Burial and Cremation (Scotland) Bill.

South Lanarkshire Council

Local Government and Regeneration Committee's call for views

The Local Government and Regeneration Committee invite all interested parties to submit written evidence on the Bill. In particular they have requested answers to the following questions:

1. Whether proposals for the restoration of lairs are appropriate (sections 25-37)?

South Lanarkshire Council has a strategic approach to the provision of cemeteries and has significantly extended burial capacity by providing new local cemeteries and extensions in the last five years, with a further programme of providing new cemeteries or extensions where possible.

South Lanarkshire Council will seek to provide burial ground within the authority but this may prove difficult whilst conforming to the Land Use Planning System SEPA Guidance Note 31.

As per our response to the Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland, South Lanarkshire Council are not supportive of the re-use /restoration of lairs in South Lanarkshire.

2. Whether provisions on the reuse of headstones would be appropriate?

Given our response to question 1 this would make the reuse of headstones improbable.

Section 33 is unclear when accompanied with the response from the question raised at meetings with local authorities “What happens to headstones that have to be moved?”

The previous response of the Burial & Cremation Bill Team was: “The consultation clearly expressed a preference for not reusing headstones, so we have moved away from this approach. However, it still leaves the issue of what to do with original headstones. As drafted, the Bill requires them to be kept in situ unless it is not possible to do so. However, we are not sure this is the right approach. We do not want the new lair owner to be able to remove the original headstone – they have the right to bury, but they do not have the right to interfere with original headstones. Any decision should be made by the burial authority – we are still considering whether headstones should automatically be removed by the burial authority when the lair is resold, or whether the approach in the Bill is preferable. We will continue to consider this, and will make a Stage 2 amendment if necessary.”

More clarification is required.
3. The appropriateness and extent of the roles which should be undertaken by inspectors of burial, crematorium and funeral directors (primarily Part 4)?

South Lanarkshire Council considers the proposed roles as outlined in Part 4 of the Bill to be appropriate and proportionate.

4. The appropriateness and extent of the proposed regulation of funeral directors (primarily Part 5)?

South Lanarkshire Council considers the proposed regulation of funeral directors as outlined in Part 5 of the Bill as appropriate and proportionate and should help address current concerns that there are few formal requirements to operate as a funeral director and that there is no independent scrutiny of funeral directors.

5. The extent to which the Bill will address funeral costs and what, if any, further measures the Bill could contain?

South Lanarkshire Council agrees that Local Authorities should have a legal obligation to clearly advertise up to date burial and cremation costs.

South Lanarkshire Council noted the response from the question raised at meetings with Local Authorities, “Will the regulations allow the Scottish Government to establish fees?”

The previous response of the Burial & Cremation Bill Team was: “No. The regulations will be used to establish how local authorities should advertise fees, and what fees they should be advertising – it does not allow the Scottish Government to set fees. Generally, the regulations will establish a framework within which burial authorities must operate – this does not necessarily prevent authorities providing their own local management rules (the power to do this might be set out in the regulations) as long as they do not contradict the regulations.”

South Lanarkshire Council feels the wording of section the Bill is open to another interpretation. The current wording of section 6(2)(e) allows the Scottish Ministers to regulate fees as may be specified in the regulations. If the establishment of fees is not specifically excluded from the power then our view is that it will be permitted. South Lanarkshire Council feels that wording permitting a cremation authority to charge such fees as it sees fit in section 45(2) should be replicated at the end of section 6(2)(e).

6. The appropriateness of the removal of existing provisions restricting the proximity of new crematorium to housing?

The removal of existing provisions restricting the proximity of new crematorium is considered to be appropriate for the following reasons:
1. The minimum distance in the Cremation Act 1902 is likely to have been introduced to protect residents from emissions. However, current SEPA regulations mean that this isn’t a concern.

2. Any new crematorium would require planning permission and it would be a matter for the relevant planning authority to determine any planning application in accordance with the local development plan in the context of all relevant material considerations.

South Lanarkshire Council would concur with FBCAs document, Recommendations on the Establishment of Crematoria.

*In addition to commenting on the above questions, you invited us to comment on detailed provisions within the Bill. Our comments are as follows:

**Section 2. Provision of Burial Grounds:** There should be a clear definition between a burial authority which is a Local Authority and a burial authority that is private as both have different roles, e.g. where a burial authority is a local authority it, in terms of section 2(2) —

(a) must provide one burial ground within the area of the local authority, and

(b) may provide other burial grounds within that area.

**Section 16. Private Burials:** Clear guidance is required and the legal position on private burials in relation to home burials, the responsibilities of the land owner and garden burials.

South Lanarkshire Council endorses further consultation with Registers of Scotland to clarify the question of where the authorisation would be recorded – and why it is believed that local authorities are the best option. Given that it is the intention to complete the Land Register within ten years and that every property will have a title sheet showing its extent then the Land Register would seem to be the most logical place for the location of private burials to be recorded. South Lanarkshire Council feels that most prospective purchasers of private residences would want this information and would expect it to be recorded within the title sheet.

**Section 24. Restoration to use of lair:** What if someone not listed in subsection (4) objects, e.g. a descendant? How will people know about a consultation that may affect a grave of an ancestor? There does not seem to be anything about public notices. Would it not be appropriate to consult with the rights holder given that the burial authority has a contractual relationship with this person?

**Section 75. Interpretation:** Can the following be clarified, “Human remains” is only defined at section 16(6) in relation to private burials (so it would seem to be proposed that it be lawful to bury cremated remains without local authority intervention) and at section 36(2) in relation to cremations. There is not an overarching interpretation presumably because it is felt it is clear.
However, if cremated ashes are not human remains for the purposes of section 16 then are they “human remains” when buried in burial grounds (i.e. those for which there are charges)? If not then debates about whether they can be moved do not really apply.

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