

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Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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Additional information: **Existing burial and cremation legislation is outdated and does not meet the needs of the service providers or the service users.**

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

Response: **Burial authorities are acting on the Burial Grounds Scotland Act 1855 and as amended 1856. These relate mostly to the provision of burial grounds? The legislation should be more descriptive and include clear Guidelines such as the English, Local Authority Cemetery Order 1977 (LACO), which would assist authorities and would provide consistency across the Burial services.**

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: **Legislation and Guidance should cover all persons/companies/authorities providing a service to the bereaved. At this time there are differences in service delivery across Scotland, it is essential that Legislation and guidance is implemented across the full service to allow the bereaved to have confidence in a service that at times can seem fragmented.**

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: **We should allow early legislation and guidance for modern methods of disposal and should ensure that any new methods are required to meet the criteria set out in law. Any new legislation should be future proof as far as reasonably practicable.**

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: **All methods should be considered in any new legislation and environmentally friendly methods should be encouraged.**

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

Yes  No  Don't Know

Additional information: **At present it is unclear where this sits and is usually considered under planning guidance. It would be helpful if there were clear legislation or guidance for burial managers etc.**

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

Response: **Public Health aspects, Planning aspects, effect on public / private water supplies, effect on a mortgaged property – Title Deeds, registration of burial.**

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

Yes  No  Don't Know

Additional information: **I believe that cremation should be regulated and managed by appropriate bodies. This would not preclude meeting the needs of bereaved or religious groups, but would be controlled in a manner that would be dignified and respectful and would meet the needs of all users.**

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: **All methods of disposal should be regulated. Equally all methods should be considered and where appropriate included in any new legislation.**

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: **Unless there are clear planning reasons for any alteration to this. There may be times when the distance may need to be altered and any new legislation should consider/allow for this.**

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response: **Penalties should be considered where there is a breach of planning laws or a breach of any new Burial and Cremation Law.**

#### The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes  No  Don't Know

Additional information:

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes  No  Don't Know

Additional information: **Whilst agreeing with the proposal, it may be appropriate to consider the needs of natural parents at all times, in cases where children may have been removed from their natural parents for reasons of health etc.**

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: **In the event of family links being identified to make arrangements to dispose, then there must be clear guidance on what authorities or service providers can accept, to ensure that there is not a future challenge between the families of the parents?**

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: **Again guidance would need to be clear to remove possible conflict in terms of next of kin or appropriate person, e.g. what position would one aunt from the fathers side have over an aunt from the mother's side?**

#### The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes  No  Don't Know

Additional information: **This should be covered by legislation and defined in a similar manner to that shown in the Local Authority Cemetery Order 1977 (England and Wales) and be specific to Scotland's needs where appropriate.**

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: **Statute ensures compliance and consistency. This should not differ between areas and service providers.**

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: **There may be times when this could not be achieved and may exclude family members being interred. Every grave where possible should have 3 foot of cover, but it may be that it would/could be possible to have less cover with graves being capped with a suitable material.**

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: **All forms and records should be stored electronically.**

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: **Records relating to death and interments need to be recorded and held indefinitely. By using electronic means, records could be easily stored.**

Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes  No  Don't Know

Additional information: **The lairs could have a defined period and could be purchased for a further period if required under new legislation/guidance. The issue for Scotland is that the right to erect a memorial is attached to the right of burial. These two rights should be separated and time scales attached accordingly.**

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes  No  Don't Know

Additional information: **There are many lairs that have been purchased in the past that are not used or have space. By placing a suitable time on the right to inter, then these lairs could be taken back and used for the benefit of the local communities, if unused for many years.**

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: **It would be for the owner/s to transfer lairs to who they want. However this could cause problems in the future where families may be in dispute.**

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: **Lair space is decreasing and authorities need to ensure as far as possible that there are facilities for the future. Selling lairs in advance could reduce choice for the bereaved.**

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: **Lair space should only be sold at the time of need.**

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: **Re-use would protect local provision for many years to come, however appropriate safeguards as described in the review groups report should be considered.**

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:

**Section 72 makes reference to "The Lair" it may be more appropriate for the local authority or other service providers to make known its intention to re-use a specific section or cemetery and advertise for a period of 12 months. Given the large number of lairs within many cemeteries especially city cemeteries, to advertise re-use of individual lairs may be costly and time consuming. This should be considered when setting legislation etc.**

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: Once it is agreed that a section or cemetery can be set aside for re-use of lairs then persons with a direct interest in an individual lair/s should be able to object without any financial disincentive. Normally they may be required to prove ownership, however this should not preclude a person with a direct interest objecting and no burden of ownership should be placed on such a person.**

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

**Response: Religious groups where a request for re-use may affect their religious beliefs. Heritage groups, Police.**

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

**Response: Objections from non-family members (other than those named in Q32) should not be legitimate where a family member or identified lair holder has given approval.**

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: **Non Family member (other than those named in Q32) should not be able to stop re-use or other persons / groups identified in any new legislation. The Exclusive Right of Burial and the Right to Erect a Memorial is sold via a Title Deed for the lair. The maintenance of the lair space lies with the Authority and the maintenance of the memorial lies with the person/s holding the Exclusive Right of Burial. The Authority would retain responsibility relating to safety etc.**

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: **Dig and Deepen allows for the best use of burial space available within the boundaries of a given cemetery.**

Q36 - Are any other techniques available that should be considered?

Response: **Other techniques should be looked at and if suitable legislation should allow for their use. The approval of new techniques or methods should be approved by the Scottish Government or Local Authority elected members.**

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes  No  Don't Know

Additional information: **The use of existing memorials would allow the memory of those previously interred in a re-used grave to remain in situ. The responsibility for the new stone should rest with the new owner.**

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: **Where a memorial is deemed unsafe and there is no contact with the owner/s. Then an Authority should have the right to remove the memorial for a set period. If there is still no contact from the owner/s, then the stone should be disposed of safely.**

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: **All methods of disposal should be considered and legislation should allow for the implementation of these, should an authority or service provider decide to use such a method as above ground mausoleums.**

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: **The 25 year period would be suitable but legislation should also allow for extension periods of say 10 years, to allow bereaved family members to retain ownership of the lair for future family use etc. Many authorities in England and Wales offer different periods of Exclusive Right of Burial. Again the Right to erect a memorial should be separate from the Exclusive Right of Burial.**

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: **A 12 month period for individual lairs may be restrictive, see reply to question 29.**

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: **The local authority could issue approvals for reuse where they are satisfied that safeguards and legislation/guidance has been met. This would include issuing approval notices to the private sector if necessary. I**

**don't believe that a Court order should be sought, as this will increase the workload, the waiting times and the cost to the authority and or the bereaved**

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: **War Graves should be exempt for all time.**

### 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:

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: **This would be acceptable; however there should be no additional cost to the bereaved or the authority. The original view of the Law Review group was that the approval should be done in such a way that would reduce costs for the bereaved in that they would have no legal costs attached to applying to the Sherriff.**

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

Yes  No  Don't Know

Additional information: **However it may be that the authority to exhume Cremated Remains could be given to approved officers within a local authority and that these officers are approved by the Government Inspector.**

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:

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: **The suspension may assist authorities during a time when there are large numbers of deaths and restricted resources.**

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: **Any updated form should cover all types of cremations and should be clear and easy to understand.**

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: 14 days as suggested is a suitable period. However there should be a provision for an extension period in exceptional circumstances to allow the ashes to be kept for a period of say 28 days, these could include illness, holidays etc. Circumstances which would justify an extension could be written in to any guidelines issued.**

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: **This would support both the bereaved and the service provider should any issues arise from the cremation at a future date.**

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: **Any form for cremation should only contain information required to undertake the cremation and the process for dealing with the remains. All parts of the form relating to specific types of service should be filled. No cremation should be undertaken unless all relevant parts are completed and signed.**

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: **Cremation authorities already scrutinise forms to ensure compliance etc. A further independent check may include the Inspector appointed by the government undertaking sample checks to ensure that authorities are meeting their statutory duties relating to checking and scrutinising forms etc. Responsibility should lie with a Senior Manager.**

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

Yes  No  Don't Know

Additional information: **Statutory forms for interments would bring the service in to line with cremations and would follow the good practice identified by the commission, for cremations. Again the Inspector could undertake sample checks to ensure compliance.**

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: **At all stages the loss of a child at any gestation should be treated in a similar manner to a Stillborn or child death. This would provide comfort for bereaved parents. Many authorities already offer services to bereaved parents that have lost their child prior to the 24 week period.**

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: **The Cremation/Burial of Pregnancy loss before the 24 week gestation should always have approval from an authorised medical professional or other suitable person such as the Procurator Fiscal. Authorities may have concerns cremating or burying a child of less than 24 weeks gestation without the legal authority to do so? Suitable persons who are able to authorise the cremation or burial should be identified in legislation or guidance.**

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes  No  Don't Know

Additional information:

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes  No  Don't Know

Additional information: **However in line with previous answers the instruction should be countersigned and should be accompanied by the authority to cremate/inter by letter/certificate from a Doctor or authorised hospital signatory.**

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:

Next of Kin, or immediate family member. Legal Guardian or person with Power of Attorney.

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: **This would be a matter for the hospital but times should be the same throughout the country, to ensure consistency of procedures.**

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: **This should also be the same for Burial.**

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

Yes  No  Don't Know

Additional information:

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes  No  Don't Know

Additional information:

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes  No  Don't Know

Additional information:

Cremation register

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

Yes  No  Don't Know

Additional information:

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

Yes  No  Don't Know

Additional information:

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes  No  Don't Know

Additional information:

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

Yes  No  Don't Know

Additional information: **This should be done if records are kept electronically and could be stored on a local or national electronic record storage system.**

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: **By including this in legislation, you would ensure consistency across the country.**

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response: **A technician's accreditation should be renewed/checked via a refresher course every 5 years or where there are significant changes to procedures or legislation.**

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: **Given that they would be responsible for both the title should reflect this.**

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: **An inspector of Cremations/Burials should have the ability to undertake checks and inspections on all aspects of funeral services and should cover local authorities, private sector, undertakers etc.**

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: **Formal inspections could be arranged by the appointed inspector and would result from particular issues. Local Authorities etc. already have systems via their professional bodies which accredit them and it may be that the inspector could work with the professional bodies to have an input and agree the accreditation schemes already operated by them**

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: **The industry could be regulated via licence. This could cover Funeral Directors and Memorial Masons. These services already operate accreditation schemes and the government could work with them to agree a way forward and ensuring the terms of any license.**

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes  No  Don't Know

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

Yes  No  Don't Know

Additional information: **A single national Bereavement Inspector should be appointed for all Bereavement Services however, the Inspectors office should have available support covering all aspects of Bereavement Services for both, public and private.**

#### 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: **However this should include development of new facilities and resources relating to the wider Bereavement Service provided by an Authority.**

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

Response: **Re-use would assist in ensuring that existing space/cemeteries could meet future demands. Insurance schemes should be more readily available and affordable. An Inspector should have the power to investigate**

**claims of excessive costs and be given powers to take action where necessary/appropriate.**

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: