

Bereavement Services



RULES AND REGULATIONS FOR THE MANAGEMENT OF WEST DUNBARTONSHIRE CEMETERIES

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THE MANAGEMENT OF
WEST DUNBARTONSHIRE COUNCIL CEMETERIES**

By virtue of the powers contained in Sections 112-118 of the Civic Government (Scotland) Act 1982, West Dunbartonshire Council, incorporated under the Local Government Etc (Scotland) Act 1994 and having their offices at Council Offices, Garshake Road, Dumbarton, hereby make and enact the following Management Rules for the regulation of all cemeteries and burial grounds situated within the boundaries of West Dunbartonshire and which are under the Council's control.

1. INTERPRETATION OF TERMS THROUGHOUT THESE MANAGEMENT RULES

Throughout these management rules:-

“Burial” refers to burial of a corpse or corpses in a coffin and may also include burial of ashes of a body in a wooden casket.

“Cemetery” refers to any cemetery which has been, which is presently, or which may subsequently be, vested in West Dunbartonshire Council under the Burial Grounds (Scotland) Act 1855 as amended and where appropriate also includes a “crematorium” as defined by the Crematorium Acts 1902 and 1952 as amended and includes a churchyard, as defined by the Church of Scotland (Property and Endowments) Act 1925, the Church of Scotland (Property and Endowments) Amendment Act 1933, the Local Government (Scotland) Act 1973, and the Local Government etc (Scotland) Act 1994, and all subsequent amendments thereto.

“Claimant” refers to a person claiming to be entitled to exercise a right of burial in a lair in terms of regulation 6 hereof.

“Coffin” refers to a box or casket in which is enclosed a corpse and may also include an urn, if appropriate.

“Director” refers to the Director of Housing, Environmental and Economic Development of West Dunbartonshire Council or his representative.

“Lair” refers to a lair in a Cemetery.

“Lairholder” refers to the owner of the exclusive right of burial in a lair.

“Lawful day” refers to any Monday to Friday inclusive, subject to the terms of regulation 16 hereof.

“Lair Certificate” has the definition assigned to it by Clause 4 a) hereof.

“Monument” refers to a monument, gravestone, tablet or any appropriate monumental inscription.

“Register of Lairs” has the definition assigned to by Clause 3 a) hereof.

“Representative” refers to all employees of West Dunbartonshire Council employed on, in or around a cemetery or any other person authorised by West Dunbartonshire Council to act on

behalf of the Director of Housing, Environmental and Economic Development in connection with these Rules and Regulations.

“Resident” refers to having a main or sole residence within West Dunbartonshire at the time of application to purchase an exclusive right of burial in a lair; or, at the sole discretion of the Director of Housing, Environmental and Economic Development, shall mean having such other connection with West Dunbartonshire as the Director of Housing, Environmental and Economic Development in his sole opinion shall consider appropriate.

Except where stated otherwise, the Interpretation Act 1978 shall apply to the interpretation of these Rules and Regulations in the same manner as it applies to the interpretation of an Act of Parliament.

2. SALE OF AN EXCLUSIVE RIGHT OF BURIAL

- a) Residents of West Dunbartonshire and non-residents may, on payment of the appropriate fee, to be fixed from time to time by West Dunbartonshire Council, apply to purchase an exclusive right of burial in a lair.
- b) The Council, under certain circumstances, may determine that the sale of lairs shall be restricted to residents of West Dunbartonshire and that further restrictions, as approved by the Director of Housing, Environmental and Economic Development, may apply to the sale of such lairs.
- c) Certain lairs are reserved for interment of cremated remains, which must be interred in urns conforming to such dimensions and specifications as West Dunbartonshire Council may from time to time stipulate.
- d) The exclusive right of burial in lairs shall be sold at such price as West Dunbartonshire Council may from time to time determine.
- e) Notwithstanding the above, all rights in a lair shall be deemed to have transferred back to the Council should said lair be unused for fifty years or more from the date of purchase of the rights. The deemed transfer shall be effective after the Council has taken all reasonable steps to identify and notify the Lairholder or their successor.

3. REGISTRATION OF SALE OF EXCLUSIVE RIGHT OF BURIAL

- a) In respect of each Cemetery there shall be kept a Register (hereinafter called “Register of Lairs”) in which shall be recorded the names and addresses of lairholders from time to time, along with particulars of the lairs to which the lairholders have acquired exclusive right of burial.
- b) The name of one person only shall be entered in the Register of Lairs as the owner of the exclusive right of burial in a lair. Joint ownership is expressly prohibited except in the case of Trustees or where West Dunbartonshire Council so permits.
- c) The entry in the Register of Lairs of the name of the lairholder and the corresponding lair, in which he has an exclusive right of burial, shall be prima facie evidence of that person’s right to that lair.

4. CERTIFICATES OF EXCLUSIVE RIGHT OF BURIAL

- a) West Dunbartonshire Council shall furnish Lairholder with a Certificate (hereafter called "a Lair Certificate") specifying the lair to which he/she is entitled.
- b) An entry of the issue of a Lair Certificate shall be made in the appropriate Register of Lairs.
- c) West Dunbartonshire Council shall charge a specified fee for making entries in the Register of Lairs and for the issue and endorsement of Lair Certificates.

5. TRANSMISSION OF RIGHT OF BURIAL

- a) A lairholder shall not be entitled to sell, dispose of, or transfer his right of burial in his lifetime except with the written consent of West Dunbartonshire Council, which shall have the right of pre-emption. Where such consent is granted it shall only be granted on payment of such fee as may from time to time be determined by West Dunbartonshire Council. West Dunbartonshire Council may exercise said right of pre-emption without requiring to compensate the lairholder therefore.
- b) Should a lairholder who is resident in West Dunbartonshire wish to transfer his right of burial to a non-resident within five years of the initial date of purchase from West Dunbartonshire Council, the Council shall reserve the right to charge a fee for the transfer, which shall be equivalent to the difference between the resident and the non-resident purchase fees.
- c) A lairholder shall not be entitled to inter any body or ashes in his or her lair for any consideration or other onerous causes whatsoever.
- d) Subject to the provisions of these Rules and Regulations, a lairholder may dispose of his right of burial after death, and a lairholder in two or more lairs may, after death, dispose of the right of burial in each lair separately.
- e) If a lairholder bequeaths a lair to more than one person, the assignation in that case shall be disregarded and the foregoing Rules as to succession of the lair shall be applied and take effect. In the event of such a bequest, West Dunbartonshire Council shall not be responsible for any misunderstanding or error in the acceptance of any person claiming to be the lairholder or to have a right of burial even though it should be ascertained subsequently that such a claim was unfounded, and shall not compensate, reimburse or otherwise make good any loss howsoever caused by such acceptance.
- f) If a lairholder dies leaving a widow or widower and/or children then, notwithstanding the transmission of the right to some other person, such widow and such children as shall not have attained the age of 21 years may be interred in the lair unless the lairholder shall have made express provision to the contrary in any valid testamentary writing.
- g) If a lairholder bequeaths his lair more than one person or if he dies without making any provision for the transfer of his lair or otherwise in the event that a specific bequest of the lair cannot be implemented the lair shall pass to his widow whom failing his eldest child which failing the succession shall be regulated by the law of succession in Scotland.

6. EVIDENCE OF TRANSMISSION OF RIGHT OF BURIAL

- a) A person claiming to be entitled to exercise a right of burial in a lair shall not be recognised nor entitled to exercise that right until he has:
 - i. Provided evidence of his Title thereto to the satisfaction of West Dunbartonshire Council, and West Dunbartonshire Council may order such public or other notice of any application to be made as they judge necessary, at the expense of the claimant;
 - ii. Lodged with West Dunbartonshire Council the Lair Certificate to which he claims to be owner either by original purchase thereof or by succeeding thereto in terms of clause 5(f) hereof or other such evidence as may satisfy West Dunbartonshire Council, and
 - iii. Paid the appropriate fees specified from time to time by West Dunbartonshire Council.
- b) Particulars of every such transmission of a right of burial shall be entered in the appropriate Register of Lairs.
- c) Prior to exercising the right of burial as aforesaid, a claimant may apply, on production of the original Lair Certificate, to have a memorandum of entry endorsed on the original Lair Certificate confirming that he has been registered as a lairholder with West Dunbartonshire Council. Such endorsement will be issued only on production of such fee as West Dunbartonshire Council may from time to time impose. If the said original Lair Certificate is missing an application as aforesaid may be made and a new Lair Certificate with memorandum of entry endorsed thereon may be issued. This is subject to payment of such fee as West Dunbartonshire Council may from time to time impose and payment of the premium of such indemnity insurance policy as West Dunbartonshire Council may wish to obtain.
- d) In the event of there being competing claims to a lair the Director of Housing, Environmental and Economic Development shall settle such dispute in such manner as he shall see fit and shall thereupon register that person as a lairholder and shall not pay the other party or parties compensation in any form in respect of any unsuccessful claim.

7. INTERMENTS

- a) An interment in a cemetery shall not be allowed unless notice of the intended interment shall have been given in accordance with paragraph (b) hereof, and the appropriate Lair Certificate or other satisfactory evidence of the applicant's right exhibited to the Director or his representative in accordance with Regulation 6 hereof. The appropriate interment fees as shall be fixed from time to time by West Dunbartonshire Council must also have been paid in full.
- b) Notice of an interment must be given to the Director as early as possible. Separate details of interment notification timescales shall be issued from time to time in accordance with the prevailing operating procedures. Notice of interment shall state name, age, date of death, address of deceased and day and lair of interment.
- c) Every such notice of an intended interment shall be made on the printed form which may be obtained from West Dunbartonshire Council Offices.

- d) West Dunbartonshire Council will not be responsible for any delay in preparing a grave for an interment howsoever such delay is occasioned, whether through the fault, negligence or otherwise of West Dunbartonshire Council, its employees or any independent contractors employed by West Dunbartonshire Council.
- e) Subject to the terms of regulation 16 hereof, interments must take place between the following hours:-

Monday to Saturday inclusive 09.00 -14:30

No interment will be permitted to take place outwith these hours or on Sundays, except on production of a Medical Certificate in cases of urgency as agreed with the Director of Housing, Environmental and Economic Development and then only on payment of the appropriate fees determined from time to time by West Dunbartonshire Council.

8. DIGGING OF GRAVES

Only authorised employees of West Dunbartonshire Council shall be allowed to dig and infill graves in a Cemetery.

9. DEPTH OF GRAVES

- a) No lairholder shall be entitled to have the ground opened to a greater depth than seven feet, unless the lairholder shall have obtained the prior written permission of the Director, which permission shall state the maximum depth permitted and the maximum numbers of coffins to be interred.
- b) In a grave not exceeding six feet in depth, not more than two, and in a grave of seven feet, not more than three coffins shall be interred, provided always that no interment shall be made without there being at least three feet of soil between the ordinary surface of the ground and the upper most side of the proposed topmost coffin.
- c) Due to variations in ground conditions and other factors, it may not be possible for a lair to accommodate a second or third interment.

10. PROHIBITED REMOVAL OF COFFINS FROM GRAVES

No coffin shall be disturbed or removed to make room for a new interment or otherwise without first obtaining the sanction of West Dunbartonshire Council and otherwise complying with all relevant statutory and other requirements.

11. DRAPING OF GRAVES

West Dunbartonshire Council may, on application, drape a grave for an interment on payment, along with the interment fees, of the fees determined from time to time by West Dunbartonshire Council.

12. MAINTENANCE OF LAIRS

- a) No planting or pruning, dressing or decorating of lairs shall be done by or on behalf of a lairholder except with the written consent of the Director of Housing, Environmental and Economic Development.
- b) The lairholder shall keep his lair in a neat and proper condition of which the Director of Housing, Environmental and Economic Development of the Council shall be the sole judge: In particular, and without prejudice to the foregoing, the lairholder shall ensure that the lair including the surface of the ground thereof is kept free from weeds and is not otherwise unsightly in appearance.
- c) The turf of a lair shall not be cut for the purpose of forming a flowerbed or border or for any other purpose, nor shall anything whatsoever be placed in or upon such turf except wreaths or flowers. Without prejudice to the foregoing, an unturfed space, approximately three feet x one foot shall be left at the head of each lair for the erection thereon of monuments and the planting therein of flowers; declaring that nothing other than flowers shall be planted on a lair without written consent of Director of Housing, Environmental and Economic Development.

13. ERECTION OF MONUMENTS

- a) The Director of Housing, Environmental and Economic Development or his representatives may, on the written application of a lairholder, allow him to erect a monument on the lair in which he has a right of burial and to have said monument inscribed. Such application must detail the type of monument intended to be erected and materials to be used, all other information which the Director may from time to time require and shall in all events include detailed drawings of the proposed monuments. Such application shall also include a specific written Statement of the inscription proposed. Such permission as may be granted shall be without prejudice to the duty of the lairholder to comply with and obtain all requisite statutory and other consent and permissions. Without prejudice to the foregoing, said permission may be granted subject to such conditions of which the Director of Housing, Environmental and Economic Development in his sole opinion shall consider appropriate. In respect of monumental inscriptions, permission granted shall be subject to the requirements that the inscriptions are both decent and proper of which the Director shall be sole judge.
- b) The erection of railings, fence, kerbs, or other structures enclosing lairs is prohibited, and West Dunbartonshire Council reserve the right to remove any such structures in circumstances where such structures pose a hazard or are unsightly or for any other reason which the Director of Housing, Environmental and Economic Development may deem appropriate. Further, West Dunbartonshire Council reserve the right to remove and dispose of any wreaths of natural or artificial flowers whenever said wreaths shall, in the opinion of the Director, have become unsightly, all at the expense of the lairholder or his representative.
- c) No monument, etc. is to protrude in any way over that part of the lair to be opened for burial or over any adjacent lair. All excavation for the foundation of monuments and all other earthwork connected with the erection and maintenance of monuments shall be done only by authorised staff of West Dunbartonshire Council or such contractors as

West Dunbartonshire Council may appoint and at the expense of the person ordering the work.

- d) The lairholder is liable for all risks or any damage by or to all adjoining lands and monuments erected thereon, in respect of any damage caused by any monument erected or planned, situated on or within his lair.
- e) A person erecting a monument in a cemetery must remove all rubbish resulting from the erection and make good any damage done to turf or walks all at his own expense and to the satisfaction of the Director or his representative.
- f) Monuments erected on lairs must not exceed three feet six inches in height, above the ground level of the lair without the prior written approval of the Director.

14. MAINTENANCE OF MONUMENTS ETC.

- a) A lairholder must maintain in a neat and proper condition, of which the Director of Housing, Environmental and Economic Development shall be the sole judge, any monument erected by him on the lair on which he has a right of burial.
- b) If any such monument falls into disrepair, West Dunbartonshire Council, after giving one month's notice to the lairholder or his representatives at the address as contained within the Register, may themselves have the monument repaired or removed from the lair and dispose of the materials as they think fit, all at the expense of the lairholder or his representative.

15. SUPERVISION OF CEMETERIES

- a) The Director of Housing, Environmental and Economic Development shall, subject to these Rules and Regulations, and to such other directions as he may from time to time receive from West Dunbartonshire Council, be responsible for the control of the cemeteries and the employees of West Dunbartonshire Council employed therein.
- b) No employee of West Dunbartonshire Council shall be entitled to solicit or accept any gratuity whatever.
- c) The Director shall regulate the hours during which monumental sculptors and any other contractor instructed by or behalf of the lairholder will be admitted to a cemetery, the routes by which they bring materials into and out of a cemetery and the manner in which such materials are conveyed.

16. ADMISSION OF PUBLIC TO CEMETERIES AND CONDUCT THEREIN

- a) The Cemeteries shall be opened and closed to the public at such hours as may from time to time be intimated by notice, which notice shall be displayed at or near the entrance to the Cemeteries.
- b) West Dunbartonshire Council may close any Cemetery or any portions thereof to the public for such a time as they may consider necessary or expedient, and that without

intimating same by notice. Further, cemeteries shall close for interments and all other purposes during all public holidays, of which dates the Director of the Council shall be the sole judge.

- c) A person shall not enter or leave any cemetery except by the gateways provided for the purpose and shall not enter or remain in any cemetery at any time when the cemetery is closed to the public.
- d) Subject to terms of regulation 15 (c) hereof, unless the Director shall otherwise agree, only hearses and vehicles carrying persons to and from a burial or cremation shall be permitted within a cemetery. Visitors will be required to park at Cemetery entrances unless they are registered as disabled.
- e) No person shall consume alcoholic liquor, as defined in the Licensing (Scotland) Act and in accordance with the WDC Prohibition of Consumption of Alcoholic Liquor in Designated Public Places Bylaws 1998, in a cemetery.
- f) Riotous, disorderly or indecent behaviour including offensive or insulting language is forbidden within the cemetery. No person shall otherwise commit any nuisance in a cemetery or cause any obstruction or annoyance to any person attending a cemetery.
- g) Without prejudice to the powers conferred upon authorised employees of West Dunbartonshire Council by s116 of the Civic Government (Scotland) Act 1982 the Director of Housing, Environmental and Economic Development or his representative are authorised to remove from the cemetery any person who contravenes the provisions of this regulation.

The Council shall not be responsible for any vandalism or damage caused to monuments/other memorials or the theft of monuments or memorials.

17. DOGS TO BE UNDER CONTROL

- a) A person shall not allow any dog belonging to him in his charge to enter or remain in any cemetery unless such dog is led by a leash and kept under proper and effective control. No person shall allow any dog belonging to him/her to foul any part of the cemetery.
- b) The Director or his representative is authorised to remove from the cemetery any person who contravenes the provision of this Regulation.

18. PROTECTION OF THE CEMETERY

The provision of the Cemeteries Clauses Act 1847 as applied by Section 25 of the Burial Grounds (Scotland) Act 1855, as amended, will be enforced by West Dunbartonshire Council.

19. INTERPRETATION

Should any difference or dispute arise as to the intent, meaning or interpretation of these Rules and Regulations or fees to be charged or in any other respect the same shall be taken up and determined by the Director of Housing, Environmental and Economic Development whose decision shall be final and conclusive and not subject to review of any court.

20. ALTERATION OF RULES AND REGULATIONS

West Dunbartonshire Council reserve the right to waive, alter, add to, or revoke all or any of the foregoing Rules and Regulations and enact others in their place, all of which shall apply to all lairholders and their representatives immediately said alterations, additions and revocations are effective and that without warning or reference to said lairholders or their representatives.

21. REPEAL OF EXISTING REGULATIONS

All Rules and Regulations made by Clydebank District Council and Dumbarton District Council prior to the date of the commencement of these Rules and Regulations are hereby revoked.