any request for interment, including cremated remains, must be submitted to the Council on an approved form and be completed to the satisfaction of the Council. The authorisation of the burial will not be granted unless the form is submitted at least 2 full working days prior to the burial taking place. Burials do not require 2 days' notice in cases of death from epidemic disease, or other interments required to take place immediately upon the production of a certificate from a Procurator Fiscal or a Medical Practitioner, or in the case of a body found at sea or washed ashore. If the applicant wishes to choose a new Lair, then the 2 full working days start at the time the new Lair is chosen. Weekends and public holidays are not considered to be working days.
- 3.4 Any request for interment must include any information deemed necessary by the Council. Interments may only take place during times fixed by the Council, except for circumstances meeting the criteria in Clause 3.3 above.
- 3.5 A statutory Certificate of Registration of Death, Cremation or Still Birth, shall be provided by the undertaker/agent to the Council prior to an interment taking place.
- 3.6 The Council will not accept a body for interment unless the body is properly enclosed in a suitably lined coffin.
- 3.7 The Funeral Director/Agent will be responsible for the provision of sufficient bearers to convey the coffin reverently from the hearse to the graveside and for lowering the coffin into the grave.
- 3.8 No coffin or casket shall be disturbed or removed from any grave under any circumstances unless permitted/instructed in writing by the Council.
- 3.9 No coffin shall be interred unless there is a minimum of a 60cm (approx. 2 ft) layer of earth available between the top of the final coffin and the surface ground level. Coffins in the same Lair must be separated from one another by a layer of earth not less than 15cm (approx. 0.5 ft) in thickness. No coffin shall be interred nearer than 75cm (approx. 2.5 ft) from the foundation or any part of a boundary, wall or building in a cemetery.
- 3.10 The number of burials which can be accommodated in any particular Lair may be indicated on the Lair Certificate, but it must be noted this cannot be guaranteed as ground conditions may limit capacity. The number of burials which can be accommodated in a specific Lair will be the decision of the Authorised Officer whose decision shall be final. Generally, adult Lairs can hold at least one adult coffin alongside up to six cremation caskets, although some Lairs can hold up to three adult coffins. Infant coffins may be accepted in adult Lairs, subject to size and ground conditions.
- 3.11 The Council will record every interment specifying the Lair number, the burial ground, the depth of the Lair, the date of interment, the name, last address and age of the person buried, burial depth and any other relevant information. An extract from a burial register, duly certified as a true copy by the Council, is sufficient evidence of the burial entered in it for the purposes of any court proceedings.

3.12 The Council will be responsible for fixing sunken Lairs as required or when notified by a relevant party.

4. Areas for Cremated Remains

4.1 Designated areas for cremated remains are only available in some burial grounds. These designated areas will be capable of holding up to four cremation caskets.

4.2 No cremation casket shall be interred unless there is a minimum of 30cm (approx. 1 ft) layer of earth available between the top of the casket and the surface ground level.

4.3 Cremated remains must not be scattered in any part of a burial ground.

5. Memorials

5.1 The erection of Memorials shall only be permitted on Lairs where a Right of Burial has been granted and paid for in full. Any applications made before the Right of Burial has been paid for in full will be refused.

5.2 A Lair Holder shall be entitled to have a Memorial erected provided it complies with current specifications as determined by the Council and that it will not intrude in any way over that part of the Lair that may require to be opened for future burials. No Memorial shall be erected or inscription added within any burial ground until a plan or sketch thereof showing suitable scale and inscription has been submitted on an appropriate application form and approved by an Authorised Officer. The stonemason must not proceed until they have received written approval from an Authorised Officer.

5.3 The application for the erection of a Memorial must be made in writing at least 21 days before it is proposed to erect the Memorial. Any inscription on a Memorial must be approved by and must conform to the administrative requirements of the Council applicable at that time.

5.4 All work in connection with the erection of any Memorial shall be undertaken by a mason who is accredited under the approved schemes managed by NAMM, or BRAMM or an equivalent approved scheme, and carried out to the satisfaction of an Authorised Officer. The whole expense of such erection and the fixing any damage to council or any other property shall be borne by the person instructing the erection of such Memorial. Foundations for all Memorials must be constructed in accordance with such recommendations issued by NAMM, or BRAMM. Memorials are erected at the owners own risk and the Council will not be responsible for any loss or damage howsoever caused.

5.5 The section and number of a Lair must be clearly and permanently marked / cut upon the side of the Memorial at the expense of the person erecting the Memorial. Any headstone which provides for two or more Lairs must have all Lair numbers marked on the side of the Memorial. The memorial mason will inscribe his identifying mark on the base of the headstone.

5.6 Maximum Dimensions for Headstones are:

	Height	Width*	Depth
Coffin Lair	150 cm	90 cm	45 cm
Casket Lair	75 cm	85 cm	30 cm
Baby Plot	45 cm	60 cm	30 cm

*Width must be 15 cm less than the width of the Lair

Any proposed variations to these measurements to be by written request to the Council who shall at its sole discretion have powers to waive or modify this regulation.

- 5.7 There should be no inscriptions or decoration of any kind on the rear of the Memorial, and nothing which could be construed as offensive. Please keep in mind that other users of the burial ground are likely to be grieving and have the right to use the space for peaceful reflection and mourning, without being encroached upon by untidy or disrespectful Lair decorations.
- 5.8 Kerbs, stones, footstones, railings, fences or any other structures (other than authorised Memorials) that delineate the Lair are not permitted.
- 5.9 The base of the Memorial may contain a flower vase holder. Additional forms of Memorials, vases, ornaments will only be permitted within 45cm out from the base of the headstone. When temporary Memorials, vases and other ornamentation is placed in this space it will be the responsibility of the Lair Holder to maintain the grass within this boundary. Any items out with this area will be removed by the Council without prior notice and stored for 28 days before disposal. Glass and pottery items are not permitted where they may present hazards to grounds maintenance staff. Noise-emitting items (e.g. wind chimes) are not permitted. These items will be removed by the Council without prior notice and stored for 28 days before disposal. The Council will not be responsible for any loss or damage to such items.
- 5.10 The planting of trees and shrubs shall not be permitted, and any such planting will be removed by the Council without prior notice. Any previous planting which is considered by an Authorised Officer to be inappropriate because of potential interference to any Memorial, grave or maintenance of the burial ground will be removed without prior notice.
- 5.11 The Lair Holder shall keep any Memorial clean and in a safe condition of repair of which an Authorised Officer shall be the sole judge. If the Lair Holder fails to make safe a Memorial 21 days after written notice to the Lair Holder at their last known address, the Council shall be entitled at the holder's expense either to repair any Memorials on that Lair, lay the Memorial flat, or have them removed in the name of public safety. Until the cost of such repairs or removals are paid, any further rights associated with the Lair shall be withheld. Sometimes Memorials are too unstable to leave standing for 21 days and will be laid flat immediately, and the Council will seek to notify the Lair Holder in this instance. The Council is not bound to re-erect any Memorial. The Lair Holder is advised to avail themselves of appropriate insurance cover in relation to their Memorial.

- 5.12 Where a Lair Holder is deceased, their legal successors assume liability in terms of Clause 5.11 above.
- 5.13 Memorial benches may be placed within burial grounds only with the authorisation of the Council, and all benches must be to the specification and design as decided by the Council. All benches are available for use by any and all visitors to the burial ground. Maintenance will be the responsibility of the person purchasing the bench. The Council will not be responsible for any damage sustained either by vandalism or storms. If the bench is deemed to be unsafe or beyond economical repair the Council will be free to remove the bench and is under no obligation to replace it. Notification will be sent to the last known address of the purchaser in this instance.
- 5.14 No Memorial or part thereof shall be removed from the cemetery without notification to the Council.

6. General

- 6.1 Information recorded in respect of the deceased, i.e. name, age, occupation, place of death, and burial location is deemed to be in the public domain. This includes the details of a deceased Lair Holder. Information recorded in relation to a Lair Holder who is not deceased is subject to General Data Protection Regulation (GDPR) and will only be used by the Council in relation to the burial service. Identifying information of a living Lair Holder such as name, address, and relationship to any previous Lair Holder will not be disclosed to any third party, including stonemasons and funeral directors, without the written unambiguous consent of the living Lair Holder.
- 6.2 Any burial grounds which are not permanently open shall have opening times at the main entrances. No person shall enter or wilfully remain in a burial ground except during the hours it is advertised as being open to the public by the Council. The Council may by notices posted at or near the place to which it refers, close any part to the public for such time as it may consider necessary.
- 6.3 No dogs shall be permitted into any burial ground with the exception of guide dogs.
- 6.4 Memorial wreaths will be removed when they wither or otherwise become unsightly in the opinion of an Authorised Officer. The timing of this may vary according to the season, however they will be left in place for at least 14 days. Families are advised to remove any tribute cards within this time. Christmas wreaths shall generally not be removed for disposal until after the end of January, unless their appearance has substantially declined. The Council does not accept any responsibility or liability for any damage to Memorials, ornamentation or flowers in any burial ground, howsoever caused. All items/Memorials/flowers are left at the owners' risk.
- 6.5 No works of any kind shall be permitted inside a burial ground without the sanction of an Authorised Officer who must be satisfied that the authority of the Lair Holder has been obtained before work commences.

- 6.6 Charges for permission to erect and place any Memorial in the cemetery or to make any inscription shall be in accordance with the fees determined by the Council. A table of fees relating to burial ground charges shall be kept at local Council offices and published on the Council's website. All fees and charges in connection with the interments, Lair certificates etc. shall be acknowledged on an official printed receipt form.
- 6.7 Car parks provided at burial grounds are for legitimate cemetery users such as use by funeral parties; council staff and stonemasons; families and the bereaved to visit plots; and for visitors researching their genealogy and local history. The use for overnight parking, camping and motorhoming is not permitted.
- 6.8 All vehicles on burial ground premises and in car parking facilities must be driven with due care and attention, and must not be driven in excess of 10mph. The Council shall not be held responsible for damage to vehicles or other property left in a burial ground, howsoever caused.

7. Nuisance

- 7.1 Whilst present in any of the Council's burial grounds, no person shall:
- a) Use offensive language or behave in an offensive, disorderly or insulting manner.
 - b) Wilfully or carelessly obstruct any employee of the Council in the exercise of their duties or in the execution of any works.
 - c) Wilfully or improperly interfere with any other person legitimately using the facilities provided by the Council or behave in such a manner as to endanger their own or any other person's safety.
 - d) Disobey any proper instructions given by any Council employee to ensure the safety and comfort of all persons using the burial ground.
 - e) Bring in any object or objects which may be considered by the Council to be dangerous.
 - f) Wilfully break, damage, deface, disfigure, tamper with or climb on any tree, shrub, wall, fence, railing, Memorial, fountain, statue, building or other structure in the burial ground.
 - g) Wilfully or carelessly damage, destroy or improperly soil any article supplied for use by the Council.
 - h) Retain or remove any article supplied for use by the Council after it has been used.

8. Contravention of the rules

- 8.1 The following provisions apply to a contravention by any person of the Management Rules
- 8.2 An Authorised Officer may:
- a) if he/she has reasonable grounds for believing that a person has contravened, is contravening or is about to contravene a management rule, expel that person;
 - b) if he/she has reasonable grounds for believing that a person is about to contravene a management rule, exclude that person; from the land or premises to which the rule applies.

8.3 Any person who has persistently contravened or attempted to contravene the management rules and is in the opinion of the Council likely to contravene or attempt to contravene them again, may be made the subject of an exclusion order in terms of Section 117 of the Civic Government (Scotland) Act 1982.

8.4 Any person who:

- a) on being required to leave burial grounds by an Authorised Officer who has reasonable ground for believing that the person has contravened or is contravening or is about to contravene any of the foregoing management rules, fails to leave;
 - b) on being informed by an Authorised Officer who has reasonable grounds for believing that the person is about to contravene any management rule applying to any land or premises that he is excluded from the land or premises, enters or attempts to enter the land or premises; or
 - c) is subject to an exclusion order under Section 117 of the Civic Government (Scotland Act) 1982 and enters or attempts to enter the crematorium to which the exclusion order relates,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 of the standard scale of fines.
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