Institute of Cemetery and Crematorium Management

Burial and Cremation (Scotland) Bill

(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 Institute agrees with and supports the Scottish Government’s policy objective.

(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.

The Institute supports the Introduction of a statutory burial application form. The form should have the facility for the applicant to also apply for the purchase of the exclusive right of burial where the pending burial is to be in a new lair, and to specify the name and address, or names and addresses where a joint ownership is desired, of who should be registered as owner of the exclusive right of burial in a new lair.

The form should also have the facility for the registered owner(s) to sign to authorise the reopening of a lair for a subsequent burial. The form should indicate that an application to reopen a lair for a subsequent burial will be refused if the application is not signed by the registered owner(s) of the right.

Where a subsequent burial is that of a registered owner or joint owner the form should indicate that a transfer of ownership will be required before any memorial work or further burials can take place.

The above points are made in order to ensure that burial rights are properly exercised and protected.

(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 Institute feels that this definition should be in an easier to understand form and would support the definition proposed by Lord Bonomy. A note can be added for clarification that ashes include those from the coffin, clothing or other item/thing placed within or on the coffin.
As the definition of ‘ashes’ was found to be the fundamental issue in the Mortonhall report produced by Dame Elish Angiolini the Institute feels that the definition should be easily understood by the public and all organisations, companies and agencies involved in the provision of funerals.

Whilst the Bill specifies that ashes do not include metal the Institute believes that each applicant for cremation must be given the opportunity to indicate their preferred method for disposing of metal. The options that should be given should be: a) returned to the applicant; b) recycled for charitable purposes; c) disposed of by the cremation authority.

It should be noted that option c) for many crematoria is to bury metal within the grounds of the crematorium without any consent being obtained and that this practice is technically unlawful, and certainly environmentally detrimental, without the appropriate license, i.e. landfill license. Those crematoria that continue to bury metal within the grounds might not be giving the options indicated in a) and b).

The Institute feels that the disposal of metal resulting from cremation should be brought into cremation legislation in order to provide transparency, and hence prevent any possible challenge when information on options for disposal of metal are not given.

(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 Institute generally supports this however a separate form for infants, stillbirths and pregnancy loss is considered preferable so as to remove inappropriate questions, e.g. Are you the executor, occupation, etc.

A single form covering all cremations will be lengthy and more difficult to complete.

(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 Institute supports the introduction of a single statutory register for all cremations.
(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.

The Institute supports this.

Provision should also be made for the nearest relative to be able to delegate the making of this decision in writing to another person if he/she so requires.

(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 within 7 days.

The Institute supports this.

(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 Institute supports this, and is pleased that cremation is the default and incineration of babies has been banned in Scotland.

(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 Institute supports this. The register should be maintained indefinitely (electronically).

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