

Annex D

List of consultation questions and consultation response form

How to complete this response form

1 Each question in the consultation paper is listed below. Respondents are invited to answer as many questions as they wish to, and there is no requirement to answer every question. Completing this form as a Word document allows responses to be provided directly on to the form, although respondents may choose to respond in other ways.

2 Some questions provide a check box to provide a response - to mark a box, double-click it and then select 'Checked' from the menu. Where several questions are asked under the same number, the initial question is the one that should be answered using the check box. Further information can be provided by inserting free text under the heading 'Additional information'.

3 Where no check box is provided, responses are sought in the form of free text, which can be inserted under the heading 'Response'.

4 At the end of the questions consultees are invited to provide any other information which they feel is relevant.

5 Once completed this form can be emailed to burialandcremationbill@scotland.gsi.gov.uk or posted to:

Burial and Cremation Consultation
Scottish Government
3E St Andrew's House
Edinburgh
EH1 3DG

6 When returning responses please also complete and return the Respondent Information Form at Annex C. **The closing date for responses is Friday 24 April 2015.**

The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes No Don't Know

Additional information:

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Response: Although it is dealt with later on in the questionnaire, there needs to be a simpler process for authorising the exhumation of ashes and bodies, particularly with regard to an infant being buried at a shallow depth and the lair subsequently being required for a full depth burial.

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Yes No Don't Know

Additional information: For consistency of service to the public, all cemeteries and crematoria should be governed by the same legislation.

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

Yes No Don't Know

Additional information: For consistency of service to the public, all providers of disposal of the dead should be governed by the same legislation.

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes No Don't Know

Additional information: For consistency of service to the public, all providers of disposal of the dead should be governed by the same legislation.

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Yes No Don't Know

Additional information: The law regarding burial should be consistent, regardless of whether it is in a cemetery or a private piece of land.

Q7 - In making legal provision for home burial, what factors should be considered?

Response: The keeping of records, the possible effect on neighbouring properties, a restriction on the number of home burials per unit area and the effect on any potential future land use, should be amongst the factors considered.

Q8 - Are there any reasons why private cremation should not remain illegal?

Yes No Don't Know

Additional information: To comply with current emission legislation a cremation must be carried out in a purpose built cremator which either has an abatement plant or is part of an emission trading scheme.

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Yes No Don't Know

Additional information: Resomation is currently being successfully used in several establishments in the United States and so should be considered for use in Scotland.

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Yes No Don't Know

Additional information:

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes No Don't Know

Additional information: Converting the minimum distance to metres gives an odd number. The minimum distance from housing should now simply become 200 metres. In addition the 50 yard minimum distance from a main road should be maintained to provide as dignified and tranquil an environment as possible. The 50 yards should become 50 metres.

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response: There should be a fine that is large enough to be a deterrent.

The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at

Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes No Don't Know

Additional information: The right to dispose of the body should be given to the person(s) stated in instructions left by the deceased and in the absence of such; it should be the nearest relative as defined above. The same process should be defined in legislation for the right of inheritance of title deeds for burial lairs.

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes No Don't Know

Additional information:

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Yes No Don't Know

Additional information:

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes No Don't Know

Additional information: There should be a similar provision for an adult, when there is no traceable next of kin.

The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes No Don't Know

Additional information:

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes No Don't Know

Additional information: For the sake of clarity and consistency, legislation would be the preferred option.

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Yes No Don't Know

Additional information: There should be a minimum distance of 3 feet (0.91m) from the surface except in cases where historical miss-measurements would cause the top burial in a lair to be between 2 feet and 3 feet from the surface. Interments should be allowed at this level as long as a concrete cap of at least 4 inches deep is formed above the coffin.

Burial and cremation records

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Yes No Don't Know

Additional information:

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

50 years Indefinitely Other period

Additional information:

Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes No Don't Know

Additional information:

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes No Don't Know

Additional information:

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Response: There should be no restriction on whom the owner can transfer the lair to.

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Yes No Don't Know

Additional information: This should not be legislated for but should be a decision made by individual burial authorities.

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Response: This should not be legislated for but should be a decision made by individual burial authorities.

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Yes No Don't Know

Additional information:

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes No Don't Know

Additional information:

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Yes No Don't Know

Additional information:

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Yes No Don't Know

Additional information:

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response: As suggested in the discussion document, there should be no onus on the objector to assume maintenance of the lair.

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Response: Anybody, if their objection is not relevant, it can be dismissed.

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Response: Historical relevance to the local or wider community.

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

Response: The liability should remain with the Burial Authority

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Yes No Don't Know

Additional information:

Q36 - Are any other techniques available that should be considered?

Response:

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes No Don't Know

Additional information:

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Yes No Don't Know

Additional information: They should be retained if of historical interest and in good condition, otherwise they should be disposed of.

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

Response: We already offer burial chambers and mausolea.

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Yes No Don't Know

Additional information:

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Yes No Don't Know

Additional information: The intention should be advertised on the Burial Authority's website, on the lair, in the local press and at strategic points within the cemetery grounds

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Yes No Don't Know

Additional information:

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Yes No Don't Know

Additional information: Guidelines should include researching any potential historical significance of the lair occupants.

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Yes No Don't Know

Additional information:

Exhumation

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes No Don't Know

Additional information:

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Yes No Don't Know

Additional information:

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Yes No Don't Know

Additional information:

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Yes No Don't Know

Additional information:

Pandemics and mass-fatality events

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Yes No Don't Know

Additional information:

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Yes No Don't Know

Additional information:

Cremation forms and procedures

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

Yes No Don't Know

Additional information: The vast majority of cremations are for adults, which is what the current A Form is designed for. It would be confusing to have one form covering the complete range of categories. If the range of questions on Form A was reduced to those that are relevant, then 3 versions should be possible; one for those whose death needs to be registered, one for nvf's and one for body parts.

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

Yes No Don't Know

Additional information:

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Yes No Don't Know

Additional information: Each Cremation Authority should be allowed to choose which of these options it wishes to offer. Witnessed dispersal uses more land and not all cremation authorities have enough land available to offer that option. Also option B dictates a timescale (up to 7 days after cremation) within which the ashes must be dispersed; we feel that is too tight to give the applicant the option of changing their mind. This timescale should not be defined in legislation, although a cremation authority could still be required to publish the timescale that it does adhere to. If a particular method of dispersal is not available (e.g. witnessed) then the applicant can always choose another crematorium.

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

Yes No Don't Know

Additional information: Once again, the options should not be defined in law and each cremation authority should be able to offer what it is able and willing to do.

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Yes No Don't Know

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Yes No Don't Know

Additional information:

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

Response: Eight weeks would be a suitable period before giving the applicant two weeks' notice of intent to disperse.

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes No Don't Know

Additional information: We are not convinced that the countersigning provides any useful purpose.

Q59 – Should application for other categories of cremation require a countersignature?

Yes No Don't Know

Additional information: Once again, we are not convinced that the countersigning provides any useful purpose.

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Yes No Don't Know

Additional information: A single application form would be preferred.

Q61 - What information should be considered essential for the cremation application?

Response: Deceased name and address: Applicant name and address: Relationship of applicant to deceased: If not nearest relative, state reason: Date and time of death: Place of Death.

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual

scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Response: The form should be countersigned and the legal responsibility should lie with the crematorium superintendent/manager or higher authority. There should be at least one nominated, trained deputy.

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Yes No Don't Know

Additional information: For consistency the application and authorisation for burial, should mirror that for cremation.

Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes No Don't Know

Additional information: There should be a similar system for nvf's including medical verification, to ensure that what is being cremated is traceable human remains.

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes No Don't Know

Additional information: There should always be medical verification of the pregnancy loss, even if the loss happens out with a healthcare setting, the mother would surely seek medical help afterwards.

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes No Don't Know

Additional information: Legislation should not state the options for dispersal. Each cremation authority should be able to choose what methods it is able and willing to offer.

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes No Don't Know

Additional information:

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Yes No Don't Know

Additional information:

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

Yes No Don't Know

Additional information:

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

Yes No Don't Know

Additional information:

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes No Don't Know

Additional information:

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes No Don't Know

Additional information:

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes No Don't Know

Additional information: We are not convinced that countersigning provides any useful purpose. How countersigning is supposed to increase a mother's awareness of the potential for loss of ashes is not obvious.

Cremation register

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes No Don't Know

Additional information: We would question the relevance of recording the occupation of the deceased. A generation ago people did remain in the same occupation for most or all of their working lives but not now.

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes No Don't Know

Additional information: We can understand why this level of confidentiality may be required for collective cremations but it is not required for individual cremations.

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes No Don't Know

Additional information:

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes No Don't Know

Additional information:

Accreditation of Cremation Authority staff

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice Legislation Don't Know

Additional information: A Code of Practice is simpler to update and so is better able to respond to changes in the training available.

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response: The accreditation could be checked on each visit of the Inspector of Crematoria. Currently the available training does not require renewing. The training providers would have to determine whether or not they review this situation, which reinforces the argument for a Code of Practice.

Inspector of crematoria

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes No Don't Know

Additional information: This would be a huge role if it covered all cemeteries and churchyards in Scotland and would need to be administered by a small team.

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Yes No Don't Know

Additional information:

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Yes No Don't Know

Additional information:

Regulation of the funeral industry

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Yes No Don't Know

Additional information: Bureaucracy and additional cost are the main disadvantages.

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes No Don't Know

As a minimum, each funeral director organisation should be licensed.

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes No Don't Know

Additional information: It would make sense to have the inspection of funeral directors, cemeteries, crematoria and new methods of disposal, to be centrally coordinated.

Funeral poverty

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Yes No Don't Know

Additional information: This should apply to private burial and cremation authorities as well as to local authorities.

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Yes No Don't Know

Additional information: The cost of burial or cremation is not the main factor in the cost of a funeral; paragraphs 191 and 192 in the consultation document make that clear, so any attempt to restrict these costs will have a limited effect on funeral poverty. The majority of funerals in Scotland are cremations. The recent rise in cremation costs has been triggered by the legal requirement to install abatement equipment or take part in a mercury trading scheme. The December 2012 deadline to abate or burden share is now past, so that cost driver has now been removed. Attempting to reduce funeral poverty by pressuring local authorities to reduce their burial or cremation costs is likely to lead to less investment in bereavement services and a fall in the quality of service provided to the public.

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

Response: The public should be encouraged to purchase a funeral plan.

Any other relevant issues

Please use this space to provide information about relevant issues which are not covered in the consultation paper or any topic which you think should be considered: