BURIAL AND CREMATION (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Burial and Cremation (Scotland) Bill introduced in the Scottish Parliament on 8 October 2015:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 80–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Summary and background

3. The purpose of the Burial and Cremation (Scotland) Bill (“the Bill”) is to provide a legislative framework for burial and cremation. The Bill will provide for the repeal of all existing burial and cremation legislation.

4. Many of the Bill’s provisions are rooted in recommendations made by various review groups, particularly the Infant Cremation Commission¹ and the Burial and Cremation Review Group.²

5. The Bill is in 6 Parts and contains 2 schedules:
   • Part 1 covers burial, including burial grounds, burials in burial grounds, private burials, exhumations, the restoration to use of burial lairs and fees for interment;
   • Part 2 covers cremation;
   • Part 3 covers arrangements on death, including arrangements on the death of adults and children and losses during pregnancy, and local authority functions in relation to the disposal of remains in certain circumstances;
   • Part 4 covers inspections;
   • Part 5 covers miscellaneous provisions, including powers for the Scottish Ministers to make a scheme for the licensing of funeral directors’ premises, to issue codes of practice and powers to modify enactments;
   • Part 6 covers general provisions, which are largely technical in nature (eg, general provisions relating to regulations, ancillary provision, Crown application);
   • Schedule 1 lists minor and consequential amendments;
   • Schedule 2 lists repeals.

¹ [http://www.gov.scot/Publications/2014/06/8342/0](http://www.gov.scot/Publications/2014/06/8342/0)
² [http://www.gov.scot/Publications/2008/03/25113621/0](http://www.gov.scot/Publications/2008/03/25113621/0)
COMMENTARY ON SECTIONS

Part 1 – Burial

Burial grounds

Section 1 – Meaning of “burial ground”

6. Section 1 defines the meaning of “burial ground” for the purposes of the Act. A burial ground is defined as land that is used or intended to be used primarily for the burial of the dead and for which a fee is charged. The definition also includes land that was used primarily for this purpose and for which a fee was charged, but is no longer used for burial; in other words, a closed burial ground. This ensures that burial grounds that are no longer in operation are still included within this definition.

7. The effect of this section is to exclude from the definition of “burial ground” any land where burials are carried out but where no fee is charged. This will include any family burial grounds (e.g., family cemeteries on private land) and individual burials of the type set out in sections 16 to 19.

Section 2 – Provision of burial grounds

8. This section sets out a local authority’s duty to provide burial grounds. The duty applies only to burial authorities that are local authorities, not to those operated by any other person (e.g., private burial authorities).

9. Subsection (2)(a) requires that such a burial authority must provide at least one burial ground within its area. Subsection (2)(b) allows such a burial authority to provide more than one burial ground within the local authority area.

10. By virtue of subsection (3) burial grounds that are closed in line with the definition at section 1(b) are not regarded as meeting the duty to provide burial grounds.

Section 3 – Provision of burial grounds outwith local authority area

11. This section allows a burial authority which is a local authority to provide a burial ground partly or wholly in another local authority area.

Section 4 – Joint provision of burial grounds

12. Subsection (1) sets out that this section applies only to burial authorities that are local authorities. Subsection (2) allows two or more such burial authorities to provide a burial ground jointly. The burial ground may be located entirely within the area of one or more of those local authority areas. The local authority within whose area the burial ground is located is deemed to have met its duty under section 2(2)(a) to provide at least one burial ground within its area.

13. Any functions exercisable under or by virtue of this Act or any other enactment by a burial authority in relation to a burial ground must be carried out jointly by all burial authorities.
who are providing the burial ground, and in accordance with any arrangements that may be made between those burial authorities in relation to the burial grounds.

14. The effect of this is that all burial authorities providing such a burial ground are jointly responsible. However, the management arrangements for the burial ground can be agreed between the burial authorities, which may result in management being undertaken by a single burial authority.

15. Subsection (6) provides that this section does not apply to burial grounds that are closed in line with section 1(b).

Section 5 – Places to keep bodies before burial

16. Subsection (1) sets out that burial authorities must provide in each burial ground provided by them a suitable place in which the deceased may be kept before burial. This is to allow for situations where the deceased is not brought to the burial ground directly before burial.

17. Subsection (2) allows that a burial authority complies with the duty under subsection (1) if it secures the provision of an appropriate place. The effect of this is that a burial authority is considered to have met the requirement if it arranges for someone else to provide an appropriate place mentioned in subsection (1) on its behalf, rather than providing that place itself.

Section 6 – Management of burial grounds

18. Section 6 gives the Scottish Ministers the power to make regulations about how burial authorities manage and control burial grounds and those places provided in burial grounds as provided for in section 5.

19. Subsection (2) lists the areas that any regulations made under subsection (1) may include:

- the maintenance of (i) burial grounds, and (ii) buildings, walls, fences or other structures erected on burial grounds;
- enclosing, laying out and embellishing burial grounds;
- access to and within burial grounds, including the construction, repair, maintenance and improvements of roads and paths;
- the maintenance and repair of memorials, buildings and other structures on burial grounds, including for the purpose of making them safe;
- the charging of fees by burial authorities which are local authorities for such matters as may be specified in the regulations;
- persons employed by burial authorities, including (for example) in relation to training, qualifications and membership of professional bodies;
- conditions relating to the erection of a memorial, building or other structure on burial grounds;
- the imposition of any restrictions and conditions as they think necessary or appropriate in relation to (i) the layout of burial grounds, including in relation to the
size of, and distance between, burial lairs, and (ii) the right to erect a memorial, building or other structure on burial grounds, including in relation to materials, construction, size, maintenance and liability for costs in respect of work carried out by burial authorities;

- the depth at which human remains may be buried;
- the designation of part of a burial ground for use by particular faiths or religious bodies;
- the provision of buildings for the use of persons of particular faiths or belonging to particular religious groups;
- creating criminal offences to be triable summarily and punishable by a fine not exceeding level 3 on the standard scale; and
- defences and evidential matters relating to such offences.

20. The overall effect will be to provide burial authorities with regulations which set out the framework for the management of burial grounds.

Section 7 – Right to erect building

21. This section allows a burial authority to sell the right to erect buildings in burial grounds. This is most likely to be used in relation to the creation of chapels, mausoleums and so on, but may also allow the erection of a memorial to people who are not necessarily buried in that burial ground – for example to commemorate people from a community who died in combat. Subsection (1) allows a burial authority to sell the right to erect a building or other structure on any burial ground which it provides. The effect of this is to allow a person who has such a right to erect a building or other structure, even if that person does not own a right of burial in that burial ground. The burial authority may attach conditions to the exercise of the right. The right is subject to, and must be exercised in accordance with, any regulations under this Part.

Burial in burial grounds

Section 8 – Application to carry out burial

22. Section 8 establishes the process by which a burial may be carried out in a burial ground (this construction is used to differentiate between burials covered by this section and private burials under sections 16 to 19). Subsection (1) sets out that a burial in a burial ground may not be carried out unless the person applying for the burial has submitted an application for the burial to the burial authority responsible for the burial ground where the burial will take place, and the application has been granted.

23. Subsection (2) provides that the Scottish Ministers may make regulations about applications made for burial in a burial ground. Subsection (4) provides that such regulations may in particular:

- specify the form and content of applications;
- specify persons, or a description of persons, who may issue forms on which applications are to be made;
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- prohibit such persons from altering the forms other than in such ways as may be specified in the regulations;
- specify persons, or a description of persons, who may submit applications;
- make provision about documents to be submitted with applications;
- make provisions for review of, or appeals against, decisions of a burial authority (i) to grant an application or (ii) to refuse to grant an application;
- create criminal offences to be triable summarily and punishable by a fine not exceeding level 3 on the standard scale;
- include provision about defences and evidential matters relating to such offences.

24. Subsection (3) requires anyone making an application for a burial to comply with the requirements of any regulations made under subsection (2).

Section 9 – Unauthorised burials: offences

25. This section sets out details of offences in relation to burial. Subsection (1) provides that a person who knowingly contravenes section 8(1) by carrying out a burial which has not been authorised commits an offence. Under subsection (2)(a) it is an offence for a person to provide information in, or in connection with, an application mentioned in section 8(1) (ie, an application for a burial) that the person knows to be false or misleading in a material way. Subsection (2)(b) provides that it is an offence for a person to recklessly provide information in, or in connection with, an application mentioned in section 8(1) which is false or misleading in a material way.

26. By virtue of subsection (3), a person who commits an offence under subsection (1) is liable on summary conviction to a period of imprisonment of up to 12 months or to a fine which does not exceed level 3 on the standard scale or to both a prison sentence and a fine.

27. Subsection (4) provides that a person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 10 – Burial register

28. This section requires each burial authority to prepare and maintain a burial register for each burial ground it provides. The burial register must contain prescribed information about burials that have taken place in the burial ground.

29. Subsection (2) gives the Scottish Ministers the power to make regulations requiring the burial register to be in a form and kept in a manner that are specified in regulations made by the Scottish Ministers and may also make other provisions relating to the burial register, including creating criminal offences. Any regulations which create criminal offences must include provision requiring the offence to be triable summarily and punishable by a fine not exceeding level 3 on the standard scale. Such regulations may include provision about defence and evidential matters.
30. The burial register is to be a public document, and the burial authority must make provision for the register to be available for inspection to the public free of charge. The burial authority must provide extracts of the register as requested for a reasonable charge. An extract from the burial register certified by the burial authority as a true copy is sufficient evidence of the burial for the purposes of any court proceeding.

Section 11 – Burial register: offences

31. A burial authority which, without reasonable excuse, fails to prepare or maintain a burial register commits an offence. On summary conviction, such an offence is punishable by a fine not exceeding level 3 on the standard scale.

Section 12 – Right of burial

32. This section makes provision about the right of burial. A right of burial in relation to a particular lair is defined as the right to be buried in that lair (subsection (3)(a)) and the right to determine whose remains may be buried in the lair (subsection (3)(c)). Subsection (3)(b) specifies that where human remains are to be laid to rest on or above ground, the right extends to placing a tomb on the lair and the right to erect a structure associated with the tomb on the lair. This covers both traditional burial and other resting places such as tombs and mausoleums. Ordinarily, a person to whom a right of burial in a lair is sold (or otherwise conferred) will receive a right to be buried in that lair. The right to determine whose remains may be buried in the lair is subject to section 29(5), which means that anyone who owns the right of burial in a lair that has been restored to use in line with section 29 must allow the remains of those people originally interred in the lair to be reinterred there.

33. A burial authority that is a local authority must grant a right of burial on the application of a person who is ordinarily resident in that local authority area. The effect of this is to ensure that a person who lives in a particular local authority area can purchase a right to be buried in that area. A burial authority that is a local authority may grant a right of burial on the application of a person who is not ordinarily resident in that local authority area, but does not have to do so. In practice, all such burial authorities currently sell lairs to people who do not live in the equivalent local authority area.

34. Subsection (2) (as read with section 75(2)) sets out that a private burial authority may (rather than must) sell or otherwise grant a right of burial in a lair in a burial ground provided by the authority. This allows private burial authorities to choose whether or not to sell a right of burial to a particular person, and does not place them under the same duty as local authority burial authorities.

35. Subsection (4) provides that a right of burial is exercisable only by the person who owns the right.

36. Subsection (5) sets out that a right of burial under subsection (1) or (2) is subject to any terms and conditions as the burial authority may determine.

37. Subsection (6) provides that a right of burial is subject to, and must be exercised in accordance with any regulations under Part 1 of the Bill.
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38. Subsection (7) allows a burial authority to refuse an application under subsection (1)(b) or subsection (2) where it considers it reasonable to do so.

Section 13 – Duration and extension of right of burial

39. Subsection (1) provides that a right of burial lasts for 25 years, beginning on the day the right was granted (as recorded in the register of rights of burial under section 14). Subsection (2) allows the burial authority to extend the right of burial on the application of the owner of the right. Subsection (3) allows the right to be extended more than once. Under subsection (4), such an extension expires after 10 years, beginning on the day that the right was originally due to expire. This has the effect of allowing a right of burial to be extended every 10 years without limit.

40. Subsection (5) allows a burial authority to refuse an application for an extension under subsection (2) if it considers it reasonable to do so.

41. Subsection (6) provides that subsection (7) applies where the owner of a right dies before the right expires and the right does not transfer to another person. This is likely to happen only where the owner who has died did not leave a will and has no family to which the right would otherwise pass in line with succession law. Subsection (7) provides that in this situation, the right vests in, and may be exercised by, the burial authority that granted the right.

42. Under subsection (8), the day on which the right was granted is the day recorded in the register of rights of burial created under section 14.

43. If the right to burial is not extended, it is automatically extinguished. Where this happens with an unused lair, the burial authority may sell the right of burial in that lair.

Section 14 – Register of rights of burial

44. This section requires burial authorities to establish and maintain a register of rights of burial for each burial ground it provides. Subsection (2) sets out the information that the register must contain. Subsection (3) permits the burial authority to take appropriate steps to ascertain that the information in the register is current and accurate and to obtain information to allow the register to be adjusted so that it is current and accurate.

45. This should enable the information in the register to be as up-to-date as possible, which should reduce the likelihood that burial authorities will lose contact with people who own the right of burials in lairs. This will act as an additional safeguard to prevent rights expiring where the owner would otherwise have wanted to extend the right. The intention is that guidance on the sale of burial lairs will be provided; this will set out further advice on how burial authorities can keep information in this register current.

46. Subsection (4) provides that the register is required to be kept indefinitely.
Section 15 – Right to erect headstone

47. Subsection (1) permits the owner of a right of burial who wishes to erect a headstone or other memorial on the lair to apply to the burial authority for the right to do so. The burial authority may refuse an application if it considers it reasonable to do so.

48. Where a burial authority grants a right to erect a memorial following an application made under subsection (1), the owner of the right must adhere to any regulations made under this Part.

49. This right can be granted only to the person in whom the right of burial in that lair is vested. The right to erect a memorial is extinguished if the right to bury is extinguished. This also applies to any extension period for the right of burial made under section 13.

50. Subsection (6) allows an owner of a right of burial granted to make more than one application for a right to erect a memorial. This means that more than one memorial may be erected at a particular lair (although the burial authority may choose to reject an application where it considers that further memorials would be inappropriate).

Private burials

Section 16 – Private burial

51. Subsection (1) allows the Scottish Ministers to make regulations for or in connection with private burials. Subsection (2) establishes that a “private burial” is one that takes place somewhere other than a burial ground. Subsection (3) provides that a private burial can take place only if it has been authorised by a relevant local authority (“relevant local authority” is defined by subsection (6) as meaning the local authority in whose area the burial will take place). The effect of this is to allow burials which are carried out in a place that is not a burial ground as defined in the Bill to take place within a legal framework. This may be, for example, land a person owns or a family burial ground on an estate.

52. Subsection (4) requires that a person carrying out a private burial must do so in compliance with any requirements imposed by regulations made under subsection (1).

53. Subsection (5)(a) to (m) sets out what regulations under subsection (1) may, in particular, do. This includes: making provision about applications to carry out private burials; specifying the form and content of applications; enabling applications to be made in respect of burials of persons who, at the time of making the application, are not deceased; making provision about documents to be submitted with, or in relation to, applications; making provision for the time at which such documents are to be submitted; making provisions about persons, or a description of persons, who are required to submit such documents; specifying persons, or a description of persons, from whom consent to proposed private burials is to be obtained and by whom consent to proposed private burials is to be signified as having been obtained in, or in relation to, applications to carry out private burials.

54. Such regulations may also require persons making such applications to provide the local authority to which the application is made with any further information in connection with the application that the authority considers necessary and specify the circumstances in which a local
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authority receiving an application to carry out a private burial must authorise the burial, may authorise the burial, must not authorise the burial and must or may authorise the burial subject to conditions specified by the authority or in the regulations.

55. Regulations may also make provision for or in connection with notices by local authorities of the authorities’ decisions relating to applications to carry out private burials and notices relating to those notices by persons making the applications or by such other persons, or other persons of such descriptions, as may be specified in the regulations, and specify the form and content of any such notices.

56. The regulations may also provide for review of or appeals against decisions of the local authority to authorise the carrying out of private burials, decisions of the local authority to refuse to authorise the carrying out of private burials and any conditions subject to which a private burial is authorised.

57. The regulations may also make provision for or in connection with the size of any area of land on which private burials may be carried out; by reference to any such size, the maximum number of private burials that may be carried out on the land; and minimum distances between lairs on such land.

58. By virtue of subsection (6), the burial of ashes outwith a burial ground is not regarded as a private burial.

Section 17 – Register of private burials

59. This section allows the Scottish Ministers to make regulations for or in connection with requiring local authority to establish and maintain a register of private burials.

60. Subsection (2) provides that such regulations may make provision for or in connection with the form and manner in which a register is to be kept; the information to be recorded, and the time at which it is to be recorded, in a register; the period of time for which a register it to be kept (which may be indefinitely); and public access to a register.

Section 18 – Suspension of private burials

61. Section 18 allows the Scottish Ministers to make regulations which would suspend any regulations made under section 16 or 17, or prohibit the carrying out of private burials. Such action may be applied to the whole of Scotland or any part of Scotland as required.

62. By virtue of subsection (2), any such suspension of the regulations can have effect even where a private burial has been authorised previously. This is to ensure that private burials are not carried out when there is a reason to prevent it – for example, when there are public health reasons to temporarily halt burial.

63. Subsection (3) allows such regulations to include different provisions for different purposes. The regulations can also include any relevant supplementary, consequential, incidental, transitional, transitory or saving provisions as the Scottish Ministers consider
necessary or expedient. This gives the regulations sufficient flexibility to apply to a variety of situations.

64. Subsection (4) sets out how such regulations will take effect. Regulations will have immediate effect and will fall on the 28th day after they take effect, unless before then the regulations are approved by the Scottish Parliament. By virtue of subsection (5), the exception to this is where regulations made under subsection (1) consist only of provisions revoking earlier regulations made under subsection (1) or provisions made under subsection (3)(b) of this section. Subsection (6) sets out that, in calculating the 28 days, periods where the Scottish Parliament is dissolved or in recess for more than 4 days should not be counted. This approach allows the regulations to take effect without delay, but limits how long they can be in force.

Section 19 – Private burial: offences

65. This section establishes offences in relation to private burials. Subsection (1) provides that anyone who carries out a private burial knowing that it has not been authorised by the relevant local authority (which has the same meaning as that used in section 16(6), ie the local authority in whose area the burial will be carried out), contravenes section 16(3) and commits an offence. Subsection (2) sets out that a person who fails to comply, without reasonable excuse, with the requirements imposed by section 16(4) commits an offence. Subsection (3) sets out that a person commits an offence by knowingly providing information that the person knows to be false or misleading in a material way in, or in connection with, a private burial application under section 16 or by recklessly providing false or misleading information in a material way in, or in connection with, such an application.

66. By virtue of subsection (4), a person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a period of no more than 12 months or to a fine not exceeding level 3 on the standard scale or both.

67. By virtue of subsection (5), a person who commits an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Burial: fees and offences

Section 20 – Fees for burials

68. By virtue of subsection (1), this section applies only to burial authorities that are local authorities. Such burial authorities may charge such fees as they think fit in respect of burials carried out in burial grounds provided by the authority; the sale of a right to erect a building or other structure under section 7; the sale of a right of burial under section 12; and the extension of a right of burial under section 13. Burial authorities must keep such fees under review.

Section 21 – Burial: offences

69. Subsection (1) provides that it is an offence for a person knowingly to bury human remains unless the burial is carried out in a burial ground by virtue of section 8 or the burial is a private burial carried out in accordance with section 16.
70. By virtue of subsection (2), a person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 3 on the standard scale or both.

**Exhumation of human remains**

*Section 22 – Exhumation of human remains*

71. This section gives the Scottish Ministers the power to make regulations relating to the exhumation of human remains. Subsection (2) lists what such regulations may do. In particular, they may set out who may apply for an exhumation, provide for applications for exhumations to be made to inspectors of burial appointed under this Act or local authorities and provide for those people to grant or refuse an application. Applications will be made to different people dependent on specific circumstances. Such regulations may also create criminal offences, to be tried summarily and punishable by a fine not exceeding level 3 on the standard scale, in relation to failures to comply with requirements imposed by the regulations; and make provision about defences and evidential matters relating to such offences.

72. Subsection (4) provides that the regulations cannot interfere with procedures for exhumation where a crime is being investigated, where criminal proceedings are taking place, where investigation of a death is taking place under the authority of the Lord Advocate or where inquiries are being made under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016.

*Section 23 – Appeal to sheriff*

73. This section sets out the process by which a person can appeal a decision in relation to an exhumation application made by virtue of regulations made under section 22(1). Subsections (2) and (3) provide that the person who made the application, or any other person who would have been able to apply for an exhumation by virtue of regulations made under section 22, may appeal to the sheriff against a decision to allow an exhumation, a decision not to allow an exhumation or any conditions attached to an exhumation which is allowed. Subsection (4) provides that any such appeal must be made with 21 days of the decision about the exhumation being made.

74. Subsections (5), (6), (7) and (8) set out what a sheriff may do in response to particular appeals. The sheriff’s decision on the appeal is final.

**Lairs: restoration to use**

*Section 24 – Restoration to use of lair: consultation*

75. Sections 24 to 35 set out the process that must be followed by a burial authority to restore burial lairs to use in particular circumstances. Section 24 sets out the initial steps that must be taken by a burial authority in choosing to restore a lair to use. Subsection (1) establishes a range of criteria that must be met to enable a burial authority to begin the restoration process. These are that it appears to the burial authority that the person who owns the right of burial in relation to a particular lair is failing to maintain it (ie, that the lair is abandoned); that there has not been an interment in the lair during the relevant period (ie, 100 years or 50 years where the lair has not...
been used); and that it might be practicable for the burial authority to restore the lair to use. Definitions of timescales are set out at subsection (6). All three criteria must be met.

76. Subsection (2) allows the burial authority to carry out excavations to establish the feasibility of restoring the lair to use, but it may not exhume any remains at this point.

77. Subsection (3) establishes that the burial lair must consult a range of people about the proposed restoration of the lair. The people who must be consulted at this stage are listed in subsection (4) and include archaeologists, the Commonwealth War Graves Commission and any other person the burial authority considers appropriate. Subsection (5) provides that if there is any objection from any of these people at this stage, the lair cannot be restored to use and must not be again considered for reuse for 10 years.

Section 25 – Notification: right-holder

78. This section applies where no objections under section 24(3) have been made to the lair being restored to use. Subsection (2) requires the burial authority to give notice to the person who holds the right of burial in relation to the lair of its intention to restore the lair to use (referred to for this purpose as the “right-holder”). The burial authority must do this if it knows the name and address of the right-holder or is able, after reasonable enquiry, to ascertain this information.

79. Notice given under subsection (2) must contain particular information set out in subsection (3), including the burial authority’s proposal to restore the lair to use; the right-holder’s right to agree or object to the proposal in writing within the prescribed time limit; any documents the right-holder is required to give the burial authority when giving consent or making an objection to the proposal; an explanation of the consequences of agreeing or objecting to the proposal; the right-holder’s responsibilities in relation to the maintenance of the lair; and any costs which the right-holder is liable for in respect of any maintenance of the lair.

80. Subsection (4) provides that this notice must be given in the prescribed form and manner.

81. Subsection (5) provides that if the right-holder responds to the notice to object to the lair being restored to use, the lair cannot be reused and cannot be considered for restoration for 10 years from the date on which the burial authority receives the objection.

Section 26 – Notification where right-holder cannot be found

82. Where a burial authority gives notice under section 25 but does not receive a response from the right-holder, or where the burial authority does not have the details for the right-holder, it must follow the procedure set out in section 26(2). This requires the burial authority to give notice in the prescribed form and manner of its proposal to restore the lair to use. By virtue of subsection (3), a notice under subsection (2) must contain prescribed information, comply with prescribed requirements and specify a prescribed period within which a person may object to the authority’s proposal to restore the lair to use. The effect of this is that the burial authority will undertake a public notification exercise about the intended restoration of the lair.
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Section 27 – Section 26: effect of objection

83. This section has effect where a burial authority is undertaking a public notification exercise by virtue of section 26. If an objection is received during the public notification period under section 26, the burial authority must respond in different ways, depending on who lodges the objection. Subsection (2) provides that if the objection is from the right-holder or a relative of a person whose remains are buried in the lair, the proposal to restore the lair to use cannot proceed and the lair cannot again be considered for restoration for 10 years. Subsection (5) defines “relative” for the purposes of this section.

84. Subsection (3) provides that if the person is not the right-holder or a relative, the burial authority must consider the validity of the objection. Subsection (4) provides that if it considers that the objection is valid, it must not proceed with the proposal to restore the lair to use, and the lair cannot again be considered for restoration for 10 years.

Section 28 – Extinguishment of right

85. This section allows a burial authority to extinguish a right-holder’s right of burial in a lair. This has effect either when the right-holder has consented to the lair being restored to use (subsection (2)), or where no valid objection is received during the public notification period under sections 26 or 27 (subsection (3)). Under subsection (4), the burial authority must extinguish the right-holder’s right in the lair, and is required to give notice of the extinguishment of the right in such form and manner as may be prescribed.

Section 29 – Restoration to use

86. This section applies where the right-holder’s right in a lair has been extinguished under section 28(4). Subsection (2) requires the burial authority to establish whether it would be practicable to restore that lair to use. Subsection (3) permits the burial authority to excavate the lair and exhume any remains for the purpose of subsection (2). Subsection (4) requires the burial authority to exhume any remains that may be in the lair before it offers the lair for sale. Subsection (5) places a duty on the burial authority to reinter any remains, which have been exhumed under subsections (3) or (4), as soon as practicable. The effect of this is that any remains that are removed from the lair to enable it to be restored to use will be reinterred in the same lair.

Section 30 – Restoration to use without extinguishment of right

87. This section enables the right-holder to allow the burial authority to restore the lair to use but retain the right of burial in that lair. This will allow the owner of a full lair which would otherwise be unsuitable for further burials to have the lair restored to use. This will allow the owner to bring the lair back into use.

88. Subsection (2) provides that the burial authority must establish whether it would be practicable to restore that lair to use. Subsection (3) allows the burial authority to carry out excavations and exhume any remains that are in the lair if it is necessary to do so under subsection (2) to confirm if it is possible to restore the lair to use. Subsection (4) requires the burial authority to reinter any remains that have been exhumed under subsection (3) as soon possible after they have been exhumed. This process is the same as that set out as section 29.
These documents relate to the Burial and Cremation (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 8 October 2015

89. Subsection (5) makes clear that any costs that the burial authority incurs in carrying out its functions under subsections (2) to (4) of this section are to be met by the right-holder. In addition, subsection (5)(b) requires the lair holder to pay any cost incurred by the burial authority in making the lair available for reuse by the right-holder.

Section 31 – Right-holder’s right to object

90. This section allows a person who holds a right of burial in respect of a lair to object to its restoration at any point before the burial authority sells a new right in the lair or otherwise confers the right on another person. This extends to after the public notification period has ended, although not if the right of burial in the lair has subsequently been sold or conferred. If the right-holder objects after the burial authority has extinguished his or her right in line with section 28(4), subsection (3) of this section requires a new right to be conferred on that person in respect of the lair.

Section 32 – Restoration to use on request of right-holder

91. This section allows a person who owns a right of burial in respect of a lair to request that a burial authority restores the lair to use even if the authority was not otherwise planning to restore the lair. The effect of this is to allow a right-holder to restore to use a lair that would otherwise be unable to be used. The burial authority must follow the same processes that are set out in subsections (2) to (5) of section 24, including giving particular people the right to object to the reuse, even though the potential restoration to use is at the request of the owner. This is to ensure that heritage and archaeological issues are considered.

92. If no objections are made, the lair can be restored to reuse in line with the process set out in subsections (3) to (5) of section 30. The right-holder is responsible for costs incurred.

Section 33 – Headstones

93. This section applies in cases where a burial authority has exhumed remains under section 29, 30 or 32, and there is a headstone or other memorial in place on the lair. The effect of the section is to ensure that appropriate steps are taken to protect the headstone and the information contained on it.

94. Subsection (2) requires the burial authority to take all reasonable steps to ensure that the headstone can be retained in place, unless it is not practical to do so.

Section 34 – Records

95. This section requires burial authorities to keep records of all activities carried out in pursuance of the functions conferred on them by sections 24 to 33. Such records must be kept in the prescribed form and manner.

Section 35 – Guidance

96. This section requires burial authorities to have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on them under sections 24 to 34 and the restoration to use of burial lairs.
97. Subsection (2) states that before issuing any guidance the Scottish Ministers must consult with burial authorities and any other persons they deem appropriate.

**PART 2 – CREMATION**

98. This Part of the Bill sets out provisions relating to cremation.

*Section 36 – Meaning of “cremation”*

99. This section defines “cremation” for the purposes of this Bill. As per subsection (1), the definition includes the burning of human remains and subsequent grinding or other processes by which skeletal remains are turned into ashes. In practice this subsequent process will tend to be cremulation, a common practice in crematoriums to grind or vibrate the bones which remain after the burning process into ashes.

100. This definition is necessary to ensure that all parts of the process are captured. It is also necessary to ensure that everything that remains after the cremation process is regarded as ashes, including any non-organic material such as the remains of clothing or the coffin, which is set out at subsection (2). Subsection (2) also specifically excludes metal from the definition of ashes; metal may remain if the coffin had metal fittings, or if the deceased had metal implants.

*Section 37 – Cremation authority: duties*

101. Subsection (1) allows the Scottish Ministers to make regulations which make provision about the management and operation of crematoriums, the maintenance of crematoriums, the disposal of ashes by cremation authorities and persons employed by cremation authorities, including, for example, in relation to training, qualifications and membership of professional bodies. Subsection (2) requires cremation authorities to comply with any requirements imposed by virtue of subsection (1). Subsection (3) provides that it is an offence for a cremation authority to knowingly contravene requirements set out in regulations. Subsection (4) provides that on summary conviction such an offence attracts imprisonment for no more than 12 months, a fine not exceeding level 3 on the standard scale or both.

102. Section 37 also defines “cremation authority” and “crematorium”. A cremation authority is a person who owns a crematorium. A crematorium is a building fitted with equipment for the carrying out of cremations.

*Section 38 – Application for cremation*

103. This section sets out the framework for making an application for a cremation. Subsection (1) provides that a person must apply for a cremation to the cremation authority where the cremation is to be carried out. Subsection (2) gives the Scottish Ministers the power to make regulations in respect of the application process. Those regulations may specify the form and content of applications, specify who may issue application forms, prohibit the alteration of any forms set out by the regulations, specify who may apply for a cremation, make provision about documents that must be submitted with an application, make provision for reviews and appeals and create criminal offences. A person, in making an application for a cremation, must comply with any requirements set out in those regulations.
Section 39 – Section 38: offences

104. This section sets out offences related to the application for a cremation. It is an offence for a person to knowingly provide information which is false or misleading in a material way, in, or in connection with, an application for a cremation, or to recklessly provide information that is false or misleading in a material way in, or in connection with, such an application.

105. Subsection (2) provides that on summary conviction, these offences are punishable by a fine not exceeding level 3 on the standard scale.

Section 40 – Requirements for carrying out cremation

106. This section sets out restrictions on the carrying out of a cremation. Subsection (1) allows that a person may not carry out a cremation unless the person is a cremation authority, an application for cremation has been granted and the cremation is carried out in a crematorium.

107. Subsection (2) provides that it is an offence to knowingly contravene these requirements. Subsection (3) sets out that, on summary conviction, contravention attracts imprisonment for a term not exceeding 12 months, a fine not exceeding level 3 on the standard scale or both.

Section 41 – Cremation register

108. Section 41 requires each cremation authority to prepare and maintain a register for each crematorium they operate. The register will be known as the cremation register. The section sets out the requirements for the register.

109. Subsection (2) allows the Scottish Ministers to make regulations to set out the form of the cremation register and how it must be kept, as well as other provisions, including criminal offences. Subsection (3) provides that regulations which create criminal offences must include provision requiring offences to be triable summarily and punishable by a fine not exceeding level 3 on the standard scale. Regulations may also include provision for defences and evidential matters relating to offences.

110. The cremation register is to be a public document, and subsection (4) sets out requirements for cremation authorities to provide access by inspection to the register free of charge and to provide extracts of the register for a reasonable charge. Subsection (5) establishes that any extract from the register certified as a true copy by the cremation authority is sufficient evidence of the cremation for the purpose of any court proceedings.

Section 42 – Cremation register: offences

111. Section 42 makes it an offence for a cremation authority to fail to prepare or maintain a cremation register without reasonable excuse. A summary conviction will lead to a fine not exceeding level 3 on the standard scale.

Section 43 – New crematorium: notice

112. This section requires a cremation authority to notify Scottish Ministers before beginning operation of a new crematorium. Subsection (2) provides that the cremation authority must
notify the Scottish Ministers of the day on which the crematorium proposes to carry out the first cremation and such matters as may be prescribed.

**Section 44 – Closure of crematorium**

113. This section gives the Scottish Ministers the power to make regulations in connection with the closure of crematoriums.

114. Regulations made under this section may make provision requiring a cremation authority to give notice of the closure and to comply with any requirements about the transfer of information specified in the regulations.

115. This approach allows various situations to be covered, including where a cremation authority decides to close a crematorium and where the closure is not voluntary (e.g., closure through insolvency).

**Section 45 – Fees for cremations**

116. This section allows a local authority cremation authority to charge such fees as it thinks fit in respect of a cremation in a crematorium it operates. The authority must keep these fees under review. This section applies only to local authority cremation authorities as they require a statutory power to charge fees. Private cremation authorities are able to charge such fees without the need for statutory provision.

**PART 3 – ARRANGEMENTS**

117. This Part of the Bill sets out who has the right to instruct the disposal of human remains. Several distinct categories are considered: adults, children, stillborn babies and pregnancy losses.

**Adults and children**

**Section 46 – Arrangements on death of adult**

118. Section 46 applies when arrangements are to be made following the death of an adult who had not made any arrangements about who is to decide what is to happen to his or her remains. This section also applies where the adult who has died did make such arrangements but it would not be reasonably practicable to carry out those arrangements. Subsection (2) allows the nearest relative of the adult to make the arrangements, but that person is not obliged to make the arrangements if they do not wish to do so (or are unable to do so).

119. Subsection (3) establishes a hierarchy of people who can fulfil the definition of nearest relative. This is set out in paragraphs (a) to (k) of subsection (3). Subsection (4) makes provision for a situation where the spouse or civil partner of the deceased was permanently separated from the adult for whatever reason.

120. Any relative that falls within one of the categories set out in this section will rank equally with any other relative in the same category and may be considered to be the nearest relative (subsection (6)). Stepchildren of the adult who has died will be treated as if they were a natural
child of the adult. Any half-blood sibling will have the same rights as a full-blood sibling (subsection (5)).

121. Subsection (7) provides that someone who is under 16 years of age is regarded as a child and will not be eligible to instruct the disposal of the adult’s remains. Anyone who would otherwise be eligible but does not wish to make the arrangements or is unable to make the arrangements for any reason, will not be included. This ensures that no-one can be made to take on responsibility for making such arrangements.

122. The section makes clear that if it is not reasonably possible to communicate with the relative in the time available before the funeral they may also be excluded and will not be called upon to make the arrangements, even if the person would have wished to do so. In this case, the responsibility falls to the next person in the hierarchy established at paragraphs (a) to (k) of subsection (3).

123. Subsection (9) makes clear that this section is subject to section 92 of the Public Health (Scotland) Act 2008 which would take effect if there was any risk to public health from the body. This would mean that the local authority would be able to take steps to minimise the risk to health, including disposing of the body without having to consider the requirements of this section.

Section 47 – Arrangements on death of child

124. Section 47 applies in respect of the arrangements to be made following the death of a child or following a still-birth. A child is someone who is under 16 years of age. A still-birth is a birth after a gestation period of 24 weeks or more, but where there is no sign of life when born.

125. Subsection (2) provides that the nearest relative may make the arrangements for the disposal of their remains. As with section 46, the nearest relative is not obliged to make the arrangements if they do not wish to do so, or are unable to do so.

126. Subsection (3) sets out the order of priority of the nearest relative who may instruct the disposal of the remains and the nearest relative is defined in paragraphs (a) to (g) of subsection (3). Subsection (3)(g) refers to ‘a friend of long standing of the child’. This is intended to allow adults who had a relationship with the child to make a decision even if they do not fall into any of the familial categories set out at paragraphs (a) to (f) of subsection (3). Subsection (4) provides that the relatives will rank in the order of those paragraphs. A relative who is a half-blood relation will be treated in the same way as a relative who is a full blood one. Subsection (5) provides that where there is more than one person of the same rank in any of the paragraphs, each of them will rank equally with the others in the same paragraph. This is the same process as for section 46, but the hierarchy established by paragraphs (a) to (g) of subsection (3) takes account of the different relationships a child would have in comparison to an adult.

127. Subsection (6) provides that a child who is under 16 years of age immediately prior to the death will not be eligible to instruct the disposal of the remains unless they are the parent of the child who has died. This will ensure that anyone under the age of 16 who has given birth will not be excluded from making the decision. Anyone who would otherwise be eligible under
paragraphs (a) to (g) of subsection (3), but does not wish to make the arrangements or is unable to make the arrangements for any reason will not be included. This ensures that no one can be forced to take on responsibility for making such arrangements.

128. Where it is not reasonably possible to communicate with the person in the time available before the funeral they will be excluded and will not be called upon to make the arrangements. This will apply even if the person would have wished to make the arrangements.

129. This section is subject to section 92 of the Public Health (Scotland) Act 2008 which would take effect if there was any risk to public health. The local authority would have the power to take steps to minimise the risk to health, including disposing of the body without having to take into consideration the views of relatives under this section.

Section 48 – Disposal of remains: nearest relative

130. Section 48 provides that the person who is making arrangements for the disposal of the remains by virtue of being the “nearest relative” under section 46 or 47 is free to choose the method of disposal (ie, burial or cremation). Subsection (3) requires that the person who makes the decision must have regard to any wishes about the disposal method that the deceased expressed, as far as the person is aware of any such wishes. The only limit on them making the decision would be if there was a risk to public health under the Public Health (Scotland) Act 2008. The local authority could overrule any decision in order to protect the public health. This is set out at subsection (5).

Section 49 – Sections 46 and 47: application to sheriff

131. Subsection (1) permits anyone who claims they are entitled to make arrangements for disposal to make a summary application to the sheriff, who can make an order setting out who is entitled to make the arrangements. The sheriff may make the order based on an “arrangements on death declaration” made by the deceased or based on who is the nearest relative. For the purposes of the Bill, the phrase “arrangements on death declaration” means any statement (whether verbal or written) the deceased made while alive specifying the person whom the deceased wished to make the arrangements for the disposal of his or her remains. Subsection (2) allows the sheriff to also make any other provision that is considered appropriate or necessary when making an order. A decision made by the sheriff will be final and cannot be appealed.

132. In certain circumstances an application may not be made under this section. Subsection (5) allows that such restrictions apply in cases where there is a risk to public health from the remains of the deceased and where either an application for an order under section 93(1) of the Public Health etc (Scotland) Act 2008 has been made and not disposed of or an order under that section has been made in respect of the remains.

Losses during pregnancy

Section 50 – Arrangements on loss during pregnancy

133. Subsection (1) sets out that this section applies where a pregnancy loss occurs at or before its twenty-fourth week, the fetus does not breath or show any other signs of life and where the woman is in the care of an “appropriate health authority” at the time when the pregnancy ends.
Subsection (6) defines an “appropriate health authority” to mean an independent health service or Health Board whose care the woman was in when the pregnancy ended. Subsection (6) also defines a “health authority” as a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 and an “independent health care service” in accordance with section 10F of the same Act.

134. Subsection (3) provides that, where the woman authorises the appropriate health authority to make the arrangements for the disposal of the remains of the fetus, the authority must inform the woman if it would not be reasonably practicable for it to arrange for the remains to be disposed of in a particular way. If she decides the health authority should make the arrangements, the woman may still choose the method of disposal. Where the woman chooses the method of disposal, subsection (3) requires the health authority to inform the woman if it is not possible to dispose of the remains in that way.

135. Subsection (2) requires the health authority to attempt to ascertain the woman’s wishes before the expiry of the “initial period”, which is defined at subsection (6) as being within 7 days of the pregnancy loss occurring. Following the loss of a pregnancy, some women may choose not to engage with the health authority, or maybe be physically unable to do so. As such, the health authority is expected to try to find out the woman’s wishes, but is not under an obligation to establish her wishes.

136. Subsection (4) requires the health authority to record the woman’s decision or the fact that she did not inform the health authority of a decision. The health authority must record this information as soon as is practicable after the expiry of the initial period. In both instances, the health authority must take reasonable steps to have the woman acknowledge her choice (including not to make a decision) by signing the record, but is not under a duty to have her sign. Again, the woman may not be able to sign or may choose not to do so.

Section 51 – Change in arrangements

137. Subsection (1) sets out that section 51 applies where an appropriate health authority has given a woman the opportunity to make a decision under section 50(2), the remains have not been disposed of and the relevant period has not expired. The “relevant period” for the purposes of this section are defined by subsection (5) as meaning the period of five weeks after the expiry of the initial period set out in section 50(6). Under subsection (2) the woman may change her decision made under section 50(2) or – where she had not made a decision under that section – make such a decision.

138. As with the process set out in section 50, subsection (3) provides that, where the woman authorises the appropriate health authority to make the arrangements for the disposal of the remains of the fetus, the authority must inform the woman if it would not be reasonably practicable for it to arrange for the remains to be disposed of in a particular way. Similarly, under subsection (4), the health authority must record the decision and take reasonable steps to secure the woman’s signature. Subsection (5) provides that “appropriate health authority” has the same definition as in section 50(6).
Section 52 – Individual authorised to make arrangements

139. Subsection (1) establishes that this section applies where an individual has been authorised to make arrangements for the disposal of remains under section 50(2)(b). Subsection (2) allows the individual to decline to make arrangements and authorise the appropriate health authority to do so in a way specified by the individual or the health authority. The individual may not authorise any other person to make arrangements.

140. Subsection (3) requires the health authority to inform the individual if it is not practicable to arrange the disposal in a way chosen by the individual.

141. Where the individual authorises the health authority to make arrangements, subsection (4) requires the health authority to record that information in the prescribed form and to take reasonable steps to secure the individual’s signature.

142. Subsection (5) sets out subsection (6) applies if the health authority has recorded a decision to authorise an individual made under section 50(2)(b) and the individual does not inform the health authority that he or she has made arrangements for the disposal of the remains and does not authorise the health authority to make the arrangements. Subsection (6) requires the health authority to record those facts in a prescribed form and take reasonable steps to secure the individual’s signature. Subsection (7) provides that “appropriate health authority” has the same definition as in section 50(6).

Section 53 – Appropriate health authority authorised to make arrangements

143. This section will apply when a health authority has been authorised by the woman who experienced the pregnancy loss or her nominated representative to make the arrangements for disposal of the remains of the fetus. It requires the health authority to dispose of the remains after the expiry of the initial 7-day period. The health authority is required to carry out the disposal in accordance with the manner agreed by way of sections 50(2)(c), 51(2) or 52(2)(a)(i); these sections cover the range of situations where the health authority is making arrangements, whether because they have been authorised to do so by the woman or her nominated representative, or because no decision has otherwise been made.

144. The “7-day period” means the period of 7 days beginning with the day on which authorisation for disposal was given.

Section 54 – Duty of appropriate health authority

145. This section applies where a pregnancy loss (as mentioned in section 50(1)) has occurred more than 6 weeks earlier and no arrangements have been made under section 51 or 52 for the disposal of the remains of the fetus following the pregnancy loss.

146. Subsection (2) provides that where the conditions set out in subsection (1) of the section are met the appropriate health board must make arrangements for the disposal of the remains as soon as practicable. Guidance will be provided to support this process; the intention being that this process will have been explained to the woman when the health authority discusses options with her as required by the Bill.
Section 55 – Duty to keep a register

147. Each health authority is required to keep and maintain a register of the disposals of pregnancy losses. The register will contain the information that has been prescribed in regulations. The regulations may also set out the form and manner in which the register is to be maintained. They may include the creation of criminal offences in relation to failing to keep a register and what the defences and penalties will be.

Local authority functions

Section 56 – Disposal of remains: duty of local authority

148. Section 56 places a responsibility on a local authority in cases where someone has been found dead in the local authority area and it appears to the authority that no arrangements have been or are being made under sections 46(2) or 47(2) for the disposal of their remains. Under subsection (2) the local authority must make the arrangements for disposal of the remains either by cremation or burial in such circumstances. Subsection (3) requires that when making arrangements the local authority should have regard to any wishes that the deceased person had about the method of disposal, if those wishes are known to the local authority. The local authority is entitled to recover any expenses it incurs in carrying out the burial or cremation under subsection (2) from the deceased’s estate.

Section 57 – Disposal of remains: power of local authority

149. This section sets out the power of the local authority in relation to the death of someone who was in the care of the local authority at the time of their death. Subsection (1) sets out that this section applies where the person who has died was either a child who was being looked after by the local authority or was an adult who was receiving assistance from the local authority immediately before his or her death, and where it appears to the local authority that no arrangements have been or are being made for the disposal of the remains under sections 46(2) or 47(2). Subsection (2) places the local authority under a duty to make arrangements for the remains to be buried or cremated.

150. By virtue of subsection (3), the local authority has the option to choose the method of disposal when making arrangements for the remains. When making arrangements, the local authority should have regard to any known wishes expressed by the deceased about the method of disposal. The local authority is entitled to recover any expenses incurred in carrying out the burial or cremation from the deceased’s estate.

151. A child who is “looked after” by the local authority has the meaning given in section 17(6) of the Children (Scotland) Act 1995.

Section 58 – Expenses of attending funeral

152. Subsection (1) establishes that this section applies in cases where a child dies and was being looked after by a local authority immediately before death, or an adult dies who was in the care of, or receiving assistance from, a local authority immediately before death. As per subsection (2), in such cases the local authority may pay the expenses for attending a funeral in certain circumstances. Expenses can cover the cost of travelling to the funeral, and other costs incurred by the person attending.
153. Expenses may be paid only where the person meets the conditions set out in subsection (3). These are that the person (referred to as a "relevant person") would not be able to attend the funeral without suffering undue hardship if the local authority did not make the payment, and that the circumstances justify the payment being made, in the opinion of the local authority.

154. Where a child has died, a "relevant person" is a relative of the child or another person connected with the child. Where a person other than a child has died, a "relevant person" is a relative of the child or some other person connected with the person who has died. Subsection (5) makes clear that a child who is ‘looked after’ by a local authority is to be constructed in accordance with section 17(6) of the Children (Scotland) Act 1995.

PART 4 – INSPECTIONS

155. This Part of the Bill sets out a range of provisions in relation to the inspection of various parts of the funeral industry, including crematoriums, burial authorities and funeral directors.

Section 59 – Appointment of inspectors

156. This section gives the Scottish Ministers the power to appoint inspectors of burial, inspectors of crematoriums and inspectors of funeral directors. The section sets out various arrangements for such appointments, including remuneration, which the Scottish Ministers may determine (subsection (3)) and terms and conditions, including pension arrangements (subsection (5)). Subsection (4) allows the Scottish Ministers to make such appointments on other terms and conditions as they may determine.

Section 60 – Functions of inspectors

157. This section obliges inspectors to carry out such functions as may be prescribed to be by the Scottish Ministers.

Section 61 – Inspections: regulations

158. Section 61 gives the Scottish Ministers the power to make regulations to cover the inspection of burial grounds and burial authorities; crematoriums and cremation authorities; and funeral directors. Such regulations may cover issues such as the frequency of inspections (subsection (3)(a)), reports by inspectors after carrying out inspections (subsection (3)(b)), steps that can be taken by inspectors to ensure compliance with any legislative requirements (subsection (3)(c)), steps that can be taken by inspectors to enforce compliance requirements (subsection (3)(d)) and the timescales that apply to such activity (subsection (3)(e)).

159. It is intended that the Scottish Ministers will be able to suspend the operation of a crematorium, burial ground or funeral director – this may be done as a consequence of subsection (3)(c) and (d). Subsection (3)(f) provides that regulations made under subsection (1) may set out the processes to be followed in such instances, including recommendations by inspectors to this effect. Subsection (3)(g) provides that regulations may make provision about reviews of or appeals against decisions of inspectors or decisions of the Scottish Ministers in relation to recommendations to suspend the operation of activities of relevant bodies or to suspend or revoke any licence necessary to operate as a relevant body.
160. Subsection (3)(h) provides that regulations may make provision about investigations of complaints against cremation authorities, burial authorities and funeral directors, and what sanctions inspectors may imposed in relation to such investigations (subsection (3)(i)).

Section 62 – Powers of entry and inspection

161. This section gives inspectors various powers of entry in the course of carrying out inspections. Under subsection (1), if authorised to do so by the Scottish Ministers, inspectors may enter any premises (apart from a dwelling-house) associated with the management or operation of a burial authority, cremation authority or a funeral director’s business. Subsection (1)(b) allows inspectors to require the production of any documents or records required by this Bill, and inspect them, including taking copies (subsection (1)(c)). Subsection (2) provides that these powers can be exercised only in relation to ascertaining whether an offence under this Bill has been or is being committed or in carrying out any function conferred on the inspector by virtue of regulations made under the Bill.

162. The section sets out further details about these powers, including that the inspector may be accompanied by any other person the inspector considers necessary and may take into the premises any materials and equipment that the inspector considers necessary (subsection (3)). Entry under this section must take place at a reasonable hour (subsection (4)), and the inspector must produce identification and proof of authorisation if required to do so (subsection (5)).

Section 63 – Section 62: offences

163. This section makes provision for offences in relation to the powers set out at section 62. It is an offence for a person to fail to comply without reasonable excuse with a requirement to produce a document or record in the course of an inspector carrying out duties under section 62(1)(b). It is an offence for a person to wilfully obstruct an inspector in the exercise of the power of entry provided by section 62(1)(a), the power to inspect or take copies of documents or records under section 62(1)(c) or any power conferred by regulations made under section 60 or section 61. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 64 – Reports

164. Subsection (1) requires an inspector to prepare and publish annual reports. Under subsection (2), the first such report prepared by an inspector is to be published before the end of the inspector’s first year in the role, and must cover that period. By virtue of subsection (3), each subsequent report is to be published no later than 12 months after the preceding report and is to relate to the period between the publication of the previous report and the publication of the latest report.

165. Subsection (4) sets out that reports must provide information about the activities undertaken by the inspector during the relevant period, and may make recommendations with the aim of improving the services under inspection.

166. Subsection (5) requires such reports to be laid before the Scottish Parliament as soon as practicable after publication.
167. In addition to annual reports set out at subsections (1) to (5), subsection (6) allows an inspector to produce other reports on matters he or she thinks appropriate – for example, a report on a crematorium that has serious failings. Such ad hoc reports must be sent to Scottish Ministers under subsection (7)(a), and may, if the inspector considers it necessary or desirable to do so, be published and/or laid before the Scottish Parliament under subsection (7)(b).

PART 5 – MISCELLANEOUS

168. This Part deals with various miscellaneous provisions included in the Bill.

Funeral directors’ premises

Section 65 – funeral directors’ premises: licences

169. Section 65(1) gives the Scottish Ministers the power to create a licensing scheme covering the operation of funeral directors’ premises. Subsection (2) defines funeral directors’ premises as any premises that are owned or occupied by a funeral director and are used primarily for activities relating to carrying on the funeral director’s business or carrying out any activities relating to the carrying on of the funeral director’s business.

170. Under subsection (3) a funeral director who does not hold a licence may not carry out such activities.

171. Subsection (4) provides that a funeral director is required to obtain a licence for each of the premises the funeral director operates and which are carrying out the activities described in this section.

Section 66 – Licensing scheme: regulations

172. Section 66(1) allows the Scottish Ministers to make regulations in respect of how a licensing scheme referred to in section 65(1) will operate. Subsection (2) sets out what the regulations may contain. This includes: who will administer the scheme; the application procedure; the circumstances under which an application may be refused or granted; for what period the licence may be granted; provisions for suspension or revocation of licences; and any conditions that may be applied, such as fees that may be payable and provision about appeals against certain decisions of the licensing authority.

Codes of practice

Section 67 – Codes of practice

173. Subsection (1) provides the Scottish Ministers with the power to issue codes of practice in relation to the management, operation and functions of burial authorities, cremation authorities and funeral directors. Subsection (5) requires anyone operating a business covered by any of the codes of practice to comply with the code of practice applicable to them.

174. Subsection (2) requires the Scottish Ministers to publish any codes of practice they issue, which they may do in such manner that they consider appropriate. Subsection (3) requires the Scottish Ministers to lay a copy of any code of practice before the Scottish Parliament on the day
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it is published. Subsection (6) places the Scottish Ministers under a duty to keep under review any codes of practice issued under this section, and allows them to revise such codes of practice at any time.

Section 68 – Codes of practice: consultation

175. This section requires the Scottish Ministers to consult on any draft code of practice, either original or revised, before it is issued. The Scottish Ministers must consult those who will be affected by the code of practice and may also consult any other persons who the Scottish Ministers consider have an interest.

Powers to modify enactments

Section 69 – Power to extend application of Act

176. Section 69 provides the Scottish Ministers with a power to make regulations which will extend the provisions of this Bill (or any other enactment) so that it can apply to other specified ways of disposing of human remains in future. This will enable new and alternative methods of disposal of remains to be subject to the provisions of the Bill and any regulations made by provisions contained in the Bill.

Section 70 – Power to suspend or modify enactments

177. Section 70(1) provides the Scottish Ministers with the power to make regulations to suspend or to modify any other legislation as they consider necessary or expedient for the purpose of protecting public health. The regulations may be made so that they have effect on the whole of Scotland or any part of it.

178. By virtue of subsection (2), the enactments covered by this section are this Bill; any regulations made under the Bill; any enactments amended by regulations made under the Bill; and any other enactment relating to burial or cremation.

179. Subsection (3) sets out that the regulations may require certain persons to comply with particular provisions of the regulations and may create criminal offences which would apply to those who do not comply with the regulations.

180. Under subsection (4), the Scottish Ministers will have the power to make different provisions depending on the circumstances when making regulations, and the regulations may include whatever provisions the Scottish Ministers think is required or will allow the regulations to take have effect more quickly in order to protect public health.

181. Subsection (5) requires that any such regulations must be laid before the Scottish Parliament and will lapse automatically 28 days later, unless the Scottish Parliament passes a resolution approving them. The 28-day period will not include any days when the Scottish Parliament is in recess for a period or more than 4 days or when the Scottish Parliament has been dissolved for whatever reason.
182. Subsection (8) sets out that the term “protecting public health” has the same meaning for this section as it is for the Public Health etc. (Scotland) Act 2008.

**Acquisition of land**

*Section 71 - Acquisition of land*

183. Section 71 sets out that references to “enactment” in section 70(1) and section 71(1) of the Local Government (Scotland) Act 1973 are to be construed as if it included the Burial and Cremation (Scotland) Act 2016. This has the effect of allowing local authorities to acquire land, whether inside or outside their area, for the purposes of this Bill.

**PART 6 – GENERAL**

184. This Part of the Bill sets out general provisions.

*Section 72 – Offences by bodies corporate etc.*

185. This section makes provision about liability where an offence has been committed under this Bill by a body corporate, a Scottish partnership or an unincorporated association (which is not a Scottish partnership). If it is proved that an individual who holds a managerial role in the organisation which has committed the offence had knowledge of the offence being committed or was negligent, they will be considered to have committed the offence also. They will then be liable to the penalty attached to that offence.

*Section 73 – Regulations: consultation requirements*

186. This section sets out the requirements for the Scottish Ministers to consult before making any regulations under this Bill. The section sets out who Scottish Ministers must consult with when making regulations under particular sections – this ensures that relevant interests are consulted with before any regulations are made.

*Section 74 – Regulations*

187. This section provides that regulations made under this Bill may make different provisions for different purposes and may include supplementary, incidental, consequential and transitional provisions. Regulations made under sections 6(1), 22(1), 60, 61(1), 66(1) and 69(1) of the Bill will be subject to affirmative procedure; regulations made under section 76(1) that amend or repeal a provision of an Act are subject to the affirmative procedure. Any other regulations made under the Bill will be subject to negative procedure. Subsection (5) sets out that this section does not have effect on regulations made under sections 18(1), 70(1) or 80(2) of the Bill, which are either subject to special procedure (in the case of sections 18(1) and 70(1)) or no procedure (in the case of section 80(2)).

*Section 75 – Interpretation*

188. This section provides for the interpretation of various terms used in the Bill.
Section 76 – Ancillary provision

189. This section provides the Scottish Ministers with the power to make, by regulation, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to the Bill. An order under this section may modify this, or any other, enactment (including this Bill).

Section 77 – Minor and consequential modifications

190. Minor and consequential modifications are set out in schedule 1.

Section 78 – Repeals

191. Legislation that will be repealed is set out in schedule 2.

Section 79 – Crown application

192. This section provides that no contravention by the Crown of any provision made by or under the Bill makes the Crown criminally liable. However, it makes clear that the provisions of the Bill apply to persons in the public service of the Crown as they apply to other persons.

Section 80 – Commencement

193. This section and sections 70, 74, 75, 76 and 81 will come into force on the day after this Bill receives Royal Assent. The other provisions in this Bill will come into force on the date or dates decided by the Scottish Ministers in regulations. Different provisions of the Bill will come into effect on different days.

Section 81 – Short title

194. This section establishes that the short title of this Act will be the Burial and Cremation (Scotland) Act 2016.

Schedules

Schedule 1 – Minor and consequential modifications

195. This schedule details the minor modifications which are being made to other enactments by this Bill.

Schedule 2 – Repeals

196. This schedule details enactments that are repealed by this Bill (including repeals of spent provisions).
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Burial and Cremation (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 8 October 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Scottish Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Scottish Parliament.

2. The Policy Memorandum, which is published separately, explains in detail the background to the Bill and the Scottish Government’s policy intention. The purpose of this Financial Memorandum is to set out the costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

3. The purpose of the Bill is to make provision for the processes involved in burial and cremation by providing a new legislative framework, including establishing who has the right to instruct the disposal of a body, providing for the application processes for a burial or cremation and improving various procedures involved, including record keeping and the management of ashes.

4. The Bill will address the shortage of burial space in many parts of Scotland by allowing burial authorities to reuse particular lairs in tightly controlled circumstances. The Bill will also provide greater powers for burial authorities to manage burial grounds, which will help the sustainability of those burial grounds and of burial generally.

5. This Financial Memorandum sets out the costs and savings associated with the Bill as they apply to various sectors, as well as to the Scottish Government. The Bill is expected to have relatively few costs for key stakeholders, although there are implications for particular sectors, and these are set out accordingly. In the main, the Bill will improve existing procedures rather than introducing new processes, and may result in some minor savings.

6. The sectors considered in the Financial Memorandum are:
   - Funeral directors;
   - Burial authorities;
   - Cremation authorities;
   - NHS Boards and other healthcare providers; and
   - The Scottish Government.

7. Scottish Government officials have engaged with representatives of each sector to consider how the Bill is likely to affect them, including any new costs that will arise from the Bill’s provisions. Engagement is ongoing and will continue as the Bill progresses through the Scottish Parliament. This may lead to refined cost estimates, particularly for the process of restoring burial lairs to use. Overall, however, the margin of uncertainty for those estimates set
out in the Financial Memorandum are considered to be low to medium. This assessment reflects the broad confidence in the estimates but also the variation in costs depending on the circumstances of each burial authority.

COSTS ON THE SCOTTISH ADMINISTRATION

THE SCOTTISH GOVERNMENT

Power to appoint inspectors

8. The Bill contains powers for Scottish Ministers to appoint inspectors to carry out various functions. It is intended to use regulations to set out the functions which inspectors can carry out. These are expected to cover the management and operation of crematoriums; the management and operation of burial grounds; and the management and operation of funeral directing businesses. The approach set out in the Bill will allow Scottish Ministers to appoint as many inspectors as required, and will enable inspectors to have flexible roles, rather than necessarily being restricted to inspecting a single part of the funeral industry. The costs associated with the appointment of inspectors are the main element of the Bill which will have cost implications for the Scottish Government.

9. This approach will provide flexibility for Scottish Ministers to appoint as many inspectors as they consider necessary, and to allow inspectors to carry out a variety of functions. For example, this means that an inspector may have responsibilities only for crematoriums, or may be responsible for the inspection of crematoriums and burial, for example. Depending on how Scottish Ministers choose to appoint inspectors, this offers the potential for cost savings by combining various inspection functions in a single appointment.

Inspector of Crematoriums

10. An Inspector of Crematoria is currently in post. This appointment was made under powers in the Cremation (Scotland) Regulations 1935, which in turn are made under the Cremation Act 1902. Although the power to appoint an inspector has existed for a number of years, it was used for the first time to appoint an inspector in March 2015. The post is not salaried; remuneration is based on the work carried out by the inspector within the context of the current job description. The Inspector is peripatetic and does not have an office (although he uses Scottish Government facilities from time to time). Very limited administrative support is provided by the Scottish Government – this amounts to approximately 1 to 2 hours per month, and involves managing the Inspector’s expenses and occasionally arranging meetings. This is provided from within existing resources, and the costs involved in providing this support are negligible.

11. Between March and September 2015, the Inspector has cost the Scottish Government approximately £12,000. This includes reimbursement for the Inspector’s time (charged at £20 per hour), modest travel and subsistence claims and salary costs (i.e, tax and National Insurance), as well as limited Scottish Government administrative support. To date, the Inspector has conducted introductory visits to crematoriums, but has not carried out any inspections. It is possible that inspections will require more of the Inspector’s time, although the introductory visits have all been thorough, so it is unlikely that inspection will require considerably more time. Based on current costs, and the work the Inspector has carried out so far, the existing post
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can be considered to be a half-time role, costing the Scottish Government approximately £24,000 per year. Inspection will require more of the Inspector’s time, which has been calculated at an additional 4 hours per visit. At the current rate of £20 per hour, including estimated salary costs, this would add an additional £3,000 per year, assuming that every crematorium will be inspected once per year. This amounts to approximately £27,000 per year. The Scottish Government expects the inspector role under the Bill to be full-time to reflect the new legislative and procedural framework. For comparison, it can be assumed that the full-time costs of the current role would be approximately £51,000.

12. Although the legislative power under which the Inspector is currently appointed will be repealed, the Bill will contain power to make savings provisions so that the existing role can continue but to be known as the “Inspector of Crematoriums”. It is likely that the remit of the role will be expanded in response to the new legislative framework, including additional powers. It is not unreasonable to assume that it will become a full-time role in response to this.

13. Given the anticipated expanded role of the Inspector of Crematoriums, as well as the options for introducing other inspectors, it is likely that these posts will be salaried, as opposed to being remunerated on the basis of work done. Such appointments could be made using Scottish Government salary scales. HM Inspectors of Education are appointed at the C2 grade, for example. Based on the likely role of the inspectors appointable under the Bill, it is expected that they could be appointed at the lower C1 grade – this would reflect the expected lower workload and the lower profile nature of the role. The total salary costs (ie, inclusive of salary, tax, National Insurance and other associated elements) of this range from £63,000 to £74,000. These salary costs apply to the financial year 2015-16; costs for subsequent years are currently not known.

14. It is anticipated that a single Inspector of Crematoriums would be required. Since the post is currently filled, it is expected that salary costs would be applicable immediately, at the lower end of the scale. The existing Scottish Government salary scale for the C1 grade takes 5 years to progress from step 1 (£63,000) to step 5 (£74,000).

Inspector of Burial

15. If Scottish Ministers choose to appoint an Inspector of Burial, it is likely that only a single inspector will be required. This is the first time such a role has been considered, and it is intended that the role will be based largely on the existing Inspector of Crematoriums, particularly initially. It is expected that the Inspector of Burial will not necessarily visit each burial ground in Scotland, of which there are several thousand. Rather, the role will involve direct engagement with burial authorities – there are around 40 burial authorities in Scotland, including every local authority. It is likely that the role will focus on supporting burial authorities to comply with the new legislative framework, as well as promoting best practice across all burial authorities.

16. Based on the current model of the Inspector of Crematoria, it is expected that a single Inspector of Burial would be required. Administrative support would be provided by the Scottish Government – requirements are expected to be minimal, and broadly similar to the support requirements for the Inspector of Crematoria. Accordingly, the cost to the Scottish Government
of appointing an Inspector of Burial is estimated at between £63,000 and £74,000. These estimates are calculated on the same basis as those indicated at paragraphs 13 and 14.

Inspector of Funeral Directors

17. Scottish Ministers will be able to appoint inspectors to inspect funeral directors. It is once again expected that the role will initially be similar to that of the Inspector of Crematoriums or the Inspector of Burial, which is to encourage compliance with legislative requirements and support best practice across the profession. Another key function will be to consider whether further regulation of funeral directors is required and make recommendations to Scottish Ministers.

18. This role will follow the same model as for other inspectors appointed under the Bill, with costs of between £63,000 and £74,000 per year and limited administrative support provided by the Scottish Government. These estimates are calculated on the same basis as those indicated at paragraphs 13 and 14.

19. Both the National Association of Funeral Directors (NAFD) and the National Society of Allied and Independent Funeral Directors (SAIF) have inspection regimes. SAIF members are inspected biennially, and SAIF employs one inspector on a part-time basis. NAFD members are also inspected every two years, and the NAFD employs a single inspector for Scotland for this purpose (one of four inspectors across the UK). Based on the existing inspection process of the NAFD and SAIF, it is assumed that the inspection of a funeral director’s premises will take half a day. There are around 250 funeral directors in Scotland, operating approximately 400 funeral homes. If funeral directors were inspected once every year, two full-time inspectors would be able to cover all funeral directing business in Scotland, including those in rural and remote places. This would cost the Scottish Government between £126,000 and £148,000 per year, based on salary costs for two full-time inspectors at the rates noted.

20. Overall, the estimated cost to the Scottish Government of the appointment of one full-time Inspector of Crematoria, one full-time Inspector of Burial and two full-time Inspectors of Funeral Directors under the Bill is estimated as being between £252,000 and £296,000 per year.

Licensing of funeral directors

21. The Bill allows Scottish Ministers to introduce a licensing scheme for funeral directors. It is intended that a decision to introduce such a scheme would be based on recommendations made by Inspectors of Funeral Directors after they had assessed the potential benefits of a licensing regime. It is expected that this process would take 2 to 3 years, to ensure that a full assessment of the need for a licensing scheme could be made. If Ministers decided to introduce a licensing scheme, the Scottish Government would work with funeral directors to develop a scheme. Accordingly, it is expected that the introduction of a licensing scheme would happen no sooner than four years after the Bill comes into force.

22. The financial impact on funeral directors of the introduction of a licensing scheme is discussed at paragraphs 52 to 66. It is intended that any licensing scheme that were introduced would be operated centrally by the Scottish Government. Many existing licensing schemes are operated by local authorities, with fees set locally. This can lead to a wide disparity in costs. For
example, licence fees for skin piercing (which also includes tattooing) range from £110 per year in Fife to £462 per year in Highland. Compliance with licensing requirements tends to be checked by local authority environmental health officials.

23. Although there would be some advantages in utilising local government resources to operate a licensing scheme for funeral directors, overall it is considered preferable for the scheme to be operated centrally by the Scottish Government. In particular, Inspectors of Funeral Directors will play a key role – linking the inspection regime to any licensing requirements will provide important continuity of standards and knowledge and support the proportionality of the licensing scheme. It should also encourage cost efficiencies by connecting the licence requirements to the inspection process. A centrally-run scheme would also allow a single set of fees to be set for the whole of Scotland, avoiding local variations that would result from the scheme being run by local government.

24. It is intended that funeral directors’ compliance with the requirements of such a scheme would be part of the inspection regime. The granting and renewing of licences would be contingent on a satisfactory inspection having been carried out within a given period; an unsatisfactory inspection would result in a licence being revoked or not granted. As the granting of the licence would be dependent on the outcome of the standard inspection process, it is not expected that any additional work would be required by inspectors; as such, it is not expected that any additional inspectors would be required to support the introduction of a licensing scheme.

25. Additional administrative support would be required to manage the licensing scheme. It is expected that this could be provided by a full-time Scottish Government official at the A4 grade as part of an existing team. This would essentially be a data entry post, with the Scottish Government official managing a database based on information provided by the inspectors and licence applications made by funeral directors. Questions about the licensing scheme would be expected to be directed towards inspectors, not the administrative support function (although it is likely that some queries about various parts of the scheme and the licence application process would nonetheless be directed towards the Scottish Government), and this grade appears appropriate on that basis. The post would also be responsible for processing licensing fees. Salary costs would be between £25,500 and £29,000; this includes salary and tax and National Insurance contributions.

26. It is not expected that a licensing scheme would require the development of significant new IT facilities. Given the scale of the licensing scheme, it is envisaged that licensing information would be managed on a simple database, which would be developed by Scottish Government Information Services and Information Systems with minimal cost implications. The processing of licensing fees would be managed through existing Scottish Government financial systems with no additional cost implications as a result, other than the staff costs indicated at paragraph 25.

27. There are around 250 funeral directors in Scotland, operating around 400 different funeral homes. The current proposal is that each business would require a licence to cover all premises that it operates. Renewal of licences could be done in line with the inspection regime, whether
that was annual or biennial. The Scottish Government believes that the infrastructure described above is proportionate to a scheme of this nature and extent.

28. The level of the fee would be developed in conjunction with the funeral directing profession at the point where Scottish Ministers decided to introduce such a scheme. It is expected that the income generated by the licence fee would at least partially offset the costs of running the scheme. However, a balance would need to be struck between funding the scheme in this way and ensuring that the licensing fee was proportionate and provided benefit to funeral directors.

29. Nonetheless, the overall costs to the Scottish Government of such a licensing scheme before income generated from licence fees is factored in, is expected to encapsulate the costs of administrative support and the provision of IT facilities. There is a relatively low margin of uncertainty for these estimates.

Combined inspection function

30. In addition to the Inspector of Crematoriums, there is currently an Inspector of Anatomy, appointed under the Anatomy Act 1984. This post currently costs the Scottish Government approximately £23,000 per year, including the costs of an administrative assistant who is not a Scottish Government official. The Inspector of Anatomy is paid a £15,000 honorarium per year, along with expenses. As this role was appointed under separate legislation, it not a direct comparison with the expected costs of inspectors under the Bill.

31. Given the increased inspection regime that might be introduced by the Bill, some minor costs savings and efficiencies would be possible by using a single administrative support role. This would replace the current administrative support provided to the Inspector of Crematoria.

32. Under this model, each inspector would still operate independently and remotely. This would not lead to the creation of a new public body, but would simply be a way to achieve small cost efficiencies.

Registration of private burials

33. The Bill creates a power for the Scottish Ministers to make regulations about the registration of private burials. The policy intention is that each local authority should maintain a register of authorised private burials. The initial intention had been to require any private burial to be recorded on the Land Register of Scotland or the Register of Sasines, but this type of information is no longer suitable for these registers. One option that would allow for this information to be publicly accessible is for local authority records to be collated into a national database maintained by Registers of Scotland – this would allow the information to be accessed centrally, and is in line with the approach taken for other registers.

34. As local authorities will be responsible for authorising private burials, it will be necessary for information to be recorded locally. However, collating this information centrally as well will allow consistent access to the information, and will enable it to be linked to other information recorded by Registers of Scotland: this will allow a person to know if a private burial had taken place on land he or she was about to purchase.

36
35. Discussions with Registers of Scotland have suggested that the development costs of such an electronic record would be low. The intention is that new systems in development will be adaptable and flexible to allow further registers to be added easily and with few cost implications.

36. Ongoing registration costs are difficult to forecast, largely because the number of private burials undertaken currently is unknown. However, the number is likely to be small. Accordingly, the cost to the Scottish Government is expected to be low. These estimates have a low-to-medium degree of uncertainty, mainly due to the lack of information about the number of private burials likely to be carried out.

COSTS ON LOCAL AUTHORITIES

37. The majority of costs on local authorities will arise when they are carrying out their functions as a burial authority or a cremation authority. There are both local authority and private burial authorities and cremation authorities and the financial impact of the Bill will apply equally to all types. Any cost implications to local authorities are therefore covered in the section below.

38. There are a small number of other costs which will fall on local authorities. As discussed at paragraphs 33 to 36, local authorities will be required to record information about private burial. The development of suitable systems for this purpose, as well as costs associated with responding to applications will have implications for local authorities. At the moment it is not clear how many private burials are likely; it is therefore difficult to provide robust estimates.

39. It is likely that there will be relatively few applications for private burials – the majority of human remains are typically cremated or buried in a burial ground. The process for considering an application is likely to be broadly similar to that for considering a planning application. An applicant will be expected to provide particular information about the proposed private burial, including whether or not any necessary permissions (e.g. to meet environmental regulations) have been granted. It might be possible to assess some applications without visiting the proposed site, but others are likely to require a site visit.

40. It is considered unlikely that the cost of assessing an application for a private burial will be more than the cost of assessing a planning application. The Scottish Government will continue to work with planning authorities and local authorities to further develop this estimate.

41. The cost of developing a system to record this information is expected to be relatively low for local authorities. Given the small number of applications anticipated, and the intention that the information is recorded centrally, it should be possible to record this information using standard software without the need for the development of bespoke systems. The key consideration is to ensure that the information recorded by local authorities is transferable to any system used by Registers of Scotland. This will be taken into account when developing regulations to prescribe the form and content of information to be recorded about private burial.

42. Sections 56 and 57 will place various duties on local authorities to undertake the disposal of human remains where no arrangements are otherwise made. This is a restatement of existing
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legislation, which will be repealed, namely section 50 of the National Assistance Act 1948 and section 28 of the Social Work (Scotland) Act 1968. As such, this will not introduce any additional costs for local authorities.

43. Section 58 of the Bill also confers a power on local authorities to pay travelling, subsistence or other expenses to a relative (or other connected person) for the purpose of that person attending the funeral of: (a) a child who was being looked after by the local authority before death, or (b) another person who was in the care of, or receiving assistance from, the local authority before death. This is a restatement of section 29(2) of the Social Work (Scotland) Act 1968 which is to be repealed by the Bill. As such, section 58 will not introduce any additional costs for local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Funeral directors

44. The majority of funerals in Scotland are organised by funeral directors. The Bill is not expected to impose any particular long-term additional costs on funeral directors, other than the potential introduction of a licensing scheme which would require the payment of a fee. The key provisions which will affect funeral directors are the revision of the application form for cremation and the introduction of a statutory form to be used when applying for a burial. Both of these forms will be provided for in regulations, and these will be subject to a formal consultation process before they are introduced.

Cremation forms

45. Currently a single form (Form A) is used for all cremation applications. It is completed by the person applying for the cremation (“the applicant”), often with the support of the funeral director. Typically, the form is provided to funeral directors by cremation authorities, usually electronically, allowing funeral directors to print forms as they are needed. It is possible for the applicant to acquire the form directly from the cremation authority, but this is not common. Cremation authorities do not charge for providing the cremation form to funeral directors.

46. In response to the recommendations of the Infant Cremation Commission (“the Commission”), the cremation application form will be revised so that it applies unambiguously to all categories of cremation (i.e, adult, child, stillborn baby, pregnancy loss). Currently, many of the questions asked on Form A are relevant only to the cremation of an adult, although it is used for all categories. The Scottish Government is working with a range of stakeholders to develop a new cremation application form. The current intention is to use a single form with separate sections for each category, requiring the applicant to complete only those sections which apply.

47. The Commission recommended that simple language should be used on revised forms and only questions which were absolutely necessary for the cremation should be asked. These principles will underpin the development of the new form, and while it is likely to be longer than the current form, the language used and the format of the form should make it easier to complete. This approach should reduce the length of time funeral directors need to spend supporting clients to complete the form. Additionally, although the revised form will be longer, it will be formatted
so that funeral directors are able to print only those pages required for a particular category. This should lead to some minor savings in printing costs for funeral directors. The new form will replace the existing Form A, and will continue to be supplied to funeral directors by cremation authorities directly.

48. As such, the new form will not add any additional costs or bureaucracy to funeral directors. It is expected that the revised cremation application form will be cost neutral for funeral directors, with the possibility of some minor savings through an overall reduction in administrative costs.

Burial forms

49. The Bill will introduce a statutory form for burial. There is currently no statutory burial form and each burial authority produces its own form. The current process for burial forms is similar to that for cremation forms, with burial authorities providing forms directly to funeral directors, usually in electronic format, with no cost. The new statutory form will replace the current locally produced forms. This will not add any costs to funeral directors and will be cost neutral. Indeed, since the same form will now be used in each instance, it is likely that the new form will lead to some minor administrative savings through reduced processing time and consistent data entry regardless of which burial authority has supplied the form.

Return of ashes

50. Where a funeral director collects the ashes on behalf of a client who then fails to claim the ashes, the funeral director will often retain the ashes. The cremation application form prescribed in regulations made under the Bill will clarify that funeral directors may return such ashes to the crematorium which carried out the cremation; this will apply to cremations that occur after the Bill comes into force and to ashes that funeral directors have stored before the Bill takes effect. This is not expected to have any particular financial implications for funeral directors. It is likely that funeral directors will seek to return unclaimed ashes to crematoriums at the same time as visiting the crematorium for other purposes (e.g., to submit paperwork for an impending cremation), so there should be no additional transport costs. Before ashes are returned to the crematorium, funeral directors will be required to attempt to contact the applicant to notify them that the ashes will be returned. Discussions with funeral directors suggest that this is something that already tends to happen with unclaimed ashes, and so this should pose no additional costs on the majority of funeral directors.

51. Overall, this provision should have no particular financial implications for funeral directors, but will ease the administrative and storage problems caused by long-term storage of unclaimed ashes.

Inspection and licensing

52. The Bill allows Ministers to appoint inspectors of funeral directors, and separately provides them with the power to introduce a licensing scheme for funeral directors. The Bill is constructed so that the introduction of a licensing scheme is contingent on the prior appointment of inspectors.
53. There are currently no particular legal, financial or educational requirements to set up a funeral directing business, and there is no independent scrutiny or regulation of funeral directors, although both national professional bodies, the NAFD and SAIF, have their own inspection regimes. However, only around 80% of funeral directors in Scotland belong to one or other organisation, so around one-fifth of funeral directors are currently subject to no scrutiny.

54. Each organisation has its own Code of Practice with which members are expected to comply, and serious failings can lead to expulsion from the organisation. There is no requirement for a funeral director to belong to a professional body in order to practice, and expulsion is not necessarily any barrier to a funeral director continuing to operate.

55. The introduction of an inspection regime is not in itself expected to have significant, if any, cost implications for the majority of funeral directors. The policy intention is that, in the first instance, an inspection regime would be used primarily to encourage best practice across the industry. Various models for inspection are under consideration, and the Scottish Government has discussed these with the NAFD and SAIF. Both organisations are, in principle, content with the proposed introduction of an inspection regime. The final requirements of an inspection regime will be considered if Ministers decided to introduce inspection, and the Scottish Government would work with funeral directors to ensure that any inspection regime introduced was proportionate, offered tangible benefits to customers and the industry and did not impose unreasonable demands on the sector.

56. It is likely that inspection would require some funeral directors to improve parts of their working practices to meet the standards against which they were inspected, which might have financial consequences. However, the Scottish Government would not necessarily seek to impose standards that were higher than those currently required by the NAFD and SAIF unless there were demonstrable reasons for doing so.

57. Additionally, it is likely that the introduction of inspection would happen either incrementally (i.e, the inspected standards expected of funeral directors would be developed over time) or with a significant lead-in time. As such, it is not expected that this provision will have particular financial consequences for the sector as a whole.

58. Inspectors would advise Ministers about the introduction of a licensing system – this is one of the recommendations of the Infant Cremation Commission. If Ministers chose to introduce licensing based on this advice, it would have cost implications for funeral directors, mainly as a result of the need to pay a licence fee. There are a number of potential models for a licensing scheme, which are discussed in the Policy Memorandum; a likely model is described at paragraphs 22 to 27 of this Memorandum, along with the cost implications of that model for the Scottish Government. If Ministers decided to introduce licensing, the Scottish Government would work with the sector to develop a scheme that was proportionate and affordable and which provided benefits for customers. Ongoing engagement with the industry, particularly the NAFD and SAIF, suggests that there is support in principle for a licensing scheme. The final form of any licensing scheme that was to be introduced would be developed in conjunction with relevant stakeholders.
59. There are a number of factors to take into account in considering how a licensing scheme would operate, particularly the cost of the licence. The fee for the licence would need to be affordable for all funeral directors, which range in size from large companies with many offices, such as Co-operative Funeralcare, to small businesses which may arrange a small number of funerals each year, and for which funeral directing might not be their main function.

60. In setting the licence fee, a balance would need to be struck between recovering at least some of the costs of the scheme and ensuring that the fee was proportionate and affordable for all funeral directors. The licence would need to offer clear benefit to funeral directors and their customers. Many funeral directors are already members of the NAFD or SAIF (indeed, some belong to both organisations) and pay an annual membership fee. Both organisations base their membership fees on the number of funerals arranged each year. The NAFD tends to represent larger organisations like Dignity and Co-operative Funeralcare, and its current rates range from £285 for members who arrange up to 50 funerals per year, to £89,824 for those who arrange more than 110,000 funerals. SAIF represents smaller independent funeral directors who tend to be sole traders or who operate a small number of funeral homes. Its current rates range from £276 to £1,681 per year.

61. Both organisations are well-established and credible, and the Scottish Government does not intend that a licensing scheme would replace them. As such, the creation of a licensing scheme might mean that some funeral directors would pay both an annual membership fee and a licence fee. One option would be to offer a reduced licence fee for funeral directors who are members of the NAFD or SAIF, reducing the overall financial burden of the licence.

62. Licensing schemes in Scotland are often dealt with under the Civic Government (Scotland) Act 1982. These schemes are generally administered by local authorities, who are able to set the licence fee for their area; as a result, fees can vary significantly from one local authority to another. For example, a 3-year licence to carry out tattooing in premises costs £500 in the City of Edinburgh Council area, but £172 in the Scottish Borders area. Allowing local authorities to administer a licensing scheme for funeral directors might result in similar cost variations, and there are clear advantages in providing consistent costs (potentially varying based on the size of each business) across Scotland.

63. Based on the costs to the Scottish Government of administering a licensing scheme set out at paragraphs 21 to 29, there are numerous cost-recovery licence fee options. A single fee that took no account of the scale of each business and was based solely on recovering the costs of the scheme would cost between £756 and £888 per licence (the range reflects the range of likely costs for the scheme; the intention would be to charge a single fee for licences). For many businesses this would be significantly above the fees they pay for membership of the NAFD and SAIF. It is unlikely that a single fee for all funeral directors, regardless of the scale of their business, would be viable. A sliding scale of fees, similar to the membership fees charged by the NAFD and SAIF, may be preferable. Inspectors of Funeral Directors would be used to establish the volume of work undertaken by each funeral director to help inform the development of a sliding scale of fees that reflected the size of business across Scotland. As such, current estimates are indicative, and have a high margin of uncertainty.
64. A further option is to link the granting of a licence to membership of one of the national professional bodies. This could incorporate the licence fee into the membership fee of each organisation. This would have the benefit of streamlining the system, reducing the need for dedicated Scottish Government administrative support. However, it would likely lead to increased administrative costs for the NAFD and SAIF, with the result that the membership fees described at paragraph 60 would rise. A significant disadvantage of this approach is that it would require every funeral director to become a member of such an organisation to secure licensed status. Membership of the NAFD and SAIF have undoubted advantages, but some funeral directors may choose not to join for legitimate business reasons. Linking membership and licensing may impose unintended restrictions on how these businesses operate. Nonetheless, this remains an option which can be explored further if a licensing scheme is introduced.

65. The licensing fee, along with other details of the scheme, are matters which will be considered in detail if Ministers decide to introduce a licensing scheme. The indicative fees set out above have a high margin of uncertainty, and further work will be required to establish fees which were equitable for all funeral directors. The Scottish Government will continue to work with funeral directors to further develop models for a licensing scheme, and to refine estimates of fees. The legislative power which would be used to bring in a licensing scheme would require Ministers to consult with those it would affect. As such, the detail of the scheme, including the cost of licences, and the frequency with which they would need to be renewed, would be considered with the sector before being brought into force.

66. No other part of the Bill is expected to have financial implications for funeral directors.

Burial authorities

Restoration to use of burial lairs

67. The Bill will enable burial authorities to restore lairs to use in certain circumstances. This is not currently possible, and including this provision in the Bill will give effect to a recommendation made by the Burial and Cremation Review Group. Restoring lairs to use will help to improve the availability and affordability of burial, as well as supporting the long-term sustainability of burial grounds.

68. The Bill sets out the process a burial authority will be required to undertake in order to restore a lair to use, with further detail to be set out in regulations. The process includes a number of distinct steps, designed to ensure that particular interests are made aware of the proposed restoration of a given lair. These interests include the owner of the lair, archaeological services, the Commonwealth War Graves Commission and the general public.

69. The process set out for this in the Bill and the regulations made under it will be necessarily long. The Scottish Government anticipates that it will take at least 12 months, and is likely to take as long as 16 months between a lair being identified for possible reuse and the lair being prepared for reuse. The process contains a number of important checks and balances, and the length of the process in itself should act as a safeguard.

70. The process has been modelled partly on that used by the City of London Cemetery, the only cemetery in the UK which currently reuses graves in this way. The public notification
These documents relate to the Burial and Cremation (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 8 October 2015

process there lasts for 6 months, but the Scottish Government believes the longer process provided for by the Bill offers more opportunity for people to consider the proposed restoration to use and object if appropriate, and more overall assurance that any lairs which are reused in this way have gone through a rigorous and transparent process.

71. Based on the experience of the City of London, and discussion with burial authorities (both local authorities and private companies), it is estimated that the process required to restore lairs to use will cost between £30,000 and £60,000. This is based on a process involving 200 lairs at a time, and includes the entire process from initial identification of the lairs through to the end of the 12-month public notification exercise, including archaeological investigations and the process for preparing the lairs. Much of the cost is made up of the administration required to conduct the public notification exercise, including advertising the proposed reuse of a given lair and considering and responding to objections, as well as associated staff costs. The process of preparing lairs for reuse is also likely to make up a significant proportion of the overall cost; however, discussions with representatives of the City of London Cemetery have suggested that this is a relatively small proportion of the overall cost, largely because of the good condition of the graves they tend to reclaim.

72. The Scottish Government has discussed the likely cost of the process with Scottish burial authorities, and a range of estimates within this range have been suggested. Engagement with burial authorities suggests that the range of estimates is based on a number of factors. These include the amount of staff time invested in the project; the number and nature of the lairs being restored to use (including efficiencies created by being able to restore to use numerous lairs in a given area rather than a large number of single lairs spread across a burial ground); whether lairs are used or unused; the condition of headstones and other monuments, and the work required to move them or keep them in place; ground conditions; and the extent of the public consultation process, including considering and responding to objections. This process has not yet been carried out in Scotland, and specific estimates are therefore difficult to establish. Nonetheless, the experience of the City of London Cemetery, together with engagement with burial authorities in Scotland, suggests that the £30,000 to £60,000 estimate is reasonably robust and can be regarded as having a low-to-medium margin of uncertainty. The Scottish Government will continue to work with burial authorities to further refine cost projections.

73. While this process represents a reasonable investment of money, time and labour, it is expected that it will generate sufficient revenue from the sale of the restored lairs to allow burial authorities to cover costs and raise additional income.

74. At the lower cost estimate, the projected revenue from restoring 200 lairs is £130,212. This is based on the current average price of a lair in Scotland of £651.06 (although the price of lairs ranges from £388 to £1,527, and burial authorities may choose to sell these lairs for a lower price than those which are not reused). This estimate would mean that a burial authority is likely to generate £130,000 of income each time this process is used. This would cover the costs of the process and produce a profit of around £100,000 (based on 200 lairs).

75. At the higher cost estimate of £60,000 per reuse process, the projected profit from reclaiming 200 lairs is £70,212, based on the average lair price in Scotland. East Lothian Council estimates its likely costs as £60,000, but charges £561 for a lair, below the Scottish
average. Nonetheless, this would still lead to £112,200 of income from the sale of 200 lairs, leaving around £52,200 of profit.

76. This revenue will not necessarily be realised immediately. The time it takes to resell 200 lairs will vary from one burial authority to the next. Burial authorities will be expected to use the reuse process strategically to provide additional burial capacity based on projected need. As such, each burial authority will know how much burial capacity is required for a given period, and will be able to generate sufficient capacity to meet that need each time the reuse process is undertaken. The burial authority can use the same projections to forecast how long it will take to sell the lairs that are made available in this way. Accordingly, burial authorities should be able to make accurate forecasts of how many lairs are required and how long it will take to sell that number of lairs. This should further support the long-term benefits of the process, despite the initial investment required. Indeed, the same process of forecasting burial capacity will inform whether a burial authority chooses to restore lairs in this way or rely solely on unused capacity.

77. Aside from the income generated by the burial lair reuse process, it is also likely to provide additional burial capacity more economically than other options, including extending existing burial grounds or creating new burial grounds. Based on current trends, land for new burial grounds is likely to be expensive and located at a distance from the communities they are intended to serve. Similarly, the extension of an existing burial ground will require significant investment, including infrastructure and landscaping costs. The creation of a new cemetery is likely to lead to further additional costs, including staffing and maintenance. Such additional costs would be avoided, or significantly reduced, by restoring lairs to use as described.

78. Accordingly, while it requires a reasonable initial investment, the process of restoring lairs to use is expected to produce considerable cost savings for burial authorities.

Burial forms

79. The introduction of a statutory application form for burial is not expected to have any financial implications for burial authorities. Each burial authority currently creates its own burial form, providing it to applicants and funeral directors as necessary, usually electronically. The new statutory application form will be prescribed in regulations and will simply replace each burial authority’s existing form. This may lead to minor cost savings over time, since the burial authority will be required to use the statutory form and will not be required to update, amend or otherwise revise the form as they may do currently.

Management of burial grounds

80. The Bill provides Ministers with the power to make regulations about the management of burial grounds. This gives effect to a recommendation of the Burial and Cremation Review Group to create a Scottish equivalent to the Local Authorities’ Cemetery Order 1977 which has effect in England and Wales. It is intended that regulations will be made setting out how burial authorities should manage burial grounds, including maintenance of the burial ground generally as well as of headstones and other memorials.
81. The maintenance of headstones and memorials is the responsibility of the owner of the headstone. In many instances maintenance work is not carried out, often because the owner is absent or cannot be traced. This is particularly true of older burial lairs, where it may not be clear who owns the lair. As a result, burial authorities currently carry out significant amounts of maintenance work, often in response to Health and Safety requirements. This often involves laying headstones flat to make them safe, but also includes other processes. Burial authorities typically assume the costs for any such activity carried out.

82. It is intended that the regulations will allow burial authorities to carry out any work required to maintain burial grounds generally, but will place burial authorities under a specific duty to take action to ensure the safety of headstones and memorials, whether by repairing them, laying them flat or removing them altogether. The method used to make a headstone safe will be for the burial authority to decide, although regulations and guidance will provide a framework for such a decision.

83. The Scottish Government has discussed this proposal with burial authorities. The widely expressed view was that it should add little to burial authorities’ existing maintenance costs, as the majority of burial authorities already undertake such work. Burial authorities have welcomed the clear legal framework which will be provided by the Bill. In particular, there is currently no clarity on what action a burial authority can take to make safe a headstone or memorial, particularly where the owner cannot be found, and this often leads to headstones being laid flat.

84. The regulations will provide for additional action, including where appropriate, the removal of headstones or memorials (for which a specific process will be set out, including the recording of the information inscribed on the headstone). As such, the wider range of actions that burial authorities will be able to take might lead to some cost savings by allowing a cheaper option to be followed that would otherwise not be possible. However, the clear intention of these provisions is to allow suitable action to be taken, not to reduce costs.

85. The regulations will also enable burial authorities to attempt to recover costs from the owners of burial lairs. Several burial authorities have indicated that they would be unlikely to use such a process given the potential costs involved in recovering maintenance costs. Nonetheless, this is a potentially valuable legislative tool which will allow burial authorities to seek to recover some of the costs involved in maintaining headstones and memorials.

86. Given that burial authorities already carry out maintenance work on headstones and memorials, it is expected that introducing a duty to do so will lead at most to only a small increase in such activity. Such a duty will provide a clear framework for work that is carried out currently. As such, the financial implications are likely to be minimal.

87. The Scottish Government has worked with burial authorities to establish estimates of current costs for burial ground maintenance, particularly the maintenance of headstones. Costs vary greatly based on the size of the local authority, the number of burial grounds for which they are responsible, and the number and condition of the headstones under consideration. Generally, local authority burial authorities have an annual budget for burial ground maintenance, from which all costs are met, regardless of the number of headstones which require attention. Some
burial authorities have specific burial ground safety programmes for which a multi-year budget has been provided.

88. Annual budgets for maintenance of burial grounds vary considerably, mainly depending on the size of the local authority. Aberdeenshire Council has an annual budget of £1.32 million. Smaller burial authorities like Angus and East Lothian have annual budgets of around £244,000-£488,000.

89. All burial authorities currently carry out maintenance work. While the introduction of regulations will provide a useful legal basis for carrying out such work, it is not expected to particularly increase costs. As such, the costs set out above are provided to indicate the current costs and funding arrangements for this work carried out by local authority burial authorities. The work the Scottish Government has done with burial authorities in testing the impact of this proposal suggests that current costs are unlikely to increase. There is a low margin of uncertainty associated with these cost implications.

90. Should such regulations be introduced by Scottish Ministers, the Scottish Government will continue to work with burial authorities to develop detailed policy, and will take into account any additional costs that arise which are currently unforeseen. It is considered unlikely that any such costs will be identified.

Cremation authorities

Cremation forms

91. The revision of the form used to apply for a cremation should not introduce any new costs for cremation authorities. The revised form will be prescribed in regulations and will be a direct replacement for the existing form. The process for storing and supplying the form will not change. The form will include questions about what should be done with the ashes which remain after the cremation. The cremation will not be able to proceed if this information is missing or incomplete. This will require cremation authority staff to ensure that this section of the form has been completed correctly.

92. Cremation authorities already scrutinise cremation application forms to ensure they are acceptable, so this is not expected to require any particular additional work. Accordingly, revising the cremation application form should have no new financial implications.

Return of ashes

93. The cremation application form prescribed in regulations made under the Bill will clarify that funeral directors may return unclaimed ashes to the crematorium where the cremation took place. Although there is nothing to prevent funeral directors doing this currently, it happens rarely. It is expected that setting out the process in regulations will increase the tendency for funeral directors to return unclaimed ashes. However, this might be balanced by the revised cremation application form requiring the applicant to state what should happen to the ashes – by specifically requiring the applicant to consider this, it is hoped that fewer ashes will be left unclaimed, whether at the crematorium or with the funeral director.
94. Nonetheless, this provision is likely to lead to crematoriums having more unclaimed ashes returned to them by funeral directors, which will then have to be disposed of, either by scattering them or burying them in the grounds of the crematorium, depending on a particular crematorium’s policy. Crematoriums already dispose of ashes – this most often happens when the applicant has instructed the crematorium to do so on his or her behalf, but is also done with ashes which are left unclaimed at the crematorium. Crematoriums usually have a stated policy on how such ashes will be disposed of, and they must be disposed of sensitively, even where they are unclaimed.

95. It is likely that this policy will lead to a slightly increased workload for crematoriums, as they will be required to dispose of greater numbers of ashes. This will have an attendant increase in labour costs, although this is likely to be a very small increase. Where ashes are scattered, this is unlikely to have any particular additional cost, other than the small amount of extra time required to scatter the additional ashes. Where ashes are buried, this might lead to a very small increase in labour costs since each set of ashes remains packaged individually. However, a typical process for the burying of ashes is for cremation authority staff to dig a hole, often using an auger, and insert each set of ashes – in individual containers – into the hole. As such, any increase in the number of ashes returned to crematoriums is likely to have a minimal effect on costs.

96. The Scottish Government will help manage the return of unclaimed ashes by setting out a procedure in guidance. This will help ensure that crematoriums do not find themselves with large numbers of ashes returned by funeral directors. This approach should help manage the process and minimise the amount of additional work required by crematorium staff to dispose of ashes.

Cremation register to be a public document

97. Each cremation authority is already required to maintain a register of cremations. The Bill will require the register to be a public document. As set out in the Cremation Act 1902, only a small number of government officials can currently view the register, although most cremation authorities will allow the applicant to view the entry for that particular cremation.

98. It is difficult to predict what demand there will be to view the cremation register. Cremation authorities report that they currently have very few requests to see the cremation register. It is unlikely to be useful for people carrying out family research, as it records the date on which the cremation was carried out, rather than biographical information that can be found elsewhere or information about the death. However, the initial availability of the register might prompt increased interest, although that is likely to fade when the register’s relative lack of value for family research becomes apparent.

99. Overall, it is considered unlikely that making the cremation register a public document will lead to significant new costs for cremation authorities. It is not expected that any other part of the Bill will have financial implications for cremation authorities.
NHS Boards and private healthcare providers

100. Only one part of the Bill affects NHS Boards and private healthcare providers. A number of provisions relate to the burial and cremation of pregnancy losses. The policy intention is that a medical certificate stating that a pregnancy loss occurred before 24 weeks gestation and showed no sign of life will be required before a burial or cremation can take place. In many instances, an NHS Board or private healthcare provider will arrange the burial or cremation with the agreement of the woman who experienced the loss. The process for this, including the forms that are to be used, is set out in guidance issued by the Chief Medical Officer.

101. The Bill will enable some minor changes to be made to the existing processes. The biggest change is that the forms which are used currently will be prescribed by regulations. This will not affect how NHS Boards and other healthcare providers carry out this process, and is expected to have no financial implications.

102. The Bill will also require that forms are kept indefinitely. Current NHS guidance is that records should be kept for a minimum of 50 years, but as other stakeholders will be required to hold parts of the record indefinitely it is important that the same duty falls on the NHS Boards (and private healthcare providers). Since most, if not all, records will be stored electronically, the impact of this should be very limited.

Conclusion

103. The overall financial implications of the Bill are limited. Overall, there is a low to medium margin of uncertainty associated with the costs identified in the Financial Memorandum. While there are some provisions which will create minor additional costs for various stakeholders, the value of the improved system the Bill will bring about far outweighs these.

104. It is expected that the Bill will lead to very few additional costs for funeral directors, burial authorities and cremation authorities. The introduction of new forms should have no cost implications. It is expected that the generally improved procedures brought about by the Bill will also have few financial effects for these sectors.

105. The introduction of licensing will have cost implications for funeral directors; as discussed at paragraphs 60 to 64, the licence fee will be considered if Ministers choose to introduce a licensing regime. A balance will be struck between recovering some of the costs of the system through the fee and ensuring that the fee provides tangible and affordable benefits for funeral directors and their customers.

106. The Bill may lead to some increased costs for burial authorities. The introduction of regulations governing the management of burial grounds will place burial authorities under a duty to ensure the safety of headstones and other memorials. Many burial authorities already carry out such activity, particularly to satisfy Health and Safety requirements, and so the introduction of a duty to make safe headstones and other memorials is likely to lead at most to a modest increase for most burial authorities. The overall effect is expected to be minimal.
107. The process by which burial lairs are made available for reuse (or use in the case of unused burial lairs) is necessarily lengthy; this should make sure the process is robust and transparent, and should ensure that burial lairs will be reused only after every opportunity has been taken to advertise the intention. The cost of reclaiming 200 lairs in this way is estimated at £30,000 - £60,000. However, this should lead to revenue of between £112,000 and £130,000, significantly offsetting the initial investment. It is expected that burial authorities will use this power as part of the strategic provision of burial capacity, which should further ensure that the cost of the process is far outweighed by the benefits. The process will require far less capital investment than the expansion of existing burial grounds or the creation of new burial grounds.

108. The introduction of various inspection functions will have cost implications for the Scottish Government, although these will be relatively moderate, extending to the salary costs of each inspector appointed, along with associated administrative support costs, which are expected to be minor.

109. The introduction of a licensing scheme for funeral directors will lead to increased costs for the Scottish Government, largely as a result of the additional administration required, but this will be offset to a degree by the cost of the licence. As discussed at paragraph 52, the cost of the licence will be developed in conjunction with the funeral directing industry if Scottish Ministers decide to introduce a licensing scheme.

110. A summary table showing the overall impact of the Bill on various stakeholders and estimated costs and savings/income is at Table 1.
Table 1: Summary of overall impact, likely costs and likely savings/income

<table>
<thead>
<tr>
<th>Provision</th>
<th>Stakeholder</th>
<th>Overall impact</th>
<th>Likely costs</th>
<th>Likely savings/income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspection regime</td>
<td>Cremation authorities</td>
<td>Neutral</td>
<td>Potential for some minor costs if improved processes are recommended by an inspector</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Burial authorities</td>
<td>Neutral</td>
<td>Potential for some minor costs if improved processes are recommended by an inspector</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Funeral directors</td>
<td>Neutral</td>
<td>Potential for some minor costs if improved processes are recommended by an inspector</td>
<td>Potential for increased income as a result of improved services as a result of inspection</td>
</tr>
<tr>
<td></td>
<td>Scottish Government</td>
<td>Light</td>
<td>£63,000-£74,000 per year per inspector; an estimated maximum cost of £296,000</td>
<td>None</td>
</tr>
<tr>
<td>Licensing of funeral directors</td>
<td>Funeral directors</td>
<td>Light-Medium</td>
<td>Cost of licence fee – this will be developed in conjunction with funeral directors if Ministers choose to introduce a licensing scheme</td>
<td>Potential for increased income as a result of being a licensed operator</td>
</tr>
<tr>
<td></td>
<td>Scottish Government</td>
<td>Light</td>
<td>£25,500-£29,000 staff costs to administer licensing scheme</td>
<td>None</td>
</tr>
<tr>
<td>Statutory cremation forms</td>
<td>Funeral directors</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td></td>
<td>Cremation authorities</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td></td>
<td>NHS Boards and other healthcare providers</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td>Statutory burial form</td>
<td>Funeral directors</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td></td>
<td>Burial authorities</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td>Area</td>
<td>Stakeholder(s)</td>
<td>Position</td>
<td>Costs/Impact</td>
<td>Additional Costs/Impact</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------</td>
<td>----------</td>
<td>----------------------------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Statutory forms for disposal of a pregnancy loss</td>
<td>NHS Boards and other healthcare providers</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td>Return of ashes to crematorium</td>
<td>Burial authorities</td>
<td>Neutral</td>
<td>None</td>
<td>Some minor administrative savings</td>
</tr>
<tr>
<td>Reuse of burial lairs</td>
<td>Burial authorities</td>
<td>Positive</td>
<td>£30,000-£60,000 each time the reuse process is used (based on a process to recover 200 lairs)</td>
<td>£52,000-£100,000 after recovered lairs are sold (based on a process to recover 200 lairs)</td>
</tr>
<tr>
<td>Management of burial grounds</td>
<td>Burial authorities</td>
<td>Neutral</td>
<td>Potential for some minor costs where increased maintenance is required</td>
<td>None</td>
</tr>
<tr>
<td>Cremation register to be public document</td>
<td>Cremation authorities</td>
<td>Neutral</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 8 October 2015, the Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison MSP) made the following statement:

“In my view, the provisions of the Burial and Cremation (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 8 October 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Burial and Cremation (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”