



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 4 November 2015

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
24th Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Cara Hilton (Dunfermline) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Simon Cuthbert-Kerr (Scottish Government)

Graham McGlashan (Scottish Government)

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 4 November 2015

[The Convener opened the meeting at 10:00]

Burial and Cremation (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the 24th meeting in 2015 of the Local Government and Regeneration Committee. I ask everyone to switch off mobile phones and other electronic equipment as they affect the broadcasting system. Some committee members will refer to tablets during the course of the meeting as we provide papers in digital format. Apologies have been received today from Cameron Buchanan.

Agenda item 1 is our only business today and it is to take evidence on the Burial and Cremation (Scotland) Bill from Scottish Government officials. I welcome Dr Simon Cuthbert-Kerr, bill team leader, and Graham McGlashan, principal legal officer, from the Scottish Government.

I invite Dr Cuthbert-Kerr to make an opening statement; we will then move on to questions.

Dr Simon Cuthbert-Kerr (Scottish Government): Thank you, convener.

The purpose of the Burial and Cremation (Scotland) Bill is to provide a modern and comprehensive framework for burial and cremation that is suitable for the needs of 21st century Scotland. The current legislation is very old: the main primary legislation for burial is the Burial Grounds (Scotland) Act 1855, while the Cremation Act 1902 is the key primary legislation for cremation. In a number of ways, the current legislative framework struggles to meet modern expectations and requirements.

The bulk of the bill is based on recommendations from two sources. The burial and cremation review group was set up by the then Minister for Health and Community Care in 2005 to review death certification and the law in relation to burial and cremation. The group reported in 2007 and made a number of recommendations. Many of those were implemented in the Certification of Death (Scotland) Act 2011, and most of the remaining recommendations will be implemented in the Burial and Cremation (Scotland) Bill.

The other recommendations that the bill seeks to implement are those made by Lord Bonomy's infant cremation commission. As well as implementing recommendations that will directly improve cremation processes involving pregnancy losses, babies and infants, the opportunity is being taken to improve processes around cremation generally.

We have consulted widely on the recommendations, both through a formal consultation exercise and through on-going engagement with particular stakeholders, and the bill reflects that process.

We will be happy to answer any questions the committee has on the bill.

The Convener: Thank you. The burial and cremation review group reported in 2007, as you said, and the infant cremation commission superseded some of the recommendations made. Which of the recommendations made by the review group have not been legislated for in either the Certification of Death (Scotland) Act 2011 or this bill?

Dr Cuthbert-Kerr: The key recommendation that came out of the burial and cremation review group that was superseded by Lord Bonomy's work was the general position that processes for cremation seemed to be fine. The burial and cremation review group suggested that very little had to happen; Lord Bonomy's work has obviously superseded that.

There are a number of recommendations made by the group that we do not intend to take forward in the bill. One of those is to do with the existing minimum distance between housing and a crematorium. The 1902 act requires that a crematorium cannot be built within 200 yards of existing housing. The burial and cremation review group recommended that that should be reinstated in a new bill but converted into metric measurement. We do not intend to take that forward.

There are one or two other minor matters from the burial and cremation review group report that we are not going to take forward. Perhaps one of the more significant ones is to do with the reuse of headstones. The group suggested that where a burial area was reused the existing headstone could also be reused. One of the processes that it proposed would be for the headstone to be lifted and turned round with a new inscription placed on what was the back of the headstone. We raised that in our consultation paper, and there were quite a lot of compelling arguments as to why we should not do that, so that is not in the bill.

The Convener: Let us stick with the question of distance. We have received a submission from Falkirk Council that states:

"We disagree with removing the existing provision which restricts the proximity of new crematorium to housing. In our view there are risks involved in reducing or removing the 200 yards limit.

In the case of Falkirk Council's crematorium an extensive area of new housing has been developed within 110 yards of the crematorium buildings. This has led to a number of unexpected issues such as the increased use of the crematorium grounds by the new residents and their dogs."

Did you take cognisance of situations such as that one before you decided to omit that provision from the bill?

Dr Cuthbert-Kerr: We looked at the issue in particular detail. The main reason why we are not going to reinstate the 200-yard limit is because we do not think that it currently works. One key factor is that the 1902 act prevents a crematorium from being built within 200 yards of housing that already exists but does not work in the other direction. In other words, there are no restrictions on any development being built within a particular distance of an existing crematorium. The limit works only one way.

We feel that the 1902 act is particularly reflective of the fact that there was no planning system when it was brought into force. We have a much stronger and more developed planning system today, and we feel that it is the place to deal with the siting of new crematoriums or, indeed, new developments close to existing crematoriums.

The Convener: Have you spoken to planning officials about your view?

Dr Cuthbert-Kerr: We have, yes. One thing that the planning system currently does not do is treat the 1902 act as a material consideration. In other words, a new crematorium can be legitimately granted planning permission even if it is built within 200 yards of existing housing. That was another reason why we decided to take the route that we have taken.

The Convener: We will certainly keep a close eye on that issue and look at any other submissions we receive.

At paragraph 24 of the policy memorandum, there is reference to resomation and promession without any explanation of those techniques. Will you please explain what they entail and indicate in which countries resomation is currently used?

Dr Cuthbert-Kerr: Certainly. Our apologies for not setting that out in more detail in the policy memorandum.

Resomation is the reduction by alkaline hydrolysis of the body down to bones. Essentially, the body is put into a machine that looks not unlike a cremator but instead of being reduced to ashes by burning it is reduced to bones by being

dissolved in a solution. We are aware of a number of American states where the process is in use. I believe that it is in use in Florida and I think that it is in use in Minnesota as well.

Promession has not yet reached the stage where it is being used anywhere. Promession is the process whereby the body is essentially freeze dried and then vibrated into ashes.

The Convener: Thank you.

We have been told that a number of smaller companies in Scotland benchmark themselves against Dignity and the Co-operative in terms of the provision of services, and it may well be the case that some local authorities do as well.

For Dignity, we are told that, between 2010 and 2014, the underlying operating profit from crematoria rose from £19.9 million to £29.1 million—an increase of some 46 per cent—and that underlying operating profit from funeral services rose from £49.3 million to £66.3 million, which is an increase of 34 per cent. In 2014, the revenue from crematoria was £55.2 million and underlying profit as a percentage of revenue was 53 per cent; the revenue from funeral services was £184.4 million and underlying profit as a percentage of revenue was 36 per cent. Total revenue across the group was £268.9 million with underlying profits of £84.9 million, which is 32 per cent of revenues.

Obviously, the committee is interested in the cost of burial and cremation because we have heard from many sources that folks are struggling to meet those costs. Have you done intensive research into the situation and have you looked at costs, particularly local authority costs, in the formulation of the bill? How can we deal with some of this seemingly large profitability?

Dr Cuthbert-Kerr: We have certainly looked long and hard at funeral costs. Both Lord Bonomy and the burial and cremation review group noted the cost of funerals and the difficulty that some people experience in meeting those costs. Throughout the entire process, funeral cost has very much been at the front of our mind. The approach that we have taken with the bill, however, is one that reflects the fact that we do not think that the bill is the place to deal with those costs directly.

There are a couple of issues we want to address, particularly with local authorities. We have had extensive discussion with local authorities about why their costs are what they are and why those costs vary so much from one part of the country to another. We have also considered what we can do, if anything, to address the situation through the bill.

One thing that we are still considering is whether we should require all local authorities to proactively publish all their funeral-related costs. Many already do that, but not all do. We are still looking to see whether that would have any particular effect. Clearly, that would not necessarily directly reduce prices, but we think that it would increase their transparency.

In terms of what we can do with funeral directors, we think that there are relatively few options through the bill. I can ask my colleague to discuss that from a legal perspective—if that would be okay.

The Convener: That would be useful. I would also be interested to know where, if you think that the bill is not the place to deal with costs, they should be dealt with.

Graham McGlashan (Scottish Government): I want to make just a few comments about the restrictions in the Scotland Act 1998 on legislating in this area. We have to be aware of the reserved matters in schedule 5, as we are limited by what we can do in them. One relevant reservation is the consumer protection reservation, which reserves legislation on the sale of goods and services to consumers. Therefore, we cannot legislate in the Scottish Parliament for anything with a consumer protection purpose behind it—that is reserved to Westminster. That is one legal consideration behind not bringing forward any provisions in relation to funeral costs.

The Convener: Have we spoken to anyone in London to see whether that power can be transferred here to deal with the situation so that the bill can encompass all aspects of burial and cremation?

Graham McGlashan: No, convener, I cannot say that we have had those discussions yet in terms of policy development.

The Convener: Dr Cuthbert-Kerr?

Dr Cuthbert-Kerr: No, we have not so far.

The Convener: Okay.

We will have questions from Clare Adamson and then Willie Coffey.

Clare Adamson (Central Scotland) (SNP): In the committee papers there is mention of the fact that there is not a trade association or professional body for funeral directors. Could you explain why it was not seen as a potential improvement for such a body to be established?

Dr Cuthbert-Kerr: There are actually a couple of trade associations. There is the National Association of Funeral Directors, which tends to represent larger organisations like Dignity and the Co-op, and then there is an organisation called the National Society of Allied and Independent

Funeral Directors, which, as the name suggests, tends to represent the smaller independent companies.

There is quite a lot of mixing and matching between the members. We believe that many funeral directors are members of both organisations, and we have certainly worked with both organisations through the process, particularly in the consideration of funeral costs and what can be done to tackle them.

10:15

Clare Adamson: But there is no compulsion on someone who is providing the service to be a member of a professional body of any kind.

Dr Cuthbert-Kerr: That is correct.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to ask about fees. Is there any scope within the bill to allow a person to make payments on a staged basis? I had an unfortunate case in which a constituent came to me to complain that they had been asked to pay the entire fees up front. Notwithstanding the comments that Mr McGlashan made, is there any provision for us to include an entitlement to staged payment?

Graham McGlashan: That would be for an individual to agree with the funeral provider. I think that that might be straying into consumer protection territory, so again we might be limited in what we can do. You will appreciate that I cannot advise the committee, but certainly I can see that there may be some difficulties in making such provision in the bill.

The Convener: One frustration that I always have is when we can resolve part of a problem but not the whole problem because the other bit is reserved. In such circumstances—particularly circumstances such as these—I would expect us at the very least to write to the United Kingdom Government to see whether there is any chance of us being able to deal with the aspect in question.

These scenarios may be frustrating for us, but they are ultra-frustrating for people out there, who cannot understand why we are tackling a particular issue but not the whole of the issue. It is often the most important part that we seem to have to omit because we do not have the power. I therefore think that we should be going back to those south of the border to see whether we can sort out the aspect in question.

John Wilson (Central Scotland) (Ind): Section 5 is on “Places to keep bodies before burial.” Do you intend to place an additional burden on local authorities to provide a place for human remains to be kept prior to burial? At present, the body usually lies either with the undertaker or in the

person's home or family home prior to being taken to the cemetery for burial.

Dr Cuthbert-Kerr: Section 5 was originally intended as the restatement of an existing duty in the Burial Grounds (Scotland) Act 1855. As you said, it requires a place to be provided, perhaps on a temporary basis, for the body to be stored before interment. However, since publication of the bill we have discussed the matter further with local authorities, which have suggested that that never happens and that bodies are always brought directly by the funeral director for burial. In that case, section 5 in its entirety would probably be unnecessary.

John Wilson: Thank you for that clarification. We are trying to simplify the system, but it might have complicated the system further if additional costs had been placed on local authorities. I am glad that the intention is to remove section 5.

Section 7, which is on "Right to erect building", refers to the local authority being able to sell a right to erect a building. Can you clarify what you mean by "erect a building"?

Dr Cuthbert-Kerr: That is intended to capture something like a chapel of rest or a memorial. It is not uncommon for burial grounds to have both such structures, particularly when the person who is being memorialised is not actually buried in that burial ground. In other words, the right to burial that comes with the right to erect a headstone would not exist. Section 7 will allow someone to make the application to build something like a memorial or a chapel of rest.

John Wilson: Right. So, you view this as an opportunity for local authorities to sell off existing land that has been designated as a cemetery to someone else who will, in effect, operate as a business.

Dr Cuthbert-Kerr: No, no. It would be very much to do with memorialisation. For example, someone might want to erect a chapel of rest to memorialise people from their community who died in a war but who are not necessarily buried in that burial ground. The intention is certainly not to allow the burial authority to sell land to somebody who would operate a business on the burial ground.

John Wilson: It is useful to have that clarification, because my interpretation of the wording was that the local authority could sell off a piece of land for someone to erect such a building. That would have raised other questions.

Section 13(1) states that:

"A right of burial is extinguished at the end of the period of 25 years beginning with the day on which the right was sold."

Who suggested that the period should be 25 years? The Scottish Parliament information centre briefing refers to a figure of 50 years, and reference has been made to two generations from the last interment.

I should declare an interest here. Just before my father passed away 22 years ago, he bought two lairs side by side; he did that because of problems with a family lair where he had hoped to be interred but could not be interred.

I have further questions on the issue, but can you tell me first why the 25-year period was used?

Dr Cuthbert-Kerr: Section 13 gives effect to one of the recommendations from the burial and cremation review group. The group recommended that the sale of lairs in perpetuity should be ended. Two processes are at work, one of which is the restoration-to-use process, to which you alluded, and periods of 50 years and 100 years. That would apply only when a lair had been sold in perpetuity in the first place.

From the point at which section 13 comes into force, no lair will be able to be sold for more than 25 years in the first instance. However, the intention is not to extinguish ownership at the end of that period; in fact, section 13(2) will allow the owner to renew ownership for a period of 10 years and thereafter for a period of 10 years as many times as necessary.

The intention is to move away from the current situation in which many lairs become abandoned and the burial authority loses contact with the owner. Section 13 aims to keep the currency of the owner with the burial authority for as long as possible. In other words, at the end of a 25-year period ordinarily we would expect the owner to come forward and renew the ownership for the next 10 years. The effect of that would be to ensure that the burial authority never loses contact with the current owner of the lair.

John Wilson: I assume that the changes will not be retrospective.

Dr Cuthbert-Kerr: Indeed, no. They will have effect only when lairs are sold for the first time after the bill comes into force.

John Wilson: Whoever holds the papers for a lair will need to be aware of the requirement to reregister. Will the Government issue guidance to advise local authorities that they must inform anyone who purchases a lair that it will be their responsibility to turn up every 25 years to reregister their interest in that lair?

Dr Cuthbert-Kerr: In essence, that is correct. We would make it clear that we would expect the terms and conditions of any sale to specify to the purchaser that they would need to renew the ownership after 25 years.

In addition to burial authorities, funeral directors will have a key role to play. Often, funeral directors do the transaction between the purchaser and the local authority; as we have done with burial authorities, we have spoken to funeral directors about this process.

John Wilson: Do you envisage an additional charge being made for reregistration at the end of that 25-year period?

Dr Cuthbert-Kerr: We would not want anything other than a nominal administrative fee to be charged. This is certainly not about reselling the lair.

John Wilson: Thank you.

Cara Hilton (Dunfermline) (Lab): Which parts of Scotland face a reduction in the availability of burial land and why is that occurring? Can you expand on the statement in paragraph 51 of the policy memorandum about burial grounds remaining

“viable and active community resources”?

Dr Cuthbert-Kerr: We understand that there is a variable pattern of availability across Scotland. It is not as simple as urban areas having particular pressures while rural areas do not. In some urban areas, there are particular parts or particular local authority areas in which burial land is less available, perhaps because local burial grounds have no available space.

We received consultation responses from some of the island local authorities that suggested that they were running out of burial space because of physical constraints. A number of different factors are at work regarding the availability of burial space. As I said, it is not quite as simple as saying that some areas are full while others are empty.

You asked about the viability of burial grounds as community resources. Traditionally, burial grounds tended to serve a community that lived locally to them but as time has passed that is often not possible any more. Many of the newer burial grounds tend to be located quite far from the communities that they would otherwise serve and, of course, that has a number of effects. It means that it might not be possible for the person to be buried close to where they lived, and it puts pressure on people who want to visit the grave.

We think that the restoration-to-use process could be used to return into use burial grounds that currently have no available space. The most obvious effect of that would be that people could be buried in that burial ground again. In addition, such burial grounds tend to fall into disrepair as fewer people visit them and tend the graves. We often find that those burial grounds become closed and unused spaces. Allowing such places to be restored to use would not only provide additional

burial space but would help to revitalise those spaces for communities.

The Convener: In recent times, there have been difficulties—they have now been resolved—in the Aberdeen area regarding land availability for various religious groups. In the Muslim faith and the Jewish faith, burial has to take place quite quickly. How are we ensuring that land is available for that? Can we deal with the situation in which folks have to be buried quite quickly according to custom of religion?

10:30

Dr Cuthbert-Kerr: There is nothing in the bill to prevent a burial happening quickly; obviously, that depends on the availability of burial space. Burial grounds, whether they are privately or publicly owned, tend to have sections that are given over to members of a particular faith and the bill allows that situation to continue. Burial authorities can set aside sections of burial grounds for that exact purpose.

The Convener: Were there many consultation responses from faith groups on that issue?

Dr Cuthbert-Kerr: We received responses from a number of groups including the Scottish Council of Jewish Communities, the Muslim Council of Scotland and an organisation—I am sorry, I cannot quite remember its name but it is an ecumenical group that represents Christian faiths. We had written consultation responses from those groups and we have had on-going dialogue with them to find out their thoughts.

The Convener: Paragraph 54 of the policy memorandum talks about the abandonment of lairs. Why is the test of whether a lair is abandoned not set out in the bill?

Dr Cuthbert-Kerr: When we considered that, we tried to imagine the kind of situations where it would appear to a burial authority that a lair no longer had any active interest in it. That ranges from a number of different scenarios, from obvious disrepair to simply the fact that there do not appear to be any fresh flowers left at it frequently.

The Convener: That is not a particularly good test in itself considering that, as you said earlier, in some cases folks are buried well away because of space availability, so there are fewer visitors. It is therefore difficult to take that as a test of whether a lair has been abandoned.

Dr Cuthbert-Kerr: Indeed, and I think that we would deliberately cast that element of the test at quite a low level because of the variety of circumstances in which lairs might be found, but that element does not operate on its own. For example, it would need to be 100 years since the last burial took place in the lair, so those two

elements would need to work together. Although you are right to say that that is a low test of abandonment, it is very much intended to be the initial examination by the burial authority of lairs that might be suitable for reuse. The notion that the last burial must be at least 100 years ago adds a little bit more of a safeguard to that. Beyond that point, there is an increasingly severe set of tests that a burial authority needs to go through.

The Convener: What are those severe tests?

Dr Cuthbert-Kerr: The authority needs to consider whether there are any archaeological or heritage reasons why the lair should not be used. Essentially, the bill sets out various stages in that process. The first is the one that we have just discussed, which is that it appears that the lair has been abandoned and there has not been a burial in it in the past 100 years. The burial authority is then required to consult archaeological experts on whether there is any particular reason for the lair not to be used; if there is any objection from them, the lair cannot be reused. At the same stage, it has to speak to the Commonwealth War Graves Commission; if the commission raises an objection, the lair cannot be reused. That is the first stage of the process.

The next stage requires the burial authority to attempt to trace the owner, and the bill sets out a number of processes for that, which will be supported by regulations. If the owner of the lair cannot be traced or does not respond, the burial authority can move on to the next stage, but if the owner does respond and objects to the lair being reused, it cannot be reused.

If there is no objection or if there is no contact from the owner, the next stage is to conduct a 12-month public notification period during which anybody is able to object to the reuse. For certain parties, including the owner, but also anyone who is a relative of someone buried in that lair, an objection will prevent the lair from being reused. An objection by someone else will be considered by the burial authority, which may choose not to use the lair on the basis of that objection or to disregard the objection. It is only at the end of that process that a lair can be reused.

The Convener: Why is the process for determining whether a lair is abandoned being set out in guidance and not in the bill?

Dr Cuthbert-Kerr: The test of whether the lair has been abandoned is in the bill, as is the detail of the other processes. I think that what we will do in guidance is offer some suggestions to burial authorities about what we mean by abandonment. As I say, that could be something as simple as the fact that no flowers have been left for a long time, or it could be something much more—something perhaps more solid, such as the fact that the lair is

in a state of disrepair and does not appear to be being maintained.

The Convener: The burial and cremation review group recommended restoration after 75 years, but the time period in the bill is 100 years. What led you to extend the period?

Dr Cuthbert-Kerr: Essentially, that was in response to both the formal consultation and engagement with stakeholders.

The Convener: You listened to the public and stakeholders.

Dr Cuthbert-Kerr: Absolutely. It was felt that 75 years was perhaps too short.

Willie Coffey: Could I just return to a point about lairs, which the convener and John Wilson asked about? Was consideration given to whether a blood relative should have precedence over the lair owner's wishes in deciding whether a family member can be interred in a lair? Sadly, I have had cases in the past where the request to inter a family member has been denied by the lair owner, who is not a blood relative, but the person who has tried to inter the family member clearly is a blood relative. Why was no consideration given to that? That is a common enough problem that I have encountered over the years when families separate.

Dr Cuthbert-Kerr: The approach that we have taken to that is very much to replicate the current situation, in which the ownership of the lair rests in one single person and it transfers by way of succession, which in some cases will be via the bloodline. Nobody raised that particular point in response to the consultation. Certainly, the approach that we have taken is to say that the person who purchases the lair initially has the right to determine who is buried in it and to be buried in it themselves, and when that person dies and the right passes to the next person, those same rights will rest in that person. The owner could, of course, choose to transfer the right of ownership to another person. There is nothing in the bill to address that and, as I say, it was not raised during the consultation.

Willie Coffey: I am surprised at that, but okay.

John Wilson: You mentioned that the owner of the lair could sell it on. Why is there nothing in the bill to prohibit the selling on of the lair? If the local authority sells a lair to an individual, the record of that sale is the record of who owns the lair, but if that person sells the lair on, how will they go about registering the new ownership of the lair? You could end up with something like ticket-tout websites, with people buying up lairs from local authorities and selling them on, or holding on to them in order to sell when there is a shortage of lairs and the demand is increased. They could sell

those lairs on without any restrictions being placed on them.

Dr Cuthbert-Kerr: In the consultation paper, we asked whether there should be any restrictions on who the owner should be able to transfer the lair to. The strong sense that came back was that, no, people have purchased the lair and it is theirs to do with as they see fit.

In answer to the question about the notion of people buying up lairs and selling them in the way you describe, the 25-year restriction that the bill will introduce at section 13 will act to control that, particularly given that the local authority has powers to ensure that its information about who owns the lair is current. In other words, it can write to the person that it believes owns the lair to check that they still own the lair. I think that that will help to control that sale process, at least in the sense that it should not allow the detail of the ownership to escape.

Broadly speaking, though, the approach that we have taken is that, if somebody buys the right to burial, it is theirs and they may do with it what they see fit.

John Wilson: Thank you.

The Convener: Paragraph 31 of the policy memorandum suggests that the position on private cremation is not clear, although it is currently recognised as illegal. Can you explain in more detail the current ambiguity and the specific issue that the bill is trying to address?

Dr Cuthbert-Kerr: Essentially, the Cremation Act 1902 prevents cremation from taking place anywhere other than in a crematorium. When the burial and cremation review group looked at the issue, its report seemed to suggest there was some sort of ambiguity about that. I have to say that our reading of the 1902 act suggests that it is quite clear and that private cremation, by which is meant cremation outside a crematorium, is illegal. The bill will seek to continue that situation.

The Convener: Paragraph 72 states that the Scottish Government has established a working group to devise an application form for cremation. Is its remit limited to the design of the form or will it have a wider locus?

Dr Cuthbert-Kerr: The group's remit is quite wide. It is a sub-group of the national committee on infant cremation and has been set up initially to look at new cremation forms, but we intend to use the group to look at forms generally for the whole process and at record-keeping processes.

The Convener: Who is on that working group?

Dr Cuthbert-Kerr: The group has a number of parents who have been affected by the ashes issues, a number of funeral directors,

representatives of burial and cremation authorities and a few industry representatives; both the Institute of Cemetery and Cremation Management and the Federation of Burial and Cremation Authorities are represented on that group.

The Convener: Thank you. We will move on to inspections. What consideration has been given to the length of the appointment of the inspectors of burial, crematoriums and funeral directors, and the number of inspectors likely to be needed, which are covered in paragraphs 95 to 97 of the policy memorandum. Will inspectors be appointed for specific functions, to cover each area, or will they work across all those areas? What duties will they be required to undertake?

10:45

Dr Cuthbert-Kerr: The model that we are working on at the moment is that there will be one full-time inspector of crematoriums, one full-time inspector of burial and two full-time inspectors of funeral directors. That is the model that we have developed to give an estimate of the likely financial cost of the process. However, the bill gives ministers the ability to appoint as many inspectors as they think are required and to give each of those inspectors specific duties as required. It also allows ministers to set out the terms and conditions of those appointments, which will include the length of time for which they would be appointed. There is nothing in the bill that would prevent one individual from taking on more than one role, so they may spend half of their time on burial and half of their time on cremation. The bill allows ministers to appoint inspectors with quite a high degree of flexibility.

The Convener: Thank you. What do you envisage complaints will cover, and what percentage of their time do you estimate the various inspectors will spend investigating complaints? Will there be an appeals process after decisions are made by inspectors? If so, to whom will people appeal?

Dr Cuthbert-Kerr: We certainly envisage that people will make complaints to inspectors. For example, we know that the current inspector of crematoria has dealt with at least one complaint that came to him through public channels. However, our vision of an inspector is that rather than being the person who would fully investigate a complaint, they would possibly be better looking at what gave rise to the complaint and making recommendations to the funeral director, the burial authority or the cremation authority about how to prevent the situation from arising again.

We are very alert to the fact that there are a number of complaints procedures in place, such as, for local authorities, the Scottish Public

Services Ombudsman's procedures and, indeed, a local authority's own complaints procedures. There are other routes, such as trading standards or professional bodies, for private businesses. We would tend to view those procedures as being the primary route by which a complaint should be fully investigated, leaving the inspector to look at what gave rise to the situation in the first place and to make recommendations to prevent a recurrence.

The Convener: What will happen if, after the inspector has made recommendations, the complainant is unhappy with those recommendations? Is there an appeal process and, if so, to whom do they appeal?

Dr Cuthbert-Kerr: I think that Graham McGlashan wants to come in.

Graham McGlashan: The powers of the inspectors will be set out in regulations. The regulation-making power is wide enough to make provision for reviews or appeals of decisions made by inspectors or Scottish ministers, including decisions to suspend or revoke licences. The regulation-making power is certainly wide enough to allow for provision to be made for reviews or appeals.

The Convener: From what we have heard this morning, it seems to me that that route is not clear, and I think that it must be made clear in the bill and in the regulations that are made under it. People have to know what the process is because there is nothing more frustrating for folks than not knowing what their rights are or where they should go next if they are unhappy about a situation. It would be extremely useful for the committee to get some more clarity on that.

In relation to the inspectors' proposed role in assessing applications for exhumation, what do you anticipate the criteria for consideration are likely to be? Will there be a fee for such applications? If so, what is the authority for such a charge, and will it be set at a level that ensures cost recovery only?

Dr Cuthbert-Kerr: We do not imagine that there will be an application fee. The process that we have in mind is one in which the person who has the authority to make the application for the exhumation would discuss the feasibility of the process with the burial authority. That is not particularly different from what happens currently; the key difference is that rather than the applicant having to go to court, as happens at present, they will instead go to an inspector. If the inspector is satisfied that the person has the right to make the application and that the process itself is feasible, they will approve it.

Willie Coffey: I have a number of questions, which are not related to that particular point.

The Convener: On you go.

Willie Coffey: My first question is about maintenance and repair of headstones. I do not think that the issue is covered in the bill but I have to raise it because quite a number of my constituents are concerned about it.

As you know, a number of headstones in Scotland's cemeteries have been staked against and tied and bound to wooden posts—I suppose that that has happened because maintenance standards have changed over the years. Is there likely to be any solution to that? There has been no progress on issue and, as far as I can see, none is likely. When you visit a cemetery, it is sad to see so many stones that have either keeled over or been attached by string to wooden posts that will deteriorate over the years. Was the issue raised in the consultation, and is there any plan to include some guidance on it under the bill?

Dr Cuthbert-Kerr: It is certainly an issue that has underpinned this entire process. One of the reasons why so many headstones are laid down is that the owner, who has primary responsibility for maintenance, is either no longer maintaining the grave or cannot be found by the burial authority, should it wish to encourage them to maintain the grave. I understand that many burial authorities tend to take on the responsibility for maintenance themselves.

Having spoken to burial authorities, I think that there is a lack of clarity about what rights they have to take action in relation to something that they do not own. A number of them have told us that, under health and safety legislation, they have to make sure that the burial ground is a safe place. That is often the basis on which they do the things that you have described—bringing headstones down and so on.

That is one of the reasons why we propose limiting the initial length of ownership of a lair. One of the key purposes behind ensuring that the burial authority knows who owns a lair is so that it can contact them about maintenance requirements.

Section 6 gives ministers the power to make regulations concerning the management of burial grounds. The intention is, under those regulations, to put a duty on burial authorities to make sure that the burial ground is safe. In England and Wales, the Local Authorities' Cemeteries Order 1977 sets out a wide range of powers and duties in that regard, and we intend to use it as a model for the Scottish regulations.

Willie Coffey: It sounds to me that liability will remain with the lair owner. I do not think that the proposal will solve the problem, given the number of stones involved. I am sure that the lair owners are known or can be identified, but no action has been taken to repair the stones—probably

because it is too expensive to do so. Have you done any further thinking on whether the problem can be overcome?

Dr Cuthbert-Kerr: We have asked burial authorities about their maintenance arrangements. Most tell us that they have an annual budget. Obviously—and particularly if the local authority is involved—the size of the budget varies, so the extent to which a burial authority can either bring down a headstone or repair it varies quite significantly as well.

We expect the regulations to offer some examples of the processes that we expect a burial authority to carry out in ensuring that the burial ground is safe. We will have to consider whether that will stretch to requiring them to repair a headstone so that it remains upright, as opposed to making it safe by laying it flat, for example.

John Wilson: I will follow up Willie Coffey's questions. A number of years ago, there was a great deal of vandalism in a cemetery, with headstones deliberately pushed over by individuals who caused a lot of damage. There was a dispute between the lair owners and the local authority about who was responsible for repairing the headstones. Issues were raised about security and maintenance at the cemetery, and about who had access to the cemetery.

How will the bill help in a dispute between a lair owner and a burial authority when a headstone is damaged through a deliberate act of vandalism, rather than through the pins rusting away? How will lair owners resolve such issues? Does the bill put in place anything that will assist that process?

Dr Cuthbert-Kerr: The bill does not address the question of who would be responsible in that scenario. Regulations under section 6 will certainly give burial authorities much stronger powers to establish local rules that will govern things such as a burial ground's opening hours. That may help to prevent people from getting in when the burial ground is not well lit or particularly busy.

The regulations could also deal with access. They will give burial authorities a duty to ensure the safety of headstones, but they will also refer to perimeter walls, fences, gates and so on being up to the standards that we expect. I think that that will help to reduce the likelihood of people being able to gain access to a locked burial ground.

The Convener: The committee has recently looked at licensing issues, particularly during our consideration of the Air Weapons and Licensing (Scotland) Bill, which we scrutinised a great deal. Sections 65 and 66 of the Burial and Cremation (Scotland) Bill provide for a licensing scheme to be set up if necessary. What work was undertaken prior to the bill's introduction to establish the need for a licensing scheme?

Dr Cuthbert-Kerr: The proposal has its genesis in the work of the burial and cremation review group and in Lord Bonyon's work. Both suggested that the current situation, in which there is no independent scrutiny of funeral directors or licence requirements on them, is not sustainable.

In our consultation paper, we asked whether the licensing and inspection of funeral directors were desirable, and the response to the consultation suggested that they were. Since then, we have worked quite closely with funeral directors to establish what kind of licensing scheme there should be, the extent of any such scheme and what cost would be appropriate. That work is ongoing.

Our financial memorandum sets out a model whereby the inspection and licensing of funeral directors are very much linked. Essentially, if an inspection is satisfactory, the licence will be granted. However, we are still looking at various options.

A key issue for us is whether a licensing scheme is necessary. Although we feel that the vast majority of funeral directors operate appropriately, we are aware of some that do not. In the first instance, we intend to use inspectors over perhaps a year or two to keep funeral directors' practices under review and make recommendations to ministers on the desirability and benefits of a licensing scheme.

11:00

The Convener: If you do not use a licensing scheme, what other methods or models will you use to regulate the industry?

Dr Cuthbert-Kerr: In the first instance, the inspection regime is a potential route. The policy intention is to introduce inspection first, as a way of ensuring that consistent minimum standards are being met across the industry.

If the inspectors consider that, based on their work, that approach is sufficient, that might be enough not to require a licensing scheme as an alternative. If, however, they recommend that a licensing scheme would be useful, that would be the way we would go.

The Convener: Schedule 2 contains a lengthy list of provisions in a wide range of legislation that are being repealed. The committee would be grateful if you could indicate to us in writing what part of the policy they relate to.

I imagine that the committee may well write to you about other aspects of the bill. It is pretty complex, and although we have gone through a huge amount today, there may be other provisions that we catch sight of and comprehend at a later

stage. I am quite sure that we will get back to you about those.

Finally, the majority of the bill's provisions do not have commencement dates. What are the indicative timings for the commencement of the various parts and associated regulations that the Government is currently working towards?

Dr Cuthbert-Kerr: Broadly, we look to commence the key elements of the bill within a year to two years, starting with the aspects that relate to cremation. The system is not working as it should, so we will try to bring forward improvements to cremation as soon as possible. We will also look to commence the inspection provisions as soon as possible, because a lot of the improvements to cremation need to be tested by inspection. That will lead on to issues such as the improvements to burial, which are perhaps less pressing than the improvements to cremation. That is the broad timescale.

The Convener: Okay. I was wrong to say "finally". Willie Coffey has a question.

Willie Coffey: My apologies, convener. I have a final question.

We are talking about modernising this entire process. Was any consideration given to whether a person's place of burial and lair reference could be recorded in the national records and the register of deaths? I ask because sometimes it can be difficult to find in the national records the history and so on of a potential relative by tracking back from their lair in a cemetery. Is there any way of closing that gap so that things are made much easier for families?

Dr Cuthbert-Kerr: We certainly have scope to look at that. The bill requires burial authorities to keep a burial register. We will prescribe the form of the register, which should produce consistency across that part of the process.

We are considering how all the different registers and types of archival information link up. We can certainly consider that point.

Willie Coffey: Thank you. There is no connection between a local authority's lair reference information and the national records to identify whether someone is in fact looking at the same person.

The Convener: That concludes our evidence session. I thank our witnesses. I have no doubt that we will be in touch. Our call for evidence on the bill closes on 4 December and we will take further oral evidence after that date.

Meeting closed at 11:04.

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