

## **The Right to Instruct the Disposal of Human Remains**

**13 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?**

Yes

If not, why not?:

In whom should this power be vested instead?:

**14 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

In whom should this power be vested instead?:

How should this be defined in legislation?:

**15 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?**

Yes

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? :

**16 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?**

Don't Know

Don't Know

Please enter any additional comments here.:

### **The Management of Cemeteries**

**17 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?**

No

Please enter any additional comments here.:

**18 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

Please enter additional comments here.:

**19 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?**

No

Should there be any exemptions?:

Please enter any additional comments here.:

### **Burial and Cremation Records**

**20 Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible?**

Yes

Should any exclusions apply?:

Should this be applied to all forms of disposing of human remains in Scotland?:

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

Indefinitely

If you specified 'other', please enter your comments below.:

### **Alleviating pressure on burial grounds**

**22 Do you agree that the sale of lairs in perpetuity should be ended?**

No

**Please enter additional comments here.:**

Purchasers should be obliged to maintain valid contact details. If it becomes impossible to contact the person responsible for the lair then the perpetuity should be forfeited. Also persistent failure to meet minimum maintenance requirements at a lair site when requested to do so by the authority should result in forfeiture of the perpetuity rights. This should be a part of all future purchase agreements. For long standing burials the perpetuity principle should be maintained even if no surviving relatives can be found. The exceptions to this should only be for a grave, headstone or other monument which is a cause of concern of physical danger to people or to adjacent graves or the safe operation of the cemetery or whose condition is offensive to the users of the cemetery.

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

No

**Please enter additional comments here.:**

The principle of in perpetuity is a key part of burial. However if the descendants decline to be registered as having responsibility for a lair then ownership should revert to the relevant authority. The onus is on the descendants to maintain a contact record with the authorities at all times. This means that should any situation arise including possible re-use of a lair then they can be consulted at any time. It would be ineffectual to wait 25 years to see if the descendant has remembered to re-apply. After a reasonable attempt to contact an individual (e.g. 2 letters to the known address within 2 months) are unsuccessful then the perpetuity terms would lapse. The initial purchaser of perpetuity should be required to make descendants aware of this responsibility e.g.: as a requirement of the executor of a will to notify.

**24a Should there be any restrictions about to whom the owner of a lair can transfer his or her interest?**

Yes

**24b Should this be restricted to family members?**

Yes

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

Yes

**Please enter additional comments here.:**

There should be limits for individuals and for families. Not sure what a reasonable limit should be but it should be lower rather than higher. Not sure how such limits can be enforced if say individuals from an extended family each apply for purchases.

**26 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 long should constitute 'imminent' in this situation? :**

The applicant or a close relative should either be within 10 years of reaching the current national life expectancy (relevant for males or females) or have a low life expectancy related to an existing medical condition. Close relatives should be parents, grandparents, siblings and step siblings, children or grandchildren. The current spouse of a parent who has re-married and step children and adopted children under the age of 16 should be included.

**How could this be tested?:**

The applicant could provide names of family members for whom the lair could be reasonably expected to be provided. It would need to be possible to verify UK citizenship, age and medical condition (when appropriate). Only one individual would need to fulfil the conditions of "imminent" suggested above.

**27 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

**Please enter any additional comments here.:**

If an individual is still responsible for a lair then they should have the right to refuse any such re-use. Existing lairs in perpetuity should only be changed for reasons of safety or if there is no alternative to the continuing good maintenance of the burial ground (other than just lack of space). If cremation preferences continue to increase and new eco-friendly methods of immediate disposal of remains become available then the pressure for re-use should diminish. The conditions of new lairs should make it clear that re-use is a possibility if descendants fail to maintain responsibility for the lair but the general principle should be that existing lairs in perpetuity should only be moved for safety reasons or extreme abandonment by descendants.

**28 Is a period of 75 years sufficient before reuse of a full lair can be considered?**

No

**Please enter additional comments here.:**

Each case will have different time considerations depending on when interments occurred and whether descendants still maintain responsibility. The principle of perpetuity as suggested in 27 should be respected.

**29a Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted?**

Yes

Please enter any additional comments here.:

**29b Should any other specific organisations or groups be consulted at this stage?**

Don't Know

**30a Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse?**

Don't Know

Please enter additional comments here.:

**30b Should any particular methods of notification be used in addition to those noted?**

Don't Know

Please enter any addition comments.:

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

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

Future sale of lairs may need to include a requirement for an insurance policy to cover future essential repairs. For existing lairs the descendants would need to meet the cost of essential repairs or transfer the rights to the authority. There should be no further financial cost associated with opposition to re-use imposed by the authority.

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

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

Any person or organisation who has taken on responsibility for a lair on behalf of a deceased or incapacitated person. (e.g.; a Power of Attorney). A representative whose function is to maintain responsibility for a lair for deceased family members with possible use by descendants who currently cannot maintain responsibility due to age or incapacity.

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

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

Evidence would be required to show that they hold responsibility for the lair on behalf of the family and solely for the benefit of the original family.

**34a 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?**

Yes

**34b If not, should the Burial Authority remain responsible?**

Don't Know

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

Yes

Please enter additional comments here.:

When the circumstances of a lair allow this. Some lairs may be in ground conditions where this will not be appropriate.

**36 Are any other techniques available that should be considered?**

Don't Know

Please enter additional comments here:

**37 Do you agree that headstones and memorials may be reused if appropriate?**

No

Please enter additional comments here.:

Not sure what reused means. They should only be used for the original family and only altered by the descendants.

**38 Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe?**

Yes

**In this instance, what should happen to headstones and memorials that are removed? :**

Electronic record should be kept if any of the monumental inscription can be read or identified. This should be identifiable and accessible for the future. If descendants are not available or able to repair a dangerous headstone then they should be disposed of as it is not practical or eco friendly to maintain an area of dangerous stones. Any broken monument or headstone which may be of historical or architectural significance should be offered to the appropriate archeological or museum authority before final disposal.

**39a Are any other approaches for easing the pressure on burial land suitable for use in Scotland?**

Yes

**39b For example, should above ground mausoleums, similar to those found in Europe, be considered?**

Yes

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

No

**Please enter additional comments here.:**

25 years is a short time in terms of existing family usage of a lair. Family members who may not consider burial at present may change their minds as they become older. It would only be appropriate in light of other conditions such as abandonment of a lair by the family.

**41 Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair?**

Yes

**Where should the Burial Authority's intention be advertised? :**

Don't know.

**42 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

**Please enter additional comments:**

**43a Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately?**

Don't Know

**Please enter additional comments here:**

**43b Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?**

Yes

**Please enter additional comments here:**

If reuse is being opposed by family who are entitled to do so

**Please enter additional comments here.:**

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

Yes

**Please enter additional comments here.:**

## **Exhumation**

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

No

**Please enter additional comments here.:**

**46 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?**

No

Please enter additional comments here:

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

Don't Know

Please enter additional comments here:

**48 Do you agree with the proposed approach for the exhumation of cremated remains?**

No

Please enter additional comments here.:

## **Pregnancy Loss**

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

Not Answered

Please enter additional comments here.:

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

Not Answered

Please enter additional comments here:

**66 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?**

Not Answered

Please enter additional comments here:

**67a 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?**

Not Answered

**67b If not, in whom should this right be vested?**

If not, in whom should this right be vested?:

Please enter additional comments here:

**68a 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?**

Not Answered

**68b If so, who should be included in this list.**

If so, who should be included in this list.:

Please enter any additional comments here:

**69a 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?**

**69b How long should this be?**

How long should this be?:

**70 Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory?**

Not Answered

if not, why not?:

**71 Should the form used by the hospital to release a pregnancy loss to the mother be statutory?**

Not Answered

Please enter additional comments here:

**72 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?**

Not Answered

Please enter additional comments here:

**73a 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?**

Not Answered

**73b Will this prove impractical?**

Not Answered

**73c Should the legislation specify categories of people who may countersign cremation application forms?**

Not Answered

Please enter additional comments here:

## **Regulation of the Funeral Industry**

**83a Would regulation of the funeral industry be beneficial?**

Not Answered

**83b What would regulating the industry achieve that cannot be achieved already?**

What would regulating the industry achieve that cannot be achieved already?:

**83c What are the disadvantages of regulating the funeral industry?**

What are the disadvantages of regulating the funeral industry?:

**84a If the funeral industry were to be regulated, what approach would be most useful for Scotland?**

If the funeral industry were to be regulated, what approach would be most useful for Scotland?:

**84b Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?**

Not Answered

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

Not Answered

Please enter additional comments here:

## **Funeral Poverty**

**86 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

Please enter any additional comments:

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

No

**Please enter additional comments here:**

It may be beneficial for Local Authorities to generate a surplus from funerals if this surplus was invested in improvements to the local services available.