

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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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

But this new framework must consider the burial/cremation cultures of all religious faiths and seek provisions that are appropriate for the UK/Scotland

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

Response:

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:

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:

We agree in principle, but this provisional affirmation is subject to more details being provided e.g. 'Resomation' –after human remains have been dissolved, how is the sterile chemical and the bone ash disposed? Can the bone ash be buried?

'Promession/Resomation'- what are the advantages over incineration – e.g. less air/Co2 pollution? less energy being used?; more environmentally friendly?, more economical?; what are they?

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:

We agree in principle, but it would be helpful to provide more details about what is entailed in 'natural burial'? What might be the criteria for 'environmentally friendly methods'?

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

Yes No Don't Know

Additional information:

We agree in principle, but find this Q difficult to answer without an indication of the criteria involved. See response to Q7.

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

Response:

Presumably 'natural' means that the human remains are buried with or without a shroud, outwith a coffin and without any interventions of any kind?

Some factors might include: size of the property – a larger being more easy to find undisturbed burial space for the long term than smaller properties; depth of internment to avoid undesirable waste products entering the environment; inhibition of future property sale due to presence of burial; robust/accurate records for location of burial if future development might require exhumation of human remains; re-internment of human remains so exhumed;

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

Yes No Don't Know

Additional information:

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: See response to Q1

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

Yes No Don't Know

Additional information: The definition appears sensible.

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 minimum distance for open ground seems reasonable – would it be possible to 'round' the figure in metric e.g. 183 or 190 or 200 metres?. Consideration might be given to reducing this distance, if the intervening ground was established woodland that provided screening, noise attenuation, sequestration of airborne particles.

But guidance on acceptable uses for the intervening spaces between houses and crematoria should be established e.g. offices?, quiet industry?, green space (preferable)?, woodland (preferable)?, etc...

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

Response: In principle, either or both powers would seem appropriate for breaches. See response to Q11

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: Yes, this seems sensible

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: Yes, this seems sensible

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: A close relative or someone previously nominated by the parents

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:

We agree with the Burial and Cremation Review Group's concerns about the management of cemeteries, particularly those which have fallen into disrepair and dereliction. This can also cause upset to the relatives/friends of loved ones that are interred amidst neglect. We, therefore, agree that Scottish Ministers should have the power make regulations pertaining to the general management of cemeteries etc...

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:

We consider that detailed guidance on the management of cemeteries should be an essential accompaniment of regulations, not an alternative to them.

Such guidance might include: design for the layout of lairs, paths, boundary walls; tree and shrub planting; provision of seating, water and garden waste bins; criteria for lairs to allow some ornamental planting by family; specifications for maintenance – grass cutting, weeding , pruning; replacement/repair of damaged cemetery infrastructure, etc.

The treatment of headstones that are the responsibility of the Burial Authority is particularly sensitive. Every effort must be made to keep headstones upright, as the practice of laying stones flat on the ground for H&S safety reasons adds significantly to the impression of dereliction – and also of disrespect if the citation is face downward.

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

Yes No Don't Know

Additional information: Provided 3 feet (1 metre?) satisfies environmental health requirements, then this would seem a reasonable depth – deeper excavations would increase costs. On the other hand, if shortage of burial ground increases, should some flexibility in depth provision be considered to allow for multiple use of lairs (i.e. for more than 2 bodies)?

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? Yes
Should any exclusions apply? No Should this be applied to all forms of disposing of human remains in Scotland? Yes

Yes No Don't Know

Additional information:

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

50 years Indefinitely Other period

Additional information:

In view of the increasing interest in genealogical/ancestry research, it might be preferable to keep records indefinitely.

Alleviating pressure on burial grounds

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

Yes No Don't Know

Additional information:

Given the forecasts for an increasing shortage of burial space, this seems a reasonable proposal. But the cost of both the original purchase and any subsequent extension of the interest should only apply to lairs purchased after the introduction of the new Act – lairs purchased in perpetuity before the Act should not be subject to any extra costs.

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

Yes No Don't Know

Additional information:

Because families may have difficulties in keeping records over long periods of time, it would be preferable for the Burial Authority, with its properly maintained records, to notify the owner to confirm or otherwise his or her interest in the lair at the end of the initial 25-year period – rather than the other way round

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:

We think the arrangements set out in paragraph 38 would be more comprehensive

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

Yes No Don't Know

Additional information: This seems a reasonable proposal.

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: Perhaps 5 years, to be tested by the Burial Authority towards the end of this period.

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: But for many families, this could be a very sensitive issue. Hence, the formulation of strict safeguards and consultation about these would be essential.

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

Yes No Don't Know

Additional information: This seems a reasonable proposal.

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: This would appear to be the case.

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: This would appear to be the case.

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

Response: A scheme for financial support under specified circumstances.

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

Response: The procedures set out in paragraph 38 should be followed

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

Response:

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

Response: The burial authority should remain responsible, including the duties outlined in paragraph 76.

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:

It would seem to be a practical method, but detailed techniques (including H&S issues) need to be established. A question arises whether, in circumstances of acute space shortage, reused lairs might be used to accommodate more than 2 bodies by digging deeper – although excavation costs rise with increasing depth.

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

Response: In many cemeteries in the Edinburgh area, above ground lairs exist, housed in substantial buildings with lockable gates, to deter body snatching in the late 19th century. Should different arrangements be considered/devised for the reuse of these lairs?

Should different arrangements be considered/devised where lairs or grounds are used for the internment/scattering of ashes?

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

Yes No Don't Know

Additional information: But, out of respect for the original artefact, the burial authority should also be required to restore it where necessary

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: But we believe this must be a last resort measure, as in most cases restoration should be possible.

Proper archaeological recording with comprehensive photography before removal. Material with decipherable forms, text or images should be retained and safeguarded, other nondescript material could be recycled.

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:

It is not clear whether other options for additional burial space have been explored, in addition to the reuse of existing lairs e.g.

- woodland burial is already practiced in certain areas of England
- 'burial' (scatter) of ashes on open ground
- 'burial' (scatter) of ashes on fresh water/marine environments?
- modern versions of crypt and sarcophagi – reuse of empty buildings?
- mausoleums designed to house multiple entombments?
- etc

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: We agree this is a reasonable period

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 agree this is a reasonable period. The procedures for advertising planning matters provide an example.

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: This is essential.

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: They would appear to do so.

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

Yes No Don't Know

Additional information:

Exhumation

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

Pandemics and mass-fatality events

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

Yes No Don't Know

Additional information: Normal archaeological practice must be adopted

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

Yes No Don't Know

Additional information:

Cremation forms and procedures

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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:

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

Yes No Don't Know

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

Yes No Don't Know

Additional information:

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

Response: Do crematoria have any evidence of the time taken to collect ashes? Perhaps 10 years (including the 2 years in the funeral parlour) might be initially trialled, monitored and modified as necessary

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:

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:

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

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:

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

Yes No Don't Know

Additional information:

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:

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:

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:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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

Yes No Don't Know

Additional information:

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:

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

Yes No Don't Know

Additional information

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:

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

Response: Every 5 years, by the proposed Inspector of Crematoria.

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: We believe it is essential that burial grounds as well as crematoria are included within the Inspector's responsibilities

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: It will also be important for the inspector to ensure that guidelines for the management of burial grounds and the grounds of crematoria are properly implemented

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

Yes No Don't Know

Additional information:

Regulation of the funeral industry

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

Yes No Don't Know

Additional information:

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

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:

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:

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: Especially as the reuse of lairs may increase burial costs.

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

Response: An effective and fair grant scheme for people who cannot afford some or all of the funeral costs should be devised

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.

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