Introduction

Healthcare Improvement Scotland is the national healthcare improvement organisation for Scotland. We have a vital role in supporting healthcare providers to deliver safer, more effective and more person-centred care and to achieve Scotland's 2020 vision for health and social care.

Our key priorities are to work together with healthcare providers and the people of Scotland to:

- empower people to have an informed voice that maximises their impact in managing their own care and shaping how services are designed and delivered
- reliably spread and support implementation of best practice to improve healthcare, and
- comprehensively assess the quality and safety of healthcare.

Throughout everything we do, we value people, make best use of our resources and work effectively as one organisation.

Key points

Healthcare Improvement Scotland has been given the responsibility of designing a new system to review Medical Certificates of Cause of Death to improve public confidence and simplify and strengthen the governance in this area.

Overall we are supportive of the new legislative framework as outlined in the consultation. This is an important opportunity to update and consolidate very important legislation which is in place to provide assurance as well as to ensure safe and respectful disposal of the deceased. The proposals are well aligned with our work on death certification review.

Our detailed responses on the questions set out in the consultation document are provided below.

Annex D

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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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 X 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: Previous reviews (McLean report) on post-mortems and organ retention highlighted the need for 'respectful disposal of body parts'. In the past these were disposed of as clinical waste and the cremation regulations were amended to allow the lawful cremation of body parts or organs. It is important that this is reflected in the new legislation and can be particularly distressing where children or babies' organs have been held for examination and need to be disposed of after a funeral has taken place.

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 X No ☐ Don't Know ☐

Additional information: As this may be difficult to enforce, it may be necessary to state any sanctions, including powers to take over organisations that do not comply

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 X 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 X No ☐ Don't Know ☐

Additional information:

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

Yes X No ☐ Don't Know ☐

Additional information:

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

Response: From April 2015 it will be necessary to register a death before a burial which will support record keeping. Any legal system introduced for home burial should, as far as practicable, adopt the same standards as burial in a graveyard, including depth of burial and recording of the site of burial.

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

Yes ☐ No X 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 X to first question No ☐ Don't Know X to second and third Questions

Additional information:

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

Yes X No ☐ Don't Know ☐

Additional information: It may be helpful to define whether each cremation is for an individual and whether (or not) the ashes received will be theirs and only theirs. It is noted that it may be difficult to provide ashes in the case of a very young baby

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 X No ☐ Don't Know ☐

Additional information: As an increasing number of people are cremated with radioactive implants, there may be a need to ensure appropriate dispersal distances. In any case, removal and disposal of such implants needs to be handled safely.

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 X No ☐ Don't Know ☐

Additional information: Need to specify what is to be done where none of the stated options are available or there is a risk that bodies cannot be respectfully disposed of. From 13th March 2015 the Healthcare Improvement Scotland medical review service will take over responsibility for verifying the death related paperwork and authorising the disposal (currently by burial or cremation) of people repatriated to Scotland for disposal. The 'nearest relative' as defined will still apply for the burial or cremation, however, there will be a secondary authorisation required from the medical review service before the disposal by either method can proceed.

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 X No ☐ Don't Know ☐

Additional information: A common definition with regard to 13 and 14 would be helpful.

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 X No ☐ Don't Know ☐

Additional information: Where the mother and father are unable to do so, the proposals in para 43 could be considered. However this may depend on why the mother and father cannot do so.

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 X Don't Know ☐

Additional information: Provision should be the same in principle (see additional comment at Q13)

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 X☐ No ☐ Don't Know ☐

Additional information: As noted above it may be difficult to enforce

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 X No ☐ Don't Know ☐

Additional information: Guidance and regulations would be advisable in either situation but if these are non-statutory experience suggests they are unlikely to be adopted

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 X 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 X to recording electronically and to all forms of disposal No X to exclusions Don't Know ☐

Additional information:This will be supported by electronic medical certification of cause of death and also by NRS systems

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 X 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 X

Additional information:

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 X

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: Should not be transferred as a commercial transaction (ie sold to a stranger)

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

Yes X No ☐ Don't Know ☐

Additional information:

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:

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 X

Additional information:

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

Yes ☐ No ☐ Don't Know X

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 X 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 X

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:

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

Response:

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

Response:

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 X

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 X 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 X No ☐ Don't Know ☐

Additional information: Area should be made available for these to be safely stored

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

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 X

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 X

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 X 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 X

Additional information:

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

Yes ☐ No ☐ Don't Know X

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 X 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 X

Additional information:

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

Yes X No ☐ Don't Know ☐

Additional information:

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

Yes X 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 X 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 X 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 X No ☐ Don't Know ☐

Additional information: A single form is preferable as it reduces the risk of using an incorrect form and ensures that all relevant information is captured in one place.

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

Yes X No ☐ Don't Know ☐

Additional information:

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

Yes X 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 X

Additional information: May not be possible to confirm that what was stated is what happened

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 X 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 X No ☐ Don't Know ☐

Additional information:

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

Response:

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 X to both questions No ☐ Don't Know ☐

Additional information: This is likely to be challenging if it needs to be proven

Q59 – Should application for other categories of cremation require a countersignature?

Yes ☐ No X 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 X No ☐ Don't Know ☐

Additional information:

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

Response: In respect of an application for cremation of a person who died outwith the UK and has been repatriated a certificate of disposal authorisation will also be required from the medical review service.

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 X No ☐ Don't Know ☐

Additional information: Arrangements for burial should mirror those for cremation. As above an application for burial of a person who died outwith the UK and has been repatriated will require a certificate of disposal authorisation from the medical review service.

Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes ☐ No X 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 X

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 X 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 X 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 X No ☐ Don't Know ☐

Additional information: Although it may be necessary to determine why the mother is unfit (categories would be sufficient)

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 X No ☐ Don't Know ☐

Additional information: It may be necessary to remove the loss from a hospital but it should be possible to store this for a period of up to five years

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 X Don't Know ☐

Additional information: see Q64

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

Yes ☐ No X 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 X 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: see above

<u>Cremation register</u>

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes X No ☐ Don't Know ☐

Additional information:

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

Yes X 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 X Don't Know ☐

Additional information:

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes X No ☐ Don't Know ☐

Additional information:

<u>Accreditation of Cremation Authority staff</u>

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice X 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: Could establish a professional register which requires review (every 3 years?) revalidation

<u>Inspector of crematoria</u>

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes X 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 X to Q1 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 X 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 X

Additional information: There are benefits and drawbacks to both options. It could be that membership or accreditation that is proportionate drives up professional standards and manages pricing. However it is important this does not become an industry in itself that could increase bureaucracy and costs

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 ☐ The examples given are useful models to consider

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes X 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 X 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 X No ☐ Don't Know ☐

Additional information: For core components. Additional elements/functions may attract a third party profit which the LA has to pass on. For example buying in a specific celebrant

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

Response: As with the financial sector, people should know what they are paying for and what options they have without any suggestion they are not respecting the deceased. There are instances where high end options are the only options presented or where 'packages' are named in such a way as to influence choice

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:

This is an important opportunity to update and consolidate very important legislation which is in place to provide assurance as well as to ensure safe and respectful disposal of the deceased. The proposals are well aligned with work on death certification review.