

MORAY COUNCIL CIVIC GOVERNMENT (SCOTLAND) ACT 1982

MANAGEMENT RULES FOR ALL CEMETERIES AND BURIAL GROUNDS

Moray Council incorporated under the Local Government etc. (Scotland) Act 1994 (hereinafter referred to as “the Council”) in exercise of the powers conferred on them by the Civic Government (Scotland) Act 1982, Section 112 hereby make the following Management Rules applicable to all Cemeteries and Burial Grounds managed, regulated or controlled by 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 & Cremation (Scotland) Act 2016.

1. INTERPRETATION

In these Management Rules the following expressions shall have the meanings hereby assigned to them, that is to say:-

(i) “Burial Grounds Clerk” is the Officer employed by or authorised by the Council to issue Lair Certificates and to maintain the Register of Lairs and Lair Holders within the Cemeteries and Burial Grounds in Moray managed, regulated or controlled by the Council.

(ii) “Cemeteries and Burial Grounds” are any area of ground within Moray acquired for, already or to be in use as a churchyard, cemetery or burial ground which have been, are or shall be managed, regulated and controlled by the Council under the Burial & Cremation (Scotland) Act 2016, the Church of Scotland (Property and Endowments) Acts 1925 and 1933 and any legislation amending or repealing the same.

(iii) “The Lair” is the piece of ground within a particular Cemetery or Burial Ground in which the exclusive right of burial is granted by the Lair Certificate for the burial of coffins and/or cremation caskets.

(iv) “The Lair Certificate” is the Certificate of Right of Burial granted by The Moray Council, or by their statutory predecessors.

(v) “The Lair Holder” is the individual (or in the case of Trustees or Executors) the individuals in whose name the Lair Certificate is registered.

(vi) “The Register” means the Register of Lairs and Lair Holders retained by the Burial Grounds Clerk.

(vii) In these Management Rules the singular shall include the plural and vice versa. The masculine shall include the feminine and vice versa.

(viii) “Memorial” means any commemorative marker placed over or upon a grave or lair (e.g. headstone).

2. MANAGEMENT AND CONTROL OF CEMETERIES AND BURIAL GROUNDS

(i) The overall responsibility for management and control of Cemeteries and Burial Grounds in Moray is delegated to the Head of Environmental & Commercial Services or to such other

officer authorised or appointed by the Council for this purpose (hereinafter referred to as “the Director”).

(ii) Within any Cemetery or Burial Ground visitors should confine themselves to paths where provided and should not interfere with headstones, monuments, ornaments, floral tributes or plant material relating to a Lair which he/she/they are not visiting.

(iii) Within any Cemetery or Burial Ground visitors must not uproot, destroy or damage in any way, flowers, shrubs or trees. The Burial Grounds Clerk or the authorised member of the Council’s staff shall be entitled to require any person (a) having alcoholic liquor in his or her possession, (b) under or appearing to be under the influence of alcoholic liquor, drugs or toxic substances, (c) who misbehaves, conducts him or herself improperly or (d) who causes damage to all or any part of the Cemetery or Burial Ground to leave forthwith. “Alcoholic liquor” shall be as defined in the Licensing (Scotland) Act 1976 or in the legislation amending or repealing the same.

(iv) Visitors are not permitted to bring a dog into a Cemetery or Burial Ground except on a short leash and under close control.

(v) Children under 12 years of age are not permitted in a Cemetery or Burial Ground unless accompanied by an adult.

(vi) Apart from those vehicles belonging to Undertakers, Monumental Masons, those officiating at a burial and those belonging to or authorised by the Council to carry out maintenance of a Cemetery or Burial Ground, **only** disabled persons will be permitted vehicular access. All other vehicles must be parked outwith the Cemetery or Burial Ground or, where applicable, confined to designated parking areas within the Cemetery or Burial Ground.

3. EXCLUSIVE RIGHT OF BURIAL

(i) The Council may sell a Right of Burial in a Lair in one of its burial grounds on the application of any person. Allocation of a Lair is made by an authorised member of the Council. The Council does not allow for families or third parties to select the location of a lair within a cemetery and allocations made by Funeral Directors or others persons will not be honoured.

(ii) Pre-purchasing of lairs is not permitted.

(iii) The Burial Grounds Clerk shall provide the Lair Holder with a Lair Certificate which describes the Lair and which, subject to these Management Rules, makes available to the Lair Holder an exclusive right of burial in the Lair. A Lair Holder shall also have the exclusive right to have or permit that Lair registered in their name to be opened. Production of the Lair Certificate will be sufficient for each of these rights. Except in the case of Trustees or Executors only one person shall be registered as the Lair Holder.

(iv) A Lair Holder shall not be entitled to sell an exclusive right of burial in a Lair other than to the Council who may purchase unused lairs back at 90% of the original purchase price. Other than as permitted by these Management Rules the Lair Holder shall not be entitled to transfer a Lair to a third party without an application to the Council who are responsible for issuing and transferring lairs.

(v) In the event of a Lair Certificate being lost or unavailable the Burial Grounds Clerk may, on application and after due enquiry, issue a duplicate Lair Certificate in the name of the

registered Lair Holder on such terms and conditions as the Council deem fit.

(vi) On the death of a Lair Holder and notwithstanding the place of domicile at their death, the right of succession to the Lair will be governed by the Law of Scotland. The Lair is capable of bequest but if more than one beneficiary is entitled to claim it under the Will, the Executors appointed thereunder or, in the absence of any Executors, the beneficiaries, shall nominate one of the beneficiaries to be the Lair Holder. Within 28 days or at least as soon as practicable the name and address of the nominated beneficiary shall be intimated in writing to the Burial Grounds Clerk who will then issue a Lair Certificate in the name of the beneficiary. 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. Written permission of legal successors is preferred by the Council, however, 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 if it is subsequently found that such a claim is unfounded. This approach also applies to applications for erections of Memorials.

(vii) If the Lair Holder dies intestate, the Lair will form part of their estate and will fall to such beneficiary entitled to it under the Succession (Scotland) Act 1964, as amended and any legislation amending, repealing or replacing the same in the following order of succession:

- The lair holder's spouse or civil partner
- The lair holder's children (biological or adopted but not step children)
- The lair holder's grandchildren
- The lair holder's great grandchildren
- The lair holder's parents (If still living)
- The lair holder's brothers or sisters
- The lair holder's Aunts and uncle
- The lair holder's cousins
- Remoter descendants in order of descent
- Ascendants in order of ascent.

(viii) In the event of there being more than one person in any class of relative, the exclusive right of burial will be shared equally and if one person wishes to exercise that right then written consent will be required from the remaining entitled lair holders. In the event of any dispute arising between entitled lair holders the Council will not get involved. Persons in dispute will need to obtain independent legal advice or access alternative dispute resolution/mediation services independently from the Council. The lair holder shall, be permitted to bequeath the lair to any member of his, her or their family or to a stranger. The Council shall not be responsible for any misunderstanding or error in the acceptance in good faith of any person claiming to be the legal lair holder, or to have a right of burial even though it should be ascertained subsequently that such a claim was unfounded.

(iv) Other than on death of the Lair Holder a transfer of the Lair can be made at any time by an Application from the Lair Holder to the Council. The Burial Grounds Clerk or other authorised officer will, if satisfied as regards entitlement, make the appropriate entry in the Register and then issue a new Lair Certificate to whoever is to be the new Lair Holder. The new Lair Holder will not have any right or interest in the Lair until (a) satisfactory evidence of entitlement is exhibited to the Burial Grounds Clerk and (b) all purchase and burial dues in relation to the Lair have been paid.

(x) For any burial within a Lair the individual instructing it shall be personally liable for all burial dues and fees.

(xii) Lair rights will be sold to accommodate two standard sized coffins (to a maximum of three where ground conditions allow). (Note- no reduction in charges will be made where the interment of three standard sized coffins cannot be accommodated)

4. NOTICE OF BURIAL

(i) Arrangements for burials can be made via the Notice of Burial form during normal office hours. Any arrangements outwith normal office hours and on public holidays shall be communicated in advance to local Funeral Directors.

(ii) The Council will communicate operational times available for booking burials and may alter these times at its discretion. Any request for burial booking made via a Notice of Burial form must include information deemed necessary by the Council. No Notice of Burial / booking time is accepted until confirmed by the Burials Clerk or other authorised officer. All burials must be authorised by the Burial Grounds Clerk prior to funeral arrangements being publicly announced, otherwise the Council shall have no responsibility for costs incurred as a consequence of any changes having to be made.

(iii) No burial shall take place outwith normal office hours except in the case of urgency and then only with the consent of the Burial Grounds Clerk or other authorised officer. Requests for burials received within the same hour (or digitally outwith normal office hours) will be given effect to in the order in which they are received.

(iv) Notice of a burial, whether of coffin or of cremated remains, must be given to the Burial Grounds Clerk on a form specified by or approved by the Council allowing 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.

(v) An application for the burial of cremated remains must be made to the Burial Grounds Clerk and the same information supplied as for burial of a coffin.

(vi) If the Certificate cannot be produced the Burial Grounds Clerk or other authorised officer may, at their sole discretion, allow the burial to take place on such terms and conditions as may seem appropriate, including the completion of an indemnity form and/or deposit of caution by the person instructing the burial. In that situation the Council and their officers shall have no liability whatsoever.

5. BURIALS

(i) Only a maximum of three coffin burials (in some cases only two where ground conditions may limit capacity) will be permitted at any time in any Lair, but any combination, subject to the maximum relating to the space available, of adult and child burials and cremation caskets may be permitted at the discretion of the Burial Grounds Clerk or other authorised officer. No burials shall be made without at least 914mm (3ft) of soil between the surface of the ground and a casket.

(ii) The Council shall have the sole authority to declare a Lair to be full. No further burials shall be permitted in any Lair declared to be full.

(iii) The digging of graves, the infilling of graves, and the preparation for the laying of foundations for monuments, shall only be carried out by employees of the Council.

(iv) The Council reserve the right to use the ground of an adjacent Lair for placing soil thereon when a burial is taking place within a particular Lair. Care will be taken to protect

any flowers or tributes that may be on the adjacent Lair and returned to the lair afterwards should these need to be temporarily removed or placed behind the headstone.

(v) Memorial wreaths shall be removed from a Lair whenever the Council in its discretion considers appropriate (normally 14 days after the burial). Where wreaths are placed on lairs at Christmas and the Lair holder wishes to retain them, arrangements should be made to remove these from lairs by the end of January as these will normally be removed by the Council from the first day in February.

(vi) No burials will be permitted where the body has not been placed in a coffin.

(vii) No animals or pets will be buried in any Cemetery or Burial Ground.

(viii) The Funeral Director / Agent will be responsible for the provision of sufficient bearers to convey the coffin from the hearse to the graveside and for lowering the coffin into the grave.

(viii) The Council will check Lairs within 4 weeks following an interment and arrange to fix any sunken ground where required. After this time the Council may repair sunken lairs at its discretion and if resources allow.

6. BURIAL OF CREMATED REMAINS

(i) Cremated remains shall not be scattered in any part of a Cemetery or Burial Ground without the prior consent of the Burial Grounds Clerk, and without the presence of a member of staff authorised by the Council.

(ii) A maximum of two caskets of cremated remains shall be allowed in every Garden of Remembrance plot.

7. MEMORIALS, MONUMENTS AND PLAQUES

(i) Any plant, bush, or memorial wreath, if considered unsuitable, may be removed by the Council's Burials staff or by a member of staff authorised by the Council.

(ii) Lair Holders will be permitted to place such vases, and/or a number of suitable containers for flowers as the Council may permit in the headstone area. Any vase or container of a material considered to be unsuitable may be removed.

(iii) Lairs laid out in turf shall be maintained by, and at the expense of, the Council, except that, vases or flowers, or other items of memorialisation placed within the permitted space (headstone area) shall continue to be the responsibility of the Lair Holder. The Council shall cut grass as close as possible to decorations placed within the permitted area on a lair and may cease grass cutting if access is obstructed. No capital payments for future maintenance of any Lair will be accepted by the Council.

(iv) Headstones shall not be erected on a Lair until all outstanding invoices issued by the Council in relation to a burial within it are settled or 50% of payments due on a payment plan have been made.

(v) A Lair Holder shall be entitled to have a headstone erected. Such a headstone shall be erected centrally and shall not protrude in any way over the part of the Lair to be opened for burial or any adjacent lair. The maximum width of the headstone and its base shall be at least 150mm (6") less than the width of the lair and shall not exceed 1200mm (4ft) in total height above ground when erected, including the exposed base. The maximum thickness

of the headstone shall not exceed 300mm (1ft). Headstones shall not protrude in any way over a lair, including those behind or adjacent.

Any monument shall be erected in accordance with the Code of Working Practice of the National Association of Memorial Masons and British Standards – BS8415. The section and lair number must be cut plainly on the side of the headstone at the expense of the Lair holder.

(vi) No erection or inscription on any monument shall be permitted without the approval of the Burial Grounds Clerk or other authorised officer, to whom a specific written statement with a drawing of what is proposed is submitted. Kerbs, copes, corner stones, fences or railings shall be confined to the headstone area and only with the prior written consent of the Council. Monuments may be erected only at such times as are permitted by the Council.

(vii) The Lair Holder shall have the primary responsibility for keeping a headstone or monument on a Lair in a vertical and safe condition in relation to which the Council shall be the sole judge. Except in emergency, where the safety of the public and Council employees is paramount and the Council take appropriate steps to make a particular headstone or monument safe, the Council will be entitled to repair the headstone or monument in question, or to have it made safe in accordance with its headstone stability procedure. In either event the works done will be at the expense of the Lair Holder and until the cost of such repairs or removal is paid the right under the Lair Certificate shall be withdrawn.

(viii) Where, after enquiry, the address of the Lair Holder remains unknown, the Council shall give notice of their intentions to make the headstone safe by placing a small notice adjacent to the headstone. Where a headstone or monument which has fallen or assumed a dangerous position, it shall be possible for the Council to have such monument or headstone made safe (usually by 'trenching in' the headstone adjacent to the plinth on the Lair in question), to facilitate maintenance of the Cemetery or Burial Ground. The Council is not bound to re-erect any Memorial.

(ix) Where a Garden of Remembrance exists with a memorial wall within a Cemetery or Burial Ground, wall mounted monuments and plaques will be permitted within it. Where such a Garden of Remembrance does not exist, wall mounted monuments and plaques will not be permitted.

(x) The Lair Holder shall be liable for any damage to or by any monument or memorial on the Lair. Excavation work for a new headstone foundation must be carried out by employees of the Council and charges therefore shall be made according to rates to be fixed from time to time by the Council.

(xi) The Council will not accept liability for loss or damage to any headstone, monuments, plants, bushes, memorial wreath, vase, or container which they remove under (i) to (x) above or which are lost or damaged as a result of actions or omissions by an unauthorised third party.

(xii) The Council reserve the right from time to time to repair any subsidence in Lairs without prior notification to Lair Holders.

(xiii) Herbicides will be applied to unplanted open ground around the headstones and monuments to control seasonal weed growth and the council will not be liable for loss or damage to any planted material.

8. GENERAL

(i) The Council will maintain cemeteries using the limited resources available to it for grounds maintenance and other maintenance works within cemeteries. Information on the level of grounds maintenance services that can be provided will be published on the Council's website, including any service disruptions or delays to the delivery of routine maintenance works.

(ii) The Burial Grounds Clerk will be responsible for the maintenance of the Registers in which will be entered details of every burial which will include the name of the Burial Ground or Cemetery reference number of the Lair, the depth of the grave(s) within it, the date of burial, the name and age of the person buried, and all other necessary information. The Registers will be available for public inspection during normal office hours and without any payment being made therefor.

(iii) All Cemeteries and Burial Grounds shall be open to the public on such days and during such hours as the Council may from time to time determine.

(iv) The Council reserves the right from time to time to amend, alter or replace these Rules with such others as they may consider appropriate for the proper or better management of the Cemeteries and Burial Grounds.

(v) The Council reserves the right from time to time to vary the charges made for Burials and other services.

(vi) These Rules supersede any Rules and Regulations however described previously issued by the Council and its predecessors in relation to any of the Cemeteries and Burial Grounds under their control. All former Rules and Regulations in respect of Cemeteries and Burial Grounds within Moray are hereby revoked.

(vii) Should any question arise as to the meaning and interpretation or in relation to what is needed to satisfy any requirement or requirements of these Management Rules the point or points at issue will be referred to the Head of Environmental and Commercial Services in the first instance and then on appeal to the Council whose decision will be final.

(viii) These Rules shall be known as the Moray Council (Cemeteries and Burial Grounds) Management Rules 2023 and shall come into force on 5 September 2023