

The Legislative Framework

1 Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes

Please enter any additional comments here:

It's hard to know all of the legislation that covers each of these areas as it is spread across so many different pieces of legislation. The legislation that does exist has been amended many times making it hard to follow.

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

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

There is currently no legal framework for Funeral Directors to return Cremated Remains to Crematoria in instances where the applicant does not claim them

following a funeral service. Please refer to our comment at Question 57

3 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

If not, please set out reasons why not.:

4 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

Please enter any additional comments here.:

5 Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes

Please enter any additional comments here.:

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

Yes

Please enter additional comments here:

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

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

The same that are required where the interment is within a Local Authority Cemetery, the current rules should be re-clarified in any new legislation.

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

No

Please enter additional comments here:

Private Cremation should remain illegal

9a Do you agree that alternative methods of disposing of the dead should be regulated for in this way?

Yes

9b Are there any particular alternative methods that should be considered?

Are there any particular alternative methods that should be considered?:

Resomation, Promession and Cryomation.

9c Are there any particular methods which should be prevented from being used in Scotland?

Are there any particular methods which should be prevented from being used in Scotland?:

Not aware of any methods that should not be used.

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

Yes

If not, how should ashes be defined?:

11 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.

No

If not, please explain why not.:

It is for SEPA and each Local Authority to lay out guidelines. The environmental impact as a result of Cremation is not what it was when existing guidance was originally issued.

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

Please enter your comments here.:

There is no point in having a minimum distance if you are not going to enforce it.

The Right to Instruct the Disposal of Human Remains

13 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?

No

If not, why not?:

By vesting authority in the nearest surviving relative you negate the responsibility of the executor

In whom should this power be vested instead?:

The Executor unless there is no will in which case the nearest surviving relative.

14 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

In whom should this power be vested instead?:

In these instances the deceased is unlikely to have a will and therefore an Executor. In this instance the nearest surviving relative should instruct.

How should this be defined in legislation?:

15 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?

Yes

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? :

16 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?

Yes

Not Answered

Please enter any additional comments here.:

Only in circumstances where family have abdicated their responsibility but it is vital that the reasons are actually recorded for future reference.

The Management of Cemeteries

17 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

Please enter any additional comments here.:

Some thought should be given to the lengths a Burial Authority should be allowed to go to prove memorials are unsafe. "Topple" testing in the past has done more damage than was present before.

18 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

Please enter additional comments here.:

This is better than exists at the moment but you cannot enforce guidance.

19 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?

No

Should there be any exemptions?:

Please enter any additional comments here.:

3'0" from the ground level to the lid of the coffin is fine however above ground interments would require exemption i.e. when the coffin is placed in a crypt or tomb. In these instances a hermetically sealed coffin would always be used thus removing the need for 3'0" of soil.

Burial and Cremation Records

20 Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible?

Yes

Should any exclusions apply?:

No exclusions should apply, it should apply to all forms of disposing

Should this be applied to all forms of disposing of human remains in Scotland?:

Yes

21 Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

Indefinitely

If you specified 'other', please enter your comments below.:

Only from the date of the Act being implemented and 50 years for deaths until that time wherever possible. It is important that this data be electronically stored to minimise storage space and ease accessibility.

Alleviating pressure on burial grounds

22 Do you agree that the sale of lairs in perpetuity should be ended?

Yes

Please enter additional comments here.:

As long as it is not for the purpose of re-use.

23 Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes

Please enter additional comments here.:

We feel the 25 year term is too short and should be reviewed to a minimum of 75 years from the date of the last interment.

24a Should there be any restrictions about to whom the owner of a lair can transfer his or her interest?

No

24b Should this be restricted to family members?

No

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

No

Please enter additional comments here.:

Burial Authorities should be able to use their own discretion and prevent/allow pre-purchasing if there is a shortage of space.

26 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 long should constitute 'imminent' in this situation? :

Burial Authorities currently have in place sufficient guidelines to allow or not the purchase of future lairs.

How could this be tested?:

27 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?

No

Please enter any additional comments here.:

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

No

Please enter additional comments here.:

We disagree with the re-use of lairs.

29a Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted?

Yes

Please enter any additional comments here.:

We are satisfied with the groups that have been consulted.

29b Should any other specific organisations or groups be consulted at this stage?

No

30a Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse?

No

Please enter additional comments here.:

We disagree with the re-use of a lair.

Should you proceed with this we feel the time should be 100 years from last interment with one years notice being given.

30b Should any particular methods of notification be used in addition to those noted?

Not Answered

Please enter any addition comments.:

We disagree with the re-use of a lair.

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

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

We disagree with the re-use of a lair.

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

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

We disagree with the re-use of a lair.

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

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

We disagree with the re-use of a lair.

34a 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?

No

34b If not, should the Burial Authority remain responsible?

Yes

35 Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

No

Please enter additional comments here.:

We disagree with the re-use of a lair.

36 Are any other techniques available that should be considered?

No

Please enter additional comments here:

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

No

Please enter additional comments here.:

We disagree with the re-use of graves.

38 Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe?

Yes

In this instance, what should happen to headstones and memorials that are removed? :

Headstones and memorials should be made safe in the event that contact cannot be made with the Lair Owner. The decision to remove and if necessary dispose of should be left to the Cemetery Authority, it is vital that full details of any inscription should be kept in perpetuity.

39a Are any other approaches for easing the pressure on burial land suitable for use in Scotland?

No

39b For example, should above ground mausoleums, similar to those found in Europe, be considered?

No

40 Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

No

Please enter additional comments here.:

We disagree with the re-use of graves.

41 Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair?

No

Where should the Burial Authority's intention be advertised? :

We disagree with the re-use of graves.

42 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?

No

Please enter additional comments:

We disagree with the re-use of graves.

43a Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately?

No

Please enter additional comments here:

We disagree with the re-use of graves.

43b Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Not Answered

Please enter additional comments here:

We disagree with the re-use of graves.

Please enter additional comments here.:

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

Not Answered

Please enter additional comments here.:

We disagree with the re-use of graves and why should certain "categories" be a specialised category?

Exhumation

45 Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes

Please enter additional comments here.:

46 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?

No

Please enter additional comments here:

We disagree with the re-use of graves.

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

No

Please enter additional comments here:

We agree there should be a new streamlined process but authority to disinter should still come from The Sheriff Court

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

Yes

Please enter additional comments here.:

See answer to Question 47 however this should only apply to recognised burial grounds i.e. someone who interashes in their garden privately should not have to then apply for authorisation.

Pandemics and Mass-Fatality Events

49a Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes?

Yes

49b Should any particular issues be taken into account or conditions applied?

Should any particular issues be taken into account or conditions applied? :

No particular issues just a requirement to follow a clear process as set out by the Bill.

50 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

Please enter any additional comments:

Cremation forms and procedures

51 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?

No

Please set out your reasons for your view. :

There should be standard forms for:

1. Any product of conception or non viable foetus.
2. Post 24 weeks (stillbirth)
3. Form A for all live births and subsequent deaths.

This should be consistent across all Crematoria & NHS trusts should be forced to use this as statutory documentation.

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

Yes

Please enter additional comments here.:

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

Yes

Please enter additional comments here:

The time frame needs to be standardised at 8 weeks i.e. points (b) and (d) need to be consistent to avoid confusion

54a 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?

Yes

Please enter additional comments here.:

54b Do the categories above cover all relevant options or should other options be offered?

No, other options should be offered.

Please enter additional comments here:

See notes at Question 53

55 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

Please enter additional comments here.:

56a Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate?

Yes

Please enter additional comments here.:

56b Are the timings proposed suitable?

No

Please enter additional comments here:

57 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?

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?:

Written notification sent by recorded delivery after 5 weeks to say that if no instructions are received by 8 weeks then the ashes will be scattered thus giving 21 days notice. Should notification not be sent at the five week mark then 21 days from the date of the letter.

58a 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?

No

58b Will this prove impractical?

Yes

Please enter additional comments:

It is a good idea but in reality it will be impractical and place unwarranted pressure on the family to find someone to countersign. How will their suitability be monitored/assessed?

58c Should the legislation specify categories of people who may countersign cremation application forms?

No

Please enter additional comments.:

59 Should application for other categories of cremation require a countersignature?

Yes

Please enter additional comments here:

But it can be the next of kin, nearest surviving relative or funeral director.

60a 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?

No

60b Would separate forms for each category be more appropriate?

Yes

Please enter additional comments here.:

See comment at Question 51

61 What information should be considered essential for the cremation application?

What information should be considered essential for the cremation application?:

A revised Form A with non relevant questions deleted for Non viable Foetus, still birth and the implant question

62a What is the best way to enable Cremation Authorities to undertake this scrutiny?

What is the best way to enable Cremation Authorities to undertake this scrutiny?:

We are concerned about the word "scrutiny" as all the Cremation Authority can do under the Death Certification Act is to check for completeness and omissions. The Medical Referee under the old system did not check the Applicant was entitled.

62b What level of seniority is appropriate for this role?

What level of seniority is appropriate for this role? :

62c Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff?

No

62d Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

No

Please enter additional comments here.:

Any member of staff who is qualified by the FBCA or ICCM as what would happen if senior management were on holiday or unwell?

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

Yes

Please enter additional comments here:

To incorporate all of the earlier burial legislation once it has been enacted.

Pregnancy Loss

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

Yes

Please enter additional comments here.:

65 Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes

Please enter additional comments here:

A statutory Form A for all three categories as per our answer to Question 51

66 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

Please enter additional comments here:

67a 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?

Yes

67b If not, in whom should this right be vested?

If not, in whom should this right be vested?:

Not applicable.

Please enter additional comments here:

68a 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?

Yes

68b If so, who should be included in this list.

If so, who should be included in this list.:

Father, grandparents then paternal grandparents, i.e. maternal grandparents before paternal ones.

Based upon list at paragraph 38

Please enter any additional comments here:

69a 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?

69b How long should this be?

How long should this be?:

One month

70 Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory?

Yes

if not, why not?:

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

Yes

Please enter additional comments here:

72 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

Please enter additional comments here:

There should be a specific form for any cremation regardless of who arranges it - see our comment to Question 51.

73a 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?

No

73b Will this prove impractical?

Yes

73c Should the legislation specify categories of people who may countersign cremation application forms?

No

Please enter additional comments here:

Countersignature is a good idea but it should remain an independent person as it currently is.

It is a good idea but in reality it will be impractical and place unwarranted pressure on the family to find someone to countersign. How will their suitability be monitored/assessed?

Cremation Register

74a Is this list comprehensive?

Yes

74b Should any other information be required to be recorded in the Cremation Register?

Should any other information be required to be recorded in the Cremation Register?:

No

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

Yes

76 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?

No

If yes, please enter additional comments here.:

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

Yes

Please enter additional comments here:

Accreditation of Cremation Authority staff

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

Yes

Please enter additional comments here:

Code of Practice

79a How should a person's accreditation be checked?

How should a person's accreditation be checked?:

Register of holders of suitable qualifications should be kept by FBCA & ICCM. There should be a minimum amount of CPD required to retain the qualification. Renewal should be specified unless CPD requirements aren't met.

79b How often should a person's accreditation be checked or renewed?

How often should a person's accreditation be checked or renewed?:

Annually.

Inspector of Crematoria

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

No

Please enter additional comments here:

Local Authorities have ownership and responsibility for Cemetery.

81a Do you agree that the Inspector should be responsible for particular additional functions, as described?

No

81b Are there any other functions that the inspector should carry out?

Yes

Please enter additional comments here.:

Annual accreditation checking under the Code of Practice at Question 78.

82 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

Regulation of the Funeral Industry

83a Would regulation of the funeral industry be beneficial?

No

83b What would regulating the industry achieve that cannot be achieved already?

What would regulating the industry achieve that cannot be achieved already?:

There are trade bodies already in place where membership is voluntary and who are scrutinising their members regularly for standards and quality. Membership of the National Association of Funeral Directors or National Society of Allied and Independent Funeral Directors is not mandatory but a majority of Funeral Directors belong to one or both. Both have stringent code of practices. The NAFD have recently updated their code of practice and introduced a code of professional conduct. The NAFD has a suite of industry leading qualifications. This is already in place.

Members of the National Association of Funeral Directors are totally committed to raising and maintaining the highest level of customer service through the strict adherence to the Association's Code of Practice and Code of Professional standards.

The NAFD supports the principle of self-regulation of the funeral sector, whereby any business wishing to operate within the United Kingdom would be required to be in membership of a trade association operating a strictly monitored Code of Practice and a robust independent client redress scheme.

83c What are the disadvantages of regulating the funeral industry?

What are the disadvantages of regulating the funeral industry?:

Disadvantages include barriers to entry and a potential that the increased cost of operating for funeral directors from compliance matters will be passed on in funeral charges.

84a If the funeral industry were to be regulated, what approach would be most useful for Scotland?

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?

84b Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

No

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

Yes

Please enter additional comments here:

Given the way that Funeral Directors work in Scotland and distances involved it would require someone working full time to ensure that compliance is maintained. The NAFD has a dedicated Standards and Quality manager visiting members in Scotland to carry out inspections at least every other year.

Funeral Poverty

86 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

Please enter any additional comments:

87 Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

No

Please enter additional comments here:

Does this question relate to burial and cremation costs or the total cost of a funeral? On the basis that the question relates to the burial and cremation costs how would the cost be established? Would the cost to someone who did not live in the Local Authorities area be the same? It should be kept to a reasonable level and made public.

Any Other Relevant Issues

89 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:

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::

There is an opportunity for the Scottish Government to address the issue of the Social Fund Payment as a result of the Smith Commission.

The social fund is not used to full effect. The information included in the recommendation needs to be checked. People on the qualifying benefits should receive support. The current level allows for the local authority costs to be met but other fees including the funeral director's charge must be met from a payment capped at £700. This figure has not been reviewed for some time.

Local Authorities have a responsibility to provide a welfare funeral where there is no one willing to arrange the funeral or no-one with sufficient funds to arrange a funeral. By necessity this is provided in a prescribed form and leaves little room for personalisation. Equally Local Authorities are reluctant to be caught with the cost of providing funerals for those that are beyond the help of the social fund and make it very difficult to arrange for such a funeral. There is also concern for the social stigma of a welfare funeral known in the past as a "pauper's" funeral.

The Local Authority could agree a set funeral service to which all funeral directors can put a price allowing the bereaved to choose a funeral director on the basis of price alone.

If formal regulation of funerals is introduced there is a risk that the cost of a funeral will increase exacerbating the issue of funeral poverty.

Some Local Authorities elsewhere in the UK tender for a funeral director to provide a fixed cost service available to their residents (Nottingham & Cardiff for example).