

## 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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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: Updated legislation would provide clarity and reduce administrative time and thus resources by simplifying the legalisation that staff refer to.

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: This would formalise the arrangements used for many private cemeteries, simply the processes and provide clarity for funeral directors and the public.

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: Inclusion would provide guidance and advice to ensure the public had a full understanding of their obligations whilst ensuring the requirements of SEPA were complied with and appropriate records kept.

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

Response: Ensuring full compliance with statutory requirements. Ensure the legalisation is clearly worded and precise to prevent undue administration and associated costs being introduced such that compliance would prohibit home burial.

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

Yes  No  Don't Know

Additional information: There is no control process to ensure that there is certain knowledge of the details of the cremated remains.

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:

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:

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

Response: These should be included in the planning regulations with enforcement through the normal procedures of planning enforcement.

#### 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: Many wills include specific instructions for arrangements of burial or cremation, the executors ensuring that these instructions are undertaken normally by a family member. In certain circumstances the executor would undertake the arrangements directly. It is suggested that the wording of (k) includes reference to the executor to cover this eventually and provide clarity.

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: Where there no surviving relatives or persons meeting the list quoted in paragraph 38 then the state agreed list also applied. It is recommended that guidance is included to explain who would be included on list.

### 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: Subject to proper consultation including a review and assessment of financial implications by ensuring the bill includes a Financial Impact Assessment which requires consultation with the Burial Authorities to determine the anticipated costs of the proposals, and that such costs are acknowledged by the Scottish Government in future funding settlements.

Legislation similar to that in England and Wales would greatly assist Local Authorities in their management of burial grounds.

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 legislation were not introduced the introduction of non-statutory guidance would be beneficial. It could be expected that failure to follow the guidance would expose an authority to the possibility of prosecution by the HSE if an accident occurred. It is therefore reasonable to assume that any guidance would effectively be statutory and legislation would be the preferred option.

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: Areas where hard rock precludes the excavation of lairs to a cover depth of 0.9m (3 foot), especially where lair can only be excavated for one interment. – Examples in the Highlands are parts of Skye and the West Coast. A reduction to 0.6m (2 foot) would be beneficial in such situations to ensure a double depth lair could be provided.

#### 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: Legal implications of signatures need to be addressed. Funding for IT improvements need to be allowed for.

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: If records can be securely digitised. National standard for storage of records should be developed.

#### 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: Cultural treatment of burials in the Highlands especially the western highlands needs to be taken into consideration and similarly for faith burials. Prepayment plans normally require a commitment to the purchase of a lair as part of the plan, setting a time limit may have an adverse effect on the take up of prepayment plans and could lead to a future increase on the burden on the state through the Social Fund.

If this option is taken forward it is suggested it is made optional and for the individual Burial Authority to determine if it wishes to adopt the policy based upon the individual circumstances relating to the availability of land for burials and the resources available for the ongoing maintenance of burial grounds.

It is also recommended that through the use of electronic record keeping the Burial authority are required to attempt to contact the recorded owners prior to the 25<sup>th</sup> year

and subsequent 10<sup>th</sup> year. This would prevent the risk of adverse publicity in the case of an authority revoking ownership immediately prior to the recorded owner's demise.

Sale of lairs could be controlled by prohibiting preselling.

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: What is the definition of a family member, what about transference via a Will.

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: Unenforceable – each member of a family could purchase a lair at the same time, rather than one member of the family

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: ? Don't know.

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: Yes for unused lairs, where the Burial Authority must contact the owner to confirm the lair will be unused and or has a clear policy governing this. No for full or partially full lairs.

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

Yes  No  Don't Know

Additional information:

Due to the cultural significance of burials in the Highlands reuse of full or partially full lairs would be unacceptable to the population of the Highlands as a whole. If introduced it should be a minimum of living memory plus a generation i.e. 130 years, but it is recommended that Burial Authorities are given the option to opt out.

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: It is not clear what the definition of particular religious or faith groups means. This should include the local Church of Scotland and other local groups failure to include these groups would result in adverse local publicity.

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: A national process for reuse of unused liars should be developed.

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

Response: Ensure it is clear that where an objection is not from a family member or the lair owner, the cost of maintenance could not be transferred to the objector (unless ownership of the lair was also transferred under the legislation).

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

Response: Depends on definition of family. Where a lair has historic significant locally this would not necessarily be reflected in any official status. To protect cultural heritage objection on grounds of historic significance of the occupant should be included.

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

Response: Determine and prove nature of objector's interest, will require a process to confirm how interest is considered/assessed and what appeal mechanism would be.

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: It would be dependent upon the nature of the objection. Placing a legal obligation on a body or individual for raising a valid objection could potentially conflict with the rights of an individual for example if the objection was on grounds of historic significance.

It is recommended that legal advice is sought especially in the context of European Human Rights.

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: Health & safety implications of moving old headstones, the foundations of which maybe unknown. H&S issues with exhumation of remains.

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

Response: Promote the use of cremations to reduce the need for full lair interments.

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

Yes  No  Don't Know

Additional information:

This could be introduced where modern headstones could be shared, but should be included in the agreements prior to initial erection of a headstone.

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: Often the work involved in making the stone safe is less than the cost of removal. Also preservation of the integrity of the burial ground is often of cultural and historical importance.

Only where the stone cannot be made safe should it be removed.

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: More cremations make the cost of cremations and associated interment of ashes less than cost of burials. Ensure that funeral directors are fully aware of the difference in costs. With state funding, target this at cremations to make more efficient use of the resources available.

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: repeat of previous question. Unused lairs only once ownership and no use requirement confirmed.

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 consider reuse of unused lairs, supported by Council approved policy.

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: Only for unused lairs.

Highland Council would not consider reuse of partially full lairs.

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: Burial authority must have a clear and approved policy for the reuse of unused lairs.

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: Need to confirm types.

#### 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:

This proposal would not be acceptable on cultural grounds within the Highlands.

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:

#### 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: One form could be used with separate sections for each circumstance. Highland Council has introduced separate forms for different circumstances in consultation with HNS Highland.

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: Highland Council has already implemented. Highland Council contact applicant where 8 weeks is exceeded, providing a more customer focused option.

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: If form is not fully completed the cremation should not proceed until all the required information has been adequately provided.

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: Option to keep ashes until applicant could collect should be considered. This would allow mother time to collect ashes. Where this is not possible, such as due to mental condition a formal process for allowing a designated representative to collect should be considered.

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: Highland Council do not have a time stated, but for children's remains these would be held for a longer period of time.

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: Eg midwife

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: Each local authority has a difference organisational structure which precludes a standard managerial structure for burials and cremations. Within the Highlands the crematorium undertakes 1000 cremations per annum, approximately 20 per week which is expected to increase. The crematorium manager should have legal responsible for ensuring the forms are checked, it is suggested that a senior member of the team undertake the checks, with the manager undertaking random sampling.

The form should be countersigned by suitable senior member of staff.

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

Yes  No  Don't Know

Additional information: Each burial authority has developed its own forms to meet the national requirements. A statutory set of forms will initially cause confusion amongst undertaker, but should lead to simplification in the future.

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: Highland Council has a process in place.

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: Highland Council have forms in place.

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: Accreditation runs for a fixed period, re-checking should be to the same frequency unless there has been a change of manager when a check should be organised. A Cremation Authority should be required to notify the inspector of a change of Crematorium manager.

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:

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:

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

Additional information: Self-regulation of the industry should be the preferred option supported by external inspection by any newly created inspection body. This would be the lowest cost option whilst allowing the option of targeted external inspection where issues of concern are identified.

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: With suitable organisation the different duties could all be accommodated within one body, this should also be the most efficient option with better internal communications and lower admin costs. Separate bodies could lead to conflict or confusion where the jurisdiction of both bodies met or overlapped.

### 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: Highland Council have recently analysis our costs and reset the fees to ensure actual costs are recovered.

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

Response: Consideration of shared services between smaller Burial Authorities.  
Devolve Social Fund to Scottish Government.

### 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:

National guidance or advice on the charging for burials, cremations and liars would be beneficial. This could be on the basis of the costs and activities that a Burial Authority should take into consideration when determine their fees.