

Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland

A Scottish Government Consultation

August 2023

Table of Contents

Ministerial Foreword	3
Responding to this Consultation.....	5
Introduction	7
Section 1 - Commencement of part 1 of the 2016 Act.....	11
Section 2 - Management of burial grounds.....	11
Section 3 - Burial Application and Register	19
Section 4 - Private burial	27
Section 5 - Exhumation	34
Section 6 - Restoration of lairs	44
Any other comments	46
Impact Assessments	47

Ministerial Foreword

Bereavement can be emotionally overwhelming and being able to engage with the practical issues and funeral arrangements can be very difficult. However, it is something everyone is likely to experience at some stage in their life, whether it's the death of a family member, a loved one, or a friend. Having confidence in the care and dignity given to our loved ones, along with the compassionate and professional treatment of those bereaved, can go some way to alleviating that distress. The rare instances where this does not happen satisfactorily can have long-standing impacts on people.

This is why we need to ensure we get the right policy and legal frameworks in place.

Therefore, as Minister for Public Health and Women's Health, I am pleased to launch the Scottish Government's collection of consultations on burial, inspection, funeral director licensing, and alkaline hydrolysis (an alternative to burial and cremation). These consultations seek views on the Scottish Government's proposals for regulations for all four of these topics, which are to be made under the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act').

The 2016 Act fulfils our commitment to implement recommendations made by the Burial and Cremation Review Group (2007), the [Infant Cremation Commission](#) (2014) and the [National Cremation Investigation](#) (2016). The regulation proposals set out in the consultations on burial, inspection and funeral director licensing are key to realising the necessary detail, protection and processes envisaged by the 2016 Act. With your help, we can ensure the right policy and legal frameworks are in place. We can ensure that regulation is fair and proportionate and achieves 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. In this way, we can provide everyone with greater confidence in the funeral sector in Scotland and promote continual improvement.

We are also taking this opportunity to attain public views on alkaline hydrolysis. When consulting on the 2016 Act we were aware that alternative methods of body disposal, which could sit alongside burial and cremation, were in development. Responses to the Bill consultation showed there was public support for the introduction of new, environmentally friendly alternatives in Scotland. This included alkaline hydrolysis which is already in use in some countries including Ireland, Canada and the USA.

The [Cremation \(Scotland\) Regulations 2019](#) updated how cremation is regulated and introduced revised and updated application forms and registers. It also set out the procedure for the handling of ashes. It is proposed that similar statutory requirements will apply to alkaline hydrolysis.

It is important that we ensure that regulations for any new methods are fit for purpose. So this consultation sets out the ways in which we propose alkaline hydrolysis should be governed and the safeguards which we consider should be put in place to help ensure the high standards that the public can expect with burial and cremation will apply to alkaline hydrolysis. We have also set out areas where the

wider legislative framework is well established in order to set out a fuller picture of what providers will be required to comply with in order to offer alkaline hydrolysis.

Our proposal is that alkaline hydrolysis would be an additional choice for people interested in exploring possible alternatives. We are not suggesting it replaces or displaces traditional methods in any way. It is a matter of choice for the individual and we absolutely recognise that many people will not consider it suitable for them or aligned with their beliefs.

Whilst many parts of the 2016 Act and associated regulations are already in place, I recognise that delays caused by the COVID-19 pandemic have impacted progress on the implementation of the remainder of the 2016 Act. I hope that the publication of these consultations demonstrates the progress made since then, working closely with the sector and other stakeholders, and the Scottish Government's continued commitment to developing these important regulations.

I am proud that Scotland is leading the way when it comes to funeral sector regulation. Scotland is the first UK nation to pursue a statutory regulatory regime for the funeral sector. In the Competition and Markets Authority's (CMA) [final report](#) on their funerals market investigation, they recognised Scotland's leadership in this area, and made recommendations to England, Northern Ireland and Wales to establish an inspection and registration regime, as a first step to the establishment of a broader regulatory regime for funeral services, "mirroring the approach taken in Scotland".

I appreciate we are seeking a wide variety of views from the public and from those working in the funeral sector in these consultations. I therefore invite you to respond to any or all of the consultations in this collection and thank you for taking the time to consider our proposals.

Your responses will help shape our next steps.

Jenni Minto MSP
Minister for Public Health and Women's Health

Responding to this Consultation

We are inviting responses to this consultation by 17 November 2023.

Please respond to this consultation using the Scottish Government's consultation hub, [Citizen Space](#). Access and respond to this consultation [online](#) here. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 17 November 2023.

If you are unable to respond using our consultation hub, please complete and return the [Respondent Information Form](#) to:

Burial & Cremation, Anatomy and Death Certification Team
Scottish Government
3 East
St Andrew's House
Edinburgh, EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond you will receive a copy of your response via email.

Following the closing date all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at burialandcremation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Introduction

1. The Burial and Cremation (Scotland) [Act 2016](#) ('the 2016 Act') received Royal Assent in April 2016. It provides a modern, comprehensive legislative framework for burial and cremation in Scotland. Many of the 2016 Act's provisions are rooted in recommendations made by the Infant Cremation [Commission](#), the National Cremation [Investigation](#) and the Burial and Cremation [Review Group](#).
2. The 2016 Act gives Scottish Ministers the power to, amongst other things, establish an inspection regime for burial authorities, cremation authorities and funeral directors and to set up a licensing scheme for funeral director businesses. Key to this is the development of regulations and codes of practice which will be fundamental in ensuring minimum standards of care of the deceased. To promote compliance with the legal requirements within these regulations and codes, Scottish Ministers can appoint inspectors under section 89 of the 2016 Act as Inspectors of Burial, Cremation and Funeral Directors ('Inspectors').
3. Scottish Ministers first appointed the Inspector of Crematoria in March 2015.¹ The Inspector was appointed under the Cremation (Scotland) Regulations 1935, which at that time was the most up-to-date legislation relating to cremation. In April 2019, following the implementation of the new 2016 Act, the Inspector of Crematoria's remit was widened to encompass the whole cremation process and was renamed 'Inspector of Cremation'.
4. The first Inspector of Funeral Directors was appointed in 2017 by Scottish Ministers (by virtue of section 89(1) of the 2016 Act) to review the funeral sector in Scotland, progressing recommendations of the [National Cremation Investigation](#) and fulfilling the recommendations the [Infant Cremation Commission](#).
5. In October 2020, the Inspector of Crematoria's remit was widened to encompass the entire funeral sector (subsuming the remit of the Inspector of Funeral Directors), and an additional Inspector was appointed. From that time, there has been appointed a Senior Inspector of Burial, Cremation and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors.
6. Some parts of the 2016 Act have already been implemented. Notably, in 2019, Part 2 on cremation was commenced, following which the [Cremation \(Scotland\) Regulations 2019](#) were made. These regulations took forward recommendations from the Infant Cremation Commission and National Cremation Investigation, to implement improvements to the cremation process and the handling of ashes in Scotland.
7. The purpose of this consultation is to seek views on the implementation of regulations for burial in Scotland.

¹ This appointment occurred in January 2015, and thus preceded the 2016 Act. Regulation 2 of the 1935 Regulations (made under the 1902 Act) required every crematoria to be "open to inspection at any reasonable time by any person appointed for that purpose by the Secretary of State or by the Department". The 1902 Act was repealed by the 2016 Act.

8. This consultation is being published as part of a collection of consultations relating to the content of various sets of regulations that will be made under sections of the 2016 Act which have not yet been implemented. They are:
 - Inspection regulations
 - Licensing regulations (for funeral directors)
 - Alkaline Hydrolysis (an alternative to burial or cremation)
9. All consultations in this collection will be available on the [collection page](#) on the Scottish Government Citizen Space website.
10. You are welcome to comment on all parts of this consultation or select only the parts and questions most relevant to you.

Burial regulations

11. The Scottish Government is committed to modernising the law on burial in Scotland. Prior to the Burial and Cremation (Scotland) Act 2016, the legislation around burial had not been substantially revised or amended since the nineteenth century. The [Burial Grounds \(Scotland\) Act 1855](#) applied only to burial grounds run by local authorities, although it is understood that many in the private sector complied with the legislation voluntarily.
12. The Burial and Cremation Review Group ('the Review Group'), established by the Scottish Government in 2005, published its [report and recommendations](#) in October 2007 ('the 2007 Report'). The Review Group recommended the repeal of all existing primary and secondary legislation in relation to burial and cremation applicable in Scotland, to be replaced by a single Act with powers to make appropriate subordinate legislation covering burial.
13. The report of the Review Group led to the 2016 Act which repealed the 1855 Act and replaced it with a comprehensive legislative framework for burial in Scotland. It also allows for the introduction of new processes, such as regulations for private burial, exhumation and the restoration of lairs to support the sustainability of burial. The 2016 Act creates consistency by requiring all burial authorities (defined in section 2 of the 2016 Act as "the person having responsibility for the management of the burial ground", which may include local authorities, private companies, community groups and faith groups) to comply with the 2016 Act and related regulations.
14. The Burial Regulations Working Group ('BRWG') established by the Scottish Government in 2016, made a number of initial recommendations relating to the management of burial grounds. After the pandemic the BRWG was re-formed in December 2021 with an updated and expanded membership list including representatives from:
 - local authority burial authorities,
 - private burial authorities,
 - funeral director businesses,
 - trade associations,
 - bereavement organisations,
 - memorial specialists,
 - historic environment and archaeological specialists,
 - Inspectors of Burial, Cremation and Funeral Directors, and
 - Scottish Government.
15. Minutes of the BRWG meetings are available at: [Burial Regulations Working Group - gov.scot \(www.gov.scot\)](#).
16. 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 BRWG. We invite views from the funeral sector and the wider public on the following areas:
 - 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.

Section 1 - Commencement of part 1 of the 2016 Act

17. The proposals set out in this paper will be achieved in part by bringing into force the sections on burial in Part 1 of the 2016 Act which have not already been commenced. Commencing these sections will, alongside the regulations described in this consultation, introduce a range of legal obligations for individuals and burial authorities.
18. Notably, commencement of sections 14 – 16 of the 2016 Act will bring an end to the sale of lair² 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-holder³ to apply to extend the right by subsequent 10 year periods.
19. It is proposed that burial authorities will be given a period of time in which they must take steps, if they have not already done so, to implement the changes to the duration of right of burial. This may include, for example, updating the lair certificate and/or other terms and conditions of sale, updating public information on websites and updating the register of rights of burial. Updating the register to record key dates will be important to keep track of when future burial rights fall to be extinguished.

Question 1 – What do you think is an appropriate timeframe for burial authorities to prepare for the changes to the sale of right of burial?

3 months

6 months

12 months

Another timeframe

Please give reasons for your answer.

Section 2 - Management of burial grounds

20. Burial authorities are responsible for all operational matters relating to management of their burial grounds. The Review Group, in the 2007 Report, highlighted the lack of regulations governing the management of burial grounds in Scotland and had particular concerns around burial grounds which had fallen into disrepair. It is intended that these regulations will create a broad and consistent framework for burial ground management in Scotland.
21. In England and Wales the Local Authorities' Cemetery Order 1977 (LACO) sets the general parameters for the operation of public burial grounds. The Scottish

² A lair is a Scottish term for a plot in a burial ground in which a person can be buried.

³ A lair right-holder is the person in whom the right of burial in the lair is vested. The lair right-holder has the right to be buried and to decide who else can be buried in the lair.

Government is aware of LACO but intends that the regulations in Scotland will be broader than LACO – applying to both local authority and non-local authority burial authorities.

Management Plans

22. 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.
23. 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.
24. Our 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.
25. 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. We propose 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.

Question 2 – Please provide any views you have on the proposed minimum content of the management plan, including whether any suggested content should be added to, or removed from, the plan.

26. It is proposed that burial authorities will be required to make their management plan available to view by Inspectors of Burial, Cremation and Funeral Directors (“the Inspectors”) and by members of the public. Burial authorities may choose to publish their management plan online for ease of accessibility. The management plan could be a useful reference document for members of the public if they have a particular interest or a complaint and wish to know more about how that burial authority handles such issues. Inspectors may also wish to view management plans to ensure they contain the required minimum information, to make an assessment on whether relevant burial grounds are being managed in accordance with the plan and to suggest improvements, if needed.

Question 3 – Who do you think should be able to inspect or view a management plan on request?

- Inspectors
- Scottish Government
- Members of the public
- Another burial authority
- Other parties
- No one – internal document only

Please give reasons for your answer.

27. It is proposed that burial authorities will be required to prepare a management plan within a set time period of these regulations coming into force. Thereafter, it is intended that burial authorities will be required to review their management plan annually and keep it updated as required. For comparison, when the Cremation (Scotland) Regulations came into force in 2019, cremation authorities had 6 months to prepare a cremation management plan. Cremation management plans must be reviewed every 12 months. We are seeking your views on what you think would be a reasonable time period to prepare a burial management plan and your views on the frequency of ongoing review.

Question 4 – What timeframe should burial authorities be given to put a management plan in place after the regulations come into force?

- 3 months
- 6 months
- 12 months
- Other
- Don't know

Please give reasons for your answer.

Question 5 – Do you think that burial authorities should be required to review the management plan annually?

Yes - it sounds right

No - it's too often

No - it's not often enough

Not sure

Please give reasons for your answer.

Maintenance, repair, embellishment, layout, access and conditions

28. The objective of the burial management regulations is to support burial authorities in the management of their burial grounds and to provide clarity around what actions burial authorities may take in certain circumstances.

29. In order for burial authorities to maintain their burial grounds, they will be granted powers to carry out any activities they deem necessary and appropriate for the proper management of their burial grounds, including powers to:

- carry out general maintenance and upkeep of the burial ground and all buildings and structures, walls, fences and other such erections (headstones and memorials are discussed separately).
- enclose, lay-out and embellish the burial ground as the burial authority considers necessary or appropriate.
- take steps to improve and maintain public access to, and within, the burial ground.
- carry out inspections, maintenance and repairs on headstones and memorials necessary to make them safe, subject to the conditions outlined below.
- impose such restrictions and conditions as the burial authority thinks necessary or appropriate in relation to the erection of a memorial, building or other structure.

30. It is understood that burial authorities already undertake many, if not all, of these tasks on a regular basis, however, consultation [responses](#) to the Burial and Cremation Bill (page 13) and engagement with burial authorities have indicated a preference for powers in relation to burial ground management to be set out in regulations to provide a legal basis for activity.

Question 6 – What is your view on the proposed list of powers (set out in the bullet points above) to be granted to burial authorities to enable them to manage and maintain their burial grounds to a safe standard?

It looks right

It does not look right

Some of these powers are unnecessary

Some powers are missing

Not sure

Please give reasons for your answer and provide any further comment.

Maintenance and repair of headstones and memorials

31. The person who owns a headstone or memorial (usually the lair right-holder) is responsible for its upkeep. However, many headstones have been abandoned over time, meaning that there is no known or identifiable lair right-holder.
32. Burial authorities have a duty of care and statutory health and safety obligations to staff working in their burial grounds and to members of the public who are visiting under The Health and Safety at Work etc. Act 1974 (as amended) (HSWA1974) and the Occupier's Liability (Scotland) Act 1960. It is understood that many burial authorities already have in place an ongoing memorial inspection programme to identify and rectify potential dangers within their burial grounds. In 2019, the Scottish Government published burial ground memorial safety [guidance](#) which supports local authorities' own maintenance and repair procedures for making memorials safe and providing a safe environment in burial grounds. Although the guidance is targeted at local authorities, private burial authorities can also use the guidance to assist their ongoing management of burial grounds under their control. It includes advice and suggestions around:
- Memorial inspection, such as – visual inspection, physical inspection and re-inspection
 - Recording and communicating
 - Methods of making safe
 - Future proofing
33. Burial authorities have indicated a preference for powers to maintain lairs and address unsafe, and damaged memorials to be set out in regulations (rather than guidance) to provide a stronger legal framework. The intention is that regulations will enable burial authorities to:
- carry out memorial inspections
 - take steps to make headstones and memorials safe, including altering the position of any headstone, memorial or other surface fitting on a lair.
 - levelling the surface of a lair to that of the adjoining ground
 - removing or altering the positions of any kerbs or railings on a lair
 - removing or repositioning any flowering or other plants
34. However, this will be subject to the conditions set out below.

Existing legislative requirements

35. These regulations do not negate burial authorities' obligations under existing legislation such as the Ancient Monuments and Archaeological Areas [Act 1979](#) in relation to scheduled monuments. It is a criminal offence to carry out unauthorised works, or to allow unauthorised works to be carried out, on a scheduled monument.

Lair right-holder notification

36. It is recognised that failure to suitably advise lair right-holders of corrective action to a lair or memorial may easily cause further distress. In order to mitigate this it

is proposed that regulations will require burial authorities to notify lair right-holders of the need to take steps to maintain lairs and to make headstones safe.

37. Where lair right-holders are 'known' (or at least some form of contact details are available) and the danger is not imminent (discussed further below), it is intended that regulations will require notification to be given to the lair right-holder in advance of any lair maintenance or corrective action to the headstone or memorial. It is proposed that notice should be sent by post to the last known home address of the lair right-holder and/or by email, depending on the contact details held.

38. For headstones and memorials, the notice should:

- explain that the headstone has failed an inspection
- request that the lair right-holder instruct repairs
- specify a deadline for the lair right-holder to take corrective action by
- set out what the burial authority will do if action is not taken

39. If the burial authority receives no response by the specified date, or the lair right-holder indicates that they will not instruct the repairs, then the burial authority can take steps to make the memorial safe, or to repair it, if they choose.

40. For other lair maintenance (e.g. levelling surface, altering position of plants, railings etc.) the notice should:

- notify the lair right-holder what lair maintenance tasks are required
- specify the date(s) on which the maintenance tasks will be undertaken by the burial authority.

Question 7 – where a lair right-holder is 'known' (or at least some form of contact details are held), and the danger is not imminent, do you think that regulations should require a burial authority to notify the lair right-holder prior to taking corrective action to a lair, headstone or memorial?

Yes

No

Not sure

Please give reasons for your answer.

Question 8 – If you answered 'yes' to question 7, how long should the lair right-holder be given to carry out necessary repairs to a headstone or memorial before a burial authority takes corrective action to make the memorial safe?

1 month

2 months

3 months

6 months

Other

Please give reasons for your answer.

41. For some lairs, it is recognised that notification will be more difficult. It is therefore proposed that, where burial authorities do not have up to date contact details for lair right-holders, they will be able to meet the intended notification requirements by publicising their intention to ensure a headstone or other memorial is made safe. This could be done in a variety of different ways, for example, via social media, local press, public noticeboards etc.

Question 9 – Where lair right-holders are unknown (contact details are outdated), please provide views on the most appropriate way to publicise the intention to carry out inspections and potential corrective action to make headstones and memorials safe.

Question 10 – In relation to Question 9, how long should burial authorities be required to publicise their intentions, prior to taking corrective action?

- 1 month
- 2 months
- 3 months
- 6 months
- Other
- Don't know

Please explain your reason for choosing this timeframe.

Memorials requiring urgent attention

42. If a headstone or memorial requires urgent action to make it safe, i.e. it presents an immediate danger to visitors or staff who work in the burial ground, it is proposed that regulations will enable burial authorities to do so prior to formal notification and consultation with lair right-holders.

Question 11 – Please provide any views you have in relation to headstones or other memorials requiring urgent attention.

Methods of making safe

43. Whilst it is intended that regulations will grant powers to burial authorities to take action to make memorials safe, it is not proposed that the regulations will specify how. This will be at the discretion of each burial authority who will be expected to have regard to existing guidance and any future burial code of practice issued by the Scottish Government.

44. We do not intend to require burial authorities to repair, conserve and restore headstones and memorials, beyond making them safe. Although any repair, conservation or restoration would have a positive impact on burial grounds in general, restoration would incur a significant financial outlay for burial authorities

which they may not be able to viably fund. These concerns were raised in the consultation and financial memorandum to the Burial and Cremation Bill in 2015.

45. We recognise that the preservation of cultural and heritage aspects of burial grounds is important and that is why considerations in relation to historical, scheduled⁴ and listed buildings and monuments are set out in the burial ground memorial safety guidance at [paragraphs 87-102](#).
46. The abandonment and subsequent disrepair of headstones is expected to improve over time once sections 12, 14 and 19 of the 2016 Act are commenced. It is anticipated that the changes to the duration of the right of burial and the right to erect a headstone will lead to more accurate records of lair right-holders, held by burial authorities, and that in turn will lead to greater accountability for maintenance.

Staff training

47. It is not intended that regulations will specify the education and training requirements for burial authority staff, except a requirement that the burial authority ensure that all staff are adequately trained in the use of any equipment they operate when performing their duties.
48. Whilst every member of staff, including managers, should be trained to the appropriate standard for their role and undertake Continuing Professional Development (CPD) and, whilst it is desirable to require staff to have successfully completed training, it is proposed that this will be set out in guidance or a future burial code of practice, rather than in regulation.
49. It is intended to provide in regulations that each burial authority is required to maintain an up-to-date record of all training undertaken by staff. This will allow Inspectors to form a view as to levels of staff training and whether a burial authority is in compliance with their duty to ensure that all staff are adequately trained in the use of any equipment they operate.

Question 12 – Please provide any comments you have on the proposed training requirements and the keeping of training records for burial authority staff.

Faith designation

50. It is understood that some 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 to engage with local faith communities to determine whether designated areas are required.

Question 13 – Please share your views on the designation of parts of a burial ground for different faiths.

⁴ [What is Scheduling? | Historic Environment Scotland | History](#)

Section 3 - Burial Application and Register

51. There is currently no standard application form for applying for burial in Scotland. Each burial authority uses a form of their own design and with differing information requirements. The intention is to create standard burial application forms by making regulations under section 8 of the 2016 Act. The standard burial application forms are to be statutory and used by all burial authorities in Scotland.

Application Forms

52. It is proposed that regulations will largely replicate the cremation application form categories and specify seven burial application forms being:

- Application for the burial of an adult, child or ashes
- Application for the burial of a stillborn baby
- Application for burial following a pregnancy loss
- Application for burial (by a health authority or body – shared or individual burial) following a pregnancy loss
- Application for the burial of an adult or child by a local authority where they are making arrangements under section 87 of the 2016 Act. This occurs when no other arrangements are being made for burial of the deceased.
- Application for the burial of body parts following a hospital arranged post mortem examination or whole body/body parts donated for anatomical examination
- Application for the burial of body parts donated in Scotland for anatomical examination or teaching before the commencement of the Anatomy Act 1984 (as amended by the Human Tissue (Scotland) Act 2006)

53. A summary of the information which it is proposed will be collected in each application form is set out below. This has been informed by the views of burial authorities and current examples of burial application forms.

Application for the burial of an adult, child or ashes
<ul style="list-style-type: none">• burial ground details: name and address• lair details: whether it is an existing lair or new lair. If existing lair, then the section and lair number• the type of burial: body or ashes• the applicant's details: full name, address, contact details and relationship to the deceased.• the deceased: full name, date of birth, date of death, last known address.• the coffin/casket weight (kg) and external measurements (overall length and width at shoulder in cm)• the funeral director details (if using) including: name of representative, organisation, address and signature declaring that the funeral director knows no reason why the burial cannot take place.• applicant declaration that they are, or will be, the lair right-holder or that written consent from the lair right-holder has been obtained (to be evidenced)

- applicant declaration that the information provided in the application form is, to the best of the applicants knowledge and belief, true and that they are entitled to apply for the burial.
- burial authority authorisation to carry out the burial: name, date, position and signature of representative.

Application for the burial of a stillborn baby

- burial ground details: name and address
- lair details: whether it is an existing lair or new lair. If existing lair, then the section and lair number.
- the applicant's details: full name, address, contact details.
- date of delivery, forename (if given), surname, sex of baby
- the unique identification number (as assigned by the health body and entered on the register of pregnancy loss)
- name, address and postcode of the baby's mother
- name of father or other parent
- applicant declaration that they are, or will be, the lair right-holder or that written consent from the lair right-holder has been obtained (to be evidenced)
- applicant declaration that the information provided in the application form is, to the best of the applicants knowledge and belief, true and that they are entitled to apply for the burial.
- funeral director details (if using) including: name of representative, organisation, address and signature declaring that the funeral director knows no reason why the burial cannot take place
- burial authority authorisation to carry out the burial: name, date position and signature of representative

Application for burial following a pregnancy loss

- burial ground details: name and address
- lair details: whether it is an existing lair or new lair. If existing lair, then the section and lair number.
- the applicant's details: full name, address, contact details.
- date of pregnancy loss, forename (if given), surname/ family name.
- the unique identification number (as assigned by the health body and entered on the register of pregnancy loss)
- name, address and postcode of the woman who experienced the pregnancy loss (if different from the applicant)
- applicant declaration that they are, or will be, the lair right-holder or that written consent from the lair right-holder has been obtained (to be evidenced)
- applicant declaration that the information provided in the application form is, to the best of the applicants knowledge and belief, true and that they are entitled to apply for the burial.
- funeral director details (if using) including: name of representative, organisation, address and signature declaring that the funeral director knows no reason why the burial cannot take place
- burial authority authorisation to carry out the burial: name, date position and signature of representative

Application for burial of pregnancy loss by a health authority or body – shared or individual burial

- burial ground details: name and address.
- lair details: whether it is an existing lair or new lair. If existing lair, then the section and lair number.
- the applicant's details: full name and organisation that they represent.
- the unique identification number (as assigned by the health body and entered on the register of pregnancy loss)
- applicant declaration that paperwork relating to each of the pregnancy losses listed on the application form, is held by the health authority.
- applicant declaration that the information provided in the application form is, to the best of the applicants knowledge and belief, true and that authorisation for the disposal has been obtained, in accordance with Part 3 of the Burial and Cremation (Scotland) Act 2016
- burial authority authorisation to carry out the burial: name, date position and signature of representative

Application for burial of adult or child – by local authority

- burial ground details: name and address.
- local authority representative: position, full name, local authority, business address, contact details, burial ground at which burial will take place.
- the deceased: full name, date of birth, date of death, last known address, religion of deceased (if known), place of death (if known) name of hospital or practice where the doctor certified the death
- the coffin/casket weight (kg) and external measurements (overall length and width at shoulder in cm)
- the funeral director details (if using) including: name of representative, organisation, address and signature declaring that the funeral director knows no reason why the burial cannot take place.
- applicant declaration that the information provided in the application form is, to the best of the applicants knowledge and belief, true and that they are entitled to apply for the burial.
- burial authority authorisation to carry out the burial: name, date position and signature of representative.

Application for burial of body parts following a hospital arranged post mortem examination or whole body/body parts donated for anatomical examination

- burial ground details: name and address
- the applicant's details (specifying the organisation they represent e.g. university or hospital) and declaration of right to apply for burial
- in cases of whole body burial, details of the deceased full name, date of birth, date of death, last known address.
- funeral director details (if using) including: name of representative, organisation, address and signature (declaring that the funeral director knows no reason why the burial cannot take place)
- burial authority authorisation to carry out the burial (name, date position and signature of representative)

Application for burial of body parts donated in Scotland for anatomical examination or teaching before the commencement of the Anatomy Act 1984 (as amended by the Human Tissue (Scotland) Act 2006 (14 February 1988

- burial ground details: name and address
- the applicant's details (specifying the organisation they represent) and declaration of right to apply for burial
- information about the body parts – anatomy reference number and parts for burial
- applicant declaration of right to apply for burial
- funeral director details (if using) including: name of representative, organisation, address and signature (declaring that the funeral director knows no reason why the burial cannot take place)
- burial authority authorisation to carry out the burial (name, date position and signature of representative)

Question 14 – Please share your view on the proposed information to be collected in the burial application forms.

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give reasons for your answer.

Accompanying documentation by way of evidence

54. It is proposed that each burial application form will require to be accompanied by certain documentation or evidence in order to confirm the identity of the deceased and other formalities prior to the burial taking place. In particular:

Application for the burial of an adult or child⁵

- A [Certificate](#) of Registration of Death (Form 14)⁶.
- A lair certificate.⁷

For deaths outwith Scotland (but in the UK):

- If the deceased died in another part of the UK but is to be buried in Scotland, as is currently the case, an equivalent Certificate of Registration of Death from the relevant UK nation is required to accompany the application.

⁵ Burial of ashes is discussed below.

⁶ Form 14 is issued under section 27(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965. This confirms the identity of the deceased and the certifying doctor and contains information about any hazards on the body.

⁷ This confirms the identity of the lair right-holder. This will only be required if the rights to the lair have already been purchased in advance – such as an existing family lair. If the applicant for the burial is not the lair right-holder, then written permission from the lair right-holder will also be necessary.

- In addition, permission from the Coroner to move the body out of the country of death.

For deaths abroad:

- If the deceased died abroad and is to be repatriated to Scotland for burial, as is currently the case, a [Form X](#) (Certificate declaring documentation to be in order) from Healthcare Improvement Scotland (HIS) is required.

Application for the burial of a stillborn baby

- Certificate of Registration of [Stillbirth](#) (Form 8)⁸.
- A lair certificate.

Application for burial following a pregnancy loss

- Medical certificate of pregnancy loss
or;
- Health authority/medical practitioner confirmation that the pregnancy has ended
and;
- A lair certificate.

Application for burial of pregnancy loss by health authority or body – shared or individual burial

- No accompanying documentation required.

Application for burial of adult or child – by local authority

- A [Certificate](#) of Registration of Death (Form 14)

Application for burial of body parts following a hospital post mortem examination

- A [Certificate](#) of Registration of Death (Form 14)

⁸ Form 8 is issued under section 21(4) of the 1965 Act. This confirms the identity of the stillborn baby and the certifying doctor/midwife and confirms information about any hazards on the body.

and;

- A Certificate of authorisation for disposal of body parts following a post mortem examination or anatomical examination ([Form N](#))⁹; containing the information specified in that form in relation to “Post-Mortem Examination”.

Application for whole body or body parts which have been donated for, and undergone, anatomical examination

- A [Certificate](#) of Registration of Death (Form 14)

and;

- In the case of a whole body - a Certificate of authorisation for disposal of a body following anatomical examination ([Form M](#))¹⁰

or;

- In the case of body parts - a Certificate of authorisation for disposal of body parts following a post mortem examination or anatomical examination ([Form N](#))¹¹, containing the information specified in that form in relation to “Anatomical Examination”

Application for burial of body parts donated in Scotland for anatomical examination or teaching before the commencement of the Anatomy Act 1984 (as amended by the Human Tissue (Scotland) Act 2006 (14 February 1988

- No accompanying documentation required.

55. We propose to clearly set out a full list of the proposed required accompanying documents in a ‘forms checklist’ on each of the new application forms.

Question 15 - Please indicate if you think anything may be missing from the proposed accompanying documentation list, or should be removed from it.

Accompanying documentation for the burial of ashes

⁹ Form N issued under regulation 8 of The Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015

¹⁰ Form M issued under regulation 7(1)(a) of The Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015

¹¹ Form N issued under regulation 7(1)(b) of The Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015

56. In cases where applications for the burial of ashes are made, we are inviting views on what documents, if any, should be required to accompany an application to the burial authority. It is proposed that an application for burial of ashes should be accompanied by a cremation certificate (an original or copy certificate would be accepted). This is the certificate which is issued by a cremation authority after a cremation has taken place. For any future methods of body disposal which produce ashes or an ash-like substance, it is proposed that an equivalent of this certificate would suffice. If a cremation certificate cannot be produced, then it is proposed that any of the following would be sufficient:

- An extract copy of the cremation register entry (through contacting the cremation authority), or
- a Certificate of Registration of Death (Form 14) or equivalent, or
- an abbreviated copy of the full death entry made in The Statutory Register of Deaths (through contacting the National Records of Scotland)

57. It is understood that most burial authorities already ask for a cremation certificate before burying ashes, however, some burial authorities will go ahead without one, if it cannot be produced. It is considered reasonable to ask an applicant to submit relevant documentation in order to evidence the identity of the ashes.

Question 16 – Do you think that an application for the burial of ashes in a burial ground should be accompanied by a cremation certificate, where available?

Yes

No

Not sure

Please give a reason for your answer.

Question 17 - Where a cremation certificate is not available, and it is not possible to obtain a copy, do you think that an applicant should be able to submit one of the following instead:

- **an extract copy of the cremation register entry or;**
- **a Certificate of Registration of Death (Form 14) or equivalent or;**
- **an abbreviated copy of the full death entry made in The Statutory Register of Deaths**

Yes

No

Not sure

Please give a reason for your answer.

Burial register

58. There is currently no standardised burial register used by burial authorities in Scotland. Each burial authority uses a register of their own design and with differing information recorded. The intention is for regulations to commence section 10 of the 2016 Act which will require each burial authority to maintain a register containing standardised information to be recorded about each burial.

This will ensure that all categories of burial can be accurately and fully recorded across Scotland in a consistent manner. Section 11 will also be brought into force, which makes it an offence for a burial authority to fail to prepare or maintain a burial register.

59. It is intended that regulations will require each burial authority to keep the register current and up to date and ensure that the information contained in it is accurate. It is proposed that the following minimum information is included in each burial record put into each burial register:

For all burials:

- Burial number/ reference
- Type of burial (adult/ child/ pregnancy loss/ stillbirth/ ashes/ body part)
- Date of burial
- Full name of deceased
- Location in burial ground
 - Section and lair number
 - Details of any other burials in the lair (name, date of burial)
 - Depth remaining at last burial
- Applicant details: full name, address, contact details and relationship to deceased
- Full name of lair right-holder
 - If the lair right-holder is now deceased, details of the new lair right-holder
- Funeral director (if used)

In addition, for adult or child:

- Date of birth
- Date of death
- Age at death
- Last known home address
- External measurements of coffin (overall length and width at shoulder in cm)

In addition, for stillborn baby:

- Name of parents
- Date of delivery
- The unique identification number (as assigned by the health body and entered on the register of pregnancy loss)

In addition, for pregnancy loss:

- Name of woman who experienced the pregnancy loss
- The unique identification number (as assigned by the health body and entered on the register of pregnancy loss)
- Date pregnancy loss occurred (for applications by individuals only, not health body)

In addition, for body part(s) following post-mortem or anatomical examination:

- Which body part(s)

Question 18 - Please share your view on the proposed information to be collected in the burial register entries.

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give a reason for your answer.

Section 4 - Private burial

60. Private burial, also sometimes known as home burial, is defined in the 2016 Act as the burial of human remains in a place other than a recognised burial ground. Prior to the 2016 Act, the requirements of private burial were not defined in Scots law and practices were inconsistent across the country. It is understood that, in practice, it is often local authorities that are contacted with queries about private burial. In some cases, a local authority might carry out a feasibility study of the land proposed for burial to determine if the deceased can be safely buried there. The local authority may sometimes provide other relevant services if requested (for a fee), such as gravediggers, but again this is not consistent across Scotland.

61. The Scottish Government are now developing proposals to commence, amongst others, sections 22 and 23 of the 2016 Act and to bring in regulations which will, for the first time, provide a legislative framework for private burial in Scotland. This will seek to introduce a standard process which will require that an application for a private burial be made to the relevant local authority and must be approved before such a burial can take place. Regulations are intended to set out the process for dealing with private burial applications, as well as the information that is to be recorded in the private burial registers that the 2016 Act requires local authorities to prepare and maintain.

Where the regulations will not apply

62. It is proposed that private burial regulations will not apply to the private burial of human remains that have been cremated or the private burial of a pregnancy loss as defined in section 22(6) and (7) of the 2016 Act.

Private burial process

Initial contact

63. As a first step in the private burial process, it is currently envisaged that a person would contact the relevant local authority. The local authority would then provide the interested party with the application form together with Scottish Government guidance on private burial. The guidance will set out important factors and considerations that interested parties should take into account when deciding if private burial is the right option for them.

64. If the person decides to go ahead with an application for private burial, it is intended that they will become 'the applicant' and will be required to complete a private burial application form. Applications will require to be made to the local authority for the place in which the burial site will be located.

Written consent from landowner

65. As part of the application process it is proposed that, if the applicant is not the owner of the land where the burial is intended to be located, they will be responsible for demonstrating that they have written consent from the landowner and, if applicable, any other appropriate consents from relevant parties e.g. any standard security holder. It may be that a standard security holder will impose, as a condition of their loan to the landowner, that private burial is not permitted or might invalidate the mortgage contract. It is intended that written consent from the landowner and standard security holder will be required to be submitted alongside the application form.

Third party agencies and existing obligations

66. As part of the application process it is proposed that applicants will be required to carry out a number of checks as to their proposed private burial site to ensure it complies with public health, pollution and planning laws and guidelines. Scottish Government guidance will be available to assist applicants understand what these obligations are. Depending on the circumstances, this may include:

- Consideration of the potential impact on groundwater in line with guidelines from The Scottish Environmental Protection Agency (SEPA).
- Consideration of the potential impact on water and sewerage infrastructure and assets in line with Scottish Water's access and stand-off distances.
- Consideration of the potential impact on gas pipe lines and electrical cables in line with advice from Distribution Network Operators (DNO).
- Consideration of the impact on water sources used for drinking water purposes. For private water supplies, this should be in consultation with the relevant local authority environmental health department.
- Archaeological assessment in consultation with local authority archaeology services or Historic Environment Scotland ('HES').
- Consideration of planning aspects in consultation with the relevant local authority planning department.
- Consideration of public health (e.g. risk of infectious disease, nuisance etc.) in consultation with the relevant local authority environmental health department.

67. Applicants should use the guidance to assist them to undertake the relevant checks and should contact the third party agencies or local authority departments for further information and advice. It is proposed that applicants will be required to submit evidence, alongside their application, to demonstrate the steps that they have taken to ensure that the proposed private burial site is in compliance with third party rules and guidelines. Such evidence may be, for example, written correspondence, utility site maps etc.

68. The local authority will use the information provided by the applicant to determine the feasibility of the private burial site and will have the ability to request any further information it requires in order to determine the application.

Question 19 – What is your view on the proposed list of organisations that an applicant should engage with to ensure they are complying with local requirements?

The list is complete

The list is missing some organisations

The list contains unnecessary organisations

Not sure

Please give a reason for your answer.

Question 20 – Do you think an applicant should be required to submit evidence, alongside the application, to demonstrate that the proposed burial site is in line with third party agency and local authority rules and guidelines?

Yes

No

Not sure

Please give a reason for your answer.

Private Burial Application Form Content

69. It is intended that the regulations will provide for a new application form which will be used by anyone wishing to apply for a private burial in Scotland.

70. It is proposed that the new application form will gather the following information:

- The applicant's name, address, contact details and relationship to the deceased
- The deceased's name, date of birth and date of death (or date of delivery for stillborn baby)
- The coffin/ casket details including external measurements (overall length and width at shoulder in cm) and weight (in kg)
- Proposed address and description and/or coordinates of the proposed burial site
- Consent from the land owner and standard security holder (if applicable)
- Confirmation that the applicant has undertaken third party agency and local authority checks (e.g. groundwater, gas and electricity, planning permission etc)
- The funeral director details (if using) including: name of representative, organisation, address and signature
- Confirmation that the proposed site has been assessed as feasible by the local authority to determine suitability of location and achievable depth
- The name of the local authority representative authorising the burial and the date of authorisation and signature

71. Additional accompanying documentation will be required to identify the deceased. These will be set out clearly in a 'forms checklist' on the application form and will be the same as the accompanying documentation required for a burial in a burial ground (e.g. Certificate of Registration of Death – Form 14) as described in the table above at paragraph 54, with the exception of a lair certificate.

Question 21 – What is your view on the proposed information to be collected in the private burial application form?

Some of this is unnecessary information
It looks right
There is some information missing
Not sure

Please give a reason for your answer.

Local authority feasibility study

72. It is proposed that once a local authority has received the private burial application, the local authority should arrange with the applicant to visit the site and complete a feasibility study to determine the suitability of the burial site, achievable depth and to carry out a risk-assessment. The local authority may charge a fee for this. The results of the feasibility report should be documented on the section of the application form which the local authority completes. This result may be either:

- Feasible
- Potentially feasible
- Not feasible at this time

73. The local authority representative will make comments on the result and will date and sign the application.

Local authority authorisation

74. Considering the application as a whole, including the results of the feasibility study, it is proposed that the local authority will have the option to either:

- refuse the private burial
- grant the private burial
- grant the private burial with conditions.

75. The local authority may also request any further information it requires to determine the application.

76. It is considered reasonable that applicants should have an indication of how long it will take to receive a decision from the local authority, especially as they will wish to progress with funeral arrangements. It is intended that regulations should require local authorities to make a decision on private burial within a set timeframe.

Question 22 – what do you think is a reasonable time limit for local authorities to give decisions on private burial applications?

- 1 week
- 2 weeks
- 3 weeks
- 1 month
- Other
- Not sure

Please give a reason for your answer.

Advance application

77. Regulations may enable an application to be made for a private burial of a person who, at the time of applying is still alive (i.e. apply for your own private burial).

78. The benefit of doing an advanced application is that some of the planning and organisation could be done in advance. A private burial application granted in advance by the local authority – with conditions attached – would recognise the preparatory work undertaken in advance of death, which may take some time to complete and could potentially lessen the burden on family members who will be arranging the funeral.

79. Whilst there are benefits in making arrangements and preparations in advance of death, there are also a number of important drawbacks to this:

- In the time between the advance application being made and death, a number of things could change (e.g. land ownership) so authorisation for private burial from a local authority could only be given with strict conditions.
- If the application is made many years in advance of death, some of the preparatory work may need to be repeated. For example, a new feasibility study may be required; the proposed burial plot may no longer be viable, e.g. the land may have become prone to flooding, erosion etc.
- Setting time limits as conditions on applications is not considered appropriate as no one knows exactly when they will die.
- An application being granted in advance may give a false sense of security to the person wishing to be privately buried
- An advance application could be confusing for families arranging the funeral as they may be under the impression that the private burial has already been granted and may not appreciate the extra steps required after the death, such as: submitting the Certificate of Registration of Death, obtaining written permission of current landowner (or heir), repeating the feasibility study if required, consulting SG guidance on private burial which may have changed in that time
- There would need to be different application forms depending on the circumstances. For example, an application form for the private burial of someone who has already died will necessarily have to be different from an advanced application. This could be confusing.
- It is likely there would need to be a third application form (or at least a second part to the advance application) whereby the person arranging the funeral

would give details such as – date and time of burial, size and weight of coffin, funeral director details (if using) etc.

80. Due to the various complex factors set out above, the Scottish Government's proposal is that there should **not be** an option to apply for a private burial in advance of a person's death. Instead Scottish Government guidance on private burial should be used to make preliminary preparations, if so desired.

Question 23 – Please share your views on the Scottish Government's proposal not to allow for an application for private burial to be made for a person who is not yet deceased.

Restrictions

81. Regulations can make provision for the size of any area of land on which private burials may be carried out, the maximum number of private burials and the minimum distance between lairs on the land. The current intention is not to set out these restrictions in regulations. There are wide variations in potential burial sites and these should be considered in the context of the individual circumstances and other relevant factors. A proposal for a private burial in a small city garden surrounded by close neighbours with the intention to create an elaborate memorial may be decided differently to a private burial in a similar sized rural garden with no neighbours and marked with a small headstone. Rejecting a private burial based on the size of the land alone may be considered arbitrary. For these reasons our proposal is that each private burial will be considered on a case-by-case basis.

Question 24 – Do you think private burial should be considered on a case-by-case basis?

Yes

No – restrictions should be included in the regulations

Not sure

Please give a reason for your answer.

Charging of fees by local authorities

82. Section 22 of the 2016 Act provides a regulation making power in respect of private burial, which can be used to make provision for or in connection with local authorities charging fees for processing applications. We propose that local authorities should have the power to charge fees for administering private burial applications.

Question 25 – Do you think that regulations should give local authorities the power to charge fees for their role in private burial applications?

Yes

No

Not sure

Question 26 – If you answered “yes” to question 25, what services should local authorities be able to charge for in relation to private burial?

Register of Private Burial

83. Regulations will prescribe the information to be contained in a Register of Private Burial which will be held by each local authority indefinitely to ensure consistent information is recorded across the country. It is suggested that the following information is contained in the register:

- Private burial number/ reference
- Type of burial (adult/ child/ stillbirth)
- Date of burial
- Full name of deceased
- Date of death of deceased (or date of delivery for stillborn baby)
- Age at death (for adult or child only)
- Last known address of deceased (for adult or child only)
- Address and postcode of burial site
- Location of burial site within the perimeter of the land
- Applicant details: full name, address, contact details and relationship to deceased
- Full name of landowner
- Funeral director (if using one)

Question 27 – What is your view on the proposed information to be collected in the Register of Private Burial?

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give a reason for your answer.

Question 28 – Please provide any comments on an appropriate way to record the precise location of the private burial site (e.g. coordinates or description).

Appeal of private burial decisions

84. It is suggested that an appeal could be made against a local authority’s decision to:

- reject the private burial application
- approve the private burial
- approve the private burial with conditions

85. The appeal could be made by the person who made the original application, as well as any other person who would have been entitled to make arrangements for the remains to be buried or cremated.
86. It is proposed that appeals should be made to the Sheriff Court within 21 days of the decision of the local authority. It will be up to the applicant to set out legitimate reasons for the appeal.
87. Consideration was given to the need for an initial internal review by the local authority prior to an appeal to the Sheriff Court. However, this was thought to be unnecessary as there will already be opportunities throughout the process – e.g. the feasibility study – where an applicant and local authority can address issues. It is thought unlikely that an internal review by the local authority would come to a different conclusion to the original decision. However, we are seeking your views on this point.
88. On appeal to the Sheriff Court, the Sheriff may decide to overturn the decision of the local authority, confirm the local authority's decision, or impose conditions.

Question 29 – Please provide any views on the proposed appeal process for private burial decisions made by local authorities.

Section 5 - Exhumation

89. Under Scots law¹² all human remains have 'the right of sepulchre'¹³ and to violate buried human remains deliberately is a criminal act under common law. However, there are a number of valid reasons why someone may wish to apply for human remains to be exhumed.
90. Exhumation is generally understood to be the process of intentionally removing human remains from their place of burial. The process in Scotland currently involves an application to the Sheriff Court for a warrant to disinter which is costly and complex.
91. The 2016 Act provides that Scottish Ministers can make regulations for exhumation. The intention is to remove exhumation from the court process in some circumstances, with the option for either Inspectors or such other persons, as may be specified by regulations, to decide on applications for exhumation. Where possible, the aim is to simplify the administrative process, reduce time and courts costs.

Categories of exhumation

92. Exhumation can broadly be split into 7 categories. Exhumation from:

¹² Logic J 1992 'Scots Law' in The Law and Burial Archaeology, Institute of Field Archaeologists Technical Paper No.11

¹³ The right of sepulchre is a common law doctrine that human remains must be left undisturbed in their place of deposition.

- A. a burial ground: at the request of relatives of the deceased
- B. a burial ground: at the request of the burial authority
- C. a burial ground: for the purpose of restoration and reuse of lairs
- D. outwith a burial ground: known private burial (home burial)
- E. outwith a burial ground: discovered human remains (recent)
- F. outwith a burial ground: discovered human remains (archaeological)
- G. outwith a burial ground: known or likely human remains on land to be developed

93. Taking into account the views of the BRWG, it is proposed that Inspectors of Burial, Cremation and Funeral Directors are an appropriate authority to make decisions on exhumation applications for A, B and D above. Inspectors will have greater knowledge and experience of burial, and therefore exhumation, than Scottish Ministers or Scottish Government officials.
94. However, Inspectors are unlikely to have the capacity, authority or knowledge and expertise to authorise exhumations of discovered human remains outwith burial grounds – whether recent or archaeological (categories E, F and G), and it is therefore proposed that existing processes remain in place in these situations. Category C is dealt with in the regulations covering restoration and reuse.
95. Each of the categories of exhumation will now be described in more detail with proposals outlined.

A. Exhumation from a burial ground: at the request of relatives of the deceased

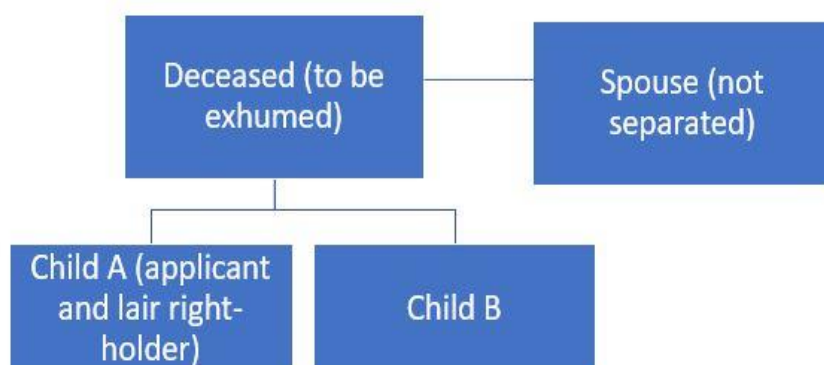
96. It is proposed that applications for exhumations of human remains from burial grounds may be made by the deceased's nearest relatives to cremate, repatriate or re-inter the deceased in a different location. The deceased's nearest relatives will be set out in a hierarchy, similar to the hierarchy in [sections 65](#) of the 2016 Act (in relation to burial and cremation arrangements on death). The relative who is making the application for the exhumation will be 'the applicant'.
97. The applicant may also be the lair right-holder, i.e. the person who has the exclusive right of burial in the lair¹⁴. However, if the applicant is **not** the lair right-holder, it is proposed that the applicant will be required to obtain the written consent of the lair right-holder as part of the application process.
98. If the applicant is a relative of the deceased, listed in the intended hierarchy, but is not the **nearest** relative, i.e. there are other relatives higher in the hierarchy or of equal rank, then it is proposed that they will need to obtain the written consent from the nearest surviving relative(s) of the deceased including relatives of the same degree of kinship, such as their siblings. This is in addition to the written consent of the lair right-holder.
99. The intention is that only adult relatives (in this context, meaning a person who is 16 years of age or over) will be eligible to apply for the exhumation or required to

¹⁴ The lair right-holder has the right to be buried and to decide who else can be buried in the lair.

give consent. The exception will be for parents under the age of 16 who will be able to apply for exhumation of their child.

100. Modern families take many different and often complex forms. It is intended that a relationship of the half-blood is to be treated as a relationship of the whole blood and the stepchild of an adult is to be treated as the child of the adult. Where a spouse is permanently separated or has been deserted, that spouse will be omitted from the hierarchy.
101. If the lair right-holder and/or nearest relative(s) cannot be traced then evidence of the applicant's attempts to consult with them will be considered by the Inspector when making a decision.
102. Two examples are set out below which aim to outline different exhumation scenarios and relevant consents.

Example 1: the applicant is a relative of the deceased and is the lair right-holder, but is not the nearest surviving relative



103. The deceased is buried in a burial ground. They had a surviving spouse and two surviving adult children (no other surviving relatives). Child A is the lair right-holder and applicant for the exhumation. As per the intended hierarchy based on [section 65](#) of the 2016 Act, the spouse is the nearest relative. The applicant obtains the signed consent of the spouse. Child B is a relative of the same degree of kinship as the applicant (sibling) so the applicant obtains the signed consent of Child B. Electronic signatures will be acceptable.

Question 30 – Where an application for exhumation from a burial ground is made by a relative of the deceased who is also the lair right-holder but is not the nearest relative, do you think the applicant should be required to obtain written consent from the nearest relative(s) and any relatives of the deceased who have the same degree of kinship as the applicant (e.g. the applicants siblings)?

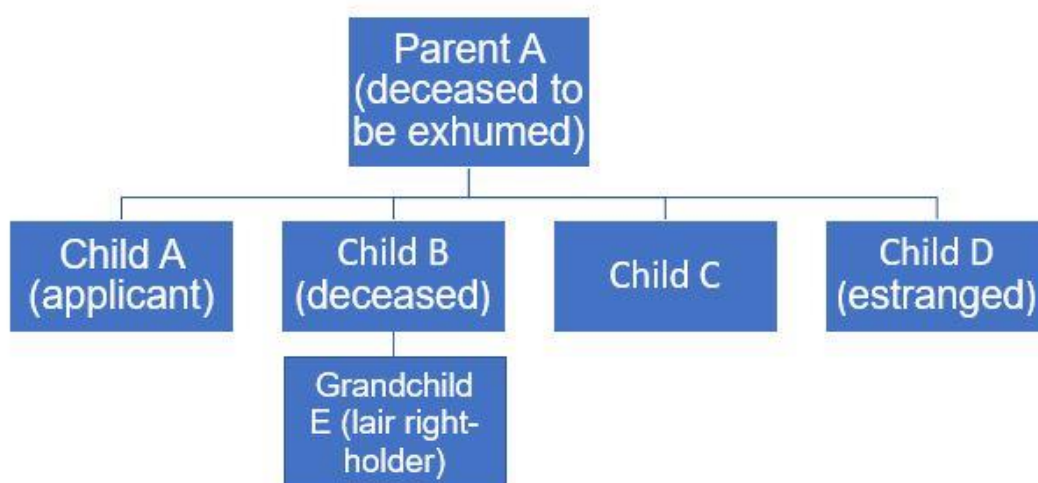
Yes

No

Not sure

Please give a reason for your answer.

Example 2: the applicant is not the lair right-holder, but is a nearest relative, ranked equally with siblings.



104. The deceased 'Parent A' was the parent of four children and is buried in a burial ground. As per the intended hierarchy, based on [section 65](#) of the 2016 Act the children are the deceased's nearest relatives. Child A wishes to exhume Parent A to move the remains to another burial ground. Child B died after Parent A and was the lair right-holder but this right transferred to Grandchild E on Child B's death. Grandchild E is now the lair right-holder. Child A has completed the application form and obtained written consent from Grandchild E (lair right-holder) and Child C (sibling). Child A has made various attempts to contact estranged Child D and submits evidence of doing so. It is proposed that in these circumstances, that an Inspector will take the evidence presented with the application into consideration when deciding whether to authorise the exhumation.

Question 31 – Where an application for exhumation is made by a nearest relative of the deceased but they are not the lair right-holder, should that relative be required to obtain the written consent of the lair right-holder and any relatives of the deceased who have the same degree of kinship as the applicant (e.g. the applicant's siblings)?

Yes

No

Not sure

Please give a reason for your answer.

B. Exhumation from a burial ground: at the request of the burial authority

105. Occasionally exhumations are required by burial authorities out of necessity, for example, due to operational concerns such as a falling wall or flooding which must be remedied. Currently, these applications are made to the Sheriff Court. It is proposed that regulations under section 27(1) of the 2016 Act will take this

process out of the Sheriff Court and enable such applications to be made to Inspectors.

106. It is proposed that burial authorities will be required to obtain the written consent from the lair right-holder prior to submitting the exhumation application to an Inspector. As good practice, the burial authority should also attempt to sensitively discuss the situation with other nearest relatives of the deceased, where known to allow them to raise any issues, for example, faith-based concerns. Consultation with nearest relatives beyond the lair right-holder will not, however, be a requirement of the regulations, as the burial authority may not know who the nearest relatives are. It is proposed that if the lair right-holder and/or nearest relatives object to the exhumation, the Inspector will take this into account when making a decision and balance this against the necessity of the exhumation.

Question 32 - Where an application for exhumation from a burial ground is made by a burial authority, from whom should written consent be obtained?

Lair right-holder
Nearest relatives
Other

Please give a reason for your answer.

Urgent exhumation

107. Occasionally there are instances where an exhumation will be required urgently to prevent delay to a funeral. This could be because a previous coffin in a lair was buried at a shallow depth and must be exhumed and reburied at a lower level to accommodate the new burial. This is a particular issue with previous infant burials.

108. When a lair is opened for a new burial there is a deal of urgency required in order to obtain permission to exhume a baby's coffin to allow the next burial to proceed. Some burial authorities are understood to have negotiated a fast-tracked petitioning system with the Sheriff Court to facilitate a warrant to disinter and re-inter babies' coffins found during lair preparations, thereby preventing delay to the funeral.

109. The intention is that exhumation regulations will provide for a fast-track procedure in these circumstances. An application can be marked as urgent for an Inspector's decision. Although the issue is mostly relevant to previous infant burials in the lair, we think it would be beneficial to extend the fast-track procedure to the discovery of shallow buried ashes and adult burials to prevent delays to funerals. Consent from the lair-right holder will be required. In contrast, where a family knows the lair cannot accommodate any further burials but wish to restore a lair for use, this will not fall under these exhumation regulations but instead under section 40 of the 2016 Act on reuse of lairs.

Question 33 – Please share any views you have on the proposed fast-tracked exhumation procedures?

Feasibility report

110. With the exception of urgent exhumations, above, it is proposed that all applications (by relatives and burial authorities) will require to be accompanied by a feasibility report, conducted in advance of the application by the relevant burial authority. Where the applicant for exhumation is a relative of the deceased, they will need to request the feasibility report from the relevant burial authority.
111. A feasibility report is important to check the condition of the coffin to determine if it is fit to exhume, preserving the dignity of the deceased, and to report on the presence of any other deceased in the lair. In addition, it is proposed that the feasibility study should include consideration of the following factors:
- Health and safety risk assessment, including public health risk, in consultation with the local authority Environmental Health Department
 - Archaeological assessment (if applicable). It is suggested that where remains are 100+ years old, archaeological assessment should always be required as part of a burial authority's feasibility study. Where remains are less than 100 years old, consultation with an archaeologist may still be required, for example, where:
 - burials are less than 100 years old but may disturb other historic remains if exhumed
 - designated assets, such as scheduled monuments, are present.¹⁵
 - Consultation with the Commonwealth War Graves Commission ('CWGC') (if applicable)
 - Any exhumation from a war grave must be done in consultation with the CWGC, regardless of whether the CWGC is the lair right-holder. This is because the CWGC can own and maintain headstones without owning the rights to the lair itself. All relevant consultation with the CWGC should be documented in the feasibility report.

Question 34 – Thinking about the proposed feasibility report factors set out above, which do you think should be included in a feasibility study for exhumation?

A check of the condition of the coffin to determine feasibility to exhume
Health and Safety Risk Assessment
Archaeological assessment (by local authority archaeologist or HES)
Consultation with the CWGC
Other
None of the above

Please provide any views on anything else you think should or should not be included in a feasibility report.

¹⁵ Some parts of Scotland's historic environment are protected through the process of 'designation' - identifying the most important parts of the built environment to recognise their significance and enhance their protection.

Time limit to carry out exhumation

112. If authorisation for exhumation from a burial ground is granted it is considered appropriate for a time limit to be attached in which the exhumation must take place. This is important so that any feasibility report is recent, registers can be updated appropriately and to ensure plans are in place for the reburial or cremation of the deceased.

Question 35 – Do you think there should be a time limit for carrying out an exhumation once authorisation has been given?

Yes

No

Not sure

Question 36 - If you answered yes to the previous question, what do you think the time-limit should be?

3 months

6 months

1 year

2 years

Other

Please give a reason for your answer and provide any other comments.

C. Exhumation from a burial ground: for the purpose of restoration and reuse of lairs

113. Where a burial authority seeks to carry out exhumations for the purpose of lair restoration for reuse (set out in more detail later in this consultation) it is proposed that the regulations for exhumation will not apply and an application to an Inspector will not be required.

114. This is because the process for lair restoration and the power for burial authorities to exhume in these circumstances is already set out in the 2016 Act. Sections 32 to 44 of the 2016 Act contains strict safeguards which burial authorities must adhere to before any exhumation can take place. An additional application to an inspector for authorisation for exhumation in this case, is considered to be overly burdensome. Moreover, it is likely that, if a burial authority decides to undertake a programme of lair restoration, then a number of exhumations will be required at the same time, for example to bring a full burial ground back into use. Individual applications would be resource intensive and impractical, especially when all other safeguards have already been met.

D. Exhumation from outside a burial ground: known private burial (home burial)

115. Although perhaps rare, there may be occasions where an exhumation of a known burial on private land, such as a small family burial ground, is requested. A burial may be 'known', for example, if a headstone marks the burial site or if the presence of the burial was identified during the sale of the property.

116. It is intended that an application for exhumation of a known burial from private land will be required to be made to Inspectors. It is proposed that such an application would be made in a similar way as the procedure for an exhumation from a burial ground. Each application would also require to be accompanied by a feasibility report conducted by the local authority, and again the exhumation decision would be made by an Inspector based on the individual circumstances.

Question 37 – Should requests for exhumation of known burials on private land be made to an Inspector of Burial, Cremation and Funeral Directors?

Yes

No

Not sure

Please give reasons for your answer and provide any further comment.

117. In relation to eligibility to apply for the exhumation of a private burial, it is proposed that this may be:

(a) at the request of relatives of the deceased (as per the intended hierarchy based on section 65 of the 2016 Act). The applicant may also be the landowner, but if not, consent from the landowner will be required.

Or;

(b) requested by subsequent landowners with no relationship to the deceased, for example, if they are planning a garden renovation.

118. However, (b) raises a number of difficult questions, including whether notifying the deceased's relatives should be required prior to exhumation. The landowner may not know who they are or have no contact details. It also raises questions over what arrangements should be made for the exhumed remains; who is responsible for the cost of exhumation, reburial or cremation. How do we ensure that those remains are treated with dignity and respect? We welcome your views.

Question 38 – Where the person applying for exhumation from private land is not related to the deceased (e.g. a new landowner) what arrangements should be made for the exhumed remains?

E. Exhumation from outside a burial ground: discovered human remains (recent)

119. Discovered human remains or 'chance finds' are reported to Police Scotland¹⁶ and the exhumation of the remains will generally follow the police investigation. Police Scotland have an agreed procedure for managing chance discoveries of human remains set out on their intranet. The police may consult with local

¹⁶ [The Treatment of Human Remains in Archaeology](#)

authority archaeologists to determine the age of the remains. Where remains are obviously recent, police will investigate in accordance with their standard procedure.

120. Section 27(4) of the 2016 Act makes it clear that the exhumation regulations cannot make provision which affects any procedure relating to the exhumation of human remains in connection with:

- the investigation of a crime that has been, or is suspected of having been, committed,
- criminal proceedings,
- investigations of deaths under the authority of the Lord Advocate, or
- inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

F. Exhumation from outside a burial ground: discovered human remains (archaeological)

121. As mentioned above, Police Scotland have an agreed procedure for managing chance discoveries and this includes the discovery of archaeological remains. Where bones are more than 100 years old, the Procurator Fiscal will make a decision on whether to investigate further or hand over the matter to the local authority archaeology service and HES.

122. HES have an operational policy paper on [The Treatment of Human Remains in Archaeology](#). It states the requirement to report findings to legal authorities prior to any further disturbance of the remains.

123. Inspectors are unlikely to have the knowledge and expertise to authorise exhumations of discovered archaeological human remains. It is therefore proposed that existing processes remain in place in these situations.

G. Exhumation from outside a burial ground: known or likely human remains on land to be developed

124. Where building development is underway near to a burial ground, there is a chance that human remains will be uncovered and this can be considered as part of the planning process. A planning consent may have conditions attached, such as requiring the developer to pay for any required exhumations and reinterments.

125. It is understood that, currently, developers sometimes apply to the Sheriff Court for a blanket exhumation order. If bodies are found, the developers will then speak to the local authority about arrangements for reinterment. It is intended that Inspectors will not have a role here. Existing procedures should remain in place.

Question 39 – Please share any views you have on exhumation of discovered human remains from outside a burial ground.

Register of Exhumation (in a burial ground)

126. It is proposed that regulations will be made under section 30(4) of the 2016 Act to make provision in relation to the exhumation registers that burial authorities will, in accordance with section 30(1) of the 2016 Act, be required to prepare and maintain for their burial grounds. It is intended that the regulations will prescribe the following minimum information to be recorded in the register:

- Burial number/ reference (from burial register)
- Type of interment (full body, ashes etc)
- Full name of deceased
- Date of birth
- Date of death
- The date the exhumation was authorised by the Inspector of Burial, Cremation and Funeral Directors
- Date of exhumation
- Detail of what happened to the remains following exhumation (e.g. cremation, reinterment, repatriation)
- Location in burial ground (pre-exhumation)
- Funeral director (if used)

Question 40 - What is your view on the proposed information to be collected by each burial authority in the Register of Exhumation relating to the exhumation of human remains carried out in a burial ground for which it is the burial authority?

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Please give a reason for your answer.

Register of Exhumation (private burial register)

127. It is proposed that regulations will be made under section 30(4) of the 2016 Act to make provision in relation to the exhumation registers that each local authority will, in accordance with section 30(2) of the 2016 Act, be required to prepare and maintain in relation to private burials authorised by that local authority under section 22(3) of the 2016 Act. It is intended that the regulations will prescribe the following minimum information to be recorded by each local authority in their register:

- Private burial/ reference number (if the burial is recorded in the Register of Private Burial)
- Full name of deceased (if known)
- Date of birth (if known)
- Date of death (if known)
- Type of interment (full body, ashes, body part etc)
- The date the exhumation was authorised by the Inspector of Burial, Cremation and Funeral Directors
- Date of exhumation

- Detail of what happened to the remains following exhumation (e.g. cremation, reinterment, repatriation)
- Location of burial site (pre-exhumation)
- Funeral director (if used)

Question 41 - What is your view on the proposed information to be collected by each local authority in the Register of Exhumation relating to the exhumation of human remains authorised for private burial by that local authority?

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Please give a reason for your answer.

Section 6 - Restoration of lairs

128. One of the key issues considered by the Review Group ([Report and Recommendations, 2007](#)) was the increasing pressure on available land for burial in Scotland. The 2007 Report notes concerns around available space for burial – both in terms of available 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. The Review Group’s recommendation in the 2007 Report for the restoration of unused and partially used lairs is now set out in sections 32 – 44 of the 2016 Act.
129. 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. 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
130. 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.
131. In some instances the lair right-holder may request that the lair is restored. Section 40 allows for this but the burial authority is still required to follow the consultation procedure set out in section 32 relating to archaeological and Commonwealth War Graves Commission (CWGC) interests.

Notification

132. Where a burial authority proposes to restore a lair and is aware of the name and address of the lair right-holder or is able, after some enquiry, to establish who the lair right-holder is, then they must give notice in accordance with section

33(3). 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.

Question 42 – Do you think that no less than 6 months from the date the notice is issued is an appropriate length of time for the lair right-holder to consent or object to the restoration of a lair?

Yes

No – too long

No – too short

Not sure

If you answered ‘no’, please suggest a minimum time period.

Question 43 – Do you think that no longer than 12 months from the date the notice is issued is an appropriate length of time for the lair right-holder to consent or object to the restoration of a lair?

Yes

No – too long

No – too short

Not sure

If you answered ‘no’, please suggest a maximum time period.

133. Where the lair right-holder cannot be found, it is intended that the burial authority will be required to give notice in an alternative manner. This may include, for example, publication of the notice in a local newspaper and displaying notices in visible positions at the entrances to the burial ground.

Question 44 – Where the burial authority cannot identify the lair right-holder, please provide your views on how a burial authority may publicise the intention to restore the lair.

Register of Restored Lairs

134. Each burial authority will prepare and maintain a Register of Restored Lairs. It is intended that the regulations will prescribe the following minimum information to be recorded in the register:

- Location of the lair in the burial ground
- The lair right-holder’s name and contact details (if known)
- The name of the person who requested the restoration (and whether they represent a burial authority or are the lair right-holder)
- Details of any deceased in the lair (name, date of death, date of burial)
- Burial number(s)/ reference(s) from burial register
- Date of any initial excavation, opening of tomb or structure under s32(2) of the 2016 Act

- Date of any objections received under s32(6) of the 2016 Act from archaeologists, CWGC or any other person the burial authority thinks appropriate
- Date notice of intention to restore lair was given to the lair right-holder (if known) under s33 of the 2016 Act
- If the lair right-holder is not known, the steps (and dates) taken to publicise the intention to restore the lair
- The date any objections are received and from whom, under s35 of the 2016 Act
- The date the right in the lair was extinguished under s36(4)
- The date any (a) excavation (b) opening or moving of tomb or structure or (c) exhumation of human remains took place under s37(3) of the 2016 Act
- The date any exhumed remains were reburied in the lair

Question 45 - What is your view on the proposed information to be collected in the Register of Restored Lairs?

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give a reason for your answer.

Headstones

135. Where a burial authority has to remove a headstone from a lair to exhume human remains in order for the lair to be restored, the headstone must be returned to its place on the lair as soon as the remains have been reburied. There may be occasions where it is not possible to return a headstone to its original location. This might be because doing so would create a potential risk to those visiting the burial ground, such as due to deterioration of the headstone.

Question 46 – If the lair is to be used for a further burial and it is not possible to return a headstone to its original position do you have any views on how it should be preserved or retained?

Any other comments

Question 47 - Please provide any additional views or comments you may have on any aspect of the proposed burial regulations.

Impact Assessments

As we develop the burial regulations proposed in this consultation we will carry out impact assessments. The aim of these assessments is to identify issues that may affect some groups more than others and to consider how we will address these issues. The assessments also explore what impacts the proposed regulations will have on matters such as privacy, equality, child rights and wellbeing and business.

The questions on the potential impacts of the proposals are broken down in line with the formal assessments carried out by the Scottish Government, which are:

- Compliance with The European Convention on Human Rights (ECHR)
- Equality Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Fairer Scotland Duty Assessment
- Islands Community Impact Assessment
- Data Protection Impact Assessment
- Business and Regulatory Impact Assessment
- Strategic Environmental Assessment

We recognise that the proposed reforms will have a much greater impact in some areas than in others and that the proposals may have a minimal or no impact in some areas.

When answering the questions, if your comments relate to a specific proposal, it would be helpful if you could set this out when describing any impacts which you think should be considered.

Human Rights

The [Human Rights Act 1998](#) incorporated the [European Convention on Human Rights \(ECHR\)](#) into UK law. It means that public authorities, such as the Scottish Government, must not act in a way that is incompatible with the rights set out on the ECHR. It is therefore vital that we consider how the proposals will impact on human rights.

Question 48 - Do you have any views on the potential impacts of the proposals in this consultation on human rights?

Equalities

The [Public Sector Equality Duty](#) requires the Scottish Government and other public bodies when they are exercising their functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the [Equality Act 2010](#)
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

For the purposes of the Public Sector Equality Duty, a 'relevant protected characteristic' means age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 sets out nine protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Public Sector Equality Duty includes a requirement for the Scottish Government and other public bodies to have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010.

Question 49 - Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above?

Children's rights

The [UN Convention on the Rights of the Child \(UNCRC\)](#) is an international treaty which sets out the fundamental human rights of all children. [Part 1 of the Children and Young People \(Scotland\) Act](#) places a duty on the Scottish Ministers to (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements and (b) If they consider it is appropriate to do so, take any of the steps identified by that consideration.

All new legislation and policy that is developed by the Scottish Government must consider the impacts on the rights and wellbeing of children up to the age of 18.

Question 50 - Do you have any views on the potential impacts of the proposals in this consultation on children and young people as set out in the UN Convention on the Rights of the Child?

Fairer Scotland Duty

The [Fairer Scotland Duty](#) came into force on 1 April 2018 and places a legal responsibility on named public bodies, including the Scottish Government, to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

This means that as well as considering the impact on people with protected characteristics, the Scottish Government must consider how any proposals will impact on people depending on their economic background. For example, if proposals would have a specific impact on people with low incomes or who live in a deprived area.

Question 51 - Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

Island Communities

[Section 7 of the Islands \(Scotland\) Act 2018](#) states that a relevant authority – which includes the Scottish Ministers – must have regard to island communities when carrying out its functions.

Scotland's islands face particular challenges around distance, geography, connectivity and demography, so it is important that this is considered when developing legislative proposals. It is also important that we ensure the islands receive fair and equitable treatment and that policy outcomes are tailored to their unique circumstances.

Question 52 - Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?

Data protection and privacy

Data protection and privacy impact assessments help the Scottish Government to assess the risks of proposed legislative changes that are likely to affect the way in which personal data is used.

Question 53 - Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

Business

A Business and Regulatory Impact Assessment (BRIA) is used to analyse the costs and benefits to businesses and the third sector of any proposed legislation or regulation, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.

Question 54 - Do you have any views on the potential impacts of the proposals in this consultation on businesses and the third sector?

Environment

In Scotland, public bodies, including the Scottish Government, are required to assess, consult on and monitor the likely impacts that their plans, programmes and strategies will have on the environment. This helps to better protect the environment, aims to ensure that any development is sustainable, and increases opportunities for public participation in decision-making.

Question 55 - Do you have any views on the potential impacts of the proposals in this consultation on the environment?



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