

Annex D

List of consultation questions and consultation response form

How to complete this response form

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

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

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

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

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

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

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

The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes No Don't Know

Additional information:

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

Response: *Powers to dispose of unclaimed ashes after a set period of time*

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

Yes No Don't Know

Additional information: *This is essential to ensure consistency across the country*

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Response: *Clearly the same requirements regarding registration and Form 14 should apply. Such burials should, inter alia, ensure the burial is at a depth and in such a manner as to ensure permanence (eg section 53 requirement for 3 feet from top of coffin), and details of any such burials should appear in the legal documentation around ownership, and any transfer of ownership, of the land.*

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

Yes No Don't Know

Additional information: *However crematorium authorities should be encouraged to meet the needs of faith groups, and individuals, in the cremation process. Provided such groups are able to have their requirements met – for example initiating the cremation process or witnessing the cremation, the requirement for any private cremation should not be an issue.*

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: *Each new alternative method should be assessed on its merits.*

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *This refers to crematorium, but in the light of the practice of scattering, as opposed to interring, ashes, should there also be a minimum distance between housing and areas for the disposal of ashes. Children playing in scattered ashes might not be seen as dignified.*

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

Response: *Whatever is required to ensure that planning regulations enforce this.*

The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *It is however important to define what we mean by "father". Should this be restricted to where the name of the father has been named and recorded on the registration of stillbirth?*

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 management of cemeteries

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *Much of the difficulties currently faced have arisen because there is only non-statutory guidance. I suspect that, while this would be a first step, we would soon see a need for making the guidance mandatory*

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

Yes No Don't Know X

Additional information: *While the minimum depth sounds sensible, I am uncertain as to whether there are circumstances where this could not be implemented.*

Burial and cremation records

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

Yes X No Don't Know

Additional information: *Subject to the strictest guidance on back-up and protection of such electronic records.*

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 X Other period

Additional information: *The CMO guidance, based on work which I chaired, stated 30 years because that was the maximum we were told was currently permissible under SG Code of Practice. We recommended 50 years because those responsible for the SG Code of Practice were prepared to consider such an extension in the next review of the Code. In an ideal world I believe this should be indefinitely, but if not, then the longest period possible*

Alleviating pressure on burial grounds

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

Yes X No Don't Know

Additional information:

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

Yes X No Don't Know

Additional information: *However I am less certain about the responsibility for renewing ownership being left to the owner of the lair. Twenty-five years is a long time to remember the date you need to renew ownership, and some form of electronically generated reminder should be considered, at least directed to the last known address.*

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: *In the course of 25 years the definition of who is or is not part of the family could vary. On the other hand transfer to someone outside the family could be contested since the transfer of the lair implies transfer of the interred remains. On balance I think the restriction to family make sense.*

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

Yes No Don't Know

Additional information:

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: *I agree with the recommendation that this be set a 25 years. If the lair is purchased on the assumption that it will be used in 25 years, but in practice it is remains unused, ownership should revert to the burial authority.*

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: *subject to comments on Question 35 and 36*

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *Contact with Funeral Directors might on occasion help to reach family members (Para 73)*

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

Response: *This depends on the interpretation and implementation of the final sentence in Para 73 "The requirement to become responsible for the lair should not be a disincentive to objecting to the potential reuse of a lair."*

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

Response: *Owners if the lair has been transferred outwith the family*

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

Response: *Only non-family members who have ownership should be considered.*

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: *In normal circumstances I believe the objector, who ever that is, should take on financial responsibility but this should not be dis-incentive to anyone with a legal right to object, as defined above.*

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

Yes No Don't Know

Additional information: *The removal of remains is a sensitive topic for family members, and while they may, responsibly, agree to the procedure, the needs of the family must still be addressed. Emotional support, and possibly some form of ritual around the re-interment should be considered.*

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

Response: *The removal of the remains, and any accompanying memorials, to an ossary or similar in another area of the cemetery.*

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

Yes No Don't Know

Additional information: *Subject to permission from the lair owner. Where the headstone is re-used, responsibility for its maintenance should pass to the new user.*

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

Yes No Don't Know

Additional information: *Laying flat in another area of the cemetery may be possible, but after a given timescale, breaking up and disposal may be appropriate where no ownership is identifiable.*

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: *Encouragement of cremation, and similar processes. I would not be in favour of above ground mausoleums.*

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *Local press, List posted at entry to cemetery, discreet notice on grave (maintained for 12 months), contact with Funeral Directors,*

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *Yes I think this is sufficient, subject to the terms of the section on exhumation (para 93 – 95)*

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: *Not as such, although re-use of a CWG in the midst of a row of such graves might not be permitted – similar to Para 70?*

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: In each of the following questions, 45 – 48, I would raise a question of the method of exhumation. It is important for bereaved families to be assured that the remains being exhumed are always handle with care. Descriptions of the “dig and deepen” process for example should make clear that remains are not being removed by random action of a mechanical digger.

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

Pandemics and mass-fatality events

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: *It would be inappropriate to make a difference between cremation and burial in such circumstances. Regulations may have to be suspended in extreme pandemic conditions to ensure public safety.*

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: *On balance I believe this is the best way forward. Clear decisions in each section as to what applies (and is completed) and what does not apply (and does not require completion) is preferable to having a plethora of forms. However there will be a drafting challenge to make the form inclusive, but to keep it relatively straightforward for completion and this may result in a need for more than one form*

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

Yes No Don't Know

Additional information: *However, see my qualification re drafting of the form in answer to Q51*

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

Yes No Don't Know

Additional information: *This is clear and unambiguous*

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: *Any other choices should be covered by option (c) where the applicant or their agent deals with ashes in whatever other manner is required.*

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

Comment: Reference to “a very young child” is ambiguous and too wide. This could mean a one-year old. I think the wording need to carefully considered in conjunction with experts.

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: *Timing should be referred to at Para 122*

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: *Para 122 suggests this should be 8 weeks. That sounds right.*

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: I feel that this is an added burden for the bereaved parents. In the days following a stillbirth the parents may not wish to see anybody but close family members. We already require them to register the death, and make funeral arrangements. Possession of Form 14 should empower the parent(s) to apply for cremation.

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

Yes No Don't Know

Additional information:

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: **as commented in Q51** *On balance I believe this is the best way forward. Clear decisions in each section as to what applies (and is completed) and what does not apply (and does not require completion) is preferable to having a plethora of forms. However there will be a drafting challenge to make the form inclusive, but to keep it relatively straightforward for completion and this may result in a need for more than one form*

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

Response: *I support the four basic principles outlined in Para 13. The detail of content for the form is I think too wide a question for this consultation. Some form of consultation on a draft of the form would be better.*

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: *Senior management should attest that the form has been completed correctly (e.g. entitlement to apply and all sections completed or deleted, etc) . I am less certain they can attest it has been completed accurately – e.g. presence or not of an implanted device.*

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

Yes No Don't Know

Additional information: *while there may be no legal need for new forms for burial, part of the effect of the Death Certification Scotland Act 2011 was to reduce the differentiation in process between Burial and Cremation, and so for the sake of consistency similar forms for burial could be useful.*

Pregnancy loss

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

Yes No Don't Know

Additional information: CMO guidance and acknowledges there are geographical areas where cremation may not be available, and that burial (individual or collective) may be appropriate. If we are regulating cremation of pregnancy loss, we should regulate burial also.

Note: Current CMO guidance is directed at collective/communal/shared cremation. The option of individual cremation is raised but the guidance implies that would be a private arrangement by the mother. Hospital would support and advise, but not meet costs.

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: Many of these non-hospitals pregnancy losses will be early miscarriages, and mothers may not wish any formal process of "disposal". Where they may wish to take advantage of the process used by the hospital, they should be able to do so with as little formality required as possible. In some cases a GP might be able to certify the gestational age as under 23+6, in other perhaps a pathological examination of the pregnancy loss would determine its gestational age. I would be reluctant to involve the Fiscal.

For those at later gestations it is likely that there would be some medical involvement and hospital disposal is possible.

It should be noted that many of those which are managed medically in clinic or hospital are actually delivered at home or with no medical supervision certifying whether or not there was any sign of life.

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: It should be noted that the current form referred to was only ever an example for Health Boards to develop their own forms, it was never prescribed.

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information: Spouse of civil partner, and as at para 38

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: *Six weeks is good. Note provision has to be made for any pathological examination of the fetus, and so mothers cannot always be told at time of the pregnancy loss when the cremation will take place.*

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

Yes No Don't Know

Additional information: *Under regulation so they can easily be revised in light of experience.*

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

Yes No Don't Know

Additional information: *For consistency this would be good.*

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

Yes No Don't Know

Additional information: *Possibly a section with thin the “combined” application Form A.*

See my note to Q64 Current CMO guidance is directed at collective/communal/shared cremation. The option of individual cremation is raised but the guidance implies that would be a private arrangement by the mother. Hospital would support and advise, but not meet costs.

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: *See my note to Q 58 I feel that this is an added burden for the bereaved parents. In the days following a stillbirth the parents may not wish to see anybody but close family members. We already require them to register the death, and make funeral arrangements. Possession of Form 14 should empower the parent(s) to apply for cremation.*

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: *This question has a negative and a positive. Yes, I think this list is comprehensive. No I do not think other information is required to be recorded.*

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

Yes No Don't Know

Additional information: However it *should specify that this is NOT the CHI of the mother.*

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

Accreditation of Cremation Authority staff

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

Code of Practice Legislation Don't Know

Additional information: *As the requirements for accreditation may change, probably better to have it in the Code than in legislation, unless Scottish Ministers given power under regulation to set the criteria.*

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

Response: *In a return from the Crematorium Authority to the Inspector of Crematoria. Annually.*

Inspector of crematoria

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

Yes No Don't Know

Additional information: *While the recent debates have been about cremation, there may well be similar issues emerge at a later date regarding burial.*

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: *Liaising with the funeral industry regulator over concerns from cemetery or crematoria management regarding standards of funeral industry.*

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

Yes No Don't Know

Additional information: *There should also be provision for unannounced inspections.*

Regulation of the funeral industry

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

Yes No Don't Know

Additional information: Pro: Consistency of standards, meeting of good practice guidance, increase of confidence in profession, potential impact on reducing funeral costs. Con: regulation would incur costs which are likely to be passed on and increase funeral costs. For this reason, and since the outcome will benefit all bereaved people, all cost should be met by government.

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

Further information is required from other jurisdictions, but the idea of licensing as in the USA FTC scheme, backed up by inspections, might contribute to consistent good practice. Regulation should cover not just training and practice, but also costs and customer information / relations.

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: The introduction of a national code of practice for funeral directors and others in the funeral industry would require the introduction of inspection to ensure compliance. This role could be combined with the inspector of crematoria (and cemeteries) but this would make for a large remit, requiring a team to fulfil it. Current practice of self-regulation with no sanction has been shown to be less effective.

Funeral poverty

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

Yes No Don't Know

Additional information: It is important that this information is openly and easily available and should therefore be available on websites and in hard copy. In addition local authorities should publish clear and open information on what is included in a National Assistance funeral.

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: While funeral provision is a clear and reliable source of income for councils which require to generate income in order to deliver a wide range of services, it is wrong that bereaved families should face the post-code lottery of costs indicated in the CAS report "The Real Deal: Funeral Costs" June 2014, or that they should be expected to subsidise other services of the local authority. Costs on a cost-recovery basis should be the minimum policy.

However I also believe Scottish Government should consider setting maximum levels of fee for both burials and cremations. See response to Q88.

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

Response: The whole question of funeral costs needs to be addressed from the bottom up. A caring society which does so much to support the start of human life needs to address in a similar way the end of that life. We refer to care from Cradle to Grave, but currently only offer care from Cradle to Mortuary.

Funeral Poverty is a financial issue, with major implications for personal debt. However it is also a bereavement issues, and I urge the Scottish Government to consider their responsibilities for the care of the bereaved families, particularly those who, in the light of the current financial climate find it difficult or impossible to meet the costs associated with a funeral, and whose grief is made more complex by the additional stress of debt and/or the stigma or guilt of not having been able to instruct the funeral that they, or the deceased, wish.

The phenomenon of Funeral Poverty is outlined in sections 191 – 195 of the consultation paper. The statistics cannot fully reflect the pain of individuals and families facing the stigma and guilt of not being able to arrange the funeral their loved one had wished, or that they feel is appropriate for their loved on.

I fully support the Response to this session form the Scottish Working Group on Funeral Poverty, of which I am a member and which I currently chair.

In addition, I offer the following reflection:

Behind the debate on funeral poverty lie three important issues:

- Funeral literacy – the need for open public discussion of funerals and funeral wishes*
- Funeral costs – the need for intervention to control the escalating costs*

- *Funeral responsibility – the need to address the question of whose responsibility it is to dispose of the dead, and whether memorial events can be separated from disposal*

Funeral literacy: *In Scotland, as in the rest of the UK, there has developed a tradition of formal funeral services, often accompanied by a range of “extras” in the form of flower arrangements, complex transport for the coffin, balloons, doves, etc. There appears to be a belief that the more you add to the funeral, the more you demonstrate a love for the deceased. Yet many people contemplating their own funeral request simplicity and low price.*

It is therefore important that the opportunity afforded by the current consultation and planned legislation is used to educate the public about the choices available around disposal and funerals, and to encourage people to make their own wishes clearly known, including how the funeral is to be financed. The promotion of Funeral Plans could assist this, provided there is clear transparency around the value for money of such arrangements.

Funeral Costs: *As reported in the Consultation Document, the cost of the “average funeral” has increased year by year, and components such as cost of burial or cremation vary widely across the country. With many deaths being unexpected, and families struggling to budget and plan even for normal regular expenditure, the struggle to find money to cover the cost of a funeral, and to do so within the time limit set for the payment to funeral directors of a deposit or of disbursements to third party providers presents a nigh on impossible challenge for many. Government should, by legislation, regulation or recommendation, seek ways to limit the cost of a funeral. There is a clear need for a “basic” funeral, which combines dignity with low cost, and avoids the stigma which the press love to emphasise by talk of “pauper’s graves”. The cost of such a funeral should be set nationally.*

Financial assistance is currently available to those who qualify through already being enrolled in the benefits system, in the form of a Funeral Payment from the DWP. The fact that that payment has been capped since its inception, is a disgrace, and the opportunity given by the devolution of this part of the benefits system under the Smith Commission needs to be grasped by Scottish Government.

In the struggle to pay the cost of funerals families may be find themselves resorting to high interest borrowing, or to organising fund-raising events. There is a clear need in the present climate for the provision of affordable lending to cover funeral costs, and government should be addressing this through support for providers such as Credit Unions.

However the ultimate solution would for Scottish Government to accept the responsibility for full cradle to grave care and to offer a national service of support at the time of death just as the national health service does at the time of birth. The “basic” funeral suggested above should be available to everyone as a right. It could

be provided either by contractual arrangements with existing funeral directors, or by the establishment of a national funeral provider. Families who wished to add extra dimensions to that service could of course do so, but well planned and marketed the such a national provision could avoid all the stigma often attaching to National Assistance funerals.

Funeral Responsibility:

At the heart of this debate is the question of who is responsible for a funeral. The Local Authority has a duty in terms of the National Assistance Act 1948 to ensure that funeral arrangements are made for any person who has died or been found dead in their area and where no other suitable arrangements are being made. If members of the public simply stopped arranging and paying for funerals, then the state would need to pick up the bill for all disposals.

A recent FOI carried out by Citizens Advice Scotland as part of the Scottish Working Group on Funeral Poverty showed that Councils interpret this responsibility in different ways, some offering much more of the “standard” funeral than others – for example some include flowers, some include a press notice, and many supply a car for the family. Moving to a national “basic” funeral as suggested above, under the proposed legislation rather than as part of the National Assistance scheme, would link the current needs and the 1948 intention to the advantage of everyone, and would clearly show that the Scottish Government accepted responsibility for total end of life care. That basic funeral would meet the responsibility to dispose of the body in a dignified manner, which is a major requirement for good bereavement care.

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:

I raised a question a year or two ago about the need to update The Scottish Office Circular GEN (1992) 33 Patients who die in hospital. It was suggested I raise this in response to the consultation on this Bill

While this letter is primarily concerned with death in hospital, it does refer to matters covered in the bill including the funeral of stillborn babies.

My specific concern was in regard to section 4 on Death at a Distant Hospital. The letter states:

4.1 Where a patient has been transferred from his home or local hospital to a distant hospital and dis in that distant hospital, the Health Board or NHS Trust responsible for the distant hospital may assist by returning the body to the local hospital for collection by the next of kin, or executor, or by contributing to or meeting reasonable additional expenditure incurred by the next of kin or executor in transporting the body

back to the local hospital or to the patient's address immediately prior to first admission.

In my time as Convener of the Scottish Grief and Bereavement Hub I received a number of enquiries from NHSS staff where there had been some disagreement about the responsibility for meeting the cost of returning the body of a deceased patient to the "home hospital" or "home address". The wording of the letter above is permissive rather than mandatory, and allows for dispute as to who should meet the cost.

The current bill perhaps allows an opportunity to recognise, and clarify, this issue which affects both adults and children.