

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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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

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: [Burial grounds include churchyards, cemeteries, private cemeteries, private burial grounds so I think it would be helpful, to avoid confusion and inconsistencies, to bring all the law relating to burial into one piece of legislation. Would the legal definition cover public Gardens of Remembrance associated with crematoria and used for the scattering of ashes?](#)

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: [The regulation should be proportionate to the issues arising from environmentally friendly methods of disposal. Resources to regulate/administer would be required.](#)

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: Home burials in private gardens or grounds should be properly recorded by burial authority and noted either in PEC or title. Clear guidelines and information should be available for this but the administration of any associated bureaucracy or regulation would need to be carefully considered and suitably resourced.

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: Any techniques which would reduce environmental impacts of disposal such as resomation and freeze drying should be considered. Open air cremations should be prevented.

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: Should probably be more – 200yds isn't much in reality on the ground. Visual, noise and odour impacts and suitable mitigation measures need to be properly assessed in each case and a minimum borne out of this type of assessment for a typical case should be developed.

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

Response: Should be clearly defined and dealt with through Planning Legislation for the siting and design of either crematoria or housing.

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:

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: Burial Authorities should generally have policies and procedures in place to deal with this although adequate resources to undertake what is required may not be available through the local democratic process and overall budget settlement. As such regulation may be a way to ensure consistency of approach. Evidence gathering to establish the extent of the problems and risks and proper consultation with the Burial Authorities would be an important prerequisite.

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: If the issues are not significant enough to require regulation, advocating a more consistent approach through guidance would be more proportionate. The Burial Authorities should be fully involved in drafting simple practical guidance that enhances service delivery with the minimum of bureaucracy and unnecessary detail.

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:

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 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: The records should be kept indefinitely – 50 years is a short period in relation to the life span of a cemetery and family history. If “dig and deepen” is to be used, the period should at least overlap the duration given before the burial Authority can apply to use a “dig and deepen” strategy. Perhaps a national database to which all records are transferred after a suitable period of time would be more useful.

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: The amount of land taken for burials is miniscule in relation to the overall land area. The responsibility for providing new space should fall to those creating the demand – the current/future generations through tax and action by the local Burial Authority or developers and landowners who are benefitting from new housing developments. Burial grounds are an important part of local history, culture and community identity and should be planned for properly. The burden shouldn't fall onto burial spaces that were provided historically by previous generations who were more philanthropic and or better planned than we are today. The whole point of burial is for a permanent final resting place for a loved one and the lair owner should have that right. There should also be a responsibility on lair owners to ensure they are properly maintained and this should be defined and become part of the purchase process. If lairs then fall into disrepair or are not used over time there should be a process that enables the Burial Authorities to take appropriate action to recover the asset and or costs. We already have a policy and process in place for this. There may be special circumstances where there is particular pressure on land in large urban areas where re-use of full lairs could be considered.

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:

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: No, transfer of the lair should be allowed to go to whoever the lair owner wants it to go to as long as it is looked after and eventually used in line with the conditions suggested at Q22.

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: Management and planning of cemetery life spans are difficult to predict if blocks of lairs are sold, also this can undermine the local authority if these lairs can be passed to any person or "sold" on to a third party. We already have a policy in place for this.

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 pre purchase and 10 working days after death, lair can be held/reserved for 10 working days if funeral service not booked in within 10 working days lair goes back to local authority/company ownership. Lair must be registered under one name and can't be transferred to other name once reserved to prevent "phantom" Purchases/bookings.

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: Full lairs should not be reused in most circumstances for the reasons given in Q22. This is an easy opt out to avoid the current generation planning and providing for their own burials and is disrespectful to previous generations. Reuse of unused lairs should be fully considered in line with the answer to Q22.

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

Yes No Don't Know

Additional information: There should be full public consultation about the permanence of lair purchase and the responsibilities of lair owners. This transcends generations and political administrations and if any changes are proposed they should really only apply to new lairs sold beyond the date of any decision.

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: This is difficult as people will generally not be expecting to need to check notices about this, especially if the relatives don't live locally. Maybe 3 or 5 years would be more reasonable timescales and there should be an obligation on lair owners to inspect and maintain as required within those timescales or they forfeit the right to the lair. If they live abroad, perhaps they could ask the Burial Authority to do this on their behalf as long as they cover the cost of doing this.

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

Response: Disagree with this – if the ownership of the lair is transferred on death then the new owner should be fully responsible for the lair. If they don't want it they could transfer it to someone else who does or back to the Burial Authority for an appropriate fee. The Burial Authority could then re-use it or if it was full, put it onto a minimal maintenance regime, enough to keep it tidy and safe.

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

Response: Nobody

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

Response: Is it not possible to set out a range of valid criteria which would stop a lair being re-used instead of costly legal action.

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: Yes and any headstone work (Making Safe) required should be the full responsibility of the non-family member.

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: Current cost and lack of ground available for future burial requirements, and the infrastructure already being in place and the fact that the remains will still be in the original lair would all be reasons to advocate the use of "Dig and Deepen" procedures. However this should be with the full agreement of the lair owner.

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

Response:

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

Yes No Don't Know

Additional information: Only with the full agreement of the owner

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: If the headstones can be made safe and the family can be contacted, they should be asked to pay all costs associated with the re-erection of the stone. If no contact with family is possible the stone should be laid flat and left in situ in perpetuity or until there is a new burial when the family should deal with the old headstone.

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: Yes where there is particular pressure, above ground Mausoleums should be considered where possible, a bigger incentive to use crematoria whether by cost of the cremation to burial margin being reduced and making the dispersal of remains more attractive and sensitive also offering a larger choice of memorials within the Garden of Remembrance.

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: Only for unused lairs, and the Burial Authority should use/ National Web site, local and national newspapers, notices within the affected Cemetery and Local Community groups and Councillors should be informed of any intent.

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:

A court order should not be sought at this juncture, unless a complaint can't be resolved and a legal decision requires to be made to settle a complaint.

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: If an application to disinter is made and all family members are in agreement and no objections are made a nominated senior member of the Burial Authority staff should be able to make the decision to enable the exhumation to proceed. The process should only be streamlined where all parties are in agreement. We have had experience of several applications where (i) families have been “at war” and it has been a contentious issue (ii) the exclusive right of burial ie the lair ownership may form part of a deceased’s estate and must be legally transferred (iii) lair owners have not been traced. In these circumstances there should always be possibility of referral to the Sheriff.

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: Each case should be considered on its own merits and if no complications are evident (and the purpose is lawful and reasonable) then a local decision should be allowed this enables a decision to be made quickly and reduce upset and stress to families. Where a more complex case is presented then the Inspector should be consulted, and the decision made by the post holder.

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

Yes No Don't Know

Additional information: As above, individual cases should be looked at and the decision made locally if complex the Inspector should be consulted to enable any decision to be made.

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:

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: The aim should always be to minimise the time and resources required to administer bureaucracy to deliver a desired outcome so the fewer simpler forms the better. Process would be easier policed and governed if a single form was

all that was in circulation, and it was unified across all areas. The form should be sufficient to be used for various types of cremation

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

Yes No Don't Know

Additional information: [Single form with options.](#)

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: [It should be dealt with on Form A rather than a separate 14 days notice](#)

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: [Should be dealt with on Form A and 30 days should pass before the remains are disposed of.](#)

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: [There would need to be a good reason as to why a countersignature is needed.](#)

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: [Single use forms would be better suited for cremation application, remains disposal is the most important aspect of the new form.](#)

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

Response: [Remains disposal- information regarding availability of remains after cremation \(babies\) Applicant, nominated person for collection of remains, removal of any implants etc, contagious disseises. Date,time, Name... Personal details.](#)

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: [The Crematorium Manager should be responsible for checking the form but not all legal aspects of it. If the form is filled in correctly then that should be sufficient to allow the cremation to proceed otherwise the process and forms should be modified to ensure they are suitable and sufficient. The Crematorium Manager is there to facilitate the smooth running of the Crematorium, not check the legality and details surrounding the individual being cremated – the medics and registrars need to get all that right.](#)

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

Yes No Don't Know

Additional information: [Would ensure a consistent approach.](#)

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: [Yes as long as a full understanding has been established with the parents and they understand if that remains might not be present after the cremation service.](#)

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: It is really a matter for the hospital and it doesn't have an impact on the cremation but the mother should have at least 6-8 weeks to make the decision

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: Information is Suffice.

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: Should be available on their employment records and only renewed if required – i.e. if they doing the job satisfactorily then no need to have a prescribed renewal. Cut down the bureaucracy.

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: With the pressures on public finances, unless there is a demonstrable pressing need to extend it to burials, there should be a presumption against any more cost and bureaucracy. I think most Burial Authorities should be capable of managing their procedures and functions correctly.

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: There should only be a change to current practices and procedures where there is a problem. The responsibility rests with the Burial Authority and the inspector's role should be to ensure they have procedures in place and look at issues where they arise.

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: This should be the absolute minimum to ensure compliance i.e. once. In most cases these services are well delivered and inspection should only be needed where a persistent problem occurs.

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: There should only be regulation if there is a demonstrable need. As no case is presented there should be no regulation as it is an additional cost that has to be paid for by customers and the taxpayer.

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: If a change was implemented, whether self-regulating or fully licensed a new role (inspector) would be best created to monitor and offer guidance to the Funeral/Cremation/Burial industry.

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: The costs should be calculated on the proper staffing and long term maintenance and management requirements of providing the facility i.e. including for building refurbishment and cremator replacement etc. It should not be used to generate income beyond those costs. For burials an allowance for cemetery maintenance and extensions etc. should be established and index linked thereafter with a periodic review.

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

Response: Subsidise the cost of providing the service through taxation.

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: