



Federation of Burial and Cremation Authorities
(Scottish sub-committee)

and

Institute of Cemetery and Crematorium Management
(Scotland & Northern Ireland Branch)

RESPONSE

to the

SCOTTISH GOVERNMENT

CONSULTATION PAPER

ON

DEATH CERTIFICATION, BURIAL AND CREMATION

CONSULTATION PAPER ON DEATH CERTIFICATION, BURIAL AND CREMATION

SECTION ONE.

When a Death Occurs

Question 1.

Would it be appropriate to enable trained clinical staff such as nurses and paramedics to verify life extinct?

As detailed within **para 13** of the consultation document, both organisations accept that it is not possible or practical for a Doctor to certify death immediately and for this reason professional groups such as registered nurses and paramedics should have the power to verify the fact that life is extinct.

The matter of certifying death should still remain with Doctors.

Duty of instructing disposal of the body.

Question 2.

Should the right to instruct the disposal of bodies on death be vested in the nearest relative?

The general consensus of both organisations is that it the Executor or nearest surviving relative of the deceased should have the right to determine the disposal of the deceased. We fully support the comments within Professor Whitty's article, "Rights of personality, property rights and the human body in Scot's Law" as detailed within **para 19**.

Question 3.

Should the definition of nearest relative follow the definition used in the Human Tissue (Scotland) Act 2006?

Both organisations fully agree that the nearest relative should follow the definition as laid down within the Human Tissue (Scotland) Act 2006. Section 50.

Question 4.

In the case of a dispute about disposal of a body should this be resolved by way of a summary application to a sheriff?

Both organisations fully agree with **para 19** of the consultation document that should there be any dispute not resolved amicably then an application should be made by way of a summary application to the Sheriff.

SECTION TWO.

Disposal following Inconclusive Post Mortem

Question 5.

In cases where the death is undetermined, even after a post mortem has been carried out, what measures should be put in place to allow the disposal of the body?

It is not within the remit of our professional organisations remit to determine measures required in cases where the cause of death is undetermined although some comments detailed that:

- The retention of detailed Toxicological evidence would facilitate disposal by burial or cremation.
- The same level of inquiry should be applied to all deaths regardless of the method of disposal.

It was also suggested that if cremation was to take place, the wording on the **E1** form and the **Form F** would require alteration to accommodate the fact that the cause of death was not “definitely ascertained”

Question 6.

Should disposal of the body where cause of death is undetermined be restricted to burial or are there circumstances where cremation or other methods should be permitted?

Please note comments to question 5.

The Medical Investigator Model

Question 7.

Is the Medical Investigator your preferred model?

No. We rejected the model of Medical Investigator.

We do not believe that the explanation detailed within **Annex A** as stated in **para 39** adequately allows investigation and scrutiny of the death certification process. The group does not feel that it provides sufficiently robust and transparent procedures for the public to hold an acceptable level of confidence in the death certification process.

We believe that there should be scrutiny of all deaths and that this commences with the administration staff. We also believe that the registrar should **not** be responsible for checking forms.

It should also be noted that this work is currently being carried out by the crematorium’s Medical Referee.

Question 8.

If yes, why?

Not applicable.

Question 9.

What do you view as its potential strengths over the existing system?

There are potential strengths over the existing system that we see, as there should now be a degree of parity throughout all areas of Scotland.

This system would also enable the investigator to provide a level of scrutiny and have access to the deceased’s medical notes etc. This however is not our preferred option.

Question 10.

What do you view as its potential weaknesses?

We were concerned about the low percentage of deaths which will be scrutinised and did not feel that this would provide a comprehensive check.

We also felt that a higher number of deaths occurring within care homes should be investigated and this option does not provide for this facility.

Question 11.

Do you think it offers best value for money?

Although we support the aspect of Best Value, we do not believe that the cost of service provision should be the determining factor in selecting the option that will serve the population..

The Medical Examiner Model

Question 12.

Is the Medical Examiner model your preferred model?

The Medical Examiner model is the preferred option for both organisations.

Question 13.

If yes, why?

All agreed that this model provided the best overall solution with all the papers scrutinised by the Medical Examiner and his staff who will note death clusters and then take immediate and appropriate action.

It was also felt that this option would sit comfortably with arrangements in place for death certification in England and Wales.

Question 14.

What do you view as its potential strengths over the existing system?

We believe that this option will provide a robust system of scrutiny and will deal with all deaths and not just those where cremation is the chosen form of disposal. It was felt that the system would increase public confidence in all sectors of the community and minority faith groups by ensuring a properly staffed system with appropriate levels of access to records that will allow the identification of any developing patterns of deaths within the community.

Question 15.

What do you view as its potential weaknesses?

We are concerned about the possible delays that the option could bring to the process. We feel it is imperative that the option is fully and properly funded in order to provide an efficient and effective service to the population that does not bring about unnecessary delays.

Question 16.

Do you think it offers best value for money?

We are aware that the higher levels of scrutiny will come at an extra cost, however the determining factor should not necessarily be "Best Value" in monetary terms but value should be judged by the increased satisfaction and confidence of the bereaved and the public in general.

Funding Increased Governance

Question 17.

Should bereaved families or the deceased's estate pay a moderate fee to cover the cost of introducing increased scrutiny by a Medical Investigator or Medical Examiner?

We would be reluctant to see the cost of the Medical Examiner service passed on to families or the deceased's estate. However we appreciate that if insufficient funding exists then this may be unavoidable.

Question 18.

Can you suggest any other ways of funding increased governance, bearing in mind the current constraints on public spending?

We believe strongly that the costs for this service should be centrally funded by government. It was generally accepted that a small percentage increase to national Insurance contributions would cover this. It was also noted that currently the Scottish Government provide a programme of care to the Elderly either within their own home or a care home and the subsequent cost involved. The additional cost of the Medical Examiner model in regard to the disposal of the dead is minute in comparison.

Question 19

If a fee were to be levied, should it be set at the same level irrespective of the method of disposal of the body?

Yes. If a fee is required to be set, both organisations believe that the fee should be a standard fee regardless of the method of disposal of the dead.

Question 20

A fee could potentially be levied at the point of disposal (i.e. included as part of the fee currently collected by local authority, burial or cremation authorities) or by private burial and cremation companies when charging for provision of their services. Are there any practical issues which need to be taken into account in considering these options?

We agree that as all fees are currently collected by the funeral director from the applicant as a disbursement, then a logical way forward is for the proposed scrutiny fee to be collected by the same method. Changing this system would place additional burdens on local authorities and private burial and cremation companies in regard to collection and passing the fees to central government.

Alternatively we agreed that if it was deemed necessary to recover the cost for this service from the family arranging the disposal then this could be managed at the point of Registration through fees collected by the General Registrars office.

SECTION THREE

Regulation of Cemeteries

Question 21.

Do you agree that new legislation should be introduced to regulate all local authority and private cemeteries?

Yes. We support the recommendations of the Review Group with regard to the standardisation of legislation across all cemetery and burial ground providers and agree that this will give reassurance to the bereaved irrespective of the preferred place of burial that is selected.

The general framework of the Local Authorities Cemeteries Order 1977 (LACO) (for England and Wales) and the Burial Grounds Regulations (Northern Ireland) 1992 could be utilised as a starting point for the construction of modern burial legislation for Scotland.

Question 22.

Do you agree with the recommendations set out above, about the erection of headstones and regulations on matters relating to memorial masons and memorials?

We consider that matters relating to memorial masons and memorials should be managed by local regulation and not include within the legislation. There is a national organization, the British Register of Accredited Memorial Masons (BRAMM) which is managed by a board/executive/committee having equal representation from the memorial industry and cemetery/burial ground owners, that has been established to regulate and control the installation of memorials. Their codes of practice and disciplinary procedures should be adopted by cemetery operators in order to ensure that service users are properly protected.

On the basis that memorials are erected in accordance with the current British Standard (BS 8415) and industry codes of practice a fixed term guarantee is not necessary. A certificate of conformity should be sufficient evidence that will provide reassurance to lair owners and the operators/owners of cemeteries and burial grounds.

A memorial properly installed should be maintenance free for a period of no less than 10 years therefore it is the enforcement of standards that will protect the lair owner, cemetery and burial ground owner and memorial mason from further expense / liability.

Regular checks need to be made by the appropriate memorial mason within the guarantee period.

While there are some issues with new headstones, in general the problem lies with older ones and at present no legislation addresses this problem.

We agree that memorial owners should be encouraged to insure their property (memorials) and that their responsibilities towards their property are clearly defined within the exclusive right document and cemetery/burial ground regulations.

Question 23.

Are there any other factors in connection with headstones or memorials which should be taken into consideration when taking forward legislation?

Gravestones, monuments and memorials should wherever possible, have a reduced right period set, in order that local authorities and private burial companies can make more frequent contact with the owner of the right or his descendants to allow maintenance of up to date records.

The lair owner should be required to advise the local authority or cemetery operator of any changes of address or other circumstantial changes to allow amendments to be made to the statutory registers,

Any organisation having an interest in headstones such as Historic Scotland, should notify the appropriate local authority or private burial company in this regard.

Continued Sustainability and Affordability of Burial Grounds

Question 24.

Should there be re-use of graves with appropriate safeguards?

Yes

We strongly believe that the re-use of old abandoned/unused graves is the only means of ensuring the long term security and sustainability of existing cemeteries and burial grounds.

The Scottish Government should have the power to appoint a Cemetery Inspector to investigate complaints of malpractice.

Question 25

What should be the optimum time before a grave is allowed to be re-used?

No lair should ever be re-used when nearest relatives express a clear wish that this should not happen and it should be confirmed with any necessary transfer of ownership taking place to confirm such rights.

We agree that where circumstances allow, the optimum period for re-use of lairs after the last interment should be set at a minimum of 75 years. Safeguards in the form of a notification process to ensure abandonment or non-objection prior to re-use should be written into legislation.

Lift and Deepen

Question 26.

Is the “lift and deepen” method an acceptable use of burial space?

We agree that this is an acceptable method of re-use, although it will present various further challenges in the way of Health & Safety when excavating lairs to greater depths with in some cases very limited access. Significant expenditure may be necessary to secure the correct type of machinery necessary for deeper excavations, along with industry standard shoring necessary to secure the lairs at such depths.

This process will obviously require compliance with any proposed statutory exhumation procedures but concern was raised that this prolonged process may create trauma and stress related illness's amongst those gravediggers who will be responsible for carrying out these exhumations. In such cases it may be appropriate to outsource the function to specialized contractors.

Question 27.

Views are invited on any advantages or disadvantages of this method?

Our comments on the advantages of “lift and deepen” are:

- Existing cemeteries and burial grounds become sustainable with significantly reduced need to construct new cemeteries.
- Maintenance costs of sustainable cemeteries and burial grounds will remain constant, as opposed to increased costs brought about by the current need of creating new cemeteries and burial grounds. This in turn may reduce the pressure on fee increases.
- Burial records remain accurate as all disturbed remains are replaced within the original lair.
- It eliminates the issue of shortage of new land close to population centres, particularly in the larger towns and cities, which results in the bereaved not having access to local and affordable burial space.
- The creation of new cemeteries in rural communities might have the effect of ‘dividing’ the community due to the necessity for increased travel.

- The ICCM has studied the method of 'lift and deepen' in Germany where it is apparent that the practice is fully acceptable to the public. The maintenance standards achieved demonstrates a reduction in financial burden and pressure.
- The managed re-use of lairs will reduce the impact upon the heritage value or historic landscape of existing cemeteries.
- 'Lift and deepen' is considered to be the most effective approach to the re-use of graves.

Disadvantages of 'lift and deepen' method are:

- It will be imperative to ensure that properly managed processes are put in place to avoid human remains being missed in excavated soil from within the lair. Such occurrences would bring the process and the cemetery operator into disrepute and cause untold further distress to family members.
- There are issues in regard to specific burial areas relating to Muslim and other ethnic groups funerals and there particular religious requests and beliefs which should be noted. However, local consultation and the fact that re-use would not be mandatory will assist in such circumstances.

Question 28.

What acceptable alternative approaches are available?

We agree that there are no acceptable alternative approach to re-use existing lairs where interments have taken place to the capacity of the lair. However, programmes to identify unused reserved lairs that have been held in excess of 25 years could realise a significant resource. In addition it may be seen as appropriate to develop a programme of repurchase of rights to lairs where the lair has not been used to capacity.

Question 29.

It would be helpful to know whether particular methods of re-using graves should be prescribed, or whether burial ground operators should be free to adopt whatever method appeared appropriate to local circumstances taking account of local consultation and the views of family or descendant?

We believe that the re-use of graves should be restricted to the adoption of the 'lift and deepen' process only and that this be prescribed in legislation.

Local consultation on plans to re-use graves should be undertaken by the owner of the cemetery or burial ground. This gives the opportunity to inform and foster greater understanding and take feedback in order to incorporate the views of local religious and minority groups.

Any family or descendant of a person buried within a particular grave identified for re-use should retain a right to renew the rights of burial and prevent the re-use of the particular grave as detailed within our answer to question 25.

Tenure of Burial Lairs

Question 30.

Is 25 years a sufficient length of time to allow exclusive tenure to a burial plot with the ability to extend that tenure for each subsequent 10 year period thereafter? (This relates to unused lairs and is unconnected to the recommendation that a period of at least 75 years should elapse before a lair can be re-used.)

We agree that cemeteries/burial grounds should continue to grant the 'exclusive right of burial' to lairs. This right should have a 25 years tenure with a subsequent 10 year extension period should families so wish if the lair is not used. We believe this would seem to be acceptable.

We also acknowledge, the administration required by an authority/company to update and advertise every 10 years for every grave will cause significant operational and logistical difficulties.

Question 31.

If not, what length of exclusive tenure do you think would be reasonable from purchase to use of a plot (with the ability to extend the tenure)? Please explain why.

Not applicable.

Question 32.

If a system of time limited tenure was to be introduced, would it be reasonable to introduce this retrospectively?

We believe that this should be introduced retrospectively as the exclusive right of burial on the lair would have been sold in perpetuity. This will also assist private cemetery/burial grounds. It should be noted that there may be an issue in respect of contract law regarding this proposal.

There is a mechanism in place for local authorities to take back unused lairs if they were detailed within their cemetery management rules which were formulated under the Civic Government (Scotland) Act. 1982 and subsequent amendments. However, the current review would allow the practice to be incorporated into legislation rather than continue within local management rules.

Question 33

Should compensation be paid when a burial authority resumes ownership of a plot?

There may be some reluctance on the part of authorities to pay compensation to the owners of rights relating to lairs in circumstances where authorities resume ownership of the rights.

It was agreed that if compensation is required to be paid it should only be paid at the original purchase price and only to the current lair owner or new lair owner following transfer of ownership

Question 34.

If yes, what would be a fair way of calculating the compensation due.

As at question 33, however, if compensation is required to be paid it should only be paid at the face value of the original exclusive right of burial.

Question 35.

Do you think the practice of selling blocks of lairs or multiple lairs should be prohibited unless it is for imminent use?

We firmly believe that the pre selling of blocks or multiples of lairs should be stopped.

Although it is seen as a means of income generation, pre selling blocks of lairs reduces lair availability for future generations.

If re-use becomes a lawful option this should be considered.

We accept that this may cause distress to families who wish to have several adjoining lairs to where a loved one is laid to rest, however many of these lairs remain unused and the first priority for local authorities and private burial companies is to safeguard valuable space.

Electronic Records

Question 36.

Do you agree that if re-use of grave occurs using the “lift and deepen” (or “dig and deepen”) method, electronic records should be kept and made readily available to the public?

We believe that all burial records, including those that would relate to re-used graves, should be maintained electronically with those electronic records being made available to the public via a media determined by the cemetery or burial ground owner (with the exception of records of grave ownership that would be data protected).

Green Burials

Question 37.

Should green burials be covered by new general legislation on burials, for instance, setting out the minimum depth between the surface and the top of the coffin?

We support the idea that green burials are covered by any new legislation in regard to burial of the deceased. We also believe that this should determine the minimum depth between the top of the coffin and the ground surface and this should be no less than 3 feet, (converted to metric).

Question 38.

What if any, additional provisions should apply to green burial sites?

We believe that it would be good practice if there was a requirement for a short and long term management plan drawn up for each green burial site in regard to maintenance etc. This should include mowing regimes, tree management etc.

In the event of a green burial site or a private cemetery becoming insolvent or being sold to another party, consideration should also be given to ways of protecting any rights of access for grave owners.

Question 39.

Are there any exemptions from regulations that should apply to green burial sites?

We believe that there should be no exemptions with regard to green burial sites.

Home Burial

Question 40.

Should legislation be enacted to govern home burials?

We agree that guidance issued by the Scottish Government should be introduced to govern “home burials”. A requirement to register a home burial with the local authority is essential in order to create a central register that SEPA, the local Planning dept, Registrars etc have access to.

Question 41.

Should local authorities be responsible for authorisation and recording of home burials?

Burials at home and on private ground should require to be authorised by the Local Authority in accordance with regulations made by Scottish Ministers. A requirement for such interments to be recorded on the title deeds to the property should also be introduced.

Question 42.

If you think the task of authorising and recording home burials should not be the responsibility of local authorities, which organisation do you think should take on this role? Please set out your reasons why.

Not applicable.

Exhumation

Question 43.

Would it be appropriate and practical to introduce a new system where the nearest relative or local authority can apply to the Scottish Government for consent to exhume a body?

We support the requirement of a new system to deal with the issue of exhumation.

A new streamlined system should be put in place whereby a relative and/or the local authority can apply to the Scottish Government for a "Warrant to Disinter".

This streamlined administrative procedure, not involving the court system would assist in regulating exhumation as well as allowing them to proceed far quicker than at present thus reducing the distress to families.

This system currently exists in England and Wales and is administered by the Ministry of Justice.

Question 44.

Can you suggest any other options which would introduce practical benefits and avoid unnecessary delays for exhumation?

The Scottish Government could consider delegating decisions regarding exhumation to local authorities with the appropriate officer of the Council being given responsibility for considering applications and issuing exhumation authorisations (for exhumation of bodies as opposed to cremated remains).

Question 45.

Are there any benefits in maintaining the current system where applications are made to the Sheriff for exhumation?

We agree that there are no benefits in maintaining the current system via the Sheriff's office.

SECTION FOUR

CREMATION AND ALTERNATIVE METHODS OF DISPOSAL

Planning for New Crematoria

Question 46.

Should the requirements specifying minimum distances (converted into metric) between new crematorium buildings and houses or roads be maintained when granting planning permission?

We firmly believe that the current legislation specifying minimum distance be maintained with regard to planning permission submissions and the granting of the necessary authority.

Question 47.

Should the Scottish Government introduce legislation covering the exhumation of cremated remains?

We agree there is a need for a single piece of legislation to cover the regulation of all cemeteries, burial grounds and areas of a crematorium where cremated remains are interred. Authorisation for exhumation of cremated remains could be granted by the manager of the cemetery, crematorium or burial ground on the application of the registered grave owner (in same spirit as the Burial Grounds Regulations (Northern Ireland) 1992).

Disposal of Cremated Remains

Question 48.

Is a time limit of 5 years a reasonable length of time to enable the next of kin to collect ashes of the deceased?

We believe firmly that a time limit of 5 years is more than an adequate time for the applicant/next of kin/family to collect the cremated remains of the deceased.

Question 49

Is it reasonable and practical for the ashes to be returned to the cremation authority for disposal if they are not collected after 5 years?

We are reluctant to see this method of disposal offered to the funeral directors. The cremation authority is likely to require the signed authorisation of the applicant for cremation or nearest surviving relative to allow disposal of the remains within the grounds of the crematorium.

Some funeral directors have a large number of cremated remains that have lost all identification, and under these circumstances it would be inappropriate for the cremation authority to accept these remains for disposal.

Once the respective removal paperwork has been completed and the remains have been taken away from the crematorium by the applicant for cremation or the appointed funeral director, the cremation authority has fulfilled its legal obligation in accordance with the instructions received from the applicant for cremation.

Question 50.

Is it reasonable to enable the disposal of existing unclaimed ashes that have currently been stored on the premises of funeral directors for over 5 years and where no instructions have been received, to be dispersed at a suitable location at the discretion of the funeral director?

We are of the view that the funeral director should follow a determined statutory process that could require the placing of a notice in two consecutive editions of local newspapers to inform the public of their intentions to dispose of remains within their possession. It is clear that the applicant for cremation did at the time of arrangement issue his/her instructions for the funeral director to collect the remains from the crematorium pending final disposal. A reasonable process should be designed to ensure that the family of the deceased have an opportunity to reclaim their loved one's remains.

CREMATION LAW

Deaths Abroad

Question 51.

When death of a person who is normally resident in Scotland occurs abroad should a Government body be able to arrange a post mortem to establish the cause of death if this is unknown?

We believe that in these circumstances a government body should arrange a post mortem to be carried out if the cause of death is unknown.

The authority to issue this instruction should be vested with the Medical Examiner or COPFS.

Question 52.

Are there any other measures that could be taken to simplify this process?

We would refer back to our response to question 5:

Where it was stated that we agreed that it was not within our professional organisations remit to determine measures required in cases where the cause of death is undetermined. However the points set out below may make cremation viable in such cases.

- It may be agreed that the retention of detailed Toxicological evidence would facilitate disposal by burial or cremation.
- The same level of inquiry should be applied to all deaths regardless of the method of disposal, resulting in the removal of the need for the cause of death to be definitely ascertained in order for cremation to take place.

