

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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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: The current legislation requires updating to reflect a modern society and it would be welcomed if all existing legislation is repealed and new legislation for burial, cremation and other methods of disposal of the dead is incorporated into one single Act.

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

Response: Yes, these are covered within the consultation.

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:

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: Clear guidance would be required as to whether the burial site would be considered a “cemetery” as defined by the Act or otherwise and if new legislation

applicable to cemeteries would apply. Consultation with Planning and Environmental Health would be required as there are considerations to be taken into account such as the level, if any, of development being carried out and if the site would constitute a nuisance. SEPA would also have to be consulted on the possible effects on any water courses. If there is a mortgage on the property, permission should be sought from the lender as any burials within the grounds could affect a future sale or could result in an exhumation. The burial should be recorded on or with the title deeds of the property. It may be a consideration that some kind of common register or local authority register be set up for such burials for future reference and for genealogy searches.

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:

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:

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: This will give Burial Authorities the right to take action where families are untraceable or unwilling to deal with the problems, however this should be a right rather than an obligation as obligations could result in significant financial implications.

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: This would be helpful however rights as described in Q17 would be of more assistance if any family came forward in the future and objected to any actions that had been taken by the authority.

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: This should be used as a guideline because it could result in existing graves taking less interments than initially intended and therefore families unable to be buried where and with family members they wished to. This could result in applications for disinterments so that their wishes can be fulfilled. Exemptions should be available to address such issues and any historical issues when shallow burials are discovered to prevent an exhumation having to take place, extra protection over the last interment can be installed such as slabs or grave liners. Burial Authorities may have to review their machinery as excavators may require to dig deeper to accommodate the number of intended interments.

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:

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 proposals will encourage transfer of ownership when title holder passes away and therefore allow for a living title holder that the burial authority can contact, should there be any necessity. This also provides scope for lairs to be reused in the future.

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, if the title holder is living then it is their right to transfer the ownership to whomever they choose, there may be no family members to transfer this to but this ensures there is a living title holder. You may wish to consider if there is a family dispute an application could be made to the Sheriff to resolve such issues as this can be a common problem.

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: There are a considerable number of purchased unused graves which are currently unable to be used without the title holder's consent.

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: Currently North Ayrshire Council policy is not to pre-sell lairs. A lair can only be purchased when there is a burial being arranged and I would consider imminent to mean this.

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:

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:

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

Response:

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

Response: Someone with a connection to the family or someone with a valid reason objecting to the proposed reuse (ie grave of historical significance etc).

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

Response: This would depend on the reasons for objection.

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: Only if the person wished to take this on should they become liable and if not the Burial Authority. They would require to take on the ownership by means of a statutory declaration incorporating the fact that if any family member was forthcoming in the future then they would have a claim on the rights to the grave.

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:

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:

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: The memorial could either be laid flat on the grave, or alternatively, "sheughed" in rather than being removed as this will affect the burial grounds historic landscape. The "sheughing in consists of one third of the plate (or face) of the memorial being placed below ground, resulting in the remaining two thirds of the plate visible above ground. This may mean that some of the inscription is no longer visible but means the memorial can remain at the graveside and results in minimal costs for the burial authority in comparison to having it re-erected. The

old base would be removed and disposed of. The option of removing the memorial should be available for extreme cases and the condition recorded and photographed before the stone is disposed of.

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, the use of above ground mausoleums is considered acceptable.

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:

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: In the case of previously unused graves which are to be reused, the prospective new title holder should not require to be informed. However if the grave had previously been used then the new title holder must be advised that the grave is being re-used.

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: That the safeguards stated would be sufficient.

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: This authority would welcome a streamlined process for exhumations and that a speedy process is to be considered for sensitive applications.

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: The relevant burial or local authority should be consulted.

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: Agree with a single form where possible.

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

Yes No Don't Know

Additional information: A single form where possible will simplify the process.

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: There will be circumstances where this will be appropriate however if the appointed person has not collected the ashes within the recommended timescale, attempts should be made to contact the applicant for further instruction in the first instance before the ashes are scattered or interred.

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: 12 weeks would be reasonable.

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: A single form where possible will simplify the process.

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: There is no requirement for statutory burial forms although most burial authorities have their own form and we are not aware of any issues with having these completed. If this were to be introduced consultation would be required as there will be information some burial authorities require and others do not.

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: All pregnancy loss should be treated the same.

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: Agree with proposals.

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: By the Inspector of Crematoria, every 5 years.

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: This will ensure that the appropriate insurances and training are in place and the industry is operating to a set standard. The public will be aware of what they can expect.

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: Costs are currently not being recovered on a cost-recovery basis only as burial grounds are being maintained in perpetuity with a one off fee charged for the Right of Burial. However we would support full cost recovery of the burial element only.

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

Response: Greater public awareness and impartial advice is required regarding the funeral industry and costs involved. There are a lot of services available that can reduce costs considerably which the public may not be aware of.

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: