Commonwealth War Graves Commission

Burial and Cremation (Scotland) Bill

Introduction

The Commonwealth War Graves Commission wishes to respond to the Health and Sport Committee’s call for written evidence and would be willing to give oral evidence to the Committee should this been deemed appropriate.

The Commission has only responded in relation to those parts of the Bill that are relevant to it, which include those sections for maintenance provisions and lair re-use. The Commission has not commented on any provisions which are unrelated to the work of the Commission.

The Commission responded fully to the initial consultation on 9 April 2015 (Respondent Reference 098) before the Bill was published and met the Burial and Cremation Team to discuss the Commission’s main concerns.

Interest

The Commission’s interest in the Bill is extensive and falls into a number of categories:

- **Care and Commemoration**

Under its Royal Charter obligations, the Commission is responsible in perpetuity for the care and commemoration of the graves and memorials of those Commonwealth Armed Forces who died during the two World Wars. It currently cares for approximately 21,000 graves and memorials in 1,275 sites across Scotland. These burial grounds range from local authority run cemeteries and churchyards from all denominations to dedicated military cemeteries, which the Commission owns, such as Lyness Naval Cemetery, Orkney. The Commission maintains these graves directly through its own maintenance teams, or indirectly through councils and contractors.

- **Burial Rights Holder**

The Commission owns the burial rights to a number of war graves in Scotland. As the Commission is responsible for war graves in perpetuity, owning burial rights allows it to protect its position as far as possible. The Commission does not currently own burial rights to all war graves in Scotland. This is discussed further, below.

- **Burial Authority**

For the purposes of the Bill, the Commission is deemed to be a burial authority as it owns dedicated military cemeteries across Scotland. It will therefore be bound by any provisions in the Bill relating to burial authorities.
**General Response to the Bill:**

The Commission is generally supportive of the Bill and what it seeks to achieve. It agrees that much of the current Scottish burial legislation is no longer fit for purpose and is out dated. The Commission is grateful to the Burial and Cremation Team for specifically consulting with it prior to the publication of the Bill. It notes that it is specifically mentioned in key provisions of the Bill and that it is recognised as being a key stakeholder in terms of re-use of graves and providing permission for re-use.

The Commission notes that the legislation allows for a vast amount of regulations and guidelines to be produced via secondary legislation and the Commission’s main concerns are how these will impact on its work.

In order to protect the Commission’s position and the war graves in its care, it seeks to be explicitly mentioned a consultee when such guidelines and regulations are being drafted.

The Commission also seeks minor amendments to the Bill and comments on specific sections of the Bill, as stated below.

**The Bill: Comments on Specific Provisions:**

For ease of reference each section which may affect the Commission is detailed below together with the Commission’s comments.

**Section 6:** It is noted that by regulations, Scottish Ministers may make provisions in relation to a number of matters, which include, by are not limited to maintenance of burial grounds, fees, persons employed (including qualifications and membership to professional bodies) and conditions relating to the erection of headstones.

**Implications for the Commission:** As a burial authority for a small number of burial grounds, the Commission may become subject to these regulations which may impose greater obligations on it.

Where the Commission completes work at a burial ground under the control of another burial authority, under the regulations they could impose greater obligations on the Commission.

**Clarity Sought:** The Commission therefore seeks confirmation that we will be consulted and be allowed to comment on any proposed regulations.

**Section 10:** Burial authorities must, subject to the new regulations, keep a burial register. It is noted that Scottish Ministers can specify that such registers could be kept in a specified form and manner.

**Implications on the Commission:** As the burial authority for a small number of sites in Scotland, the Commission may be required to keep a register in a different format to which it currently holds such information. This could have cost implications on the Commission.
**Clarity Sought:** The Commission seeks confirmation that keeping such registers will not be onerous on the Commission. If the manner and form specified for keeping a registers differs from how the Commission keeps its current own registers, the Commission seeks an exemption consider the very small number of sites that it owns.

**Section 12:** Obliges the burial authority to sell a right of burial to a person who is ordinarily a resident in the area and allows the burial authority to considering the application of any other person.

**Implications for the Commission:** The Commission is responsible for war graves in perpetuity. Under Section 12 a burial authority could refuse an application made by the Commission for burial rights.

**Clarity Sought:** The Commission seeks amendments to the Bill to explicitly state that where there is no other grave owner and the grave is a war grave, the Exclusive Right of Burial will be transferred to the Commission free of cost.

**Section 13:** Provides that a right of burial will be extinguished at the end of the period of 25 years beginning on the day on which the right was sold, and a person may apply for extensions of 10 year durations.

**Implications for the Commission:** It is unclear whether burial rights already granted will be included in this extinguishment provision. As the Commission is responsible for 21,000 graves across Scotland, having to apply for extensions in relation to these rights will be time consuming, expensive and onerous. It is noted that the burial authority may also refuse an application for extension if it considers reasonable to do so.

**Clarity Sought:** The Commission seeks amendments to the Bill to provide that burial rights previously granted will not be affected by these provisions. It further seeks that amendments to the Bill provide that burial rights granted to the Commission will not be extinguished after 25 years and will be granted in perpetuity.

**Section 15:** It is noted that the burial right holder has the right to erect a headstone. This provision does not appear to permit parties not owning the burial rights to erect a headstone on the grave.

**Implications for the Commission:** Whilst the Commission owns a number of burial rights for war graves across Scotland, it does not own the burial rights to a number of graves. The Commission is concerned that it may not be permitted to erect headstones on all the graves which it is responsible.

**Clarity Sought:** The Commission therefore seeks an amendment to provide that, subject to the burial authority's permission, the Commission may erect a headstone on a lair, where it is not the burial rights holder.

**Section 22:** The Commission’s Charter obligations mean that it is responsible for the care and commemoration of war graves including the casualties
remains. The Bill allows regulations to be drafted in relation to exhumations and the Commission wishes to be consulted on the draft provisions. In England, the Commission is consulted by the Ministry of Justice where there are human remains to be exhumed so that war graves cannot be inadvertently exhumed without the Commission’s knowledge.

Clarity Sought: The Commission would seek similar provisions in Scottish regulations so that the Commission would be notified in the event that a war grave is likely to be disturbed.

Section 24: The Commission is explicitly mentioned in section 24 of the Bill as being a party that must be consulted before a lair is restored.

Implications on the Commission: The Commission is supportive of the provisions mentioning the Commission specifically. This provision is particularly important as many of the war graves for which the Commission is responsible are over 100 years old, and without this provision, could be reused.

Clarity Sought: The Commission would however, like to see clarity to the provisions section 24(5)(b). It is unclear whether, upon receiving the objection, the burial authority could continue with the lair re-use upon the expiry of 10 years, without any consultation with the parties included in section 24(4).

Where possible, the Commission would like to see the burial rights in any war graves identified as part of a re-use provisions, transferred to the Commission to ensure long-term protection for war graves. The Commission believes this transfer should be done free of charge and without a time limit by the burial authority as the Commission has responsibility for the care and maintenance of the war graves in perpetuity.

Section 26: Allows graves to be re-used where the burial rights holder cannot be found.

Implication to the Commission: Unlike section 25(1), section 26 does not specify that it applies only where none of the persons in section 24(3) have objected.

Clarity sought: For clarity and consistency with section 25, the Commission seeks an addition, to state that section 26 only applies where the persons in section 24(3) have not objected.

Section 35: Provides that burial authorities must have regard for guidance issued in relation to sections 24-34 and restoration to use. It states that Ministers must consult persons which they consider appropriate.

Implications to the Commission: With a wide reaching interest in over 21,000 war graves across Scotland, the ramifications to the Commission and the graves which it is responsible for, are high, particularly with the extensive use of regulations and guidance that will be produced as a result of the Bill.
Clarity Sought: The Commission therefore seeks to be a statutory consultee in relation any guidelines and regulations produced as a result of the Bill.

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