

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:

Please see attached correspondence - and
SG commissioned analysis - from 2010
consultation

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:

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:

STEVEN MORTON

004/018

Kevin Wilkie
Health Protection Team
St Andrew's House
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EH1 3DG

6 April 2010

Dear Mr Wilkie

Burial, Cremation & Death Certification Review

I would like to make the following comments on questions 2 and 3 of the above review.

Question 2

Should the right to instruct the disposal of bodies on death be vested in the nearest relative?

Question 3

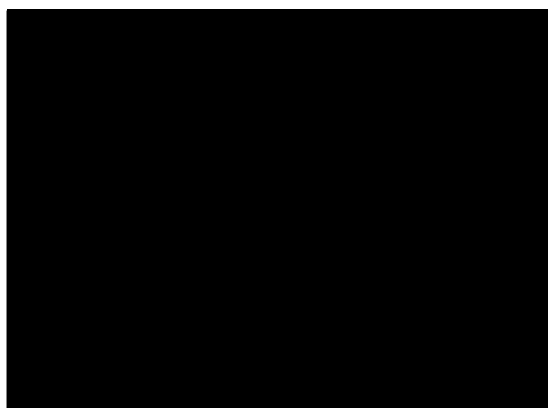
Should the definition of nearest relative follow the definition used in the Human Tissue (Scotland) Act 2006?

The proposal to legislate for the right to instruct the disposal of bodies on death to be vested in the nearest relative, together with the adoption of a standard list to define nearest relative, does not appear to make provision for an individual to specify who should be responsible where they do not wish this to be their – now legally defined – nearest relative.

In common with a number of gay men I have made clear my wishes on this matter and have specifically excluded my family from any involvement in my funeral arrangements.

It would be helpful if any legislation made provision for an individual to vest the right to instruct the disposal of their body on death in an individual of their choice. This would allow for category (k) - a friend of longstanding of the adult - to be given precedence, an option which would reflect the experience of those gay men who are estranged from family members but have a well established network of friends of long standing.

A provision of this nature would also potentially benefit all individuals whose nearest relatives live outwith Scotland, or from whom they become estranged. For example, it would appear to be iniquitous for a surviving niece living abroad with whom the deceased had had no contact to issue instruction rather than a close friend of several years standing with whom arrangements for a funeral had been discussed in advance.



DEATH CERTIFICATION, BURIAL AND CREMATION ANALYSIS OF CONSULTATION FINDINGS PHASE 1 REPORT

Reid Howie Associates

Scottish Government Social Research

2010

2.18

Some, however, identified that there may be difficulties, or cases where this is not possible, such as: where the nearest relative is estranged from the rest of the family; where there are issues with contacting relatives; where there is no relative to take on this function; or where there is poverty or refusal. Examples of other exceptions or perceived difficulties included where the deceased left explicit instructions to the contrary and / or made their own funeral arrangements prior to death, or where the nearest relative stated that he or she intended to arrange disposal in a way that is known would not have been the wish of the deceased. An instance of how this could occur was identified as being, for example, where the deceased was Jewish and the nearest relative was not. One respondent (the only respondent who expressed the specific view that they disagreed with the proposal) expressed a concern that this may give rise to false claims of being next of kin.

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One respondent stated that the proposal did not appear to make provision for an individual to specify who should be responsible where they did not wish this to be their (now legally defined) nearest relative, while another suggested that it would be helpful if any legislation made provision for an individual to vest the right to instruct the disposal of their body on death in an individual of their choice. It was suggested that this would reflect the experience of some gay men who are estranged from family members but who have a well-established network of friends of long standing. It was also suggested that it would potentially benefit those whose nearest relatives live outwith Scotland. Another respondent suggested that there should be provision (e.g. where there are religion / faith issues or issues with contacting the next of kin) either for vesting right of disposal in another relative who will arrange for disposal according to the wishes of the deceased, or (if there is none available), in an appropriate authority (in this instance of the relevant branch of Judaism).