
Report to: Clackmannanshire Council

Date of Meeting: 6 October 2022

Subject: Management Rules for Cemeteries

Report by: Strategic Director Place

1.0 Purpose

- 1.1. The purpose of this report is to seek Council agreement on the revised Management Rules for Cemeteries. A copy of the Draft Management Rules for Cemeteries is attached as an appendix to this report

2.0 Recommendations

- 2.1. It is recommended that Council:
- Formally approve the amended Management Rules for Cemeteries

3.0 Considerations.

- 3.1. The Council has made the rules for the management of cemeteries in terms of the Burial Grounds (Scotland) Act 1855: the Civic Government (Scotland) Act 1982 and the Burial and Cremation (Scotland) Act 2016 and any Regulations and Code of Practice made thereunder.
- 3.2. The Clackmannanshire Management Rules for Cemeteries accede to any Regulation and Code of Practice made by Scottish Ministers that makes provision for, or in connection with, the Burial and Cremation (Scotland) Act 2016.
- 3.3. The Clackmannanshire Management Rules for Cemeteries apply to all burial grounds under the control of Clackmannanshire Council and required to be reviewed to accommodate a number of changes in our Cemeteries such as the introduction of Muslim graves at Sunnyside Cemetery and the new Woodland Burial Site at Alva.
- 3.4. These Management Rules for Cemeteries replace all previous rules for the management of cemeteries made by Clackmannanshire Council.
- 3.5. The Clackmannanshire Management Rules for Cemeteries must be read and interpreted in conjunction with the Burial Grounds (Scotland) Act 1855: the Civic Government (Scotland) Act 1982 and the Burial and Cremation

(Scotland) Act 2016 and any Regulations and Code of Practice made thereunder.

- 3.6. Clackmannanshire Council's aim is to ensure that the Council's cemeteries are maintained safely whilst ensuring each cemetery site is respected and protected for the benefit of all citizens.

4.0 Sustainability Implications

- 4.1. Operation of the Woodland Burial Site offers the public a more sustainable alternative to a traditional burial

5.0 Resource Implications

5.1. *Financial Details*

- 5.2. There are no financial implications

5.3. *Staffing*

- 5.4. There are no staff implications

6.0 Exempt Reports

- 6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box)

- Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all
- Our families; children and young people will have the best possible start in life
- Women and girls will be confident and aspirational, and achieve their full potential
- Our communities will be resilient and empowered so that they can thrive and flourish

- (2) **Council Policies** (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
 Yes No

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

- Draft Management Rules for Cemeteries

11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)
 Yes (please list the documents below) No

Author(s)

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Approved by

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Clackmannanshire Council

*MANAGEMENT RULES
FOR CEMETERIES*

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Management

Clackmannanshire Council hereinafter referred to as 'the Council' or 'burial authority' has made the following rules for the management of cemeteries in terms of the Burial Grounds (Scotland) Act 1855: the Civic Government (Scotland) Act 1982 and the Burial and Cremation (Scotland) Act 2016 and any Regulations and Code of Practice made thereunder.

The Clackmannanshire Cemetery Management Rules accede to any Regulation and Code of Practice made by Scottish Ministers that makes provision for, or in connection with, the Burial and Cremation (Scotland) Act 2016.

The Clackmannanshire Cemetery Management Rules apply to all burial grounds under the control of the burial authority.

These Cemetery Management Rules replace all previous rules for the management of cemeteries made by Clackmannanshire Council.

The Clackmannanshire Cemetery Management Rules must be read and interpreted in conjunction with the Burial Grounds (Scotland) Act 1855: the Civic Government (Scotland) Act 1982 and the Burial and Cremation (Scotland) Act 2016 and any Regulations and Code of Practice made thereunder.

Clackmannanshire Council's aim is to ensure that the Council's cemeteries are maintained safely whilst ensuring each cemetery site is respected and protected for the benefit of all citizens.

Exclusive Right of Burial

Where the burial authority sells an Exclusive Right of Burial in a burial ground for which it is the burial authority it shall in relation to each such burial ground, prepare and maintain a register containing:

Information about lairs in the burial ground in which rights of burial have been sold by the authority,
The date on which the rights were sold by the authority,
The names and addresses of persons to whom the authority sold the rights, and
The names and addresses of persons in whom the right of burial vests

The burial authority may take such steps as it considers necessary to ascertain whether the information in the register is current and accurate and to obtain information to enable the authority to adjust the information to ensure the register is current and accurate.

The register will be kept indefinitely.

An extract from a register maintained by a burial authority, duly certified as a true copy by the burial authority, is in relation to matters contained in the extract sufficient evidence of those matters for the purposes of any court proceedings.

The Council may, on the application of any person, sell a right of burial in a lair in a burial ground for which it is the burial authority.

"Exclusive Right of Burial", in relation to a lair, means:

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a right to be buried in the lair, where human remains are to be buried, unless the right is withdrawn or transferred in accordance with these rules

a right to erect a structure associated with the lair, and
a right to determine whose remains may be buried in the lair.

An Exclusive Right of Burial is exercisable only by the person in whom the right is vested.

An Exclusive Right of Burial sold by the Council can only be exercised subject to such terms, and on such conditions, as the Council may determine.

The Council will not refuse an application for right of burial if, in the opinion of the Council, it is reasonable to do so where the following conditions are met:

The application discloses that the applicant intends the lair to be used to bury the remains of a person who, at the time the application is made, has died, and

immediately before the person's death, the person was ordinarily resident in the Clackmannanshire Council area, or

The application discloses that the applicant intends the lair to be used to bury the remains of a still-born child,

“still-born child” having the meaning given by section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, or a fetus parted from a woman before or on completion of the 24th week of the woman's pregnancy, and after being so parted, does not breathe or show any other signs of life

An Exclusive Right of Burial does not confer or grant ownership of the land itself. Ownership of the burial ground

vests with the burial authority not with the owner of Exclusive Right of Burial.

The person in whom an Exclusive Right of Burial in a lair within a burial ground is vested may apply to the burial authority for the right to erect a headstone or other memorial on the lair.

A burial authority may refuse such an application if, in the opinion of the authority, it is reasonable to do so.

A right conferred by the granting of such an application is subject to the terms and conditions relating to the erection of memorials contained within these rules

A right to erect a headstone or other memorial on the lair in which an Exclusive Right of Burial is vested in a person is extinguished on the extinguishment of the right of burial.

The burial authority may charge such fees as the authority thinks fit in respect of:

Burials carried out in burial grounds for which it is the burial authority,

The sale of a right to erect a memorial, headstone or other structure,

The sale of an Exclusive Right of Burial

The extension of an Exclusive Right of Burial.

The burial authority will publish the aforementioned fees;

in paper form, and

on the website of the burial authority

in the scheme of Fees and Charges set by the Council.

The burial authority will keep under review all aforementioned fees and publish the fees in its scheme of Fees and Charges.

The Council shall give the right- holder a Certificate identifying the lair and conferring Exclusive Right of Burial.

Details of the Exclusive Right of Burial will be recorded in the register of lair holders. The holder of the Exclusive Right of Burial shall have the sole right of permitting the lair to be opened on production of the lair certificate.

Only one person can hold the Exclusive Right of Burial and be registered as the right-holder to a lair except in the case of trustees.

The right-holder may not sell or transfer the Exclusive Right of Burial to a lair without the prior consent of the burial authority.

Grave Types

Several types of graves are available at designated sections of some of our cemeteries. These are marked on plans available for viewing at the Council offices.

Traditional Grave: This is a grave that has a headstone and kerb set that forms an edge around the grave area. This type of grave is only available at Sunnyside Cemetery, Alloa and is only suitable for one burial.

Lawn Grave: This is a grave that has a headstone, a small memorial border immediately in front of the headstone and a grassed area level with the surrounding ground. This grave is suitable for a maximum three burials.

Cremated Remains Lawn Grave: This is a grave that has a headstone, a small memorial border immediately in front of

the headstone and a grassed area level with the surrounding ground.

Unmarked Grave: In accordance with Burial and Cremation (Scotland) Act 2016, the Council makes provision under Section 87 for unmarked graves, previously referred to as Public or Common graves at Sunnyside Cemetery, Alloa. No memorials are permitted on these graves and they can accommodate a maximum of four burials, but no cremated remains.

Muslim Grave: A designated area for Muslim burial is provided at Sunnyside Cemetery, Alloa. This is a traditional grave aligned with Mecca and is suitable for one burial only

Purchase of Lairs

Where the burial authority sells a right of burial to a person, hereinafter called the 'lair holder', in a burial ground for which it is the burial authority it shall give that person a certificate identifying the lair and conferring Exclusive Right of Burial.

Details of the Exclusive Right of Burial will be recorded in the register of lair holders. The holder of the Exclusive Right of Burial shall have the sole right of permitting the lair to be opened on production of the Exclusive Right of Burial certificate.

Only one person can hold the Exclusive Right of Burial and be registered as the lair holder except in the case of trustees.

The owner of Exclusive Right of Burial may not sell or transfer the Exclusive Right of Burial without the prior consent of the burial authority.

Lairs available for the purchase of the Exclusive Right of Burial will be allocated by the authorised officer of the burial authority.

The Exclusive Right of Burial is limited to a maximum of two per person in any one burial ground.

Exclusive Right of Burial - Succession

On the death of the holder of Exclusive Right of Burial, the holder's successor shall be entitled, on producing sufficient evidence of entitlement, to be registered as the holder and owner of Exclusive Right of Burial.

In such cases the Council shall either;

- (i) Amend the original Exclusive Right of Burial certificate or,
- (ii) Issue a new Exclusive Right of Burial certificate

In either foregoing case the original Exclusive Right of Burial certificate must be submitted to the burial authority or otherwise accounted for to the satisfaction of the burial authority's authorised officer.

The Council shall not be responsible for any misunderstanding or error arising from the acceptance in good faith of the claim of any person to be the lair holder, even though it is subsequently ascertained that such a claim was unfounded.

On the death of the holder of Exclusive Right of Burial, and in the absence of a valid bequest to transfer the Exclusive Right of Burial, the right to the Exclusive Right of Burial shall transfer using the order of ranking below:

- The lair holder's spouse or legal partner
- Eldest surviving child of the lair holder
- Eldest surviving grandchild of the lair holder
- Remoter descendants in order of descent
- Ascendants in order of ascent
- Siblings and their ascendants and descendants in similar fashion

In the event of there being more than one person in any class of relative, the party succeeding shall be the eldest in each case and nearer of the classes shall take precedence over the remoter. Adopted children shall succeed in all respects in the same manner as natural children

The Exclusive Right of Burial holder may bequeath their Exclusive Right of Burial to any one person whether that person is a successor or not.

The Exclusive Right of Burial may not be transferred to more than one person except in the case of trustees.

Forfeiture

The duration of right of burial is extinguished at the end of the period of 40 years beginning with the day on which the right was sold.

The Council may, on the application of a person in whom the right of burial is vested, extend on more than one occasion the period for which the right subsists.

Where an extension to the right of burial is granted the right is extinguished at the end of the period of 10 years beginning

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with the day on which the right would, but for the extension,
otherwise be extinguished.

The Council may refuse an application for extension to the
right of burial if, in the opinion of the Council, it is reasonable
to do so.

The right of burial vests in, and may be exercised by, the
Council where:

The person in whom a right of burial is vested dies
before the right is extinguished, and the right does not
transfer to and vest in another person by virtue of any
testamentary provision, enactment or rule of law.

Where the Council is aware of the name and address of the
right-holder, or can, after reasonable enquiry, ascertain them,
the Council will:

at least 3 months before the day on which the right of
burial falls to be extinguished notify the right-holder of
the date on which the right falls to be extinguished, and
notify the right-holder of the right-holder's right to apply
for an extension of the right.

After notification and where no application is made by the
right-holder, the right of burial will be extinguished.

The right of burial can be deeded, willed or transferred to
another person provided that an amendment is made to the
original record kept by the Council.

If a right-holder does require the Exclusive Right of Burial and
provided no burial has taken place in the grave, the right-
holder may surrender the Exclusive Right of Burial to the

burial authority. In such a case the burial authority shall
reimburse the lair holder one half of the original sale price of
the Exclusive Right of Burial less any reasonable charge for
administration costs the burial authority deems appropriate.

Notice of Burial

All burials must be authorised by the Cemetery Officer prior to
the funeral arrangements being publicly announced.

The notice Application for Interment must be completed and
lodged with the Cemetery Officer 2 Working Days (**48 hours**)
prior to interment (excludes Weekends and Public Holidays)

Notice of interment must be given in accordance with
Clackmannanshire Council's Procedure for Accepting Burials.

The form Registration of Death, known as Form 14 must be
lodged with the Cemetery Officer before the funeral takes
place.

The Exclusive Right of Burial lair certificate must be
presented to the Cemetery Officer with the notice of
interment.

Interment Procedures

Upon receipt of an Application for Interment the cemetery
register shall be checked to verify entitlement to the Exclusive
Right of Burial. Thereafter the order to dig the grave will be
issued.

The Council shall open the appropriate lair to a depth of up to
2 metres or such other depth as the Cemetery Officer may
determine. After interment there shall be a least 900mm of

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soil between the adjoining ground level the upper side of the coffin.

At interment the funeral director, or other person responsible for arranging interment, shall provide sufficient means and bearers to convey the coffin reverently to the graveside and also for lowering the coffin safely into the grave. If Council employees are required to assist, neither they nor the Council, will be held responsible for any damage to the hearse or coffin.

It is an offence under Section 26 of the Burial and Cremation (Scotland) Act 2016 for a person knowingly to bury human remains unless the burial is carried out in a burial ground in accordance with Burial and Cremation (Scotland) Act 2016, or the burial is a private burial carried out in accordance Burial and Cremation (Scotland) Act 2016.

Records and Fees

The Council shall keep a register into which shall be entered details of every interment, the specified lair, the depth of the grave and the date of interments, the name and age of the person buried and any other necessary particulars. A plan of each local cemetery shall be available for information.

Burial ground charges will be set annually by the Council. A list of charges will be available at Council offices and publicised in the Council scheme of fees and charges.

Interment of Cremation Remains

Designated areas for the interment of cremated remains will be provided in some cemeteries. Each lair shall be one metre square and capable of holding six sets of cremated remains.

Memorials and Headstones

Foundations must be constructed in accordance with the current recommendations of the National Association of Monumental masons.

All works inside the grounds require the consent of the Cemetery Officer who must be satisfied that the authority of the lair holder has been obtained before work commences.

No memorial or part thereof shall be removed from the cemetery without notification and consent of the Council.

The section and number of the lair must be cut plainly upon the side of the memorial at the expense of the person erecting the memorial.

Memorials shall not protrude in any way over that part of the lair to be opened for burial and shall be restricted to at least 75mm less in width than the width of the lair.

Only one flower vase will be allowed on each lair and placed in the space provided at the head of each lair i.e. the crown head or on the base of the memorial.

To preserve the visual amenity of cemeteries, and maintain decorum and show respect to all cemetery users, and for the purposes of allowing safe and effective grounds maintenance, the following are not be permitted to be placed or fixed

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anywhere within the cemetery or out with the monumental
border area of any lair:

Electrical or mechanical devices of any kind, including solar,
mechanical movement or artificial illumination.

Kerbs, copes and corner stones

Railings, chains and fences of any type

Gravel, loose stones or similar materials

Glass and pottery containers

Planting of Seasonal Bedding or low growing compact
perennial plants may be allowed within the monumental
border of a lair at the discretion of the Cemetery Officer.

The Council reserves the right to prune or remove plants as it
considers necessary to preserve the visual amenity of the
cemetery or ensure safety and access to lairs and memorials.

Lair holders shall keep memorials in a neat and proper
condition and shall ensure that all memorials are kept in a
safe and stable condition.

The Council may require the lair holder to carry out
maintenance works. If the works are not carried out the
Council may at the lair holder's expense, repair the memorial
or have it removed. Until the costs of such repair or removal
are paid the right to use the lair shall be withheld.

Memorials are erected at the lair holders own risk. The
council will not be responsible for loss, injury or damage to
other users of the cemetery or to other property due to
instability or any other fault with a memorial.

The council will have no liability for loss or damage to any
monument or memorial or other item.

Management of Cemetery Grounds

The opening and closing time of a cemetery shall be from
dawn until dusk notwithstanding any displayed opening and
closing time considered necessary.

The burial authority may open or close any part of any
cemetery for such time as it considers necessary.

Access to and from cemeteries shall be via designated
entrance/exit points of roads, footpaths and gates only.

Members of the public are not permitted to enter cemeteries
out with opening times.

Except for Guide Dogs or working Assistance Dogs, all dogs
entering cemetery grounds must be kept on a leash and
under proper control.

Memorial wreaths may be removed at the discretion of the
Cemetery Officer.

To facilitate access to a grave it may be necessary to place a
wooden soil box and other materials onto adjacent lairs and
thereby cause surface disturbance to the grass or other
surface finish of adjoining lairs. The burial authority retains
the right to place material of any kind on the surface of lairs to
permit efficient operation of the cemetery.

Where the appearance of any lair has been disturbed by
cemetery operations the burial authority will as soon as
practically possible reinstate the surface finish of any lair so
disturbed.

Woodland Burial Ground

In order to meet a demand for a more natural and environmentally sensitive burial, Clackmannanshire Council has created a Woodland Burial Site at Alva Woodland Park.

This natural form of burial provides important environmental benefits and will through time provide an undisturbed place of rest in a natural woodland setting.

The Woodland Burial Site is secular and operated as non-denominational and because the site is to be a natural environment without evidence of man made structures, no memorials are permitted at graves or within the Woodland Burial Site.

Only fully biodegradable botanical material, such as flowers or wreaths made without metal or plastic parts will be permitted as a memorial tribute. Memorial tributes will be removed by the burial authority after a period of not less than six months if they have not naturally decayed prior to that time. Any non-biodegradable materials will be removed without notice and disposed of at the discretion of the burial authority.

In the Woodland Burial Site the right-holder has the right to bury only one person in a woodland burial grave.

Graves will be laid out in a hexagonal format with the centre of each grave planted with an indigenous tree during the first available planting season after the grave has settled.

Tree species will be limited to indigenous species such as *Quercus petraea* (Oak), *Sorbus aucuparia* (Rowan), *Prunus*

avium (Gean) and *Betula pendula* (Birch) and *Corylus avellana* (Hazel). Trees will be planted as 45–60cms high whips and will be protected with a tree guard and biodegradable mulching mat

Specific lair positions can not be selected in advance by right-holders. Graves will be used in strict rotation unless in the opinion of the burial authority there are overriding reasons to deviate from the procedure.

Only coffins that are constructed of completely biodegradable materials will be permitted in the Woodland Burial Site. Examples of acceptable materials are wood, wicker, straw, cardboard, bamboo and paper with no metal or plastic attachments.

Embalmed corpses are not permitted in the Woodland Burial Site and must be wearing natural fibres such as wool and cotton etc. It is permissible to be buried with certain possessions or artefacts providing these are made from natural materials.

Coffin burial is preferable but burial in a fully biodegradable natural fibre shroud is permissible.

Funeral directors and those making funeral arrangements for funerals at the Woodland Burial Site must be aware of and prepared to safely and respectfully lower the coffin or shroud-wrapped body into the grave without damage to the coffin or shroud-wrapped body.

There will be no network of roads and paths inside the Woodland Burial Site. Funeral directors and those attending

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funerals at the Woodland Burial Site must ensure they are aware that they enter the site at their own risk and fully prepared to negotiate a sloping thickly grassed meadow in any weather conditions that prevail that could make the ground uneven, muddy or slippery. Visitors are advised to wear appropriate sturdy footwear

Funeral Directors, or other persons making funeral arrangements, attention is drawn to conducting their own risk assessment for their employees and on behalf of all persons, relatives and attending mourners whose funeral they are providing services to.

The burial authority will dig the grave and backfill the grave following the burial.

The Woodland Burial Site will be maintained as natural woodland and as such the meadow grass will only be cut twice per year and consequently will look completely different from traditional cemeteries. No gardening or cultivation is permitted.

The maintenance of the woodland will be carried out in accordance with Woodland Management Best Practice by Clackmannanshire Council. From time to time this will involve remedial work or the removal of trees that are inhibiting the full development of the woodland. No pruning or felling of trees is permitted by anyone other than Clackmannanshire Council.

Vehicles

Car parking provided by the Council is for the convenience of cemetery users only and may be used only during opening

hours. Directions issued by the Cemetery Officer in respect of parking arrangements and vehicle routes must be complied with.

The Council shall not be held responsible for any damage to vehicles, or other property left in the car parks, however such damage may be caused.

Vehicles conveying memorials or goods will be allowed into the cemetery grounds only with the consent of the Cemetery Officer. Drivers must comply with the directions of the Cemetery Officer as to the route to be followed within the grounds.

Behaviour Within Cemetery Grounds

All persons within a cemetery shall conduct themselves in a respectful manner and refrain from any offensive or inappropriate behaviour or actions as to which, for the purposes of Rule 16, the Cemetery Officer shall be sole judge.

Contravention of Management Rules

The following provisions apply to a contravention by any person of these management rules.

If the Cemetery Officer has reasonable grounds for believing that any person has contravened, is contravening or is about to contravene any of these management rules, he/she may expel that person from any cemetery.

Any person who fails to leave the cemetery on being required to do so in any of the circumstances specified in Clause 16.2

Clackmannanshire Council - Management Rules for Cemeteries shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

If the Cemetery Officer has reasonable grounds for believing that any person is about to contravene any of these management rules, he/she may exclude that person from any cemetery.+

Any person who, on being informed by the Cemetery Officer that they are excluded from the cemetery, thereafter enters or attempts to enter a Clackmannanshire Council cemetery shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

The Council may decide that a person who has persistently contravened or attempted to contravene any of these management rules and is, in their opinion likely to contravene them again, shall be made subject to an Exclusion Order.

If the Council so decides, they shall give the person subject to the Exclusion Order notice of their decision. The notice shall contain a statement of reasons and a statement as to his/her right to make representations.

An Exclusion Order shall take effect on such date as the Council may decide which shall be least 14 days after their decision to make the Exclusion Order.

Any person subject to an Exclusion Order shall be entitled to make written or oral representations to the Council at any time up to the date when the Order is due to take effect. On receipt of representation, the Council shall suspend the effect of their decision, consider the representation and decide whether to confirm or revoke or amend their decision.

An Exclusion Order shall have effect for up to one year. The Council may at any time reduce the period of, or revoke an Exclusion Order made by them.

Any person subject to an Exclusion Order who enters or attempts to enter the cemetery to which the Exclusion Order relates shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

Exhumations

No exhumations will be permitted under any circumstances except by lawful authority.

Alterations of Management Rules

The Council may alter, amend or add to these rules and regulations or any part of them, from time to time as they may see fit.

Interpretation of Management Rules

Any difference or dispute arising as to the intention meaning or interpretation of these rules and regulations or the list of charges, shall be dealt with by the Cemetery Officer whose decision shall be final.

Revocation of Previous Management Rules

These management rules replace the Rules and Regulations for the Management of Cemeteries made by Clackmannanshire Council on 30th October, 1998, which are revoked.

Clackmannanshire Council
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Date:

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