



Institute of Cemetery and Crematorium Management (ICCM)

CONSULTATION PAPER
ON
DEATH CERTIFICATION, BURIAL AND CREMATION

Response of
The Board of Directors of the ICCM



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?

The Institute accept that it is not possible or practical for a Doctor to certify death immediately in all cases and for this reason the we support that appropriately trained professional groups such as registered nurses and paramedics heave 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.

Yes.

Question 3.

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

Yes.

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?

Yes.



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?

This decision should be one for the Medical Examiner.

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?

As response to Q5.

The Medical Investigator Model

Question 7.

Is the Medical Investigator your preferred model?

No.

Question 8.

If yes, why?

Not applicable.

Question 9.

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

Not applicable.

Question 10.

What do you view as its potential weaknesses?

The large % of deaths which will not be regarded as a comprehensive check.
Delays might be encountered regarding unusual variances and hence time would be lost in investigating.
There is also insufficient scrutiny.



Question 11.
Do you think it offers best value for money?

The matter of best value should be weighed against the most secure system that will foster public confidence.

The Medical Examiner Model

Question 12.
Is the Medical Examiner model your preferred model?

Yes.

Question 13.
If yes, why?

The closer scrutiny that it offers would provide security and public confidence.

Question 14.
What do you view as its potential strengths over the existing system?

Closer scrutiny of an increased number of cases.

Question 15.
What do you view as its potential weaknesses?

Possibility of delays to some funerals.

Question 16.
Do you think it offers best value for money?

The matter of best value should be weighed against the most secure system that will foster public confidence.

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?

This should be centrally funded.



Question 18.

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

No.

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.

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?

As all deaths are required to be registered it might be more logical for the registrar of deaths to collect any fee.



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.

The Institute support the recommendations of the Review Group on the basis that standardisation of legislations across all cemetery and burial ground providers will give reassurance to the bereaved irrespective of the preferred place of burial chosen. Uniform legislation will also provide recourse for the bereaved and the Scottish Government in the event of instances of malpractice or major complaint.

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?

The Institute considers that any bodies established to regulate and control the installation of memorials should be managed by a board/executive/committee having equal representation from the memorial industry and cemetery/burial ground owners.

On the basis that memorials are erected in accordance with the current British Standard (BS8415) and industry codes of practice a fixed term guarantee is not necessary. A certificate of conformity (confirming adherence to the afore mentioned standard and codes) should be sufficient evidence to 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 far in excess of 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 within the period of the grant for the right to erect a memorial.

The Institute agrees that memorial owners should be encouraged to arrange insurance cover for their property (memorials) and that their responsibility towards their property is 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?

When an exclusive right is purchased it should be required that the successor of the owner is named on the certificate in addition to the name of the lair owner. The lair owner should have the right to change the name of the successor during his/her lifetime however on the death of the lair owner a transfer of ownership would take place and into the name of the named successor. The successor should then be required to name his/her successor which will be registered and recorded on the lair certificate.

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.

The Institute strongly believes that the re-use of old abandoned lairs is the only means of ensuring the long term security and sustainability of existing cemeteries and burial grounds. Appropriate safeguards would include licensing by either central or local means, local consultation and adherence to codes of practice and ethics. A conservation management plan should be required prior to re-use of any cemetery and burial ground with such plan being designed to protect the historic and heritage value of the cemetery or burial ground and its historic landscape. Selective re-use should be considered i.e. re-using areas where impact on existing heritage and landscape will be minimal.

Safeguards in the form of a notification process to ensure abandonment prior to re-using should be written into legislation. No lair should ever be re-used when nearest relatives express a clear wish that this should not happen. Should relatives respond to a notification process their rights should be confirmed with any necessary transfer of ownership taking place and appropriate fee being paid in order to transfer and confirm such rights.

The Scottish Government should have the power to appoint a cemetery inspector and investigate complaints of malpractice. It should also establish a working group tasked with formulating operational and management best practice guidance on this subject in order to secure uniformity of application across Scotland.

Question 25

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

The Institute believes that 75 years after the last time the right was exercised is reasonable. However, 75 years should be regarded as a minimum with burial ground operator being encouraged to use older lairs in the first instance where these exist.



Lift and Deepen

Question 26.

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

Yes.

Question 27.

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

The Institute believes that 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 to create new cemeteries and burial grounds when older sites become full. This in turn may reduce the pressure on fee increases.
- A continuation of local affordable burial space will exist.
- Burial records remain accurate as all disturbed remains are replaced within the original lair.
- No need to transport remains.
- Potential shortage and cost of new land close to populations, and particularly in the larger towns and cities, on which to create new cemeteries would result 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.
- 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.
- Selective re-use of lairs will not affect the heritage value or historic landscape of existing cemeteries.
- ‘Lift and deepen’ is considered to be the most sensitive approach to the re-use of lairs.

Disadvantages of ‘lift and deepen’ method are:

None.



Question 28.

What acceptable alternative approaches are available?

The Institute believes that there are no suitable acceptable alternative approaches.

Alternative approaches such as mass exhumation and mass re-burial or cremation do not possess the same sensitive approach as 'lift and deepen' and would effectively destroy the historic records and landscape of the cemetery or burial ground.

Overfilling of old burial ground will also destroy existing cemetery landscape and is not a sustainable option. Of all alternatives overfilling is considered to be totally inappropriate.

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?

The Institute is of the view that the re-use of lairs should be restricted to the adoption of the 'lift and deepen' process only and that this is prescribed in legislation.

Local consultation on plans to re-use lairs 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 ethnic groups.

Any family or descendant of a person buried within a particular lair identified for re-use should retain a right to renew the rights of burial and prevent the re-use of the particular lair 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.)

The Institute believes that 10 years should be the maximum time permitted for the 'reservation' a lair. The lair owner should be offered the opportunity to renew the reservation period for a further 10 years at its expiry.

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.

In addition to the response given at Q30 above the Institute is aware that contact can be lost with lair owners therefore a 10 year limitation might assist in maintaining such contact. The onus MUST be placed on the lair owner to inform the owner of the cemetery or burials ground



of any change of address during the period.

Large amounts of burial space can potentially be held in reserve however the application of a 10 year reserve period would assist in freeing up some of this space in the future. The ability for the owner to renew the period maintains the rights of the owner.

Question 32.

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

A specific mechanism to cancel rights previously granted in perpetuity at a point that is 75 years after the time the right was last exercised should be written into new legislation (as currently exists in the Local Authorities Cemeteries Order 1977 in England & Wales). Such a mechanism should require a notification process with those owners or relatives that come forward being able to confirm their rights and retain them. Should the original lair owner be deceased, the near relatives can confirm their right via a transfer of ownership and payment of the appropriate fee. Should an owner be deceased any near relative that comes forward should be required to arrange for the ownership of the rights to be transferred in order to retain rights.

Question 33

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

No.

A burial authority or company would only resume ownership of abandoned lairs where no owner or relatives come forward during the notification process period therefore there would be no person to deal with in cases of abandoned lairs.

If an owner wishes to sell his/her rights back to the cemetery or burial ground owner prior to its expiry it should only be paid on a pro rata basis and at the original purchase price and only to the current lair owner or new lair owner following transfer of ownership. The cemetery or burial ground owner should not be required to re-purchase any lair if it does not wish to do so.

Question 34.

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

Not applicable – see Q33 above.



Question 35.

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

The Institute believes that the pre selling of lairs, blocks or multiples should be at the discretion of the cemetery or burial ground owner.

It should be noted that the ability to re-use old abandoned lairs will reduce pressure to restrict the selling of blocks or multiple lairs.

A 'saving' for the Commonwealth War Graves Commission should be continued.

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?

The Institute believes that all burial records, including those that would relate to re-used lairs, 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 lair 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?

The Institute strongly believes that green burials should be covered by any new legislation in regard to burial of the deceased. Support is given to one single piece of legislation being applicable to all cemetery and burial ground providers.

The Institute also believes that such legislation should determine the minimum depth between the top of the coffin to the ground surface and this should be 3 feet, (converted to metric) however this could be reduced to 2 feet where suitable soil conditions exist.

Question 38.

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

Consideration should also be given to ways of protecting the rights of lair owners should a private green burial site (or any private cemetery or burial ground) go into liquidation.



Question 39.

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

No.

Home Burial

Question 40.

Should legislation be enacted to govern home burials?

Guidance issued by the Scottish Government should be introduced.

A requirement to register a home burial with the local authority/land registry 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. Consideration should be given to requiring home burials to be registered with the Land Registry.

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.

See Q41.

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?

The Institute supports the requirement of a new system to deal with the issue of exhumation. A new streamlined system could 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 exists in England & 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 local environmental health officer being the person responsible for considering applications and issuing authorisations (for exhumation of bodies and cremated remains – see response to Q47).

Question 45.

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

No.



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?

No.

As all new crematoria are required to abate emissions the decision on distance from dwellings etc. should be at the discretion of the planning authority.

Question 47.

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

The Institute believes that there is a need for a single piece of legislation to cover the regulation of all cemeteries and burial grounds and areas of a crematorium where cremated remains are interred. Authorisation could be granted by the manager of the cemetery or burial ground or crematorium on the application of the registered lair 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?

The Institute believes 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 from a Funeral Director where instruction were that the Funeral Director should retain them.

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?

Where a Funeral Director has lost contact with a family a mechanism for returning the cremated remains to the crematorium, who then undertakes the statutory notification procedure, should be considered. This should only be considered in instances where the cremated remains can be positively identified.



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?

No.

Ashes should be returned to the crematorium in order that location of disposal can be recorded in the statutory cremation register.

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?

Yes.

The authority for this should lie with the Medical Examiner.

Question 52.

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

No.

