



22nd April 2015

Burial and Cremation Consultation
Scottish Government
3E St Andrew's House
Edinburgh
EH1 3DG

Dear Sirs,

Please find attached the response of the Roman Catholic Archdiocese of Glasgow to the Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland.

We have answered those parts of the consultation which we consider to be directly relevant.

We have also attached a brief note outlining some pastoral and spiritual considerations which we believe need to be borne in mind when drawing up legislation and which the current consultation document does not seem to provide for.

Against that background, we believe that it is timely for the Government to consider updating the legislation.

The Archdiocese currently operates a cemetery but has no intention to operate a crematorium or provide any other means of disposal of remains, other than those offered in a cemetery.

A concern which we have is the possible cost implications involved, should some of the proposals contained in the consultation document become law.

Yours sincerely,

Monsignor Paul M. Conroy
Vicar General

Burial and Cremation Consultation

A general note reflecting spiritual and pastoral considerations.

There is a number of issues which the consultation does not directly address but which pastoral sensitivity suggests would be better not dealt with by legislation or guidelines but left to the discretion of family members and their spiritual advisers.

Issues concerning the disposal of ashes and the treatment of stillborn children and pregnancy loss should require complete transparency on the part of medical and healthcare practitioners as well as cemetery (whether in the ownership of local authorities or private bodies) and crematoria authorities on the one hand, and respect for the remains and sensitivity to those who are grieving. It is impossible to imagine how this latter can be provided for either in legislation or even in guidelines, but any legislation or guidelines should allow scope for a considerable degree of discretion on the part of those most closely affected and those from whom they seek support.

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:

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 there seems to be an anomaly with the maintenance of Headstones and Lairs especially where families die out.

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: Subject to appropriate prior public consultation before any new provisions are brought into effect.

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: On the understanding that the wishes of family and that faith communities are consulted.

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

Yes ☒ No ☐ Don't Know ☐

Additional information: What is the definition of a home burial, does it include crypts or mausoleums. There are already some burials in crypts and that right must be maintained.

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

Response: Adequate record keeping of the site of the burial and appropriate provisions to ensure that the burial site and remains are respected.

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: What happens to the metal?

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: Not relevant.

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: What provisions are there in the event of a dispute in a family, where the person with the right to instruct the disposal of the body is not the same as the person with the right of burial. What happens if these two people are in dispute.

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: What if parental rights have been assumed by a Local Authority.

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: Yes

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: Safeguards should be reasonable and proportionate. How would repairs be funded if a family die out and an insurance policy cannot be traced?

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 is likely to be less effective.

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: Possible exemption should be looked at in areas where the nature of the ground means that there is little soil depth.

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: Yes, whenever possible. Discretion would be needed retrospectively with historical records taking account of Data Protection.

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: We agree with the War Grave Exemption. • If Local Authorities are to be involved in this it seems to us that there should be a statutory requirement to provide ground for burial especially in Brownfield or Greenfield sites which are to be developed. In the event that burial in the ground is to be permitted to continue then both funding and land have to be made available. • A lot of cemeteries don't have sufficient ground to allow advance purchase of lairs otherwise there would be no ground for current burials so the practise of selling funeral plans well in advance of a death will have to be regulated.

23 - 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: Subject to No 22.

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: Yes. Not necessarily.

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:

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: Imminent should mean on the occasion of a death, new lairs should be released when burials are being arranged and should be left to the discretion of the cemetery operator.

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: In the case of churchyards around parish churches in use, the relevant diocese should be consulted. In regards to lairs in other burial ground there should, where known, be consultation with the religious denominations whose clergy conducted the burial service.

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: The introduction of a Tribunal which would be a mechanism to properly record and assess the objection. Any disputes have to be resolved quickly.

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

Response: It should only be family members. What is meant by family members and to how many generations? Religious Orders should also be able to object to the reuse of their lairs.

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

Response: Cemeteries have neither the time or resources to be investigation agencies. How is the person objecting going to be made aware. Would every burial need to be advertised? Any dispute has to be resolved quickly so that the bereaved are not waiting weeks or months for decisions.

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: No. Yes.

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: We do not feel qualified to comment.

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: If possible they should be retained in the burial ground.

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: We suspect that above ground mausoleums would not find favour with the public.

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: 50 years.

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: At least one local newspaper, the Local Authority website and onsite.

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 would seem unnecessary but there should be a review of the legislation after it has had time to be tested.

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: All war graves and graves of historic or local importance should be excluded.

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: Except in the case of the reuse of a lair exhumation should remain the last stage.

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: There would need to be appropriate provisions to ensure that the remains were treated with dignity and also their reburial with an appropriate service after the research was completed.

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:

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:

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:

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 ☐ 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:

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:

We cannot comment on questions 51-62.

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

Yes ☐ No ☒ Don't Know ☐

Additional information:

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: The time limit does not apply to the Catholic Church.

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:

For Questions 64 – 69 – time limit does not apply.

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: Yes, we suggest that the Register should include the religious affiliation of the deceased as well as the name and denomination of the member of the clergy who officiated at the cremation.

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:

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: We consider that there may well be reasons for regulation of the industry. One possible reason of interest is that this might require a funeral director to ensure that the deceased person's religious affiliation is sought out and respected.

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 ☐

We do not consider that self regulation of the funeral industry would be adequate.

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: Government Funded Inspector.

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: There needs to be discretion for operators to make sure any profits are reinvested into the cemetery.

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

Response: The Inspector should try to ensure that costs are equitable.

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:

- It would be hoped that any costs and expenses arising from any changes in the law are either met directly by the Government or that an obligation is put on Local Authorities to meet them.
- Burials at sea have not been covered in the consultation process.
- We need to emphasis the need for dignity, pastoral assistance, emotional involvement associated with funerals, burials etc..
- The whole issue of changing legislation while welcome should not turn the whole process into some impersonal business where these matters are ignored.
- The Archdiocese of Glasgow has no intention whatever in owning or operating a crematorium in the foreseeable future.