

SCOTTISH CONSULTATION ON BURIAL AND CREMATION

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

That depends on what is in the legislation. For example, before 1952, the fees charged by public, but not private, crematoria were subject to Ministerial approval. Whether or not it was thought desirable to legislate for the possibility of Ministerial control of fees charged by public crematoria it would not be right to allow for the possibility of that control extending to private ones.

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

But only by giving power to make subordinate legislation regulating them (e.g. like the Public Health (Control of Disease) Act 1984 s. 47) and the Bill should not seek to outlaw new methods while such subordinate legislation is awaited. To do so will stifle innovation.

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

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

Yes No Don't Know

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

Do you agree that alternative methods of disposing of the dead should be regulated for in this way?

Yes but there should be no blanket ban on new (and as yet unthought of) methods until regulations have been made. To provide otherwise will stifle innovation.

*Are there any particular alternative methods that should be considered?
Resomation.*

Are there any particular methods which should be prevented from being used in Scotland?

No.

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

Yes No Don't Know

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

The Burial and Cremation Review Group recommended not only that the distance of 200 yards from houses should be retained but also that of 50 yards from public highways.

If the limits were to be relaxed or done anyway with completely this should not be done in such a way as to render lawful cremations carried out in crematoria built in breach of section 5 of the Cremation Act 1902.

If limits are to be retained the Bill should make it crystal clear the point within the crematorium grounds from which the distance is to be measured, and this should be the room/chamber housing the cremator(s).

The Bill should also make it clear that the limits apply to extensions to crematoria and adaptations of buildings or structures to crematoria by defining "crematorium" and/or "construct" appropriately. Examples of how this might be done are

London County Council (General Powers) Act 1935 s. 64

Mortlake Crematorium Act 1936 s. 34

South-West Middlesex Crematorium Act 1947 s. 40

Manchester Corporation Act 1950 s. 52

Essex Act 1987 s. 50

Various drafts of the Burial Grounds (Scotland) Bill, then the Burial and Cremation (Scotland) Bill produced by the Scottish Local Government Law Consolidation Committee from 1943 onwards and issuing eventually in the Draft of a Burial and Cremation (Scotland) Bill 1953 [Cmd. 8752]

The legislation should also be drafted so what is required of neighbouring house owners, occupiers and lessees is consent to the acquisition of land/premises/buildings for a crematorium not consent to its construction. At present a cremation authority might acquire land for a crematorium with the consent of all neighbours but be prevented from building the crematorium because before building is started (or completed?) those who have given consent change their minds or new neighbours object.

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

Either (1) Restore the requirement for site and plans of crematoria to have Ministerial approval which was removed by the Local Government, Planning and Land Act 1980 ss. 188, 194, and 195 and Sch. 34 Part XVI or (2) insert the limits into planning legislation.

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

Power should be given to Executor or nearest surviving relative.

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

50 years for documents – indefinitely for registers.

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

There are two forms currently in use in England and Wales – A; AA – Body parts.

If foetal cremation is brought within regulation in Scotland it may be necessary to extend the versions available to cover different circumstances.

A separate application for still born children would be appropriate.

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

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

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?

*Para 126 of the Consultation Paper says “the Cremation Authority may not scatter or inter the ashes unless 14 day's notice of the intention to do so has been given to the applicant”.
(a) If on Form A the applicant has signed that “I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the*

ashes will be scattered or interred at/by the crematorium" (see para 122 of the Consultation Paper), there is no need to give the applicant any notice;
(b) If notice can be "given" to the applicant, there is no reason why the ashes should not be given;
(c) If the Bill is to say that notice must be given, it should make clear that what is meant by "given" is "sent to the applicant's address as given on Form A"

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

Yes No Don't Know

Photo ID more appropriate.

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

Same details as England and Wales

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?

Authority can be given to a suitable senior member of staff but ultimately crematorium manager is legally responsible.

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

The forms should only become statutory once the process is recognised by law or once it has been formally regulated.

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

Yes No Don't Know

See answer to question 70.

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

Photo ID would be more appropriate instead of a countersignature.

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

Yes No Don't Know

Pre 24 weeks should be in a separate register.

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

As should the private sector

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

Closer scrutiny of funeral directors' costs/charges.