

THE HIGHLAND COUNCIL

TRANSPORT, ENVIRONMENTAL AND COMMUNITY SERVICES
COMMITTEE – 18 March 2010

Agenda Item	
Report No	

Consultation on Death Certification, Burial and Cremation

Report by Director of Transport, Environmental and Community Services

SUMMARY

This report invites Members to approve the Council's response to the Scottish Government's Consultation on Death Certification, Burial and Cremation.

1. Introduction

- 1.1 The Scottish Government established the Burial/Cremation Review Group in 2005 with a remit to review current legislation relating to cremation and burials, and to take account of developments arising from the Shipman Enquiry in England especially around death certification for cremations.
- 1.2 This review group reported in March 2008 and consequently the Scottish Government has issued this consultation document on its proposals. The Consultation can be viewed at:

<http://www.scotland.gov.uk/Publications/2010/01/26131024/0>
- 1.3 The Consultation closes on 21 April 2010 and the Council's proposed response is contained in **Appendix A**.

2. Summary of Proposals to Death Certification

- 2.1 In relation to death certification procedures to allow a burial proceed, there are no proposals to change the current arrangements which require one doctor to sign for cause of death, and the death to be registered, however these proposals will introduce a level of paper based scrutiny.
- 2.2 In the case of a cremation, the current death certification procedures require two doctors to testify the cause of death and for the documentation to be checked by the medical referee before the crematorium takes place.
- 2.3 The Consultation contains two alternative proposals in relation to death certification for **all** deaths.
 1. Introduce a Medical Investigator where a 1% to 2% sample of all deaths are scrutinised
 2. Introduce a Medical Examiner Model where all deaths are scrutinised.

2.4 Proposal 1 - Introduce a Medical Investigator

- 2.4.1 The Medical Investigators will carry out a comprehensive paper based scrutiny of a 1% random sample of all deaths. In addition, all deaths where concerns have been expressed will be scrutinised, and this is estimated to involve a further 1% of all deaths.
- 2.4.2 The scrutiny will be paper based, and will involve viewing the appropriate medical records and taking evidence from the nearest relative and/or those providing care including medical care to the deceased.
- 2.4.3 In this model it is recommended that a new post of a Deaths Investigator be appointed. The Deaths Investigator would be a statistician who would undertake a statistical check on all Scottish death data. The Medical Investigator will consider the statistical checks and will investigate any unusual patterns of data.
- 2.4.4 In the majority of cases this model should not cause any increase in the time between death and burial / cremation.
- 2.4.5 The Medical Investigator will have a Scotland wide remit.

2.5 Proposal 2 - Introduce a Medical Examiner Model

- 2.5.1 In this model the Medical Examiner will carry out a basic scrutiny of all deaths, and a comprehensive scrutiny of 1-2% of these deaths. The Medical Examiner will countersign all Medical Certificates of Cause of Deaths.
- 2.5.2 Additional staff will be employed to scrutinise all Medical Certificates of cause of deaths. In this model the Deaths Investigator will also be appointed to generate statistical data.
- 2.5.3 As all documents will be scrutinised and countersigned, it is likely that there will be a delay in the timescale for approval to dispose of the body, especially in sparsely populated areas. It is believed that in worst cases, this could result in a delay of up to 6 ½ days.
- 2.5.4 The Medical Examiner will have a Scotland wide remit.
- 2.6 In both cases the post of medical referee will be abolished, and the Scottish Government is seeking views on a preferred option. The Scottish Government's preferred option is to introduce a Medical Investigator (Proposal 1).

3. Conclusions for Death Certification

- 3.1 Whilst the current system provides checking for individual cremations it does not examine statistical trends, and the proposals set out in the Consultation are intended to identify any abnormal trends in death certification.
- 3.2 The Medical Investigator Option (Proposal 1) provides a limited level of scrutiny, however the costs are less and there are unlikely to be increased delays for

burials and cremations.

- 3.3 The Medical Examiner Option (Proposal 2) provides more comprehensive scrutiny, however there will be significant costs, which will result in higher fees for all deaths, and increased delays for burials and cremations.
- 3.4 On balance the Medical Investigator Model (Proposal 1) appears to provide the correct balance, and is proportionate for the issues being addressed.

4. Summary of Proposals for Burials

- 4.1 There is a proposal to introduce legislation which will regulate all local authority and private burial grounds similar to the English Local Authority Cemetery Order.
- 4.2 Perhaps the most contentious issue will be the proposal to introduce legislation which will permit local authorities to reuse lairs after a period and 75 years. This power may find support from urban authorities where land for new burial grounds is limited or very expensive, however as a result of the Council's recent consultation in relation the Management Rules for Burial Grounds this proposal is unlikely to find support in the Highlands.
- 4.3 The second contentious issue is the proposal that lair rights are sold for a limited but renewable period of 25 years. Again, the feedback from the Council's recent consultation in relation the Management Rules for Burial Grounds would indicate that this proposal would meet with strong resistance in the Highlands.

5. Conclusions for Burials

- 5.1 The Council's recent consultation in relation to the Management Rules for Burial Grounds confirms that there would be little support to introduce restrictions on the use of lairs, and the current arrangements to sell lairs in perpetuity received wide spread support across the Highlands.

6. Resource Implications

- 6.1 There are no resource implications arising directly from this report.

7. RECOMMENDATION

- 7.1 Members are invited to approve the Council's response to the Scottish Government's consultation on Death Certification, Burial and Cremation, as contained in **Appendix A**.

Signature:

Designation: Director of Transport, Environmental and Community Services

Date: 5 March 2010

Author: Brian Donnet

Background Papers: Burial and Cremation Group: Report and Recommendations, March 2008
Scottish Government's Consultation Paper on Death Certification, Burial and Cremation.

Consultation Paper on Death Certification, Burial and Cremation

Section 1 - When a death occurs

Q 1 – Would it be appropriate to enable trained clinical staff such as nurses and paramedics to verify life extinct?

A – Yes but subject to appropriate and suitable training

Q 2 – Should the right to instruct the disposal of bodies on death be vested in the nearest relative?

A – Yes. Common law position is that the deceased persons next of kin or nearest relative arrange for disposal of body, if no relatives then falls to deceased persons executor. Proposal is that common law practice should be given a formal legislative footing.

Q 3 – Should the definition of nearest relative follow the definition used in the Human Tissue (Scotland) Act 2006?

A - Yes

Q4 – In the case of a dispute about disposal of a body, should this be resolved by way of summary application to a sheriff?

A – Yes

Section 2 – Death Certification

Q 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?

A- In this event where a doctor is unable to verify cause of death, the Procurator Fiscal should have final decision as to disposal of the body.

Q6 – 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?

A- It would not be in public interest to allow cremation without all medical certification and registration of death therefore disposal of body should be confined to burial.

Q7 –Is the Medical Investigator model preferred choice?

A- Yes

Proposals for change – There will be a comprehensive scrutiny of a 1% random sample of all deaths certifications plus approx another 1% where there is concern. There will also be

a new appointment of a Deaths Investigator who will be a statistician to will look for anomalies and trends in the death data.

Q8 – If yes, why?

A – One of the major drivers in this proposal is to identify another Dr Shipman. This proposal will keep the current system of medical certification of cause of death but will overlay this with a system of checking the certification process and introduce a statistical check looking for anomalies and possible criminal activities. It is believed this proposal is proportionate to the risk involved, costs less than proposal 2 –a factor which will have a bearing on recovering fees to pay for this system, finally the proposed delay due to the introduction of this scrutiny will be less than the other proposal, a consideration in rural areas such as the Highlands.

Q9 – What are its potential strengths over existing system?

A- The current system of certification does not look for statistical trends. These proposals are intended to identify and abnormal trends in death certification.

Q10 – What are its potential weaknesses?

A - The current system involves each cremation requiring to be countersigned by 2 doctors and then overseen by a medical referee which ensures a high degree of scrutiny but fails to identify any trends. This proposal is only taking a 1-2% sample of all death certification therefore it is possible that an abnormal trend may not be detected immediately.

Q11 – Does it offer best value for money?

A- Yes, It is proportionate to the risk.

Q12 – Is the Medical Examiner model preferred choice?

A- No

Proposals for change- This model undertakes a basic paper scrutiny of all documentation related to deaths and a comprehensive scrutiny of 1-2% of these deaths. This will lead to the appointment of more medical examiners with assistants who will be required to countersign all deaths The MCCD form in all deaths will be required to be countersigned by the Medical Examiner which will lead to increased delays in the time lapse between death and disposal and will affect rural areas like the Highlands.

Q13 – if yes why?

A – not applicable

Q14- What are its potential strengths over existing system?

A- This system would introduce a statistical check and identify trends in death certification.

Q15 – What are its potential weaknesses?

A - The proposal is excessive when considering the degree of risk involved.

Q16 – Does it offer best value for money?

No – this model offers more scrutiny but is more expensive.

Funding Increased Governance

Q17- Should bereaved families or the deceased estate pay a moderate fee to cover the cost of introducing increased scrutiny by a Medical Investigator or Medical Examiner?

A- Yes – The proposal is to introduce a fee for all deaths irrespective of cremation or burial. 2/3 of deaths in Highland are burials therefore this would be a new charge for the majority of deaths.

Q18 – Any other ways of funding increased governance, bearing in mind current constraints on public spending?

A- This is probably the only way of funding increased governance in the present financial climate.

Q19 – If a fee were to be levied should it be set at the same level irrespective of the method of disposal?

A- A cremation requires the signature of two doctors, whilst a burial only requires one signature to certify death and cause of death. It would be unfair to levy a uniform charge for different services.

Q20 – A fee could potentially be levied at the point of disposal (i.e. included as part of the fee currently collected by Burial and Cremation authorities) or by private burial and cremation companies when charging for provision of their services. Are there any practical issues to be taken into account in considering these options?

A – The implication is that the income received as a result of this levy would pass to the Scottish Government to fund either proposal. This needs to be clarified.

As this fee relates to a service over which the Burial Authority has no responsibility for, it is suggested that the undertakers who act on behalf of the bereaved families should collect the fees from the families and pass this on to the appropriate person.

Section 3 - Burial

Regulation of Cemeteries

Q21 – Do you agree that new legislation should be introduced to regulate all local authority and private cemeteries?

A - Most cemeteries in Scotland are run by Local Authorities. Scotland does not have any legislation covering these facilities unlike England and Wales which has the Local

Authorities Cemeteries Order 1977. In Scotland, local authorities use this Order as the basis for Management Rules and how to operate and manage these facilities. However there are some green burial grounds, private cemeteries and crematoria which are not covered by existing legislation and there is no onus on them to observe the provisions of the Order. It would be sensible and practical to pass legislation to include private and green burial grounds—then all to be governed by same legislation.

Memorials and Headstones

Q22 – Do you agree with the recommendations set out above about the erection of headstones and regulations on matters relating to memorial masons and memorials?

A – Yes there are no general regulations governing the erection of headstones – Memorial masons operating in cemeteries should be able to show they had proper training etc and should be members of an accredited scheme (NAMM or BRAMM)
It is recommended a mason shall supply a 10 year guarantee, after which they undertake regular check of headstone at cost to owner.
Owners are encouraged to take out insurance, and responsibility for headstones etc rests with lair right holder.

Q23 – Are there any other factors in connection with headstones or memorials which should be taken into consideration when taking forward legislation?

A – No.

Q24 – Should there be reuse of graves with appropriate safeguards?

A-In the Highlands the burial grounds have traditionally served the local community where the burial ground is located. Lack of space to provide new burial grounds or extend existing ones has never been a major problem. A recent consultation exercise regarding new Management Rules for Burial Grounds revealed the strength of public opposition to the concept of reuse of lairs and consequently the Highland Council oppose this concept.

Q25 – What should be the optimum time before a grave is allowed to be reused?

A-In Scotland the practice has been to sell lair rights in perpetuity, therefore it has not been possible for a third party or burial authority to reuse the lair. The Highland Council would not wish to see lairs reused but if the Scottish Government wish to give powers to burial authorities to reuse lairs then the proposed period of 75 years appears reasonable but there must be sufficient robust procedures in place to offer the relatives of the deceased an opportunity to object to this proposal.

Lift and Deepen

Q 26 – Is the “lift and deepen” method an acceptable use of burial space?

A-This proposal assumes that ground conditions in all areas will permit further excavation. There are many burial grounds in the Highlands where ground conditions -water, rock or peat- would prevent this.

Q27 - Views are invited on any advantages or disadvantages of this method.

A - The risk of opening the wrong lair increases with time and unreliability of records. The proposal relating to surplus headstones is unsatisfactory as it could lead to old stones being stored somewhere out of public sight or worse left propped up against a wall in the burial ground. The suggestion that old headstones are reused is not tenable.

Q28 – What acceptable alternative approaches are available?

A - The practice prevalent on the continent is to inter the body above ground in a vault. This would create a new set of challenges.

Q29 – 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?

A - If burial ground operators were allowed their own discretion there would be confusion and diverse methods of reuse. The best scenario would be to have the method prescribed. However this may cause difficulties in some burial grounds with difficult soil conditions.

Tenure of Lair Rights

Q30 – 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 reused)

A - Highland Council opposes the proposal of a fixed tenure period as it has already taken a sounding on this idea through a consultation exercise for the new Management Rules and this proposal was strongly opposed.

Q31- If not, what length of exclusive tenure do you think would be reasonable from purchase to use of plot (with the ability to extend the tenure)? Please explain why.

A - The view is that lair rights should continue to be sold in perpetuity.

Q32 – If a system of time limited tenure was to be introduced, would it be reasonable to introduce this retrospectively?

A - No. The existing lairs may already have been purchased under the current scheme. Retrospective application of any new proposals would not be acceptable to the public.

Q33 – Should compensation be paid when a burial authority resumes ownership of a plot?

A - Yes if a relative or estate can be traced.

Q34 – If yes what would be a fair way of calculating the compensation due?

A – The current lair price minus an administrative charge on the basis that the lair can then be resold.

Q35- Do you think the practice of selling blocks of lairs or multiple lairs should be prohibited unless it is for imminent use?

A- Yes. This practice prevents optimum use of a burial ground.

Q36 – Do you agree that if reuse of graves occurs using the “lift and deepen” method, electronic records should be kept and made readily available to the public?

A - A suitable and robust electronic record system would require to be put in place and given the period of time records would require to be maintained it is likely that the record system would required to be updated or replaced at least once.

Green Burials

Q37 – Should green burials be covered by new general legislation on burials, e.g. setting out the minimum depth between the surface and top of coffin?

A - Yes, There is increasing interest in “green burials” Promotion and protection of sites will allow them to be fully utilised as green spaces for community benefit.

Q38 – What if any additional provisions should apply to green burial sites?

A - Each site should have a maintenance plan, which has been specifically developed in tandem with local wildlife trusts and ecological advisors to achieve the long term objectives for the site. In most cases, the key objective is for the land to remain essentially unchanged - this is typically the case where the area for burials is within an already established and important part of the landscape. There are always some good opportunities for enhancements to be made, such as managing the grassland to encourage indigenous wild-flowers, allowing reeds and native wetland plants to become established in wet areas, and for tree-planting to form copses, increase woodland margins and regenerate ancient specimen trees. The maintenance plan will generally include for the land to be grazed by stock (as it previously had been); for mowing and weed-topping by tractor to keep down thistles, nettles and docks.

Q39 – Are there any exemptions from regulation that should apply to green burial sites?

A – Exemptions could apply to the formation of new roads and car-parking areas ensuring they are kept to a minimum, to preserve existing landscape features and wildlife habitats are not harmed.

Home Burial

Q40 – Should legislation be enacted to govern home burials?

A - Yes. At present there is no legislation covering home burial.

Q41- Should local authorities be responsible for authorisation and recording of home burials?

A - Yes local authorities are best placed to advise and coordinate the parties when an application for a home burial is made.

Q42 – If it is considered that 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.

A - n/a

Exhumations

Q43 - 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 - The current procedure is time consuming, formal and expensive. The proposals will speed up the application process and make it cheaper to apply for an exhumation. The role of the appropriate officer in the local authority who would authorise exhumation needs clarification. The system should also make provision to ensure that Environmental Health Officers are appropriately involved in the decision making process as they are at the moment. The Council notes the proposals that a system whereby each burial or cremation authority would be given power to licence/allow other persons to carry out exhumations. It would not be envisaged that outside contractors be used for exhumations and that this work would be carried out by the Councils own burial teams.

Q44 - Can you suggest any other options which would introduce practical benefits and avoid unnecessary delays for exhumation?

A – No

Q45 - Are there any benefits in maintaining the current system where applications are made to the sheriff for exhumation?

A - No.

Section 4 - Cremation and Alternative Methods of Disposal

Q 46 – Should the requirements specifying minimum distances between new crematorium buildings and houses or roads be maintained when granting planning permission?

A - The current separation distances (>200yds from a dwelling and >50 yards from a public road) provide a level of privacy, and quiet for mourners, and help prevent adverse effects on adjacent houses and protects the public.

Q 47 Should the Scottish Government introduce legislation covering the exhumation of cremated remains?

A - No, the current procedure needs clarification but no new procedure is required.

Disposal of Cremated Remains

Q48 – 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?

A - Yes, there is currently no legislation pertaining to the collection and disposal of cremated remains. It would be sensible to stipulate a maximum period for the bereaved families to collect remains from the undertakers.

Q49 – 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?

A - No - The disposal of cremated remains should be the responsibility of undertaker.

Q50 – 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?

A - Yes

Deaths Abroad

Q51- 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?

A - At present no public body in Scotland has the power to request a post mortem where a death has occurred abroad. In England, Wales and Northern Ireland, the Coroner has powers to instruct a post mortem. It is considered that the Procurator Fiscal should have powers to investigate such deaths.

The Council would also welcome guidance on dealing with the repatriation of non UK visitors to Scotland who die here. This occurs very infrequently in our experience but guidance would be useful.

Q52 – Are there any other measures that could be taken to simplify this process?

A – No