The Federation of Burial and Cremation Authorities

Burial and Cremation (Scotland) Bill

Submission to the Health and Sport Committee

(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.

The Federation of Burial and Cremation Authorities (FBCA) agrees that the existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework, and this should apply to all cemeteries and crematoria in Scotland.

(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.

In addition to the standardised application form, if the Right to Bury in the lair has been pre-purchased or the grave has already been used for a previous interment, the application should be accompanied by the Exclusive Right of Burial document.

(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.

The FBCA would recommend the following definition of ashes as is currently used by the professional associations following on from the Bonomy Report and Recommendations: ‘all that is left in the cremator at the end of the cremation process and following the removal of any metal’

(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.

The FBCA is comfortable with the statement above.

(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.

The FBCA would caution against the use of one Register for all cremations for the following reason: Pre 24 week gestation babies are not subject to the registration of death process and as such if these cremations are recorded in one general Register of Cremations, the statistical information relating to the total number of cremations carried out in Scotland each year will be misleading when compared with the number of registered deaths. The recording of the cremation of pre 24 week gestation babies and the cremation of body parts taken at post mortem should be recorded in separate statutory registers to allow for continuing accurate analysis of statistical information.

(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.

This point must take into consideration the legal position regarding the instructions provided by the Applicant for Cremation after the completion of statutory forms. In the case of a broken relationship, another relative issuing disposal instructions may result in significant distress of the Applicant and a potential legal challenge.

(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 FBCA is comfortable with this clause.

(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.

The FBCA is comfortable with this clause.

(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.

The FBCA is comfortable with this clause.

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