West Lothian Council

Burial and Cremation (Scotland) Bill

Introduction

The intention of the Bill is to provide a modern, comprehensive legislative framework for burial and cremation.

Health and Sport Committee’s call for views

The Health and Sport Committee invites all interested parties to submit written evidence on the Bill. The Committee’s focus will be on the Bill’s general principles, as well as the provisions relating to pregnancy loss, still-birth and infant loss.

1. General principles – the policy objective is to put in place new legislation to provide a modern and comprehensive legal framework for burial and cremation in Scotland. The Bill should provide a robust and long-lasting legislative framework to meet the needs of twenty-first century Scotland.

West Lothian Council (WLC) recognises the need to provide a modern, comprehensive legislative framework for burial and cremation as the existing legislation is antiquated and increasingly unfit for purpose e.g. the requirement for burial authorities to introduce Cemetery Management Rules.

2. Applications for burial (Section 8) – the Bill seeks to make it a requirement to apply for a burial in a burial ground and to standardise the application forms. It prescribes that a person may not bury human remains in a burial ground unless that person has submitted an application to the burial authority and the application has been granted. The contents of the application form will be set out in regulations.

Currently each local authority uses their own forms leading to a diverse variation in the forms and information required. The introduction of a statutory burial application form will provide clarity and consistency.

3. Meaning of cremation/ashes (Section 36) – the Bill seeks to define what is meant by ashes to avoid misunderstandings. It defines cremation as “the reduction to ashes of human remains and the application to the burnt human remains of grinding or other processes”. The Bill specifies that ashes do not include metal and where human remains are clothed, in a coffin or with any other thing, the remains include the clothing, coffin or other thing.

WLC supports the policy objective of establishing a clear and unambiguous definition of ashes.

4. Applications for cremation (Section 38) – the Bill seeks to create a single application form to cover all cremations. It requires a person who wishes a cremation to be carried out in a crematorium to submit an
application. The contents of the application form will be set out in regulations. The policy memorandum to the Bill states that the new form will specify that in certain circumstances, particularly in the case of pregnancy loss, still-births or infants, it may not be possible to recover ashes. However, it is now expected that ashes will be recovered in the vast majority of cremations. Where this does not occur, the Inspector of Crematoriums will investigate.

Although WLC is not a cremation authority it does host a crematorium within West Lothian and supports the creation of a single application form to cover all cremations.

5. Duty to maintain cremation register (Section 41) – the Bill seeks to create a single register for all cremations, including pregnancy losses. It puts a duty on each cremation authority to prepare and maintain for each crematorium owned by it a register containing prescribed information about cremations carried out in the crematorium.

Although WLC is not a cremation authority it does host a crematorium within West Lothian and supports the creation of a single register containing prescribed information for all cremations, including pregnancy losses.

6. Relatives’ decision on disposal of remains (Section 47) – in practice, it is normally the nearest relative who arranges for the disposal of remains but currently this is not set out in legislation. The Bill seeks to make clear which relatives should be allowed to arrange for the disposal of remains in the event of a child’s death or still-birth. It creates a list of the nearest relatives who may do so and specifies that each nearest relative ranks equally if more than one nearest relative exists.

Specifying who should have the right to instruct the disposal of human remains will remove any uncertainty about who is entitled to instruct the disposal of human remains. Clarification will also reduce the likelihood of disagreements and the risk of any future litigation

7. Disposing of remains from pregnancy loss at or before twenty-fourth week (Sections 50-53) – the Bill specifies that in the first instance the right to make the decision about pregnancy loss lies with the woman who has experienced the loss. She may also give permission for an individual over 16 years, or the appropriate health authority, to make this decision. The Bill provides a procedure for a woman to make a change to the arrangements for disposing of remains in certain circumstances. Where an authorised individual over 16 years has been designated to deal with the remains, the Bill also enables that person to authorise the appropriate health authority to arrange for disposal of remains. Where a health authority has been appointed to dispose of remains, it must do so after the expiry of the initial 7 day period.

The proposed approach provides an appropriate level of clarity for all concerned.
8. Disposal of remains by Health Authorities (Section 54) – the Bill seeks to address what happens if no arrangements are made for the disposal of remains of pregnancy loss at or before the twenty-fourth week within the relevant period contained in sections 51 and 52. It provides a duty on the appropriate health authority to dispose of the remains.

No comment, WLC is not a health authority.

9. Register of disposal of remains (Section 55) – the Bill provides a duty on each health authority to maintain a register recording the disposal of remains when pregnancy loss occurs at or before the twenty-fourth week. In the policy memorandum to the Bill, it states that the way in which information is recorded on the cremation register will not identify a woman who has experienced pregnancy loss. Instead a unique identifying number will be used.

No comment, WLC is not a health authority.

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