

East Ayrshire  
COUNCIL

# **East Ayrshire Council Bereavement Services Home Burial Guidance**

## **East Ayrshire Council** **Home Burial Guidance**

### **General**

1. Scots law does not prescribe any particular method of disposing of the dead. In normal circumstances, the first issue to arise following a death is whether disposal is by way of burial (in churchyard or cemetery) or cremation. The death must be registered, and any procurator fiscal interest in the body must be resolved. The body can then be released to the next of kin or executor who must make the necessary arrangements for disposal.
2. Close relatives and possibly friends usually determine the place and manner of disposal, often in accordance with the deceased's wishes. Failing that, it is the duty of the local authority under Section 50 of the National Assistance Act 1948 to dispose of the body.  
Relatives or friends may decide on the place for disposal other than a churchyard or cemetery, subject to restrictions imposed under a number of different statutory provisions, for example public health, planning, pollution or subject to the law of nuisance at common law. Certain local statutes may apply in particular areas.

### **Private Burial Places**

There is no specific restraint under the law of Scotland on a person setting apart a portion of his ground as a family burial place, or as a place for a small number of graves and it is not considered illegal to create private cemeteries. However, a decision to provide any such private burying place could be defeated, if it were shown to be injurious to health or to be a nuisance to neighbouring proprietors. Under the common law of nuisance an adjacent proprietor would have a remedy in respect of any use of property which occasions serious disturbance or substantial inconvenience to him or material damage to his property. A private burying place would not be a burial ground within the meaning of the Burial Grounds (Scotland) Act 1855, for which certain consents and procedures are required under that Act.

### **Public Health Aspects**

Under sections 79-80 of the Environmental Protection Act 1990 a "home burial" might constitute a nuisance within the meaning of the Act if it could be demonstrated that it was "Prejudicial to Public Health". Clearly the context of the burying place would be relevant: a "home burial" in a remote part of a farm would be less likely to constitute a nuisance than within a domestic garden. If in the opinion of the local authority or the designated medical officer such a nuisance existed or if the interment takes place and constitute such a nuisance or was likely to occur, the local authority could serve a notice on the author of the nuisance requiring them to remove it or prevent its' occurrence. The authority, or an individual, can thereafter take proceedings in the sheriff court against the nuisance.

## **Planning Aspects**

The question of whether planning permission is required for a private burying-place depends on whether the proposed burying-place involves the carrying out of development, which means building operations or the making of any material change of use in terms of the Town and Country Planning (Scotland) Act 1997. It would be for the planning authority to decide, in the circumstances of each case, whether any particular proposal did in fact amount to a material change of use. The decision is largely a matter of fact and degree, taking into account the characteristics of the proposal and in particular the likely physical planning and environmental implications. Although planning permission may not be required for individual graves on private land, a person contemplating a home burial particularly involving the erection of a headstone would be well advised to seek advice at an early stage from the local authority planning and environmental health officers, as well as checking whether there are restrictions in any local legislation.

## **Effect on Public / Private Water Supplies**

Under the Control of Pollution Act 1974, as modified by the Water Act 1989, it is an offence to cause or knowingly permit to enter “controlled waters” any poisonous, noxious or polluting material or any solid waste matter. The disposal of human remains could come within the scope of the above provisions. It would be prudent therefore for those contemplating or arranging a home burial to contact the Scottish Environment Protection Agency (SEPA) for the appropriate area and should also contact Scottish Water to ensure there will be no contamination of the local public water supply.

The agreement of the local Environmental Health Service (EHS) should be sought in relation to private water supplies, and the EHS may withhold its agreement where there is an identified or perceived risk to a private water supply. Where contamination of a private supply occurs, the EHS can take enforcement action under the provisions of the Water (Scotland) Act 1980 requiring the person responsible for the contamination to remove it, in the case of home burials this would normally be the landowner.

## **Effect on a Mortgaged Property**

If the property is subject to a mortgage, permission will have to be obtained from the company which issued the mortgage loan. As the property may be unsellable once a “Home Burial” has been carried out within the grounds, they may not allow the burial or may place very restrictive provisions on it.

## **Council Housing**

It should be noted that if the dwelling is owned by East Ayrshire Council, the Council as a landlord would not permit a home burial within any part of the dwelling including all garden ground pertaining to the tenancy.

## **Other Landlords**

Tenants of other landlords must contact their landlord and seek their permission prior to making any plans for a Home Burial.

## **Registration of Burials on Private Land**

Although there is no statutory requirement in Scotland to register burials on private land it is desirable, in order to guard against the possibility of the inadvertent disturbance of remains, the particulars of the burial should be noted and the information kept with the deeds to the property concerned.

## **Burials in Private Ground (Home Burials)**

Having given due consideration to the foregoing legal, public health and planning aspects of Home Burials, (in all instances except where the deceased was stillborn and less than 24 weeks gestation registration of the deceased must take place within 8 days from the date of death) you should give consideration to the implications of such action.

Burial in private ground is viewed by some members of the public as a suitable place of rest, and it is assumed that this will be the final resting place for yourself or that of a loved one. Little consideration is given to how permanent this resting place might be:-

- a) Will your family choose to remain in the family home after your death?
- b) Can you be sure that the property can be sold when the prospective purchasers are made aware that a burial has taken place within the garden area?
- c) Will your family be granted the right of access to visit the grave or carry out necessary maintenance on any memorial?
- d) Will the prospective purchasers demand that the human remains are removed prior to settlement of the contract?

(It is a criminal offence to disturb human remains without the authority of the Sheriff)

This raises another question:-

Who is the rightful person to make application for the disinterment of any remains?

- a) Would it be the new owner of the property or
- b) The relatives of the deceased, who may not now be the land owners.

It should be borne in mind that either party might be able to prevent the exhumation

If the new property owners wished to exhume the human remains to allow for the extension to existing dwellings, the relatives of the deceased can object.

You cannot assume that the Sheriff will always grant authority for an Exhumation.

Warrant for the removal of the remains if you decide to leave your property and seek accommodation elsewhere.

Only land owners having the unencumbered title to the ground can carry out interments of human remains out with a designated burial land.

If the property is subject to a mortgage, permission will have to be obtained from the company which issued the mortgage loan. As the property may be unsaleable once a "Home Burial" has been carried out within the grounds, they may not allow the burial or may place very restrictive provisions on it.

## **Arranging a Burial or Cremation without the assistance of a Funeral Director within Cemetery and Crematorium facilities.**

Local Authorities and Private Cemetery or Cremation Companies are not necessarily opposed to the concept of members of the public choosing to carry out either Burial or Cremation arrangements without the services of a Funeral Director. There is no legal reason why you cannot manage the funeral arrangements if you so desire.

Local Authorities and Private Cemetery or Cremation Companies will, however, insist on the proper local or statutory applications being made for each burial or cremation together with the necessary registration and medical certificates as applicable. Carrying out funeral arrangements on behalf of a relative or friend will not excuse you from the statutory or local requirements connected with the disposal of the dead, these are;

### **At the time of Death**

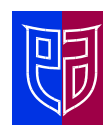
If the death occurs at home you should contact your Doctor who will attend and confirm the death and subsequently issue a certificate stating the cause of death. The Death Certificate may sometimes be issued immediately or may be made available for collection later from the Doctor's surgery. If the death occurs in a hospital it is normally the Doctor attending who will issue the Death Certificate. The Hospital Administrator will advise you when the Death Certificate is available for collection from the hospital. When a death occurs and the Doctor who attends is unable to state the cause of death, the Doctor will inform the Procurator Fiscal and a Death Certificate will not be issued until the reason for death is determined.

- a) Registration of Death. Deaths must be registered by the Registrar of Births and Deaths. An appointment must be made to register the death and this must be completed within 8 days of death. The next of kin should attend the Registry Office in order to complete the registration taking with him or her Death Certificate issued by the deceased's Doctor or by the hospital.
- b) Completion of Application forms for either Burial or Cremation, (these can be obtained from your local Burial and Crematorium Office)
- c) Ensuring **that all Medical forms are returned to the relevant authority.**
- d) Burial and Cremation fees and charges are normally paid in advance of the burial/cremation.

You will be the contact person for the relevant Burial or Cremation authority who will insist that all information is conveyed to them timeously. With regards to carrying out the funeral itself, you should discuss all the arrangements with the authority before you decide to proceed.

Consideration must be given to the type and size of coffin that is to be used, especially where cremation is chosen as the method of disposal, to ensure compliance with the Cremation Authorities' requirements, regarding protection of the environment. It is therefore essential that you contact your Burial or Cremation Administration to obtain guidance prior to making any arrangements.

## NOTES –



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