

**CHURCH OF SCOTLAND  
CHURCH AND SOCIETY COUNCIL**

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**THE CHURCH OF SCOTLAND  
MISSION & DISCIPLESHIP COUNCIL**  
EAGLAIS NA H-ALBA

## Official Response

**SUBJECT:** Consultation Paper on *Death Certification, Burial and Cremation*  
**REQUESTED BY:** The Scottish Government  
**REFERENCE:** OR-005  
**DATE:** Monday 12 April 2010  
**SUBMITTED BY:** David Bradwell for the Church and Society Council and Nigel Robb for the Mission and Discipleship Council

### 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?**

This would be appropriate as long as the personnel involved were provided with the necessary training and skills.

If nurses and paramedics are to be trained to verify death, then there must be clear standards of education, clear statements of which grade or qualification is necessary before they can verify, and the required education must be fully funded.

#### **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?**

It would be advisable to ensure that the nearest relative had this responsibility.

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

It appears that this would be a very sensible definition.

**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?**

Once again this process does seem to be congruent with good practice.

**Section two**

**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?**

We do not have any specific proposals to make, though the needs and wishes of the family should be taken into consideration.

**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?**

This does not really fall within our area of expertise. Any system should be clear and straightforward.

**The Medical Investigator Model**

**Question 7 Is the Medical Investigator model your preferred model?**

This would be a preferred model on the grounds that it appears to cause the least delay and emotional distress to the relatives, and economically is not as burdensome as the other suggestions.

**Question 8 If yes, why?**

See answer to questions seven

**Question 9 What do you view as its strengths over the existing system?**

It attempts to ensure that all deaths are treated in the same way, and provides safeguards against abuses highlighted in the Shipman enquiry. The cost issues are also important as a reduction in fees for cremation would be important in the consideration given by some parties.

**Question 10 What do you view as its potential weaknesses?**

It does not seem in any way to be intrusive or necessarily creating delays, but the particular deaths which are investigated would be subject to delay and this has an emotional impact.

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

Yes

**The Medical Examiner Model**

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

No

**Question 13 If yes, why?**

See answer to question seven.

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

Not applicable

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

Increased costs which would have to be imposed upon the bereaved.

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

No

**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?**

No. This could be seen as a death tax and would be particularly unwelcome at a time of great sensitivity. Indeed, reports of some doctors' insensitive attitude to 'ash cash' for cremations under the current system suggests that perhaps the best thing would be for costs of the system to be met through general taxation through local authorities rather than directly paid by the deceased's family to a doctor. We note that this is also the view of the British Medical Association, who have called for a centralisation of fees paid to doctors for death certification. We hope that this review of death certification would be an opportunity to cease the payment of a fee by bereaved families.

**Question 18 Can you suggest any other ways of funding increased governance, bearing in mind the current constraints on public spending?**

The increased income to local authorities from the proposed changes in regard to burial grounds could assist in the costs of ensuring appropriate governance. Governance should be seen as a priority in this area and not sacrificed for financial reasons.

**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?**

Any fee should be exactly the same for all forms of disposal.

**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?**

The fee should be declared openly by any party and a statement identifying this fee as the recommended or required fee should be given to those who are paying it so that all are clearly being asked to pay the same sum for the same service.

### **Section Three**

#### **Regulation of Cemeteries**

**Question 21 Do you agree that new legislation should be introduced to regulate all local authority and private cemeteries?**

New legislation is obviously required.

#### **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. This is a matter of serious concern due to the numbers of dangerous installations in graveyards and amateur, unqualified installations which take place often through funeral undertakers who do not employ qualified masons.

**Question 23 Are there any other factors in connection with headstones or memorials which should be taken into consideration when taking forward legislation?**

Please see the answer to question twenty two.

#### **Continued Sustainability and Affordability of Burial Grounds**

**Question 24 Should there be re-use of graves with appropriate safeguards?**

There should be this opportunity with the appropriate safeguards.

**Question 25 What should be the optimum time before a grave is allowed to be re-used?**

The seventy five years suggested appears reasonable, quite sensitive to the issues and has been thought out carefully and helpfully.

#### **Lift and Deepen**

**Question 26 Is the 'lift and deepen' method an acceptable use of burial space?**

This appears to be a quite reasonable and respectful process of making the ground available for future burials, while seeking to accord appropriate dignity to those who have been interred previously.

**Question 27 Views are invited on any advantages or disadvantages of this method.**

This appears to offer the opportunity of burial in locations where families have particular links and prevent expensive alternative sites being developed.

**Question 28 What acceptable alternative approaches are available?**

No other alternative approaches were suggested in the paper. Any alternative approach must not be seen as destructive of the graves of the dead in a way which treats them without some degree of honour and care. Any proposal to clear the remains from graves and bury them in a communal area would be highly contentious and offensive.

**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?**

It would be strongly advisable to ensure that the particular method was prescribed or methods stated so that no inappropriate innovation could be attempted without someone being held culpable.

**Tenure of Burial Layers**

**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.)**

Twenty five years seems to be quite adequate.

**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 the answer to question thirty.

**Question 32 If a system of time limited tenure was to be introduced, would it be reasonable to introduce this retrospectively?**

This appears to be reasonable provided clear notification was given to relatives.

**Question 33 Should compensation be paid when a burial authority resumes ownership of a plot?**

If this was at a level which recognises that there is a transfer of the family's rights while not being excessive so that the gains will be exhausted in operating this process.

**Question 34 If yes, what would be a fair way of calculating the compensation due?**

The compensation should be related to what was paid originally and measured in current terms of depreciation.

**Question 35 Do you think the practice of selling blocks of layers or multiple lairs should be prohibited unless it is for imminent use?**

This appears to be a plausible suggestion but it could create difficulties for those who wish to have all the family members buried in the same area. It may also raise questions and problems with those who have purchased several blocks in the past. Care should be taken here to ensure that the families have some right of request for an exemption from a blanket ban on multiple purchases, or to buy lairs for themselves or other family members for future use beyond 25 years.

**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.

**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?**

This seems to be based on sensible principles.

**Question 38 What, if any, additional provisions should apply to green burial sites?**

The same careful monitoring of the practices here should be undertaken as in all other burial sites.

**Question 39 Are there any exemptions from regulations that should apply to green burial sites?**

No.

**Home Burial**

**Question 40 Should legislation be enacted to govern home burials?**

Yes.

**Question 41 Should local authorities be responsible for authorisation and recording of home burials?**

Yes.

**Question 42** If you think the task of authorising and recording home burials should not be the responsibility of local authorities, which organisation do you think should take on this role? Please set out your reasons why.

See answer to question forty one.

### **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?

Yes.

**Question 44** Can you suggest any other options which would introduce practical benefits and avoid unnecessary delays for exhumation?

No.

**Question 45** Are there any benefits in maintaining the current system where applications are made to the Sheriff for exhumation?

No.

### **Section four**

#### **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.

#### **Exhumation of Cremated Remains**

**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 the 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?

Yes.

**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.

#### **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?**

This does not appear to be an area where we can make competent comment.