

Report To: Safe, Sustainable Communities Committee

Date: 4 May 2010

Report By: Corporate Director Regeneration & Environment

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Subject: Consultation Paper on Death Certification, Burial and Cremation

1.0 PURPOSE

- 1.1 The purpose of this report is to advise the Safe, Sustainable Communities Committee of the officers' response to the Scottish Government's Consultation Paper on Death Certification, Burial and Cremation

2.0 SUMMARY

- 2.1 In January 2010 the Scottish Government published a Consultation Paper on Death Certification, Burial and Cremation.

- 2.2 The response to the consultation will assist with the drafting of new legislation to replace the current legislation, which is old and no longer considered fit for purpose i.e. The Cremation Acts of 1902 and 1952 (and the Cremation (Scotland) Regulations 1935 as amended) and the Burial Grounds (Scotland) Act 1855.

- 2.3 The consultation follows consideration of the 33 recommendations by the Burial and Cremation Review Group, all of which the Scottish Government has decided to consult on. The Review Group which was set up under the previous Administration presented its recommendations to the Scottish Government in 2007. It considered two main areas:

(1) death certification, focusing on issues designed to ensure that when a death occurs there are adequate safeguards in place to meet any concerns there may be around the death having particular regard to recommendations which flowed from the Shipman Inquiry

(2) the law relating to burial, cremation and cemeteries, much of which dates back over 100 years.

3.0 RECOMMENDATION

- 3.1 That the Committee note the responses made to the questions in the Consultation Document

4.0 BACKGROUND

- 4.1 The Cremation Acts of 1902 and 1952 (and the Cremation (Scotland) Regulations 1935 as amended) and the Burial Grounds (Scotland) Act 1855 as amended are outdated and in need of replacement or updating.
- 4.2 The Burial and Cremation Review Group was set up in 2005 by the former Minister for Health under the previous Administration. The Review Group, which was chaired by Sheriff Robert Brodie, drew its membership from a wide range of interests including representation from the medical profession, faith groups, and professional bodies from the funeral industry, local authorities and consumer groups and others, with secretarial support provided by the Scottish Government. In addition, other individuals and organisations offered expert advice to the Review Group on particular issues when necessary, such as Historic Scotland and the Information Services Division (ISD), part of NHS National Services.
- 4.3 The consultation follows consideration of the 33 recommendations by the Burial and Cremation Review Group, all of which the Scottish Government has decided to consult on. The Review Group which was set up under the previous Administration presented its recommendations to the Scottish Government in 2007.
- 4.4 The main impetus as regards death certification is to focus on issues designed to ensure that when a death occurs there are adequate safeguards in place to meet any concerns there may be around the death, having particular regard to recommendations which followed the Shipman Inquiry

5.0 Proposals

- 5.1 It is proposed that the Committee notes the responses made to the consultation document within its required timescale of 21 April 2010. The full consultation document can be viewed on the consultation web pages of Scottish Government website at: <http://www.scotland.gov.uk/consultations>

6.0 Implications

- 6.1 Financial: There are no financial implications at this stage
- 6.2 Legal: There are no legal implications at this stage.

CONSULTATION

- 6.1 Consultation on the details of this report was carried out with the Federation of Burial and Cremation Authorities (FBCA) and the Institute of Cemetery and Crematorium Management (ICCM) (Scotland & Northern Ireland Branch).

7.0 Equalities

- 7.1 This report has no impact on the Council's Equality Agenda

ATTACHMENTS

Summary of Questions and Responses

Inverclyde Council

RESPONSE

to the

SCOTTISH GOVERNMENT

CONSULTATION PAPER

ON

DEATH CERTIFICATION, BURIAL AND CREMATION

CONSULTATION PAPER ON DEATH CERTIFICATION, BURIAL AND CREMATION

SECTION ONE.

When a Death Occurs

Question 1.

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

It is acknowledged that it may not always be possible or practical for a Doctor to certify death immediately and for this reason professional groups such as senior registered nurses and paramedics should have the power to verify the fact that life is extinct.

Duty of instructing disposal of the body.

Question 2.

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

The Executor or nearest surviving relative of the deceased should have the right to determine the disposal of the deceased. We support the comments within Professor Whitty's article, "Rights of personality, property rights and the human body in Scot's Law" as detailed within para 19 of the consultation paper.

Question 3.

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

Yes

Question 4.

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

Yes

SECTION TWO.

Disposal following Inconclusive Post Mortem

Question 5.

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

The retention of detailed Toxicological evidence would be sufficient to facilitate disposal by burial or cremation.

The same level of inquiry should be applied to all deaths regardless of the method of disposal.

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

Question 6.

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

Please see response to question 5.

The Medical Investigator Model

Question 7.

Is the Medical Investigator your preferred model?

The Medical Investigator option is not our preferred option.

It is our position that there should be some scrutiny of all deaths, but that the Registrar should **not** be responsible for the initial check.

It is noted that this work is currently being carried out by crematoria Medical Referees.

Question 8.

If yes, why?

Not applicable.

Question 9.

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

It would introduce a standard approach throughout all local authority areas.

This system would also enable the Medical Investigator to provide a level of scrutiny and in particular have access to the deceased's medical records etc. This however is not our preferred option.

Question 10.

What do you view as its potential weaknesses?

The low number of deaths proposed to be scrutinised.

Question 11.

Do you think it offers best value for money?

No

The Medical Examiner Model

Question 12.

Is the Medical Examiner model your preferred model?

The Medical Examiner model is the preferred option.

Question 13.

If yes, why?

The Medical Examiner model provides the best overall solution with all the documents scrutinised to some degree by the Medical Examiner and/or their staff. This option will show up death clusters and permit further investigation.

It is also considered that this option sits comfortably with arrangements in place for death certification in England and Wales.

Question 14.

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

This option will provide a robust system of scrutiny and will deal with all deaths and not just those where cremation is the chosen form of disposal.

Question 15.

What do you view as its potential weaknesses?

The potential for delays that the option could bring to the process is the most obvious downside. It is imperative that the option is fully and consistently funded so as to minimise the potential for delays.

Question 16.

Do you think it offers best value for money?

The higher levels of scrutiny will come at an extra cost, however the determining factor should not be cost, it should be fitness for purpose and value.

Funding Increased Governance

Question 17.

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

Yes. At present the medical costs e.g. MCCD, Forms B and C, Medical Referee are passed on, so any new costs will for the most part replace existing charges.

Question 18.

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

The preferred option is to levy a charge to those arranging the funeral or the deceased's estate.

Question 19

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

Yes.

Question 20

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

In Inverclyde medical fees are currently collected by the funeral director from the applicant as a disbursement and thereafter disbursed to the relevant doctors, or in the case of the Medical Referee to the burial or cremation authority (Inverclyde Council).

Changing this system as proposed would place an additional administrative burden on Inverclyde Council in regard to collection and passing the fees to central government.

Funeral Directors already collect the associated fees and disburse them. The new proposal will see a reduction in the number of disbursements and therefore a consequent reduction in administration costs for funeral directors.

SECTION THREE

Regulation of Cemeteries

Question 21.

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

Yes.

It is considered appropriate that the Local Authorities Cemeteries Order 1977 (LACO) (for England and Wales) and the Burial Grounds Regulations (Northern Ireland) 1992 be used as a basis for framing legislation in Scotland.

Question 22.

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

It is considered that matters relating to memorial masons and memorials should be managed by local regulation and not included within the legislation. Management Rules for Cemeteries under the Civic Government (Scotland) Act 1982 are used at present and are considered adequate.

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

It is agreed that memorial owners should be encouraged to insure their memorials

Question 23.

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

It is considered that matters relating to memorial masons and memorials should be managed by local regulation and not included within the legislation. Management Rules for Cemeteries under the Civic Government (Scotland) Act 1982 are used at present and are considered adequate.

Continued Sustainability and Affordability of Burial Grounds

Question 24.

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

Yes. The re-use of old abandoned/unused graves is an appropriate means of assisting the long term security and sustainability of existing cemeteries and burial grounds.

Question 25

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

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

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

Lift and Deepen

Question 26.

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

Yes.

Question 27.

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

No comment

Question 28.

What acceptable alternative approaches are available?

It is accepted that there are few if any acceptable alternative approaches to re-use existing lairs where interments have taken place to the capacity of the lair. It may be appropriate to develop a programme of repurchase of rights to lairs where the lair has not been used after a particular period.

Question 29.

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

The re-use of graves should be restricted to the adoption of the ‘lift and deepen’ process only and that this be prescribed in legislation.

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

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

Tenure of Burial Lairs

Question 30.

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

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

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

Question 31.

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

Not applicable.

Question 32.

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

This should be introduced retrospectively as the exclusive right of burial on the lair would have been sold in perpetuity.

Question 33

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

Yes.

Question 34.

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

Current charge for provision of new lair.

Question 35.

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

The pre selling of blocks or multiples of lairs should be discontinued.

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

Electronic Records

Question 36.

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

All burial records, including those that would relate to re-used graves, should be maintained electronically with those electronic records being made available to the public via a media determined by the cemetery or burial ground owner.

Green Burials

Question 37.

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

Yes.

Question 38.

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

Protection any rights of access for grave owners.

Question 39.

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

There should be no exemptions with regard to green burial sites.

Home Burial

Question 40.

Should legislation be enacted to govern home burials?

Yes.

Question 41.

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

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

Question 42.

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

Not applicable.

Exhumation

Question 43.

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

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

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

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

Question 44.

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

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

Question 45.

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

There are no benefits in maintaining the current system via the Sheriff's office.

SECTION FOUR

CREMATION AND ALTERNATIVE METHODS OF DISPOSAL

Planning for New Crematoria

Question 46.

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

Yes.

Question 47.

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

Yes.

Disposal of Cremated Remains

Question 48.

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

Yes.

Question 49

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

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

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

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

Question 50.

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

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

CREMATION LAW

Deaths Abroad

Question 51.

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

Yes.

Question 52.

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

The retention of detailed Toxicological evidence would facilitate disposal by burial or cremation.

The same level of inquiry should be applied to all deaths regardless of the method of disposal, resulting in the removal of the need for the cause of death to be definitely ascertained in order for cremation to take place.