

Background paper 2: Aberdeen City Council Draft response to Scottish Government Consultation on Death Certification, Burial and Cremation : 2010

SECTION ONE WHEN A DEATH OCCURS

Question 1

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

Yes, principally because it will also help to minimise distress for the bereaved.

DUTY OF INSTRUCTING DISPOSAL OF THE BODY

Question 2

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

Yes. This will confirm the tried, trusted and accepted common law position in Scotland, as long as the right to instruct the disposal of bodies is defined sufficiently to mean the nearest adult relative. In the absence of any relative, then the right to instruct the disposal of a body is vested in the Local Authority

Question 3

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

Yes. This would be in line with the principles set down in that Act, which reflects modern thinking. The answer to question 2 is also relevant here.

Question 4

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

Yes.

SECTION TWO DEATH CERTIFICATION

DISPOSAL FOLLOWING INCONCLUSIVE POST MORTEM

Question 5

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

The method of disposal of the body should be restricted to burial as this leaves the possibility of later examination and analysis open –at least for a reasonable time.

Question 6

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

Yes and no, respectively.

THE MEDICAL INVESTIGATOR MODEL

Question 7

Is the Medical Investigator model your preferred model?

Yes.

Question 8

If yes, why?

The Medical Investigator model will not increase delays in 98% of deaths. In addition, there will also be a slight reduction in 60% of delays where cremation is the proposed method of disposal.

Question 9

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

The Medical Investigator model reduces the number of medically qualified individuals involved in the process, thereby enhancing continuity within the process.

Question 10

What do you view as its potential weaknesses?

The potential for added delay in the 2% of deaths which are subject to comprehensive scrutiny is the main drawback, rather than being a weakness.

Question 11

Do you think it offers best value for money?

The figures would seem to indicate that it will offer best value, but there needs to be put in place a system of rigorous scrutiny of the scheme's operation: specific, measurable, achievable, realistic and time-defined

(SMART) measures will have to be in place to enable the scheme to be properly assessed against best value principles .

THE MEDICAL EXAMINER MODEL

Question 12

Is the Medical Examiner model your preferred model?

On emotional and religious costs -no. The financial cost also seems high in comparison to the medical Investigator model. Overall, it is not our preferred model.

Question 13

If yes, why?

Not applicable.

Question 14

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

It does away with the need for separate medical referees at Crematoria.

Question 15

What do you view as its potential weaknesses?

Its potential weaknesses, apart from the emotional and religious costs mentioned already, are that delays are slightly greater in 40% of all deaths where the method of disposal is burial.

Question 16

Do you think it offers best value for money?

In terms of the figures provided, no. It is assumed that the comparisons between this and the Medical Investigator model are on a wholly like for like basis.

REVIEW OF FORMS AND CERTIFICATES

Question 17

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

Yes, as this continues the accepted principle. It would also benefit bereaved families/the deceased's estate in terms of the reduced fee resulting from the proposed changes.

FUNDING INCREASED GOVERNANCE

Question 18

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

The current system will more than meet the costs of the improved governance, so there is already adequate funding in place.

Question 19

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

Yes. This would ensure consistency of approach, especially since the need for more than one medically qualified officer's signature is dispensed with, in all but the 2% of cases which are subjected to a comprehensive investigation.

Question 20

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

Yes. There would need to be some mechanism whereby every local burial/cremation authority charged exactly the same fee.

It would be difficult to maintain transparency if this was just included along with all the other charges in an overall fee, so the alternatives are:

- (i) an initial fee(i.e. this one) to be collected at the point of application by each local burial /Cremation authority, with the fee for burial lair sales, cremations, etc being kept separate; or
- (ii) an identifiable part of the overall fee charged by each burial /cremation authority.

The second option is, it is submitted, preferable in terms of paperwork reduction/reduction of process complexity if, and only if, each burial /cremation authority adjusts its overall charge by removing the element for forms B, C and the third medical referee and replacing it with this fee for cremations and adding it to current burial charges.

SECTION THREE BURIAL

REGULATION OF CEMETERIES

Question 21

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

Yes. The current position with regard to Health and Safety issues is that where the premises (the cemetery) is separate from the church, or is a Local Authority administered cemetery attached to the church, the Health and Safety Executive are responsible for enforcement..

The Local Authority has responsibility for enforcement of Health and Safety only where the cemetery is attached to and administered by a church.

Specific legislation would add weight to an employer's duties under section 3 of the Health and Safety at Work etc., Act 1974.

More specifically, feedback from a local memorial mason company is in agreement with the introduction of new legislation, provided that memorials with kerbs are allowed back into Scotland to promote increased freedom of choice for families.

MEMORIALS AND HEADSTONES

Question 22

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

Yes. For reasons of Health and Safety as well as consistency of approach to all staff and visitors to burial grounds. However, it would be difficult to enforce unless a condition of erection of memorials was that owners were required to produce a certificate of insurance prior to the erection of the memorial headstone. There is also the potential for a disproportionate effect, resulting from the cost implications of ongoing insurance, upon older people and in particular, older women, in poverty.

Question 23

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

Yes.

- (i) Provision for defining who will be responsible for ensuring that the legislation is complied with;
- (ii) Provision to deal with the situation where the person who holds the insurance policy defaults on payment/leaves the country/dies ; and
- (iii) Guidance on appropriateness of memorials and the area surrounding the headstone.

CONTINUED SUSTAINABILITY AND AFFORDABILITY OF BURIAL GROUNDS

Question 24

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

Yes, but see also the answer to question 26 below. Burial /Cremation authorities would not only have to make reasonable attempts to find surviving relatives, but could not proceed without their express approval once found. This is entirely sensible, but would benefit from a working definition of “reasonable”, rather than having to rely on precedent.

Question 25

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

75 years would appear to be a reasonable and sensible time limit, given current demographic trends in terms of longevity in Scotland, and assuming that all the other safeguards outlined in the answer to question 26 below are followed.

LIFT AND DEEPEN

Question 26

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

Even taking into account all the safeguards outlined in sections 82-85 of the consultation paper, there is no easy answer to this question. There are many issues to consider, not the least of which is that this could be an issue for certain religious or belief groups who see burial grounds as consecrated ground Accordingly, before any Burial Authority considers taking this course of action, it is submitted that it should only do so if:

- (i) space within the Authority’s burial grounds is exhausted or about to be ; and**
- (ii) there is no realistic chance of new burial grounds being provided in the foreseeable future; and**
- (iii) a public consultation is carried out to ascertain the public’s view of such a course of action and sets out the alternatives, including cremation .**

Question 27

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

The method itself, if applied with all the safeguards listed in the response to question 26 above, still has disadvantages in that at least part of the public will not be in favour of it under any circumstances. The advantages are that the occupants of the lair retain their unique separateness.

Question 28

What acceptable alternative approaches are available?

Green burials and cremation are two possible alternative approaches.

Question 29

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

At present, since there are no prescribed methods for re-using lairs, it could only assist and enhance uniformity of service provision if particular methods were approved in, say, a statutory code of good practice. This would still leave some room for flexibility of approach, should local circumstances require it.

TENURE OF GRAVE LAIRS

Question 30

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

It is believed that, with an increasingly healthy and long-lived population, the time between buying a lair and its eventual use might be more than 25 years on average. Perhaps a figure of 40 years would be more appropriate.

It is also the case that, in Aberdeen, there is a system in place whereby, in certain cemeteries, the lair is reserved for 10 year periods. The onus is then on the family to renew the reservation at the end of each 10 year period. If the tenure is not renewed, the lair space is returned to the Council's ownership and again made available for sale.

Question 31

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

See answer to question 30 above.

Question 32

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

No. People have entered into binding contracts for the tenure of lairs and this should be honoured.

Question 33

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

No. Compensation should not be payable provided that the time limited tenure is not introduced retrospectively. If it is to be introduced retrospectively then it is believed that compensation should apply in relation to those lairs purchased prior to the date of the legislation.

Question 34

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

Not applicable.

89. In order to minimise the number of unused lairs in future the Review Group recommended the burial authority should be prohibited from selling blocks of lairs or multiple lairs. In reality this may mean that only one lair can be sold to any one person. Furthermore the burial authority could have the right to refuse the sale of a lair if it has cause to believe that it is not for imminent use.

Question 35

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

Yes, since that would be consistent with the proposals on limiting tenure of lairs and making use of unused burial space. It would be desirable to have at least a working definition of "imminent".

However, feedback from a local memorial mason company points out that a restriction on the sale of multiple lairs will mean that those who wish to erect large family memorials will not be able to do so and believes that this would be a restriction on freedom of choice.

It could also limit choice for buyers who want to purchase more than one lair to ensure that they are all together.

ELECTRONIC RECORDS

Question 36

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

Yes. This would be necessary for enabling accurate checks to be made on lairs many years in the future and also for genealogical research.

GREEN BURIALS

Question 37

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

Yes, for reasons of Health and Safety and consistency of approach.

Question 38

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

Protection in perpetuity from future building developments and a commonsense set of provisions governing the type of memorials appropriate to such burial grounds..

Question 39

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

No. For reasons of Health and Safety, green burial sites should be subject to the same legal controls as “non-green” burial sites.

HOME BURIAL

Question 40

Should legislation be enacted to govern home burials?

Yes, most definitely, for all the reasons quoted in section 92.

Question 41

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

Yes. They are best placed to record and administer these matters, since they are also responsible for Planning and Public Health matters.

Question 42

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

Not applicable.

EXHUMATION

Question 43

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

No. The better option would be for legislation to grant this power to local burial / cremation authorities. Local knowledge and record-keeping should help to keep this process as efficient and quick as possible.

Question 44

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

See answer to question 43 above.

Question 45

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

Yes, but only in cases where a dispute arises about a request for permission to exhume remains.

SECTION FOUR CREMATION AND ALTERNATIVE METHODS OF DISPOSAL

PLANNING FOR NEW CREMATORIA

Question 46

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

Yes. New build crematoria are constructed according to the most up to date and strict environmental legislative requirements: accordingly, the existing limits should be easily adequate. The Head of Service (Planning and Sustainable Development) is in agreement with this approach.

EXHUMATION OF CREMATED REMAINS

Question 47

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

Yes, in the interests of consistency of approach and for the removal of doubt as to the proper authority to grant permission to exhume cremated remains.

Question 48

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

In Aberdeen, if the ashes are not collected after one month has passed, the Crematorium staff contact the Funeral Director and request them to make contact with the family. If the Funeral Director either cannot contact the family or receives no response, the Crematorium staff then send a letter to the family. If, after the passing of a further month, the ashes still have not been collected, the Crematorium staff then scatter the ashes, with all due dignity and respect, in the Garden of Remembrance at Hazlehead.

It is therefore submitted that 5 years would be more than sufficient time for the collection of ashes.

Question 49

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

Yes. See answer to question 48 above.

Question 50

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

Yes. However, it is important that the law should also provide for a clear definition of a “suitable location”. Regulation 17 of the Cremation (Scotland) Regulations 1935 (as amended) provides a good basis for such a definition:”...a burial ground or in land adjoining the crematorium reserved for the burial of ashes or shall be scattered thereon.”

DEATHS ABROAD

Question 51

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

Yes. This should be made clear in legislation. It is submitted that the Crown Office Procurator Fiscal Service is the appropriate body to carry this out.

Question 52

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

Yes: those measure mentioned in section 111 below , proposing uniformity of transfer procedures across jurisdiction boundaries.