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East Dunbartonshire Council

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**PLACE NEIGHBOURHOOD &
CORPORATE ASSETS
COMMITTEE**

THURSDAY, 9 NOVEMBER 2023

REFERENCE:

PNCA/105/23/SE

LEAD OFFICER:

DEPUTE CHIEF EXECUTIVE

CONTACT OFFICER:

**STEPHEN EGAN, TEAM LEADER –
STREETSCENE TECHNICAL SUPPORT**

SUBJECT TITLE:

**CONSULTATION RESPONSES TO THE
BURIAL AND CREMATION ACT 2016**

1.0 PURPOSE

- 1.1** The purpose of this Report is to seek approval for a response to the Scottish Government's consultation with regard to the introduction of regulations around the Burial and Cremation Act 2016.

2.0 RECOMMENDATIONS

It is recommended that the Place Neighbourhood & Corporate Assets Committee:

- 2.1** approves the proposed responses to the four consultation documents relating to the 2016 Act, attached to this Report.

**ANN DAVIE
DEPUTE CHIEF EXECUTIVE**

3.0 BACKGROUND/MAIN ISSUES

3.1 The Burial and Cremation (Scotland) Act 2016 is an Act of the Scottish Parliament that provides a legislative framework for burial and cremation in Scotland. The Act restates and amends the law with regard to burial and cremation and provides powers for Scottish Ministers to make regulations and provision for the inspection and regulation of burial authorities, cremation authorities and funeral directors.

3.2 The Act also enables provision to be made for the licensing of Funeral Directors and the exhumation of human remains.

3.3 The Act is in 7 Parts :

- Part 1 covers burial, including burial grounds, burial in a burial ground, private burial, exhumation, the restoration to use of burial lairs and fees for interment;
- Part 2 covers cremation;
- Part 3 covers arrangements on death, including arrangements on the death of adults and children, stillbirths and pregnancy loss, and local authority functions in relation to the disposal of remains in certain circumstances;
- Part 4 covers inspection;
- Part 5 covers funeral directors, including powers for the Scottish Ministers to make a scheme for the licensing of funeral directors' businesses;
- Part 6 sets out miscellaneous provisions, including guidance on funeral costs, powers to extend the application of the Act, powers to modify enactments and the acquisition of land;
- Part 7 sets out general provisions, which are largely technical in nature (e.g. general provisions relating to regulations, ancillary provision, Crown application);

3.4 The Scottish Government has published four consultation papers arising out of the Act with a response date of November 17th 2023 – they are as follows:

- Management of Burial grounds, application for burial, exhumation, private burial and restoration of lairs
- Statutory Inspection of Burial authorities, cremation authorities and funeral directors
- Funeral Director licensing scheme for Scotland
- Regulation of Alkaline hydrolysis (Water Cremation) in Scotland

3.5 The consultation runs to several hundred pages with an associated 140 questions, the majority of which are operational and administrative. There are several areas where Elected Members require oversight – these are noted below with associated recommendations.

3.6 **MANAGEMENT OF BURIAL GROUNDS, APPLICATION FOR BURIAL, EXHUMATION, PRIVATE BURIAL AND RESTORATION OF LAIRS** – link to the full document below

<https://www.gov.scot/publications/management-burial-grounds-application-burial-exhumation-private-burial-restoration-lairs-regulation-scotland/documents/>

3.7 This consultation paper sets out a range of proposals and approaches for the regulation of burial in Scotland which have been informed by the work and recommendations of the Burial Regulations Working Group

- Commencement of part 1 of the 2016 Act
- Regulations for the management of burial grounds
- Regulations for burial application and register
- Regulations for private burial
- Regulations for exhumation
- Regulations for the restoration of lairs.

3.8 As noted above many of the 55 questions in this consultation are either operational or administrative however there are four areas that merit being highlighted to committee.

3.9 COMMENCEMENT OF PART 1 OF THE 2016 ACT – SALE OF RIGHT OF BURIAL

The Act will bring an end to the sale of lair rights in perpetuity which means that descendants of the person who originally bought the rights to a lair, have continuing exclusive rights to its use. These owners are often impossible to trace after the first two generations, leaving empty lairs unused and allowing headstones on used lairs to fall into disrepair. Instead rights of burial will be limited to a period of 25 years with the option for the lair right-holder to apply to extend the right by subsequent 10-year periods.

3.10 Within East Dunbartonshire's Burial Ground Management Rules there is a 40-year arrangement re Sale of the Right of Burial which will need to change to 25 years (as above) - this has the potential to provide the benefits around empty/unused lairs and headstones as noted above in the consultation document.

3.11 Recommendation

The Officer recommendation is to note the move to 25 years but include a timeframe of at least 12 months to transition to the new arrangement.

3.12 FAITH DESIGNATION WITHIN BURIAL GROUNDS

A number of burial authorities already designate parts of their burial grounds for use by particular faiths or religious bodies. It is proposed that regulations will set out the legal basis for doing so. This is intended to be a power for burial authorities, not a duty, as the requirements of local communities will differ. Burial authorities are encouraged within the consultation to engage with local faith communities to determine whether designated areas are required.

3.13 Within East Dunbartonshire the Council currently operates an informal arrangement with the Muslim community regarding burial space within Langfaulds Cemetery and the introduction of a legal basis to formalise this moving forward and indeed liaise with other faith groups is welcome.

3.14 Recommendation

The Officer recommendation is to support the move towards a formal legal basis for the power to designate parts of burial grounds for faith groups and thereafter engage within the East Dunbartonshire area.

3.15 MANAGEMENT PLANS

Section 6 of the 2016 Act gives Scottish Ministers the power to make regulations for, or in connection with, the management, regulation and control of a burial ground by a burial authority. It is intended that regulations will make provision in respect of the effective management of the wide range of burial grounds that exist in Scotland. Burial grounds can be active (accepting new burials), inactive (not accepting new burials) or historical (generally understood to be where the last coffin burial took place more than 100 years ago and no more coffin burials are anticipated). They can be located, for example, on steep cliffs, remote beaches, hilly terrain or city centres and can be managed by one of a number of different parties such as local authorities, commercial companies, charitable and faith organisations or not-for-profit community volunteers.

3.16 The proposal is to require each burial authority in Scotland to prepare and maintain at least one management plan which will apply to all the burial grounds for which the burial authority has responsibility. A management plan is intended to be a type of operating manual which offers a transparent view of who manages burial grounds in Scotland, the different types of burial grounds and how those burial grounds are managed and operated.

3.17 Each burial authority's management plan is to provide an overview of how their burial grounds are to be managed. The regulations will prescribe the minimum content required of the management plan, but each burial authority will have the option to add additional information. The proposal is that the minimum information to be included will be:

- a list of the names, addresses and business hours of each burial ground that the burial authority manages and to which the management plan applies.
- whether each burial ground is active, inactive or historical in nature.
- the procedures for –
 - carrying out of burials
 - dealing with an unexpected rise in the number of burials
 - operation and servicing of all equipment used in the burial process or to maintain the burial ground.
 - procedures for keeping burial grounds well maintained.
 - procedures for keeping headstones and other memorials in safe order and repair such as any memorial inspection programme.
 - contingency arrangements for any unexpected disruption to, or loss of, service (e.g. flooding, unsafe headstones, police incidents within burial grounds).
 - an overview of staff training (e.g. what courses, qualifications, CPD etc. are available to staff) and how training is recorded.

3.18 Within the Council, Officers are currently updating the Management Rules associated with burial grounds and the information around active, inactive and historical will be included within these rules.

3.19 The additional operational information suggested is currently spread over several documents however it not thought that this should be onerous to collate in line with the proposals from the Scottish Government.

3.20 Recommendation

The Officer recommendation is to support the creation of a formal management plan in line with the consultation paper.

3.21 REGULATIONS FOR THE RESTORATION OF LAIRS

One of the key issues considered by the Scottish Government is the increasing pressure on available land for burial in Scotland. A previous report in 2007 noted concerns around available space for burial – both in terms of lairs within existing burial grounds and available land for future burial grounds. Although the issue is acute in larger cities, it is also an issue in some rural areas. Once these sections of the 2016 Act are brought into force, a lair in a burial ground can be considered for restoration if it appears to have been abandoned, the relevant period of time has passed and the burial authority is of the opinion that the lair is suitable for restoration.

3.22 The relevant period of time is:

- where the lair contains human remains, 100 years from the day on which the last burial took place, or
- where no burials have taken place in the lair, 50 years from the day on which the right of burial in the lair was last sold
- Additional strict safeguards are included in the 2016 Act to ensure lairs are only considered for restoration once the burial authority has notified the lair right holder and given an opportunity for objection

3.23 Under the proposal the lair right-holder will have a period of time to consent or object in writing before any work to restore the lair can take place. The proposed time period is no less than 6 months and no greater than 12 months from the date the notice is issued. The Council has plans in the medium term to extend both Langfaulds Cemetery in Bearsden and Cadder Cemetery in Bishopbriggs, which will create significant burial capacity for many years to come. In tandem with this a Cemetery Management Plan will be produced setting out a strategy for the next 50 years to ensure burial capacity remains available.

3.24 Recommendation

In terms of this proposal the Officer recommendation is that a minimum of 12 months should be given to lair holders before any works commence to restore any lair within the district however it is worth noting that Officers do not foresee any circumstances over the coming two decades where this would be required.

3.25 STATUTORY INSPECTION OF BURIAL AUTHORITIES, CREMATION AUTHORITIES AND FUNERAL DIRECTORS – link to the full document below

<https://www.gov.scot/publications/statutory-inspection-burial-authorities-cremation-authorities-funeral-directors/documents/>

3.26 Inspection is an essential and core part of the regulatory responsibilities under Part 4 of the 2016 Act, under which seeks to improve standards and quality of funeral services in order to protect the deceased and the public in Scotland. It is central to the Scottish Governments overall aim of increasing the credibility of, and confidence in, Scotland's funeral sector. The importance of inspection in the funeral sector has its roots in the Infant Cremation Commission. The Commission published its report in 2014, which examined the practice at that time regarding infant cremation and made recommendations for improvement, including the monitoring of work practices and standards at crematoriums. This led to the appointment of Scotland's first Inspector of Crematoria in 2015.

3.27 The 2016 Act builds on this and enables Scottish Ministers to appoint Inspectors under section 89 of the 2016 Act as Inspectors of Burial, Cremation and Funeral Directors ('Inspectors'). There is currently a Senior Inspector of Burial, Cremation and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors appointed by Scottish Ministers. The Inspectors are currently limited in their ability to conduct inspections or investigate complaints, and do not yet have any enforcement-related powers. The proposed inspection regulations will provide statutory powers for current and future Inspectors to carry out the functions required of them to contribute to the protection of the deceased and ensure minimum standards are being met in Scotland's funeral sector.

3.28 This consultation as detailed above focuses in on inspection, frequency of inspection, future enforcement arrangements and an appeals process. Some 21 questions are asked around this with a specific focus on a 'risk based' approach to inspection and response times to inspections and any enforcement actions.

3.29 Recommendation

In principle Officers are supportive of the inspection process and therefore the recommendation would be to provide a response around practical timescales re all the above.

3.30 FUNERAL DIRECTOR LICENSING SCHEME FOR SCOTLAND – link to the full document below

<https://www.gov.scot/publications/funeral-director-licensing-scheme-scotland/pages/3/>

3.31 The 2016 Act provides Scottish Ministers with the power to introduce licensing of funeral directors. Scottish Ministers are now proposing to bring into force Part 5 of the 2016 Act to introduce a licensing scheme for funeral directors in Scotland.

3.32 Part 5 contains the relevant provisions for licensing which will apply to anyone who carries on business as a funeral director in Scotland. As part of the proposed scheme, sections 94 to 96 of the 2016 Act would be commenced to make it an offence to carry on business as a funeral director without obtaining a licence for that business issued by the licensing authority. Where a person operates more than one business they will need to apply for a separate licence for each business.

3.33 The licensing regulations are intended to regulate the industry in its care and handling of the deceased. The aim is to ensure that the care and handling of the deceased and the practices of the funeral sector are being delivered in compliance with the minimum standards set by the Scottish Government.

It is intended that a consequence of this will be increased confidence in Scotland's funeral director sector. This is because the scheme would provide reassurance to the public who can expect that (a) any funeral director business in Scotland is licensed, and (b) that they are therefore meeting minimum standards of care for the deceased and in their practices as funeral director businesses.

3.34 Details about how the licensing scheme will operate include:

- Who is to administer the scheme (the 'licensing authority') – Scottish Ministers,
- The application forms and the application process (including documents to be submitted with applications),
- Enabling the licensing authority to grant or refuse an application with or without conditions, specify circumstances where the licensing authority may or must grant or refuse a licence application (and whether that licence may be granted subject to any conditions), and timescales,
- How long a licence lasts, and whether it can be renewed,
- Enforcement-related matters, such as how and in what circumstances a licence might be suspended or revoked,
- How decisions of the licensing authority can be appealed, and
- The implementation of licence application fees.

3.35 Recommendation

The Officers recommendation is to support the proposals which include the appointment of Scottish Ministers as the Licensing Authority, the creation of a national register of Funeral Directors, the creation of a mandatory Code of Practice for Funeral Directors and the creation of minimum standards in the care and handling of the deceased.

3.36 REGULATION OF ALKALINE HYDROLYSIS (WATER CREMATION) IN SCOTLAND – link to the full document below

<https://www.gov.scot/publications/alkaline-hydrolysis-water-cremation-regulation-scotland/documents/>

3.37 Alkaline hydrolysis is a method of disposal of human remains using hot water with the addition of potassium hydroxide, or sodium hydroxide, or a mix of both. The body is wrapped in a silk or woollen shroud, or other biodegradable material, before being placed into a pressurised chamber and heated to up to 150 °C. The body rapidly reduces to bones, any medical implants and sterile DNA-free liquid. The vessel is then pressurised and the water is heated. The maximum temperature varies from about 100 to 150 degrees Celsius, depending on the type of system being used, and the pressure applied. The combined action of heat, water, and potassium hydroxide, causes the body's organic substances to dissolve in the liquid. This fully automated process takes two to ten hours, depending on the temperature and on the weight of the body to be processed. In addition to heating the liquid, a complete cycle involves various cooling and rinsing steps.

3.38 There are three types of residual material:

- The bones. These are dried and ground into a white powder, which consists largely of calcium. As with cremation ashes, this powder can be given to the next of kin.

- Any prostheses, fillings, and medical devices. These can be collected and disposed of.
- The liquid used during hydrolysis. This effluent, which has a volume of approximately 1,500 litres, consists of water, potassium hydroxide, and the dissolved organic substances (sugars, amino acids, salts, and fatty acids).

3.39 The effluent has a high pH, and contains no DNA or RNA. The pH is reduced to less than 10 by adding sulphuric acid. After the process is complete and the bones and any implants removed, the remaining liquid is cooled before being moved to a treatment tank. The liquid produced as a result of alkaline hydrolysis is slightly alkaline (around 9 – 10.5 on the pH scale). It includes compounds such as sugars, amino acids and fatty acids, nitrogen, phosphorus, and potassium hydroxide.

3.40 The consultation's 24 questions focus predominantly on the regulation of either an amended crematoria facility or indeed a newly created facility and since East Dunbarton at the moment has neither it is perhaps less (for the moment) relevant to the area.

3.41 Recommendation

The Officers recommendation is to support regulation similar to Crematoria so as to ensure all the appropriate safeguards are in place.

3.42 SUMMARY AND NEXT STEPS

The 2016 Act fulfils the commitment given by government to implement recommendations made by the Burial and Cremation Review Group (2007), the Infant Cremation Commission (2014) and the National Cremation Investigation (2016).

3.43 The regulation proposals set out in the consultations on burial, inspection and funeral director licensing are key to realizing the necessary detail, protection and processes envisaged by the 2016 Act.

3.44 The focus of the Act is to have the right policy and legal frameworks in place. The regulation seeks to be fair and proportionate and achieve the aim of protecting the deceased, setting minimum standards of care in the sector, supporting consistency of service and establishing a statutory regulatory function to monitor compliance with the 2016 Act and its codes of practice.

3.45 Officers have highlighted the key areas for Elected Member oversight and provided recommendations regarding a response.

3.46 In terms of next steps Officers, with the Place Neighbourhood & Corporate Assets Committee's approval will facilitate a response to all 4 consultations in advance of the 17th November 2023 deadline.

4.0 IMPLICATIONS

The implications for the Council are as undernoted.

4.1 Frontline Service to Customers – Yes - longer term impact of Regulation of Lairs

- 4.2 Workforce (including any significant resource implications) – None
- 4.3 Legal Implications – Yes – impact on Burial Ground Management Rules
- 4.4 Financial Implications - None
- 4.5 Procurement – None
- 4.6 ICT – None
- 4.7 Corporate Assets – None
- 4.8 Equalities Implications – None
- 4.9 Corporate Parenting - None
- 4.10 Sustainability – None
- 4.11 Other - None

5.0 MANAGEMENT OF RISK

The risks and control measures relating to this Report are as follows:-

- 5.1 Requirement to follow legislation once implemented

6.0 IMPACT

- 6.1 **ECONOMIC GROWTH & RECOVERY** – None
- 6.2 **EMPLOYMENT & SKILLS** - None
- 6.3 **CHILDREN & YOUNG PEOPLE** - None
- 6.4 **SAFER & STRONGER COMMUNITIES** - None
- 6.5 **ADULT HEALTH & WELLBEING** - None
- 6.6 **OLDER ADULTS, VULNERABLE PEOPLE & CARERS** - None
- 6.7 **CLIMATE CHANGE** - None
- 6.8 **STATUTORY DUTY** – Burial and Cremation Act 2016.

7.0 POLICY CHECKLIST

- 7.1 This Report has been assessed against the Policy Development Checklist and has been classified as being an operational report and not a new policy or change to an existing policy document.

7.2 Note that the Scottish Government has undertaken their own assessments.

8.0 **APPENDICES**

8.1 **Appendix 1** – Respondent Information Form (1)

8.2 **Appendix 2** - Respondent Information Form (2)

8.3 **Appendix 3** - Respondent Information Form (3)

8.4 **Appendix 4** - Respondent Information Form (4)