



**Law
Commission**

Reforming the law

New Funerary Methods

Consultation Paper



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Consultation Paper 272

New Funerary Methods Consultation Paper

4 June 2025



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The Law Commission – How we consult

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commissioners are: The Rt Hon Lord Justice Fraser (Chair), Professor Nicholas Hopkins, Professor Penney Lewis, and Professor Alison Young. The Chief Executives are Joanna Otterburn and Roshnee Patel.

Topic of this consultation: We are consulting on a framework for the future regulation of new funerary methods, which are alternatives to the established funerary methods of burial, cremation and burial at sea. There is currently no specific regulation of new funerary methods in England and Wales.

Geographical scope: This consultation applies to the law of England and Wales.

Duration of the consultation: We invite responses from **4 June 2025** to **4 September 2025**.

Responses to the consultation may be submitted using an online form accessible at: <https://lawcom.gov.uk/project/new-funerary-methods/>. Where possible, it would be helpful if this form was used. However, we are happy to accept comments in other formats.

If you would prefer to respond in Word format, we can provide a formatted response form upon request.

If you are not using the online form, please send your response:

By email to: bcnfm@lawcommission.gov.uk

By post to: New Funerary Methods Team, Law Commission, 1st Floor, Tower,
52 Queen Anne's Gate, London, SW1H 9AG.

If you send your comments by post, it would be helpful if, whenever possible, you could also send them by email.

Availability of materials: The Consultation Paper is available on our website at <https://lawcom.gov.uk/project/new-funerary-methods/>. We have also published a summary of the Consultation Paper, which is available in Welsh and in Easy Read.

We are committed to providing accessible publications. If you require this Consultation Paper to be made available in a different format please email bcnfm@lawcommission.gov.uk or call 020 3334 0200.

After the consultation: We will analyse the responses to the consultation, which will inform our final recommendations for reform to Government, which we will publish in a report.

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Glossary

Alkaline hydrolysis: a **new funerary method** which uses water, alkaline chemicals, heat, and pressure to break down the body of a deceased person into liquid and pieces of bone.

Aquamation: a (proprietary) name for a form of **alkaline hydrolysis**.

Anglican: a branch of Christianity which developed following the break from the Roman Catholic Church of the **Church of England** during the Reformation in the 16th century. Includes the **Church in Wales**.

Burial at sea: a **funerary method** by which human remains are committed to the sea as a final resting place.

Burial authority: a **local authority** which is empowered by section 214 of the Local Government Act 1972 to operate a cemetery.

Burial ground: land that is, or was, used primarily for the burial of human remains. This encompasses, but is not limited to, **Church of England** churchyards and cemeteries.

Cemetery: the term used for a **burial ground** operated by a local authority in the Local Government Act 1972, and also used in the founding Acts of Parliament of a number of private burial grounds.

Church in Wales: the **Anglican** church in Wales, formed following the disestablishment of the **Church of England** in Wales in 1920.

Church of England: the established **Anglican** church in England and the Crown Dependencies.

Consistory court: a court of the **Church of England** which exercises control over changes to certain types of church land and buildings, by issuing faculties.

Cremation: the burning of human remains.

Crematorium: a building fitted with appliances for the purpose of burning human remains.

Cremation authority: any person who has opened a **crematorium**. A **burial authority** may be a cremation authority.

Cremator: the furnace used to **cremate** human remains.

Cremulation: a process of grinding the remains which are left in the **cremator** after a **cremation** into a fine powder. Cremulation may also take place as part of the process of **alkaline hydrolysis**.

Cremulator: a machine used to grind the remains which are left in the **cremator** after a **cremation** (or as part of the **alkaline hydrolysis** process) into a fine powder.

Death certificate: a certificate issued by the **Registrar** confirming the entry of a death into the death register.

Embalming: the practice of preserving a body after death to delay decomposition.

Exhumation: the removal of human remains from a place of burial. May also be referred to as disinterment.

Faculty: a decision by the **consistory court** which gives permission to make changes to consecrated buildings and land.

Funerary method: a method of disposing of the body of a deceased person. This can be **burial, cremation, burial at sea** or a **new funerary method**.

Human composting: a **new funerary method** which uses control of the environment within a sealed container to accelerate the decomposition of the human body into soil.

Local authority: the local government body for a given administrative area.

Medical examiner: a senior medical doctor who provides independent scrutiny of the causes of death as part of the **death certification** process.

Medical referee: a medical doctor who provides independent scrutiny of a **cremation** application.

Natural organic reduction: another term for **human composting**.

New funerary method: a process, other than **burial, cremation** or **burial at sea**, that breaks down the body of a deceased person. Its purpose is to dispose of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

Parish: in the **Church of England**, the smallest pastoral area, usually with one main church building. In secular local government, the area governed by the smallest division. Not all parts of the country are divided into secular parishes.

Pathogen: an organism that causes disease.

Prion: a type of protein that can trigger proteins in the brain to fold abnormally. In a prion disease, proteins in the body misfold and cause illness. Prions are not destroyed by routine sterilisation methods and are extremely resistant to standard disinfection procedures.

Private cemetery: a burial ground in England or Wales which is not owned by a **local authority**, the **Church of England** or the **Church in Wales**. This includes burial grounds owned by other religious groups, companies and charities.

Registrar: a person appointed by a **local authority** to record information on births, deaths, stillbirths, marriages and civil partnerships on the relevant registers. They are responsible to the Registrar General for the technical aspects of their work.

Resomation: a (proprietary) name for a form of **alkaline hydrolysis**.

Senedd: the Senedd Cymru, known in English as the Welsh Parliament, the devolved legislature of Wales.

Stillborn child: a child who is born after 24 weeks of pregnancy and who does not show any signs of life.

Chapter 1: Introduction

A FRAMEWORK FOR THE REGULATION OF NEW FUNERARY METHODS

- 1.1 This Consultation Paper is about new funerary methods in England and Wales. It is part of the Law Commission’s wider project on Burial, Cremation and New Funerary Methods. New funerary methods are ways of dealing with the bodies of deceased people that are potential alternatives to burial, cremation and burial at sea. These three methods have been practiced, to differing degrees, over many hundreds of years as we explain further below.
- 1.2 Our focus is on a new framework, set out in primary legislation, to enable the regulation of new funerary methods, that have been developed more recently. We do not consider whether specific new funerary methods should be regulated under the framework. That will be a question for Government¹ if it accepts our final recommendations.

Established funerary methods

- 1.3 Burial and cremation are long-established funerary methods. Burial at sea also has a long history although it is not now commonly used in this jurisdiction.
- 1.4 Cremation was practised by the ancient Greeks and Romans but fell out of favour in Europe and was hardly used at all by the fifth century.² For centuries after this, burial was the main funerary method in England and Wales. Burial has “always been permissible at common law”.³ It is now covered by a patchwork of legislation, including several Burial Acts dating back to the 19th century,⁴ that makes provision for different aspects of the burial process.
- 1.5 In the second half of the 19th century, cremation was promoted in the United Kingdom as a “socially acceptable and more sanitary” funerary method.⁵ It was not clear, however, whether cremation was permitted by law. It was held in a criminal case in 1884 that the burning of a body was lawful so long as it did not constitute a public nuisance or prevent a coroner’s inquest, but this was not a binding precedent.⁶ Following a number of local Acts of Parliament which enabled councils or corporations

¹ In this Consultation Paper, where we refer to “the Government” in the context of decisions that would need to be made about detailed regulation of new funerary methods (on matters that are not reserved), this is a reference both to the UK Government (in relation to England) and the Welsh Government (in relation to Wales).

² The Cremation Society, *History of Modern Cremation in the United Kingdom: 1874 to 1974* (2025) <https://www.cremation.org.uk/history-of-cremation-in-the-united-kingdom>.

³ H Conway, *The Law and the Dead* (2016) p 28.

⁴ Including Burial Act 1852, Burial Act 1853 and Burial Act 1857.

⁵ H Conway, *The Law and the Dead* (2016) p 39.

⁶ *R v Price* (1884) 12 QBD 247.

to establish crematoria,⁷ the Cremation Act 1902 made wider provision about cremation and contained a power to make regulations “as to burning”.⁸ At the time the 1902 Act came into force, the Cremation Society’s statistics show that less than 1% of bodies were cremated in England and Wales. This rose to 83% by 2023.⁹

- 1.6 “Burial at sea” is not defined in legislation. It is understood as a process by which human remains are “committed to the sea as a final resting place”.¹⁰ It is used only rarely.¹¹ Burial at sea is outside the scope of our project on Burial, Cremation and New Funerary Methods.¹² Burial at sea has a separate legal framework which is intertwined with its naval history. Given this distinct history, and its exceptional nature, we did not think that it was appropriate to include it.

New funerary methods

- 1.7 New funerary methods are alternative ways of dealing with the bodies of deceased people, beyond the established funerary methods. Two new funerary methods, which we refer to in this Consultation Paper as alkaline hydrolysis and human composting, have been developed and are in use in other jurisdictions. Other new funerary methods may emerge as feasible alternatives in future. We explain our conception of a new funerary method in more detail in Chapter 2.
- 1.8 At the time of writing, there are no new funerary methods in use in England and Wales. Alkaline hydrolysis was used as a funerary method for the bodies of five deceased people in 2019, as part of a study facilitated by Middlesex and Sheffield universities.¹³ Although we understand that there is ongoing research into human composting, the process has not been used for human bodies in England and Wales.
- 1.9 There is no specific regulation of new funerary methods in England and Wales. The use of new funerary methods is not explicitly prohibited in law, although legislation about death registration may have the effect of prohibiting it. We discuss this further in Chapter 3. Stakeholders have told us that they want a system of regulation so that they can operate securely and conscientiously, unlock investment, and offer a greater choice of funerary methods to members of the public.

⁷ Such as the Cardiff Corporation Act 1894, s 71.

⁸ Cremation Act 1902, s 7.

⁹ The Cremation Society, *Progress of Cremation in the British Islands: 1885 to 2023* (2020) <https://www.cremation.org.uk/progress-of-cremation-united-kingdom>.

¹⁰ See Marine Management Organisation, *Guidance: How to arrange a burial at sea in the UK marine area* (15 November 2017) <https://www.gov.uk/guidance/how-to-get-a-licence-for-a-burial-at-sea-in-england>.

¹¹ Figures from the Marine Management Organisation, which administers licences for burials at sea in English waters, indicate that 18 applications for licences were received in 2022, 13 in 2023 and 16 in 2024. Search carried out at: <https://www.gov.uk/check-marine-licence-register>.

¹² See the terms of reference for the project at Appendix 1.

¹³ G Robinson, “Alkaline Hydrolysis in the United Kingdom” in R McManus (ed) *The Sustainable Dead* (2023) p 89. See also Resomation, *Successful Study of Water Cremation completed for Yorkshire Water* (24 March 2020) <https://resomation.com/news/successful-study-of-water-cremation-completed-for-yorkshire-water/>.

The aim of this review

- 1.10 The ultimate aim of this review is to make recommendations to Government about a new legislative framework for the regulation of new funerary methods in England and Wales.

SCOPE AND STRUCTURE OF THE PROJECT

About this Consultation Paper and next steps

- 1.11 In this Consultation Paper we ask for consultees' views about a legislative framework for the regulation of new funerary methods. This Consultation Paper does not contain any final recommendations for reform of the law, although it does contain provisional proposals.
- 1.12 The consultation period begins on 4 June 2025 and ends on 4 September 2025. You can respond to the consultation online through the link on our website at <https://lawcom.gov.uk/project/new-funerary-methods/>.
- 1.13 After the consultation period ends, we will collate the responses to the consultation and analyse them carefully. We will then form a final view on the recommendations we should make to Government. We will publish a final Report containing an account of the consultation process, and setting out recommendations for reform. We will also publish a draft Bill, setting out a framework for the regulation of new funerary methods. We expect to publish the Report and draft Bill in spring 2026.

How this project came about

- 1.14 This project is part of our 13th Programme of Law Reform, which was launched on 14 December 2017 following an open public consultation. It included a project on "A Modern Framework for Disposing of the Dead",¹⁴ which was to be started when resources permitted, with an expected duration of two to three years.
- 1.15 We began the scoping phase of this project in December 2022. Over the course of that phase, and our many helpful discussions with stakeholders, it became clear that the project was potentially very wide-ranging. It also became clear that many issues which could be contained within the project were viewed by stakeholders and by the Ministry of Justice, our sponsoring department, as in need of reform. While some of the stakeholders we spoke to were interested in all parts of the work, many were focussed only on specific aspects of it.
- 1.16 Following the scoping phase, we decided that the project would be better taken forward in three sub-projects. This Consultation Paper is part of the New Funerary Methods sub-project, which is the second of the three sub-projects. This sub-project aims to create a future-proof regulatory framework for new funerary methods. The Law Commission is also currently working on the Burial and Cremation sub-project, which looks at burial and cremation law in England and Wales.¹⁵ We published a Consultation Paper on the Burial and Cremation sub-project on 3 October 2024 and

¹⁴ For an explanation for the change of title, see Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 1.142.

¹⁵ Law Commission, *Burial and Cremation* (2017) <https://lawcom.gov.uk/project/burial-and-cremation/>.

the consultation closed on 9 January 2025.¹⁶ Once the Burial and Cremation sub-project is complete, the Law Commission will move onto a third sub-project titled Rights and Obligations Relating to Funerals, Funerary Methods, and Remains. That sub-project will address issues such as family disputes about funerary arrangements after death, the legal status of human remains and whether a person should be able to make binding decisions about what happens to their body after death.

1.17 A number of issues that are relevant to new funerary methods will be covered in our review of Rights and Obligations Relating to Funerary Methods, Funerals and Remains.¹⁷ We mention some of these in this Consultation Paper, where they are of particular significance.

Terms of reference

1.18 The full terms of reference for all three sub-projects are included as Appendix 1 to this Consultation Paper.

1.19 Some areas are identified in those terms of reference as being outside the scope of this project. They are:

- (1) death certification and registration (except where relevant to new funerary methods);
- (2) the regulation of funeral directors;
- (3) the Church of England's common law duty to bury parishioners and those who die in the parish;
- (4) regulation of methods of preservation of human remains;
- (5) burial at sea;
- (6) planning and environmental law;
- (7) other issues relating to body parts, such as organ donation, post-mortem reproduction and police investigations; and
- (8) criminal offences that may be committed in relation to human remains, including in relation to desecration.

1.20 The reasons for excluding areas from the scope of the project vary. Some, like planning and environmental law, organ donation, and death registration, are part of their own wider legal framework, which it would be inappropriate for this project to reform piecemeal. As mentioned at paragraph 1.6 above, burial at sea has a separate legal framework which is intertwined with its naval history, so we did not view it as appropriate for inclusion. The criminal law in relation to dead bodies raises distinct issues which would not be appropriate for consideration in this project. We do,

¹⁶ Burial and Cremation (2024) Law Commission Consultation Paper No 263

¹⁷ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

however, make provisional proposals about criminal offences in relation to new funerary methods in this Consultation Paper.

Scope of this sub-project on new funerary methods

- 1.21 In this sub-project our aim is to introduce a framework, in primary legislation, for the regulation of new funerary methods. We need to consider which elements should be set out in the framework itself and the powers of regulation that should be granted.
- 1.22 We anticipate that detailed regulation of individual new funerary methods will sit under this framework. In Chapter 6 we set out some of the matters that could or should be covered by this detailed regulation. We do this to help us gather information to decide on the content of the framework.
- 1.23 In this review we will not be making any recommendations about which new funerary methods should be subject to detailed regulation, or what the precise content of that regulation should be. These matters will be for Government to take forward if it accepts our eventual recommendations about the framework.

Stakeholder engagement

- 1.24 We have been meeting with stakeholders in relation to this project since the scoping period for the wider project began in December 2022. Those meetings have enabled us to gather insight into the areas of law and practice which stakeholders have felt are causing problems and are in need of reform.
- 1.25 The stakeholders with whom we have discussed new funerary methods have mainly fallen into the following groups:
 - (1) companies and organisations that have expressed an interest in developing and/or providing new funerary methods;
 - (2) funeral directors and funeral director trade groups;
 - (3) cemetery and crematorium industry bodies;
 - (4) operators of cemeteries and crematoria;
 - (5) representatives of faith and religious groups and groups representing secular perspectives;
 - (6) interest groups within the funeral sector, such as the Cremation Society; and
 - (7) academics whose work focusses on death and dying.
- 1.26 In addition, we have been in regular contact with Ministry of Justice policy officials. We have also met with public bodies such as Cyfoeth Naturiol Cymru/ Natural Resources Wales, the Environment Agency and the General Register Office.

DEVOLUTION TO WALES AND FUNERARY LAW

Legislative competence and reforms to law on burial, cremation and new funerary methods

- 1.27 The law on burial and cremation was explicitly included within the areas over which the Welsh Assembly had legislative competence in the Government of Wales Act 2006, as originally passed.¹⁸ Following the move to a reserved powers model,¹⁹ neither burial and cremation, nor matters which could be taken to refer to new funerary methods, are listed as matters which are reserved to the UK Parliament. That means that the Senedd has competence to legislate in relation to them.²⁰ Enacting reforms to primary legislation in these areas will require either an Act of the Senedd, or a legislative consent motion²¹ from the Senedd should the Westminster Parliament decide to legislate.
- 1.28 Some issues which are relevant to the context of this review are reserved to the UK Parliament, such as death registration²² and certain aspects of water and sewerage regulation.²³

Secondary legislation and executive functions

- 1.29 The functions of Welsh Ministers refer to a combination of the powers they are given to act by legislation and common law, and their ability to make secondary legislation (for example, regulations and orders) as given by primary legislation.
- 1.30 A number of Acts relevant to burial and cremation law have had their functions transferred to Welsh ministers.²⁴ Of these, as we explain in Chapter 3, the following provision is of potential relevance to new funerary methods: section 47(1)(a) of the Public Health (Control of Disease) Act 1984.²⁵

¹⁸ Government of Wales Act 2006, Sch 7, pt 1, para 6, as originally passed.

¹⁹ Whereby the Senedd has the power to legislate on any matter not specifically reserved in statute to the UK Parliament.

²⁰ The courts have had little opportunity to scrutinise the Welsh devolution model post-2017. However, in relation to the similar model in Scotland, the Supreme Court found that “anything that does not fall within the matters listed there [in the Schedule setting out reserved matters] must be taken to be within competence”: *Imperial Tobacco v The Lord Advocate* [2012] UKSC 61 at [29]. It also appears to be the view of the Welsh Government that burial and cremation are devolved, see Law Wales, *Ecclesiastical law and the Church in Wales* (16 March 2021) <https://law.gov.wales/ecclesiastical-law-and-church-wales>.

²¹ A motion passed by a devolved legislature to indicate that it is content for the UK Parliament to pass a law on a devolved matter.

²² Government of Wales Act 2006, Sch 7A, para 181.

²³ Government of Wales Act 2006, Sch 7A, para 92.

²⁴ For a list of the provisions that are relevant to burial and cremation law, see Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 1.137.

²⁵ The National Assembly for Wales (Transfer of Functions) Order 1999, Sch 1.

- 1.31 The effect of the transfer of this power is that the functions of a Minister of the Crown under that provision are transferred to the Welsh Ministers, as far as they relate to Wales.²⁶
- 1.32 This includes the power to make statutory instruments. That means, for example, that the Welsh Ministers could make regulations for Wales under section 47(1)(a) of the Public Health (Control of Disease) Act 1984.²⁷

STRUCTURE OF THIS CONSULTATION PAPER

- 1.33 This Consultation Paper consists of nine chapters, including this introductory chapter. It starts with a Glossary of terms.
- 1.34 In Chapter 2 we explain our conception of a new funerary method. We also describe two methods that are in use in other jurisdictions, alkaline hydrolysis and human composting, and consider some other methods that have been, or are being, developed. We then move on, in Chapter 3, to review existing legislation in England and Wales that may be relevant to new funerary methods. In Chapter 4 we consider the development of, and legislation about, new funerary methods in various other jurisdictions.
- 1.35 In Chapters 5 to 7 we set out how a new framework for new funerary methods might work. In Chapter 5 we consider the basis of the framework. In Chapter 6 we explore issues relating to the nature and scope of the regulatory framework. In Chapter 7 we consider the status of new funerary methods that are not regulated under the framework.
- 1.36 In Chapter 8 we consider the potential impact of our provisional proposals. Chapter 9 lists our consultation questions and provisional proposals.

TERMINOLOGY

- 1.37 We have carefully considered the language that we use in relation to death and dying. We have tried to avoid using the term “disposal”, as a number of different stakeholders told us that they disliked the term in this context. Where possible, we use alternative wording such as “dealing with the bodies of deceased people”. However, we use the term when it is necessary to quote from a source that uses it (including legislation), or where it is essential so that our meaning is clear.
- 1.38 We note that the term “disposal” is used in legislation including the Births and Deaths Registration Act 1953²⁸ and the Coroners and Justice Act 2009.²⁹ It was also used in the Coronavirus Act 2020.³⁰ It is anticipated that this sub-project will result in draft

²⁶ The National Assembly for Wales (Transfer of Functions) Order 1999, art 2(a).

²⁷ For an example of such an instrument, see the Town and Country Planning (Blight Provisions) (Wales) Order 2019 SI No 1018 (Wales 178) which is made by Welsh Ministers under the powers to make an order originally granted to the Secretary of State under the Town and Country Planning Act 1990, s 149(3)(a).

²⁸ Births and Deaths Registration Act 1953, ss 11, 16, 17, 24 and 41.

²⁹ Coroners and Justice Act 2009, s 43.

³⁰ Coronavirus Act 2020, Sch 13.

legislation. We are keeping an open mind on whether it may be necessary to use the term “disposal” to ensure that the draft legislation is clear.

- 1.39 We have sought to avoid some other forms of language where we are aware they can cause offence or be viewed as problematic. For example, rather than “the deceased”, we prefer “deceased people”, “deceased person” or other formulations. Similarly, we do not use the phrase “loved one”, which presupposes how people feel about the person who has died. Although many would see the term “loved one” as appropriate in individual circumstances, for some the relationship with the deceased may make the term inappropriate. We are indebted to the “#DeadGoodWords” campaign started by Poppy’s Funeral Directors for their steer on careful consideration of our language in this project.³¹

WEB LINKS AND REFERENCES

- 1.40 All web links and references to documents have been checked and are accurate as of 28 May 2025.

ACKNOWLEDGEMENTS

- 1.41 We would like to thank all those stakeholders and others who have assisted us with the work leading up to this Consultation Paper and given their time to meet with us.
- 1.42 Professor Heather Conway of Queen’s University Belfast has served as the academic advisor to the project since December 2023 and we are thankful for her input. Her contributions have been independent, and do not represent the views of any of the organisations of which she is a member or with whom she is affiliated.
- 1.43 We are thankful to officials from the Ministry of Justice, with whom we have been in contact throughout our work on this project, and also to officials from other Government departments and public bodies who have met with us.
- 1.44 The Commissioners would like to record their thanks to the following members of staff who worked on this Consultation Paper: Rebecca Mandal and Andrew Bazeley (team lawyers), Tasha Waller (research assistant), and Henni Ouahes (team manager). With thanks also to Lisa Smith (team lawyer) and to Chloe Gershon, Guy Cabral, Saiba Ahuja, and Abbie Rawat (research assistants) for research input.

³¹ Poppy’s Funeral Directors, *Dead Good Words: Our Manifesto for Change* (2023) <https://poppysfunerals.co.uk/media/downloads/DeadGoodWords.pdf>.

Chapter 2: What is a new funerary method?

INTRODUCTION

- 2.1 In the Consultation Paper for the Law Commission’s Burial and Cremation sub-project, we defined “new funerary method” as “a novel way of dealing with the bodies of deceased people outside the usual options of burial and cremation”.¹
- 2.2 In this chapter, we build on this definition to put forward a conception of a “new funerary method” which is more comprehensive. We suggest that a new funerary method is a process other than burial, cremation or burial at sea that breaks down the body of a deceased person. The purpose of a new funerary method is to dispose of the body of a deceased person. The purpose is not, for example, the preservation of or research involving bodies.
- 2.3 We start by considering the definitions of burial and cremation, and a description of burial at sea, followed by further explanation of our conception of a new funerary method. We then look at some variations within burial and cremation that are not new funerary methods. We also describe two new funerary methods that are currently used in other countries, alkaline hydrolysis and human composting, and consider the development of other new funerary methods.
- 2.4 A number of methods may fall within our conception of a new funerary method now or in future. This does not necessarily mean that they would be regulated. In Chapter 5 we provisionally propose that the Government should have a power to regulate specific new funerary methods and in Chapter 7 we provisionally propose that non-regulated methods should be prohibited. It would be for the Government to decide which methods should be regulated. In Chapter 6 we set out key principles, including the preservation of human dignity, that we think would guide the regulation of new funerary methods. We invite views, in that chapter, on whether primary legislation should require the Government to have regard to certain principles when regulating specific new funerary methods.
- 2.5 In this chapter, we invite consultees’ views on our conception of a new funerary method. We also ask whether consultees are aware of any potential new funerary methods other than those we refer to in this chapter, or any other significant developments with the processes we mention.
- 2.6 Although the term “new funerary method” is used in this Consultation Paper, it is possible that a different term may be used in our draft legislation.

ESTABLISHED FUNERARY METHODS: BURIAL, CREMATION AND BURIAL AT SEA

- 2.7 In this Consultation Paper, we use the term “funerary method” to mean “a method of disposing of the body of a deceased person” that can be burial, cremation, burial at

¹ Burial and Cremation (2024) Law Commission Consultation Paper No 263 p 349 (Glossary).

sea or a new funerary method. A new funerary method is one other than burial, cremation or burial at sea. Before we explore our conception of a new funerary method it is necessary to set out the meaning of these terms.

Burial

- 2.8 In the existing legislation, the term “burial” is not exhaustively defined.
- 2.9 The Local Authorities’ Cemeteries Order 1977 (LACO 1977) does not contain a definition of burial but specifies, in Article 2, that burial includes:
- (1) the interment of cremated human remains;
 - (2) the interment of bodies of stillborn children or of their cremated remains; and
 - (3) placing human remains, cremated human remains, or the remains of a stillborn child in a vault, where vault means “a chamber provided for the reception of human remains or cremated human remains, together with the access thereto”.
- 2.10 We do not consider that the definitions of “burial ground” in legislation, as set out below, assist.
- (1) The Registration of Burials Act 1864 defines “burial ground” to include a vault or other place where any body is buried.²
 - (2) Some of the legislation on burial uses the term “interment” in order to define “burial ground” or “cemetery”, although interment is not defined, as set out below.
 - (a) The Local Government Act 1972, under which LACO 1977 is made, defines a “cemetery” as including a burial ground or other place for interment of the dead, including any part of such a place set aside for the interment of ashes.³
 - (b) In the Disused Burial Grounds Act 1884, “burial ground” is defined as “any churchyard, cemetery or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment”.⁴
- 2.11 Where a word is not defined in legislation, courts will generally give the word its ordinary meaning, bearing in mind the context and purpose of any legislative provisions. When we consider the meaning of burial in this chapter this is how we will approach the meaning of the word, also bearing in mind the additional clarification in Article 2 of LACO 1977.

² Registration of Burials Act 1864, s 7.

³ Local Government Act 1972, s 214(8).

⁴ Disused Burial Grounds Act 1884, s 2.

- 2.12 The Oxford English Dictionary definition of “burial” includes “the act of burying; interment; funeral”.⁵ “Interment” is further described as “the action of interring or burying in the earth”.⁶ The verb “to bury” includes the meaning “to deposit (a corpse) in the ground, in a tomb; to inter”.⁷

Cremation

- 2.13 Cremation is defined in the Cremation (England and Wales) Regulations 2008 as “the burning of human remains”.⁸
- 2.14 The Oxford English Dictionary indicates that the verb “to burn” may have various meanings.⁹ Only the meanings that involve a direct object (“to burn [something]”) are relevant because we are concerned with the burning of human remains (where “human remains” is the object).
- 2.15 We discuss this definition in more detail, in relation to alkaline hydrolysis, at paragraphs 2.56 to 2.58 below.

Burial at sea

- 2.16 Burial at sea is not defined in legislation. It is generally understood as a process by which human remains are “committed to the sea as a final resting place”.¹⁰ A licence is required for a burial at sea under sections 65 and 66 of the Marine and Coastal Access Act 2009.¹¹
- 2.17 Burials at sea are deemed to take place outside England and Wales. Notice of removal of the body from England and Wales must be given to a coroner before a

⁵ Oxford English Dictionary, *search results for “burial”* (2025) https://www.oed.com/dictionary/burial_n?tab=meaning_and_use#11806040.

⁶ Oxford English Dictionary, *search results for “interment”* (2025) https://www.oed.com/dictionary/interment_n?tab=meaning_and_use#288125.

⁷ Oxford English Dictionary, *search results for “bury”* (2025) https://www.oed.com/dictionary/bury_v?tab=meaning_and_use#11613902. It also includes a definition of burial at sea: “Hence to commit (a corpse) to the sea, with appropriate funeral rites”.

⁸ The Cremation (England and Wales) Regulations 2008, reg 2(1). The main piece of primary legislation governing cremation is the Cremation Act 1902, under which the Cremation (England and Wales) Regulations 2008 were made. There is also some provision in the Cremation Act 1952. Neither of these Acts defines cremation, although “crematorium” is defined in section 2 of the Cremation Act 1902 as “any building fitted with appliances for the purpose of burning human remains”, including “everything incidental or ancillary thereto”.

⁹ Oxford English Dictionary, *search results for “burn”* (2025) <https://www.oed.com/search/dictionary/?scope=Entries&q=burn>.

¹⁰ Marine Management Organisation, *Guidance: How to arrange a burial at sea in the UK marine area* (15 November 2017) <https://www.gov.uk/guidance/how-to-get-a-licence-for-a-burial-at-sea-in-england>.

¹¹ The Marine Management Organisation administers marine licences for English waters and Natural Resources Wales administers marine licences for Welsh waters.

licence can be obtained.¹² Other documents, including a death certificate, must also be provided.¹³

- 2.18 The Marine Management Organisation administers licences for burials at sea in English waters. A self-service licence, which costs less than a standard licence and is likely to be obtained more quickly, may be used for burials at sea within certain designated areas. For burials at sea outside those areas, a standard licence is required and the location must be approved. For all licences there are conditions on various matters including identification tags, coffin specifications and a prohibition on embalming.¹⁴
- 2.19 We have not included burial at sea in our conception of a new funerary method because it is an established funerary method in England and Wales, with an existing distinct system of regulation. For those reasons it is excluded from our terms of reference, as we explain in Chapter 1.

OUR CONCEPTION OF A NEW FUNERARY METHOD

- 2.20 As set out at paragraph 2.7 above, a new funerary method is a process other than burial, cremation or burial at sea. It breaks down the body of a deceased person. The purpose of a new funerary method is to dispose of the body of a deceased person. The purpose is not, for example, the preservation of or research involving bodies. We examine the elements of this description in more detail below.

Not burial, cremation or burial at sea

- 2.21 A new funerary method must be distinct from burial, cremation and burial at sea.
- 2.22 Before a new funerary method is regulated, it will be necessary to determine that it is distinct from burial, cremation or burial at sea. This will require analysis of the method. Some funerary methods which may initially appear to be new funerary methods are, on closer inspection, simply variations within burial or cremation that are not sufficiently different to be new funerary methods. We explore this at paragraphs 2.30 to 2.38 below. We explain why we think that alkaline hydrolysis and human composting, as described in this Consultation Paper, are distinct from established funerary methods at paragraphs 2.55 to 2.58 and 2.72 to 2.79 below.

Effect of the process

- 2.23 A new funerary method breaks down the body of a deceased person.
- 2.24 Cryonics, or cryogenic freezing, is the process of preserving human bodies of deceased people at very low temperatures with the intention of reviving them if future

¹² Under s 4 of the Births and Deaths Registration Act 1926 and reg 4 of The Removal of Bodies Regulations 1954, a body may not be removed from England and Wales until notice has been given to a coroner and four days have passed. The form of notice is set out in The Removal of Bodies Regulations 1954, as amended by The Removal of Bodies (Amendment) Regulations 1971.

¹³ Marine Management Organisation, *Guidance: How to arrange a burial at sea in the UK marine area* (15 November 2017) <https://www.gov.uk/guidance/how-to-get-a-licence-for-a-burial-at-sea-in-england>.

¹⁴ Marine Management Organisation, *Guidance: How to arrange a burial at sea in the UK marine area* (15 November 2017) <https://www.gov.uk/guidance/how-to-get-a-licence-for-a-burial-at-sea-in-england>.

technology enables this. It does not break down the bodies. On this basis it is not a new funerary method. Embalming, the practice of preserving a body to delay decomposition, is similarly not a new funerary method. Public display of human bodies, or parts of human bodies, for example in an exhibition or museum, is also not a new funerary method.¹⁵ We note that the regulation of the preservation of human remains is outside the scope of this project.¹⁶

Purpose of the process

- 2.25 In addition to the effect of a new funerary method, it is also important to take account of its purpose. The purpose of a new funerary method is to dispose of the body of a deceased person. The purpose is not, for example, the preservation of or research involving bodies.
- 2.26 If a body underwent a preservation process (such as cryogenic freezing) that went wrong and the body was broken down, the process would still not be a new funerary method because its purpose was preservation of the body, even though the effect could be the same as the outcome of a funerary method.
- 2.27 A process with the purpose of research would not constitute a new funerary method. This would include research on bodies donated to medical science, which is regulated by the Human Tissue Authority.¹⁷
- 2.28 Some other jurisdictions (including the US, Australia, Canada and the Netherlands) have research facilities that study the decomposition of bodies in a variety of conditions and settings, often mimicking crime scenes. These are known by different names, including human taphonomy facilities, forensic anthropology research facilities or, more controversially, body farms. The results of this research can be used by law enforcement and the justice system, as they may be used to determine approximate time of death which is crucial in some criminal and civil proceedings. The bodies have been donated for use in such a facility. If such facilities were to be established in England and Wales, we do not think that their use would constitute a new funerary method. Although the research process would involve the breaking down of human remains, the purpose would be research rather than disposing of the body of a deceased person.

¹⁵ Public display is within the remit of the Human Tissue Authority under Sch 1, para 5 of the Human Tissue Act 2004. Under s 26(1) of the Human Tissue Act 2004, the Human Tissue Authority has issued a code of practice on public display: *Code of Practice D: Public Display* (30 June 2023) <https://www.hta.gov.uk/sites/default/files/2023-06/Code%20D%20-%20Public%20Display.pdf>.

¹⁶ See the terms of reference for the project at Appendix 1.

¹⁷ Anatomical examination is within the remit of the Human Tissue Authority under Section 14 and Sch 1, para 1 of the Human Tissue Act 2004. Under s 26(1) of the Human Tissue Act 2004, the Human Tissue Authority has issued a code of practice on anatomical examination: *Code of Practice C: Anatomical Examination* (30 June 2023) <https://www.hta.gov.uk/sites/default/files/2023-06/Code%20C%20-%20Anatomical%20examination.pdf>.

Consultation Question 1.

2.29 We provisionally propose that a new funerary method is:

- (1) a process;
- (2) other than burial, cremation or burial at sea;
- (3) that breaks down the body of a deceased person; and
- (4) which has the purpose of disposing of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

Do consultees agree?

VARIATIONS WITHIN BURIAL AND CREMATION

2.30 We have set out below some examples of variations within burial and cremation which may appear at first glance to be new funerary methods but which fall outside our conception of a new funerary method.

Natural burial

2.31 Natural burial describes the burial of human remains in an area that creates or preserves a range of wildlife-rich habitats, or which are otherwise intended to be sustainable. Other terms which are sometimes used include “green burial” and “woodland burial”.¹⁸ In natural burial, bodies may be buried in a biodegradable casket, or in a cloth or woollen shroud.¹⁹ According to The Association of Natural Burial Grounds, there are over 270 natural burial grounds in the UK.²⁰

2.32 There is nothing to suggest that natural burial falls outside the ordinary meaning of burial, although there may be some differences between natural burial and what is most common in more traditional burial practices. For example, in natural burial, bodies are often buried at a shallower depth. It is intended that this will result in faster decomposition of the body because aerobic decomposition is enabled.²¹

2.33 However, natural burial grounds operate within the existing legislation that covers burial. For example, in local authority cemeteries a body must be buried at least three

¹⁸ Ministry of Justice, *Natural burial grounds: guidance for operators* (2009) p 1 <https://assets.publishing.service.gov.uk/media/5a7f0113e5274a2e8ab498ed/natural-burial-grounds-guidance.pdf>.

¹⁹ UK Parliament, *Burying the dead* (1 May 2014) <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/death-dying/dying-and-death/burying/>.

²⁰ Natural Death Centre, *Association of Natural Burial Grounds* (2025) <http://www.naturaldeath.org.uk/index.php?page=the-anbg>.

²¹ Natural Death Centre, *Association of Natural Burial Grounds Leaflet* <http://www.naturaldeath.org.uk/uploads/Forms/ANBG%20leaflet%20FINAL.pdf>.

feet deep.²² However, where the coffin is made of perishable materials and the soil is suitable, a body may be buried in a local authority cemetery at the shallower depth of at least two feet. Local authorities who operate natural burial grounds use this provision.

- 2.34 Natural burial is simply a variation within burial and not a new funerary method. If any legislative amendments were required in relation to natural burial, these would fall within the scope of burial legislation.

Other variations within burial

- 2.35 Requirements as to clothing worn by deceased people during burial, or alternatives to traditional shrouds, would not give rise to a new funerary method. For example, there have been reports in the press about “mushroom suits”, made from organic cotton with additional material cultivated from mushrooms.²³ It seems that the aim of mushroom suits is to help to decompose the body while neutralising toxins, although there has been scepticism as to whether these claims are justified.²⁴ Mushroom suits would be a variation within burial. The use of coffins made from alternative materials would also be a variation within burial.
- 2.36 Any such variations could be regulated within the existing system of regulation of burial, if necessary, although we note that there are currently no statutory provisions relating to clothing or shrouds.

Open pyre cremation

- 2.37 In Hindu, Sikh and Pagan faiths some people favour open pyre cremation. As this constitutes the burning of human remains it is not a new funerary method, but rather a form of cremation.
- 2.38 There are currently no open pyre crematoria in England and Wales. In a Court of Appeal case in 2010, it was held that although the burning of human remains must occur in a “building” under cremation law,²⁵ this could include a funeral pyre where the cremation process is exposed to the elements.²⁶ As we noted in our Consultation Paper on Burial and Cremation, we are not aware that any attempt has been made so far to build an open pyre crematorium that falls within the specifications outlined in that case.²⁷ Planning and environmental law, which are outside the scope of this project, may be relevant. We did not make any provisional proposals for reform of cremation law in this area in our Consultation Paper on Burial and Cremation.²⁸

²² Local Authorities’ Cemeteries Order 1977, Sch 2 para 2.

²³ BBC News, *Would you get buried in a mushroom suit like Luke Perry?* (6 May 2019) <https://www.bbc.co.uk/news/48140812>.

²⁴ D Jorgensen-Skakum “Composting Life Death Time” in C Taylor (ed), *The Routledge Companion to Gender and Animals* (2024).

²⁵ Cremation Act 1902, s 2 and Cremations (England and Wales) Regulations 2008, reg 13.

²⁶ *R (Ghai) v Newcastle City Council* [2010] EWCA Civ 59, [2011] QB 591.

²⁷ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 12.65.

²⁸ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 12.66.

SPECIFIC NEW FUNERARY METHODS

- 2.39 Alkaline hydrolysis and human composting are used in other jurisdictions. We set out the processes below and use them as examples to illustrate our conception of a new funerary method. In this sub-project, we will not be making any recommendations about which specific new funerary methods should be regulated. As mentioned at paragraph 2.4 above, whether or not methods such as alkaline hydrolysis and human composting, or other methods, are regulated in future will be a matter for Government.
- 2.40 We also refer to some other funerary methods that have undergone development, although none of these has reached the stage of being used. We ask consultees if they are aware of any other potential new funerary methods.

Alkaline hydrolysis

- 2.41 Of the two new funerary methods currently in use in other parts of the world, alkaline hydrolysis and human composting, alkaline hydrolysis has been used for a longer period of time and is used more widely.
- 2.42 Other names which have been used for alkaline hydrolysis include water cremation, green cremation, flameless cremation, chemical disposition, and dissolution. Proprietary names may also be used: for example, Resomation or Aquamation.

The development of alkaline hydrolysis as a new funerary method

- 2.43 The chemical process of alkaline hydrolysis was first developed in the late 1800s, primarily to produce organic fertiliser from the bones of dead animals.²⁹ It has been used more recently on animal carcasses infected with BSE. Alkaline hydrolysis systems have been used for some time in the United States of America (the US) for bodies which have been donated to medical research, after the research has taken place. Robinson states that alkaline hydrolysis was first used “in the funerary realm” (with bodies undergoing the process individually) in 2005 and then commercially as a funerary method in the US in 2011.³⁰
- 2.44 Alkaline hydrolysis is not currently available in England and Wales. However, there are some examples of developments in this area. Robinson notes that Resomation Ltd formed in the UK in 2007 and has been working to develop alkaline hydrolysis and establish it in the UK since then.³¹ In July 2023, Co-op Funeralcare announced its intention to offer a form of alkaline hydrolysis (to be provided by Resomation) in the UK.³² We understand that a number of providers of burial or cremation, or funeral

²⁹ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 17 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

³⁰ G Robinson, “Alkaline Hydrolysis in the United Kingdom” in R McManus (ed) *The Sustainable Dead: Searching for the Intolerable* (2023) p 87.

³¹ G Robinson, “Alkaline Hydrolysis in the United Kingdom” in R McManus (ed) *The Sustainable Dead: Searching for the Intolerable* (2023) p 87

³² Co-op, *Co-op announces biggest change to funerals in 120 years: Resomation to be available in UK* (3 July 2023) <https://www.co-operative.coop/media/news-releases/co-op-announces-biggest-change-to-funerals-in-over-120-years-resomation-to>. See also BBC News, *Water cremation: Co-op Funeralcare to be first UK company to offer resomation* (2 July 2023) <https://www.bbc.co.uk/news/uk-66081058>.

directors, would potentially be interested in offering alkaline hydrolysis if it was available in England and Wales.

- 2.45 Details about the current use of alkaline hydrolysis in various jurisdictions around the world and legislation that underpins this are set out in Chapter 4.

The process of alkaline hydrolysis

- 2.46 The process of alkaline hydrolysis, as a new funerary method, uses water, alkaline chemicals, heat and pressure to break down the tissue of a deceased person into liquid leaving bone fragments and teeth. The process may use varying amounts of pressure and heat, which will have an impact on the time taken. The pieces of bone and teeth are dried out and may be ground to a powder.
- 2.47 The alkaline chemicals used in the process are generally either potassium hydroxide or sodium hydroxide, or a combination of the two. In higher concentrations, potassium hydroxide and sodium hydroxide are extremely corrosive and capable, as in the alkaline hydrolysis process, of dissolving chemical bonds to individual molecules.
- 2.48 The body, usually in a woollen shroud or other organic pouch, is placed into a vessel with a 5% solution of the alkaline chemical, to which heat is applied. Materials such as cotton, polyester or linen may not be used for the shroud, as the alkaline hydrolysis process only impacts protein.³³
- 2.49 The time taken for the process varies depending on the temperature and level of pressure but is generally between two and 18 hours, as indicated by the estimates below.
- (1) The Health Council of the Netherlands, in its 2020 report entitled “The admissibility of new techniques of disposing of the dead”, stated that the process takes between two and ten hours.³⁴
 - (2) The Cremation Association of North America states that the process can take between three and 16 hours.³⁵
 - (3) In a 2020 Consultation Paper on regulating alkaline hydrolysis and other new funerary methods, the Ontario Government stated that the “high temperature” alkaline hydrolysis process takes approximately six hours at 176.6 degrees Celsius at elevated pressure. The “low temperature” process, which is not

³³ G Scarre, “Alkaline hydrolysis and respect for the dead: an ethical critique” April [2024] *Mortality* 1.

³⁴ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 18 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

³⁵ Cremation Association of North America, *Alkaline Hydrolysis* (2025) <https://www.cremationassociation.org/alkalinehydrolysis.html>.

permitted in Ontario, usually takes approximately 18 hours at 93.3 degrees Celsius at atmospheric pressure.³⁶

- 2.50 During the alkaline hydrolysis process, the tissue of the deceased person is broken down into molecules which mix with the water and alkaline chemicals. The resulting liquid contains basic organic compounds including salt, sugars and amino acids; it has been stated that it contains no tissue.³⁷
- 2.51 In most alkaline hydrolysis systems, the pH value of the resulting liquid is checked and, if necessary, chemically treated, to ensure that it is sterile and an appropriate pH to enter the wastewater treatment system.³⁸ Alternatively, treated water is sometimes used as water for agriculture or as fertiliser.³⁹
- 2.52 Bone fragments and teeth remain after the process. The wet pieces of bone, which are softened by the process and white in colour, along with the teeth, are then dried out and may be ground into a fine powder. Similarly, the bones and teeth that remain after cremation are usually ground in a cremulator, resulting in cremation ashes. The powder produced following alkaline hydrolysis is similar to this although greater in volume.⁴⁰
- 2.53 Certain medical implants, including those which have batteries, radioactive implants and implants which are pressurised, may pose a risk if they are not removed prior to cremation. It appears that medical implants do not need to be removed prior to the process of alkaline hydrolysis and instead will remain at the end of the process.⁴¹

Alkaline hydrolysis as a new funerary method

- 2.54 Alkaline hydrolysis is a process for dealing with the body of a deceased person that breaks down the body (leaving only bones and teeth, which can then be reduced further). It disposes of the body, with no alternative purpose.
- 2.55 It seems clear that alkaline hydrolysis is a fundamentally different process from burial.

³⁶ Ontario Government, *Regulating Alkaline Hydrolysis and Other Alternative Methods of Disposing of Human Remains under the Funeral, Burial and Cremation Services Act, 2002* (3 March 2020) <https://www.regulatoryregistry.gov.on.ca/proposal/31772>.

³⁷ Cremation Association of North America, *Alkaline Hydrolysis* (2025) <https://www.cremationassociation.org/alkalinehydrolysis.html>.

³⁸ G Robinson, "Alkaline Hydrolysis in the United Kingdom" in R McManus (ed) *The Sustainable Dead: Searching for the Intolerable* (2023) p 86.

³⁹ K Hansen, "Choosing to Be Flushed Away: A National Background on Alkaline Hydrolysis and What Texas Should Know about Regulating 'Liquid Cremation'" (2012) 5 *Estate Planning & Community Property Law Journal* 145.

⁴⁰ There is a detailed consideration of the appearance and composition of these remains in P R Olson, "Basic Cremation" (2018) 8 *Wake Forest Journal of Law and Policy* 149 pp 159 to 162. Use of a low pressure or a high pressure system will create differences in the remains produced.

⁴¹ P R Olsen "Flush and Bone: Funeralizing Alkaline Hydrolysis in the US" [2014] 39 *Science, Technology and human values* 666.

- 2.56 Although heat is applied during the alkaline hydrolysis process, it seems very unlikely that alkaline hydrolysis would be considered to constitute “the burning of human remains” and therefore we consider that it falls outside the definition of cremation.
- 2.57 We mention the Oxford English Dictionary definition of the verb “to burn” at paragraph 2.14 above.⁴² The relevant meanings are those that involve a direct object (“to burn [something]”) because we are concerned with the burning of human remains (where “human remains” is the object). “To burn human remains” may mean “to consume human remains by fire”. This is the meaning that is most obviously relevant. It may also mean “to affect human remains by burning”. This could include “to produce the characteristic effects of combustion upon human remains”. The ordinary scientific meaning of “combustion” is “the development of light and heat accompanying chemical combination”. As there is no fire, and no light, in the process of alkaline hydrolysis, we do not think that these meanings of burning would apply to it.
- 2.58 Another possible meaning of the verb “to burn” is “to alter in chemical composition, or in appearance, physical structure or properties, by intense heat (although not if the effect is merely melting or softening)”. Some cremators are electric and do not use flames; these may fall within this definition. It could be argued that this is more similar to the process that takes place during alkaline hydrolysis than the definitions mentioned above. However, in the process of alkaline hydrolysis, the alteration in chemical composition that occurs is not caused directly by intense heat. The main cause is liquid chemicals, applied in a heated (and pressure-controlled) environment. This suggests strongly that alkaline hydrolysis would not meet this definition of burning.

Human composting

- 2.59 Human composting involves keeping a body in a controlled environment which is optimised so that the body’s natural microbiome can break down the remains into soil much more quickly than in a burial.
- 2.60 Other names which have been used for human composting include natural organic reduction, accelerated natural decomposition, mortality composting, humusation and organic dispersal. Proprietary names may also be used, such as terramation.

The development of human composting as a new funerary method

- 2.61 Human composting as a new funerary method has been developed in the US in the past decade. The process is based on expertise, experience and technology from the livestock sector.⁴³
- 2.62 It has been reported that Katrina Spade, the founder of Recompose, the first provider of human composting in Washington State in the US, investigated methods used by farmers to compost animals in her graduate thesis in 2013 and found that they could

⁴² Oxford English Dictionary, *search results for “burn”* (2025) <https://www.oed.com/search/dictionary/?scope=Entries&q=burn>.

⁴³ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 8 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

be applied to human bodies.⁴⁴ Recompose states that it developed its process of human composting “over years of rigorous research and design”.⁴⁵

- 2.63 Human composting has been explicitly legalised in several states in the US, where it is commonly known as natural organic reduction. Details about the current use of human composting in the US and legislation that underpins this are set out in Chapter 4.

The process of human composting

- 2.64 The body is placed into a sealed chamber, or vessel, with carbon-rich organic matter (such as straw, wood chips and alfalfa) that enables quicker decomposition. Various elements in the vessel are monitored and may be controlled, including temperature and humidity. The vessel is rotated periodically.
- 2.65 The temperature varies during the process as the microorganisms, such as bacteria and fungi, involved in the decomposition process produce heat. Recompose states that the temperature inside the vessel rises over time and is sustained for a minimum of three days at 131 degrees Fahrenheit.⁴⁶
- 2.66 Recompose states that it keeps the body and plant material in the vessel for five to seven weeks, resulting in approximately one cubic yard of soil. The soil is then removed from the vessel and kept in a “curing bin” for another three to five weeks.⁴⁷
- 2.67 Pieces of bones that remain after the process may be mechanically reduced to small fragments, or powder, and reincorporated into the soil. This may include the use of a cremulator.⁴⁸ Some or all of the resulting soil may be returned to the families or friends of the deceased person with the remainder placed on land by providers.⁴⁹
- 2.68 We understand that variations on the method described above are being developed. The company Precision Organic describes a process of “organic dispersal”, which would turn a body into soil through decomposition, as being different from that of natural organic reduction. The body would similarly be placed in a vessel, but with a specially formulated soil blend which could result in the whole body, including hard tissue such as bones, being broken down. It says that some of the soil remaining at

⁴⁴ The Guardian, *From Cradle to Compost: The Disruptors Who Want to Make Death Greener* (19 February 2023) <https://www.theguardian.com/society/2023/feb/19/human-composting-industry-deathcare>.

⁴⁵ Recompose, *Our Model* (17 September 2024) <https://recompose.life/our-model/>.

⁴⁶ Recompose, *What is human composting?* (12 February 2025) <https://recompose.life/faqs/what-is-human-composting/>.

⁴⁷ Recompose, *How Human Composting Works* (12 November 2024) <https://recompose.life/human-composting/how-it-works/>.

⁴⁸ D Cirigliano, “A Comparative Analysis of Contemporary Methods of Final Disposition” (2024) 14 *Open Journal of Applied Sciences* 1762.

⁴⁹ Earth Funeral, *What Is Terramation?* (2022) <https://earthfuneral.com/resources/what-is-terramation>.

the end of the process could be returned to families or friends but the rest could be reused in future human composting cycles.⁵⁰

- 2.69 It has been stated that the process of human composting kills most pathogens, although not prions, which can cause fatal neurodegenerative diseases. As mentioned in paragraph 6.109, regulations in some jurisdictions prevent the use of human composting where prions may be present. In the context of animal composting, a report of the Health Council of the Netherlands also mentioned a concern that some medications, including euthanasia medications, are not eliminated.⁵¹
- 2.70 Pacemakers may be removed before the human composting process begins, with other medical implants such as artificial joints being removed before the end of the process.⁵²

Human composting as a new funerary method

- 2.71 Human composting meets the first part of our conception of a new funerary method because it is a process that breaks down the body of a deceased person.
- 2.72 It is clear that human composting is not cremation, because it does not consist of the “burning of human remains”.
- 2.73 There are some similarities between human composting and burial.
- (1) In the process of human composting, the body (usually inside a pouch or shroud made of organic materials) is placed in a vessel, surrounded by various organic materials or specially developed soil. This is similar to the act of placing a body under the ground (or in a burial vault, or mausoleum) in the process of burial.
 - (2) The intention behind burial is to place the body in a grave, which is a place where the body will decompose over time. In human composting, the body is placed in a vessel with the intention that it will decompose there, although over a much shorter period of time.
- 2.74 However, there are also significant differences between human composting and burial, and many ways in which the current system of regulation of burial would not work for the process of human composting.
- (1) Once a body is put in a place of burial, it is left there undisturbed. It is possible that in some circumstances the grave may be reused, where the law allows, but

⁵⁰ Precision Organic, *Frequently Asked Questions* (4 December 2023) <https://precisionorganic.com/frequently-asked-questions/>.

⁵¹ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 22 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

⁵² See, for example Recompose, *Frequently Asked Questions* (19 February 2025) <https://recompose.life/faqs/#human-composting> (“What happens to artificial limbs or tooth fillings during composting”) and Return Home, *Natural Organic Reduction* (June 2022) <https://returnhome.com/natural-organic-reduction/> (“What about medical implants”).

this would only take place after many years.⁵³ In human composting, by contrast, the vessel in which the body is placed is monitored constantly and rotated periodically, with the intention of speeding up decomposition. Elements such as temperature and humidity may be controlled. The vessel is intended as a temporary location for the body and it will be there only for the accelerated period of decomposition, which will be weeks or months rather than years.

- (2) Removal of human remains from a place of burial is a criminal offence unless permission is given for exhumation (see the discussion at paragraphs 2.77 and 2.78 below) or the grave is reused in accordance with legislation. In human composting, at least in the process currently used in the US, the bones are not entirely broken down by the initial process and are removed from the vessel, dried, ground and then mixed with the soil.
- (3) Once the human composting process has been completed, the soil is removed from the vessel and placed somewhere else, whether given to bereaved people, placed on land by the provider or possibly reused. This is fundamentally different from burial, where there is no such resulting material.

2.75 As set out at paragraph 2.9 above, under Article 2 of LACO 1977, burial includes placing human remains in a vault, where “vault” means “a chamber provided for the reception of human remains or cremated human remains, together with the access thereto”. In our Consultation Paper on Burial and Cremation we asked whether there were any problems with this definition and suggested that it could be applied to private burial grounds (meaning those that are not Church of England or local authority burial grounds).⁵⁴ It could be argued that the vessel in which the body is placed in human composting could fall within the meaning of “vault” because it is a “chamber provided for the reception of human remains”.

2.76 This could also apply to other funerary methods. In both alkaline hydrolysis and human composting, the body of a deceased person is placed in a vessel. It seems likely that this may also be the case with new funerary methods that may be developed in future. It could be argued that such a vessel comes within the meaning of “vault” because it is a “chamber provided for the reception of human remains”.

2.77 It is an offence to remove human remains from a place of burial without authority.⁵⁵ A “place of burial” is likely to include a vault. If the definition of “vault” used in LACO 1977 included a vessel used in human composting, or another new funerary method, any subsequent removal of the human remains inside (including, for example, the

⁵³ Grave reuse is possible after a minimum of 75 years in London local authorities and three cemeteries covered by private Acts. There is no formal minimum period in Church of England churches. For more information about the current law on grave reuse, see Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 6.7 to 6.31. We asked a number of questions, and made provisional proposals, about grave reuse in Chapter 6 of that Consultation Paper.

⁵⁴ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 2.59 and 2.66.

⁵⁵ Burial Act 1857, s 25. Exhumation may be authorised by faculty from the consistory court, licence or the approval of a proposal under the Care of Cathedrals Measure 2011 (No. 1). Remains buried at cathedrals are governed other than by faculty and can be removed in accordance with authority by the Cathedrals Fabric Commission for England or a fabric advisory committee: s 25(2)(b).

bones and teeth that may remain after part of the process, in order for them to be reduced further) would be an offence.

- 2.78 However, we think it is very likely that the implied meaning of “reception of human remains” must indicate a place where human remains are to be buried and not disturbed (subject to grave reuse provisions).⁵⁶ If this was not the case, it could potentially include any space where human remains were placed temporarily, which cannot be right. Therefore, we think it is very unlikely that the definition of vault would include vessels used in human composting and that human composting would not fall within the definition of burial set out in LACO 1977.
- 2.79 Overall, we consider that there are significant differences between burial and human composting and that the process of human composting, as described here, is not burial and should not be regulated as burial.

Development of other potential new funerary methods

Methods involving freezing

- 2.80 Various methods involving the freezing of human remains, followed by subsequent treatment, have been suggested. However, none of these methods appear to have been developed to the stage of use on human bodies.⁵⁷
- 2.81 A method known as promession was being developed in Sweden from the late 1990s.⁵⁸ It appears that development is no longer ongoing. It has been reported that the Swedish company that was developing the process closed in 2015 without having developed a functional facility for the promession of human remains.⁵⁹ The first part of the process would be the removal of water content from the deceased person’s body. The body would then be frozen to minus 18 degrees Celsius and submerged in liquid nitrogen. The body, which would become very brittle, would be treated with vibrations of specific amplitude intended to reduce the body to a fine organic powder. It has been stated that the remains would be buried in a shallow grave and would turn into compost in approximately six to 12 months.⁶⁰
- 2.82 Ecolation was a similar process which involved freezing remains. The company developing ecolation was wound up and it has been reported that there was no successful demonstration of the ecolation process or any prototype.⁶¹
- 2.83 Another possible new funerary method that appears to have undergone development is cryomation. The process has been described as freezing the body using liquid

⁵⁶ See footnote 53 (in this chapter) above.

⁵⁷ We have used proprietary names in this section, where necessary.

⁵⁸ This project has its origins in the Law Commission’s 13th Programme of Law Reform, which was published in 2017. In that document, we referred to promession/cryomation as a new method that was being developed.

⁵⁹ The Natural Death Centre, “On Thin Ice? Cracking plans to freeze-dry corpses” (2019) 14 *More to death* 76 <https://woodlandburialtrust.com/pdf/More-to-Death/More%20to%20Death%2014th%20Edition.pdf>.

⁶⁰ The Local, *Swedish green-burial firm is to turn frozen corpses into compost* (13 April 2011) <https://www.thelocal.se/20110413/33178>.

⁶¹ The Times, *Put on Ice* (7 July 2018) <https://www.thetimes.com/world/ireland-world/article/put-on-ice-0bv59320p>.

nitrogen, which makes the body brittle. The body would then be reduced by means of controlled pressure and a “vibrating pin mill”.⁶² Further treatment, including in a vacuum chamber and the application of a gas to reduce pathogens would then take place.⁶³

Exposure

- 2.84 Some cultures leave bodies to be exposed to the elements, allowing the corpse to decompose or be consumed by animals. This is sometimes known as sky burial.
- 2.85 Our conception of a new funerary method is that it must be a process for dealing with the bodies of deceased people. We think that exposure may fit this description. However, as Conway notes, this is not generally regarded as socially acceptable in most Western societies and raises “serious public health and human dignity concerns”.⁶⁴

Possible future methods

- 2.86 It is possible that new funerary methods may emerge in future which would have significant differences from those that we know about today. One of our aims is to ensure that any framework for the regulation of new funerary methods is, as far as possible, future-proofed. The framework should be suitable for use as new funerary methods are developed. We have borne this in mind throughout our work on this sub-project and encourage consultees to raise any related issues where relevant in their responses to specific questions.

Consultation Question 2.

- 2.87 Are consultees aware of any other significant developments with the processes mentioned in paragraphs 2.39 to 2.85 of this Consultation Paper?
- 2.88 Are consultees aware of any other potential new funerary methods, other than those mentioned in paragraphs 2.39 to 2.85 of this Consultation Paper?

⁶² E E Keijzer and H J G Kok, “Environmental Impact of Different Funeral Technologies” (2011) *TNO Report* TNO-060-UT-2011-001432.

⁶³ E E Keijzer and H J G Kok, “Environmental Impact of Different Funeral Technologies” (2011) *TNO Report* TNO-060-UT-2011-001432.

⁶⁴ H Conway, *The Law and the Dead* (2016) p 50. Beyond this, case law indicates that carrying a body to the grave uncovered is unlawful as it would offend public morals, see *R v Stewart* (1840) 12 Adolphus & Ellis’ Queen’s Bench Reports 773. See also comments in *Gilbert v Buzzard* (1820) 161 English Reports 1342 at [344].

Chapter 3: Existing legislation and new funerary methods in England and Wales

INTRODUCTION

- 3.1 There is currently no specific regulation of new funerary methods in England and Wales. In this chapter, we consider the extent to which existing burial and cremation legislation is relevant to new funerary methods.
- 3.2 We look at a power to make regulations that is set out in the Public Health (Control of Disease) Act 1984 and consider its possible scope and usefulness.
- 3.3 We also consider legislation about death registration and explore its possible implications for the use of new funerary methods. We provisionally propose that the requirements in legislation relating to death registration should broadly be the same for an approved and regulated new funerary method as for burial and cremation.

BURIAL AND CREMATION LEGISLATION

Burial

- 3.4 Legal provisions about burial are scattered across several pieces of primary and secondary legislation. Different provisions apply to different types of burial grounds, whether Anglican, local authority or private burial grounds.¹ Local authority burial grounds are governed by detailed legislation. Some, but not all, private burial grounds were established under private Acts of Parliament. Church of England churchyards are governed by a mixture of legislation and the jurisdiction of ecclesiastical courts. Some specific legislation applies to burial grounds of the Church in Wales. For some burial grounds there is little, if any, legislation governing how burial should take place. We are considering the reform of various aspects of burial law in our sub-project on Burial and Cremation.²

Cremation

- 3.5 Legislation on cremation is primarily set out in two Acts, the Cremation Act 1902 and the Cremation Act 1952, and in the Cremation (England and Wales) Regulations 2008.

New funerary methods in burial and cremation legislation

- 3.6 The legislation regulating burial and cremation mentioned above does not explicitly prohibit the use of new funerary methods, although it does not make provision for them. There is no case law specifically on this point. In 1884 it was held in a criminal case about cremation that burial was not the only lawful way of dealing with human

¹ For a description of the development of burial law, see Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 1.44 to 1.73.

² Law Commission, *Burial and Cremation* (2017) <https://lawcom.gov.uk/project/burial-and-cremation/>.

remains.³ In this case, it was determined that cremation, which was not covered by any legislation at the time, was lawful as long as it did not go against established laws of the time, for example causing a public nuisance or preventing a coroner's inquest. Similarly, in the absence of contradictory legislation, other "decent means" of dealing with human remains may have been permitted.⁴

- 3.7 It has generally been assumed that the use of new funerary methods would not be unlawful, so long as it complied with laws on other matters, such as sanitation and public decency.⁵
- 3.8 Legislation that primarily relates to death registration prohibits the "disposal" of the body of a deceased person unless certain certificates or evidence have been provided to a specific person. We consider this, along with other death registration legislation, at paragraph 3.40 onwards.
- 3.9 Section 46 of the Public Health (Control of Disease) Act 1984 (the 1984 Act) contains a duty for local authorities to bury or cremate the body of any person who has died or been found dead in their area if it appears that no suitable arrangements are being made.⁶ These are known as public health funerals and will be considered in our third sub-project on Rights and Obligations relating to Funerary Methods, Funerals and Remains.⁷
- 3.10 In the same Part of the 1984 Act, section 47(1)(a) contains a separate power to make regulations "with respect to the means of disposal of dead bodies otherwise than by burial or cremation". We consider this provision, and its relevance to regulation of new funerary methods, below.

SECTION 47(1)(A) OF THE PUBLIC HEALTH (CONTROL OF DISEASE) ACT 1984: A LIMITED POWER TO REGULATE NEW FUNERARY METHODS?

- 3.11 Section 47(1) of the Public Health (Control of Disease) Act 1984 states that:

The Secretary of State may make regulations imposing any conditions and restrictions:

- (a) with respect to means of disposal of dead bodies otherwise than by burial or cremation,
- (b) as to the period of time a body may be retained after death on any premises, or

³ *R v Price* (1884) 12 QBD 247.

⁴ E Lewis Thomas (ed), *Baker's Law Relating to Burials* (1901) p 36, as discussed in J Shaw, "A Common Law Power to Dissect: A Medico-Legal History" (2025) 33 *Medical Law Review* fwaf006.

⁵ H Conway, *The Law and the Dead* (2016) p 50; and H Rumble, J Troyer, T Walter and K Woodthorpe, "Disposal or Dispersal: Environmentalism and Final Treatment of the British Dead" (2014) 19 *Mortality* 243 at 248.

⁶ Public Health (Control of Disease) Act 1984, s 46.

⁷ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

(c) with respect to embalming or preservation,

which may appear to be desirable in the interests of public health or public safety.

3.12 We consider the wording of this provision, its legislative history and its potential relevance to the regulation of new funerary methods below.

Legislative history of section 47

3.13 Section 47 has its origins in the Births and Deaths Registration Act 1926 (the 1926 Act), the long title of which is: “An Act to amend the law relating to certification of deaths and the disposal of the dead”.

3.14 Section 9(b) of the 1926 Act stated that the Minister of Health, with the concurrence of the Secretary of State, may make regulations:

imposing any conditions and restrictions with respect to means of disposal otherwise than by burial or cremation, as to the period of time a body may be retained after death in an inhabited house or other premises or with respect to embalming or preservation, which may appear to be desirable in the interests of public health or public safety.

3.15 The Bill which became the 1926 Act was introduced to the House of Lords by Viscount Gage for the Government. During his speech at second reading of the Bill he said that it was “a Bill to add further to the safeguards relating to the disposal of the dead so as to reduce, as far as possible, the number of loopholes which still exist ... for the concealment of crime”. Viscount Gage went on to say:

Regulations are proposed placing restrictions on the disposal of a body by means other than burial or cremation—such as burial at sea. By this method there seems to be no safeguard at present whereby criminal practices can be prevented, with any degree of certainty.⁸

3.16 The provision was transposed, with minor amendments, into section 161 of the Public Health Act 1936 (the 1936 Act), an Act which consolidated the Public Health Act 1875 and parts or the whole of “some 30 to 40 Acts of Parliament” following the recommendations of a Departmental Committee established for the purpose.⁹ The only modifications to this provision when it was moved to the 1936 Act were the clarification that the section relates to disposal “of dead bodies” and the removal of the words “an inhabited house”.

3.17 Section 47 of the 1984 Act differs from section 161 of the 1936 Act only in that regulations are to be made by the Secretary of State, rather than the Minister with the concurrence of the Secretary of State.

3.18 The text of section 47 has therefore come, largely unmodified, from the Births and Deaths Registration Act 1926 (via the Public Health Act 1936).

⁸ Hansard (HL), 7 December 1926, vol 65, col 1283-1284.

⁹ Hansard (HL) 2 April 1936, vol 100, col 415.

Limitations of the section 47(1)(a) power

Scope of the provision

- 3.19 The power to make regulations in section 47 must be exercised in the interests of public health or public safety. We consider the meaning of these words below, but this would certainly exclude any provisions that might be driven solely by other concerns, for example human dignity or public decency.
- 3.20 For example, in Scotland, cremation regulations provide that only one adult, child, stillborn child or fetus can be placed in a cremator, and the remains must be raked into the cooling tray before another body can be placed in the cremator.¹⁰ Although this is best practice in England Wales,¹¹ there is no provision made for this in statute. In our Consultation Paper on Burial and Cremation, we stated that there could be potential benefit in placing the current best practice in England and Wales on a statutory footing, similar to the provisions in Scotland, potentially with exceptions. We invited consultees' views on which relationships between two deceased people should mean the law permits their bodies to be cremated together, with written consent. We provisionally proposed that, in all cases, it should be a requirement that ashes from a cremation should be removed from the cremator before another cremation occurs.¹²
- 3.21 There does not appear to be a public health or public safety rationale for provisions such as this. Instead, they reflect what is considered appropriate, mainly to avoid distress to bereaved people. It would therefore not be possible to use the section 47(1)(a) power to make provisions about similar matters in relation to new funerary methods.

The meaning of the words “desirable in the interests of public health or public safety”

- 3.22 Where a word is not defined in statute, the word should generally be given its ordinary meaning, bearing in mind the context and purpose of the legislative provisions.
- 3.23 The term “public health” has been interpreted, in case law, to describe activities such as the medical inspection of pupils and the conduct of health research.¹³ The National Institute for Health and Care Excellence states that public health is about “helping people to stay healthy and avoid getting ill”.¹⁴ This is similar to the definition from

¹⁰ Cremation (Scotland) Regulations 2019 SSI 2019 No 36, reg 5(2).

¹¹ The Code of Cremation Practice of the Federation of Burial and Cremation Authorities (of which 85% of crematoria are voluntary members) requires that each deceased person is cremated separately, with the possibility of exceptions such as in the case of a mother and baby, if the next of kin has made a specific request. See Federation of Burial and Cremation Authorities, *Code of cremation practice* (2019) <https://www.fbca.org.uk/code-of-cremation-practice/> paras 6 and 9.

¹² Burial and Cremation (2024) Law Com Consultation Paper 263 paras 11.103 to 11.110.

¹³ *R (National Aids Trust) v NHS Commissioning Board (NHS England)* [2016] EWCA Civ 1100, [2017] 1 Weekly Law Report 1477 (Longmore LJ) at [33].

¹⁴ National Institute for Health and Care Excellence, *12 NICE Strategic Principles: A Complementary Approach to Public Health, Social Care and Rare Disease Topics* (4 April 2024) <https://www.nice.org.uk/consultations/2523/15/nice-strategic-principles-a-complementary-approach-to-public-health-social-care-and-rare-disease>.

Public Health Wales, which states that its work is to “protect and improve health and well-being” while also reducing health inequalities.¹⁵

- 3.24 The term “public safety” is used in various pieces of legislation without a definition, for example in the Public Order Act 2023.¹⁶ “Public safety” is defined in section 2(6) of the Space Industry Act 2018 as meaning “the health and safety of members of the public ... and the safety of their property”.
- 3.25 The words “the interests of public health or public safety” could be interpreted broadly to mean that the Secretary of State could make regulations about various aspects of the use of new funerary methods. Many aspects of the regulation of burial and cremation could be said to fall into the scope of “public health or public safety”. For example, provisions about burial specifications, the closure of burial grounds, exhumation, maintenance and inspection of crematoria all relate in some way to public health and/or public safety. It may be possible for regulations to be made under the section 47(1)(a) power about new funerary methods, relating to similar matters.
- 3.26 However, following case law from the Supreme Court on the modern approach to statutory interpretation, the context and purpose of a provision are important in identifying the meaning of the words used by Parliament.¹⁷ We must therefore also consider the context and purpose of the provision.
- 3.27 The 1984 Act is a result of a Law Commission Report on consolidation. That Report is brief and does not offer any specific comment on section 47. The Report states that:
- The Public Health (Control of Disease) Bill seeks to consolidate those provisions of the public health legislation that relate to the control of disease, and certain closely related provisions.¹⁸
- 3.28 The preamble to the 1984 Act states that it is an Act to:
- consolidate certain enactments relating to the control of disease and to the establishment and functions of port health authorities, including enactments relating to burial and cremation¹⁹
- 3.29 It could be argued that the purpose of the provision is to enable regulations to be made about “means of disposal” other than burial or cremation, where public health and public safety would otherwise be at risk because of infection or disease. This may be because a person had died of a disease which would make burial or cremation risky, from a public health or public safety point of view. Alternatively, it is possible to

¹⁵ Public Health Wales, *About Us* (2024) <https://phw.nhs.wales/about-us/>.

¹⁶ Public Order Act 2023, s 18.

¹⁷ See *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at [28-29] and *R v Luckhurst* [2022] UKSC 23, [2022] 1 Weekly Law Report 3818 at [23].

¹⁸ Public Health (Control of Disease) Bill: Report on the consolidation of certain enactments relating to the control of disease (1984) Law Com No 130 para 1.

¹⁹ Public Health (Control of Disease) Act 1984, preamble.

envisage the provision being used in a scenario where a very high number of deaths made burial or cremation difficult.

- 3.30 We note, however, that the Public Health Act (Northern Ireland) 1967 contains a provision that is very similar to section 47 of the 1984 Act but with a key difference. Regulations made under the 1967 Act may be made about “means of disposal otherwise than by burial or cremation” (and about the maximum time bodies may be kept on premises and embalming and preservation) but only in relation to “the dead bodies of persons who die from a notifiable disease”.²⁰ It would have been open to Parliament to include a similar express limitation of the power in the 1984 Act, but they did not do so.
- 3.31 It is stated in *Bennion, Bailey and Norbury on Statutory Interpretation* that when considering the meaning of a provision that has been consolidated, the approach should generally be the same as to any other Act, without referring to the provision that has been replaced. However, where there is real doubt as to the legal meaning of a provision, the previous version of the provision may be considered. The presumption that a consolidation Act does not change the law will apply. It may be necessary to consider the history of a provision in order to understand the social and historical context of the words.²¹
- 3.32 As set out at paragraphs 3.13 to 3.18 above, the provision in the 1984 Act came from the Births and Deaths Registration Act 1926, via the Public Health Act 1936. In the 1926 Act, which makes provision for the registration of births and deaths, there was no indication of a link to control of disease beyond the reference to “public health”. We have discussed the indication from Viscount Gage that the provision was intended to enable the closure of loopholes in relation to alternative methods such as burial at sea. However, the relevant section in the 1936 Act is contained in Part V, which is headed “Prevention, Notification and Treatment of Disease”. It is grouped with other sections under a sub-heading that reads “Provisions for preventing spread of infection”. These headings are not determinative of the meaning of the provision but may assist with interpreting the wording in it.

Offences

- 3.33 Section 47(1)(a) does not include a power to create any offences, which may be needed as part of an effective framework in which new funerary methods are regulated. We consider this in more detail in Chapters 6 and 7.

Analysis

- 3.34 The original version of section 47(1)(a), in the Births and Deaths Registration Act 1926, was apparently passed to enable the closure of loopholes in relation to alternative methods such as burial at sea. As set out at paragraph 3.6 above, a criminal case in 1884 had indicated that cremation, which was then not covered by

²⁰ Public Health Act (Northern Ireland) 1967, s 13. The list of notifiable diseases is set out in Sch 1 of that Act and includes, for example, anthrax, chickenpox, COVID-19, food poisoning, monkeypox, rabies, scarlet fever, smallpox and whooping cough. Under section 2(1), a medical practitioner must notify the Director of Public Health if the medical practitioner is aware, or has reasonable grounds for suspecting, that a person is suffering from a notifiable disease.

²¹ *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed 2023) s 24.7.

any legislation, was lawful provided that it did not contravene other established laws of the time, for example by causing a public nuisance or preventing a coroner's inquest.²² Although by 1926 cremation had been regulated by the Cremation Act 1902, it was thought by some that other funerary methods may also be lawful, although unregulated.²³ Against this backdrop, a provision allowing "conditions and restrictions" to be imposed on the use of such methods makes sense.

- 3.35 The current purpose of section 47(1)(a) is unclear. It is possible that, by placing it in an Act making provision for public health, it was intended that it could be used to enable regulations to be made about alternative "means of disposal" solely in connection with the control of disease. This could be in the context of an emergency or because a specific disease made burial or cremation impossible in the case of the body of a particular deceased person. We are not aware that the power in section 47(1)(a) has been used since it was introduced in 1926. It was not used in the recent COVID-19 pandemic.²⁴
- 3.36 The provision is limited in scope. It would not be possible to use it to set out a comprehensive system of regulation for new funerary methods. Furthermore, as we set out later in this chapter, it is possible that death registration legislation criminalises the use of new funerary methods, although this is unclear. If so, it is difficult to see how section 47(1)(a) could be used.
- 3.37 In this Consultation Paper, we make provisional proposals about a legislative framework for the regulation of new funerary methods. In Chapter 5 we provisionally propose that there should be a power for the Government to make secondary legislation approving and regulating specific new funerary methods. In Chapter 7 we provisionally propose that it should be a criminal offence to use a non-regulated funerary method.
- 3.38 If these provisional proposals are taken forward, it may be possible to make any regulations that could have been made under section 47(1)(a) under the new power. Furthermore, if the use of non-regulated funerary methods is expressly prohibited, it will clearly not be necessary, or possible, to impose "conditions or restrictions" on their use, under section 47(1)(a). In these circumstances, we think that section 47(1)(a) would be redundant. If section 47(1)(a) were to be interpreted more narrowly, as an ability to make exceptional provisions for regulated new funerary methods and burial at sea during public health emergencies, this could be provided for under the new power. In the alternative, section 47(1)(a) could be amended to clarify the narrower scope of this provision.

²² *R v Price* (1884) 12 QBD 247.

²³ E Lewis Thomas (ed), *Baker's Law Relating to Burials* (1901) p 36, as discussed in J Shaw, "A Common Law Power to Dissect: A Medico-Legal History" (2025) 33 *Medical Law Review*.

²⁴ There were more than 300 statutory instruments with "Coronavirus" in the title made under the Public Health Act 1984. These were often short and specific to various topics, such as international travel, face coverings and gatherings. No statutory instruments were made using the power in section 47(1)(a).

- 3.39 When we make our final recommendations to Government, we will need to consider the relationship between section 47(1)(a) and our draft legislation. If section 47(1)(a) appears to be redundant, it may be appropriate to recommend its repeal.

DEATH REGISTRATION LEGISLATION

- 3.40 There are some prohibitions and offences set out in legislation about registration of deaths that may be relevant to the use of new funerary methods.

Prohibition of disposal without delivery of certificate or order to the person effecting the disposal (the 1926 Act)

- 3.41 Section 1(1) of the Births and Deaths Registration Act 1926 provides that “the body of a deceased person shall not be disposed of” unless a specified certificate or an order of a coroner has been delivered to “the person effecting the disposal”. The specified certificates are those given under section 11(2) or (3) or section 24 of the Births and Deaths Registration Act 1953.

- 3.42 It is an offence to breach this prohibition and on summary conviction a person may be liable to a fine not exceeding level 1 on the standard scale (currently £200).²⁵

- 3.43 In the 1926 Act, “disposal” is defined as “disposal by burial, cremation or any other means and ‘disposed of’ has a corresponding meaning”.²⁶ We have already seen (at paragraph 3.15 above) that at least one of the purposes of the reference to other “means of disposal” in section 9(b) of the 1926 Act was to ensure that there were sufficient safeguards and no “loopholes” for the “concealment of crime” relating to funerary methods other than burial or cremation, such as burial at sea.

- 3.44 However, the definition of “person effecting the disposal” in the 1926 Act is limited to:

the person by whom or whose officer the register of burials in which the disposal is to be registered is kept, except that in the case of a burial under the Burial Laws Amendment Act 1880 in the churchyard or graveyard of a parish or ecclesiastical district the expression “person effecting the disposal” shall be construed as referring to the relative, friend, or legal representative having charge of or being responsible for the burial of the deceased person.²⁷

- 3.45 Section 10 of the 1926 Act states that the provisions of that Act do not apply to cremation, except where regulations are made under the Cremation Act 1902 applying the provisions of the 1926 Act to cremation.

- 3.46 The Cremation (England and Wales) Regulations 2008, which have been made under the power in the Cremation Act 1902, do not state that these provisions of the 1926 Act apply to cremation. Instead, similar provision is made prohibiting cremation of the

²⁵ Births and Deaths Registration Act 1926, s 1(1). We note that this provision does not apply to burial at sea. As set out in para 2.16, burial at sea takes place outside England and Wales and the provisions about “disposal” which are discussed here do not apply.

²⁶ Births and Deaths Registration Act 1926, s 12.

²⁷ Births and Deaths Registration Act 1926, s 12.

remains of a deceased person unless specified certificates have been given.²⁸ These certificates are: a certificate under section 24(1), (2) or (4) of the Births and Deaths Registration Act 1953, a certified copy of the register entry of the death under sections 30 to 32 of the 1953 Act, a certificate of the coroner or a certificate confirming an anatomical examination. It is an offence to carry out a cremation in breach of this provision and on summary conviction, a person may be liable to a fine not exceeding level 3 on the standard scale (currently £1,000).²⁹

- 3.47 In all circumstances other than burial under the Burial Laws Amendment Act 1880 in the churchyard or graveyard of a parish or ecclesiastical district, or cremation under the Cremation (England and Wales) Regulations 2008, the “person effecting the disposal” in the 1926 Act is therefore “the person by whom or whose officer the register of burials in which the disposal is to be registered is kept”. If the relevant certificate or coroner’s order is not delivered to that person then “the disposal of the body” will be an offence.
- 3.48 All burial grounds are required to keep a burial register, although this is governed in different ways for different types of burial grounds. For local authority cemeteries, the requirements for registration are set out in article 9 of the Local Authorities’ Cemeteries Order 1977.³⁰ Registration of burial in Church of England churchyards or other burial grounds is set out in the Parochial Registers and Records Measure 1978.³¹ The requirements for private cemeteries differ depending on whether they have been established under the Cemeteries Clauses Act 1847³² or not.³³
- 3.49 We do not think that a person who intended to use a new funerary method could simply keep a register of burials and therefore qualify as a “person effecting the disposal”. This would stretch the meaning of “register of burials” far beyond its natural meaning. It seems much more likely that the reference to “register of burials” in the definition of “person effecting the disposal” in the 1926 Act refers to a burial register and not a register of any other funerary methods. As set out above, the requirements to keep a burial register are set out in legislation.
- 3.50 It appears arguable, therefore, that an effect of section 1(1) of the 1926 Act is to prohibit the use of a new funerary method in relation to the body of a deceased person, because there would be no “person effecting the disposal”. It is a criminal offence to breach this prohibition.

Obligation to pass certificates to the person effecting the disposal (the 1953 Act)

- 3.51 Although the Births and Deaths Registration Act 1926 prohibits “disposal” without certificates under section 11(2) or (3) or section 24 (or an order of the coroner) having

²⁸ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 16.

²⁹ Cremation Act 1902, s 8(1).

³⁰ SI 1977 No 204.

³¹ Church Measures 1978 No 2, s 1

³² Cemeteries Clauses Act 1847, s 32.

³³ Registration of Burials Act 1864, ss 1 and 2.

been delivered to the “person effecting the disposal”, the obligation to deliver the certificates is set out in the Births and Deaths Registration Act 1953.

- 3.52 Under section 36 of the 1953 Act, a person who refuses or fails without reasonable excuse to give, deliver or send any certificate as required by the Act may be liable on summary conviction to a fine not exceeding level 1 on the standard scale (currently £200).

Certificate under section 11(2) or (3)

- 3.53 Section 11 of the 1953 Act relates to registration of stillbirths. Under section 11(2) a certificate may be given by the registrar to the informant, who registers the death, or “to the person who has control over, or who ordinarily effects the disposal of bodies at, the place at which it is intended to dispose of the child’s body”. Under section 11(3) a duplicate of the certificate may be issued by the registrar in certain circumstances.
- 3.54 “Disposal” in the 1953 Act means: “in relation to a dead body ... disposal by burial, cremation or any other means”.³⁴
- 3.55 It seems that a person who intended to use a new funerary method could meet the definition of “the person who has control over, or who ordinarily effects the disposal of bodies at, the place at which it is intended to dispose of the child’s body”. In any event, the section 11(2) certificate may alternatively be given to the informant. There are therefore no additional issues arising from section 11.

Certificate under section 24

- 3.56 A certificate under section 24(1) of the Births and Deaths Registration Act 1953 is issued by the registrar when they register a death and is given by them to “the person giving information concerning the death”, who is usually a family member. A certificate under section 24(2) is given by the registrar where a body has come into England and Wales from elsewhere, upon application by “the person procuring the disposal”. A certificate may not be issued under this section in cases where a coroner’s order has been issued authorising disposal of the body.
- 3.57 Section 24(3) of the 1953 Act obliges a person who receives a certificate from the registrar under section 24(1) or 24(2) to transmit it to “the person effecting the disposal of the deceased person”.
- 3.58 Confusingly, the definition of “person effecting the disposal” that is set out in section 24 of the 1953 Act is slightly different from the 1926 Act definition. The 1953 Act definition of “person effecting the disposal” is:

the person by whom or whose officer the register in which the disposal is to be recorded is kept, except that, in the case of a burial under the Burial Laws Amendment Act 1880, or section four of the Welsh Church (Burial Grounds) Act 1945, in the churchyard or graveyard of a parish or ecclesiastical district, it shall be construed as referring to the relative, friend or legal personal representative having charge of or being responsible for the burial of the deceased person.

³⁴ Births and Deaths Registration Act 1953, s 41.

- 3.59 As set out above, “disposal” in the 1953 Act means: “in relation to a dead body ... disposal by burial, cremation or any other means”.³⁵
- 3.60 Under section 32(1) of the Cremation (England and Wales) Regulations 2008, a registrar must keep a permanent register of all cremations carried out by the cremation authority for which they have been appointed registrar. As set out above, the requirement to keep a register of burials applies to all burial grounds but is set out in various pieces of legislation.
- 3.61 It could be argued that if a person who intended to use a new funerary method kept their own register in which they intended to register the disposal, they would meet the definition of a “person effecting the disposal”. If this was correct then anyone could dispose of a body using any means, keep their own register and therefore qualify to receive the section 24 certificate. The section 1(1) prohibition in the 1926 Act would, however, still apply.
- 3.62 It seems more likely that the reference to “the register in which the disposal is to be recorded” means the register in which the disposal is required to be recorded. These requirements are set out in statute. The position, however, is slightly unclear.
- 3.63 If a person intending to use a new funerary method could not be a “person effecting the disposal” under the 1953 Act, then it is possible that “the person giving information concerning the death” may also come within the scope of the offence in section 36, for failing to give the certificate to the “person effecting the disposal”. However, section 36 includes the words “failing without reasonable excuse”. Where there is no “person effecting the disposal”, it would be impossible for the certificate to be delivered to such a person, and it seems clear that this would be a “reasonable excuse” for the person giving information about the death not to have passed on the certificate.
- 3.64 Overall, interpreting death registration legislation in relation to new funerary methods is complicated and it is difficult to reach a clear conclusion. This is unsatisfactory, both for those who may wish to know whether they are able to operate new funerary methods without contravening these provisions, and for the public.

Reform of the law

- 3.65 If a framework enabling the regulation of new funerary methods is introduced, specific new funerary methods may be approved, regulated and used in future. It seems clear that, to avoid undermining the system of death registration, death registration requirements should be broadly the same whether a body is to be dealt by way of burial, cremation, or a regulated new funerary method.
- 3.66 In Chapter 6 we provisionally propose that there should be a requirement for the use of the new funerary method on the body of a deceased person to be registered. We also provisionally propose that regulations made about specific new methods must set out how and by whom this registration must be carried out. This could facilitate the changes required to the death registration legislation.

³⁵ Births and Deaths Registration Act 1953, s 41.

- 3.67 We note that any amendments to the death registration system beyond those required to facilitate the use of new funerary methods in line with our recommendations for a regulatory framework would be outside the scope of this project.

Consultation Question 3.

- 3.68 We provisionally propose that the requirements in legislation relating to death registration should be broadly the same for an approved and regulated new funerary method as for burial and cremation.

Do consultees agree?

CONCLUSION

- 3.69 There is some very limited legislative provision relating to new funerary methods, but nothing that amounts to a framework. Although there are a few references to other methods of “disposal”, it is clear that there has been no joined-up approach to legislating for the use of (or prohibition of) new funerary methods. As a consequence, the existing legislation is limited, piecemeal and unsatisfactory.
- 3.70 It appears arguable that the use of new funerary methods is prohibited by death registration legislation, although the application of the legislation to new funerary methods is complicated and potentially confusing. Our engagement with stakeholders throughout our work on Burial, Cremation and New Funerary methods has shown us that, due to the sensitivities around death, certainty is valued by those involved in the death care sector. Stakeholders have told us that a clear pathway to the use of new funerary methods would be preferred.
- 3.71 Our review of the existing legislation underlines the need for a comprehensive framework for new funerary methods, which will enable the public to be clear on the position and give certainty to those that wish to operate new funerary methods.
- 3.72 In Chapters 5 to 7 we consider what an effective, future-proof regulatory framework for England and Wales might look like. Before this, in Chapter 4, we set out some developments in other jurisdictions.

Chapter 4: Developments in other jurisdictions

INTRODUCTION

- 4.1 Worldwide, there are a variety of approaches to the question of how the bodies of deceased people should be dealt with. In some parts of the world burial has traditionally been favoured, whereas in others cremation has been the norm, and these preferences have sometimes changed over time. As technology to enable new funerary methods has emerged over the past few decades, different approaches to it have arisen.
- 4.2 In this chapter, we provide examples of how new funerary methods are legally regulated, in order to inform ideas about how a legislative framework could work in England and Wales. It is not intended to provide a comprehensive account of the regulation of new funerary methods across the world. We consider the position in the following jurisdictions: Australia, Canada, Ireland, the Netherlands, New Zealand, Scotland, South Africa and the United States of America (the US). We have focussed on jurisdictions where there is sufficient information available in the English language. We understand that there have also been developments in other jurisdictions, including Norway, Belgium, Mexico and Germany.
- 4.3 We first explore the position in various jurisdictions that have introduced legislation about new funerary methods: states in Australia, Canada, and the US, and Scotland. We then consider two jurisdictions where legislative changes have not been made but where alkaline hydrolysis is available: Ireland and South Africa. Finally, we look at the Netherlands, New Zealand, and Queensland, Australia, in which new funerary methods are currently neither regulated nor available although there have been noteworthy developments.

LEGISLATIVE CHANGES

Australia

Summary

- 4.4 Legislation in three Australian states (New South Wales, Victoria and Tasmania) and the Australian Capital Territory makes some provision for new funerary methods.

Amendments to the definition of cremation: Australian Capital Territory, New South Wales and Tasmania

- 4.5 Alkaline hydrolysis is available in the Australian state of New South Wales. The definition of “cremation” has been extended to include “disposal of the body by

alkaline hydrolysis”.¹ The definition of “crematory” has been amended so that it “includes premises in which bodies are disposed of by alkaline hydrolysis”.²

- 4.6 Similarly, in Tasmania an amendment has been made to relevant legislation to include alkaline hydrolysis in the definition of cremation.³
- 4.7 In the Australian Capital Territory, the definition of “cremation” has been extended in relevant legislation to include “alkaline hydrolysis and other non-fire based methods for breaking down human remains”.⁴ This envisages the use of new funerary methods beyond alkaline hydrolysis.
- 4.8 It has been reported that Sydney Water, the primary water supplier for New South Wales, has refused to allow the resulting liquid to enter the wastewater system. Instead, it is poured on plantation forests.⁵

Victoria

- 4.9 In the state of Victoria, legislation allows the Secretary of the Department of Health to give approval for a cemetery trust to use a method other than burial or cremation to dispose of “bodily remains”. This approval may be given generally, for a class of disposals or for a specific disposal, and the Secretary may specify such terms and conditions as they think fit.⁶
- 4.10 The explanatory memorandum, which explains the purpose of the legislation, stated that this provision was:

intended to allow for approval by the Secretary of the use of alternative techniques for disposing of bodily remains that may be developed in the future. These techniques may be experimental. Should any such technique develop to the point where there is a general demand for its use, processes for application to a cemetery

¹ The New South Wales Public Health (Disposal of Bodies) Amendment (Cremation) Regulation 2011 amended the definition of cremation in the Public Health (Disposal of Bodies) Regulation 2002 to include “the disposal of the body of a dead person by alkaline hydrolysis”. The 2002 Regulations were repealed by the Public Health Regulation 2022, which states that cremation includes “disposal of a body by alkaline hydrolysis” at Sch 7. The 2022 Regulations are found at: <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2022-0502#sch.7>.

² New South Wales Public Health Regulation 2022, Sch 7 <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2022-0502#sch.7>.

³ Para 48AA was inserted into the Tasmanian Burial and Cremation Regulations 2015 to provide that alkaline hydrolysis was included in the definition of cremation in the Burial and Cremation Act 2002, s 3. This has since been repealed by the Burial and Cremation Act 2019 which has the same definition of cremation at s 3. The 2019 Act is found at: <https://www.legislation.tas.gov.au/view/html/inforce/2024-06-13/act-2019-050>.

⁴ See the Notes to the Australian Capital Territories Cemeteries and Crematoria Act 2020 https://kirra.austlii.edu.au/au/legis/act/consol_act/caca2020222/notes.html.

⁵ ABC News, *Natural burials, ‘water cremation’ and more – here’s your guide to a sustainable funeral* (27 April 2019) <https://www.abc.net.au/news/science/2019-04-27/green-death-funeral-environment/10994330>.

⁶ Victoria Cemeteries and Crematoria Act 2003, Pt 11 div 1 <https://www.legislation.vic.gov.au/in-force/acts/cemeteries-and-crematoria-act-2003/037>.

trust for use of the technique by the public will be included in future amendments to the Act and or by regulation.⁷

Canada

Summary

- 4.11 There is legislation relating to new funerary methods in four provinces and one territory of Canada: Newfoundland and Labrador, the Northwest Territories, Ontario, Québec and Saskatchewan. Alkaline hydrolysis is offered in most of these.
- 4.12 There is also relevant regulation at a federal level. For example, the Canadian Nuclear Safety Commission includes precautions for alkaline hydrolysis in the Radiation Protection Guidelines for Safe Handling of Decedents. Due to potential contamination, the guidance states that alkaline hydrolysis is not suitable for a deceased person who underwent certain “therapeutic nuclear medicine” procedures (for example, the use of radioactive iodine to treat thyroid cancer or hyperthyroidism) within prescribed timeframes.⁸

Amendments to the definition of cremation: the Northwest Territories, Québec and Saskatchewan

- 4.13 In the Northwest Territories, “cremation” is defined as “disposal of a dead body in a crematorium, by incineration or by any other physical or chemical process”. “Crematorium” is defined as “a building or a part of a building used for the purpose of cremation and includes appliances and other equipment incidental or ancillary to that purpose”.⁹ These definitions could include a range of processes. However, a crematorium may not operate unless it has been issued with a permit by the Chief Public Health Officer.¹⁰
- 4.14 In Saskatchewan, under the Funeral and Cremation Services Bylaws, alkaline hydrolysis is described and explicitly included in the definition of cremation.¹¹ The bylaws relating to cremation therefore also apply to alkaline hydrolysis, such as the requirement to remove non-combustible objects or hazardous materials that may pose

⁷ Explanatory Memorandum to the Victoria Cemeteries and Crematoria Bill 2003, cl 146 <https://www.legislation.vic.gov.au/in-force/acts/cemeteries-and-crematoria-act-2003/037>.

⁸ Canadian Nuclear Safety Commission, *REGDOC-2.7.3, Radiation Protection Guidelines for Safe Handling of Decedents* (June 2018) <https://www.cnsccsn.gc.ca/eng/acts-and-regulations/regulatory-documents/published/html/regdoc2-7-3/#sec2-1>.

⁹ These definitions are from the Northwest Territories Vital Statistics Act, SNWT 2011, ch 34, s 1 <https://www.canlii.org/en/nt/laws/stat/snwt-2011-c-34/latest/snwt-2011-c-34.html>. They apply to the Northwest Territories Crematorium Regulations, NWT Reg 001-2020 <https://www.canlii.org/en/nt/laws/regu/nwt-reg-001-2020/latest/nwt-reg-001-2020.html>.

¹⁰ Northwest Territories Crematorium Regulations, NWT Reg 001-2020, regs 2 to 4 <https://www.canlii.org/en/nt/laws/regu/nwt-reg-001-2020/latest/nwt-reg-001-2020.html>.

¹¹ Funeral and Cremation Services Council of Saskatchewan Bylaws, 1000(f) <https://fscscs.ca/wp-content/uploads/The-Funeral-Cremation-Services-Bylaws-1-1.pdf>.

a danger during or after the process.¹² With limited exceptions, no person may own a crematorium without a licence.¹³

- 4.15 In Québec, section 2(4) of the Funeral Operations Act, as updated in December 2023, defines “cremation services” as “services consisting of disposing of a body by fire or any other physical or chemical process”.¹⁴ A licence is required to carry out funeral services,¹⁵ which includes cremation services.¹⁶ Regulations about the application of the Funeral Operations Act explicitly prohibit the use of alkaline hydrolysis (referred to in the regulations as “alkaline hydrolysis cremation”) for bodies with a probable diagnosis of a specified disease.¹⁷

Newfoundland and Labrador

- 4.16 The Embalmers and Funeral Directors Act 2008 was amended in 2023 to make provision for alkaline hydrolysis. There is now a definition of “aquamation” as “the disposal of a dead body through the use of water, alkaline chemicals and heat”.¹⁸ The definition of “funeral director” was amended to “an individual who takes charge of a dead human body for the purpose of burial, cremation, aquamation, removal or other disposition”.¹⁹
- 4.17 Objectives for the Embalmers and Funeral Directors Board were added to the Act. These include ensuring that funeral homes and “embalming, cremation and aquamation facilities” are maintained and equipped as required by the legislation.²⁰ The board was given the power to establish or adopt, by regulation, standards of practice regarding matters including cremation and aquamation.²¹ Regulations have

¹² Funeral and Cremation Services Council of Saskatchewan Bylaws, 8020 <https://fcscs.ca/wp-content/uploads/The-Funeral-Cremation-Services-Bylaws-1-1.pdf>.

¹³ Saskatchewan Funeral and Cremation Services Act, SS 1999, ch F-23.3, ss 3 and 4 <https://www.canlii.org/en/sk/laws/stat/ss-1999-c-f-23.3/221369/ss-1999-c-f-23.3.html>.

¹⁴ Québec Funeral Operations Act 2016, CQLR ch A-5.02 s 2(4) <https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-5.02/latest/cqlr-c-a-5.02.html>.

¹⁵ Québec Funeral Operations Act 2016, CQLR ch A-5.02 s 5 <https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-5.02/latest/cqlr-c-a-5.02.html>.

¹⁶ Québec Funeral Operations Act 2016, CQLR ch A-5.02 s 2(5) <https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-5.02/latest/cqlr-c-a-5.02.html>.

¹⁷ Québec Regulation respecting the application of the Funeral Operations Act, OC 1194-2018, reg 119 <https://www.canlii.org/en/qc/laws/regu/cqlr-c-a-5.02-r-1/220140/cqlr-c-a-5.02-r-1.html>.

¹⁸ Newfoundland and Labrador Embalmers and Funeral Directors (Amendment) Act 2008, SNL 2023, ch 22, s 1(1) <https://www.canlii.org/en/nl/laws/astat/snl-2023-c-22/216411/snl-2023-c-22.html>.

¹⁹ Newfoundland and Labrador Embalmers and Funeral Directors (Amendment) Act 2008, SNL 2023, ch 22, s 1(4) <https://www.canlii.org/en/nl/laws/astat/snl-2023-c-22/216411/snl-2023-c-22.html>.

²⁰ Newfoundland and Labrador Embalmers and Funeral Directors (Amendment) Act 2008, SNL 2023, ch 22, s 4(1) <https://www.canlii.org/en/nl/laws/astat/snl-2023-c-22/216411/snl-2023-c-22.html>.

²¹ Newfoundland and Labrador Embalmers and Funeral Directors (Amendment) Act 2008, SNL 2023, ch 22, s 4(2) <https://www.canlii.org/en/nl/laws/astat/snl-2023-c-22/216411/snl-2023-c-22.html>.

been made about funeral directors and embalming, but no regulations appear to have been made about cremation or aquamation, at the time of publication.²²

Ontario

- 4.18 Amendments were made to relevant legislation in 2006, to include provision about new funerary methods. Legislative provisions about “crematoriums, cremation and crematorium services” were made to apply, “with necessary modifications, to establishments that provide alternative processes or methods of disposing of human remains and to those processes or methods”.²³
- 4.19 There is a power for the Lieutenant Governor in Council to make regulations “governing alternative processes and methods of disposing of human remains”.²⁴ No regulations have been made using this power. Instead, the “modifications” referred to in the legislation have been effected by the Registrar of the Bereavement Authority of Ontario, who has delegated responsibility to administer and enforce provisions under the legislation.²⁵ These include terms and conditions imposed on providers by way of a licence.
- 4.20 A consultation was launched by the Government of Ontario in March 2020 to review the adequacy of the approach to the regulation of emerging new funerary methods and to consider whether any changes are needed to legislation to address new developments.²⁶ The consultation paper stated that alkaline hydrolysis has been used in Ontario since May 2015. The consultation closed in August 2020. At the time of publication, the Government of Ontario has not yet responded to the consultation.
- 4.21 In the consultation paper, it was noted that a 2018 report by Public Health Ontario had concluded that “high temperature” alkaline hydrolysis (heating to 176.6 degrees Celsius for around six hours at an elevated pressure) was recognised as an “acceptable method for disinfection and disposal of human remains”.²⁷ The report had concluded that the “effluents” from high temperature alkaline hydrolysis were “unlikely to contain viable infectious agents when the process is conducted in accordance with the manufacturer’s instructions for use”. However, the paper stated that more

²² See Newfoundland and Labrador Office of the Legislative Council, *Table of Regulations under Embalmers and Funeral Directors Act, 2008* https://www.assembly.nl.ca/Legislation/sr/Tableregulations/tableofregulations_e07-1.htm.

²³ The Ontario Ministry of Government Services Consumer Protection and Service Modernization Act, SO 2006, ch 34, sch D, s 2 amends the Funeral, Burial, and Cremation Services Act, SO 2002, ch 33, s 1.1(2). The 2002 Act is found at: <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

²⁴ Ontario Funeral, Burial, and Cremation Services Act, SO 2002, ch 33, s 113(1)25.1 <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

²⁵ Ontario Government, *Regulating Alkaline Hydrolysis and Other Alternative Methods of Disposing of Human Remains under the Funeral, Burial and Cremation Services Act, 2002* (Consultation Paper, 2020) p 4 <https://www.regulatoryregistry.gov.on.ca/proposal/31772>.

²⁶ Ontario Government, *Regulating Alkaline Hydrolysis and Other Alternative Methods of Disposing of Human Remains under the Funeral, Burial and Cremation Services Act, 2002* (Consultation Paper, 2020) <https://www.regulatoryregistry.gov.on.ca/proposal/31772>.

²⁷ Ontario Government, *Regulating Alkaline Hydrolysis and Other Alternative Methods of Disposing of Human Remains under the Funeral, Burial and Cremation Services Act, 2002* (Consultation Paper, 2020) p 5 <https://www.regulatoryregistry.gov.on.ca/proposal/31772>.

research was required to confirm the effectiveness of “low temperature” alkaline hydrolysis (heating to 93.3 degrees Celsius for around 18 hours at atmospheric temperature).²⁸

- 4.22 Licensing requirements for alkaline hydrolysis include specifications about temperature, concentration of chemicals and timing. They also include provision for the wrapping of the body, a prohibition on co-mingling of remains during the process and the disposal of the resulting liquid, called “hydrolysate” (which is not defined as “human remains” under the relevant legislation). There are also stipulations regarding the keeping of performance data, regular inspections of the premises, safety and emergency protocols and design specifications.²⁹
- 4.23 Regulations relating to cremation have been modified to permit alkaline hydrolysis to be used for a body with a pacemaker and not to be used for a body with a radioactive implant within the first two years of implantation.³⁰
- 4.24 There is a prohibition on describing the alkaline hydrolysis process as cremation, and a stipulation that all contracts between the operator and the consumer must contain a specific statement defining alkaline hydrolysis.³¹

The US

Summary

- 4.25 The regulation of new funerary methods in the US has been dealt with at state level. Legislation has been passed in many states to allow alkaline hydrolysis and, in a smaller number of states, human composting.

Alkaline hydrolysis

- 4.26 Legislation enabling the use of alkaline hydrolysis has been passed in more than half of US states, starting with Minnesota in 2003.³²
- 4.27 Most states have classified alkaline hydrolysis as a form of cremation, whilst others, including Minnesota, Oregon and Wyoming, have defined it as a separate funerary method and developed regulations which are specific to alkaline hydrolysis.³³

²⁸ Ontario Government, *Regulating Alkaline Hydrolysis and Other Alternative Methods of Disposing of Human Remains under the Funeral, Burial and Cremation Services Act, 2002* (Consultation Paper, 2020) <https://www.regulatoryregistry.gov.on.ca/proposal/31772>.

²⁹ Bereavement Authority of Ontario, *Requirements for an Alternative Disposition Operator – Hydrolysis* (January 2020) <https://thebao.ca/wp-content/uploads/2020/09/AH-REQUIREMENTS-FINAL-V4.pdf>.

³⁰ Bereavement Authority of Ontario, *Requirements for an Alternative Disposition Operator – Hydrolysis* (January 2020) <https://thebao.ca/wp-content/uploads/2020/09/AH-REQUIREMENTS-FINAL-V4.pdf>.

³¹ Bereavement Authority of Ontario, *Requirements for an Alternative Disposition Operator – Hydrolysis* (January 2020) <https://thebao.ca/wp-content/uploads/2020/09/AH-REQUIREMENTS-FINAL-V4.pdf>.

³² See C Reid and B Kemmis, “Killing the funeral industry: the problem with states’ piecemeal approach to legalizing alternative methods of disposition” (2024) 59 *Wake Forest Law Journal* 997. See also Nolo, *Water Cremation and Aquamation Laws in Your State* (13 August 2024) <https://www.nolo.com/legal-encyclopedia/alkaline-hydrolysis-laws-your-state.html>.

³³ H M Marsh, “The Green New Death: A Legislative Framework to Promote and Legalize Green Funerary Alternatives” (2021) 12(2) *George Washington Journal of Energy and Environmental Law* 124.

- 4.28 Where states have included alkaline hydrolysis in the definition of cremation, this has been done in different ways. For example, alkaline hydrolysis is mentioned by name in Nevada’s legislation (as is natural organic reduction, or human composting).³⁴ However, in Colorado, the definition of cremation has been broadened to mean “the reduction of human remains to essential elements, the processing of the remains, and the placement of the processed remains in a cremated remains container”.³⁵
- 4.29 In New Hampshire, legislation was passed in 2006 overhauling the regulation of cremation and enabling the use of alkaline hydrolysis. However, when, two years later, a funeral home director sought permission to install an alkaline hydrolysis system, legislators decided to place a moratorium on issuing alkaline hydrolysis permits and the provision enabling the use of alkaline hydrolysis was subsequently repealed.³⁶

Human composting

- 4.30 The state of Washington was the first in the US to pass legislation regulating human composting, which came into force in 2020.³⁷ “Natural organic reduction”, another name for human composting, is defined in the legislation as “the contained, accelerated conversion of human remains to soil”.³⁸ The same legislation provided for regulation of alkaline hydrolysis.
- 4.31 Several other states have since passed legislation to regulate human composting.³⁹
- 4.32 The details of the regulation of human composting vary from state to state. For example, although Colorado, which was the second state to pass legislation about human composting, uses the same definition for natural organic reduction as Washington, there are differences in registration, licensing and inspection requirements.
- 4.33 In Washington, regulations provide that a human composting operator must collect samples of human remains for analysis, to check for various physical contaminants: arsenic, cadmium, lead, mercury, selenium and fecal coliform or salmonella. Human

³⁴ Nevada Revised Statutes, 451.607 (2024) (and natural organic reduction at 451.623) <https://law.justia.com/codes/nevada/chapter-451/statute-451-607/>.

³⁵ Colorado Revised Statutes, 12-135-103(4) (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-1/section-12-135-103/>.

³⁶ K Hansen, “Choosing to be Flushed Away: A National Background on Alkaline Hydrolysis and What Texas Should Know about Regulating Liquid cremations” (2012) 5 *Estate Planning & Community Property Law Journal* 145. Hansen says (p 159) that the provision was included “inconspicuously” and that law makers were “surprised ... that the provision had been inserted into the bill”.

³⁷ “The Right of Sepulcher (Disposition of Human Remains) Defined” (2023) *Restatement (Third) of Torts: Miscellaneous Provisions* § 1_48 D TD No 2. See also Team Earth, *Tracker: Where Is Human Composting Legal In The US?* (2024) <https://earthfuneral.com/resources/tracker-where-human-composting-legal>.

³⁸ Washington Administrative Code, WAC 246-500-010(15) <https://regulations.justia.com/states/washington/title-246/health-information/chapter-246-500/section-246-500-010/>.

³⁹ C Reid and B Kemmis, “Killing the funeral industry: the problem with states’ piecemeal approach to legalizing alternative methods of disposition” (2024) 59 *Wake Forest Law Journal* 997. See also Recompose, *Where Is Human Composting Legal?* (21 January 2025) <https://recompose.life/human-composting/legal-status/>.

remains, which include the soil produced by the human composting process,⁴⁰ must not be released if the samples exceed specified limits on the amount of each contaminant.⁴¹

- 4.34 In Colorado there are more restrictions on the use of the soil produced; it may not be sold or used by businesses to grow food for human consumption and the soil from more than one deceased person may not be combined without consent.⁴²
- 4.35 The legislation that makes provision for human composting in California will come into force in 2027 and requires rules and regulations to be made prescribing standards for human composting operators.⁴³

Scotland

Summary

- 4.36 New funerary methods are not currently available in Scotland. Since 2016, there has been a power in primary legislation for regulations to be made about new funerary methods. The Scottish Government has carried out a consultation about regulating alkaline hydrolysis, but, at the time of publication of this Consultation Paper, no regulations have been made.

Statutory power to make provision for new funerary methods

- 4.37 In Scotland there are two main pieces of legislation relating to burial and cremation: the Burial and Cremation (Scotland) Act 2016, and the accompanying Cremation (Scotland) Regulations 2019.⁴⁴ The 2016 Act repealed the Cremation Acts of 1902 and 1952, which still apply in England and Wales, as well as the Burial Grounds (Scotland) Act 1855.⁴⁵
- 4.38 Prior to the passing of the 2016 Act, the Scottish Government carried out a consultation on the proposed legislation. It asked whether respondents agreed that the 2016 Act should include a provision for Scottish Ministers to regulate new funerary

⁴⁰ The definition of “human remains” includes “remains following the process of ... natural organic reduction”, Washington Administrative Code, WAC 246-500-010(11) <https://regulations.justia.com/states/washington/title-246/health-information/chapter-246-500/section-246-500-010/>.

⁴¹ Washington Administrative Code, WAC 246-500-055 <https://regulations.justia.com/states/washington/title-246/health-information/chapter-246-500/section-246-500-055/>.

⁴² Colorado Revised Statutes, 12-135-105(1) (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-1/section-12-135-105/>.

⁴³ California Business and Professions Code, 7714.4 (2024) <https://law.justia.com/codes/california/code-bpc/division-3/chapter-12/article-6-6/section-7714-4/>. The rules and regulations are to be made by the Cemetery and Funeral Bureau within the Department of Consumer Affairs.

⁴⁴ SSI 2019 No 36.

⁴⁵ A full list of provisions repealed by the Burial and Cremation (Scotland) Act 2016 can be found in Sch 2 to that Act.

methods in the same way as burial and cremation. Of the 135 respondents to this question, 81% agreed, 7% disagreed and 12% didn't know.⁴⁶

4.39 Under the 2016 Act, there is a power to make provision for “ways of disposing of human remains”, supporting the potential introduction of new funerary methods in the future. Section 99 of the Act, which is in force, is entitled “Power to extend application of Act” and contains a power for Scottish Ministers to “provide that specified provisions of this Act or any other enactment apply, subject to any specified modifications, in relation to specified ways of disposing of human remains”. Section 99(2) provides that “specified” means “specified in the regulations”.

4.40 The explanatory notes accompanying the 2016 Act state that:

Section 99 provides the Scottish Ministers with a power to make regulations which will extend the provisions of this Act (or any other enactment) so that it can apply to other specified ways of disposing of human remains in the future. This will enable new and alternative methods of disposing of remains to be subject to the provisions of the Act and any regulations made by provisions contained in the Act.⁴⁷

4.41 At the time of publication, Scottish Ministers have not yet made any regulations using the power in this section, although the Scottish Government recently carried out a consultation on the regulation of alkaline hydrolysis.

Scottish Government consultation on the regulation of alkaline hydrolysis

4.42 The Scottish Government launched a consultation on the regulation of alkaline hydrolysis in August 2023, which closed in November 2023. The consultation was issued alongside related consultations on burial, inspections and funeral director licensing.⁴⁸

4.43 The Scottish Government noted that the responses to the consultation which preceded the 2016 Act had contained “strong support for the introduction of alkaline hydrolysis”.⁴⁹ It set out proposals for the ways in which alkaline hydrolysis should be regulated and the safeguards that should be put in place. It also set out areas where the wider legislative framework would apply to the regulation of providers.

4.44 The proposals covered topics including trade effluent consents, local authority involvement, opening and regulation of a facility, inspection, management plans, maintenance of equipment, training, statutory application forms, disposal of ashes, registers, sustainability, health and safety and a code of practice for alkaline

⁴⁶ Scottish Government, *Consultation Analysis Report on a proposed Bill relating to burial and cremation and other matters in Scotland* (Consultation Analysis Report of Responses, 2015) para 23 <https://www.gov.scot/publications/consultation-analysis-report-proposed-bill-relating-burial-cremation-matters-scotland/pages/3/>.

⁴⁷ Explanatory Notes to the Burial and Cremation (Scotland) Act 2016, para 261 <https://www.legislation.gov.uk/asp/2016/20/notes>.

⁴⁸ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/>.

⁴⁹ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) para 19 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/5/>.

hydrolysis. The consultation document indicated where proposals were similar to, or diverged from, the regulation of cremation.

- 4.45 It was proposed that the procedures for alkaline hydrolysis would be subject to the same legislative requirements and regulations as apply to cremation (under the 2016 Act and the 2019 Regulations). The operators, premises and process would also fall under the wider funeral sector inspection regime which is being developed following the 2016 Act.⁵⁰
- 4.46 Trade effluent consents would be obtained from Scottish Water under section 26 of the Sewerage (Scotland) Act 1968. Alternatively, the Scottish Environmental Protection Agency (SEPA) would be responsible for the regulation of the discharge if no public sewers were available. It would be for each operator to liaise with these bodies and agree the appropriate method for disposal, and then ensure they have the necessary consents before making a planning application to the local authority.⁵¹
- 4.47 Sustainability considerations were mentioned in relation to the use of water and the disposal of the “effluent”. It was noted that some studies have been conducted about the environmental impact of alkaline hydrolysis, but that “it is important to note that the evidence base in this area is limited”.⁵²
- 4.48 It was stated that the preference of the Scottish Environment Protection Agency was for discharge to a public sewer where feasible, although other options may be possible: discharge into the water environment, including rivers, following treatment and controls, or discharge via an infiltration system with biosolids containing residues being spread directly onto land. The volume of liquid produced and its high organic content was mentioned. The Scottish Government stated that it intends to develop a Strategic Environmental Assessment alongside development of the regulations.⁵³
- 4.49 The consultation covered the storage, use and disposal of the chemicals used in the process of alkaline hydrolysis. It was proposed that providers would need to undertake a thorough risk assessment in line with health and safety legislation. They would need to comply with the Health and Safety at Work etc Act 1974 and would be subject to regulation by the Health and Safety Executive.⁵⁴

⁵⁰ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) paras 31 to 32 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/7/>.

⁵¹ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) paras 24 to 26 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/7/>.

⁵² Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) para 53 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/8/>.

⁵³ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) paras 56 to 60 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/8/>.

⁵⁴ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) paras 61 to 62 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/9/>.

Analysis report

- 4.50 An analysis report was published by the Scottish Government in April 2024, setting out the findings of the consultation.
- 4.51 The “main findings” set out in the executive summary of the report were as follows.
- (1) The majority of respondents (84%) supported regulation of alkaline hydrolysis. Relevant factors were environmental considerations, increased options, personal preference and cost.
 - (2) Some respondents commented on the need for further research on the environmental impact of alkaline hydrolysis in comparison with other methods.
 - (3) There was strong support for regulation of alkaline hydrolysis to be similar to the regulation of cremation and for the application process and statutory forms to be in line with those for cremation.
 - (4) There were very mixed views and levels of support for the potential for other “sustainable disposal methods such as fertiliser use”, with some strongly in support and others strongly opposed.⁵⁵
- 4.52 The Scottish Government stated that it will consider its proposals for the regulations of alkaline hydrolysis in light of consultation findings and continue to engage with the funeral sector and other interested parties to inform the development of policy proposals.⁵⁶ In February 2025, the Government stated that it will be “establishing a working group with a focus on draft alkaline hydrolysis regulations”.⁵⁷

NEW FUNERARY METHODS AVAILABLE WITHOUT SPECIFIC LEGISLATION

Ireland

- 4.53 Alkaline hydrolysis is available in Ireland although this is not underpinned by specific legislation.
- 4.54 An alkaline hydrolysis facility has been opened in Ireland, which is the first to be operating in Europe.⁵⁸ The provider has described a three-year period of testing by

⁵⁵ Scottish Government, *Regulation of Alkaline Hydrolysis in Scotland (Water Cremation)* (Consultation Analysis Report, 2024) p 3 <https://www.gov.scot/publications/scottish-governments-consultation-analysis-report-regulation-alkaline-hydrolysis-scotland-water-cremation/pages/1/>.

⁵⁶ Scottish Government, *Regulation of Alkaline Hydrolysis in Scotland (Water Cremation)* (Consultation Analysis Report, 2024) p 40 <https://www.gov.scot/publications/scottish-governments-consultation-analysis-report-regulation-alkaline-hydrolysis-scotland-water-cremation/pages/7/>.

⁵⁷ Scottish Government, *Update on commencement of regulations on 1 March 2025 and associated work* (14 February 2025) <https://blogs.gov.scot/funeral-industry/2025/02/14/update-on-commencement-of-regulations-on-1-march-2025-and-associated-work/>.

⁵⁸ Resomation, *Where Is Resomation Permitted?* (2019) <https://resomation.com/our-funeral-partners/where-is-resomation-permitted/>.

Irish Water before a licence was granted.⁵⁹ It has been reported that the first alkaline hydrolysis processes were carried out at the end of September 2023.⁶⁰

- 4.55 The provider describes “rigorous treatment” of the resulting liquid to ensure environmental safety and to ensure that “the final water product is free from any contaminants” before it is released into the wastewater system.⁶¹
- 4.56 There is no legislation specifically addressing alkaline hydrolysis, or other new funerary methods, in Ireland. It appears that there is no legislation underpinning cremation either. It has been reported that many crematoria have developed their own codes of ethics.⁶²
- 4.57 There is nothing to indicate that alkaline hydrolysis is not lawful in Ireland. There may be relevant regulations about related issues such as water discharge and planning.

South Africa

- 4.58 Alkaline hydrolysis is available in South Africa, although it appears that this is not underpinned by specific legislation.
- 4.59 Regulations have been made under the National Health Act concerning the management of human remains, including regulations on the storage of certain remains and minimum requirements for crematoria.⁶³ It has been stated that these regulations are only applicable to burial and cremation.⁶⁴
- 4.60 However, it appears that there is some, limited provision of alkaline hydrolysis in South Africa. It has been reported that the first alkaline hydrolysis machine was in operation in South Africa in 2019⁶⁵ and, as of January 2024, was available in Cape

⁵⁹ Meath Chronicle, *Mortician Holds First Irish Water Cremation* (6 October 2023) <https://www.meathchronicle.ie/2023/10/06/mortician-holds-first-irish-water-cremation/>.

⁶⁰ Irish Independent, *Ireland hosts Europe's first ever eco-friendly water-based cremations* (7 October 2023) <https://www.independent.ie/irish-news/ireland-hosts-europes-first-ever-eco-friendly-water-based-cremations/a748688859.html>.

⁶¹ Pure Reflections, *Frequently Asked Questions* (2016) <https://www.purereflections.ie/frequentlyaskedquestions> (“What happens to the liquid by-product after the resomation process?”).

⁶² Citizens information, *Cremations* (2023) <https://www.citizensinformation.ie/en/death/practical-arrangements-after-a-death/cremations/>.

⁶³ South Africa Regulations Relating to the Management of Human Remains Government Notice No. R. 363 of 22 May 2013 are regulations made under the National Health Act 61 of 2003, s 68(1)(b) together with s 90(4)(c) https://www.gov.za/sites/default/files/gcis_document/201409/36473rg9960gon363.pdf.

⁶⁴ M. Slabbert and M Labuschaigne, “Aquamation: legal nail in burial and cremation’s coffin?” (2021) 54(1) *De Jure Law Journal* 359.

⁶⁵ The Village News, *Aquamation: when you go, go green* (29 January 2020) p 21 <https://online.fliphtml5.com/xkcxj/cgos/#p=21>.

Town and Gauteng.⁶⁶ It was also reported in 2021 that alkaline hydrolysis was to be used for the body of Archbishop Desmond Tutu, in South Africa.⁶⁷

OTHER DEVELOPMENTS

The Netherlands

Summary

4.61 New funerary methods are not currently available in the Netherlands. However, in 2020 the Health Council of the Netherlands issued a report on new funerary methods which set out guiding principles against which new processes could be assessed. It considered alkaline hydrolysis and human composting in light of these principles. The Health Council decided that alkaline hydrolysis, in principle, complied with these. It concluded that it did not have sufficient information to make a proper assessment about human composting.

Report of the Health Council of the Netherlands

4.62 In May 2020, following a request from the Minister of the Interior and Kingdom Relations, the Health Council of the Netherlands produced a report on “the admissibility of new techniques of disposing of the dead”.⁶⁸

4.63 Legislation in the Netherlands allows for burial, cremation, donation to science, with burial at sea in exceptional circumstances.⁶⁹ The report examined new funerary methods within the context of the doctrine that “bodies of our dead must be disposed of properly”. To reflect this doctrine, the Health Council noted that it was led by three guiding principles: safety, dignity, and sustainability.⁷⁰

4.64 The first of these values required the review to guarantee technical safety, by ensuring that systems are technically sound and do not pose any unacceptable risks to those working in the funeral industry or to anyone else present at the funeral. The value of safety also required that there should be no emission of high-risk agents, for example bacteria, viruses, metals, isotopes or radiation. Citing an incident in which a crematorium had to suspend operations when its cremation oven became contaminated with isotopes, the Health Council noted that it is important to know

⁶⁶ News 24, *Aquamation: A Funeral Service Innovation* (30 January 2024) <https://www.news24.com/news24/partnercontent/aquamation-a-funeral-service-innovation-20240129>.

⁶⁷ BBC News, *Desmond Tutu: Body of South African Hero to Be Aquamated* (31 December 2021) <https://www.bbc.co.uk/news/world-africa-59842728>.

⁶⁸ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead_.

⁶⁹ Under the Netherlands Corpse Disposal Act. See Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 3 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

⁷⁰ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) pp 3 to 4 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

whether a new funerary method can eliminate high-risk agents effectively and whether they comply with regulatory requirements.⁷¹

4.65 The second guiding principle was dignity, which required those reviewing new methods to ensure that:

- (1) any new method guaranteed decomposition of the body, meaning that only the skeleton was left;
- (2) there was no unintentional mixing of bodies and their remains (it must remain possible to link bodies and remains to a specific individual);
- (3) the decomposition process remained shielded from the public view; and
- (4) the integrity of bodies and their remains was guaranteed, and steps should be taken to prevent misappropriation of the body and remains.⁷²

4.66 Finally, the report noted the significance of sustainability when examining new methods. The Health Council decided that any new method must ensure the reduced use of finite resources (in particular, reducing the use of these materials as compared to burial and cremation), produce fewer harmful emissions than burial and cremation, and ensure a reduced overall use of available space compared to burial.⁷³

4.67 The Health Council examined two new funerary methods within the framework of its guiding principles: alkaline hydrolysis and human composting. It decided that alkaline hydrolysis in principle complied with the proposed assessment framework and the principles of safety, dignity and sustainability. It concluded that it was not able to make a proper assessment of human composting, given the information available at that time.⁷⁴ In the report, the Health Council stated that it “still has reasonable doubts about the extent to which this method complies with the other conditions of the assessment framework”, including “the emission of high-risk agents, the decomposition of the body, and the extent to which the decomposition process is shielded from public perception”.⁷⁵

⁷¹ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) pp 11 to 12 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

⁷² Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) pp 12 to 13 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

⁷³ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) pp 14 to 15 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

⁷⁴ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 17 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

⁷⁵ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 22 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

- 4.68 It has been reported, separately, that there is an alkaline hydrolysis facility in the Netherlands which is open and ready to start carrying out alkaline hydrolysis when legislation enables this.⁷⁶

New Zealand

Summary

- 4.69 New funerary methods are not currently available in New Zealand and the law is silent on whether they are lawful. A consultation by the Ministry of Health in 2019 set out options for reform in relation to new funerary methods. The Ministry's response to the consultation expressed support for reforms but, at the time of publication, no further action has been taken.

Report of the Law Commission of New Zealand

- 4.70 New Zealand's Law Commission carried out a review of burial and cremation law and the report was published in October 2015.⁷⁷ New funerary methods were not covered in detail in the report, nor were any recommendations made in relation to them, although it was noted that use of regulations to define an "approved cremator or device" would "enable the department administering the Act to approve new methods of disposing of bodies".⁷⁸ The Government's response to the report, in April 2016, did not mention new funerary methods.⁷⁹

Ministry of Health consultation

- 4.71 In 2019, the Ministry of Health published a consultation document titled "Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation".⁸⁰ This consultation document referred to many of the recommendations made by the Law Commission and was published with a view to assessing the viability of various options for implementation.
- 4.72 The consultation document included consideration of new funerary methods and their place in New Zealand law and put forward options for reform. It was noted that:

The law is unclear about whether other body disposal methods are legal. The Burial and Cremation Act 1964 (the Act) defines 'disposal' as '*including* burial and cremation' but otherwise is silent on this issue and does not explicitly provide for or prohibit other methods of body disposal. Regulation-making powers set out in the

⁷⁶ Resomation, *Where Is Resomation Permitted?* (2019) <https://resomation.com/our-funeral-partners/where-is-resomation-permitted/>.

⁷⁷ New Zealand Law Commission, *Death, Burial and Cremation: a new law for contemporary New Zealand* (Report 134, 2015) <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R134.pdf>.

⁷⁸ New Zealand Law Commission, *Death, Burial and Cremation: a new law for contemporary New Zealand* (Report 134, 2015) para 14.5 <https://www.lawcom.govt.nz/assets/Publications/Reports/NZLC-R134.pdf>.

⁷⁹ New Zealand Law Commission, *Burial and Cremation Law- Government Response to R134* (20 April 2016) <https://www.lawcom.govt.nz/assets/Publications/GovtResponse/NZLC-Government-response-R134.pdf>.

⁸⁰ New Zealand Government, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* (Consultation Document, 2019) https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation/supporting_documents/deathfuneralsburialandcremationconsultationdocumentjan2020v3.pdf.

Act allow only regulations related to managing cemeteries and burial grounds and cremation.⁸¹

- 4.73 The consultation document proposed that legislation should make provision for regulations to govern new funerary methods. Such regulations would “regulate all matters in relation to the establishment and operation of any new method of body disposal and dealing with remains”. A decision maker would have to consider how any new funerary method would ensure integrity and safety of the method for the provider, consumer, the public, and the environment, and would protect the dignity of deceased people and any cultural considerations. It would be an offence to use a non-approved funerary method to deal with the body of a deceased person.⁸²

Summary of responses

- 4.74 In 2021 the Ministry of Health published a summary of responses to its consultation. This indicated that there was support for implementing reforms to regulate new funerary methods. The key area for policy refinement was deciding how new funerary methods would be confirmed as acceptable.⁸³
- 4.75 Consultees had commented that a new legislative framework should be “flexible, accommodating, and responsive to advances in technology to allow for a wider range of body disposal options”. They had also suggested a centralised system to allow for approval of any new funerary method.⁸⁴
- 4.76 The submissions summary document noted that “further work is required to finalise the policy recommendations in this section”.⁸⁵

Update from the Ministry of Health

- 4.77 Following the Ministry of Health’s consultation document and subsequent summary of submissions, an update was published in June 2023. The Ministry stated that the COVID-19 pandemic had resulted in some delays in the policy response to the

⁸¹ New Zealand Government, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* (Consultation Document, 2019) para E1.1 (emphasis in original) https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation/supporting_documents/deathfuneralsburialandcremationconsultationdocumentjan2020v3.pdf.

⁸² New Zealand Government, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* (Consultation Document, 2019) p 79 https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation/supporting_documents/deathfuneralsburialandcremationconsultationdocumentjan2020v3.pdf.

⁸³ New Zealand Government, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation Summary of Submissions* (Summary of Submissions, 2021) p 11 https://www.health.govt.nz/system/files/2021-06/burial_and_cremation_act_1964_summary_of_subs_updated_untracked.pdf.

⁸⁴ New Zealand Government, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* (Summary of Submissions, 2021) p 98 https://www.health.govt.nz/system/files/2021-06/burial_and_cremation_act_1964_summary_of_subs_updated_untracked.pdf.

⁸⁵ New Zealand Government, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* (Summary of Submissions, 2021) p 100 https://www.health.govt.nz/system/files/2021-06/burial_and_cremation_act_1964_summary_of_subs_updated_untracked.pdf.

consultation and that the policy work in this area is being reassessed, including a consideration of:

whether a broader range of factors need to be considered than were initially covered in the consultation, particularly given the time that has passed since the Law Commission completed its report.⁸⁶

Queensland, Australia

- 4.78 The Queensland Law Reform Commission issued a report in 2011 entitled “A Review of the Law in relation to the Final Disposal of a Dead Body”.⁸⁷ The Commission reviewed Queensland’s laws on the rights and duties associated with the “final disposal of a dead body”. It considered whether, and to what extent, there should be a comprehensive legislative framework and whether any new legislation should provide for a dispute resolution mechanism. The report was published together with a draft Bill.
- 4.79 In the information paper which preceded the report, the Commission had noted that a method of final disposal of a dead body is lawful in Queensland unless it is prohibited. It asked for submissions on whether there were methods of disposal which people would like to use which are prohibited in law or practice and what methods of final disposal should be lawful in Queensland.⁸⁸
- 4.80 In its report the Commission noted the likelihood that new funerary methods would emerge with the development of new technologies. It noted that any new method developed would, to some degree, already be regulated by law on matters including public health, the environment and public order. However, these laws would have general application and their own focus, rather than being directly concerned with whether a new method is appropriate or whether there should be specific requirements for use of that method.⁸⁹
- 4.81 The Commission stated that an “aquamator for the disposal of human bodies” was installed on the Gold Coast in 2010 and that two “aquamations” (alkaline hydrolysis) were carried out, although it was no longer in operation.⁹⁰
- 4.82 The Commission recommended that existing legislation should be amended to make provision for new funerary methods by taking Victoria’s legislation as its model. The

⁸⁶ New Zealand Ministry of Health, *Burial and Cremation* (15 January 2025) <https://www.health.govt.nz/regulation-legislation/burial-and-cremation>.

⁸⁷ Queensland Law Reform Commission, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (Report No 69, 2011) https://www qlrc.qld.gov.au/___data/assets/pdf_file/0008/372545/r69.pdf.

⁸⁸ Queensland Law Reform Commission, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (Information Paper WP No 58, 2004) para 2.37 https://www qlrc.qld.gov.au/___data/assets/pdf_file/0007/372940/wp58.pdf.

⁸⁹ Queensland Law Reform Commission, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (Report No 69, 2011) para 2.45 https://www qlrc.qld.gov.au/___data/assets/pdf_file/0008/372545/r69.pdf.

⁹⁰ Queensland Law Reform Commission, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (Report No 69, 2011) para 2.15 https://www qlrc.qld.gov.au/___data/assets/pdf_file/0008/372545/r69.pdf.

Commission noted that the broad discretion conferred by this legislation was appropriate given the variety of issues that could be relevant depending on the nature of the new funerary method. However, it proposed some modifications. For example, it should be made clear that funerary methods other than burial or cremation may not be used without approval, by including a general prohibition on use of any new method without the relevant approval.⁹¹

- 4.83 The Commission noted that the purpose of its recommendations was to make clear which funerary methods were lawful in Queensland, while facilitating the development of new methods. However, it recommended that if there was a general demand for the use of a specific new method, it would be desirable for legislation to be passed to regulate that method, including provisions about any remains or “residue” and how these may be dealt with by the person carrying out the method.⁹²
- 4.84 The Commission’s recommendations about amendments to the 2003 Act in relation to new funerary methods have not been implemented by the Queensland Government at the time of publication.

⁹¹ Queensland Law Reform Commission, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (Report No 69, 2011) paras 2.49 and 2.53
https://www qlrc.qld.gov.au/ __data/assets/pdf_file/0008/372545/r69.pdf.

⁹² Queensland Law Reform Commission, *A Review of the Law in Relation to the Final Disposal of a Dead Body* (Report No 69, 2011) para 2.61
https://www qlrc.qld.gov.au/ __data/assets/pdf_file/0008/372545/r69.pdf.

Chapter 5: An overview of a regulatory framework

INTRODUCTION

- 5.1 In this chapter, we will consider options for the basis of a framework for the regulation of new funerary methods. We will look at examples from other jurisdictions and consider whether the following options might be appropriate: including new funerary methods in the definition of cremation, introducing a power to make secondary legislation (which includes regulations and orders) about new funerary methods and enabling a system of licensing. These options are not mutually exclusive, so two or more could be used together.
- 5.2 We provisionally conclude that new funerary methods should be defined and regulated separately from existing funerary methods, rather than being included in the definition of cremation. We also provisionally propose that there should be a power for the Government to make secondary legislation about individual new funerary methods and how they should be carried out. We invite views from consultees on whether licensing should form part of the regulation of new funerary methods.

INCLUDING NEW FUNERARY METHODS IN THE DEFINITION OF CREMATION: EXAMPLES

- 5.3 In a number of jurisdictions, the regulation of new funerary methods has been achieved by widening the definition of cremation. In some cases, alkaline hydrolysis or human composting have been named specifically as constituting cremation. In others, broader wording has been used with the aim of bringing new funerary methods in general into the definition of cremation.

Specific methods included in definition of cremation

New South Wales, Australia

- 5.4 In New South Wales, the relevant legislation states that cremation “includes disposal of a body by alkaline hydrolysis” and crematory “includes premises in which bodies are disposed of by alkaline hydrolysis”.¹ The provisions in the regulations relating to cremation therefore also apply to alkaline hydrolysis. These provisions cover matters such as documentation, application, permits, closing of crematories and stipulate that bodies must be cremated separately, and that cremation must commence within four hours of the body arriving at the crematory unless it is placed in a holding room.² The legislation does not include a separate definition of alkaline hydrolysis.

¹ New South Wales Public Health Regulation 2022, Sch 7
<https://legislation.nsw.gov.au/view/html/inforce/current/sl-2022-0502#sch.7>.

² New South Wales Public Health Regulation 2022, ss 98 to 110
<https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2022-0502>.

- 5.5 Although alkaline hydrolysis is included in the definition of cremation, New South Wales legislation provides for differences in the regulation of cremation and alkaline hydrolysis, for example with coffin requirements.³

Saskatchewan, Canada

- 5.6 In Saskatchewan, under the definition of cremation in the Funeral and Cremation Services Bylaws, cremation “includes alkaline hydrolysis”.⁴ The provisions in the bylaws that apply to cremation therefore also apply to alkaline hydrolysis. The bylaws include rules about licences and the provision of funeral services as well as rules specific to cremation such as:

- (1) maintenance of cremation equipment;
- (2) holding of bodies prior to cremation;
- (3) cremation container procedures;
- (4) identification and processing procedures;
- (5) packaging of cremated remains; and
- (6) cremation record keeping and forms.⁵

- 5.7 Alkaline hydrolysis is defined as:

a process whereby human remains are placed in a pressure vessel containing water and potassium hydroxide. With the introduction of heat and pressure the human remains are reduced to bone fragments.⁶

Nevada, USA

- 5.8 In Nevada, alkaline hydrolysis and human composting (termed “natural organic reduction” in its legislation) have both explicitly been included in the definition of cremation. In the relevant legislation, cremation is defined as “the technical process that reduces human remains to bone fragments or soil by using alkaline hydrolysis, incineration or natural organic reduction”.⁷

- 5.9 Alkaline hydrolysis is defined as the “reduction of human remains to bone fragments through a water-based process of dissolution using alkaline chemicals and agitation to accelerate natural decomposition” and the “processing of the hydrolyzed human

³ New South Wales Public Health Regulation 2022, s 89 <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2022-0502#sch.7>.

⁴ Funeral and Cremation Services Council of Saskatchewan Bylaws, 1000 <https://fcscs.ca/wp-content/uploads/The-Funeral-Cremation-Services-Bylaws-1-1.pdf>.

⁵ Funeral and Cremation Services Council of Saskatchewan Bylaws, 8000, 8010, 8020, 8050, 8060, 8080 and 8090 <https://fcscs.ca/wp-content/uploads/The-Funeral-Cremation-Services-Bylaws-1-1.pdf>.

⁶ Funeral and Cremation Services Council of Saskatchewan Bylaws, 1000(b) <https://fcscs.ca/wp-content/uploads/The-Funeral-Cremation-Services-Bylaws-1-1.pdf>.

⁷ Nevada Revised Statutes, 451.617 (2024) <https://law.justia.com/codes/nevada/chapter-451/statute-451-617/>.

remains after their removal from the container in which the process of dissolution occurs”.⁸ Natural organic reduction is defined as “the contained, accelerated conversion of human remains to soil”.⁹

- 5.10 The relevant legislation in Nevada contains provisions that apply to burial and cremation as well as specific rules about cremation. These would all apply to alkaline hydrolysis and human composting.¹⁰

New funerary methods in general included in definition of cremation

Florida, USA

- 5.11 In Florida’s legislation, the definition of cremation has been amended to mean “any mechanical or thermal process whereby a dead human body is reduced to ashes and bone fragments”. It also “includes any other mechanical or thermal process whereby human remains are pulverized, burned, re-cremated, or otherwise further reduced in size or quantity”.¹¹ Crematoria, including those performing alkaline hydrolysis, are regulated under chapter 497 of the Florida Statutes and must be licensed under that chapter to do so.¹²
- 5.12 Alkaline hydrolysis is available in Florida. We presume that the words “other mechanical or thermal process” and “otherwise further reduced” are intended to include alkaline hydrolysis in the definition of cremation. It would also include other new funerary methods that met the description.

Colorado, USA

- 5.13 The state of Colorado is a slightly unusual example, as alkaline hydrolysis is regulated as a form of cremation, whereas human composting is defined separately.
- 5.14 In Colorado’s legislation, the definition of cremation has been broadened potentially to include a range of new funerary methods. “Final disposition” means “the disposition of human remains by entombment, burial, cremation, natural reduction (human composting),¹³ or removal from the state”. Cremation is defined broadly as “the reduction of human remains to essential elements, the processing of the remains, and the placement of the processed remains in a cremated remains container”. The “reduction of human remains to essential elements” and “processing of the remains” are broad descriptions and could include various new funerary methods, including alkaline hydrolysis. In alkaline hydrolysis, the bones and teeth that remain after the

⁸ Nevada Revised Statutes, 451.607 (2024) <https://law.justia.com/codes/nevada/chapter-451/statute-451-607/>.

⁹ Nevada Revised Statutes, 451.623 (2024) <https://law.justia.com/codes/nevada/chapter-451/statute-451-623/>.

¹⁰ Nevada Revised Statutes, ch 451 (2024) <https://law.justia.com/codes/nevada/chapter-451/>.

¹¹ Florida Statutes, 497.005(20) (2024) <https://law.justia.com/codes/florida/title-xxxiii/chapter-497/part-i/section-497-005/>.

¹² Florida Statutes, 497.606(1) (2024) <https://law.justia.com/codes/florida/title-xxxiii/chapter-497/part-vi/section-497-606/>

¹³ “Natural reduction” is defined as “the contained, accelerated conversion of human remains to soil” in Colorado Revised Statutes, 2-4-401 (2016) <https://law.justia.com/codes/colorado/2016/title-2/statutes-construction-and-revision/article-4/part-4/section-2-4-401>.

main part of the process may be processed and placed in a container, as with cremation ashes.¹⁴ “Natural reduction”, which is mentioned separately, and “naturally” reducing human remains, are excluded from the definition of cremation.¹⁵

- 5.15 Colorado has recently passed legislation requiring funeral directors, embalmers and those practising cremation or human composting to be licensed from 1 January 2027.¹⁶ Until 31 January 2031, a provisional licence may be issued to experienced practitioners who do not meet the licensing requirements.¹⁷

Northwest Territories, Canada

- 5.16 In the Crematorium Regulations of Canada’s Northwest Territories, cremation is defined as “disposal of a dead body in a crematorium, by incineration or by any other physical or chemical process”.¹⁸ The words “physical or chemical process” appear to be deliberately broad, with the apparent aim of encompassing a range of new funerary methods.
- 5.17 The definitions in the Northwest Territories’ Vital Statistics Act apply, where “cremation” is defined as “disposal of a dead body in a crematorium, by incineration or by any other physical or chemical process”. “Crematorium” is defined as “a building or a part of a building used for the purpose of cremation and includes appliances and other equipment incidental or ancillary to that purpose”.¹⁹
- 5.18 Under the Crematorium Regulations, a crematorium may not operate unless it has been issued with a permit by the Chief Public Health Officer.²⁰ Before an operator makes a change to a process, technology, appliance or other equipment used in the

¹⁴ For more details on the process of alkaline hydrolysis, see Chapter 2.

¹⁵ Colorado Revised Statutes, 12-135-103(4) (2016) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-1/section-12-135-103/>.

¹⁶ Colorado Revised Statutes, 12-135-501 (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-5/section-12-135-501/>; and 12-135-601 (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-6/section-12-135-601/>; and 12-135-702 (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-7/section-12-135-702/>; and 12-135-802 (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-8/section-12-135-802/>; and 12-135-902 (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-9/section-12-135-902/>.

¹⁷ Colorado Revised Statutes, 12-135-501(4) (2024) <https://law.justia.com/codes/colorado/title-12/business-professions-and-occupations/article-135/part-5/section-12-135-501/>.

¹⁸ Northwest Territories Vital Statistics Act, SNWT 2011, ch 34, s 1 <https://www.canlii.org/en/nt/laws/stat/snwt-2011-c-34/latest/snwt-2011-c-34.html>. The definitions apply to the Northwest Territories Crematorium Regulations, NWT Reg 001-2020 <https://www.canlii.org/en/nt/laws/regu/nwt-reg-001-2020/latest/nwt-reg-001-2020.html>.

¹⁹ These definitions are from the Northwest Territories Vital Statistics Act, SNWT 2011, ch 34, s 1 <https://www.canlii.org/en/nt/laws/stat/snwt-2011-c-34/latest/snwt-2011-c-34.html>. They apply to the Northwest Territories Crematorium Regulations, NWT Reg 001-2020 <https://www.canlii.org/en/nt/laws/regu/nwt-reg-001-2020/latest/nwt-reg-001-2020.html>.

²⁰ Northwest Territories Crematorium Regulations, NWT Reg 001-2020, reg 4 <https://www.canlii.org/en/nt/laws/regu/nwt-reg-001-2020/latest/nwt-reg-001-2020.html>.

crematorium, the operator must apply to the Chief Public Health Officer for approval to do so.²¹

Québec, Canada

- 5.19 In Québec, the Funeral Operations Act, section 2(4) defines “cremation services” as “services consisting of disposing of a body by fire or any other physical or chemical process”.²²
- 5.20 Regulations about the application of the Funeral Operations Act refer to alkaline hydrolysis as “alkaline hydrolysis cremation”.²³
- 5.21 A licence is required to carry out “funeral services”, which include cremation services.²⁴

A LICENSING OR PERMITTING SYSTEM: EXAMPLES

- 5.22 Many states in Canada and the United States of America (the US) have systems of licensing for cremation and often other funeral-related services. When provision is made for new funerary methods in legislation, these are also regulated by way of a licensing system. Under such systems, licences or permits may be issued to individual providers of new funerary methods. Generally, providers may not operate without a licence or permit.
- 5.23 Many, although not all, jurisdictions that have included new funerary methods in the definition of cremation also have licensing systems.

Ontario, Canada

- 5.24 The Funeral, Burial and Cremation Services Act 2002 sets out the framework for the regulation of funerary methods. Section 1.1(2) of that Act states that the provisions dealing with “crematoriums, cremation and crematorium services” apply “with necessary modifications, to establishments that provide alternative processes or methods of disposing of human remains and to those processes or methods”.²⁵
- 5.25 The Bereavement Authority of Ontario (the BAO), led by a registrar, has been given delegated authority to administer provisions of the Funeral, Burial and Cremation

²¹ Northwest Territories Crematorium Regulations, NWT Reg 001-2020, reg 9 <https://www.canlii.org/en/nt/laws/regu/nwt-reg-001-2020/latest/nwt-reg-001-2020.html>.

²² Québec Funeral Operations Act 2016, CQLR ch A-5.02, s 2(4) <https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-5.02/latest/cqlr-c-a-5.02.html>.

²³ Québec Regulation respecting the application of the Funeral Operations Act, OC 1194-2018, reg 119 <https://www.canlii.org/en/qc/laws/regu/cqlr-c-a-5.02-r-1/220140/cqlr-c-a-5.02-r-1.html>.

²⁴ Québec Funeral Operations Act 2016, CQLR ch A-5.02, s 5 <https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-5.02/latest/cqlr-c-a-5.02.html>.

²⁵ Ontario Funeral, Burial and Cremation Services Act, SO 2002, ch 33, s 1.1(2) <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

Services Act 2002 as an administrative authority under the Safety and Consumer Statutes Administration Act 1996.²⁶

- 5.26 Under the 2002 Act, all crematorium operators and those offering crematorium services to the public must be licenced.²⁷ The registrar may impose terms and conditions on providers of new funerary methods (“hydrolysis” is mentioned on the BAO’s website) by way of a licence.²⁸ The registrar may issue or renew licences, subject to conditions that they consider appropriate, and may also include new conditions on licences that have already been issued or renewed. The registrar has powers of refusal or revocation of a licence.²⁹
- 5.27 There is a power in the 2002 Act for the government to make regulations “governing alternative processes and methods of disposing of human remains”.³⁰ It appears that no regulations have been made using this power.

Saskatchewan, Canada

- 5.28 As set out at paragraph 5.6 above, in Saskatchewan alkaline hydrolysis is included in the definition of cremation.³¹ With very limited exceptions, no person may own a crematorium without a licence.³²
- 5.29 The legislation sets out steps that a person who wishes to obtain or renew a licence must take. For example, they must apply to the Funeral and Cremation Services Council in a form prescribed by the council, pay a fee and produce evidence that they have complied with the Funeral and Cremation Services Act and relevant regulations and bylaws.³³ When the Council is issuing, renewing or reinstating a licence, it can impose terms that it considers appropriate. The Council may issue a temporary licence where an applicant does not comply with the statutory requirements if there are special circumstances, as set out in the relevant bylaws.³⁴

²⁶ Ontario Safety and Consumer Statutes Administration Act 1996 <https://www.canlii.org/en/on/laws/stat/so-1996-c-19/216564/so-1996-c-19.html>. See also Bereavement Authority of Ontario, *About the BAO* (27 September 2024) <https://thebao.ca/about-the-bao>.

²⁷ Ontario Funeral, Burial, and Cremation Services Act, SO 2002, ch 33, s 6(1) <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

²⁸ Ontario Funeral, Burial, and Cremation Services Act SO 2002, ch 33, s 1.1(2) <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

²⁹ Ontario Funeral, Burial, and Cremation Services Act, SO 2002, ch 33, ss 16 to 17 <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

³⁰ Ontario Funeral, Burial, and Cremation Services Act 2002, s 113(1)(25.1) <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>.

³¹ Funeral and Cremation Services Council of Saskatchewan Bylaws, 1000 <https://fcscs.ca/wp-content/uploads/The-Funeral-Cremation-Services-Bylaws-1-1.pdf>.

³² Saskatchewan Funeral and Cremation Services Act 1999 ch F-23.3, ss 3 and 4 <https://www.canlii.org/en/sk/laws/astat/ss-1999-c--f-23.3/latest/ss-1999-c--f-23.3.html>.

³³ Saskatchewan Funeral and Cremation Services Act 1999 ch F-23.3, s 6 <https://www.canlii.org/en/sk/laws/astat/ss-1999-c--f-23.3/latest/ss-1999-c--f-23.3.html>.

³⁴ Saskatchewan Funeral and Cremation Services Act 1999 ch F-23.3, ss 11 to 12 <https://www.canlii.org/en/sk/laws/astat/ss-1999-c--f-23.3/latest/ss-1999-c--f-23.3.html>.

Washington, USA

- 5.30 Legislation in the state of Washington provides that human remains, except where they are lawfully removed from the state for burial elsewhere, “must be decently buried, undergo cremation, alkaline hydrolysis, or natural organic reduction”.³⁵ We refer here to natural organic reduction as human composting. A person may not carry out or operate a facility that carries out cremation, alkaline hydrolysis or human composting without a licence or endorsement under the relevant legislation.³⁶
- 5.31 The website of the Washington State Department of Licensing contains information on how to apply for a licence for a “reduction facility”, which includes facilities for cremation, alkaline hydrolysis and natural organic reduction. It states that the facility “must comply with all city or county zoning, health, and ecology laws and rules”.³⁷
- 5.32 There are detailed regulations covering some matters that are common to all handling of human remains. Other regulations are specific to alkaline hydrolysis or human composting. For example, regulations about alkaline hydrolysis include a requirement for a vessel that reaches a minimum temperature of 250 degrees Fahrenheit (121 degrees Celsius) for a minimum of 30 minutes.³⁸ There are detailed provisions about testing of remains following human composting.³⁹
- 5.33 Violation of “any regulation affecting the handling, custody, care, transportation, or disposition of human remains” may result in sanctions including revocation or suspension of a licence.⁴⁰

A POWER TO MAKE REGULATIONS ABOUT NEW FUNERARY METHODS: EXAMPLES

- 5.34 In England and Wales, some provisions about cremation are set out in primary legislation. There is also a duty for the Secretary of State to make regulations about cremation, and most provisions are found in these regulations.⁴¹ This is a duty, not a power, as we explore at paragraphs 5.57 to 5.60 below. It would be possible for a

³⁵ Revised Code of Washington, 68.50.110 (2024) <https://law.justia.com/codes/washington/title-68/chapter-68-50/section-68-50-110/>.

³⁶ Revised Code of Washington, 68.05.175 (2024) <https://law.justia.com/codes/washington/title-68/chapter-68-05/section-68-05-175/>; and 18.39.217 (2024) <https://law.justia.com/codes/washington/title-18/chapter-18-39/section-18-39-217/>. The licence or endorsement is to be issued under ch 18.39.

³⁷ Washington State Department of Licensing, *Get Your License: Reduction Facilities* (2025) <https://dol.wa.gov/professional-licenses/reduction-facilities/get-your-license-reduction-facilities#whoneedsalicense>.

³⁸ Washington Administrative Code, WAC 246-500-053(2)(a) <https://regulations.justia.com/states/washington/title-246/health-information/chapter-246-500/section-246-500-053/>.

³⁹ Washington Administrative Code, WAC 246-500-055(2)(c) <https://regulations.justia.com/states/washington/title-246/health-information/chapter-246-500/section-246-500-055/>.

⁴⁰ Revised Code of Washington, 18.39.410(5) (2024) <https://law.justia.com/codes/washington/title-18/chapter-18-39/section-18-39-410/>.

⁴¹ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841).

power to make regulations about individual new funerary methods to be set out in primary legislation, in a similar way.

- 5.35 As indicated above, many of the examples of legislation dealing with new funerary methods come from jurisdictions such as provinces in Canada and states in the US where there are systems of licensing for new funerary methods, as well as other related areas. The requirement for a licence may sit alongside other legislation containing detailed regulations, as in Washington. The main example of a power to make regulations about new funerary methods is the law in Scotland.

Scotland

- 5.36 In Scotland, the Scottish Ministers have a power to make regulations which apply provisions in the Burial and Cremation (Scotland) Act 2016, or any other enactment, to “specified ways of disposing of human remains”. The regulations may specify which provisions are applied, the ways of “disposing” of human remains to which they apply, and any modifications to the provisions.⁴²
- 5.37 This is a fairly broad power, although it is limited to making existing provisions that are already set out in legislation applicable to new funerary methods, with modifications, rather than creating entirely new provisions.
- 5.38 Although the Scottish Government has carried out a public consultation on the possible future regulation of alkaline hydrolysis,⁴³ it has not yet made any regulations under this power at the time of publication.

New Zealand

- 5.39 New Zealand has not introduced legislation about new funerary methods. However, as set out in more detail at paragraphs 4.71 to 4.73, the Ministry of Health of New Zealand carried out a consultation in 2019 entitled “Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation”.⁴⁴ In the consultation document it proposed that new legislation should provide for regulations to govern new funerary methods.

ANALYSIS

Including new funerary methods in the definition of cremation

- 5.40 It is not our intention, in this sub-project, to make recommendations about which new funerary methods (if any) should be regulated in England and Wales. We therefore do not consider in any detail whether alkaline hydrolysis or human composting should be included in the definition of cremation. However, we consider below the possibility of

⁴² Burial and Cremation (Scotland) Act 2016, s 99. See paras 4.34 to 3.39 of this Consultation Paper for more details.

⁴³ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/>.

⁴⁴ New Zealand Ministry of Health, *Death, Funerals, Burial and Cremation: a Review of the Burial and Cremation Act 1964 and Related Legislation* (Consultation Document, 2019) https://consult.health.govt.nz/environmental-and-border-health/death-funerals-burial-and-cremation/supporting_documents/deathfuneralsburialandcremationconsultationdocumentjan2020v3.pdf.

including new funerary methods more generally in the definition of cremation. We conclude that this would not be a satisfactory way forward.

The definition of cremation

5.41 The definition of cremation is set out in the Cremation (England and Wales) Regulations 2008 as “the burning of human remains”.⁴⁵ The duty under which the 2008 regulations were made is set out in the Cremation Act 1902 and includes reference to regulations about the following:

- (1) the maintenance and inspection of crematoria;
- (2) prescribing in what cases and under what conditions the burning of any human remains may take place;
- (3) directing the disposition or interment of the ashes;
- (4) prescribing the forms of the notices, certificates and applications to be given or made before any such burning is permitted to take place; and
- (5) regulations as to the registration of burnings.⁴⁶

5.42 The definition of “crematorium” in the 1902 Act includes the wording “any building fitted with appliances for the purpose of burning human remains”.⁴⁷ This definition has been in the 1902 Act since it was passed. Since that time, therefore, cremation has been legally understood as the burning of human remains.

5.43 If the definition of cremation were to be amended to include new funerary methods, the legislation that currently applies to cremation would also apply to new funerary methods. This legislation includes the 1902 Act, the Cremation Act 1952 and the 2008 regulations, which, as mentioned above, contain provisions about matters such as opening and closing of crematoria, maintenance and inspection of crematoria and disposal of ashes.

New funerary methods

5.44 Some new funerary methods might appear to be comparable to cremation and it might be thought that these should be regulated in the same way as cremation. However, even alkaline hydrolysis, a process that takes place over an analogous period of time that results in some similar material being left afterwards, is a very different process from cremation. It seems very likely that some separate provisions would be needed for its regulation.

5.45 Although there may be some parallels between a new funerary method and cremation, they will never be exactly the same. A new funerary method must be distinct from both cremation and burial (see Chapter 2). In England and Wales, there are provisions in both primary and secondary legislation that are specific to cremation. Simply expanding the definition of cremation to include new funerary methods would

⁴⁵ SI 2008 No 2841, reg 2.

⁴⁶ Cremation Act 1902, s 7.

⁴⁷ Cremation Act 1902, s 2.

be problematic, because some of the regulations about cremation would not be relevant to the new funerary method, whilst new regulations may be needed that are not relevant to cremation.

- 5.46 For example, remains from human composting are quite different to those from cremation, so Government might want to treat them in a different way to cremation ashes. For alkaline hydrolysis, new regulations may be needed about storage and disposal of the alkaline chemicals used in the process. For any new funerary method, it is possible that new regulations may be required stating that the method must not be used where certain pathogens are present.
- 5.47 Amending the definition of cremation may appear at first to be a simple solution. However, the consequential changes that might be required to regulate new funerary methods effectively, whether through a licensing system or further changes to legislation, arguably negate this simplicity.
- 5.48 Many of the jurisdictions that include new funerary methods in their definition of cremation have systems of licensing for new funerary methods, including Saskatchewan and Nevada which are mentioned at paragraphs 5.6 and 5.8 above. In such a system, it would be possible for the terms of a licence for a new funerary method to differ from the terms of a licence for cremation. We discuss licensing in more detail below and note that that this would be a significant change from the current regulation of burial and cremation in England and Wales.
- 5.49 Without a licensing system for new funerary methods, if the definition of cremation were amended to include new funerary methods, it seems likely that it would be necessary to make further amendments to legislation that would enable different provision to be made for different types of “cremation” (which could be cremation, as currently defined, or various new funerary methods).
- 5.50 Furthermore, we consider that the change to the definition could be confusing, particularly when the accepted understanding of cremation is of such long standing. It could be misleading for those who are choosing a funerary method, which could have a negative impact on bereaved people. It would also mean the ordinary and widespread understanding and usage of the term currently would need to become entirely different.
- 5.51 It is also possible that there may be a detrimental impact on those who belong to certain faiths, for whom cremation is the preferred funerary method. For example, cremation is traditionally used as part of Hindu funerals, as it is seen as an important part of severing the tie between one body and the next, as the soul leaves the body and re-enters a new one.⁴⁸ If new funerary methods were to be included in the definition of cremation, this may lead to confusion and the possibility that methods other than cremation could be used when they may not have been wanted.
- 5.52 Other issues may arise in future. In the third sub-project within this project, on Rights and Obligations relating to Funerary Methods, Funerals and Remains, we will be

⁴⁸ See Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 1.130 and H Hadders, “Establishment of Electric Crematorium in Nepal: Continuity, Changes and Challenges” (2017) 23 *Mortality* 19.

considering whether it should be possible for a person to specify that only certain funerary methods may be used on their body after their death, whether for religious or other reasons. If the definition of cremation was broadened, it may be difficult to enable this sort of decision to be made with clarity.

- 5.53 Our aim is to make recommendations about a framework that is future-proof and can enable the regulation of methods that emerge in future. Future methods may have very few similarities to cremation which would mean that many amendments would need to be made to the legislation to enable the system to work for these new funerary methods.
- 5.54 Overall, we do not see that there is any useful advantage in amending the definition of cremation to include new funerary methods, rather than referring separately to new funerary methods and enabling these to be approved and regulated.
- 5.55 Defining new funerary methods separately from cremation would give clarity about the differences between regulation of cremation and regulation of new funerary methods, whilst making it easier to make separate provision for different new funerary methods. It would not, however, preclude future regulations mirroring existing regulations for burial or cremation, where such mirroring was suited to that particular new funerary method.

Consultation Question 4.

- 5.56 We provisionally propose that new funerary methods should be defined and regulated separately from existing funerary methods (rather than, for example, being included in the definition of cremation).

Do consultees agree?

A power to make regulations

Cremation Act 1902: a duty to make regulations

- 5.57 The Cremation Act 1902 contains a duty for the Secretary of State to:

make regulations as to the maintenance and inspection of crematoria, and prescribing in what cases and under what conditions the burning of any human remains may take place, and directing the disposition or interment of the ashes, and prescribing the forms of the notices, certificates and applications to be given or made before any such burning is permitted to take place ... and also regulations as to the registration of such burnings as have taken place. Each such application shall be verified in such manner as the Secretary of State may by such regulations prescribe ... All statutory provisions relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in courts

and otherwise, shall apply to the register of burnings directed by such regulations to be kept.⁴⁹

- 5.58 When the Cremation Act 1902 was passed, cremations were already being carried out. In 1884, it had been held in a criminal case that cremation (the burning of a body) which was not covered by any legislation at the time, was lawful as long as it did not go against established laws of the time, such as amounting to a public nuisance or preventing a coroner's inquest.⁵⁰ Several local Acts of Parliament had subsequently been passed enabling councils or corporations to establish crematoria.⁵¹ The Cremation Act 1902 required the Secretary of State to make regulations about cremation; it was not simply an option.
- 5.59 This provision requires the Secretary of State to make regulations about a broad range of matters relating to cremation including "in what cases and under what conditions the burning of any human remains may take place".⁵²

A power, not a duty

- 5.60 The duty to make regulations about cremation, set out in the Cremation Act 1902,⁵³ was imposed at a time when cremations were already happening. It was in this context that Parliament decided that a system of regulation must be imposed, given the urgent need for cremation to be regulated. New funerary methods are not being used in England and Wales at the time of writing. As we set out in Chapter 3, the use of new funerary methods may be prohibited by death registration legislation. We therefore consider that a power to make regulations, giving the Government discretion as to which methods are regulated and when, would be more appropriate than a duty to do so.

A power to make existing legislation applicable to new funerary methods or a power to make new provisions?

- 5.61 As many jurisdictions, including states in the US and provinces and territories in Canada, have introduced licensing systems for new funerary methods, we do not have many examples of regulation-making powers. The main example is Scotland, where legislation enables Scottish Ministers to make regulations making provisions in any enactment applicable to specified new funerary methods, "subject to any specified modifications".⁵⁴
- 5.62 If a new funerary method emerged with characteristics that necessitated regulations to be made that were completely different from any existing provisions, it is possible that there could be a dispute as to whether a power such as this was broad enough for these regulations to be made.

⁴⁹ Cremation Act 1902, s 7.

⁵⁰ *R v Price* (1884) 12 QBD 247.

⁵¹ Such as the Cardiff Corporation Act 1894, s 71.

⁵² Cremation Act 1902, s 7.

⁵³ Cremation Act 1902, s 7.

⁵⁴ Burial and Cremation (Scotland) Act 2016, s 99.

- 5.63 If England and Wales had a power to extend the Cremation (England and Wales) Regulations 2008 to a specified new funerary method, regulations about maintenance and inspection of crematoria could be modified to apply to the equivalent premises for a new funerary method. Similarly, regulations about the disposal of ashes could be modified to make provision for other material that remains after a new process. However, there may be a question as to whether the power was sufficient to make, for example, a regulation preventing the use of a new funerary method where certain pathogens were present. This may appear to be an entirely new regulation rather than a modification to an existing provision.
- 5.64 It might appear that a possible solution to this would be to create a power to extend the application of existing primary legislation to new funerary methods to make the power in section 7 of the 1902 Act applicable to new funerary methods. However, this would involve broadening the scope of the application of a power contained in primary legislation by means of secondary legislation. We think that this would be considered problematic from a constitutional point of view. It could also be unclear to members of the public which provisions had been extended to new funerary methods.
- 5.65 We consider that it would be more straightforward and effective to create a power to make regulations about new funerary methods that is not limited to extending the application of existing legislation. This would be simpler, more accessible and easier to understand. It would more closely mirror the approach for cremation in England and Wales, whilst providing flexibility so that different regulations could be made for individual new funerary methods.
- 5.66 We aim to create a legal framework for new funerary methods that is, as far as possible, future-proof. In the chapters that follow we will consider elements of a framework to be set out in primary legislation including key provisions about the regulation of new funerary methods and the status of unregulated new funerary methods. This includes consideration of whether the creation of criminal offences would be appropriate. In this context, we think that it would be appropriate to have a fresh power to make regulations about new funerary methods that is not contingent on other legislation.
- 5.67 A power to make new regulations, set out in primary legislation about new funerary methods, would also be more clearly understandable by members of the public. This would be in line with the Law Commission's aim of making the law as fair and simple as possible.
- 5.68 We provisionally propose that the main basis of a legal framework for new funerary methods should be a new power to make regulations about individual new funerary methods. We consider that this power should enable regulations to be made approving the use of specific new funerary methods and setting out how they should be carried out. We discuss the topics that could be covered by detailed regulation in Chapter 6.
- 5.69 Primary legislation would not specify the new funerary methods that could be regulated; that would be a decision for Government. Any regulations made under this power would need to define clearly the new funerary method to be regulated. As a result, we do not intend that this power could be used to issue regulations covering all new funerary methods without each method being defined. Before making regulations

under the new power, the Government would have to consider the new method and be satisfied that it was a new funerary method capable of regulation. For example, it would need to decide that it was not simply a variation within the existing categories of burial, cremation or burial at sea.

Consultation Question 5.

5.70 We provisionally propose that new legislation for the regulation of new funerary methods should contain a power to make regulations approving the use of specific new funerary methods and setting out how they should be carried out.

Do consultees agree?

A licensing system?

- 5.71 It would also be possible to introduce a power to make regulations approving the use of specific new funerary methods alongside a requirement for operators to be licensed, although this has not commonly been done elsewhere. Alternatively, there could be a power for Government to make provision for licenses in regulations about specific new funerary methods.
- 5.72 The use of new funerary methods in England and Wales would be novel. Any system of regulation would need to ensure that there were appropriate safeguards in place. Stakeholders have told us that this is important. It could be said that a licensing system could assist with this, because no-one would be able to operate a new funerary method without having successfully applied for a licence.
- 5.73 A system of licensing could also provide flexibility in circumstances where there may be a number of new funerary methods that are similar to each other in some ways but different in others. The licenses issued could be tailored to the individual methods, which could be simpler than making new regulations for each method. There may also be variations within a new funerary method that could be dealt with by having different licences for different variations.⁵⁵
- 5.74 However, the effectiveness of safeguards would depend on the terms of the licence and the extent to which inspection of a proposed facility, or a facility that was in use, was carried out.
- 5.75 If there was a power to make regulations with no licensing system, safeguards could be provided in other ways. For example, the regulations could make detailed provision about matters such as maintenance and inspection. We explore the possible scope of future regulations further in Chapter 6.
- 5.76 Jurisdictions that have introduced systems of licensing for new funerary methods tend already to have licensing systems for related practices, such as cremation, embalming or funeral services. For example, in Ontario, the authority that administers licences for

⁵⁵ See Chapter 2 of this Consultation Paper for a description of some of the variations within alkaline hydrolysis and human composting.

new funerary methods may also issue licences for cemetery operators, crematorium operators, sale representatives, funeral directors, transfer service sales representatives and funeral planners.⁵⁶

- 5.77 England and Wales does not have licensing systems for burial or cremation, or related matters such as funeral directors or embalming. The Human Tissue Authority administers licences for some activities that relate to the bodies of deceased people including post-mortem examinations and removal of material from a deceased person. However, this is within a broader system of licensing for other matters involving human tissue that do not relate to the bodies of deceased people.⁵⁷
- 5.78 Introducing a system of licences for burial and cremation would be a wholesale change and we have not considered it in our sub-project on burial and cremation. It would be outside the scope of the Burial, Cremation and New Funerary Methods project to consider whether such a system should be introduced for related areas, such as funeral directors.
- 5.79 If a licensing system were to be introduced solely for new funerary methods, this would create a distinction between the regulation of burial and cremation on one hand and new funerary methods on the other. Some stakeholders have indicated that they think such distinctions should be avoided. We would like to understand whether having a licensing system, or the possibility of a licensing system, for new funerary methods would deter providers of burial or cremation from offering new funerary methods or deter new providers from entering the market.
- 5.80 If, however, there was a power for the Government to make regulations about licensing alongside other regulations, rather than a requirement in primary legislation for licences to be obtained, it would be possible for some new funerary methods to be regulated by licences but others to be regulated by legislation only.
- 5.81 There are arguments for and against the introduction of a licensing system and we have not made a provisional proposal about this. We would like to hear views from consultees about whether there could be a role for licensing in regulation of new funerary methods.
- 5.82 If new funerary methods were to be regulated by way of a licensing system, there are a number of issues that would need to be considered, including the following:
- (1) Who would issue and administer licences? This could be, for example, a government department, local authorities or a regulating body set up for this purpose. There would be resourcing and funding implications in relation to this issue.

⁵⁶ These are established under the Ontario Funeral, Burial and Cremation Services Act 2002 <https://www.canlii.org/en/on/laws/stat/so-2002-c-33/196608/so-2002-c-33.html>. See also Bereavement Authority of Ontario, *Licensing* (20 June 2024) <https://thebao.ca/for-professionals/cemeteries-crematoriums/licensing/>; and Bereavement Authority of Ontario, *Licensing (Funeral Transfer Service Professionals)* (4 March 2025) <https://thebao.ca/for-professionals/funeral-transfer-service-professionals/licensing/>.

⁵⁷ Human Tissue Act 2004, s 6 and Sch 3.

- (2) Who could apply for a licence and what would they need to provide in order to qualify for a licence? Would there be a fee?
- (3) Would the licence authorise only the activities of the person to whom the licence is issued, or others?
- (4) What would the duration of a licence be?
- (5) Could conditions be imposed?
- (6) Could licences be amended, transferred, suspended or revoked?
- (7) How would a prohibition on operating without a licence be enforced?

5.83 We would like to hear from consultees about whether they think a licensing system would increase public trust in the use of new funerary methods. We would also like to hear about whether a licensing system would be seen as beneficial by potential providers.

Consultation Question 6.

5.84 We invite consultees' views on whether licensing should be part of the regulation of specific new funerary methods. Licensing would be in addition to secondary legislation approving the use of specific new funerary methods and setting out how they should be carried out.

Chapter 6: The nature and scope of the regulatory power

INTRODUCTION

- 6.1 We provisionally propose, in Chapter 5, that the basis of a legal framework for new funerary methods should be a power in primary legislation to make secondary legislation approving the use of specific new funerary methods and setting out how they should be carried out. The drafting of any secondary legislation about specific new methods is not part of the work of this sub-project; it would be for Government to make any secondary legislation under this power in future, determining whether to approve a particular new funerary method and the regulation needed for each specific new funerary method.
- 6.2 In this chapter, we begin by exploring the key principles that underpin the regulation of burial and cremation and would be likely to underpin any regulation of new funerary methods. These are: protection of the environment, protection of public health and public safety, and preservation of human dignity. We invite views from consultees on whether the Government should be required to have regard to these principles, or any others, when making secondary legislation about specific new funerary methods.
- 6.3 We then consider what provision should be made for new funerary methods in primary legislation. Alongside this, we consider whether primary legislation should specify anything about the content of secondary legislation made about distinct new funerary methods. We ask questions and make provisional proposals about the following matters.
- (1) We provisionally propose that new offences should be created. These are: making false representations to procure the use of a new funerary method and procuring, or attempting to procure, the use of a new funerary method to conceal an offence or impede a prosecution.
 - (2) We ask whether primary legislation should provide that it is an offence to use regulated new funerary methods in breach of the legislation, or whether there should be a power for the Government to create new offences in relation to this. We discuss a possible, separate, offence of using a non-regulated funerary method in Chapter 7.
 - (3) There is a system for the registration of burials and cremations, which interacts with the system of death registration. We provisionally propose that the framework for new funerary methods should state that each use of a new funerary method on the body of a deceased person must be registered as burials and cremations are currently registered. We also provisionally propose that primary legislation should state that if regulations are made about individual new funerary methods, these regulations must set out the details of how this registration must be carried out.

- 6.4 Beyond this, a regulation-making power would need to be broad enough to cover all the aspects of detailed regulation that might be needed. In this chapter we also set out further matters that we think may need to be covered by detailed regulation. We invite consultees' views on any matters that may need to be covered by detailed regulation, other than those set out in this chapter. This will assist us in considering the scope of the regulation-making power in primary legislation.
- 6.5 Finally, we invite consultees' views on whether it should be possible for provision to be made for approved trials of new funerary methods.
- 6.6 In Chapter 5 we ask for consultees' views on whether the power to make regulations should include the ability to make regulations about licensing. If regulations could be made about licensing, some of the matters discussed in this chapter could be covered by licences. When we refer in this chapter to "regulations", we mean secondary legislation made by a particular type of statutory instrument, such as the Cremation (England and Wales) Regulations 2008. When we refer to "detailed regulation", we mean to refer more generally to either secondary legislation or, if there was to be a power to make provision for a licensing system, licences.

PRINCIPLES UNDERPINNING THE REGULATION OF NEW FUNERARY METHODS

- 6.7 In Chapter 2 we set out our conception of a new funerary method and considered how to determine whether a specific new process falls within this conception or not. However, in this sub-project we are not considering whether specific new funerary methods should be regulated. In Chapter 5 we provisionally propose that the power to make decisions about which new funerary methods should be approved for use and regulated would lie with Government.
- 6.8 Before a new funerary method can be regulated, it should be shown to be effective in achieving the required decomposition of the body. Beyond this, however, there will be other considerations.
- 6.9 For example, Conway states that the law's treatment of human remains has always been based on two core values: "respect for the dead, and public health fears around decaying corpses".¹ In Chapter 4 we refer to a report by the Health Council of the Netherlands in 2020 called "The admissibility of new techniques of disposing of the dead".² The Health Council, following the doctrine that "bodies of our dead must be disposed of properly" stated that they were led by three guiding principles: safety, dignity, and sustainability.³

¹ H Conway, "Death rites disrupted: coronavirus, 'lockdown' laws and the altered social ritual of the funeral" (2023) 74(2) *Northern Ireland Legal Quarterly* 211 at p 215.

² Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

³ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 4 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>. For more details, see paras 4.62 to 4.68 of this Consultation Paper.

- 6.10 We explore below the following three principles: protection of the environment, protection of public health and public safety, and preservation of human dignity (which includes the dignified treatment of human remains). We think that these concepts underpin the regulation of established funerary methods in England and Wales and would guide future decisions about new funerary methods.
- 6.11 Legislation is already in place to protect the environment and ensure public health and public safety, and this could be extended to new funerary methods, as appropriate. We set this out in more detail below.
- 6.12 There is some overlap between the principles. For example, the law on exhumation of human remains relates to public health as well as human dignity. Environmental legislation about groundwater also has potential implications for public health.
- 6.13 We invite views from consultees on whether primary legislation should require the Government to have regard to these principles, or any others, when making secondary legislation about specific new funerary methods.

Protection of the environment

- 6.14 All funerary methods have the potential to have an impact on the environment. Burial and cremation are subject to general environmental regulation. It is possible that the existing provisions may apply to new funerary methods, although it is likely that some amendments would be required.
- 6.15 We explore below some of the main examples that might be relevant to new funerary methods.

Environmental permitting

- 6.16 The Environmental Permitting (England and Wales) Regulations 2016 set out a permitting regime for various activities and industries.⁴
- 6.17 Burials are subject to regulation as groundwater activities under the 2016 Regulations.⁵ Permits may be required. The Environment Agency and Natural Resources Wales provide guidance (for England and Wales, respectively) on permitting and they may issue notices prohibiting an activity or requiring a permit.⁶
- 6.18 Emissions from crematoria are regulated through the issuance of a permit from the local authority.⁷ The “cremation of human remains” is referred to expressly in the legislation.⁸ The Department for Environment, Food and Rural Affairs (DEFRA) has

⁴ SI 2016 No 1154.

⁵ Environmental Permitting (England and Wales) Regulations 2016, reg 12.

⁶ Environmental Permitting (England and Wales) Regulations 2016, Sch 22 paras 9 and 10. For more information, see Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 3.32 to 3.35.

⁷ Environmental Permitting (England and Wales) Regulations 2016, regs 8 and 12, Sch 1 part 1 para1(1) and part 2 ch 5.

⁸ Environmental Permitting (England and Wales) Regulations 2016, Sch 1 part 2 ch 5.

issued statutory guidance to crematoria on the control of emissions from cremations.⁹ Local authorities in England and Wales must have regard to this guidance when determining applications for permits and reviewing existing permits.¹⁰

Environmental principles

6.19 Under the Environment Act 2021, Government ministers must “have due regard to” the Government’s policy statement on five environmental principles when making new policy.¹¹ These principles include integrating environmental protection into all policies and seeking to prevent environmental harm before it occurs.

Applicability to new funerary methods

6.20 Some aspects of the process of a new funerary method may fall within the existing environmental permitting scheme. For example, if the resulting liquid from alkaline hydrolysis was to be discharged into surface waters such as inland freshwaters and coastal waters, this could constitute a “water discharge activity”.¹² If it was to be discharged into the ground, this could be a “groundwater activity”.¹³ However, if the resulting liquid was to be discharged into a public sewer, the occupier of the trade premises would need to obtain consent from,¹⁴ or enter into an agreement with,¹⁵ the water company for that area. In such a case, an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016 would not be necessary.

6.21 The extent to which new funerary methods might already be covered by the environmental permitting system would depend on the application and interpretation of the existing legislation. We have considered provisions about groundwater activities and emissions at paragraphs 6.17 and 6.18 above. There are also provisions in the 2016 Regulations about waste operations. The Environment Agency and National Resources Wales would need to determine whether the process of any new funerary methods fell within their existing remit.

6.22 It would also be open to the Secretary of State and Welsh Ministers to amend the 2016 Regulations to make elements of the process of a new funerary method subject to environmental permitting if they would not already be covered. The requirements would depend on the nature of the specific new funerary method. For example, if a new funerary method produced emissions that required regulation, this could be dealt with under the 2016 Regulations and guidance, in a similar way to emissions from crematoria.

⁹ Department for Environment, Food & Rural Affairs, *Process Guidance Note 5/2 (12), Statutory Guidance for Crematoria* (September 2012) p 42 <https://www.gov.uk/government/publications/crematoria-process-guidance-note-52>.

¹⁰ Environmental Permitting (England and Wales) Regulations 2016, reg 65(2).

¹¹ Environment Act 2021, s 19.

¹² Environmental Permitting (England and Wales) Regulations 2016, Sch 21.

¹³ Environmental Permitting (England and Wales) Regulations 2016, Sch 22.

¹⁴ Water Industry Act 1991, s 118(1).

¹⁵ Water Industry Act 1991, s 129.

- 6.23 In relation to environmental principles, the duty under the Environment Act 2021 would apply when the Government was deciding whether to approve a new funerary method for use under the framework or deciding the content of detailed regulation. The Government would need to have due regard to the policy statement in place at the time. At present, this would involve consideration of the five environmental principles set out in the policy statement.¹⁶
- 6.24 Our aim is to create a framework for regulation that will be future-proof, as far as possible. However, it is possible that new funerary methods might, in time, give rise to environmental considerations that we cannot foresee now. Decisions would need to be taken about how to make provision for these in legislation at a future time.

The environmental impact of new funerary methods

- 6.25 The Scottish Government noted in its 2023 consultation on alkaline hydrolysis that although some studies have been conducted about the environmental impact of alkaline hydrolysis, “it is important to note that the evidence base in this area is limited”.¹⁷ There have been a few studies, for example two reports by the Netherlands Organisation for Applied Scientific Research, in 2011 and 2014.¹⁸
- 6.26 An assessment of the environmental impact of individual new funerary methods is outside the scope of this project. The environmental impact of an individual new funerary method is something that the Government could consider when deciding whether to regulate that method. The Government would currently be required to do so under the Environment Act 2021 duty discussed at paragraph 6.19 above.
- 6.27 It would be possible for the framework to stipulate that all new funerary methods must meet certain environmental standards. In its report in 2020, the Health Council of the Netherlands proposed that new funerary methods should produce fewer harmful emissions than cremation and take up less space than burial.¹⁹ However, we think that it would not be appropriate to require new funerary methods to be more sustainable than burial or cremation. It seems likely that sustainability will be important to those developing new funerary methods and that environmental considerations will play a part in choices made by individuals about funerary methods. However, one of the primary reasons for introducing a framework is that there should be increased choice, and we think that specific new funerary methods should be dealt with in the existing system of environmental legislation, which can be amended as necessary.²⁰

¹⁶ Environment Act 2021, s 17.

¹⁷ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (2023) para 53 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/8/>.

¹⁸ E E Keijzer and H J G Kok, “Environmental impact of different funeral technologies” (2011) *TNO Report TNO-060-UT-2011-001432*; and E E Keijzer, H ten Broeke and A M M Ansems, “Milieueffecten van verschillende uitvaarttechnieken - update van eerder TNO onderzoek” (2014) *TNO Report R11303*. See also G Robinson, “Alkaline Hydrolysis in the United Kingdom” in R McManus (ed) *The Sustainable Dead: Searching for the Intolerable* (2023) pp 87-88.

¹⁹ Health Council of the Netherlands, *The admissibility of new techniques of disposal of the dead* (Advisory Report NR 2020/06e, 25 May 2020) p 14 <https://www.healthcouncil.nl/documents/advisory-reports/2020/05/25/admissibility-of-new-techniques-of-disposing-of-the-dead>.

²⁰ See para 1.9 of this Consultation Paper, where we refer to stakeholders’ views.

- 6.28 If new funerary methods were required to be more sustainable than established funerary methods this could limit the introduction of new funerary methods, particularly given the challenges associated with obtaining clear evidence. As indicated above, we anticipate that, in future, people may be able to choose between a range of methods and might base their choices on environmental reasons, for example the relative sustainability of various funerary methods. However, introducing different standards for new funerary methods may have a chilling effect on market entrants, meaning that consumer choice is not increased.
- 6.29 Dealing with new funerary methods within existing systems of environmental regulation will also ensure greater clarity and certainty. Separate regulation or requirements for new funerary methods may create fragmentation in the law and may lead to confusion for market entrants and consumers.

The protection of public health and public safety

- 6.30 There are numerous existing provisions about public health and public safety in relation to burial and cremation.

Legislation

- 6.31 Measures to address public health concerns have been part of burial law since at least the nineteenth century. For example, Orders in Council can be made to close a burial ground.²¹ Provisions such as this were introduced to address rising concerns of the risk to public health from over-full burial grounds. Local authorities have duties in relation to maintaining other closed burial grounds, including ensuring that they are kept in a “proper sanitary condition”.²² Orders in Council can also be made to require actions to be taken to prevent a burial ground from being “dangerous or injurious to public health”.²³ Where those actions are not done within a reasonable time, the Secretary of State can direct the local authority to complete them.²⁴ We made some provisional proposals about these provisions in our Consultation Paper on Burial and Cremation.²⁵
- 6.32 The Local Authorities’ Cemeteries Order 1977 provides that a body must be buried at least three feet deep, with no part of the coffin being less than three feet below the ground level.²⁶ This is, at least in part, related to public health concerns about the disturbance of remains.
- 6.33 In relation to cremation, the restrictions on where crematoria may be sited were originally put in place partly due to concerns about the public health risks of

²¹ Burial Act 1853, s 1.

²² Public Health Act 1875, Sch 5 pt 3.

²³ Burial Act 1857, s 23.

²⁴ Burial Act 1859, s 1.

²⁵ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 7.73 (closure orders) and Chapter 3 (maintenance of burial grounds).

²⁶ Local Authorities’ Cemeteries Order 1977, Sch 2, part 1 para 2.

emissions.²⁷ Modern pollution abatement technology advances mean that crematoria no longer pose the same risks that they did when the Cremation Act 1902 was passed.²⁸

- 6.34 Section 46 of the Public Health (Control of Disease) Act 1984 contains a duty for local authorities to bury or cremate the body of any person who has died or been found dead in their area if it appears that no suitable arrangements are being made. These are known as “public health funerals”. Government guidance states that public health funerals are “designed to protect public health and are important in ensuring that all individuals are treated with dignity and respect, regardless of their circumstances”.²⁹ Public health funerals will be considered in our third sub-project on Rights and Obligations relating to Funerary Methods, Funerals and Remains, within the wider project on Burial, Cremation and New Funerary Methods.³⁰
- 6.35 The Health and Safety at Work etc Act 1974 and regulations made under that Act provide a framework for the management of health and safety in the workplace.

Guidance

- 6.36 DEFRA’s statutory guidance to crematoria, mentioned at paragraph 6.18 above, includes provisions that are relevant to health and safety. For example, the “requirements of a permit should not put at risk the health, safety or welfare of people at work or those who may be harmed by the work activity”.³¹
- 6.37 The Health and Safety Executive publishes guidance for managing risks arising from infection when carrying out work activities that involve handling the bodies of deceased people. This includes guidance for those involved in funeral services and exhumations. The guidance notes that “duties under the Health and Safety at Work etc Act 1974 apply to the risks of infection that may arise from work activities”.³²

²⁷ Cremation Act 1902, s 5. Crematoria must be constructed at least 200 yards away from any residential house, unless written consent has been given by the house’s owner, lessee and occupier, and least 50 yards from a public highway.

²⁸ See Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 12.6 in relation to abatement of mercury and other contaminants. The provision may be currently said to maintain the solemnity of crematoria and to enable them to be built on green belt land. In para 12.45 of that Consultation Paper, we invited views from consultees on whether the provision should be retained or repealed.

²⁹ Ministry of Housing, Communities and Local Government, *Public health funerals: good practice guidance* (16 September 2020) <https://www.gov.uk/government/publications/public-health-funerals-good-practice-guidance/public-health-funerals-good-practice-guidance>.

³⁰ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

³¹ Department for Environment, Food & Rural Affairs, *Process Guidance Note 5/2 (12), Statutory Guidance for Crematoria* (September 2012) p 42 <https://www.gov.uk/government/publications/crematoria-process-guidance-note-52>.

³² Health and Safety Executive, *Managing infection risks when handling the deceased, Guidance for the mortuary, post-mortem room and funeral premises, and during exhumation* (July 2018) para 12 <https://www.hse.gov.uk/pubns/books/hsg283.htm>.

Applicability to new funerary methods

- 6.38 The Health and Safety at Work etc Act 1974 would apply to workplaces where new funerary methods were carried out. Guidance such as that of the Health and Safety Executive could also be updated to make reference to new funerary methods, where necessary. As an example of this, in its consultation on alkaline hydrolysis, the Scottish Government proposed that providers of alkaline hydrolysis would need to undertake a thorough risk assessment in line with health and safety legislation. In particular, they would need to comply with the Health and Safety at Work etc Act 1974 and would be subject to regulation by the Health and Safety Executive.³³
- 6.39 We also mention public health issues elsewhere in this Consultation Paper. For example, we mention later in this chapter that there may be reasons that a specific new funerary method may not be used in certain circumstances, which may relate to public health concerns.

The preservation of human dignity and the dignified treatment of human remains

- 6.40 Conway states that “respect for the dead” is a “universal standard that permeates the law”. She says:

Respecting the dead not only speaks to basic notions of human dignity; as a society, and as individuals, we care about how our dead are treated because it gives us a sense of existential comfort about our own treatment when we die.³⁴

- 6.41 Jones notes the necessity of “the dignified treatment of the deceased body”, as dignity is an intrinsic trait and right of all humans. In the context of forensic science, she states:

working with human remains engages particular ethical questions which highlight the importance of deceased bodies, and parts of bodies, not only as evidence relevant to answering legal questions but as the remains of a human person who had a history and shared relationships.³⁵

- 6.42 Stakeholders have consistently told us that the preservation of human dignity is currently fundamental to all elements of the death care sector, and that it should, and will, also be as important to any future use of new funerary methods.

Dignity as a relevant concept in burial and cremation regulation

- 6.43 Respect for deceased people, or human dignity in the context of deceased people, may have a range of possible meanings. Interpretations of these concepts may be context specific. We find that although the concept of dignity is very important in relation to funerary methods, it is not specifically referred to in legislation. Instead,

³³ Scottish Government, *Alkaline hydrolysis ('water cremation') regulation in Scotland* (Consultation Paper, 2023) paras 61 to 62 <https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/pages/9/>.

³⁴ H Conway, “Death rites disrupted: coronavirus, ‘lockdown’ laws and the altered social ritual of the funeral” (2023) 74.2 *Northern Ireland Legal Quarterly* 211.

³⁵ I Jones, “Pathology and Forensic Science: Dignity, Respect, and the Dead Body” (2023) 6(3) *Wires Forensic Science* e1512.

considerations about dignity underpin the regulation of burial and cremation. The purpose and result of various provisions can be linked to human dignity and the dignified treatment of human remains.

- 6.44 For example, in paragraph 2 of the Explanatory Notes to the Coronavirus Act 2020, it is stated that the 2020 Act aims to support Government in, amongst other things, “managing the deceased with respect and dignity”.³⁶ There is no express reference to dignity in the wording of the legislation. However, as indicated in the explanatory notes, the concepts of respect and dignity in relation to deceased people were of significance to the content of the 2020 Act.
- 6.45 The whole system of regulation of burial and cremation can be linked to concepts of human dignity. A significant aim of this system is to ensure that human remains are treated in a dignified manner. For example, burial provisions that have clear links to human dignity and respect for deceased people include those specifying depth of burial, restrictions on exhumation and grave reuse.

Applicability to new funerary methods legislation in England and Wales

- 6.46 We think that preservation of human dignity and the dignified treatment of human remains will underpin the regulation of new funerary methods, as with current regulation of burial and cremation.

Analysis

- 6.47 There is already legislation in place about protection of the environment and public health and public safety that applies to burial and cremation. These provisions could be extended to cover new funerary methods, as appropriate. For example, the Environmental Permitting Regulations 2016 and subsequent guidance could be amended. We therefore do not think that a legal framework for new funerary methods needs to make any specific provision to ensure the application of the protection of the environment and public health and safety to new funerary methods.
- 6.48 We think that the principles we have set out above already underpin the legislation governing established funerary methods, although there is no legislative requirement for this. We do not think there is any reason to believe that these principles would not similarly guide future regulation of new funerary methods.
- 6.49 However, new funerary methods will be novel and the public may not know much about them. A requirement for Government to take certain key principles into account when making secondary legislation about new funerary methods could give members of the public more confidence that these methods are being dealt with in an appropriate way. It could also help to ensure that these principles are taken into account, by providing a potential route for legal challenge if they are not.
- 6.50 We therefore invite views from consultees on whether the Government should be required to have regard to these principles, or any others, when making secondary legislation about specific new funerary methods. We note that such a requirement would not prevent the Government from taking other principles or factors into account.

³⁶ Explanatory Notes to the Coronavirus Act 2020, para 2 <https://www.legislation.gov.uk/ukpga/2020/7/notes>.

Consultation Question 7.

- 6.51 Should primary legislation expressly require the Government to have regard to the following principles when making secondary legislation about specific new funerary methods?
- (1) Protection of the environment.
 - (2) Protection of public health and public safety.
 - (3) Preservation of human dignity.
- 6.52 We also invite consultees' views on any further principles to which the Government should have regard when making secondary legislation about specific new funerary methods.

CRIMINAL OFFENCES

Offences in the Cremation Act 1902

- 6.53 Under the Cremation Act 1902, it is a criminal offence knowingly to carry out, procure or take part in a cremation except in accordance with the provisions of the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008. A person who commits this offence may be liable, on summary conviction (in magistrates' courts), to a fine not exceeding level 3 on the standard scale (currently £1,000).³⁷
- 6.54 It is also a criminal offence to "wilfully make any false representation, or sign or utter any false certificate, with a view to procuring the burning of any human remains". Any person who does this may be liable to imprisonment not exceeding two years, in addition to any civil penalty otherwise incurred.³⁸
- 6.55 Procuring or attempting to procure the cremation of a body with intent to conceal the commission or impede the prosecution of an offence is a criminal offence and a person may be convicted on indictment (in the Crown Court) for a prison term not exceeding five years.³⁹
- 6.56 We set out more details about criminal offences relating to burial and cremation in Chapter 7.

³⁷ Cremation Act 1902, s 8(1).

³⁸ Cremation Act 1902, s 8(2).

³⁹ Cremation Act 1902, s 8(3).

New funerary methods: offences

Criminal offences in primary legislation

- 6.57 As set out above, the Cremation Act 1902 sets out criminal offences in relation to cremation. Similar offences could be included in the framework for new funerary methods, set out in primary legislation.⁴⁰
- 6.58 We provisionally propose that there should be an offence of making false representations for the purpose of procuring the use of a new funerary method. We think that this should be similar to the offence of making false representation to procure a cremation. We note, however, that fraud by false representations, as set out in section 2 of the Fraud Act 2006, adopts the fault element of dishonesty rather than wilfulness. In order not to create a confusing contrast with the modern understanding of false representation, the legislation could align with the relevant elements of fraud by false representation. This would require proof that the person made a false representation, that they did so dishonestly, and that they knew the representation was or might be untrue or misleading.
- 6.59 The offence of making false representations to procure a cremation applies to deliberately lying on the cremation application form and there is a reference to it on the form itself.⁴¹ The process of applying for the use of a new funerary method would be set out in detailed regulation, rather than in the framework. However, various requirements will clearly need to be met before a new funerary method may be used on the body of a deceased person. It seems appropriate that making false representations to procure the use of a new funerary method should be a criminal offence.
- 6.60 We also think that it should be an offence to procure or attempt to procure the use of a new funerary method on a body with intent to conceal the commission, or impede the prosecution, of an offence. As with cremation, the offence of procuring, or attempting to procure the use of a new funerary method to conceal an offence or impede a prosecution would provide protection against new funerary methods being used to conceal crimes.
- 6.61 These offences are similar to those in the Cremation Act 1902. It is likely that many new funerary methods will be rapid and irreversible, like cremation. We consider that the new offences would provide important protections, comparable to those provided in relation to cremation. We are not aware of any problems with the cremation offences.
- 6.62 We provisionally propose that the maximum penalty for the new concealment of crime offence should be the same as that for the comparable cremation offence. This is, on indictment, a prison term not exceeding five years (or a fine). We think that this consistency with the existing cremation legislation is appropriate and fair.

⁴⁰ In relation to this, and other new criminal offences that we provisionally propose in this Consultation Paper, we have considered Government guidance on creating new criminal offences: Ministry of Justice, *Advice on introducing or amending criminal offences and estimating and agreeing implications for the criminal justice system* (December 2015) <https://www.gov.uk/government/publications/making-new-criminal-offences>.

⁴¹ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), Sch 1.

6.63 In relation to the new false representations offence, the maximum penalty for the comparable cremation offence is two years' imprisonment, in addition to any civil penalty otherwise incurred.⁴² This offence is triable either way (in a magistrates' court or the Crown Court).⁴³ We think that the new offence should also be triable either way. The appropriate maximum penalty for the new offence would be an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court on summary conviction and, we think, a fine or two years' imprisonment, on indictment.

A power to create further criminal offences in secondary legislation?

6.64 As set out above, it is a criminal offence knowingly to carry out, procure or take part in a cremation except in accordance with the provisions of the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008. The maximum penalty for this is, on summary conviction (in magistrates' courts), a fine not exceeding level 3 on the standard scale (currently £1,000).⁴⁴

6.65 It would be possible to use primary legislation to criminalise knowingly carrying out, procuring or taking part in the use of a regulated new funerary method except in accordance with primary legislation and any regulations that have been made about that new funerary method. The maximum penalty could be a fine at level 3 on the standard scale, as with the cremation-related offence. To some extent, this could provide more certainty and clarity for operators and members of the public.

6.66 However, this offence would be created before we knew which new funerary methods will be regulated or the content of those regulations. It is possible that the content of future regulations on new funerary methods will be more detailed than the regulation governing cremation. It would be very difficult to decide, without having seen the regulations, whether a breach of all of its provisions should result in a criminal offence and what the appropriate maximum penalty for a breach of these provisions should be. Were primary legislation to set out that it was a criminal offence to carry out a new funerary method in breach of these regulations there would be a maximum penalty for the offence. There would be some flexibility within this, for those imposing penalties in individual cases (as long as these did not exceed the maximum penalty). However, there would be no way of distinguishing in advance between breaches that would be better regulated by a civil penalty and those for which a criminal penalty would be more appropriate.

6.67 Instead of setting out the criminal offence in primary legislation, the legislation could instead include a power for Government to make regulations about criminal offences. This would provide more flexibility. Hypothetically, depending on the approach taken by the Government, regulations governing new funerary methods such as alkaline hydrolysis could include provisions relating to the need for clear warning signs as to the presence of potentially harmful chemicals in sites carrying out the new funerary method. Were a new funerary method to be carried out in breach of this provision, this would be likely to attract a lower form of sanction. On the other hand, regulations might also require that material remaining after a new funerary method (for example,

⁴² Cremation Act 1902, s 8(2).

⁴³ Magistrates' Courts Act 1980, Sch 1 para 13.

⁴⁴ Cremation Act 1902, s 8(1).

the resulting liquid left after alkaline hydrolysis or the soil after human composting) not be used for certain purposes. This may be for health and safety reasons, or alternatively reasons related to the preservation of human dignity. We think that carrying out a new funerary method in breach of these provisions could be more criminally culpable so as to warrant criminalisation with a higher penalty. With a power to create criminal offences, the Government would be able to make informed decisions about the appropriate scope of each offence and the associated maximum penalty in each case, depending upon the method and the nature of the new offences.

- 6.68 We acknowledge that the use of powers to create criminal offences in secondary legislation has been criticised, for example by the House of Lords Constitution Committee. This committee has stated that “delegated powers should be sought only when their use can be clearly anticipated” and that the creation of criminal offences should be subject to proper and full parliamentary scrutiny.⁴⁵ The Delegated Powers and Regulatory Reform Committee has also stated that it would expect a “compelling justification” for the components of a criminal offence to be set out in secondary legislation.⁴⁶
- 6.69 We think that there may be a justification in this case. It is vital to ensure that there are sanctions for operators and others who fail to adhere to legislation about new funerary methods, which might have serious consequences. Criminal offences already exist regarding cremation as we have explained. We think that it is likely that the Government would want to mirror the existing offences for breach of provisions relating to cremation mentioned at paragraph 6.53 above, as far as possible. However, we cannot know precisely what the content of future regulations relating to new funerary methods might be, particularly for methods that are not currently available elsewhere. It would therefore not be possible to determine all possible future criminal offences or the maximum penalty suitable for each of these. We think, therefore, that it may not be appropriate to set out all of the criminal offences in primary legislation.
- 6.70 However, we recognise that a power to create criminal offences in secondary legislation may be considered problematic and could be criticised, for the reasons outlined above. We have therefore not made a provisional proposal about this issue and we would like to hear from consultees.
- 6.71 We invite views from consultees on whether primary legislation should set out a broad criminal offence, as described above, or whether it would be appropriate for the Government to be given the power to create further criminal offences. We think that the offences should be broadly limited to offences of carrying out, procuring or taking part in, regulated new funerary methods in contravention of existing legislation, including secondary legislation. We understand that secondary legislation made under

⁴⁵ House of Lords Select Committee on the Constitution, *The Legislative Process: The Delegation of Powers* (12th Report of 2017-19 Session, 20 November 2018) paras 8 and 46 <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/225.pdf>.

⁴⁶ House of Lords Delegated Powers and Regulatory Reform Committee, *Guidance for Departments* (December 2023) s 12 <https://committees.parliament.uk/publications/42694/documents/212126/default/>.

a power such as this would normally be subject to affirmative resolution, which should ensure Parliamentary scrutiny.⁴⁷

Consultation Question 8.

6.72 We provisionally propose that primary legislation should specify that it is a criminal offence to do the following, in relation to the use of regulated new funerary methods:

- (1) dishonestly make false representations to procure the use of a new funerary method, with a maximum penalty of, on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court, and, on indictment, a fine or two years' imprisonment; and
- (2) procure or attempt to procure the use of a new funerary method with intent to conceal an offence or impede a prosecution, with a maximum penalty, on indictment, of a fine or five years' imprisonment.

Do consultees agree?

Consultation Question 9.

6.73 We invite consultees' views on whether:

- (1) primary legislation should provide that it is a criminal offence to carry out, procure or take part in regulated new funerary methods in contravention of legislation or other detailed regulation and, if so, whether a maximum penalty, on summary conviction (in magistrates' courts), of a fine at level 3 on the standard scale (currently £1,000) would be appropriate; or
- (2) the Government should be given the power to create new offences in secondary legislation of carrying out, procuring or taking part in regulated new funerary methods in contravention of legislation or other detailed regulation. Any secondary legislation made under this power should be subject to the affirmative resolution procedure.

REGISTRATION OF USE OF NEW FUNERARY METHOD

6.74 All burials and cremations must be registered. This should not be confused with the registration of a death.

6.75 For burial, the requirements for registration vary depending on where the burial takes place, whether in a local authority cemetery, Church of England burial ground, private cemetery, or other burial ground. However, in each case these are set out in

⁴⁷ Under the affirmative procedure, secondary legislation must be approved by both Houses of Parliament (except certain financial legislation, which is considered only by the House of Commons).

legislation.⁴⁸ It is a criminal offence knowingly and willingly to make a false statement or entry in a burial register,⁴⁹ and knowingly and willingly to destroy, injure, forge or falsify a burial register.⁵⁰

- 6.76 Cremations must be registered by a registrar appointed by the cremation authority. The registrar is required to keep a permanent register, either electronically or in a book, of cremations that take place at a crematorium.⁵¹ The register must contain specified information including details of the deceased person.⁵² It is a criminal offence to wilfully make a false statement with a view to procuring a cremation.⁵³
- 6.77 A comprehensive system of registration of burials and cremations is a very important feature of the existing legislation. It ensures a record is kept which may be of value in relation to the investigation of crime. It may also be of practical and emotional significance to those tracing their family history. The system of registration of burials and cremations also interacts with the system of death registration. We discuss death registration legislation in more detail in Chapter 3.
- 6.78 If this was not extended to new funerary methods, it would undermine the system of registration and create an unnecessary and unhelpful divergence in the law. There is therefore a very strong rationale for ensuring that each use of a new funerary method must be registered in broadly the same way as a burial or cremation. We think that legislation should set out a requirement that each use of a new funerary method on the body of a deceased person be registered, as well as how, and by whom, this should be done.
- 6.79 We provisionally propose that the requirement for registration should be set out in primary legislation. This will ensure that it is clear and in an obvious place.
- 6.80 We consider that the details of how and by whom the registration must be carried out should be contained in secondary legislation at a later stage. It might be difficult to identify who must carry out the registration before detailed regulation of individual methods has been set out. It would seem best for the information required to be set out in secondary legislation, so that there is parity with cremation. This would mean that if the Government wanted to change the detailed registration requirements for cremation and for new funerary methods, they could make both these changes by amending secondary legislation. We therefore provisionally propose that primary legislation should state that where the Government makes regulations about the use of a new funerary method, these must include provision about how and by whom each use should be registered.

⁴⁸ For example, the Local Authorities' Cemeteries Order 1977 (SI 1977 No 204), art 11 for local authority cemeteries.

⁴⁹ Forgery Act 1861, s 37; and Perjury Act 1911, s 5(b).

⁵⁰ Forgery Act 1861, s 36.

⁵¹ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), regs 32(1) and 33(1).

⁵² Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 33(2).

⁵³ Cremation Act 1902, s 8(2).

Consultation Question 10.

6.81 We provisionally propose that primary legislation should:

- (1) require that the use of a new funerary method on the body of a deceased person must be registered; and
- (2) stipulate that regulations made about specific new methods must set out how and by whom this registration must be carried out.

Do consultees agree?

NEW FUNERARY METHODS: MATTERS THAT COULD BE COVERED BY DETAILED REGULATION

6.82 At the end of this sub-project, we intend to make recommendations about the framework and to publish draft primary legislation to reflect this. We will not make recommendations about whether specific new funerary methods should be regulated or draft any regulations. However, we will need to ensure that any power to make regulations will be sufficient to encompass all matters that might need to be covered in detailed regulation.

6.83 As the intention is to ensure that regulations could be made to enable the use of currently unknown funerary methods, it is not possible to describe fully all the matters that may need to be covered in detailed regulation. However, we have set out below some of the key areas we think may need to be covered. Some of these could form part of a non-exhaustive list of matters that could be regulated, which could be useful if there might otherwise be uncertainty about whether the power applies to them.

6.84 We would like to hear from consultees about whether there are other significant matters that would need to be addressed by detailed regulation. This will assist us at a later stage when we are considering whether the power in the framework is broad enough to cover all necessary matters. Consultees may provide views on the potential content of future regulation of specific new funerary methods, as these may also be relevant to the scope of the regulation-making power. We recognise that because alkaline hydrolysis and human composting are currently in use elsewhere, consultees' responses may focus on these methods. However, it will be for the Government to decide whether and how specific new funerary methods should be regulated.

Opening and closing facilities

6.85 Detailed regulation would need to cover the process of opening a facility for a new funerary method, including who may do so, the application process and any notice period. For example, the notice period is one month for opening a crematorium.⁵⁴ Where a crematorium has been established since 1952, cremations cannot take place

⁵⁴ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 3.

until the crematorium has been certified to the Secretary of State.⁵⁵ Similar provisions may be required regarding facilities for new funerary methods.

- 6.86 The procedure for closing a facility would also need to be considered. One month's notice is required to close a crematorium, for example.⁵⁶ As the processes for some new funerary methods, for example human composting, could take several months, provision may need to be made to cover unexpected or unauthorised closure of a facility.

Location of facilities

- 6.87 Crematoria must be constructed at least 50 yards away from a public highway. They must also be 200 yards away from a residential house, unless written consent has been given by the owner, lessee and occupier of the house.⁵⁷ We refer to this rule as the "radius clause". These requirements were proposed by a Member of Parliament who was concerned about the impact of cremations on air quality, as well as the noise from the tolling of bells.⁵⁸ In our Consultation Paper on Burial and Cremation we noted that, largely due to modern environmental protection requirements in relation to cremation, the original purpose of the provision is no longer served. However, we noted that there are other consequences, such as enabling crematoria to be developed on countryside and greenbelt sites. The provision may also help to ensure an appropriate level of solemnity and peace for those attending services. We invited consultees' views on whether the radius clause should be retained or repealed.⁵⁹
- 6.88 It is possible that a similar provision for facilities for specific new funerary methods may be desirable. Such provisions could be aimed at ensuring solemnity and peace.
- 6.89 However, separate provision may be needed for particular new funerary methods, or different circumstances within a new funerary method. For example, crematoria commonly include a space where mourners could attend a service, although this is not a requirement and with direct cremation there is no concurrent funeral service. Where there is a service before a burial, this is not always at the same place as the body is buried. If facilities for a specific new funerary method were not to include space for a service, there may not be the same need to ensure that facilities were sited away from roads and buildings. To give another example, if a new funerary method emerged that created high levels of noise, this could necessitate a more stringent version of the radius clause. Different provision may be required for different cases.
- 6.90 We think it would be appropriate for the regulation-making power to be broad enough to cover any requirements about location of facilities, rather than including a provision in primary legislation. This would allow flexibility for provisions to be made in future, as needed.

⁵⁵ Cremation Act 1952, s 1(1).

⁵⁶ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 3.

⁵⁷ Cremation Act 1902, s 5.

⁵⁸ Hansard (HC), 26 June 1901, vol 95, col 1567.

⁵⁹ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 12.7 to 12.9 and 12.45 to 12.47.

Operation and maintenance of facilities

6.91 Provision could be made for matters such as standards of maintenance, training for operators, health and safety, and record keeping.

Elements of the process

6.92 In England and Wales, the regulation of burial and cremation does not contain many details about the process. This can be partially explained by the fact that environmental legislation covers some aspects of the processes.⁶⁰ However, it is possible that new funerary methods may involve more complex processes with more options that would need to be regulated more closely.

6.93 Elements of the process of each new funerary method may need to be regulated. For example, alkaline hydrolysis systems can be high pressure or low pressure. This may need to be covered in detailed regulation. Similarly, in Ontario the minimum temperature, period of time and concentration of alkaline chemicals are specified for alkaline hydrolysis.⁶¹

6.94 To give another example, although in almost all cases the bones and teeth that remain after cremation are ground in a cremulator, this is not a requirement and is not regulated in England and Wales. Pieces of bones and teeth similarly remain after the main part of the alkaline hydrolysis process. However, these are wet and of a different consistency, so it may be necessary to stipulate in detailed regulation that they must be dried out. It would also be possible to state that they must be cremulated.

Inspection of facilities

6.95 In relation to burials, the Secretary of State has the power to authorise an inspection of any burial ground or cemetery to assess its state and condition and whether any regulations have been complied with. The Secretary of State may seek an Order in Council directing certain actions where there is a risk to public health and where those actions are not taken within a reasonable time, the local authority may be required to complete them.⁶²

6.96 In our Consultation Paper on Burial and Cremation we provisionally proposed that the Secretary of State should continue to have the power to authorise inspections of Burial Grounds. However, where an inspection reveals that the law is not being followed, the Secretary of State should have the power to issue a notice requiring action to be taken.⁶³ Other options we had considered were giving inspection powers to local authorities and introducing a new inspector of burial grounds, although these

⁶⁰ For example, Department for Environment, Food & Rural Affairs, *Process Guidance Note 5/2 (12), Statutory Guidance for Crematoria* (September 2012) <https://www.gov.uk/government/publications/crematoria-process-guidance-note-52>.

⁶¹ Bereavement Authority of Ontario, *Requirements for an Alternative Disposition Operator – Hydrolysis* (January 2020) <https://thebao.ca/wp-content/uploads/2020/09/AH-REQUIREMENTS-FINAL-V4.pdf>.

⁶² Burial Act 1855, s 8 and Burial Act 1857, ss 10 and 23, and Burial Act 1859, s 1 (in relation to the role of local authorities).

⁶³ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 3.89.

did not form part of our provisional proposal as current evidence suggests that poor practice in cemeteries is relatively rare.⁶⁴

- 6.97 For cremation, the Secretary of State may appoint a person to inspect crematoria and crematoria must be available for inspections.⁶⁵ There is no ongoing appointment to this role and no record of any formal inspections having been carried out under this power recently.⁶⁶ Registers and applications for cremation must also be open for inspection by a person appointed by the Secretary of State and by the Chief Constable of the relevant police force, and the cremation authority can make these open to inspection by anyone else.⁶⁷ We noted in our Consultation Paper on Burial and Cremation that a number of stakeholders had raised with us the question of whether there ought to be a statutory inspector of crematoria. However, we concluded that there was not a strong case for this.⁶⁸
- 6.98 We think that detailed regulation about new funerary methods will need to make provision about inspections. It is possible that more comprehensive provision for inspection of new funerary methods facilities will be required, compared to that which currently exists for burial and cremation. The use of new technology and new processes may necessitate closer scrutiny of facilities, at least while new methods are emerging and developing. It is possible that some elements of some new funerary methods may require more frequent or detailed inspections, for example where potentially harmful materials are used.
- 6.99 In Scotland, under the Burial and Cremation (Scotland) Act 2016, the Scottish Ministers may make regulations providing for the inspection of burial grounds, crematoria or funeral directors by special inspectors appointed under the 2016 Act. A wide-ranging list of matters that may be covered in the regulations is set out. The list includes circumstances in which inspections are to be carried out, the frequency of inspections, reports by inspectors, steps for ensuring compliance and sanctions.⁶⁹ So far, no regulations have been made under this provision, although the Scottish Government consulted on this in August 2023 and published a consultation analysis in July 2024.⁷⁰
- 6.100 Regulations made about inspection of facilities for new funerary methods might cover the matters set out above, amongst others. The Government may want to consider creating an inspectorate, or appointing a permanent inspector, to carry out

⁶⁴ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 3.86 to 3.88.

⁶⁵ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 5

⁶⁶ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 11.23.

⁶⁷ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 35(2).

⁶⁸ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 11.23 to 11.26.

⁶⁹ Burial and Cremation (Scotland) Act 2016, s 90. The power to appoint inspectors is in s 89.

⁷⁰ Scottish Government, *Statutory inspection of burial authorities, cremation authorities and funeral directors* (Consultation Paper, 25 August 2023) <https://www.gov.scot/publications/statutory-inspection-burial-authorities-cremation-authorities-funeral-directors/>; and Scottish Government, *Burial authorities, cremation authorities and funeral directors – statutory inspection regime: consultation analysis* (Consultation Analysis, 15 July 2024) <https://www.gov.scot/publications/scottish-governments-consultation-burial-authorities-cremation-authorities-funeral-directors-statutory-inspection-regime-scotland/>.

inspections. We think that the framework should ensure that these options would be open to the regulation-maker.

6.101 Regulations may also need to be made setting out steps for compliance with inspection reports and sanctions for non-compliance.

Appointments

6.102 For each cremation authority, the Secretary of State must appoint a medical referee, and can additionally appoint deputy medical referees.⁷¹ The main role of medical referees, who must be registered medical practitioners,⁷² is to give authority for the cremations which take place in the crematorium.⁷³ The medical referee must provide reports to the Secretary of State, when required.⁷⁴ Following the introduction in 2024 of statutory medical examiners to scrutinise the cause of death, the Ministry of Justice has been reviewing the role of medical referees and gathering evidence to determine their long-term status.⁷⁵

6.103 Each cremation authority must appoint a registrar, who is required to keep a permanent register of all cremations that are carried out.⁷⁶

6.104 For new funerary methods, detailed regulation could align with the cremation system where appropriate but separate provision could be made where necessary. Depending on the approach taken, some of this may be set out in legislation about death management more generally. However, it may also be necessary to include it in detailed regulation of specific new funerary methods.

Medical devices

6.105 For some new funerary methods, provision may need to be made about removal of medical devices prior to the process being carried out where this would be hazardous or have a negative impact on the environment. In practice, we understand that medical implants which may pose a risk during cremation should be removed beforehand,⁷⁷ although this is not set out in legislation.

Application procedures on behalf of a deceased person

6.106 In our Consultation Paper on Burial and Cremation we noted the lack of alignment between the person who can apply for cremation and the common law position about who can make decisions about a body. We indicated that we would consider who can apply for cremation in our third sub-project on Rights and Obligations Relating to

⁷¹ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 6.

⁷² Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 7.

⁷³ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 23.

⁷⁴ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 11.

⁷⁵ Department of Health and Social Care, *An overview of the death certification reforms* (Guidance, 14 August 2024) <https://www.gov.uk/government/publications/changes-to-the-death-certification-process/an-overview-of-the-death-certification-reforms>. See the section entitled “Cremation and burial”.

⁷⁶ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), regs 31, 32(1), and 33.

⁷⁷ J Green and M Green, *Dealing with Death: A Handbook of Practices, Procedures and Law* (2nd ed 2006) p 112.

Funerary Methods, Funerals and Remains.⁷⁸ This is something that will also need to be considered for new funerary methods and it seems likely that any provision about this would be set out in regulations made under the framework.

6.107 Prescribed forms and application processes could also be set out in detailed regulation.

Circumstances in which a specific new funerary method must not be used

6.108 Detailed regulation may need to provide that specific new funerary methods may not be used in certain circumstances. For example, a specific new funerary method might give rise to public health or environmental considerations in particular cases.

6.109 The state of Washington prohibits the use of natural organic reduction (human composting) for people with prion diseases, along with tuberculosis, Ebola and contagious diseases which may pose a public health hazard.⁷⁹ In the state of New York, providers of natural organic reduction must include in an authorisation form a statement that the cause of death was not a prion disease, or other diseases including active tuberculosis or Ebola.⁸⁰

Remains

6.110 Provision would need to be made about what may or must be done when human remains remain after the process. It may also be necessary for secondary legislation to define, or identify, what constitutes human remains in relation to specific new funerary methods.

6.111 For example, following the alkaline hydrolysis process, pieces of bone and teeth may remain. These are dried out and may be ground, resulting in a material similar to the ashes which remain following cremation, although whiter in colour and greater in volume. These could be dealt with in a similar way to cremation ashes. In our Consultation Paper on Burial and Cremation, we put forward provisional proposals in relation to uncollected ashes.⁸¹ We also asked questions about ash scattering and exhumation of ashes.⁸² Similar issues would likely arise in relation to the material remaining after alkaline hydrolysis. This may also be relevant to matters such as exhumation. It is currently a criminal offence to remove human remains from a place of burial without authority. This includes cremation ashes that have been buried or placed below ground in a crypt or vault.⁸³ New funerary methods, including alkaline hydrolysis, as mentioned, may produce remains that are similar to cremation ashes.

⁷⁸ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 11.88 to 11.90.

⁷⁹ Washington Administrative Code WAC, 246-500-030(3)
<https://regulations.justia.com/states/washington/title-246/health-information/chapter-246-500/section-246-500-030/>.

⁸⁰ New York Codes, Rules and Regulations, 19 NY Comp Codes Rules and Regs § 204.9(d)(7)
<https://regulations.justia.com/states/new-york/title-19/chapter-vi/part-204/section-204-9/>.

⁸¹ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 13.62.

⁸² Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 13.66, 13.82 and 13.83.

⁸³ Burial Act 1857, s 25.

6.112 A new funerary method may also result in material other than human remains. For example, if the soil that remains after the human composting process does not contain any bone fragments, it might not be treated as human remains. The resulting liquid following alkaline hydrolysis is another example of remaining material that may not constitute human remains. However, rules may still be needed about what should happen to the soil, liquid or other similar material that may result from other new funerary methods. Our third sub-project on Rights and Obligations Relating to Funerary Methods, Funerals and Remains will consider the legal status of human remains, including those which are created as a result of new funerary methods. The exact nature of what that sub-project considers may be dependent on whether the law on new funerary methods has changed and whether any new methods have been regulated and are operating at the time.

New funerary methods and fetal remains

6.113 A child which is born after the 24th week of pregnancy and which shows no signs of life is defined as a stillborn child, and this event must be registered under the system of birth registration.⁸⁴ No statutory provisions apply to cremating fetuses from pre-24 week pregnancy losses, although in practice some cremation authorities do carry out cremations of these remains.⁸⁵

6.114 In 2015, the Ministry of Justice consulted on whether fetuses should be included in the statutory regime.⁸⁶ Government responded to the consultation in 2016. It stated its intention to introduce a statutory application form to bring the cremation of fetuses within the scope of the Cremation (England and Wales) Regulations 2008. It indicated that it would consider the practical issues further with the aim of making changes in 2017.⁸⁷ This recommendation has not been implemented at the time of publication.

6.115 In our Consultation Paper on Burial and Cremation, we noted our support for the proposed Government reforms.⁸⁸ We suggest that the reforms should be extended to new funerary methods. Provision about this may need to be set out in the detailed regulation of new funerary methods.

Unidentified bodies

6.116 In our Consultation Paper on Burial and Cremation, we provisionally proposed that no irreversible funerary method should be used in relation to unidentified bodies or body parts.⁸⁹ We noted that this would allow for exhumations to confirm the identity of an

⁸⁴ Births and Deaths Registration Act 1953, ss 11 and 41.

⁸⁵ Ministry of Justice, *Consultation on cremation following recent inquiries into infant cremations* (Consultation Paper, 16 December 2015) p 38, citing the FBCA https://consult.justice.gov.uk/digital-communications/consultation-on-cremation/supporting_documents/englishconsultationdoc.pdf.

⁸⁶ Ministry of Justice, *Consultation on cremation following recent inquiries into infant cremations* (Consultation Paper, 16 December 2015) https://consult.justice.gov.uk/digital-communications/consultation-on-cremation/supporting_documents/englishconsultationdoc.pdf.

⁸⁷ Ministry of Justice, *Consultation on cremation Following recent inquiries into infant cremations* (Government Response, 7 July 2016) p 40 <https://consult.justice.gov.uk/digital-communications/consultation-on-cremation/results/consultation-response.pdf>.

⁸⁸ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 11.43.

⁸⁹ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 11.124 and 11.125.

unidentified deceased person and would also enable family members whose identity was established at a later date to make decisions about the body of their relative.⁹⁰

6.117 This would include cremation and any new funerary method that was irreversible. In relation to new funerary methods, provision would need to be made in detailed regulation of each method to which this applies.

Rights and obligations

6.118 As mentioned above, the third sub-project within our wider project on Burial, Cremation and New Funerary Methods will focus on Rights and Obligations Relating to Funerary Methods, Funerals and Remains.⁹¹ This sub-project will include consideration of:

- (1) whether decisions made by a person about what happens to their body after death should be binding;
- (2) rules about who has the right or responsibility to make decisions about a deceased person's body and the funeral as well as how disputes can be resolved; and
- (3) the legal status of human remains (as mentioned at paragraph 6.112 above).

6.119 Provision in relation to the above matters, as it relates to new funerary methods, may need to be included in detailed regulation about specific new funerary methods.

Consultation Question 11.

6.120 We provisionally propose that the power to make detailed regulation about new funerary methods should be broad enough to encompass the matters set out at paragraphs 6.85 to 6.119 of this Consultation Paper.

Do consultees agree?

6.121 We invite consultees' views on whether there are any other matters that may need to be included in detailed regulation of individual new funerary methods, beyond the matters set out in paragraphs 6.85 to 6.119 of this Consultation Paper. Responses to this question may include views on the potential content of detailed regulation of specific new funerary methods, although whether and how specific new funerary methods should be regulated will be a question for Government to address in future.

TRIALS AND TESTING OF NEW FUNERARY METHODS

6.122 The processes of alkaline hydrolysis and human composting are at an advanced stage of development and are already in use in other countries. As we noted at

⁹⁰ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 11.116.

⁹¹ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

paragraph 1.8, a study of alkaline hydrolysis has taken place in England. It is possible that further trials may be needed for these methods. Furthermore, new methods may emerge that would need to be tested before they could be brought to the point of being ready to be regulated as a new funerary method. Trials may help to highlight key issues and therefore determine the content of future detailed regulation about the method.

- 6.123 In Chapter 7 we provisionally propose that it should be a criminal offence to use a non-regulated new funerary method. Without legislation enabling the use of trials whilst non-regulated new funerary methods are being developed, this could stifle innovation (which stakeholders have told us is important). However, if trials were to be allowed, safeguards would need to be considered to try to ensure that, for example, trials involving experimental technology which were unsuccessful did not cause distress to bereaved people or compromise the preservation of human dignity.
- 6.124 The regulation-making power in the framework could include a power to make provision about trials in secondary legislation. We think that each trial would need to be approved before it took place. It may be appropriate for Government to do this. If trials were carried out in accordance with any conditions that had been imposed, any prohibition on the use of non-regulated funerary methods (and therefore any sanction for breach of the prohibition) should not apply.
- 6.125 We would like to hear from consultees about whether they think that making provision for trials to be possible would be useful and appropriate.

Consultation Question 12.

- 6.126 We invite consultees' views on whether the power to make regulations should include the ability to make provision for approved trials of new funerary methods.

Chapter 7: The status of non-regulated new funerary methods

INTRODUCTION

- 7.1 In Chapter 3 we set out existing legislation that is relevant to new funerary methods. We noted that there is no explicit prohibition on the use of new funerary methods and that although death registration legislation may criminalise the use of new funerary methods, this is unclear and there is no case law on the matter.
- 7.2 The new legislation creating a framework for the regulation of new funerary methods could resolve this by making clear that only those new funerary methods that are regulated are lawful, and that the use of other methods is prohibited. Such a prohibition could be enforced by means of a criminal offence or a civil penalty.
- 7.3 In Chapter 6 we consider possible offences relating to the use of new funerary methods that are regulated under the legal framework. In this chapter, we provisionally propose that the use of *non-regulated* new funerary methods should be a criminal offence. We think that the harm that could arise from the conduct that amounts to the commission of this offence could be more severe than that arising from a cremation not being done in accordance with the cremation legislation, for which the maximum penalty is a fine of £1,000. We provisionally propose that the maximum penalty for this offence should be more severe. We invite consultees' views on whether the maximum penalty for the new offence should include imprisonment.

THE CURRENT LAW

- 7.4 There is no explicit prohibition on the use of new funerary methods in burial and cremation law or any other legislation.
- 7.5 However, as set out in Chapter 3, it is arguable that the use of new funerary methods is effectively prohibited by death registration legislation. Under section 1(1) of the Births and Deaths Registration Act 1926, the body of a person may not be “disposed of” unless a certificate or order has been given to “the person effecting the disposal”.¹ This provision does not apply to cremation, as this is dealt with separately. The “person effecting the disposal”, other than in a narrow set of burials, is “the person by whom or whose officer the register of burials in which the disposal is to be registered is kept”. As there is no requirement for a “register of burials” to be kept for a new funerary method, it is likely that if a new funerary method was to be used there would be no person effecting the disposal, as defined in the 1926 Act. If so, it would be impossible for the certificate or order to be delivered as required and using a new funerary method for the body of a deceased person would therefore be prohibited.

¹ Births and Deaths Registration Act 1926, s 1(1).

- 7.6 It is an offence to breach the prohibition in section 1(1) and on summary conviction a person may be liable to a fine.²

PROBLEMS WITH THE CURRENT LAW

- 7.7 Interpreting the death registration legislation and understanding its relevance to new funerary methods, including the circumstances in which an offence may be committed, is complicated and potentially confusing.
- 7.8 This is unsatisfactory. Those who wish to become operators of new funerary methods should have clarity about whether their use is prohibited. Clarity is also needed for members of the public, including those who would consider making use of new funerary methods if they were available.
- 7.9 There are strong arguments in favour of a clear prohibition on, and criminalisation of, the use of funerary methods that have not been regulated. Allowing the use of non-regulated methods could lead to risks to public health and public safety or the environment. It could also lead to undignified treatment of human remains. If the use of a non-regulated new funerary method is to be prohibited and criminalised this should be clear and not require a convoluted interpretation of legislation about death registration.

REFORM OF THE LAW

The position if no provision is made about the status of non-regulated new funerary methods in primary legislation

- 7.10 As set out in Chapters 3 and 6, we provisionally propose that where a regulated new funerary method is to be used for the body of a deceased person, their death (and the use of the new funerary method) should be registered in the same way as when burial or cremation is the funerary method used.
- 7.11 We envisage that a framework for new funerary methods, set out in primary legislation, would enable regulations to be made approving the use of specific new funerary methods. This could, but need not, include provisions relating to the licensing of new funerary methods. If the framework was silent on whether the use of funerary methods that have not been approved was lawful this would continue the current, unsatisfactory, position. This would obviously not be an effective way to deal with this issue.

Prohibiting the use of non-regulated new funerary methods

- 7.12 There are advantages to having a legislative framework through which new funerary methods can be regulated. These include enabling members of the public to have clarity and confidence that there are safeguards in place for new processes as well as certainty for providers as to how they can and should operate. If some individual new funerary methods are regulated in future, the position on other potential new funerary methods should be clear. There does not appear to be any benefit in allowing them to operate with no regulation in place.

² Births and Deaths Registration Act 1926, s 1(1).

7.13 We think that a prohibition on the use of non-regulated funerary methods should therefore form part of the framework, set out in primary legislation.

Consultation Question 13.

7.14 We provisionally propose that primary legislation should explicitly prohibit the use of a new funerary method which has not been regulated.

Do consultees agree?

Consequences for breach of a prohibition on use of non-regulated funerary methods

7.15 For the prohibition to be effective, we consider that it would be necessary to include an enforcement mechanism for a breach. This could be a civil (non-criminal) sanction or a criminal offence. We think that it would be appropriate for the enforcement mechanism to be a criminal offence. This is in line with the way that the law on burial and cremation is currently regulated and recognises the importance of human dignity and public health in this context.

7.16 We have set out below various criminal offences that apply to burial and cremation, including those which may apply to new funerary methods. We then discuss our provisional proposals for a new offence.

Burial offences

7.17 The law on burial is scattered over several pieces of legislation. Some of the criminal offences relating specifically to burial are set out below.

- (1) It is an offence to contravene the rules on the following in local authority cemeteries (and a person may be liable on summary conviction for a fine not exceeding £100, and £10 for each subsequent day in breach):³
 - (a) burial location;⁴
 - (b) depth of burial;⁵
 - (c) vaults;⁶ or
 - (d) the prohibition on removing interred human remains or soil contacting the remains when making a new burial.⁷

³ Local Authorities' Cemeteries Order 1977 (SI 1977 No 204), art 19.

⁴ Local Authorities' Cemeteries Order 1977 (SI 1977 No 204), art 5(6).

⁵ Local Authorities' Cemeteries Order 1977 (SI 1977 No 204), Sch 2 pt 1 para 2.

⁶ Local Authorities' Cemeteries Order 1977 (SI 1977 No 204), Sch 2 pt 1 para 5.

⁷ Local Authorities' Cemeteries Order 1977 (SI 1977 No 204), Sch 2 pt 1 para 4.

- (2) It is a criminal offence to bury a body in a closed burial ground.⁸ There is no statutory fault element for the offence. The maximum penalty for the offence is a fine not exceeding level 1 on the standard scale (currently £200). In our Consultation Paper on Burial and Cremation we provisionally proposed that the fault element of the offence should be knowledge that the burial ground has been closed to further burials. We also provisionally proposed that the maximum penalty should be increased to level 3 on the standard scale (currently £1,000).⁹

7.18 In our Consultation Paper on Burial and Cremation, we made several provisional proposals regarding the law on burial offences.¹⁰

Cremation offences

7.19 As also set out in paragraphs 6.53 to 6.55, there are three criminal offences in the Cremation Act 1902 that relate specifically to cremation.

- (1) It is a criminal offence to contravene the Cremation (England and Wales) Regulations 2008 or knowingly to carry out, procure or take part in a cremation except in accordance with the provisions of the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008. A person who commits this offence may be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000).¹¹
- (2) It is a criminal offence to make false representations to procure the burning of any human remains. Any person who does this may be liable to imprisonment not exceeding two years, in addition to any civil penalty otherwise incurred.¹²
- (3) Procuring or attempting to procure the cremation of a body with intent to conceal the commission or impede the prosecution of an offence is a criminal offence and a person may be, on conviction, sentenced to a prison term not exceeding five years.¹³

Offences relating to burial and cremation

7.20 There are some offences that relate to burial and cremation which could also apply to new funerary methods.

7.21 Some of these offences form part of the common law. There is a common law offence of preventing the lawful and decent burial of a dead body.¹⁴ It is also an offence to dispose of a dead body in order to obstruct a coroner from holding an inquest.¹⁵ Both

⁸ Burial Act 1855, s 2.

⁹ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 7.81 to 7.82.

¹⁰ Burial and Cremation (2024) Law Commission Consultation Paper No 263.

¹¹ Cremation Act 1902, s8(1).

¹² Cremation Act 1902, s8(2).

¹³ Cremation Act 1902, s8(3).

¹⁴ *R v Hunter* [1974] QB 95.

¹⁵ *R v Stephenson* (1884) 13 QBD 331.

of these offences are punishable by a fine and imprisonment (with no statutory maximum), as determined by the court.¹⁶

7.22 There are also certain statutory offences which are relevant to the way in which the bodies of deceased people are treated. For example, under the Human Tissue Act 2004, a person who removes, stores, or uses human tissue without consent to use it for a “scheduled purpose” is liable to imprisonment for up to three years.¹⁷ The term “scheduled purpose” includes public display, research, and transplantation.¹⁸

7.23 Under section 5 of the Burial Act 1857, it is a criminal offence to remove human remains (which includes cremated remains) from any place of burial unless one of three conditions below is complied with.

- (1) the remains are removed in accordance with a faculty (from the consistory court);¹⁹
- (2) they are removed in accordance with a proposal under the Care of Cathedrals Measure 2011 (No 1); or
- (3) if the remains are not interred in consecrated land, they are removed under a licence from the Secretary of State and in accordance with any conditions attached to that licence.

7.24 The “fault element” (or “mental element”) of an offence is the state of mind that the defendant must have had at the relevant time to be sufficiently culpable. In our Consultation Paper on Burial and Cremation, we noted that there is no statutory fault element for this offence. We provisionally proposed that the fault element required for the commission of the offence of unlawful exhumation should be recklessness.²⁰

7.25 If a person commits the offence of unlawful exhumation, the maximum penalty is a fine of level 1 on the standard scale (currently £200).²¹ In our Consultation Paper on Burial and Cremation, we recommended increasing the maximum penalty to an unlimited fine on summary conviction, or to imprisonment for up to three years on indictment.

A new offence for the use of non-regulated new funerary methods

7.26 The criminal offences set out above reflect the importance that our society places on the proper and appropriate treatment of human remains, particularly in light of public health and human dignity considerations.

¹⁶ See *R v Black* [1995] Crim LR 640, where a life sentence was imposed for each count of preventing a lawful burial.

¹⁷ Human Tissue Act 2004, s 1.

¹⁸ Human Tissue Act 2004, Sch 1.

¹⁹ Remains buried at cathedrals are governed other than by faculty and can be removed in accordance with authority by the Cathedrals Fabric Commission for England or a fabric advisory committee under s 25(2)(b).

²⁰ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 8.94 to 8.99.

²¹ Burial Act 1857, s 25(3).

7.27 We provisionally propose that it should be a criminal offence to breach the prohibition on the use of non-regulated new funerary methods. We consider that the severity of the harm that might be caused by such a breach means that civil penalties or other regulatory sanctions would not be sufficient. The potential harm includes the bodies of deceased people being dealt with in a way that impinges on human dignity, endangers the health of the public and operators, or damages the environment.

External elements

7.28 The “external elements” of an offence are the elements other than those that relate to the state of mind of a defendant (D). These can be divided into:

- (1) “conduct elements”: what D must be proven to have done or have failed to do;
- (2) “consequence elements”: the result of D’s conduct; and
- (3) “circumstance elements”: other factors or states of affairs that must be shown to have existed (such as, for example, the falsity of a statement).²²

7.29 In this case, we provisionally propose that, of the three external elements, the offence would include conduct and circumstance elements. The conduct element would be to carry out, procure or take part in the use of a new funerary method. The circumstance element would be that the new funerary method was not regulated.

7.30 It is not clear precisely what would constitute taking part in a cremation, in the cremation-related offence. There does not appear to be any case law about this. We think that taking part might include being involved in the process but not carrying out the main part of it. For example, a person who moved the body of a deceased person to the location where it would be cremated might be taking part in the cremation.

Fault element

7.31 As mentioned above, the “fault element” (or “mental element”) of an offence is the state of mind that D must have had at the relevant time to be sufficiently culpable. Where at least one of the external elements²³ does not have a corresponding fault element, this is known as strict liability.

7.32 There may be circumstances in which a person does the conduct part of the offence which would not be seen as wrongful or culpable. For example, it is possible that someone who delivered chemicals that were used as part of a non-regulated new funerary method might be “taking part” in the use of the new funerary method. They should not be culpable on this basis alone. We think that there should be a fault element for the offence, for example, intention, knowledge or recklessness.

7.33 It is an offence to carry out, procure or take part in a cremation except in accordance with the provisions of the cremation legislation if this is done “knowingly”.

7.34 In our Consultation Paper on Burial and Cremation, we provisionally proposed that there should be a fault element of recklessness for the offence of unlawful exhumation

²² This approach is set out in Reform of Offences Against the Person (2015) Law Com No 361 para 2.3.

²³ See para 7.28 of this Consultation Paper for an explanation of external elements.

(for which there is currently no fault element). We noted that “removing remains without authority can be seen as wrongful and culpable if it is the possible or probable consequence of an action”. We gave the example of a developer who digs up a former burial ground without making checks as to the location of graves.²⁴

- 7.35 We provisionally propose that, in order to have committed the offence of breaching the prohibition on the use of new funerary methods, D must have had knowledge of the “conduct element” (that they were carrying out, procuring or taking part in the use of a new funerary method). This is the same as the fault element that is required for the offence of carrying out, procuring or taking part in a cremation. If someone did not have actual knowledge that the new funerary method was not regulated but shut their eyes to this or deliberately avoided making inquiries, this would not necessarily exempt them from guilt. This might be taken as knowledge, or alternatively it could be evidence of knowledge.
- 7.36 We also provisionally propose that someone procuring or taking part in the use of the non-regulated new funerary method would need to have known that the new funerary method was not regulated (a “circumstance element”).
- 7.37 However, we think that the position should be different for a person *carrying out* a non-regulated funerary method. We think that it is appropriate that a person carrying out a new funerary method should be required to investigate the position on regulation more than a person who, to use the example above, delivers chemicals to a facility.
- 7.38 We think that it might be appropriate to require that a person carrying out the new funerary method must have been reckless as to whether or not the new funerary method was regulated (or known that it was regulated) to be guilty of the offence. This would be a lower bar for culpability than for the offence of procuring or taking part in the use of a new funerary method. If an operator starts using a new funerary method without checking whether it is regulated, a possible consequence is that they will be using a non-regulated new funerary method and, with this fault element, they could be guilty on this basis.
- 7.39 Another possibility would be not to include any fault element relating to whether the new funerary method was regulated for a person carrying out a non-regulated funerary method. This would be strict liability. As long as the person knew they were carrying out a new funerary method, they could then be guilty of this offence regardless of their state of mind in relation to whether the new funerary method was regulated.
- 7.40 When creating a criminal offence, it is necessary to try to ensure that only those who are sufficiently culpable can be guilty of the offence. A criminal offence would usually include a fault element corresponding to each of the external elements, so that determining culpability would include consideration of what D knew or ought to have turned their mind to. There are some exceptions to this, where it is justified. It is not clear that there would be sufficient culpability if there was no fault element for this external element of the offence. However, we want to ensure that the offence is sufficiently broad in scope to ensure that those who are culpable are caught by the

²⁴ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 8.94.

offence. We would like to hear from consultees as to whether there are any reasons not to include a fault element for this part of the offence, so that someone who is not reckless as to whether the new funerary method they are carrying out is regulated could still be culpable.

- 7.41 We ask consultees whether, in order to have committed the offence of carrying out a non-regulated new funerary method, a person must have known, or been reckless as to whether, the new funerary method was regulated. Alternatively, we ask whether consultees are aware of any justification for not including a fault element for this part of the offence. If there is no fault element, a person can be guilty of the offence even if they do not know that the new funerary method they are carrying out is not regulated, and are not reckless as to whether the new funerary method is regulated.

Maximum penalty

- 7.42 The offence of cremating human remains other than in accordance with the cremation legislation has a maximum penalty of a level 3 fine (currently £1,000). We think that the potential harm that might arise from this offence could be greater.
- 7.43 With the cremation offence, although the person has contravened the regulations relating to cremation, they have still used a recognised funerary method. With the new offence, any new and unregulated method may have been used. The potential harm that might arise from the use of a non-regulated funerary method could be very serious. If a method emerged that, for example, was dangerous to public health or the environment or would have an impact on human dignity, it might be appropriate for a more severe penalty to be imposed.
- 7.44 We consider that the maximum penalty for the new offence should be greater than for the offence of cremating a body in contravention of the regulations and we ask whether consultees agree with this. We invite views from consultees on whether a period of imprisonment should be included in the maximum penalty.

Consultation Question 14.

7.45 We provisionally propose that:

- (1) it should be a criminal offence to *procure or take part in* the use of a new funerary method which is not regulated; and
- (2) to be guilty of the offence of *procuring or taking part in* the use of a new funerary method which is not regulated, the defendant must:
 - (a) know that they are procuring or taking part in the use of a new funerary method; and
 - (b) know that the new funerary method is not regulated.

Do consultees agree?

7.46 We provisionally propose that:

- (1) it should be a criminal offence to *carry out* a new funerary method which is not regulated; and
- (2) to be guilty of the offence of *carrying out* a new funerary method which is not regulated, the defendant must know that they are carrying out a new funerary method.

Do consultees agree?

7.47 We invite consultees' views on whether:

- (1) there should be a corresponding fault element as to regulation, such that, to be guilty of the offence of *carrying out* a new funerary method which is not regulated, the defendant must either know that the new funerary method is not regulated or be reckless as to whether the new funerary method is regulated; or
- (2) there are any reasons that would justify having no fault element for this part of the offence, so a person can be guilty even if they do not know that the new funerary method they are carrying out is not regulated and are not reckless as to whether the new funerary method is regulated.

Consultation Question 15.

7.48 We provisionally propose that the maximum penalty for the offence of carrying out, procuring or taking part in the use of a new funerary method which is not regulated should be more severe than for the offence of carrying out, procuring or taking part in a cremation except in accordance with cremation legislation (a fine at level 3 on the standard scale, currently £1,000).

Do consultees agree?

7.49 We invite consultees' views on whether the maximum penalty for the offence of carrying out, procuring or taking part in the use of a new funerary method which is not regulated should include a period of imprisonment.

Chapter 8: The impact of our provisional proposals

INTRODUCTION

- 8.1 When we make recommendations to Government in our final Report, we will publish an impact assessment. This will set out our assessment of the likely impact of our proposed reforms.
- 8.2 There are factors which make it difficult to assess the impact of this sub-project. First, our work is forward-looking. In our final Report, we intend to make recommendations about a new framework for the regulation of new funerary methods, which are currently not regulated or used in England and Wales. When we publish our final Report, we will not know which new funerary methods might be regulated under the framework, or the future content of any detailed regulation. Second, some of the positive impacts of our reforms will be non-monetisable benefits, which are not as easily measurable as financial impacts.
- 8.3 We ask a general question about the likely impacts (economic and social) of our provisional proposals below.

MONETISABLE COSTS AND BENEFITS

- 8.4 As set out above, when we publish our final Report, we will not know which new funerary methods might be regulated in future. Furthermore, it is difficult to predict what the costs of any individual new funerary method might be to those who choose to use them and whether this would be more or less than the costs of burial or cremation. We may be able to draw on data from other jurisdictions to some extent.
- 8.5 There may be costs to Government arising from the regulation of new funerary methods. In particular, if there was to be a system of licensing, the Government would bear the costs associated with this.

BENEFITS OF REFORM THAT CANNOT EASILY BE MONETISED

- 8.6 Regulation of new funerary methods under the framework could result in a range of funerary methods being available. We think that increased choice of funerary methods is a significant non-monetisable benefit that would be likely to arise from these reforms. We invite views on the extent to which this is recognised by stakeholders.
- 8.7 As we explained in our Consultation Paper on Burial and Cremation, there is significant pressure on burial space in England and Wales. Official reports suggest that local authority and Church of England burial grounds may run out of burial space

in the coming decades.¹ Making the regulation of new funerary methods possible may alleviate some of this pressure by providing more alternatives to burial.

- 8.8 We note that it is possible to calculate benefits or costs of a proposed intervention by using the HM Treasury system of “wellbeing adjusted life years” or “WELLBYS”. This can be used to calculate the economic value of policy change by assessing a value between 0 and 1 by which an intervention would improve an individual’s wellbeing. We welcome any views from consultees in relation to this.

Consultation Question 16.

- 8.9 We invite consultees to provide data and evidence-based views on the likely impacts (economic and social) of the provisional proposals in this Consultation Paper. This may include data and evidence from other jurisdictions.

EQUALITY IMPACTS

- 8.10 We must consider whether any of the changes proposed in this Consultation Paper would adversely affect groups or individuals with a protected characteristic. These characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.² Although these characteristics have legal protection, there are other ways that proposed changes to the law may have impacts on groups or members of groups that do not necessarily fall within the ambit of a particular protected characteristic. Consideration of the impacts on these groups is also important.
- 8.11 We do not envisage that the provisional proposals in this Consultation Paper will have adverse equality impacts.

Religion or belief

- 8.12 The protected characteristic that might be most relevant in relation to these reforms is religion or belief. A person’s religion or belief can influence their attitude to different funerary methods, whether burial, cremation or new funerary methods. However, the aim of a framework for the regulation of new funerary methods would be to enable people to have more choice. No-one would be compelled to use a particular new funerary method. Our sub-project on Rights and Obligations Relating to Funerary

¹ Ministry of Justice, *Burial Grounds: the results of a survey of burial grounds in England and Wales* (June 2007)
https://assets.publishing.service.gov.uk/media/5a74b748ed915d502d6ca66f/burial_grounds_web_pg1-14.pdf. See also J Rugg and N Pleace, *An Audit of London Burial Provision* (2011)
https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Audit%20of%20London%20Burial%20Provision.pdf.

² Equality Act 2010, s 4.

Methods, Funerals and Remains will consider matters relating to the control of the bodies of deceased people and any equality-related implications.³

- 8.13 In our Consultation Paper on Burial and Cremation, we set out in brief some of the beliefs and practices which particularly relate to the funerary methods used by some of the major faiths in England and Wales.⁴
- 8.14 We have been mindful of potential adverse impacts and have sought to protect against these. In our Consultation Paper on Burial and Cremation, we provisionally proposed that cremation, and any irreversible new funerary methods, should not be permitted in relation to unidentified bodies or remains.⁵ We took this approach because using burial is more likely to err on the side of caution in terms of the religious preferences of the unidentified person.
- 8.15 We ask a general question below about potential equality impacts. Consultees may wish to address equality impact issues as they arise throughout the paper, in relation to specific proposals, or more generally in response to the question below. The purpose of this question is to encourage consultees to raise any equality impacts that we may not have considered. Consultees do not need to repeat material here that they have included in responses to other questions.

Consultation Question 17.

- 8.16 We invite consultees to tell us if they believe or have evidence or data to suggest that any of our provisional proposals could result in advantages or disadvantages to certain groups, whether or not these groups are protected under the Equality Act 2010.

WALES

- 8.17 This area of law is devolved. It would be possible for the Welsh Government to decide to introduce legislation to cover Wales, rather than passing a legislative consent motion so that the UK Government could legislate for Wales as well as England. We invite consultees to tell us about any impacts that are specific to Wales.

³ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

⁴ Burial and Cremation (2024) Law Commission Consultation Paper No 263 paras 1.122 to 1.133.

⁵ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 11.125.

Consultation Question 18.

8.18 We invite consultees to provide data and evidence-based views on the likely impacts of the provisional proposals in this Consultation Paper that are specific to Wales.

Chapter 9: Consultation Questions

Consultation Question 1.

9.1 We provisionally propose that a new funerary method is:

- (1) a process;
- (2) other than burial, cremation or burial at sea;
- (3) that breaks down the body of a deceased person; and
- (4) which has the purpose of disposing of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

Do consultees agree?

Paragraph 2.29

Consultation Question 2.

9.2 Are consultees aware of any other significant developments with the processes mentioned in paragraphs 2.39 to 2.85 of this Consultation Paper?

9.3 Are consultees aware of any other potential new funerary methods, other than those mentioned in paragraphs 2.39 to 2.85 of this Consultation Paper?

Paragraph 2.87

Consultation Question 3.

9.4 We provisionally propose that the requirements in legislation relating to death registration should be broadly the same for an approved and regulated new funerary method as for burial and cremation.

Do consultees agree?

Paragraph 3.68

Consultation Question 4.

9.5 We provisionally propose that new funerary methods should be defined and regulated separately from existing funerary methods (rather than, for example, being included in the definition of cremation).

Do consultees agree?

Paragraph 5.56

Consultation Question 5.

9.6 We provisionally propose that new legislation for the regulation of new funerary methods should contain a power to make regulations approving the use of specific new funerary methods and setting out how they should be carried out.

Do consultees agree?

Paragraph 5.70

Consultation Question 6.

9.7 We invite consultees' views on whether licensing should be part of the regulation of specific new funerary methods. Licensing would be in addition to secondary legislation approving the use of specific new funerary methods and setting out how they should be carried out.

Paragraph 5.84

Consultation Question 7.

9.8 Should primary legislation expressly require the Government to have regard to the following principles when making secondary legislation about specific new funerary methods?

- (1) Protection of the environment.
- (2) Protection of public health and public safety.
- (3) Preservation of human dignity.

9.9 We also invite consultees' views on any further principles to which the Government should have regard when making secondary legislation about specific new funerary methods.

Paragraph 6.51

Consultation Question 8.

9.10 We provisionally propose that primary legislation should specify that it is a criminal offence to do the following, in relation to the use of regulated new funerary methods:

- (1) dishonestly make false representations to procure the use of a new funerary method, with a maximum penalty of, on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court, and, on indictment, a fine or two years' imprisonment; and
- (2) procure or attempt to procure the use of a new funerary method with intent to conceal an offence or impede a prosecution, with a maximum penalty, on indictment, of a fine or five years' imprisonment.

Do consultees agree?

Paragraph 6.72

Consultation Question 9.

9.11 We invite consultees' views on whether:

- (1) primary legislation should provide that it is a criminal offence to carry out, procure or take part in regulated new funerary methods in contravention of legislation or other detailed regulation and, if so, whether a maximum penalty, on summary conviction (in magistrates' courts), of a fine at level 3 on the standard scale (currently £1,000) would be appropriate; or
- (2) the Government should be given the power to create new offences in secondary legislation of carrying out, procuring or taking part in regulated new funerary methods in contravention of legislation or other detailed regulation. Any secondary legislation made under this power should be subject to the affirmative resolution procedure.

Paragraph 6.73

Consultation Question 10.

9.12 We provisionally propose that primary legislation should:

- (1) require that the use of a new funerary method on the body of a deceased person must be registered; and
- (2) stipulate that regulations made about specific new methods must set out how and by whom this registration must be carried out.

Do consultees agree?

Paragraph 6.81

Consultation Question 11.

9.13 We provisionally propose that the power to make detailed regulation about new funerary methods should be broad enough to encompass the matters set out at paragraphs 6.85 to 6.119 of this Consultation Paper.

Do consultees agree?

9.14 We invite consultees' views on whether there are any other matters that may need to be included in detailed regulation of individual new funerary methods, beyond the matters set out in paragraphs 6.85 to 6.119 of this Consultation Paper. Responses to this question may include views on the potential content of detailed regulation of specific new funerary methods, although whether and how specific new funerary methods should be regulated will be a question for Government to address in future.

Paragraph 6.120

Consultation Question 12.

9.15 We invite consultees' views on whether the power to make regulations should include the ability to make provision for approved trials of new funerary methods.

Paragraph 6.126

Consultation Question 13.

9.16 We provisionally propose that primary legislation should explicitly prohibit the use of a new funerary method which has not been regulated.

Do consultees agree?

Paragraph 7.14

Consultation Question 14.

9.17 We provisionally propose that:

- (1) it should be a criminal offence to *procure or take part in* the use of a new funerary method which is not regulated; and
- (2) to be guilty of the offence of *procuring or taking part in* the use of a new funerary method which is not regulated, the defendant must:
 - (a) know that they are procuring or taking part in the use of a new funerary method; and
 - (b) know that the new funerary method is not regulated.

Do consultees agree?

9.18 We provisionally propose that:

- (1) it should be a criminal offence to *carry out* a new funerary method which is not regulated; and
- (2) to be guilty of the offence of *carrying out* a new funerary method which is not regulated, the defendant must know that they are carrying out a new funerary method.

Do consultees agree?

9.19 We invite consultees' views on whether:

- (1) there should be a corresponding fault element as to regulation, such that, to be guilty of the offence of *carrying out* a new funerary method which is not regulated, the defendant must either know that the new funerary method is not regulated or be reckless as to whether the new funerary method is regulated; or
- (2) there are any reasons that would justify having no fault element for this part of the offence, so a person can be guilty even if they do not know that the new funerary method they are carrying out is not regulated and are not reckless as to whether the new funerary method is regulated.

Paragraph 7.45

Consultation Question 15.

9.20 We provisionally propose that the maximum penalty for the offence of carrying out, procuring or taking part in the use of a new funerary method which is not regulated should be more severe than for the offence of carrying out, procuring or taking part in a cremation except in accordance with cremation legislation (a fine at level 3 on the standard scale, currently £1,000).

Do consultees agree?

9.21 We invite consultees' views on whether the maximum penalty for the offence of carrying out, procuring or taking part in the use of a new funerary method which is not regulated should include a period of imprisonment.

Paragraph 7.48

Consultation Question 16.

9.22 We invite consultees to provide data and evidence-based views on the likely impacts (economic and social) of the provisional proposals in this Consultation Paper. This may include data and evidence from other jurisdictions.

Paragraph 8.9

Consultation Question 17.

9.23 We invite consultees to tell us if they believe or have evidence or data to suggest that any of our provisional proposals could result in advantages or disadvantages to certain groups, whether or not these groups are protected under the Equality Act 2010.

Paragraph 8.16

Consultation Question 18.

9.24 We invite consultees to provide data and evidence-based views on the likely impacts of the provisional proposals in this Consultation Paper that are specific to Wales.

Paragraph 8.18

Appendix 1: Terms of Reference

BURIAL, CREMATION AND NEW FUNERARY METHODS – TERMS OF REFERENCE

- 1.1 The Law Commission’s review will seek to create a future-proof legal framework to address what happens to our bodies after we die. It will seek to make recommendations that will provide modern, certain and consistent regulation across different funerary methods. It will also seek to allow individuals to make decisions about what will happen to their bodies after they die which the law will respect, and to provide a fair and modern framework for decision-making by the deceased person’s family where they have not made an advance choice.
- 1.2 So that the review can make clear progress and deliver efficiently, it will be divided into three separate phases.
- 1.3 The first two phases will consider methods of disposal:
 - (1) burial and cremation, and
 - (2) new funerary methods.
- 1.4 The final phase will consider who has the legal authority and responsibility to make decisions about a dead person’s body, including the status of the deceased’s own wishes.

Principles

- 1.5 Our review will be informed by the following five principles:
 - (1) sensitivity about the importance of the treatment of the dead within families and communities;
 - (2) fairness and diversity within the law, to reflect the variety of family structures;
 - (3) sustainability in the environmental impacts of disposal and land use;
 - (4) adaptability of the law so that it is modern and future-proof;
 - (5) resilience in the law in the face of future emergencies.

Phases 1 and 2: Funerary methods

- 1.6 The review’s consideration of the laws governing different funerary methods will consider the current laws governing burial and cremation, as well as the need for regulation of new funerary methods.

Phase 1: Burial and cremation

- 1.7 In relation to burial, the review will aim to rationalise and simplify the law governing burials and exhumation in all types of burial grounds, including the law governing –

- (1) the burial process;
- (2) regulation of burial spaces, including memorials and burial rights;
- (3) the maintenance of burial grounds;
- (4) the opening and closing of burial grounds, and the transfer of responsibility to local authorities;
- (5) the extent to which the law of burial applies to interred ashes or other types of remains from new processes;
- (6) legal authority for grave re-use; and
- (7) legal authority to exhume a body, and any issues relating to exhumation.

The review will not consider the law governing burials at sea or the removal of bodies outside of England or Wales. It will not consider reducing or removing any exceptions or special provisions applying to graves under the care of the Commonwealth War Graves Commission, but may consider improving them or extending them.

- 1.8 In relation to cremation, the review will aim to place the rules governing cremation into a modern legislative framework. It will include specific consideration of –
- (1) accommodating new technologies and diverse religious practices;
 - (2) the rights of family and friends to register an objection to a cremation;
 - (3) planning and siting crematoria (and the disjunct with planning permission criteria);
 - (4) entitlement to ashes following a cremation and rules governing where ashes may be scattered (including public policy concerns that may arise); and
 - (5) any issues about the ownership of medical implants and devices.

Phase 2: New funerary methods

- 1.9 In relation to new funerary methods, the review will aim to introduce a legislative framework to regulate them, which will include consideration of –
- (1) what makes something a lawful funerary method, including with reference to environmental and public health concerns;
 - (2) what regulation or powers of regulation of new funerary methods are necessary;
 - (3) the interaction with death registration requirements; and
 - (4) necessary rules in relation to any remains resulting from any new funerary process.

Phase 3: Rights and obligations relating to funerary methods, funerals and remains

1.10 The review will consider the status of a person's own decisions about what happens to their remains, as well as the law which governs the determination of who has the responsibility for and authority to make decisions about our bodies after we die.

1.11 This phase will include consideration of –

- (1) the ability of a person to make a legally binding decision about what should happen to their body after they die, and their funeral;
- (2) in the absence of a decision by the deceased, who has the right to make decisions about their body and the funeral, how their decisions could be challenged, and the rules governing how the disputes should be resolved (including disputes between parents or other family members);
- (3) who should bear responsibility for a dead body, including the rules and standards applying to public health funerals; and
- (4) the legal status, including ownership of or rights and responsibilities in relation to, dead bodies and human remains.

1.12 In this final phase, we will also consider any remaining or overarching issues which have emerged during the course of the project.

Areas out of scope of the project

1.13 The following matters are out of scope of the review:

- (1) death certification and registration;
- (2) the regulation of funeral directors;
- (3) the Church of England's common law duty to bury parishioners and those who die in the parish;
- (4) regulation of methods of preservation of human remains;
- (5) burial at sea;
- (6) planning and environmental law;
- (7) other issues relating to body parts, such as organ donation, post-mortem reproduction and police investigations; and
- (8) criminal offences that may be committed in relation to human remains, including in relation to desecration.