

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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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

Additional information:

We have not given consideration to "powers" which may be relevant, other than those indicated in our 'Emergency Service to Empower' attachment, (with our main report), which must span all public services in a comprehensive and joined-up way.

We are concerned with "duties" and as set out in our lengthy report, e.g. confer on all public services the same duty as that imposed on NHS staff to protect emotional wellbeing. The main duty of all public services, (not simply burial and cremation authorities), must be to meet the emergency emotional needs of those who are newly bereaved, as rapidly as possible, in creative ways as long as those are lawful. All public servants must respect this 21st century approach based on crisis and survival psychology or be legally required to step aside and leave those public servants with the necessary skills to deliver the highest standards of care. Those public servants must have to power to sweep aside anything which is not required by law, e.g. any protocols and guidance as guidance is nothing more than guidance for those who lack necessary education and expertise. Rules must never exist for their own sake. They must never be allowed to override the need for emergency responses.

It could be useful for very specific public servants to have the "power" to dispense with certain legal requirements but this would require very careful consideration. An analogy is that it is illegal to break into someone's home without their consent but it would be lawful to do so in order to protect life and limb, e.g. in the event of a domestic fire. NHS staff have a legal duty to protect and promote physical and mental health. The same duty exists in health and safety legislation, in that "health" means both physical and emotional. Rules are brushed aside in emergency situations to protect life and limb. The same should apply in urgent situations to protect emotional wellbeing. Both are about the protection of "health" as defined by the World Health Organisation inter alia.

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

Response:

In our main report, we mentioned the parents of baby Jasper, who urgently needed to arrange an exhumation. If social workers had already been put in charge of cemeteries and crematoria in E&W and had been faced with that urgent request and based on the skills which they should have in assessing the needs of individuals, families and other groups, they should have had the power to ring the civil servants responsible for issuing licences (E&W) and agree on the spot that the exhumation could go ahead and without bureaucratic delay. That would have been an urgent response to an urgent need. There

should also be power to allow those who are newly bereaved, their relatives, friends, neighbours and others to dig graves and arrange exhumations, subject only to rational and reasonable health and safety considerations. That might include, for example, that an approved volunteer be with them at all times. That happens with burials in nature reserves and what charities can do local authorities can do. It is the therapeutic opportunities which matter, to protect the emotional wellbeing of all concerned. See Bradfield, J, 'The Health & Safety of Protected Species', IBCA (now Institute Cemetery & Crematorium Management) The Journal, Autumn 1999, pages 28 to 30 with photographs of children involved with burials. That article mentions the legal duty under health and safety law of protecting emotional wellbeing. The question is raised as to whether any articles have been written on funerals and protecting emotional wellbeing. The same question needs to be asked in connection with all events around dying, death and the immediate impacts of devastating bereavements. Without that information, we cannot know how to achieve the highest standards within relevant public services.

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.

Don't Know

Additional information:

The main worry is the risk of a re-run of what happened in the 19th century, i.e. commercial organisations using every which way to profit from bereavement and then bailing out when there was nothing left but liabilities. Those were essentially the expense of maintaining large gravestones. Avoid those and ensure the land can be used for wildlife conservation and/or public recreation and the risks would be minimal.

There is a way of testing the question. What has been achieved by the Cemeteries Clauses Act 1847? Did it prevent or solve any problems? It only applies to cemeteries in E,W,NI & S which incorporated that Act through a special Act. So there must have been two types of commercial cemeteries, i.e. those controlled and those not controlled by that Act. Can it be shown that one group operated differently to the other? What lessons are there from those two differences?

Who would police such legislation? Public cemetery staff lack the skills to do so, as illustrated in our main report. We cite in our report, the examples not just of gross incompetence but of tormenting those who are newly bereaved and the avoidable death of 6-year-old Reuben Powell. It should be possible to escape bad practice by being able to use a range of services, without homogenising them all.

Charities in particular must be free to pioneer more appropriate ways of meeting emotional and social needs. Laws and red tape must not have the unintended consequence of obstructing creative responses to bereavement. If anything, rules should be stripped away, leaving one very clear and overriding legal duty, i.e. to protect the physical and emotional wellbeing of those who are bereaved.

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?

Don't Know

Additional information:

There is the danger of creating pointless administration. In our main report we touch upon having appropriate certificates for specified methods in addition to burials and cremations, i.e. there would be no additional administration other than to specify the appropriate method on the certificate issued by the registrar of births and deaths and to record that method along with other details in the register of deaths.

What matters is that evidence of the causes of deaths not be destroyed prematurely and that having skeletal remains, not give rise to investigations by the police., wasting their time and public funds. The value of having skeletal remains is touched upon in our main report but we did not mention the value of having tangible evidence of bereavements, which could enable us all to develop the skills and confidence to deal with those bereavements.

Unknown to the authorities, a number of funeral pyres have taken place. The police turned up to one and left, thinking they had visited a festival and nothing more. If it had caused a problem, they would have investigated. This may come down to scale and frequency. For example, would there have been any point in having powers over the funeral pyre near Newcastle in July 2006? That was in the middle of nowhere, attended only by those invited and very personal event. Our Trust advised on our understanding of relevant law (E&W) beforehand, one of our volunteers attended and our Trust was made a party in the successful Judicial Review proceedings.

All that is absolutely necessary, in terms of not prematurely destroying evidence on the causes of deaths, is to obtain and authorisation to go ahead with the explicitly specified and preferred method. In the Newcastle case, the law was satisfied by having obtained before the pyre took place, approval for a cremation in a crematorium.

In terms of scale and frequency, would planning consents not be adequate for any new methods? Those are not required for isolated burials or where the land use would effectively stay the same.

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

No

Additional information:

There is a very strange logic from the working group.

On the one hand it recommends controlling matters where there is no evidence of problems but on the other, "because of the financial burden", it has advised against having "regulations" for public cemeteries, i.e. in places where there has been shocking evidence of problems.

"Methods" plural is in the question but there is only mention of "natural burial" singular, which is "already available". Again, what problem has been identified which needs to be solved? There should be no laws which would result in gross intrusions into private grief and/or end civil liberties. The only justification is to keep adding controls to keep reducing what citizens can do, to create state controls which are wholly unnecessary. Public officials keep adding to rules, restrictions and controls. They almost never make a case for curbing and reducing what they are employed to do. If the government in Scotland is committed to the defence of freedoms and civil liberties and the imposition of controls and restrictions only when considered absolutely necessary, we are confident that it will continue to approach this subject very responsibly and sensitively.

Our Trust provided research evidence on relevant law for wildlife charities, in order to pioneer so-called "natural burials" in wild places. Opportunities for more hands-on experiences for everyone, including young children, are far greater than anything provided in public cemeteries. "Natural" or "woodland" burials without gravestones in public cemeteries, have not yet provided that range of opportunities for hands-on experiences for those who are newly bereaved. That is a challenge which cemetery staff in Scotland could address through this consultation and review of law.

The main issues include:- (1) failing to meet emotional and social needs on the false assumption that only environmental considerations matter; (2) ensuring with "natural" or "green" burials that the land management will stay as promised at the outset; (3) ensuring the land owner has consented to the burial or burials, which did not happen in one case over which we expressed profound concerns before the truth came to light; (4) ensuring proper records are kept of all graves, including their precise positions on location plans or maps; (5) keeping two sets of records in separate places and systems, in case of fire, flood, computer viruses etc; (6) protection of personal information about anyone still alive, so any certificates issued only give minimal details, e.g. name of the person buried with their dates of birth, death and burial and some method by which the position of their grave can be identified.

We were reliably informed that an illegal exhumation recently took place in one commercial scheme. In such situations, it would make sense to have the powers to confiscate such projects and taken them into public or charitable ownership, i.e. to protect the public interest or more specifically, relatives and friends connected with the graves created in those projects.

Public bureaucracies are heavily addicted to red tape and always find reasons to employ more and more people to create it and police it. That should not be a reason to kill off personalised initiatives, which meet emotional and social needs. There is no justification for forcing everyone to have to deal with impersonal and routine services.

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

No

Additional information:

As in the above answer.

There is no justification unless to impose monocultural values and prejudices.

Again, what matters is that the landowner (freeholder) has given consent and proper records be kept, e.g. so as not to waste police time in the near or distant future. If the law in E&W is complied with, a land burial register with plan or map must exist and be handed to each successive owner of the property. That needs to be enshrined in a modern law. We have recommended in our main report that the same be done in Scotland. The Scottish Environment Protection Agency recommends the same.

Other concerns are personal rather than public, e.g. how to ensure the long term protection of the grave and access rights. Those matters can be dealt with in terms of long term burial and access rights.

To cite from the consultation document, what "uncertainty" exists?

Why does it need to be removed with legislative controls?

Does it call for the intrusion of public officials and if so why?

What justifiable criteria would they apply, e.g. what evidence base exists for recommending that "requirements" be imposed by law?

What problems have arisen which call for not one but "various authorisations" to be issued?

What does "permission from the local authority" mean, e.g. cemetery staff, environmental health officers or planning authority?

Why would they need to give consent?

Scottish Environmental Protection Agency (SEPA) staff were baffled when we asked if they have any guidance on the subject. Two members of staff said they saw no need to be consulted. For the equivalent position of the Environment Agency in E&W., see our main report paras. 11:15, 16:07, 16:08 & 16:11. We have since written to the SEPA requesting clarification on its position, which should be the same as the Environment Agency in E&W., i.e. the two organisations should be able to agree about environmental science.

Why would those burials need to be, "in line with (those) carried out by burial authorities" and what exactly does that mean? Does it mean having to use gardeners,

gravediggers, JCBs., shoring equipment or what? It reads more like authoritarianism by trying to control others when controls have proven entirely unnecessary over past centuries.

Surely necessity dictates whether freedoms which have existed for centuries can be denied for the first time?

We hasten to add that we have never promoted "home burials". Indeed we warn about the long term implications. However, it is not for us to dictate to others how they need to deal with their grief. We are sure it is not appropriate for local authorities to impose local authoritarianism when there is no justification, e.g. there is not a scrap of evidence of any burial or burials causing public health concerns.

The last point is the most serious. In our main report we call for the urgent needs of those who are newly bereaved to be met urgently. We give examples of local authority staff frustrating those needs by acting in officious rather than educated and sensitive ways. The recommendation of the review group makes no mention of how it would help or hinder in dealing with what matters more than anything else. That must be the urgent needs of those who are newly bereaved and that should not be subjected to officious intrusion, when there is no evidence of a problem, other than of one group imposing its values on another. Scotland has to decide whether it defends freedoms or has reached the stage of wanting to remove them.

What we recommend is that local authorities do nothing more than provide credible guidance on "home burials", in terms of law, long-term considerations and how to act responsibly by considering the needs of all concerned, so the option is only chosen, after very careful thought.

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

Response:

As stated above we see no need for "legal provision" other than the keeping of adequate and legally protected records. The need for land burial registers in all circumstances is mentioned in our main report.

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

Yes  No  Don't Know

Additional information:

We have mentioned above and/or in our main report, what we think are the only legally necessary controls. Any other controls unless absolutely necessary, would only create controls, intrusions and administration for their own sake, be a waste of public funds and discredit public services and public servants.

If legal principles in Scotland are the same as E&W., then funeral pyres are not "illegal". This is about legal definitions, some of which may be in case law. The Ministry of Justice (E&W) has issued and stood by false and misleading information about the law in E&W.. As our Trust was involved in the Court of Appeal case, following the funeral pyre in the Newcastle area, we should have a sound grasp of what was decided.

The Anglo Asian Friendship Society supported the Applicant in the above Judicial Review and if that charity has not responded to the consultation, we strongly urge the government in Scotland to liaise with its legal adviser over future proposals.

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:

In the case of burials, they are only controlled by the Burials Grounds (Scotland) Act 1855, if within local authority cemeteries. Is there any reason why other methods should come within the controls of a new Act, unless they are offered on an industrial scale? What justification could there be, for preventing a family from composting a body? Why would a local authority want to impose controls and what controls could be imposed which are not merely arbitrary? It seems highly probable that existing laws and legal precedents would cover variables such a private and public nuisance. To that end, it only seems useful for local authorities to provide sound guidance, including how to make sensitive decisions which take into consideration all points of view, i.e. psychological and social considerations which are not about pollution or the disease myth. In the event that rare and dangerous diseases are involved, such as Ebola, public officials would have controls to determine what can and cannot be done. Thus, safeguards already exist.

We have covered this subject in our main report, including the importance of local authorities not arranging 'safety net' funerals which cause avoidable pollution, i.e. cremations in crematoria. Environmentally benign methods should be encouraged as a matter of priority, e.g. so as not to add to mercury contamination in fish and other food.

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

No

Additional information:

Relatives have been deeply upset but not having been given shrapnel. We cannot over stress the importance of doing exactly what is requested. Consequently, the application

form for cremations needs to ask if everything from the cremator is required and whether or not metals and anything else should be removed.

Ashes are produced by cremulators and not cremators. The option should be given of having cremated bones, without need for turning to ash in a cremulator. Having bones may help some people cope with their bereavements, in the same way that spending time with a body may often do. Some believe ashes are not really from the person who has died but bones would feel much more real and personal to many. It would be no different to having bones after exhumations if Scotland moves from perpetual burial rights to the constant use and reuse of graves.

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:

If there are plans for a the construction of a crematorium near houses which already exist, details about emissions of dioxins and mercury should be stated in planning applications, e.g. where those pollutants are predicted to concentrate in surrounding soils, such as the eastern side because of predominantly westerly winds and the distances involved. There may be scientific ways of determining how far houses need to be from the source of pollution. Simply having an arbitrary distance of 200 yards may make little or no scientific sense.

Plans to build new houses near an existing crematorium should be based on pollution risks, especially to unborn babies and young children.

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

Response:

We are unable to comment without considering the matter in greater detail.

#### 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?

No

Additional information:

We are reasonably sure that the statement in para. 35 is not a sound reflection of current law in Scotland. Clearly the role of executor does not arise in the case of those not old enough to make valid Wills.

We provide more detail in our main report, including making it possible in law, for the person who is dying to appoint someone to take responsibility for their funeral arrangements. That is not currently possible.

The information which we have indicates that executors have the common law duty to take control if no-one else does so. If a relative takes control, the executor still has financial control. Some people deliberately make Wills to prevent relatives having control over funerals. Our understanding is that common law has always been clear on this point, so we were surprised by the way it has been presented in the consultation document. We have mentioned this point elsewhere, e.g.

"... a right to the custody and possession of (a body) until it is properly buried. (That right lasts from the time of death up until the body is buried) Any violation of that right to possession ... is a trespass for which an action lies'. The authority for this proposition is two Scottish cases (and there) is no suggestion ... that it is (anything) other than a statement of English law"

In ordinary circumstances in Scotland, "there is no legal obligation on any person to dispose of a dead body and no specific requirement as to the method of disposal which may be used. The ... executor, the next of kin, or near relatives are entitled to arrange for the disposal ... and to chose the method of disposal". Ignoring European legal judgments, that has always been our understanding and also of **the ranking order**.

We are not aware of a single legal case, where funeral arrangements were made by someone named as an executor in a Will but whose rights were latter challenged to make those arrangements, because they subsequently declined to have their role formalised in a document of 'confirmation' (Scotland) or probate (E&W). It seems to us that the courts would undoubtedly uphold the immediate rights of putative or provisional executors named in Wills, to act responsibly in connection with funeral arrangements and the protection of assets, even if they withdraw and give way to others, when decisions have to be taken about confirmation or probate. It seems virtually impossible that the courts would make a decision, which could or would create a power vacuum, in which non-one appears to have clear responsibilities. All that seems to matter, is that those claiming to be executors are named in Wills. It is not the task of public officials to check those Wills, because those claiming to be executors are ultimately answerable to the courts and beneficiaries and no-one else.

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:

We have not given this point adequate consideration. What we can say, is that when a child in the care of the local authority dies, the biological parents can step in immediately and take lawful control.

If the child had been living for most of their life or a very long time with the same foster parent/s, the emotional wellbeing of all concerned needs to be considered. One or both biological parents might only grasp at legal rights, simply to prove a point, rather than because of emotional need. There needs to be a method for trying to meet varying needs and not simply rush to a quick button-pushing formula. When a child has been in the care of the local authority, it would make more sense for the local authority to have the power to decide the fate of the child's body but with the obligation of trying to meet the needs of all concerned, in one way, one event or varying ways and events. If that additional duty is not imposed, social workers might be sympathetic to the foster parents and not the biological parents. What matters, if the NHS and health and safety duty is meaningful, is to strive to protect and promote the emotional wellbeing of all concerned. It should not be a process roulette, i.e. whose emotional wellbeing will be protected and promoted and whose will not, depending on the spin of a wheel.

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:

Hopefully, the Stillbirth & Neonatal Death Society will provide useful information on this question. We have not had time to adequately consider this point but believe the mother should give consent whenever possible and if the father makes the application, it should also contain the signature of the mother. Both should be able to sign an application to say that they are giving consent to any named person to make the application on their behalf, e.g. a very close friend rather than a relative.

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:

The answer given in 15 could, we believe, be applied to anyone of any age who has died, i.e. the person with the greatest right to decide what should happen to a body, could and perhaps should sign to say the person making the application is doing so on their behalf.

Needing more than one signature when possible, leans towards co-operation and consideration of the needs of others. Simply resorting to the powers which an individual may have, may cause emotional harm. It may make for simple decision making for others but emotional and social needs are often complex. If emotional crises are not successfully negotiated, long-term emotional and social harm may result. That is another reason for placing social workers in charge of cemeteries and crematoria, so needs are properly assessed whenever possible and rules and courts are only resorted to, when all else has failed.

If more than one signature is required, there must be discretion to waive the rule when practical circumstances clearly require.

### 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

Additional information:

Most definitely in terms of safety.

However, see in our main report, the case of the Shiregreen cemetery all night vigil and distress caused to parents of babies in other places by dreadful attitudes and practices.

Management principles must be based on meeting bereavement needs. If they fail to meet those needs that the principles or working practices must be wrong. If trying to be everything to everyone proves impossible, then the answer is to come up with a range of options rather than Hobson's choice.

We cannot be sure as to what is meant by "abandoned lairs". Was the sale of perpetual burial rights contingent upon graves not being "abandoned" and if so was that clearly defined? If visits are being made and those are recorded in visitors book, anyone could add their name or that of anyone else or a false name, simply to prevent the ending of burial rights. If genuine information is provided, that would have to be done in a way which does not breach privacy law.

Will future burial rights, even if limited to 25 years, be contingent upon not "abandoning" lairs? Could they be abandoned after a much shorter time and if so, what would be the consequences if laws keep changing to assist with the reuse of graves?

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:

Safety is addressed in our main report, e.g. which would have prevented the death of 6-year-old Reuben Powell by a 6-foot gravestone. His death resulted from the failure to work to the required legal standards. Laws and guidance are necessary and laws must be rigorously enforced without delays. Laws should not exist if they are not worthy of enforcing.

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

Additional information:

It is a figure pulled out of thin air and needs to be based on what makes environmental cum scientific sense. Local authorities can agree to 2' 0" in E&W and there is no reason why they could not offer composting, which could be at ground level. Bodies placed in vaults and below floors in buildings are not 3' 0" deep and are defined as burials in some legislation, so decisions must be coherent and make sense in a number of ways.

An alternative approach is to have a fixed depth for "burials" and anything shallower defined as something else but that would probably result in needless complexity.

### 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?

Don't Know

Additional information:

If we had relied on computer records, we would have lost details of some burials, because of computer breakdowns and information simply vanishing without trace.

We have two sets of paper records in separate buildings in case of fire.

We also have computer records but if we relied upon them, we would have to have those backed-up, in case of computer malfunctions, fire etc..

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

Indefinitely   

Additional information:

The problem is where they should be kept "indefinitely", especially with bulky paper records. Archivists might have sound suggestions and also the Registrar General.

Note that the maximum penalty for altering, damaging or destroying a register in E&W (and possibly Scotland) is life imprisonment. So, the law would have to be changed in E&W if registers are to be lawfully destroyed.

### Alleviating pressure on burial grounds

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

Don't Know

Additional information:

Tricky with lairs already sold, if the time span is shortened by law, because it would be a fundamental breach of trust.

Anyone who wants limited rights should be able to purchase those - when there would be no breach of trust.

More details are in our main report.

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

No

Additional information:

The "alternative approach" is not one which is designed to meet emotional and social needs. It is proposed out of managerial necessity, assuming it is now necessary. Consequently, we could not agree that it is public service to offer everyone Hobson's choice. That is all the more reason to encourage other credible options and without strangling those at the very outset, with wholly unnecessary red tape.

If composting is encouraged in public cemeteries or the possibility of removing skeletal remains when burial rights expire, now is the time to work intensively with wildlife charities, to find places for the burial of skeletal remains adjacent to existing nature reserves, especially well away from houses and alignments for new roads. That could mean having to create new or use existing compulsory purchase powers of the local

authority. That would not be a legal precedent in that commercial cemeteries acquired those powers through Private Acts of Parliament.

In E&W the only option that we are aware of which has been floated is "lift and deepen" but that only works once. Rather than move to the next stage of having to destroy bones by cremation or other means, having the informed choice of moving them to nature reserves would be a credible option. Other possibilities on what to do with bones could be offered.

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:

Burials rights are in effect property rights.

They should be treated as any other property rights.

Unless our mad dash through this document is resulting in misunderstandings on our part, it is unclear why the question is raised.

Why would this be any different to leaving other property to non-relatives etc.?

If it is decided that only family members can own burials rights, that might be challenged in the courts and ruled invalid.

We assume that it is legally valid to have only one owner at any one time of the burial rights, which include the right to prevent exhumations and other burials. By powers conferred by S.112, Civic Government (Scotland) Act 1982, the Moray Council created its own rules for its cemeteries and burial grounds. One states that, "The Lair is capable of bequest but if more than one beneficiary is entitled to claim it under the Will, the Executors appointed thereunder or, in the absence of any Executors, the beneficiaries, shall nominate one of the beneficiaries to be the Lair Holder".

Other rules of the Moray Council include, that the owner of the burial rights cannot "sell an exclusive right of burial in a Lair" and they, "shall not be entitled to transfer a Lair to a third party". This last point seems to refer to a transfer whilst the owner of the burial rights is alive, in that as mentioned above, it is stated that a "lair is capable of bequest".

Presumably there is no law or legal principle which prevents the owner of a burial ground, from agreeing that there can only be one owner at any one time. We have not researched that point or whether it might be legally invalid to prevent anyone from transferring their interest in a grave (or any other property) whilst they are alive.

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

Don't Know

Additional information:

No response as we have not been able to consider the matter.

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:

No response

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:

This requires more depth of consideration than we can give to the subject.

It would be a breach of trust to end what has been paid for, i.e. perpetual burial rights.

That should not stop the removal of dangerous gravestones but that is a separate matter.

Rather than carry on creating more problems which will have to be faced in the future, one very obvious part of the solution and it is only a part, is to come up with a range of creative options in the immediate future. Those must be designed to avoid storing up problems which would have to be faced in future decades, whether they be about the management of public cemeteries or anything else.

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

Don't Know

Additional information:

Any figure is arbitrary.

Another option is that there must not be anyone alive who knew the person or those buried in a grave.

It would be very hard to find an average person in E&W who has any idea about what it means to own time-limited burial rights. They are not told what could or would happen, unless constantly renewed over the coming centuries.

For a change of direction to be ethical, the full implications must be spelt out very clearly, before anyone agrees to a burial. As mentioned in our main report, baby Jasper would not have been buried in a public cemetery and then exhumed, had his parents been adequately informed about the true and full implications.

In terms of consumer protection legislation, it is illegal in E&W to sell products with misleading information, whether that is by commission or omission. That same principle must be applied to what happens in public cemeteries, i.e. there must be no deception because of what is said not said, on the assumption that the truth would be too insensitive to mention.

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

Additional information:

There is no health and welfare perspective but having said that, it is rare that any health and welfare staff in our public services have any understanding of the subject.

There is no evidence of any understanding of applied working principles from crisis and survival psychology.

We strongly advocate a health and welfare perspective as the utmost priority and to design all bereavement services around that. We reject the "disposal" paradigm and disease myth which have determined the way cemeteries have operated since at least the Victorian era.

Services need to be looked at afresh and we congratulate the government in Scotland for doing just that.

If consultations with health and welfare staff (nurses, occupational therapists, psychologists, social workers et al) might be thought useful, they could be shown copies of this response and our main report, to precipitate critical thinking on the subject.

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?

No

Additional information:

We own the burial rights in a lair and would never see any notice in the cemetery, local newspaper or anywhere else.

There is the recommendation that owners of rights be required to resurface after 25 years. Why not enable the same people to update their contact details at any time, by giving them a password to a specific website for that purpose? That way, messages could be sent out on an ad hoc basis. In that way, names and personal contact details would remain confidential.

It is not clear why religious organisations can object to reuse and others cannot.

That appears to be contrary to the legal principle of equality, i.e. it may be unlawful to offer to one group or individual that which is denied to another.

If religious and secular organisations and individuals need permanent graves, now is the time to assist and encourage them in creating their own places for permanent burials.

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

Response:

We cannot see what this question means. If anyone owns perpetual rights and does nothing, they would not face "financial disincentives", unless forced by a new law to make a choice. If they feel they can no longer trust the local authority to honour its original promise and the threat may keep surfacing with creeping changes to laws, one option would be for the local authority to pay for the removal of skeletal remains and have them taken for permanent burial in a nature reserve, if that is an acceptable option to all concerned. Agreement would have to be reached about the fate of any gravestone, unless that could be buried below the bones in the new grave. That could prove expensive for the local authority, unless there is a longer term view on financial considerations, i.e. regular income each time a grave is reused in the cemetery.

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

Response:

The owner of the burial rights.

Anyone who was a close friend, e.g. anyone who was fostered as a child.

One way out of this difficulty if reuse is to be imposed by law, is to ensure no-one could be alive, who had any relationship with the person buried in the grave, e.g. add 110 years to the date on which the burial took place.

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

Response:

If reuse is to be forced through, it is only necessary to create conditions with cut-off dates, so those who can object miss their opportunities to do so. That would be unethical but it happens all the time with other laws. To stay on the right side of ethics, we are sure reuse should not occur with perpetual rights, unless by consent. For example, it might be possible to remove gravestones, leave burials undisturbed and use those areas for public recreation. For example, we see no reason to prevent children aged 5 and under from playing any games where there are graves and no gravestones or other dangers. That would mean creating new cemeteries, possibly in public recreation areas, so functions switch around.

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:

There is a need to differentiate between maintenance of a lair and a gravestone. The latter is the responsibility of the owner, so it would not be unethical to require that anyone claiming control over the grave, meet the costs of keeping the memorial stone in a safe condition or having it removed from the cemetery. After a few decades, subsidence should have stopped, so it is unclear to us what maintenance of a lair might then mean. Presumably the local authority would continue to mow the grass over the grave, as that would have been implicit in the original contract of sale of the burial rights.

As mentioned above, one way out of this difficulty if reuse is to be imposed by law, is to ensure no-one could be alive, who had any relationship with the person buried in the grave., e.g. add 110 years to the date on which the burial took place.

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

No

Additional information:

It is not the solution need by the local authority. It only stores up further problems for the future, i.e. what happens when the grave needs to be reused for the second time? If anyone wants temporary graves and to have their bones eventually destroyed by cremation or any other means, that is a matter of free choice. However, it is not free choice if no other options are made available.

So-called "natural burials" should be a way of providing permanent graves but those projects need to be designed with considerable care, so they don't end up being destroyed with compulsory purchase orders. There would need to be a new law so that such orders could not be used, in circumstances when other land could be acquired for the intended purpose, i.e. permanent graves could only be destroyed as a very last resort.

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

Response:

Composting - mentioned above and in more detail in our main submission.

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

Yes  No  Don't Know

Additional information:

Anything which is "appropriate" must ipso facto be agreed.

If not agreed it would not be appropriate to at least one party, perhaps including a civic or historical society.

The consultation attempts to address problems currently being faced. If it is to prevent the same sort of problems in the decades to come, it is vital that anyone who erects any gravestone today or at any time in the future, be informed very openly at the very outset, exactly what may happen to it, e.g. it will be removed if a danger to health and safety or after burial rights expire and they are not renewed. The gravestone would automatically become the property of the local authority to do whatever with it.

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

Additional information:

We can only comment on need to protect life and limb and that can summed that up with one name, Reuben Powell.

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:

Ensure permanent graves can be offered in other places, e.g. nature reserves,

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:

As with other points, if this is to happen, it must be very prominent in the contract details and not concealed within small-print. So local authorities cannot be accused of deception in the years to come, we recommend that on one sheet of A4 paper, there be a number of separate statements requiring a number of signatures from the same person, i.e. who intends to purchase burials rights and erect a gravestone. If a copy is handed to that person to sign before they go ahead with a purchase, they could never be in any doubt as to the consequences of not renewing their burial rights and what could or would happen to their gravestone. In terms of safety, we have suggested in our main report that gravestones always be limited to single slabs of specified dimensions and specified or suitable materials, sunk one third of their length into the ground. That would reduce future risks to near to minimal, i.e. not storing up problems for the future. It also gets around complexities of each owner having to have insurance and checking if that exists every day of every year and every decade.

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:

We have stated above that we own the burial rights in a lair but would never know of any advertisement. We have suggested a complementary mechanism, i.e. website by which anyone using a password, could keep up-dating their details and through that, receive information at any time.

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

Additional information:

Essential and not optional,  
if being open and honest, which any public service should do.

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:

Law or court order is the same thing, i.e. imposing a breach of contract and breach of trust.

Part of the answer is to rapidly create a number of options as discussed above and in our main report. Those options need to address issues of the here-and-now and prevent future problems which could result in another phase of breaches of contracts and breaches of trust.

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:

We suspect that it may be lawful to make war graves an exception but as stated above, it seems unlawful to provide permanent graves to religious organisations and not secular:-

That appears to be contrary to the legal principle of equality, i.e. it may be unlawful to offer to one group or individual that which is denied to another.

### 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:

We have not read the notes with this question.

We have recommended what might be termed "therapeutic" exhumations which health and welfare staff should be able to authorise, if asked for help from the person who owns the burials rights. or they are in agreement with the request of someone else.

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?

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?

Don't Know

Additional information:

Was does "carried out" mean? Would an inspector arrive with a spade?

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

Yes  No  Don't Know

Additional information:

No response

Exhumation for archaeological purposes

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:

We have considered this point very carefully and briefly liaised with academic archaeologists, e.g. Prof. Mike Parker-Pearson who wrote to the Law Commission (E&W) on the subject.

We are entirely sure that laws about how we deal with our dead and the protection of their burial places, should be very distinct from an archaeological exhumation law.

There is a need for a law on archaeological exhumations and "curation", i.e. what can and cannot be done with exhumed remains in terms of conditions if any for investigative techniques, storage and reburial or long-term retention.

If outside a public cemetery, considerable care needs to be taken so archaeologists are not given carte-blanche to become 21st century grave robbers and grave destroyers.

If permanent graves through perpetual burial rights are to be offered in places other than public cemeteries, that would be pointless if archaeologists are allowed to move in at any time and very respectfully do more damage than could ever be caused by young vandals.

Unless justifications for archaeological exhumations are set out with considerable care, there will come a time when it may prove very difficult or even impossible to find any places left with ancient burials. Is it adequate to authorise archaeological exhumations, simply because one or more amateur and/or professional archaeologists would like to do so, for the sake of their own experience, interest and education? Would it be acceptable to destroy a burial ground of 17th century dissenters, just to discover what if any "grave goods" they were buried with, even if all skeletal remains would be reburied exactly where they had been found? An ability to destroy all graves or none would be very clear. It would also be very clear to only authorise such exhumations prior to large scale construction works which cannot be located elsewhere. Another clear-cut example is where coastal erosion would destroy ancient graves. Such considerations leave a grey and ethical area to be considered, where there is no 'necessity' for exhumations.

In cases where surveys need to be conducted, prior to deciding whether planning permissions can be granted, then presumably the discovery of graves would not result in exhumations, unless permission is given to destroy those graves. That raises the issue of whether planning authorities should be able to authorise the destruction of any graves or in some circumstances but not others. In E&W they have powers to arrange exhumations under compulsory purchase powers, e.g. when built-up areas are demolished for redevelopment schemes. That process would include any "home burials" as stated in this consultation document. Presumably, Scotland has similar laws.

We submit that such considerations are too complex to insert into up-dated burial, cremation and related laws. Those, we submit, should be restricted to public burial places, i.e. where the public have automatic or common law rights to use those services. There might then only be an overlap if previously unknown ancient graves are discovered in public cemeteries. What law would then apply could simply be decided on the basis of whether or not archaeologists would be involved. If they are, then and only then would it make sense to say that their own law must be applied.

### Pandemics and mass-fatality events

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

Additional information:

Public health must take priority, e.g. outbreak of Ebola.

It is unclear what is meant by mass fatality events. What figure constitutes a "mass"? Would that have to be more than 100 or some other figure? Would a set figure be misleading? Would a decision to suspend be based on public officials being so overwhelmed with administrative responsibilities, that they could not cope appropriately and sensitively, unless regulations are suspended? Is there no emergency law which could be brought into play, to suspend any number of laws in such circumstances? Is so, we understand that there should not be two or more laws what address the same point.

### 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:

No response

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

Yes  No  Don't Know

Additional information:

No response

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

Yes  No  Don't Know

Additional information:

No response

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:

First question - answer is "Yes".

Second question - no response

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

We thought one or more inquiries conducted on behalf of the Scottish government, concluded that it is possible to obtain ashes of very young babies, if using appropriate equipment. It is unclear if the question is asking whether parents should be told "it may not be possible to recover ashes" if the wrong equipment is used. Whatever is said, it must include a sound and sensitive explanation, which does not mislead.

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:

Anyone should be able to collect the bones or ashes, at the request of the applicant.

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:

As above - applicant should state what they plan to do. If they fail to follow through, personal contact may be highly relevant, to discover if they are not coping emotionally and socially. We advised someone who for two years, was terrified about asking for her son's cremation ashes, believing her request would be illegal. Such fears must be prevented with sound information and follow-up enquiries, e.g. through health and welfare staff.

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:

On the one hand, evidence must not be destroyed prematurely but on the other, the process of applying should not become a burden resulting in delays and frustration. Another option is to ask if there is anyone the crematorium staff could ring, if they believe that at least one additional endorsement would be useful., e.g. health and/or welfare staff.

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

Yes  No  Don't Know

Additional information:

No response

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:

No response

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

Response:

No response

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:

No response

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

No

Additional information:

Over 25 years, we have never been aware of any problem.

Why create work when none is necessary?

What is important, is that proper records be kept of all burials.

That is also recommended by the Scottish Environment Protection Agency.

### Pregnancy loss

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

Yes

Additional information:

If the primary focus is to move to urgent emotional needs, then a pregnancy loss below 24 weeks may well have the impact of a bereavement. Consequently, it should be regarded like any other, if that is what the mother and/or father need.

In terms of emotional needs, it is important to help if asked to bury amputated limbs.

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:

No response

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:

We have not had time to read the background details. In the early days of the NHS, hospital staff offered to "take care" of stillborn babies and mothers accepted those offers, without understanding what was meant, e.g. years later began searching for records of what happened. It is vital that mother's be given opportunities to make informed choices, in a way that they can be sure at any later date, that it was their decision and not one surreptitiously made by someone else.

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:  
No response

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:  
No response

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:  
No response

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

Yes

Additional information:

It is vital that mother's be given opportunities to make informed choices, in a way that they can be sure at any later date, that it was their decision and not one surreptitiously made by someone else. That is more likely to be guaranteed when there is a statutory process to be followed.

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

No

Additional information:

If we understand the question correctly, there is no statutory process imposed when anyone collects a body from any placed. Although websites and other sources of information refer to a need for "Release Certificates" in Scotland, there appear to be no

such documents in law. Why would the process need to be any different for a pregnancy loss or the collection of any body part after an operation?

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

Additional information:

Yes, so the loss is treated like any other loss. What matters is the needs of one or both parents.

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:

It feels as though this question has already been asked and that we have given a brief answer above.

### 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:

Details not read so we are unable to respond.

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

Yes  No  Don't Know

Additional information:

Details not read so we are limited in what we can usefully say.

We have recommended that registers of burials, cremations and anything else, be used as therapeutic tools, recording details about those who are alive. Even if just names and addresses, those details should not be open to the public and so should be protected by the Data Protection Act.

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:

Same answer as with the above question.

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

Yes

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:

Details not read so we are unable to respond.

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

Response:

Details not read so we are unable to respond.

#### Inspector of crematoria

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

Yes

Additional information:

It is essential, not to concentrate power in the hands of one person, because of the familiar danger of ending up serving vested interests, e.g. the hand that feeds them. Serious concerns, however they may be defined, should be presented to some form of tribunal made up of independently minded people who have no axes to grind. An example of how concentrated power can go very badly wrong, is in the case of the Parliamentary & Health Service Ombudsman/woman. The Patients Association will no longer refer anyone to that watchdog because, "The quality, accuracy, objectivity, effectiveness, openness and honesty of its reports is shameful", it, "often ends up compounding the grief of families" and the investigation methods used are, "inadequate, untimely, secretive and unacceptably flawed".

This highlights the importance of detailing the duties of an Inspector. We strongly recommend that four of those should be:-

- (1) staff must provide sound and easy to understand information directly to anyone about to use a service, or their representative, to empower those who are newly bereaved, so they can do whatever they need, drawing on whatever help may be available from relatives, friends, neighbours or anyone else or and any organisations but within the unavoidable resource constraints of the cemetery, crematorium or other service and as long as what is done is lawful;
- (2) all monitoring and all assessments must be used to continually drive up standards and not reluctantly give mediocrity a seal of approval;
- (3) reports must include minority view points, both of service users and staff, so that justice is done and is seen to be done;
- (4) staff must be encouraged to be open about mistakes without fears of repercussions, so lessons can be learnt and defensive attitudes avoided.

The last point is one long used in the aircraft industry and is slowly being introduced into the NHS..

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:

See answer to the above question.

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

Additional information:

There needs to be a checklist of what to look for but without a tick-box mentality, e.g. are the right buttons pressed and levers pulled at the right times? The attitudes of staff, their creativity and an empathic determination to act in good faith and to the best of their ability, is the most any reasonable person expects. When that standard is reached, human errors are accepted with good grace.

### 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?

No

Additional information:

As mentioned in our main report, regulation would consolidate and exacerbate intractable issues. Those include financial exploitation, losing legal and psychological powers and being helplessly dependent, rather than empowered and liberated.

As mentioned in our main report, the answer rests unquestionably with consumer protection legislation. That could and should achieve everything that needs to be done, to address the criticisms of MPs and the findings of the Office of Fair Trading inter alia.

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

Our answer is provided in response to the above question.

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:

Our answer is provided in response to the above question.

The industry paid for a Funeral Ombudsman at one stage and as far as we could see, apart from a small number of exceptions, acted in the main as an apologist for the industry. See our answer to Q80 and the Parliamentary & Health Service Ombudsman, as another example of the need for a very different way of driving up standards.

## 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

Additional information:

Details about what is being purchased should also be comprehensive and easy to understand, e.g. options when time-limited burial rights expire and what will happen if all concerned do not discuss and agree what to do at that time. More details are in our main report.

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:

It should be possible to have some degree of flexibility, e.g. what local authorities "may" charge for certain public services, such as for children in care. The current situation on funeral charges is "all or nothing". If "nothing" the local authority steps in and "may" recover costs but is not required to do so.

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

Response:

Details are provided in our main report under the heading of Funeral Poverty and also Consumer Protection.

## 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:

Further details are provided in our main report.