

Corporate Policy & Strategy Committee

10.00am, Tuesday, 24 March 2015

Response to the Scottish Government consultation on proposed Bill relating to burial and cremation and other related matters in Scotland

Item number	7.2
Report number	
Executive/routine	
Wards	All

Executive summary

The Scottish Government has drafted a consultation paper on a proposed Bill relating to burial and cremation and other related matters in Scotland. The aim of this Bill is to carry out a full review of the legislative framework which will ensure both clarity of process, and that appropriate dignity and respect is shown when carrying out burials and cremations.

The consultation paper brings together the recommendations made by the Burial and Cremation Review Group in 2007 that have not already been taken forward in the Certification of Death (Scotland) Act 2011, and those of Lord Bonymy's Infant Cremation Commission in 2014. The consultation will run until 24 April 2015, after which the responses will be analysed to inform the Bill.

The Chief Executive's Multi-Agency Working Group continues to have oversight of improvements in Edinburgh, and has been asked to consider this consultation response on 13 March 2015. The report and consultation response is presented to Committee for approval.

Links

Coalition pledges	P27
Council outcomes	CO24 , CO26
Single Outcome Agreement	SO2 , SO4

Response to the Scottish Government consultation on proposed Bill relating to burial and cremation and other related matters in Scotland

Recommendations

- 1.1 The Committee is asked to approve the Council's response to the Scottish Government's consultation on proposed Bill relating to burial and cremation and other related matters in Scotland, attached as Appendix 1 to this report.

Background

- 2.1 The Scottish Government has established a National Committee on Infant Cremation to deliver the 64 recommendations from the Infant Cremation Commission (which will also address the specific points from the Mortonhall Investigation accepted by the Government). Managers in Services for Communities represent the City of Edinburgh Council on this Committee.
- 2.2 This Committee has established a series of sub-groups to deal with specific strands of work, including
 - development of an overarching code of practice for infant cremation;
 - a cremation working practices sub-group, which will deal with recommendations on the process within crematoria;
 - a shared cremation sub-group, which will deal with policy and practice in relation to shared cremations (for pregnancy loss or terminations), normally arranged by the NHS;
 - a training and communications sub-group, which will deal with training and professional development across the NHS, cremation authorities and funeral director companies; and
 - a records and forms sub-group, which will deal with the various recommendations to statutory forms and record-keeping.

The City of Edinburgh Council is represented on a number of these sub-groups.

- 2.3 The existing legislative framework covering burial and cremation legislation dates from 1855 to 2003, but it is recognised that this has not been comprehensively updated or consolidated. There is an acknowledgement by the Scottish Government that this needs to be modernised.

- 2.4 Separate to the work of the National Committee, the Scottish Government has also now commenced recruitment of an Inspector of Crematoria, with adverts placed in national press in early October 2014 and interviews of short-listed candidates on 22 January. It is expected that the Inspector will be in post from early 2015.
- 2.5 The Scottish Government has drafted a consultation paper on a proposed Bill concerning burial and cremation and other related matters in Scotland, with the aim of addressing a number of issues affecting burial and cremation. This includes addressing the supply of burial land and management of burial sites, as well as historical practices in some crematoria in Scotland.
- 2.6 In addition to implementing some of the recommendations of the Infant Cremation Commission, the Bill will enact recommendations made by the Burial and Cremation Review Group in 2007, which was chaired by Sheriff Robert Brodie. Some of the recommendations of his Review have already been implemented by the Certification of Death (Scotland) Act 2011.
- 2.7 Some of the Commission's recommendations are beyond the scope of this Bill and will be implemented using other means.

Main report

- 3.1 In addition to a root and branch review of legislation, the Bill will also implement recommendations made by the Infant Cremation Commission to improve procedures around the cremation of infants. This will seek to provide a consistent process across all crematoria, and will specifically legislate for all categories of cremation, including those of pregnancy losses and stillborn babies.

The legislative framework

- 3.2 The Bill seeks to ensure that the existing legal framework covering burial and cremation is comprehensively updated, and to provide clarity of process and responsibility for both practitioners and members of the public. It is proposed that this would apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated. The proposed City of Edinburgh Council response is in support of these proposals.

The right to instruct the disposal of human remains

- 3.3 The Bill will seek to achieve clarity for practitioners and members of the public on the right to instruct the disposal of human remains, as currently no legal provision exists regarding who has the right to instruct the disposal. In practice, this is commonly carried out by the nearest relative, or by the executor. The Consultation recommended this should be the nearest relative for adult disposal and stillborn and pregnancy loss, and this was reinforced through the Lord Bonomy review. In the case of shared or collective cremation, the Bill recommends this should be the person so authorised by the Medical Director of

the Health Board. The City of Edinburgh Council proposed response is in support of these proposals.

The management of cemeteries

- 3.4 Provision will be included to enable better and more consistent management of burial grounds, including ensuring that all burial grounds and cemeteries are subject to the same legislation, regardless of whether they are council or privately owned. The City of Edinburgh Council proposed response is in support of these proposals.

Burial and cremation records

- 3.5 The Bill seeks to determine an agreed approach to the retention of burial and cremation records, including recommending the use of electronic records, where possible. The Bill also seeks views on whether all records should be kept for 50 years or longer, and recommends greater consistency of which records are kept and how. The City of Edinburgh Council proposed response fully endorses this view.

Alleviating pressure on burial grounds

- 3.6 The Bill seeks feedback on proposals to alleviate pressure on burial grounds. The Bill will make provision to secure adequate burial land through a variety of means, including the potential for reusing full burial grounds and cemeteries and unused lairs and lairs which still have space available. The sale of burial lairs in perpetuity will no longer be possible. The Bill also recommends a robust consultation process to ensure affected families and members of the public have the opportunity to comment on any proposals to reuse existing lairs. The Bill will also make provision to enable alternatives to traditional methods of burial and cremation. Although the City of Edinburgh Council response is in support of these proposals, the opening of Craigmillar Cemetery has ensured that space for burials is not currently an issue in Edinburgh.

Exhumation

- 3.7 The Bill seeks views on the desirability of a streamlined process to exhumation in certain cases, without the need to apply to a Sheriff. The City of Edinburgh Council proposed response is in support of these proposals.

Pandemics and mass-fatality events

- 3.8 The Bill seeks to provide clarity on arrangements in the cases of pandemics or mass-fatality events. The Bill will contain provision to enable any relevant burial regulations to be suspended in particular situations, such as pandemics and mass-fatality events, therefore ensuring parity between legislation for burials and cremation. The City of Edinburgh Council proposed response is in support of these proposals

Cremation forms and procedures

- 3.9 The Bill includes proposals which seek to rationalise the existing wide range of burial and cremation application forms currently in use in Scotland through the creation of a standardised, nationally adopted framework which will ensure consistency of approach. Revised application forms will also incorporate greater clarity around specific categories of cremation, such as those of stillborn babies or pregnancy loss, which had previously not been explicitly covered. The City of Edinburgh Council fully supports these proposals and is currently contributing to the development of these standardised forms.

Accreditation of Cremation Authority staff

- 3.10 The Bill recommends methods to ensure continuing professional development and accreditation for crematorium staff. The City of Edinburgh Council proposed response is in support of these proposals.

Inspector of crematoria

- 3.11 The Bill outlines the proposed role and functions that could be undertaken by the new Inspector of Crematoria, including regular site inspections. The City of Edinburgh Council welcomes the introduction of this role in Scotland.

Regulation of the funeral industry

- 3.12 The Bill may make provision for the regulation of the funeral industry, subject to consultation. The City of Edinburgh Council considers that this may be a positive step forward in developing consistent support for the bereaved.

Funeral poverty

- 3.13 The Bill also seeks to address issues of Funeral poverty and ways in which this could be alleviated. The City of Edinburgh Council accepts the potential impact on the bereaved, and suggests regular service reviews are carried out by local authorities to ensure efficient and effective use of resources.

- 3.14 Existing legislation covering burials and cremations is dated (dating as far back as 1855 for some elements) and spread across a variety of Acts. This Bill will consolidate the law into a single piece of primary legislation, with appropriate powers to make secondary legislation as necessary.

Measures of success

- 4.1 Submission of the Council's input by the consultation deadline, and ongoing participation in National Committee and its subgroups.

Financial impact

- 5.1 There are no current financial implications in relation to this consultation response, however City of Edinburgh Council participation in the work of the National Committee will allow early assessment of future legislative impacts. This will be reported to the appropriate Council committee.

Risk, policy, compliance and governance impact

- 6.1 The Council response positively contributes to the development of nationally agreed legislation that will provide practitioners with a standardised and clearly delineated set of processes and documentation. The review of this legislation will also provide clarity and reassurance to members of the public around processes when engaging with practitioners around the time of bereavement.

Equalities impact

- 7.1 There are no negative impacts on Equalities or Human Rights arising from responding to this consultation. It is acknowledged that the Scottish Government is engaging with a wide range of stakeholders.

Sustainability impact

- 8.1 Any proposed changes to cremation and burial processes will be fully discussed and agreed with the Scottish Environmental Protection Agency, to ensure compliance with all relevant environmental legislation.

Consultation and engagement

- 9.1 This consultation is being carried out by the Scottish Government. The consultation response has been presented to the Chief Executive's Multi-Agency Working Group on the 13 March in order to provide a City of Edinburgh Council return within the consultation period. Arrangements have also been made for the Bill consultation to be distributed through the local community planning networks within neighbourhood teams.

Background reading/external references

[Scottish Government National Committee on Infant Cremation](#)

[Burial and Cremation review Group](#)

[Consultation on a Proposed Bill Relating to Burial and Cremation and Other Related Matters in Scotland](#)

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Links

Coalition pledges	P27 - Seek to work in full partnership with Council staff and their representatives
Council outcomes	CO24 - The Council communicates effectively and internally and externally and has an excellent reputation for customer care CO26 - The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives.
Single Outcome Agreement	SO2 - Edinburgh's citizens experience improved health and wellbeing, with reduced inequalities in health. SO4 - Edinburgh's communities are safer and have improved physical and social fabric.
Appendices	Proposed Council response to the Scottish Government consultation on proposed Bill relating to burial and cremation and other related matters in Scotland.

APPENDIX: Proposed Council response to the Scottish Government consultation on proposed Bill relating to burial and cremation and other related matters in Scotland..



Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation

City of Edinburgh Council

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

McKail

Forename

Natalie

2. Postal Address

Room 9.53

City Chambers

EDINBURGH

Postcode EH1
1YJ

Phone 0131 529 7300

Email
natalie.mckail@edinburgh.gov.uk

3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

 Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

 Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

 Yes

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:

It would be helpful to provide legal definition around the issue of rights of inheritance of title deeds for burial lairs, to clarify the process of who has the rights to make decisions if the original lair holder is deceased.

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:

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:

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

Yes No Don't Know

Additional information:

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

Response:

Factors for consideration might include:

It may be considered necessary to limit this to certain locations with the approval of the local authority.

- a. *Clarification required on minimum standards for burial (depth, coffin, soil types which should correspond with those in place in the industry). A pre-assessment of any proposed site would be necessary to check if it is suitable, and clarification provided as to who should carry this out.*
- b. *Clarification that grave digging and interment for home burials should be carried out by professionally qualified staff to ensure appropriate health and safety procedures followed.*
- c. *Clarification of what prior approvals should be required and whether this could be incorporated into existing paperwork.*
- d. *Clarification on how compliance would be monitored.*
- e. *Clarification on the impact of home burial on future changes to property ownership and how this would work in a shared ownership scenario.*

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

Yes No Don't Know

Additional information:

These should continue to be illegal and we would agree that cremation should only be carried out by an approved crematorium with qualified staff able to demonstrate through Code of Practice and SEPA compliance that the correct procedures are being followed and inspected. City of Edinburgh Council considers that this would better mitigate any public concerns.

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:

Regulation and guidance on alternative methods should be produced by relevant industry bodies, and if necessary adopted within the existing Code of Cremation Practice or a new and dedicated Code formulated, depending on the circumstances which are being proposed and implemented.

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

Yes No Don't Know

Additional information:

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes No Don't Know

Additional information:

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

Response:

Clarity is needed on whether this would also apply to any planning application for extensions of existing properties which would then enter into the 200 yard exclusion zone, and on whether this would mean that applications would be refused on this basis.

The emphasis is on new crematoria adjacent to existing dwellings not new dwellings next to crematorium; this needs to be equally weighted. It would be useful to define proposals for other buildings such as commercial properties or schools

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:

For the avoidance of doubt, the City of Edinburgh Council view is that it would be helpful to define an order of preference for this list.

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:

Agree in principle, assuming this includes cases where the natural parent is not present/no longer alive and the child in the care of adoptive or foster parents.

In the case of adopted children clarity needed as to whether the rights of adoptive parents overrule those of the natural mother.

Clarity on whether this would also apply to looked after children would also 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 No Don't Know

Additional information:

If natural father was not known, no longer present or no longer in a relationship with the mother, it needs to be clarified if the mother's new partner, if any, would have the authority to make this decision.

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes No Don't Know

Additional information:

The City of Edinburgh Council would agree in principle with this proposal, with the caveat that there would require to be a signature from the mother/father, plus a designated medical or pastoral care professional.

For the proposal around the death of an adult, the City of Edinburgh Council would take the view that, in cases where the next of kin was not identifiable or contactable,

provision is required for a designated professional, such as a Social Worker or Police Officer to make arrangements, if required through the Ultimas Haeres Unit within the Crown Office.

The management of cemeteries

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

Yes No Don't Know

Additional information:

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes No Don't Know

Additional information:

The City of Edinburgh Council preference would be for regulations to be implemented. However it would welcome intermediate guidance as a stepping stone prior to implementation of legislation.

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:

The City of Edinburgh Council would seek to describe the necessity of this also applying to home or ecological burials.

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:

There is a need to ensure relevant data security and protection issues are considered, as well as ensuring that there is appropriate public access to these records.

The City of Edinburgh Council would welcome clarification on whether this would refer to data input onto systems such as the Burial and Cremation Administration System, and/or the digitisation of paper-based forms such as Form A – Application for Cremation.

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:

Although there are no immediate space pressures in Edinburgh, following the opening of Craigmillar Cemetery, the City of Edinburgh Council recognises that there will be national exceptions and therefore considers that a level of local discretion would be appropriate.

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:

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:

The City of Edinburgh Council does not consider it necessary to solely restrict this to family members, so long as the process is transparent and clear and consistent guidance is provided on line of inheritance to service teams.

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:

On a case by case basis, the City of Edinburgh Council would allow multiple lairs or blocks of lairs to be sold. It is noted that this is often carried out by families to enable funeral plans for their families to be determined.

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:

It is felt that this would be unlikely in a City of Edinburgh Council context, but it is appreciated that other local authorities may benefit from this discretion.

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:

This is considered an acceptable proposal, where clear safeguards and decision making processes are in place. This process would need to have a timeline which takes account of other proposals in relation to the 75 year time window.

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:

It is considered useful to be very clear as to what faith communities have been/are to be consulted throughout this process.

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:

It is felt appropriate that notification should also be made via local community organisations and networks, such as Community Councils, and religious groups/churches.

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response:

It is unlikely that the City of Edinburgh Council will reuse lairs in the foreseeable future.

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

Response:

Religious organisations, local residents, friends, affiliated organisations, public health services, SEPA.

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

Response:

It is felt that a non-family member would need to demonstrate that they had valid connection to lair, or that their objection was based on particular and evidenced historical reasons.

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:

In Edinburgh the responsibility for the headstone would remain with the City of Edinburgh Council. The burden of requiring the objector to assume maintenance responsibilities is unclear, greater clarity is required on what mechanism is envisaged to enable this to be pursued.

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:

Where a local authority deems this to be necessary and with appropriate risk assessments and consultation, it is unlikely that Edinburgh would need to consider this, given the development of Craigmillar Cemetery.

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

Response:

Nil response

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

Yes No Don't Know

Additional information:

This is something that the City of Edinburgh Council would not consider, however it is understood that this may need to be considered by other authorities.

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:

The City of Edinburgh Council's current policy is that headstones would be laid flat face up or otherwise made safe.

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:

Nil response

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:

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:

In local and national press, local community notice boards, places of worship, email stakeholder circulation, at relevant cemetery. Liaison with appropriate faith groups would also be important.

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:

It is felt that if a lair was reused, that this would be a requirement for the transaction with the new purchasers.

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 City of Edinburgh Council does not consider that a court order is required, if remains are not exhumed above ground. This may also be a decision that could be taken by the Inspector of Crematoria for Scotland.

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:

Other Local Authorities may wish to determine this by policy; therefore a discretionary clause would be requested.

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:

It is suggested that a clearly articulated and transparent process should be implemented. The City of Edinburgh Council would be supportive of this, only if all necessary consultations, risk assessments and decision making controls were in place and publicly reported or available.

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:

It is not anticipated that the City of Edinburgh Council would require this process. It is acknowledged however that other authorities may have pressures which they seek to address and the Council would agree with this proposal on that basis.

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 process should be subject to inspection and review.

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:

The City of Edinburgh Council believes that it is important when disinterring any grave and particularly aged or ancient graves to consider the possible causes of death at the time of internment, eg Smallpox, bubonic plague and anthrax. Often in such circumstances the graves will be pits due to multiple and rapid fatalities presenting at the time and due to the virulence of the infecting agent.

It is essential to research the time line history of diseases in an area, and apply that knowledge to the dates of graves to be disturbed, remembering that there could be earlier burials underneath. An appropriate and thorough risk assessment, in conjunction with the Environmental Health Team of the Local Health Authority, and if necessary the Public Health Team in the NHS should be carried out.

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:

The City of Edinburgh Council view is that a single, consistent and statutory form needs to be developed using plain and sensitive language. It is hoped that this will ensure a consistency of approach nationally, providing the same service for customers at any stage of the process, therefore reducing risk and improving support for the bereaved.

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:

The City of Edinburgh Council has submitted draft forms for consideration by the National Committee and is committed to ensuring the appropriate outcome for the bereaved moving forward.

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

The City of Edinburgh Council considers that Form A – Application of Cremation, should state that all efforts will be made to minimise the loss of ashes and that, in exceptional circumstances, the collection may not be possible, as per the recommendation from the Lord Bonomy report.

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:

The City of Edinburgh Council supports this process, however consideration needs to be given to tracking the collection or otherwise of ashes at the stipulated two year period. It is City of Edinburgh Council view that this responsibility should lie with Funeral Directors.

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:

8 weeks plus 14 days notice period as developed through the work of the National Committee on Infant Cremation.

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:

Agree it would be useful to produce a list however it is appreciated that this may pose difficulty in cases of early pregnancy loss. On balance, however, it is felt that the benefits of countersigning for the vast majority are worthwhile, and extra support should be offered at early pregnancy loss application to mitigate wellbeing impacts.

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:

A single application form is preferred, but clarity is needed around the process for shared cremations, anatomical cremations etc. It is felt that this needs to be included in the legislation.

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

Response:

Details of applicant

Details of deceased

Applicants relationship to deceased

Surgical implants

Definition of ashes

Clear signed instructions around disposal of ashes, including authorisation for collection by another party

Clear signed understanding that ashes may not be recovered in case of infants, but that every effort will be made to do so

Overall statement of truth, countersigned

Cause of death if high risk.

In addition to a nationwide statutory form containing agreed aspects detailed above, clarity would be welcomed as to whether the following aspects should also be included, perhaps as a template customisable for each individual crematorium.

Date and time of service

Instructions from Funeral Directors

Special instructions eg weight of coffin

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 Service Managers with relevant qualification and training, and empowered under a clearly articulated Scheme of Delegation, could carry out this function, assuming legal responsibility for decisions made. The City of Edinburgh Council is of the view that the delegated manager should be required to countersign the form to ensure compliance.

The provision of a clear training and guidance checklist would support this level of responsibility.

It is felt appropriate that both the Institute of Cemetery and Crematorium Management/The Federation of Burial and Cremation Authorities should have role here in providing appropriate training and guidance materials.

Although most necessary checks would be carried out through the new medical review process, local staff would then be checking accurate completion of Form A.

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

Yes No Don't Know

Additional information:

Clear, consistent and statutory forms should also be developed using plain and sensitive language.

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:

Yes, this cremation would need authorisation from the Procurator Fiscal or similar designated role. The City of Edinburgh Council would however encourage medical input into the process wherever possible, to ensure wellbeing of the mother.

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:

Yes, but sensitivity is needed around any reminder letter being sent as it may be opened by someone who is not aware of the original pregnancy loss.

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:

Yes, as per paragraph 38, they must be the applicant completing Form A as prescribed.

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:

NHS lead on this matter and their view should determine.

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:

Yes, in order to create a consistent level of service across Scotland.

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:

Yes, Form A may be appropriate in these circumstances.

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:

The City of Edinburgh Council believes that this should be a suitably trained and informed medical person or chaplain, or Funeral Director who is in a position to explain choices to the mother in a clear and consistent manner.

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:

Location of internment of ashes

NHS reference number

Clear indication that all mandatory fields had been completed on Form A

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

Yes No Don't Know

Additional information:

The City of Edinburgh Council uses the unique reference number provided by the NHS.

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:

Agree should be public document.

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:

The City of Edinburgh Council consider that the accreditation requirements be set out in legislation and compliance with these requirements should be monitored by the Inspector of Crematoria.

Training should enable and support a focus on Scottish law and requirements.

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

Response:

Inspector's duties should be to ask for the policy of the Council which sets a reasonable accreditation programme of review. Minimum requirements for infant cremation should be every three years. For other categories, every five years. Register to be maintained by Local Authorities.

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:

An inspection of all establishments in Scotland should be carried out within twelve months, with regular assessments programmed thereafter over a three year period.

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:

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:

Inspector may need to map requirements as there may be concern around capacity. The City of Edinburgh Council preference would be for one lead inspector for both.

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:

An impact analysis of this should be carried out looking at impact on customers and Local Authorities.

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

Response:

Local Authorities to carry out ongoing service reviews to ensure efficient and effective use of resources.

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: