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EXECUTIVE COMMITTEE TUESDAY, 12TH MAY, 2015

A MEETING of the EXECUTIVE COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS, TD6 0SA on TUESDAY, 12 MAY 2015 at 10.00 am

J. J. WILKINSON,
Clerk to the Council,

5 May 2015

BUSINESS		
1.	Apologies for Absence	
2.	Order of Business	
3.	Declarations of Interest	
4.	Minute. (Pages 1 - 4) Minute of meeting of 21 April 2015 to be approved and signed by the Chairman. (Copy attached.)	2 mins
ECONOMIC DEVELOPMENT BUSINESS		
5.	Economic Development Update. (Pages 5 - 8) Presentation on recent Economic Development progress by the Chief Officer Economic Development. (Briefing Note attached).	20 mins
6.	Business Gateway Business Plan 2015 to 2016 (Pages 9 - 54) Consider report by Service Director Strategy and Policy setting out service performance in 2014/15 and seeking approval of refreshed Business Plan to 30 September 2016.	20 mins
7.	Any Other Economic Development Items Previously Circulated.	
8.	Any Other Economic Development Items which the Chairman Decides are Urgent.	
	Economic Development Theme additional membership of Committee:- Mr J. Clark, Mr G. Henderson.	
OTHER BUSINESS		

9.	Strategic Housing Investment Plan 2015-2020 (Progress Update 2014-2015) (Pages 55 - 61) <i>Consider report by Service Director Strategy and Policy to advise Members of all affordable housing completions, and progress made in the delivery of the Strategic Housing Investment Plan (SHIP) projects for the period 2014-2015.</i>	15 mins
10.	Edinburgh, Lothians, Borders & Fife Roads Collaboration Programme (ELBF proposal) and SBC roads services (Pages 62 - 70) Consider report by Service Director Commercial Services to seek a decision to review the operating model of the Council's wider roads services.	10 mins
11.	Response to Scottish Government's Consultation Paper on a Proposed Bill Relating to Burial and Cremation and other Related Matters in Scotland. (Pages 71 - 184) Consider report by Service Director Neighbourhood Services seeking approval of the response to Scottish Government's Consultation Paper.	10 mins
12.	Any Other Items Previously Circulated	
13.	Any Other Items which the Chairman Decides are Urgent	
14.	Items Likely To Be Taken in Private. Before proceeding with the private business, the following motion should be approved:- "That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 7A to the aforementioned Act".	
15.	Minute. (Pages 185 - 186) Private Minute of 21 April 2015 to be approved and signed by the Chairman.	2 mins

NOTES

- Timings given above are only indicative and not intended to inhibit Members' discussions.**
- Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

Membership of Committee:- Councillors D Parker (Chairman), S Aitchison, S Bell, C Bhatia, J Brown, M J Cook, V Davidson, G Edgar, J G Mitchell, D Moffat, D Paterson, F Renton and R Smith

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SCOTTISH BORDERS COUNCIL
EXECUTIVE COMMITTEE

MINUTE of MEETING of the EXECUTIVE COMMITTEE held in the Council Chamber, Council Headquarters, Newtown St. Boswells on Tuesday, 21 April 2015 at 10.00 a.m.

Present:- Councillors D. Parker (Chairman), S. Aitchison, S. Bell, J. Brown, V. Davidson (from para.4), G. Edgar, J. Mitchell, D. Paterson, F. Renton, R. Smith.
Also Present:- Councillors I. Gillespie, G. Logan, S. Mountford.
Apologies:- Councillors C. Bhatia, M. Cook, D. Moffat.
In Attendance:- Chief Executive, Depute Chief Executive – Place, Chief Financial Officer, Chief Social Work Officer, Corporate Transformation and Services Director, Service Director Regulatory Services, Service Director Neighbourhood Services, Clerk to the Council, Democratic Services Officer (K Mason.).

MINUTE

1. The Minute of meeting of the Executive Committee of 24 March 2015 had been circulated and was approved subject to an amendment in that the meeting had been held in the Town Hall, Jedburgh not in Council Headquarters as stated in the Minute.

DECISION

APPROVED for signature, subject to the above amendment.

REQUEST FOR THE INCLUSION OF PATHS IN TWEEDBANK IN THE COUNCIL'S LIST OF PUBLIC ROADS

2. There had been circulated copies of a report by the Service Director Regulatory Services seeking approval for footpaths in the Tweedbank area of Galashiels to be added to the Council's List of Public Roads. The report explained that the Council had been asked to look at the possible upgrading of a trodden pedestrian link between the car park associated with 'Herges on the Loch' and the footpath around Gunknowe Loch. When it was agreed this should be to an adoptable standard, officers were asked what other paths in the area could also be considered for adoption in terms of their strategic nature. After lengthy discussions, the paths indicated on the plan attached to the report were deemed suitable for addition to the Council's List of Public Roads. In response to a question raised regarding future maintenance costs, the Service Director Regulatory Services advised that the appropriate budget amendments would be made.

DECISION

AGREED to the paths shown red on the plan attached to the report being advertised for adoption and thereafter being added to the Council's List of Public Roads subject to there being no substantive representations made against the proposal.

UK LANDFILL COMMUNITIES FUND

3. There had been circulated copies of a report by the Service Director Strategy and Policy recommending two projects for approval from the Landfill Communities Fund for the funding period to January 2015. The following projects were recommended for approval (a) BCCF Environmental – Innerleithen Pipe Band – Hall Refurbishment Phase 1 - £14,278; and (b) BCCF Environmental – Southdean Village Hall – Hall Extension - £32,250.

DECISION

APPROVED

- (a) a grant of £14,278 to BCCF Environmental (Innerleithen Pipe Band – Hall Refurbishment Phase 1); and
- (b) a grant of £32,250 to BCCF Environmental (Southdean Village Hall – Hall Extension).

MEMBER

Councillor Davidson joined the meeting during consideration of the following item.

IMPROVING THE QUALITY OF OLDER PEOPLE'S CARE HOMES – REPORT OF MEMBERS/OFFICER WORKING GROUP

- 4. With reference to paragraphs 4 – 6 of the Minute of Meeting of the Social Work and Housing Committee of 5 June 2014, there had been circulated copies of a report by the Chief Social Work Officer summarising the work of the Officer/Member Working Group which had been set up to consider ways to develop more pro-active approaches to maintain and improve the quality of service delivery within Care Homes for Older People. The work had been based upon research evidence of best practice and quality monitoring initiative. The report explained that a paper presented to Social Work and Housing Committee on 5 June 2014 provided an overview on the quality of Care Homes in the Borders. As a result of this, Members requested that an Officer/Member Working Group be set up to consider the quality of service delivery in Care Homes. Appendix 1 to the report contained the findings and recommendations of the Officer/Member short life Working Group which met to review the quality of Older People's Care Homes and considered proposals for improvements where required. The Working Group's Report reviewed the national and local context and challenges in the Care Home market. It considered current local mechanisms in place to address quality issues and looked to encourage improvements and new initiatives; analysed benchmarking and good practice in other areas of Scotland and the UK including alternative models; and identified gaps in service design and delivery and proposed recommendations for improvement to the Executive Committee. These would be taken forward via an action plan, attached as Appendix 2 to the report, over the next 12 months. Councillor Renton gave background information on the remit of the Officer/Member Working Group and thanked all those concerned for their input. Members discussed nursing provision in Homes, the number of beds available, and the role of carers and family members. In response to a question raised regarding the lack of information as to where the Homes were located and the number of beds provided together with their geographical spread, the Chief Social Worker advised that she would provide the relevant information to Members from work already undertaken relating to the Transforming Older Peoples Service.

DECISION

AGREED:

- (a) to endorse the report on Improving the Quality of Older People's Care Homes as detailed in Appendix 1 to the report;
- (b) the recommendations in the Members' review report as detailed in Section 12 of the report;
- (c) to note the action plan set out in Appendix 2 to the report;
- (d) that the Chief Social Work Officer would provide information on the number of beds and geographical spread of Care Homes in the Borders to Members; and
- (e) receive a progress report mid-2016.

DISCRETIONARY HOUSING PAYMENTS – 2014/15 PERFORMANCE REPORT

- 5. There had been circulated copies of a report by the Service Director Neighbourhood Services detailing the activity of the Discretionary Housing Payment Scheme in 2014/15, as requested by the Council at its meeting on 28 March 2013. The report provided an update

on the funding and performance of the scheme for 2014/15. The total amount of Discretionary Housing Payments awarded in 2013/14 was £492,855.04, with the total amount awarded and paid in 2014/15 £726,465.88. There were 2,238 Discretionary Housing Payment applications received. Of the 2,191 applications decided, 1,951 (89%) were successful. The high rate had been achieved by a designated Take Up officer employed by the Council working jointly with Citizens Advice Scotland and Housing Associations to identify people who might be eligible and improve the quality of applications. A joint take up campaign with the four main Housing Associations specifically targeted tenants who had been affected by the Removal of Spare Room Subsidy. At 31 March 2015 an estimated 89% of people affected had applied for a Discretionary Housing Payment. This reduction in the level of applications was due to the turnover of cases and the identification of new potential cases. The take up work was continuing with staff trying to engage with those people who had not yet applied. In response to questions relating to 2015/16 and the risk of there being insufficient budget available via the Department of Work and Pensions and the Scottish Government to meet demand, the Service Director Neighbourhood Services advised that the position would be closely monitored and policy would be revised if required with further information being reported to the Executive Committee. With reference to paragraph 1.4 of the report, the Service Director Neighbourhood Services undertook to provide information to Members relating to reasons for the 47 unsuccessful applications.

DECISION

(a) **NOTED the activity relating to Discretionary Housing Payments for 2014/15 and that the position would continue to be monitored on a quarterly basis.**

(b) **AGREED that the Service Director Neighbourhood Services would provide information to Members relating to the reasons for the 47 unsuccessful applications.**

PRIVATE BUSINESS

6. **DECISION**

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A to the Act.

SUMMARY OF PRIVATE BUSINESS

Minute

1. The Committee approved the Private Minute of Meeting of the Executive Committee of 24 March 2015.

Galashiels Transport Interchange Operating Model

2. The Committee asked for a report giving more details on the Galashiels Transport Interchange Operating Model to be presented to a future meeting of Council.

The meeting concluded at 10.55 a.m.

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EXECUTIVE – 12 MAY 2015

Economic Development Update

1. Business:

- For the period to 31 March 2015 the **Business Gateway team worked with 670 businesses and individuals**, and assisted 225 business start-ups, of which 27 have the potential to be high growth. The advisers have delivered 84 start-up workshops and 76 local workshops with 1000 (exactly) attendees. The workshop numbers include our first series of half day business start-up outreach workshops that have allowed the team to have a visible presence across the area.
- Business Gateway is running a series of 5 Masterclass and networking events in 2015, on Marketing, Social Media, Motivation, Innovation and Sales. These are being organised in locations across the Borders, the first on 30 April has 70 attendees booked with similar numbers already signed up for the next Masterclass. The aim is to bring quality speakers to the area to provide information to businesses and an opportunity to network.
- In 2014-15, the **Scottish Borders Business Fund** received 64 applications and approved 51 grants valued at £132,300 supporting projects with a value of around £316,000. These projects are forecast **to create 98 jobs and safeguard 167 jobs** with a forecast **economic impact of £2.3 million GVA**.
- The Scottish Borders Business Loan Fund offers loans of between £1,000 and £20,000 over terms of up to three years. In 2014-15, the **Scottish Borders Business Loan Fund** received nine applications and approved six loans valued at £71,600. These loans are forecast **to create 31.5 jobs and safeguard 41 jobs** with a forecast **economic impact of £747,000 GVA**.
- **Property** – 178 property enquiries were received in 2014/15 which is an increase of nearly 20% on 2013/14. Enquiries resulted in 30 new property leases which will generate £158k in annual rental income. The current occupancy level is **91%** for the portfolio of industrial units, yards and shops. So far this year there have been 11 property enquiries and 4 new leases.
- **Employer Recruitment Incentive - Youth Employment Scotland Scheme** – The Youth Employment Scotland Scheme funded by the Scottish Government and EU funding has supported 156 placements since the Scheme was launched in October 2013 up to March 2015. The Council is currently evaluating the impact of the Scheme and considering options to extend similar support for businesses and young people.

2. Regeneration:

- **Galashiels Town Centre** – recent activity includes Retail Merchandising support to traders by John Lewis, the launch of a new shop window display in Douglas Bridge to house a countdown clock for the railway, and support being given to a

new social enterprise which plans to run a market in Channel Street. Shop front improvement grants totalling £14,300 have been approved, covering 7 properties, 2 of which are vacant. The Events Development Strategy is progressing with a second workshop planned for 30 April to work up more details for additional events in Galashiels.

- **Selkirk Business Improvement District (BIDS)** – The Steering Group is progressing their two BIDS for the town centre and the Ettrick Riverside area. The estimated revised ballot date is February 2016. The next steps in the BIDS development process involve extensive business and community engagement, the development of a robust business plan and the implementation of a formal ballot process.
- **Burnfoot Community Hub** – The construction phase continues to progress well, with over 50% of the contract having been delivered. It is on budget and at present has an anticipated completion date of September 2015. The Scottish Government Regeneration Capital Grant Fund, accessed via Scottish Borders Council, is expected to be fully expended by end of June 2015. Further work is ongoing to develop the operational delivery plan for the hub. This plan will aim to provide a vibrant and well structure programme of activity for the first 6 months of operation.
- **Newlands Community Development Trust (NCDT)** was awarded (via SBC) £245,277 from the Scottish Government Regeneration Capital Grant Fund in November 2014. The grant will fund the full costs of the Newlands Rural Business Units Project, a project which will see the conversion of the old and disused Newlands Memorial Hall into 3 rural business spaces. The grant will pay for site preparation works, external refurbishment, windows, doors, internal fit out of three spaces, new toilets, kitchen, professional and statutory fees. NCDT is currently in discussion with SBC to plan the most appropriate procurement route. Design Team and Works Contact are expected to be in place by August with a start on site by September 2015.
- **Chirnside Development Group (CDG)**: SBC has completed the first asset transfer of an operating community centre passing it into community control, via a 10 year lease. CDG has worked for a number of years to raise funds to take control of the building and its services – a large Church building in the centre of the village. CDG has now secured just under £400,000 from a variety of sources. The majority funder is the Big Lottery Fund (£250k) but the funding package includes SBC Landfill Communities Fund, SBC Community Grant Scheme, Planning Gain, Robertson Trust and Fallago Environmental Trust. The project will see the full refurbishment of the internal space, new layout, heating, toilets, community kitchen and small extension. Work started on site on 21 April.

3. Tourism & Events

- **Tourism support** –
 - Tourism and Leisure Solutions were awarded the contract to deliver the Tourism Destination Audit for Midlothian and the Scottish Borders. The final report will be delivered on 8 May.

- Officers met with 2 bus operators, Rabbies and Austin Travel, to discuss plans to support the STEAM train experience pilot from September for 6 weeks.
- A meeting with World Host trainers “People 1st” took place in April. Scottish Borders Tourism businesses will discuss becoming World Host accredited and options for subsidy through Skills Development Scotland at their meeting on 3 June. There were also discussions around using the World Host ambassadorial scheme to support volunteers from Energise Galashiels for a ‘welcome host’ project.
- Signage: Newcastleton Fingerposts (x2) for 7stanes, cycling and walk trails are now in place along the riverside in the village for the start of the season. The Jedburgh Visitor Information boards have been agreed by the group and are now in production ready for installation at the end of May. Two community councils in Jedburgh are looking at the signage on the Carter Bar. They are aiming to update the existing historic panel and adding a visitor information panel with the support of Economic Development.
- Estates officers received a note of interest for the development of Wilton Lodge Caravan Park in Hawick. An informal meeting with developers has been held.
- **Borders Railway Opening Celebrations Committee** – Two day celebration event progressing well, (4 & 5 September. VIP day and Golden Ticket Saturday. Platform 2 secured at Waverley Station for 8 days throughout September for a food & drink/ arts & crafts fair/ performance & culture, with VisitScotland Pod to provide destination marketing. The showcase will promote Scottish Borders, Midlothian and Edinburgh. Local events developed by communities around the opening are being supported. Economic Development are supporting Golden Ticket day, including welcome receptions.
- **Event support –**
 - Cycling event support is continuing, with the growth in the number of events planned to continue. The cycle scottish borders website and related social media is supported through this. Support for cycling events in the Borders from EventScotland National fund is £53k for 2015. Potential AIMUp development and existing events (Tour o’ the Borders / Tweelove etc.) and products (7 Stanes) demonstrate the possible requirement for an ambitious cycling strategy for the Scottish Borders addressing infrastructure, events, promotion, transport, tourism and cycle friendly business support.
 - Melrose 7’s has been successful in obtaining ‘beacon funding’ from EventScotland to assist in promoting the event over the next three years and developing plans around the Borders Railway transport links.

- The Borders Book Festival is receiving ongoing support with the event receiving business planning and event development assistance, which will be ongoing due to financial pressure in the festival.
- Galashiels Event Development support – linked to the Borders Railway and town centre regeneration activity, a consultant is now working with the '**Galashiels Events Group**' a sub group of Galashiels 2020.
- The SAG (Safety Advisory Group) continues to support regional events. There are currently 33 events participating in the process for 2015. All of the Common Riding Festivals are now attending and working on event plans etc.

4. Funding:

- Volunteers for the new LEADER Local Action Group are currently being recruited. The recruitment process for a new LEADER Coordinator will commence shortly, and it is likely that the Programme will now be launched in autumn 2015. It is considered unlikely that the Government's new IT system for LEADER applications and implementation will be fully functional until the end of 2015, putting the first round of LEADER applications back to early 2016.
- Scottish Government plans for the launch of the European Maritime Fisheries Fund (EMFF) 2014 – 2020 have been delayed. Marine Scotland is now considering implementing local development funding on a regional basis. It is unclear at present what impact this may have on the level of funds allocated to each area.
- The Council has the opportunity to access funding from the **European Social Fund (ESF)** to support a local 'Employability Pipeline', youth employment and poverty and social inclusion activities. An initial bid will be submitted in May 2015, although the scale of the bid will be dependent on the availability of future match-funding.

5. Property & Projects:

- **Strategic Employment Land Project: Coldstream** – Tenders for the final phase of the project were returned on 9 February and the contract was accepted on 19 February. Work on the site started on 9 March and completion expected by June 2015.
- **Gunsgreenhill Industrial Estate Extension (Seafood Technology Park) Eyemouth** – The physical contract works are completed, with only grass seeding to be commenced. Final completion is expected by June 2015.

Bryan McGrath, Chief Officer Economic Development, tel 01835 826525.

BUSINESS GATEWAY BUSINESS PLAN 2015 TO 2016

Report by Service Director Strategy & Policy

EXECUTIVE

12 MAY 2015

1 PURPOSE AND SUMMARY

- 1.1 **This report sets out service performance in 2014/15 and seeks approval of a refreshed Business Plan for the delivery of Business Gateway services in the Scottish Borders to 30 September 2016.**
- 1.2 Overall performance of the service has improved in 2014/15. This is reflected in the achievement of targets and also feedback which noted overall satisfaction with the service at 86%. Most targets have been achieved or exceeded, and those below target have improved significantly since 2013/14.
- 1.3 The refreshed Business Plan (see Appendix 1) sets out how the Business Gateway service will develop during 2015/16. In terms of advice and information, it will offer greater breadth and depth to growing businesses in the Scottish Borders and it will seek to work with more businesses across the Borders. In addition, focus will be given to the opportunities presented by the arrival of the Borders Railway and the roll out of Superfast Broadband. Advisers will work with businesses to ensure that the benefits of these opportunities are maximised.
- 1.4 In the period up to March 2016 the Business Gateway service will continue to deliver against the national service specification. The refreshed Business Plan will, through utilising EU Funds, enhance the service delivery at the local level by aligning to the priorities in the Scottish Borders Single Outcome Agreement (SOA) and Scottish Borders Economic Strategy 2023.

2 RECOMMENDATIONS

I recommend that the Executive Committee:

- (a) **Acknowledges the 2014-2015 service performance improvement and impact;**
- (b) **Approves the 2015-2016 Business Plan for Business Gateway in line with the national service specification; and**
- (c) **Agrees that an annual meeting is held with the Committee and a range of Business Gateway customers to receive feedback on service delivery and areas for further improvement.**

3 BACKGROUND

- 3.1 Business Gateway offers information, advice and guidance to people who are considering starting a business or growing their existing business. It is a national service with built-in local flexibilities. It is supported by the national Business Gateway Enquiry Service, the Business Gateway website (bgateway.com) and the national Business Gateway Unit located in COSLA.
- 3.2 The Business Gateway service is managed by lead local authorities and offers a "one stop shop" for business support enquiries as well as providing direct support and a conduit to other business support services provided by the Council and its partners, such as Scottish Enterprise and Skills Development Scotland.
- 3.3 The service specification for the 2012-17 Business Gateway service was developed nationally, and was approved by the Business Gateway Scotland Board on 21 November 2011. An obligation to deliver to a consistent standard and report in a consistent way is required of all lead local authorities with responsibility for Business Gateway in their area.
- 3.4 The Business Gateway service in the Scottish Borders operates from the Ettrick Riverside Business Centre in Selkirk. The team of 10 consists of 6 full time and 4 part time staff and includes a recently appointed manager.
- 3.5 The Business Plan for the period up to 2017 is updated on an annual basis. The latest Business Plan is set out in Appendix 1.

4 PERFORMANCE INDICATORS

4.1 The performance against key indicators and targets for 2014/15 is noted in the table below.

Service Output Targets			
Start-up Advisory Service	Target 2014/15	Actual 2014/15	Target 2015/16
Total number of start-up customers who have begun trading	220	225	220
Number of higher value start-up customers with agreed actions identified in Action Plan for Growth	20	17	25
Number of higher value start-up customers with completed Action Plans for Growth	8	10	10
Number of start-up workshops/seminars held	72	84	72
Number of customers attending start-up workshops/seminars	360	533	360
Growth Advisory Services for start-up and existing businesses			
Number of growth customers with agreed actions identified on their Action Plan for Growth	20	21	20
Number of growth customers accepted into growth pipeline relationship with SE	10	8	10
Number of growth customers accepted into account management relationship with SE	2	3	2
Number of growing business workshops/seminars held	10	13	25
Number of clients attending growing business workshops/seminars	40	166	125
BG Local Services			
Number of customers accessing local advisory services	400	670	400
Number of growth customers accepted into Local Growth Advisory Service ¹	45	41	45
Number of customers accessing local expert help services	30	9	30
Number of workshops/seminars held	72	71	50
Number of customers attending workshops/seminars	360	445	250

4.2 Overall, the performance of the service has improved over the last year in response to the range of improvements that managers and the team have delivered. The key points to note in respect of the performance indicators in the table above are as follows:

- (a) Business start-up numbers and local advisory services are greater than expected. This reflects demand from local businesses and the use of EU funding to extend the activities beyond the core national Business Gateway service offering;

¹ This is a local target for businesses with growth potential of £100,000 to £199,000 over three years and new for 2014/15; it is not included in national reports
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- (b) The 'growth' targets for 2014/15 were ambitious so not all of these targets have been met. However, there has been an important improvement in these figures compared to 2013/14. The structure of the business base in the Scottish Borders makes it difficult to attain the nationally set 'growth' criteria and highlights the need to develop and deliver a local service that meets the needs of businesses with growth potential in the Scottish Borders;
 - (c) In respect of Expert Help, the uptake from businesses was slower than anticipated. However, there are currently an additional 13 projects underway and these will be captured in the 2015/16 figures.
 - (d) The proposed targets for 2015/16 continue to place an emphasis on support for local businesses with growth potential and delivering services that meet local priorities. These are stretching but realistic targets that will contribute to the growth of the local economy.
 - (e) Following discussions at a national level, the targets set for workshops will be recorded slightly differently from April 2015. Full details are provided in Section 5a of the Business Plan.
- 4.3 Another important measure of performance is customer satisfaction and business survival rates. The Scottish Borders Business Gateway service performs well in both areas. The latest results of the independently delivered customer satisfaction survey have overall satisfaction in the Scottish Borders at 86%, compared with 85% nationally, and 86% of clients stating that they would recommend the service to a friend, colleague or family member, compared to 80% nationally.
- 4.4 The current figures for the survival of start-up businesses that have been supported by Business Gateway at 12 months and 36 months from date of commencing trading, for Scottish Borders are 96% at 12 months and 65% at 36 months. These compare favourably with the national figures of 78% at 12 months and 60% at 36 months. Another highlight of 2014/15 was the delivery of the first Scottish Borders Business Week in September which focused on events and the provision of knowledge to businesses.
- 4.5 The latest national independent evaluation of the Business Gateway service undertaken in 2011 established that the service contributed a net £6.80 additional GVA per £1 spent, meaning that for the Scottish Borders the service during 2015/16 is expected to add some £2.25 million to the local economy.

5 BUSINESS PLAN 2015/2016

- 5.1 The revised Business Plan sets out the opportunities to further develop the Council's in-house service delivery model. This delivers against the detailed national service specification and also provides a range of local services that meet the priorities set by the Scottish Borders Single Outcome Agreement (SOA) and the Scottish Borders Economic Strategy 2023. The Business Plan brings together the service and financial plans for Business Gateway for the period to 30 September 2016.
- 5.2 The Business Gateway service comprises three key elements. The first is a Start-up Advisory Service, which follows a national specification; the second is a Growth Advisory Service, also following a national specification; and finally Business Gateway Local Services which delivers local flexibility. These services are provided within a market segmentation model that targets the intensity and shape of the support provided.
- 5.3 In addition to providing these services, the Business Gateway service also supports: delivery of local marketing activities; participation in local and

national promotional and networking events; and advisory input to future online and other services. The Economic Development team also provides a link between Business Gateway and other business facing Council services (e.g. planning, procurement, licensing).

- 5.4 The Business Gateway service in the Scottish Borders will deliver against the core elements of the national service specification (Start Up and Growth Advisory Service), but it will also enhance the breadth and depth of the overall Business Gateway service through the further development of Local Services. These have been developed to better reflect the nature of the local business base and focus on local objectives to encourage increased business growth and to push up the number of businesses entering the business 'growth pipeline'.
- 5.5 A range of Business Gateway Local Services will be delivered as part of the new business plan. Business Gateway will increase focus on taking the service out across the Scottish Borders. This will include a range of Master Class events, covering topics such as innovation, motivation, sales and social media, through to September 2015 utilising EU funds. In addition Council offices will be identified in towns across the area where an adviser can hold regular sessions advertised to the local community. This activity will not only improve the service offered but also reach businesses and communities not currently using the service.
- 5.6 The Service will continue to provide workshops and events on issues that are key to local businesses, including leadership and development; e-commerce; social media; marketing and financial management; and other "hot" subjects of interest e.g. pensions auto-enrolment.
- 5.7 The team will work with colleagues and partners to maximise the impact of the arrival of both the Borders Railway and Superfast Broadband. The Business Gateway will promote the opportunities these investments offer to businesses, and advisers will work with businesses providing advice and information on how they can best exploit these opportunities.
- 5.8 Specialist advice will continue to be made available to potential growth business across issues such as resource efficiency, energy audits and action plans, ICT strategy and implementation, business strategy, e-commerce and organisational development. This links to the objectives of the Low Carbon Economic Strategy. Specialist advisers will be in place for the key sectors and they will be given a wider remit to operate in these sectors to increase capacity and collaboration between businesses. All of these services are designed to complement the support provided by other partners, in particular Scottish Enterprise and Skills Development Scotland.
- 5.9 Operationally, in order to reflect the priorities in the Scottish Borders Economic Strategy, the Business Gateway will adopt a proactive approach to its engagement with each of the key sectors, working with sector groups and intermediaries to ensure that businesses are aware of the services and benefits of working with Business Gateway. To facilitate this engagement a Business Gateway adviser has been nominated as lead adviser for each sector. This ensures that the Business Gateway has a good understanding of the issues within the sector and the impacts on the individual businesses.

- 5.10 Promotion and engagement are important elements of the service. In addition to national and local campaigns in the press, TV and local radio; working with partners and stakeholders is key to success. The Council is also building on well established links with business representative organisations (including Scottish Borders Chamber of Commerce, Federation of Small Businesses and the Exporters' Association) and intermediaries such as accountants and banks, to further promote the Business Gateway.
- 5.11 In order to help deliver the SOA high level priority to reduce inequalities in the Scottish Borders, in 2015/16 the Business Gateway service will continue its proactive approach to stimulating business and enterprise in our most disadvantaged communities, working in particular in areas including Burnfoot in Hawick and Langlee in Galashiels and with minority groups.
- 5.12 The Business Gateway service fits within a wider range of business support services delivered by the Council. This includes provision of access to finance (loans and grants), economic intelligence, business property, industrial developments, and inward investment activities. The on-going aim is to continue to fully integrate Business Gateway within the wider 'business facing' functions of the Council, while maintaining the required distinct Business Gateway brand identity. For example, the team is currently working the Procurement team to promote Council procurement opportunities to local businesses and assist businesses to develop their capacity to win public sector contracts through workshops and adviser surgeries.

6 PERFORMANCE IMPROVEMENT PLAN

- 6.1** In order to continue to build on the performance of the service, there are a series of activities that will be implemented during 2015/16 to further enhance the impact of the Business Gateway service. These include:
- (a) Development and delivery of 5 Master Class and Networking events across the area, to trial the effectiveness for businesses.
 - (b) Identifying suitable contact centres and using these for delivery of Business Gateway across the area.
 - (c) Establishing a Client Management system of operation for Growth Advisory Service clients. This will identify businesses with the greatest potential and formally allocate them to a client manager.
 - (d) Continuing to promote the benefits of the digital economy to businesses in the Scottish Borders through a dedicated adviser, workshops and activities linked to the roll out of Superfast Broadband.
 - (e) Proactive delivery of service and workshops to harder to reach areas and communities in the area. Working with our colleagues in Equality and Diversity to identify prospects to encourage engagement with the service.
 - (f) Introduction of the national Business Gateway CRM 2 as a recording and data base system for the department .
 - (g) Delivery of Scottish Borders Business month during October.

- 6.2 The development of improved local services, enhanced promotional activities and greater levels of stakeholder and partner engagement will drive forward the performance of the service, enabling it to meet the needs of local businesses and contributing to the development of the Scottish Borders economy. The Committee will receive regular updates on the performance of the Business Gateway service as well as an annual review and presentation of a new business/action plan each year.

7 IMPLICATIONS

7.1 Financial

- (a) Scottish Borders Council receives funding to deliver Business Gateway in the Scottish Borders from the Scottish Government. The additional "local services" are funded through EU funding, matched to the funding from the Scottish Government.
- (b) The in-house delivery costs of Business Gateway (£331,088 for 2015/16) are based on the budget available within the Council's five year Financial Plan agreed by Council on 12 February 2015.

7.2 Risk and Mitigations

- (a) As part of the on-going management of the Business Gateway a risk workshop was held in February 2015 with support from the Council's Corporate Risk Team. The Risk Register (see Appendix 2) is reviewed quarterly and actions undertaken as appropriate.
- (b) The main risks identified in the risk register relate to accessing the right type and number of business across the area, and potential changes to future EU funding. The Business Plan has been written to address these risks.

7.3 Equalities

An equality impact assessment (EIA) has been written with input from the Corporate Equality & Diversity Officer. A key aspect of the Economic Development Team's work is to reduce barriers to economic inequality and information on service delivery to equalities groups is monitored. Positive action will be taken by Business Gateway during 2015/16 to address issues raised through this exercise.

7.4 Acting Sustainably

The Business Plan for the Business Gateway service contains a number of targeted outputs and outcomes that will deliver economic benefit: these relate to the number of businesses assisted, start-up, growth and local service priorities as defined by the Council. As a lead local authority with Business Gateway responsibility, the Council must deliver against agreed priorities and report progress to the Business Gateway National Unit based within COSLA.

7.5 Carbon Management

By bringing the Business Gateway service in-house and using office space at Ettrick Riverside, Selkirk, there is no net increase at a Scottish Borders level as this is the continuation of an existing service delivery.

7.6 Rural Proofing

Rural Proofing is not required as the proposals do not relate to a new or amended Council policy or strategy

7.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to the Scheme of Administration or Scheme of Delegation are required as a result of this report.

8 CONSULTATION

8.1 The Chief Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, the Service Director Interim Capital Projects and the Clerk to the Council are being consulted and their comments will be incorporated into the final report.

Approved by

Service Director Strategy & Policy

Signature

Author(s)

Name	Designation and Contact Number
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Background Papers: None

Previous Minute Reference: Executive 3 February 2015

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jim Johnstone can also give information on other language translations as well as providing additional copies.

Contact us at Jim Johnstone, Economic Development, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 826727, Fax 01835 825071, email eittranslationrequest@scotborders.gov.uk.



BUSINESS GATEWAY BUSINESS PLAN 2015/16

1. BACKGROUND

Introduced in 2001, Business Gateway (BG) was established by Scottish Enterprise to provide a first point of contact for business support enquiries and as a channel for access to all publicly funded services to businesses including Scottish Enterprise, Local Authorities, the Scottish Government and others.

In 2007, the Scottish Government reviewed the remit of the enterprise networks which resulted in the transfer of responsibility for local economic development, including the Business Gateway service, and regeneration to Local Authorities. As a result, Scottish Borders Council took responsibility for the management of the Business Gateway contract (let to Carnegie Enterprise Ltd) for the period October 2007 to September 2012. Linked to this, the Economic Development team assumed responsibility for ensuring the development of a more responsive, accessible and joined-up business support service in the Scottish Borders.

Following publication of the national evaluation of Business Gateway in May 2011 and a new Service Specification in November 2011, a new framework for delivery of Business Gateway for the period 2012-17 was agreed by the Council in March 2012 and the delivery of Business Gateway service was transferred in-house on 1 October 2012.

Business Gateway is now fully integrated into the Economic Development Department of the Council and provides the majority of business facing activities that are carried out by the department.

2. DIRECTION FOR THE FUTURE

2a) Business Vision

In order to address feedback that has been received Business Gateway will carry out a number of actions this year to ensure that the majority of businesses in the Scottish Borders know what the service offers and how to access it. This will ensure that national priority targets are met and that the service continues to deliver business advice and support to an ever increasing audience. These actions will focus on delivery in different parts of the region as well as providing workshops to minority communities and the area's most disadvantaged communities. Business Gateway will continue to work with other departments in the council to ensure consistency of delivery and to enable smoother process of business support functions.

The Scottish Borders Economic Strategy 2023 sets out the Council's and its partners' vision for a prosperous economy in the Scottish Borders. It sets out a strategic approach to the development of the economy – through the development and implementation of infrastructure, support to business, increased employment and the facilitation of external funding and European investment. The Strategy has been produced in the context of challenging local economic conditions and the need to provide new investment, jobs and opportunities for our communities.

The Vision to 2023:

'By 2023 the Scottish Borders will be amongst the best performing and the most productive rural economies in Scotland. By supporting existing businesses and

encouraging higher value economic activity, our quality of life will increase. The Borders will become a location of choice for growing businesses and for people to live and work'.

In April 2013, the Scottish Borders Community Planning Partnership (CPP) took a strategic decision to focus public sector efforts on our most deprived communities and target resources to address persistent challenges and socio-economic 'outcome gaps' compared to the rest of Scotland. To achieve this, the CPP Strategic Board (including the Council and Scottish Enterprise) has agreed a joint vision:

“By 2023, quality of life will have improved for those who are currently living within our most deprived communities, through a stronger economy and through targeted partnership action.”

To deliver this vision, the CCP Board has identified 3 strategic priorities:

1. Grow our economy
2. Reduce inequalities
3. Maximise the impact from the low carbon agenda

Point 1 is covered by all the actions carried out in Business Gateway as attention is focused on businesses with the greatest potential for growth. This includes providing individuals with the information they need to make the decision to start their own enterprise, assisting new start businesses to gain the support they need to get established and helping established business to meet their full potential both in turnover and employment opportunities.

Point 2 will be addressed by the delivery of services in the most disadvantaged areas of the Scottish Borders and through working with partners to access minority communities. Specifically Business Gateway will be looking for opportunities to run start up workshops in Burnfoot and Langlee and investigating our ability to run these in languages other than English. The team have started to work with our colleagues in the Council to identify communities not currently accessing the service, with a view to meeting with these groups to better understand how the service can be delivered to them.

Point 3 takes more time as it relies on informing businesses of the benefits and waiting for them to take positive action. This has proved challenging to date and the service will survey businesses to establish the best way to engage on this topic area. The outputs of the survey will be used to direct the team's activities during the forthcoming year building on the current signposting to other support organisations such as the Energy Saving Trust and Resource Efficient Scotland.

2b) Where do we see ourselves going?

2015 will see the reintroduction of a railway to the Scottish Borders; this is the biggest opportunity for the businesses in our region for many years, possibly a generation. Business Gateway is at the forefront of the support for businesses to take advantage of the railway. This year will see many opportunities linked to the railway for those in the immediate vicinity and for the wider region. Business Gateway will continue to promote these opportunities to the region as a whole and to work with individual businesses wanting to take advantage of the railway.

The service will remain flexible and continue to research new opportunities available to the businesses in our region. Through utilising European funding it is possible to continue to provide additional advisers for key sectors and with specialisms in the areas of business that are most needed in our region. These will include HR, Finance, Social Enterprise, e-commerce and ICT to assist with the use and progression of Next Generation Broadband.

Business Gateway will work with more businesses and communities to encourage enterprise. This will involve it in proactively addressing the needs of those communities that find it difficult to access the service in its current format, and where possible the service offering will be adapted to meet their needs. Business Gateway will also seek out new businesses to work with by using a variety of marketing methods and by more regularly taking the service out to the towns across the region. Again through accessing European funding Business Gateway will deliver a series of Masterclasses and networking events to encourage established businesses to start using the service. In addition, the service we will increase the number of workshops delivered from its base in Selkirk to include more current topics such as auto enrolment. This will also support the aim of developing stronger working relationships with potential introducers such as accountants, banks etc.

This year Business Gateway will be adopting a client management approach to working with businesses, with advisers being given a target number of growth potential businesses to work with and develop better relations in order to better understand how Business Gateway, the Council and other partners can support their development and growth. This approach of having a closer working relationship with a number of identified businesses with growth potential will enable the team to meet its national targets as well as contributing to the development of the economy of the region.

The changing economic, political and financial factors affecting businesses in the Scottish Borders means that it is crucial that the Business Gateway service remains flexible and adapts to changes in the external environment, allowing the service to respond to local opportunities and threats, and to continue to meet the needs of local business.

3. WHERE ARE WE NOW?

3a) Local Economic Context - The Scottish Borders Business Base

According to the figures published by the Office for National Statistics (ONS) using data from the Inter Departmental Business Register (IDBR) in 2014, there are 4,775 enterprises in the Scottish Borders area.

In terms of employment numbers, almost 90% employ less than 10 people (micro-enterprises) compared to c. 87% in Scotland; c.9% employ between 10 and 49 people (small enterprises), compared to a Scottish profile of 11%, and c.1% employ 50 or more people (medium sized enterprises and above) compared to a Scottish profile of 2%. In other words the Scottish Borders economy is more heavily reliant on “micro” businesses¹ than Scotland as a whole.

Analysis of business turnover and age also provides an insight into the likely trading activities of businesses. Higher levels of turnover suggest that businesses will be trading out with the region, and business age can provide an indication of a business’ potential for growth; as younger businesses tend to grow faster.

In terms of the value of annual business turnover, the comparison between Scottish Borders and Scotland² is as follows:

£ 000's	Scottish Borders	Scotland
0 – 49	20%	17%
50 – 99	22%	23%

¹ Micro businesses are defined as employing less than 10 people

² Please note that there are 156,765 enterprises in Scotland, 4,775 in the Scottish Borders – ONS Inter Departmental Business Register, 2014.

100 - 249	29%	31%
250 - 499	14%	13%
500 - 999	8%	8%
1000 - 4999	5%	7%
5000+	1%	2%

Source: the Office for National Statistics (ONS) IDBR, 2014

In terms of business age the breakdown is as follows:

Age (years)	Scottish Borders	Scotland
> 2	10%	16%
2 – 3	8%	12%
4 – 9	21%	25%
10+	61%	48%

Source: the Office for National Statistics (ONS) IDBR, 2013

In comparison to Scotland, the Scottish Borders tends to have businesses that are smaller in terms of turnover, fewer of scale (annual turnover greater than £1 million), and businesses that are significantly older.

The Scottish Borders does benefit from higher rates of business density and business start-up. 2013 data from the ONS indicates that there are 548 businesses per 10,000 adults in the Scottish Borders, compared to 364 at the Scottish level and, in 2012, 315 Business Start ups out of 17,385 across Scotland. This higher rate of business density is common to rural areas and suggests a competitive and entrepreneurial business environment in the area, but may also be indicative of a reliance on multi-entrepreneurship, for example in the tourism and construction sectors.

Analysis of the sectoral make up of the business base and its employment shows that the Scottish Borders has a higher reliance on primary production, wholesale/retail, health and public sector and manufacturing than the rest of Scotland.

Manufacturing is well represented in the area supporting over 5,000 jobs, around 3% of Scottish manufacturing jobs³. Construction supports just over 2,500 jobs, just over 2% of Scottish construction jobs.

As noted in the Scottish Borders Economic Profile: “The sectoral mix of the local economy is different to Scotland, and represents a significant challenge in shaping our economic future”.⁴

Recognising these challenges, the dynamics of the business base and the objectives set out in the Scottish Borders Economic Strategy will continue to direct the provision of services at Business Gateway. The emphasis for 2015/16 will be to maintain the levels of business start ups, but place greater emphasis and resources on supporting business growth particularly in key sectors.

³ Source: business register and employment survey - NOMIS

⁴ Scottish Borders Economic Profile 2013 (April 2013) page 18

3b) Developing the Business Gateway Service- Ambitions for the Scottish Borders

As noted earlier the Business Gateway service is managed by lead local authorities and offers a “one stop shop” for business support enquiries as well as providing direct support and a conduit to other business support services provided by the Council and its partners, especially Scottish Enterprise.

The service specification for the 2012-17 Business Gateway service was developed nationally, and was approved by the Business Gateway Scotland Board on 21 November 2011. An obligation to deliver to a consistent standard and report in a consistent way is required of all lead local authorities with responsibility for Business Gateway.

Business Gateway offers information, advice and guidance to people who are considering starting a business or growing their existing business. It is a national service with built-in local flexibilities. It is supported by the national Business Gateway Enquiry Service and the Business Gateway website (bgateway.com).

As the Business Gateway service in the Scottish Borders goes forward it will deliver against the core elements of the national service specification (Start Up and Growth Advisory Service), but it will continue to enhance the breadth and depth of the overall Business Gateway service through the development and delivery of Local Services. This provision of local services is aligned to the priorities set out in the Scottish Borders Single Outcome Agreement (SOA) and the Scottish Borders Economic Strategy 2023 in order to maximise the impacts from the resources available. Local Services will be developed to better reflect the nature of the local business base and focus on our objectives to encourage increased business growth and to push up the number of businesses entering the business ‘growth pipeline’.

Business Gateway will continue to develop the Local Services offered to businesses. It will make these services innovative and look to lead the way nationally by developing new and effective services. These services will assist the team to achieve its goal of becoming one of the top performing Business Gateways in the country. Working with colleagues in the Business Gateway National Unit and making best use of the European funding available new delivery methods and ways to promote the service will be researched and trialled. The successful projects will be fed back to the national unit to encourage adoption by other regions.

The service will also look to provide advisers for national Business Gateway projects such as appraising EDGE funding applications, which will benefit the Scottish Borders, to ensure that it is recognised as one of the leading Business Gateway regions. The team will also continue to feedback to the national unit on elements of the service that should be adopted or amended to enable other regions to benefit from the experience of the Scottish Borders.

Finally, it should be noted that there has been some initial discussions about undertaking a review of the national service specification. Council staff will be involved in this review and it is anticipated that the review will reflect the direction of travel that has been adopted in the Scottish Borders over the past couple of years; namely providing a high quality universally available service with an emphasis on supporting local businesses with growth potential.

SWOT analysis – Strengths, Weaknesses, Opportunities and Threats

		Positive	Negative/ detrimental		
<i>Internal to the Economic Development Team/ Business Gateway (SW)</i>					
Strengths		<ul style="list-style-type: none"> - Reputation - Skills and expertise in the team - Proven track record in delivery - Strategic influence - Multi disciplined team - Cross-departmental and Council links - Credibility – with customers - EU experience - New Business Gateway Manager bringing increased focus on service 	<ul style="list-style-type: none"> - Availability of staff - Time consuming levels of bureaucracy - Risk aversion - Multi reporting/ systems - Not recognised as a support mechanism by other departments - Expectation for advisers to deliver services not core to BG Targets 	Weaknesses	
Opportunities		<ul style="list-style-type: none"> - Shifting and volume of demand - Master class series - Proactive contact with minority and deprived communities - Economic recovery - Local funding provision – grant and loan funds - EU funding – programmes - Integration of business support services - Local added value 	<ul style="list-style-type: none"> - Shifting and volume of demand - Economic recovery, driving down business starts - EU funding – changes - Public sector deficit and budget reduction 	Threats	
<i>External to the Economic Development Team/ Business Gateway (OT)</i>					

3c) Business Gateway Contract 2012-17 – National Service Requirements

The Business Gateway service in the Scottish Borders offers a “one stop shop” for all business support enquiries including access to all publicly funded services to business. It helps hundreds of businesses every year through a combination of workshops, online advice via the www.bgateway.com website, and through other forms of direct support. The service is delivered by a team of business advisers based at Etrick Riverside in Selkirk. It uses the Council’s contact centres and other facilities such as community centres across the Scottish Borders as out-reach points to provide clients with a “local” service. In 2015/16 the aim is to formalise this “local” service by piloting adviser attendance on specified dates as well as providing Business Gateway branding and information in the contact centres.

It is expected that the form of business development assistance provided by Business Gateway will remain consistent in the period to March 2016, and is broadly characterised as follows:

Assistance Type	Details
<ul style="list-style-type: none"> • Advice and Information 	Advice and information provided directly by Business Gateway Advisers, and via national BG website and other online services at business.scotland.gov.uk website, supplemented via local business gateway web pages and information exchange via social media channels. Access to research and market insight data is provided via the Scottish Enterprise ‘Enquiry Fulfilment Response Service’ (EFRS). Wider linkages, e.g. property advice, provided via the Council’s Economic Development team.
<ul style="list-style-type: none"> • External Expertise 	Direct referral by Business Gateway Advisers to expertise via external partner programmes, as well as access to consultants, higher education institutions and other centres of excellence, including accessing skilled individuals seconded or placed in the business and business mentoring programmes.
<ul style="list-style-type: none"> • Financial Support 	Assisting client to access finance in the form of grants, loans, loan guarantees or private equity, including grant support via Economic Development service and the soon to be launched national Local Authority Business Loans Scotland. Note: Business Gateway service does not administer funding directly.
<ul style="list-style-type: none"> • Networking 	Supporting businesses to expand their network via business groups, sector initiatives, business events, workshops and seminars and referrals to appropriate routes – Chamber, FSB, etc. BG workshops encourage business to engage with each other as well as the adviser during the ½ day or full day workshop. The introduction in 2015 of the new Masterclass series providing information and advice on key topics as well as networking opportunities, led by the Business Gateway team.
<ul style="list-style-type: none"> • Skills 	The upgrading of skills and competencies within the businesses via training delivered, sourced or referred. Help to identify skills support from other partners such as Skills Development Scotland.

Business Gateway

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Some of these inputs can be directly linked to each other. For instance, the provision of grants may encourage the use of external expertise (e.g. web development), or networking events that include an element of management development training.

Business Gateway Service Specification 2012-17 – National Specification

Following a national evaluation in 2011 and feedback from stakeholders and businesses at a national level the Business Gateway service now comprises the following elements:

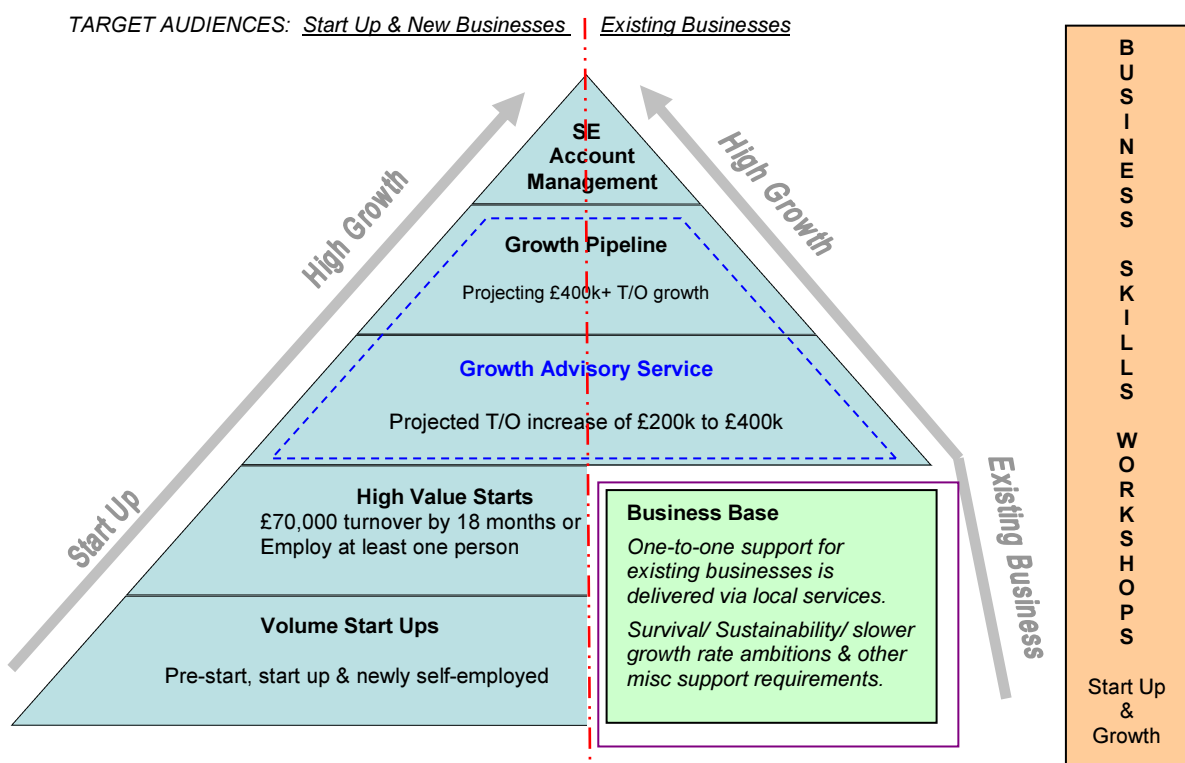
1. **Start up Advisory Service**
2. **Growth Advisory Service**
3. **Business Gateway Local Services**

In delivering these services, the Business Gateway service also supports:

- Delivery of local marketing activities
- Participation in local and national promotional and networking events
- Advisory input to future online and other services
- Provision of a link between Business Gateway national and local services with other business facing Local Authority services.

Market Segmentation: targeting business support

The national Business Gateway service specification operates within the following segmentation model of businesses in Scotland.



4. HOW ARE WE GOING TO GET THERE?

4a) Business Gateway Service Delivery Areas 2015/16

1. Start-Up Advisory Service (Volume and Value Added Starts):

The Business Gateway Start-Up Advisory Service provides both pre-start and start-up/ early stage support. The principle activities are the provision of training workshops and advisory services. The volume start up service will be delivered by one full time member of staff; the role will be to deliver workshops and other 1 to many support services. The adviser will continue to work closely with the Further and Higher Education Institutions in the Scottish Borders and will be instrumental in our outreach services – both in geography and minority communities. For start-up businesses not expected to employ staff or meet the turnover level outlined above, support will be predominantly through the Business Gateway website, the Business Gateway Enquiry Service and locally delivered workshops.

The advisory services (one-to-one support) focus on higher value start up businesses which are capable, with the support from Business Gateway, of employing staff and/ or achieving turnover levels of over £70,000 within 18 months of starting to trade. For the first six months of 2015/16 Business Gateway will utilise EU funds to appoint an adviser (0.6 fte) to focus on this segment of businesses. This will allow a stronger focus on business start-ups with the ability to grow turnover and employ staff. This adviser will provide the time and expertise to assist these businesses in taking full advantage of the opportunities open to them. The goal will be drive these businesses on to the next level of segmentation i.e. Local Growth Advisory Service.

Business Gateway will continue to work closely with other government departments e.g. Job Centre Plus and Skills Development Scotland, and programmes to ensure it offers opportunities for assistance to those not currently in work or further education.

The team will also work closely with Council colleagues following the Wood Commission report to ensure that self-employment and enterprise is considered a real alternative to employment. This work will include working closely with Young Enterprise Scotland and supporting its proposed development work with secondary schools in the Scottish Borders.

2. Growth Advisory Services

At the national level the Growth Advisory Service aims to work with established businesses with the greatest potential to increase turnover and numbers employed in the business. Specifically this means increasing annual turnover by a minimum of £200,000 within a 3 year period. Those with the potential to increase the turnover by £400,000 are considered for further support by Scottish Enterprise while still working with a local Business Gateway adviser.

The support will be further enhanced by the introduction of a Client Management approach within the Business Gateway service in the Scottish Borders during 2015/16. This approach will allow a named adviser, to act as the main point of contact for the client, as well as a set number of days to work with individual businesses to help them achieve their goals. In addition to the expertise each Client Manager will bring to the role they will be able to access specialist advice from both colleagues and external consultants (funded by EU monies). Advisers will also be expected to attend workshops and the Masterclass series to increase their knowledge and networks.

These businesses will be the focus of our internal funding opportunities both from grant and the new national loan scheme and the Railway Investment Fund. The client manager will be responsible for identifying the funding needs of these businesses and ensuring that they are

well placed to apply for and get these funds. Business Gateway does not have access to direct funding other than through Expert Help and focusses on facilitating funding applications.

Business Gateway will continue to provide specialist advisers in the subjects most required by businesses using European funding to support this provision. Business Gateway will also allocate time to advisers to focus on our key sectors: tourism, renewables, food and drink, construction, textiles, manufacturing and the creative sector; as well as social enterprises and the third sector. The team will develop closer links to advisers, including Scottish Enterprise, working in the areas of Innovation and internationalisation through joint events, local surgeries and referrals to ensure that the businesses in our region have the opportunity to be at the leading edge when it comes to product and service development.

3. New Local Services

In addition to the national core services outlined above, new 'Local Services' have been designed and delivered to complement the core services delivery to enable the Business Gateway service in the Scottish Borders to:

- Respond quickly to any significant changes in the local economy
- Respond quickly and appropriately to changes in the needs of the local business base
- Accurately reflect the pressures felt by local businesses.

These interventions include: Business Gateway advisory support; expert help or specialist support; localised bespoke training workshops; networking events for specific target groups or sectors. In the Scottish Borders, these local services include the following:

- Advisory services (1 to 1) will also be provided to individuals seeking to start up a business within one of the key sectors noted in the Economic Strategy as well as client groups that are recognised as requiring additional support e.g. young people.
- In order to better reflect the nature of the local business base and the objectives to encourage growth, the Business Gateway has extended the national threshold for entry into a "Local" Growth Advisory Service from £200,000 to £100,000 annual turnover growth over three years.
- Workshops and events that provide support in respect of key business issues including: leadership and development, e-commerce, social media, marketing, financial management, Tax and HR.
- Provision of proactive support and advice to stimulate new enterprise in areas identified by the CPP as the most disadvantaged, especially Burnfoot in Hawick and Langlee in Galashiels.
- Provision of specialist advice to growth potential business across issues such as resource efficiency, energy audits and action plans, ICT strategy and implementation, business strategy and organisational development.
- Introduction of a series of Masterclasses which will be made available across the region. The plan is to pilot a series of 5 events in the period to the end of September 2015, if successful these will then be rolled out in future years. The Masterclasses will take the form of a strong business speaker on relevant subject and then a structured networking event for the attendees run by Business Gateway.

Business Gateway

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This local service element is being funded through two European funded projects that are linked to the delivery of local Business Gateway services in the Scottish Borders, which continue into 2014/15:

- Business Gateway Plus – additional one-to-one services, e-business skills workshops, additional start-up and follow-up support, survival and growth support. This amounts to an additional £210,000 in the period to September 2015.
- South of Scotland Business Competitiveness Project – additional support for tourism, food and drink, and renewables sectors, valued at £108,000 until September 2015.

Both of these programmes were extended during 2014 until September 2015 allowing this additional support to continue.

Scottish Borders Council submitted an application, in early March 2015, for the next round of ERDF funding running from September 2015 until December 2020. The focus of this application is the provision of more businesses services targeting businesses with growth potential and aims to provide greater breadth of activities (working with more businesses) and depth (working more with individual businesses) through the new client management process. At the time of writing the Council is awaiting feedback from the Scottish Government on the proposal which would secure £1.05m of extra funding.

4b) Improvement Plan: Developing Best Practice and Local Added Value

The delivery of Business Gateway services does not happen in isolation. In addition to close working with other Council departments, Business Gateway has developed and is seeking to develop strong working relationships with a range of partners and stakeholders to provide the best possible enterprise support for local businesses. It works with:

- Scottish Enterprise;
- Scottish Borders Chamber of Commerce;
- The Federation of Small Businesses;
- Intermediaries such as accountants, lawyers and bank managers; and
- The Scottish Borders Exporters Association.
- Skills Development Scotland
- Scottish Business in the Community
- Resource Efficiency Scotland

These partners provide a range of services that complement those of the Business Gateway, but are also a route to clients that would benefit from support from Business Gateway.

Drawing on experience from other areas of enterprise support delivery across Scotland and the UK the Council and Business Gateway team continue to look at ways of improving the service provided to clients and the impacts it has on the local economy.

The advisers are the main interface with businesses and individuals seeking to start up in business. The team are structured so that advisers are, where possible, focused on a specific segment or a key sector. There is, currently, a team of 9 advisers and each has a part to play in the new client management approach. The team is split as follows:

- 4 advisers (2 fte) working with Business Start Ups;
- 5 advisers (2.8 fte) working with Business Growth;
- 2 advisers supporting Food & Drink, Renewables and Tourism sectors; and
- 4 advisers (2.8 fte) providing specialist support in the areas of e-commerce, ICT, social enterprise, investment readiness and HR and organisational development.

This targeted approach will ensure that advisers can focus on delivery and achievement of national start up and particularly growth targets.

The team is key to the success of the service and investment in adviser training and continuing professional development (CPD) is absolutely critical, each adviser has been tasked with completing a CPD diary and targeted to achieve a minimum of 5 hours per month (full time).

Last year 3 advisers completed the Premier Adviser accreditation and 3 others gained a BA in Business and Enterprise, all passing with distinction.

Planned and current training and development activities include:

- Team meetings are held every 2 weeks and at each meeting a section is given over to a guest speaker with the aim of updating the team on current business practices or partner activity
- In addition where workshops are held for clients the staff are invited to attend where this is relevant for example on subjects like Auto Enrolment which is a crucial business change that advisers need to be aware of.
- Formal training and personal development plans, advisers are able to apply for support for more formal training. One adviser is currently being supported to undertake an MSc in

Business Information Systems and Technologies, which will help in delivering ICT/e-commerce advice to businesses

- Personal networking/attendance at industry events;
- Attendance at the Masterclass talks and networking opportunities
- Shadowing of peers - be that listening to calls, attending meetings or site visits;
- Best practise visits to other areas/service deliverers to broaden perspective;
- Case conference approach to client development – i.e. active involvement of wider adviser team and management in developing growth action plans/ agreeing best approach for delivery of client support – encourages sharing of ideas, previous experience and/or sector specialism;
- Monthly structured CPD and Performance Review and Development activity.
- Regular mutual identification of training needs (where the manager and adviser jointly identify the adviser's strengths and weaknesses) and they agree what needs to be done, when and how.

Specific measures to address and improve performance are outlined in Section 5.

5. BUSINESS GATEWAY PERFORMANCE AND TARGETS 2015/16

5a) Business Gateway Performance and Targets 2014/15

The table below provides a summary of Business Gateway performance for 2013/14 and the targets for 2015/16, which Scottish Borders Council has agreed with the Business Gateway National Team at COSLA will be delivered.

Service Output Targets			
Start-up Advisory Service	Target 2014/15	Actual 2014/15	Target 2015/16
Total number of start-up customers who have begun trading	220	225	220
Number of higher value start-up customers with agreed actions identified in Action Plan for Growth	20	17	25
Number of higher value start-up customers with completed Action Plans for Growth	8	10	10
Number of start-up workshops/seminars held	72	84	72
Number of customers attending start-up workshops/seminars	360	533	360
Growth Advisory Services for start-up and existing businesses			
Number of growth customers with agreed actions identified on their Action Plan for Growth	20	21	20
Number of growth customers accepted into growth pipeline relationship with SE	10	8	10
Number of growth customers accepted into account management relationship with SE	2	3	2
Number of growing business workshops/seminars held	10	13	25
Number of clients attending growing business workshops/seminars	40	166	125
BG Local Services			
Number of customers accessing local advisory services	400	670	400
Number of growth customers accepted into Local Growth Advisory Service ⁵	45	41	45
Number of customers accessing local expert help services	30	9	30
Number of workshops/seminars held	72	71	50
Number of customers attending workshops/seminars	360	445	250

⁵ This is a local target for businesses with growth potential of £100,000 to £199,000 over three years and new for 2014/15; it is not included in national reports

There are a number of issues to comment on in respect of performance during 2014/15 as follows that are reflected in the Business Plan and Improvement Plan priorities:

- Business start-up numbers and local services are greater than expected and this reflects demand from local businesses and the use of EU funding to extend the activities beyond the core national Business Gateway service offering;
- The growth targets for 2014/15 were overly optimistic and ambitious; the structure of the business base in the Scottish Borders makes it difficult to attain the nationally set growth criteria and highlights the need to develop and deliver a local service that meets the needs of businesses with growth potential in the Scottish Borders;
- In respect of Expert Help, the uptake from businesses was slower than anticipated. However, there are currently an additional 13 projects underway and these will be noted in the 2015/16 figures.
- The proposed targets for 2015/16 continue to place an emphasis on support for local businesses with growth potential and delivering services that meet local priorities. These are stretching but realistic targets that will contribute to the growth of the local economy.

A Business Gateway Manager was appointed in October 2014 allowing a greater focus on day to day management and achievement of targets as well as other priorities. This appointment resulted in a major pick up in the team's outputs during the second half of 2014/15 and has created a stronger position for the team going into 2015/16.

Workshops

At this point, it is worth explaining the targets and highlighting a change in the workshop activity for the forthcoming year. Currently, Business Start-Up workshops are run at a minimum of 4 per month. These workshops are delivered in locations across the region as well as evenings and at weekends to ensure access for anyone interested in attending.

After a review it has been decided to change the recording of Growing Business workshops to include all those that are delivered by the in-house team of advisers. This means that Business Gateway will count a number of the ICT/e-commerce workshops and our Marketing Your Business workshops as Growing Business workshops where previously these were recorded under local services> This is an historic anomaly from prior to the service being brought in-house. This result in the mix of workshops reported changing but no reduction in the actual number delivered.

Finally, the BG Local Services workshops are those that have been developed to meet local needs and priorities and are funded through EU monies and this year will include the Masterclass series. The target for 2015/16 assumes that new EU funding will be available from October and there will not be a break in the service provision.

5b) Continuing Performance Improvement 2015/16

The focus for the team in the coming year is to ensure that the service is reaching the maximum number of businesses possible. This means taking the service out across the region in a structured and well marketed series of campaigns and adviser sessions. As noted earlier the team seek to engage with traditionally harder to reach communities and ensure that the service

is as accessible as possible. These actions will help ensure that the service is delivered to those that need it and core targets are delivered.

The client management approach will allow advisers the time required to work with relevant businesses and help the business achieve its growth targets. The team will have a new focus on High Value Start-up⁶ clients providing them with a service that will enable a more rapid growth and bring them earlier success and impact in the economy.

Business Gateway will continue with its sector focused specialists and provide support for important elements of business such as HR and Finance. The team will work closely with partners (e.g. Scottish Enterprise) in delivery of Innovation support and during the year review this activity to ensure that it best meets the needs of local businesses.

The team will continue to work with Further and Higher Education Institutions as well as supporting the Young Enterprise Scheme as well as attending careers fairs at schools. This activity will support enterprise education efforts and ensure that self-employment is considered a real alternative to employment.

Continued participation in national network groups enables the service to learn from other areas and also influence future policy in respect of Business Gateway and wider business support activity.

Monthly performance meetings will continue to be held with the Chief Officer Economic Development to ensure close monitoring of local performance progress.

During 2014/15 an internal marketing team was established to coordinate marketing and promotional activities. A marketing plan will be developed to support this business plan that will focus on the key activities throughout the coming year. This marketing team already has close working links with the national marketing team and PR agency. A recent appointment within the Council's Communications team has proved an excellent resource for communicating the Business Gateway message in the region. The Business Gateway Manager also sits on the National Marketing team enabling local input to the national plan.

As previously identified intermediaries such as banks and accountants are an important source of referrals of new clients and add credibility in the service. To date these introductions and this will be addressed during 2015/16 through introducing a monthly newsletter targeted at intermediaries. This newsletter will highlight the activities of the service and the impact on the businesses supported through case studies with the aim of triggering further introductions to their clients.

Risk – a risk workshop was carried out during January and the key risks and mitigations identified are recorded in the Business Gateway Risk Register (attached as Appendix 3).

Low Carbon and Sustainability – Working closely with colleagues in Economic Development Business Gateway aim to encourage uptake in renewable energy and adoption of sustainable business methods.

Historically this has proved to be a difficult area to engage with businesses. To address this Business Gateway and the Economic Development team are surveying the business base to

⁶ High Value Start Up is defined as a business that has a turnover of in excess of £70,000 or takes on an employee within 18 months of commencing trading.

Business Gateway

Business Plan 2015/16

explore how best to engage with businesses, how they want to receive information regarding this subject, the barriers to adoption and how Business Gateway can help them overcome these barriers. The results of the survey will provide the basis for activity during 2015/16. In addition it is possible that Resource Efficiency Scotland may advisers operating across Scotland and Business Gateway will look to work closely with the team and if possible accommodate one of these advisers in its office to keep the subject high on the agenda of advisers and businesses alike.

Equalities Impact Assessment – In preparation for planning activity for the forthcoming year the service completed an Equality Impact Assessment. This exercise highlighted a number of areas where the service needs to be more proactive. This includes meeting with communities and groups that traditionally find it hard to access public services and exploring how this can be made easier.

As noted earlier Business gateway will deliver workshops to specific groups that been identified as not being proactive in accessing the service, as well delivering workshops in key areas such as Burnfoot and Langlee and will take advice as to whether these should be delivered in a language other than English.

6. FINANCE

Scottish Borders Council receives funding to deliver Business Gateway in the Scottish Borders from the Scottish Government.

The in-house delivery costs of Business Gateway are based on the budget available within the Council's five year Financial Plan.

The financial projections are attached below in Section 7.

Business Gateway

Business Plan 2015/16

7. Financial Plan 2014 - 2017

	2015/16	2016/17	2017/18
	12 months	12 months	6 months
	£	£	£
ANNUAL BUDGET	331,088	333,823	168,305
Staff	291,929	294,664	148,726
Property Expenses	17,152	17,152	8,576
Transport Expenses	12,864	12,864	6,432
Supplies & Services	9,143	9,143	4,571
TOTAL	331,088	333,823	168,305

Business Gateway – Performance Improvement Plan – 2015/16

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Improvement Action	Responsibility	Timeline	Cost/Resource	Expected Result
1). Create and deliver a series of 5 Master Class and Networking events across the region, to trial effectiveness for businesses and Business Gateway	BG Manager & BG Advisers	April 2015 – September 2015	Staff Time; Budget of £10k for delivery and marketing from budget	More knowledgeable businesses, an excellent networking opportunity for attendees who will be encouraged to collaborate. Marketing for BG Service and better representation of the service in the rest of the region leading to introduction to new contacts for BG Advisers and achievement of national targets.
2). Identify suitable contact centres and use these for delivery of Business Gateway across the region. Research opportunities to apply branding and provide leaflets and further information. Timetable and market the adviser attendance at these venues	BG Manager and BG Advisers. SBC Contact centre managers	May to September 2015 as initial trial	Staff Time	Greater visibility and reach of Business Gateway. Additional marketing opportunity for service. Provision of easier access of service to more remote parts of the region leading to achievement of national targets in particular start-up.
3). Establish a Client Management system of operation for Growth Advisory Service clients. Identifying businesses with greatest potential and formally allocating them to a client manager.	BG Manager	April 2015	Staff Time	Closer working relationship with our key target market. Quicker identification and provision of solutions for client needs. Leading to a stronger business base in the region who have easier access to the services the public sector can offer. Creation of a more structured operating environment in Business Gateway and again assistance in achieving national targets.
4). Proactive delivery of service and workshops to harder to reach areas and communities in the region. Working with our colleagues in Equality and Diversity to	BG Manager and BG Advisers	May 2015	Staff Time	Provision of a better service from BG, carrying out our wider social responsibilities as part of SBC. Discovering new businesses and

Business Gateway

Business Plan 2015/16

Improvement Action	Responsibility	Timeline	Cost/Resource	Expected Result
identify prospects				individuals that we should be working with and who will contribute to our national targets.
5). Identify opportunities for businesses to take advantage of the new Borders Railway. Ensure where possible that support is given to those businesses that want to provide a service linked to the railway and that we promote this in our marketing activity.	BG Advisers	Ongoing	Staff time	Borders Railway will bring a range of excellent business opportunities to the region. Businesses are currently slow to change practices or introduce new services until they can gauge the use of the railway. While this is understandable our role will ensure that when they are ready to invest time and money that we are there to discuss and encourage this investment. This will see a greater use of the railway and lead to more successful local businesses
6). Radio Borders advertising for both the service provided by BG but also linked to case studies supporting some of the businesses we work with.	BG Manager and BG Marketing team	May 15 – September 15	Staff Time, Budget of approx. £5k using existing budgets	Increased exposure of BG service and better description of how we can assist businesses in the region. Closer links to Radio Borders leading to greater opportunities for exposure and acceptance of BG related news stories. Leading to a greater number of enquiries for BG services.
7). Provision of a dedicated Broadband line to Business Gateway offices in Selkirk.	BG Manager and SBC IT	May 2015	£250 installation and £25 per month rental	Reduction in IT problems during BG training workshops. Greater service to workshop attendees and reduction in complaints received by workshop deliverers relating to lack of IT access.
8). Introduction of CRM 2 as a recording and data base system for the department	BGNational; PO (Business), BG Manager and roll out	May 2015	Staff time, cost is covered centrally	Reduction in time spent by advisers recording activity. Greater increase in reporting capabilities leading to more

Business Gateway

Business Plan 2015/16

Improvement Action	Responsibility	Timeline	Cost/Resource	Expected Result
	team and SBC IT			in-depth information about provision of the service we deliver which in turn will lead to better future planning activity
9). Link with workshop delivery in Dumfries and Galloway to look at provision of additional IT and tax related workshops for businesses	BG Manager	May 2015 to September 2015	£200 per workshop paid from existing budgets	Provision of wider knowledge to businesses and increase the ability to reach new audiences for our workshops and services. Aiming for a minimum of 12 workshops delivered over the period with 60 additional attendees.
10). Research and introduce diagnostic reviews for businesses in Growth Advisory Service and operating in the Client Management system	BG Manager and BG Advisers	October 2015	Staff time. Any additional costs coming from existing budgets	Greater understanding of the businesses we work with and an opportunity to structure the information gained from them. Will lead to a more structured delivery of support, more expansive identification of need and in turn a quicker move through our segmentation model and achievement of national targets.
11). Delivery of Scottish Borders Business month extending the period of focus from Business week in 2014, reacting to feedback taken during that week.	BG Manager and BG Marketing local team	Up to October 2015	Staff time, marketing and delivery costs within a budget of £10k – source to be confirmed	Increased awareness of business in the region and the importance of this to the region. Increased knowledge transfer to business owners by delivery of various workshops. Greater attendance at the workshops as the content is spread over a month rather than focussed on one week. Increased access to business not currently using our service to help achieve our national targets.

Risk Register [Business Gateway]

No	Risk	Causes/ triggers	Consequences	Proximity	Risk owner	Inherent risk			Controls		Residual risk		
						Impact	Likelihood	Score	Current controls	Control assessment	Impact	Likelihood	Score
1	If we fail to reach the right people, then we may not achieve our start up and business growth targets	Potential customers do not know the range of services offered; Customers do not trust the advice; Inaccurate data; Large geographical area to cover; Reactive service rather than proactive; Customers access advice and funding from competitors	Targets are not achieved; Growth projections for the local economy are lower.	on going	Phil McCreddie	4	4	16	Marketing strategy/plan; Business Plan/Improvement Plan; Use of nationally contracted PR company; New relationship with Corporate Comms; Use of Contact Centres	effective partially effective effective effective partially effective	4	2	8
Page 39	If we are unable to access financial support for growth businesses then the number of enquiries may reduce	SBC allocates funds elsewhere; A large number of grant applications comes in at once and are approved (following marketing campaign)	Enquiries reduce which means less businesses are coming forward to enable us to achieve targets.	October annually	Phil McCreddie	3	3	9	Business Gateway is now represented on the Grants panel (some influence); Employment of Business Gateway Manager	effective effective	3	3	9
3	If the economy continues to grow then the number of start up businesses may decrease and targets for set up businesses may not be achieved	Customers go back into employment; Less people start businesses as there are more opportunities to gain employment;	We do not achieve targets;	18-24 months	Phil McCreddie	3	3	9	Monitor economic growth TOLERATE RISK	effective	3	3	9
4	If we do not have accurate and up to date data regarding businesses, then our targets may be unrealistic	Information is not currently accurate; Information that we hold is out of date	Unable to find potential customers - missed opportunities; May be finding the 'wrong' customers; Do not achieve targets;	on going	Jim Johnstone	4	3	12	Business Gateway is achieving targets; We do hold some useful data	effective effective	4	3	12

Risk Register [Business Gateway]

No	Risk	Causes/ triggers	Consequences	Proximity	Risk owner	Inherent risk			Controls		Residual risk		
						Impact	Likelihood	Score	Current controls	Control assessment	Impact	Likelihood	Score
5	If we do not secure European funding then we may not have the resources to continue to deliver all aspects of the service to the same high standards	Poor application; EU membership from UK is not certain following outcome of General Election 2015; Guidelines for application are not clear	We do not achieve targets; Marketing budget is reduced; Staff losses	01-Oct-15	Jim Johnstone	4	2	8	Experience of previous successful applications; Scottish Government want applications to be successful	Effective effective	4	1	4
								0					0
								0					0
								0					0
								0					0
								0					0
								0					0

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Mitigating Actions [Business Gateway]

Risk No.

1

Risk

If we fail to reach the right people, then we may not achieve our start up and business growth targets

8

Consequences

Targets are not achieved;
Growth projections for the local economy are lower.

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed
Marketing strategy/plan; Business Plan/Improvement Plan; Use of nationally contracted PR company; New relationship with Corporate Comms; Use of Contact Centres	effective partially effective effective effective partially effective	Master classes and Networking events to be launched	Phil McCreadie	30-Apr-15	
		Improve Marketing Plan	Lyn Galloway	01-Apr-15	
		Start using Contact Centres as customer access points	Phil McCreadie	30-Apr-15	

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets		8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.				
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No.	4	Risk	If we do not have accurate and up to date data regarding businesses, then our targets may be unrealistic	Residual risk level (Red, Amber,	12
Consequences	Unable to find potential customers - missed opportunities; May be finding the 'wrong' customers;				

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed
Business Gateway is achieving targets; We do hold some useful data	effective effective	Establish a Companies database which contains accurate and up to date information	Jim Johnstone	30-Apr-15	

Mitigating Actions [Business Gateway]

Risk No. 1 **Risk** If we fail to reach the right people, then we may not achieve our start up and business growth targets **Residual risk level (Red, Amber, Yellow)** 8

Consequences Targets are not achieved; Growth projections for the local economy are lower.

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed
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Mitigating Actions [Your Department]

Risk No. **Risk** **Residual risk level (Red, Amber, Yellow)**

Consequences

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets		8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.				
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Your Department]

Risk No.		Risk		Residual risk level (Red, Amber, Yellow)	
Consequences					
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets				8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.						
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed		

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets		8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.				
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Your Department]

Risk No.		Risk		Residual risk level (Red, Amber,	
Consequences					

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No. Risk

Consequences

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed
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Mitigating Actions [Your Department]

Risk No. Risk Residual risk level (Red, Amber,)

Consequences

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No. 1 **Risk** If we fail to reach the right people, then we may not achieve our start up and business growth targets 8

Consequences Targets are not achieved; Growth projections for the local economy are lower.

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed
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Mitigating Actions [Your Department]

Risk No. **Risk** **Residual risk level** (Red, Amber,)

Consequences

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets				8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.						
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed		

Mitigating Actions [Your Department]

Risk No.		Risk				Residual risk level (Red, Amber,	
Consequences							
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed		

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets				8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.						
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed		

Mitigating Actions [Your Department]

Risk No.		Risk		Residual risk level (Red, Amber,	
Consequences					

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

Mitigating Actions [Business Gateway]

Risk No.	1	Risk	If we fail to reach the right people, then we may not achieve our start up and business growth targets				8
Consequences	Targets are not achieved; Growth projections for the local economy are lower.						
Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed		

Mitigating Actions [Your Department]

Risk No.		Risk		Residual risk level (Red, Amber,			
Consequences							

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed		

Mitigating Actions [Business Gateway]

Risk No. 1 **Risk** If we fail to reach the right people, then we may not achieve our start up and business growth targets **8**

Consequences Targets are not achieved; Growth projections for the local economy are lower.

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed
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Mitigating Actions [Your Department]

Risk No. **Risk** **Residual risk level (Red, Amber, Yellow)**

Consequences

Current controls	Control assessment	New Action	Action owner	Date to be completed by	Date completed

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Escalated Risks [SERVICE]

No	Risk	Causes/ triggers	Consequences	Proximity	Proposed Risk owner	Inherent risk			Controls		Residual risk		
						Impact	Likelihood	Score	Current controls	Control assessment	Impact	Likelihood	Score
1								0					0
2								0					0
3								0					0
4								0					0

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Escalated Risks [SERVICE]

No	Risk	Causes/ triggers	Consequences	Proximity	Proposed Risk owner	Inherent risk			Controls		Residual risk		
						Impact	Likelihood	Score	Current controls	Control assessment	Impact	Likelihood	Score
5								0					0
6								0					0
7								0					0
8								0					0
9								0					0
10								0					0
11								0					0

**Strategic Housing Investment Plan 2015-2020
(Progress Update 2014-2015)**

Report by Service Director Strategy & Policy

Executive Committee

12 MAY 2015

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to advise Members of all affordable housing completions, and progress made in the delivery of the Strategic Housing Investment Plan (SHIP) projects for the period 2014-2015.**
- 1.2 The Strategic Housing Investment Plan (SHIP) is the key document for targeting affordable housing investment in Scottish Borders. Annual updates have previously been submitted to the Scottish Government in November of each year with the current SHIP 2015/20 being submitted in October 2014.
- 1.3 Local Authorities to date have been required to produce and submit a SHIP annually to the Scottish Government and 2014 saw the Scottish Government change this requirement to bi-annually thus the next SHIP submission is likely to be in November 2016.
- 1.4 This report advises Members that in 2014/15, 62 affordable houses were delivered, with 49 homes being for social rent, 3 via the Open Market Shared Equity scheme, and 10 homes for mid-market rent via Bridge Homes, the limited liability partnership established as a result of the Council's new National Housing Trust/Local Authority Variant initiative. Scottish Ministers have recently confirmed that this initiative can be extended until March 2019. Within the SHIP it was envisaged that 146 houses would be completed in 2014-2015, but due to contractor performance issues, 3 Registered Social Landlord projects totalling 87 homes will now complete in the first quarter of this financial year and will be reported as completions in the 2015/16 SHIP update.

2 RECOMMENDATIONS

- 2.1 It is recommended that Members agree to:**
- (a) endorse the progress made in the delivery of affordable housing projects in 2014/15 as set out in the Strategic Housing Investment Plan and;**
 - (b) note the extension to the National Housing Trust/Local Authority Variant initiative to March 2019.**

3 STRATEGIC HOUSING INVESTMENT PLAN PROGRESS UPDATE

- 3.1 The 2015-20 SHIP sets out how the affordable housing projects are prioritised to meet needs identified in the Local Housing Strategy and how new planned projects will be delivered in practice. As reported to the Executive on the 11th November table 3 page 18 of the SHIP outlined the number of housing projects that were due to complete in 2014-2015 which were committed under the 2012-2015 SLP. These projects were agreed in collaboration with Scottish Government, Housing Supply Division (East) Office, the Borders Housing Network and the Council.
- 3.2 The 2012-2015 SHIP and three year Strategic Local Programme (SLP) was estimated to deliver 331 new affordable homes over the three year period with an estimated investment value of £43m. To recap briefly, 113 affordable houses were completed in 2012-13, a further 72 houses were completed during 2013-14 and it was planned that a further 146 houses would be delivered during 2014-2015.
- 3.3 Table 1 below shows the progress for 2014-15 with 59 new affordable homes being completed by 31st March 2015 with 49 homes for social rent and 10 homes for mid-market rent via Bridge Homes, the Council's National Housing Trust (NHT) Local Authority Variant. A total investment of approximately £7.670m. It is expected that the remaining 87 homes, at Acredale 2, Eyemouth, Todlaw 3, Duns and Easter Langlee 2A, Galashiels will be completed in the first quarter of the 2015-2016 financial year. This slight slippage was owing to a range of issues which are currently being resolved¹. 3 Open Market Shared Equity homes were concluded in period bringing the total number of affordable homes delivered to 62. Figure 1 on page 3 below illustrates some of the completed developments.

Table 1: Project Completions 2014-15

RSL	Project Name	Supplier	Units GN	Units PN	Units Total	Status Update as at 31 March 2014
Eildon	Old School Place, Lauder	HA Rent/MMR	12	0	12	Completed
Eildon	Dunwhinny Lodge Peebles	HA Rent	15	1	16	Completed
Eildon	Rodger Fish Garden Kelso	HA Rent/MMR	18	0	18	Completed
Eildon	40-42 Old Town Peebles	HA Rent	2	0	2	Completed
Eildon	Chris Paterson P ² Galashiels	HA Rent	1	0	1	Concluded
Bridge Homes	Castle View Ayton	MMR	4	0	4	Concluded
Bridge Homes	Queen Eliz Drive Galashiels	MMR	6	0	6	Concluded
OMSE	Scottish Borders	Shared Equity	3	0	0	Concluded
Total			61	1	62	

¹ Weather Conditions, non-compliance with planning requirements and modern methods of construction

² Off the Shelf purchase

Figure 1: Affordable Housing Developments Completed 2014-2015



- 3.4 The SHIP does not address unsubsidised private sector market housing, or include opportunistic unplanned provision of affordable housing by other means. However it is recognised that new private house building makes a significant contribution to communities' sustainability, and by providing opportunities to deliver affordable housing by providing sites through the operation of the Planning system and the Council's Affordable Housing Policy and working with Registered Social Landlords. In addition the private house building industry has also created opportunities to produce affordable housing opportunities to support the Council's National Housing Trust/Local Authority Variant initiative.
- 3.5 Bridge Homes has been legally established as the Limited Liability Partnership which will own the homes produced by the Council's National Housing Trust initiative. Officers have investigated 49 sites to date to ascertain if there is a potential to deliver mid-market homes on these sites for the Council's programme. 10 of these sites have some potential to deliver up to 65 homes for mid-market rent and Officers are constantly monitoring these potential opportunities. An additional 11 sites are considered as being "open" which means Officers are in discussion with developers and land owners to meet the Initiative's requirements. These sites could potentially provide up to 80 homes.
- 3.6 Bridge Homes currently owns 10 homes at Castle View, Ayton, and Queen Elizabeth Drive Galashiels (see figure 1 on page 3 above). Bridge Homes has agreed contracts with developers to provide 13 homes in Peebles, 6 in Innerleithen and 8 in Denholm. The Council has also recently received confirmation from the Scottish Government to extend the Initiative until March 2019 and it is envisaged this will provide more certainty in project delivery.

- 3.7 Scottish Ministers have agreed a policy framework and publication of Guidance to allow Council borrowing and on-lending to Registered Social Landlords (RSLs). Following subsequent discussions between Officers and individual RSLs in Borders, the Council received a business case proposal from Eildon Housing Association. After consideration and review of the contents against the criteria set out in the above Guidance, it was determined that this particular business case did not meet these requirements. Nevertheless, the Guidance is now operational and provided that an RSL business case proposal satisfies all the required criteria, the Council is empowered to decide to on-lend without the need to secure consent from Scottish Ministers. This provides the Council with another method of being able to assist delivery of affordable housing.
- 3.8 In the event of any additional funding and resources being made available, or project re-phasing, the Council and its partners remain able to bring forward projects that have been identified through the routine SHIP project prioritisation assessment and review process. Quarterly programme meetings with Berwickshire Housing Association, Eildon Housing Association, Scottish Borders Housing Association and the Scottish Government and the Council are instrumental in this project prioritisation and review process.

4 IMPLICATIONS

4.1. Financial

- (a) Ensuring the effective development and delivery of SHIP projects continues to be dependent on SBC's provision of core services, financial resource allocations from the Scottish Government, partner agencies and private developers and individuals.
- (b) There are a number of funding resources that the Council and its development partners have drawn upon including Affordable Housing Supply Programme Funding, 2nd Homes Council Tax, Commuted Sums, Housing Association Private Finance Borrowing and Scottish Water Grant Funding, and finally Council Borrowing from the Public Works Loan Board (PWLB) in order to deliver NHT Initiatives, and to on-lend to RSLs which could help deliver additional affordable homes for rent in Borders.
- (c) In 2014/15, through use of Affordable Housing Policy Developer Contributions, the Council grant assisted projects at Easter Langlee, Galashiels, Chris Paterson Place Galashiels, and Jedward Terrace Denholm. The Council also grant assisted projects Castle View Ayton, Queen Elizabeth Drive Galashiels, Dunwhinny Gardens Peebles, High Street Innerleithen, Acredale Eyemouth through use of its Second Homes/Council Tax budget.
- (d) The financial impacts of the National Housing Trust/Local Authority initiative programme are fully reflected within the revenue and capital budget and the associated Treasury Prudential Indicators which control council borrowing.

4.2 Risk and Mitigations

Delivery of the SHIP is largely dependent upon a number of variables, not least of which relate to resource and other political and organisation decision making processes beyond the control of the Council. However, governance and control measures are in place to ensure delivery of the SHIP including monitoring contractor performance and quarterly programme meetings involving partners.

4.3 **Equalities**

- (a) In line with both Council policy and legislative requirement, the SHIP 2015-20 was subjected to an equalities impact assessment which did not identify any concerns regarding adverse impact on equalities groups through delivery of the SHIP.
- (b) The development of SHIP 2015-20 was predicated on the endorsement of the principle of equalities as articulated in the SHIP guidance. The SHIP was subjected to an Equalities Impact Assessment, Strategic Environmental Assessment screening and rural proofing.
- (c) Houses produced by Registered Social Landlords will be allocated according to their individual allocations policy and procedures. As a consequence the RSLs are subject to the weight of statutory scrutiny via regulation and inspection by the Scottish Housing Regulator.

4.4 **Acting Sustainably**

- (a) In accordance with Section 7 of the Environmental Assessment (Scotland) Act 2005 a pre-screening assessment of the SHIP 2013-18 had been undertaken using the criteria specified in Schedule 2 of the Act. The pre-screening assessment identified no or minimal effects in relation to the environment, hence the SHIP is exempt from Strategic Environmental Assessment (SEA) requirements under Section 7(1) of the Act.
- (b) By seeking more new affordable houses the SHIP will promote sustainable communities and help to overcome many of the housing supply challenges faced locally.
- (c) There are no adverse economic or social effects resulting from the recommendations of this report. In addition, SHIP delivery and potential environmental effects from new build housing will be addressed through the planning process and national policies and standards.

4.5 **Carbon Management**

- (a) It is considered that there are no direct effects on the Council's carbon emissions arising from the report recommendations.
- (b) New additional affordable housing will have a general effect on the region's carbon footprint however these are addressed within the planning process and in meeting the housing requirements and standards as set out by the Scottish Government.

4.6 **Rural Proofing**

- (a) Rural proofing applies to all areas of Scottish Borders classified by Scottish Government as 'remote rural' or 'accessible rural'. This applies to all areas of Scottish Borders out with the towns of Hawick, Galashiels, Peebles, Selkirk, Eyemouth, Jedburgh and Kelso.
- (b) The SHIP Project Working Group carried out a rural proofing exercise as part of the preparation of the SHIP 2013/18. It was determined that the delivery of this SHIP will not have an unforeseen adverse impact on the rural areas and that the needs of rural areas have been properly taken into account.

4.7 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made.

5 CONSULTATION

- 5.1 The SHIP Working Group has been consulted and contributed to this report.
- 5.2 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy & Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council are being consulted and their comments will be incorporated in the final report.

Approved by

David Cressey

Service Director Strategy & Policy

Signature.....

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Background Papers: None

Previous Minute Reference: None

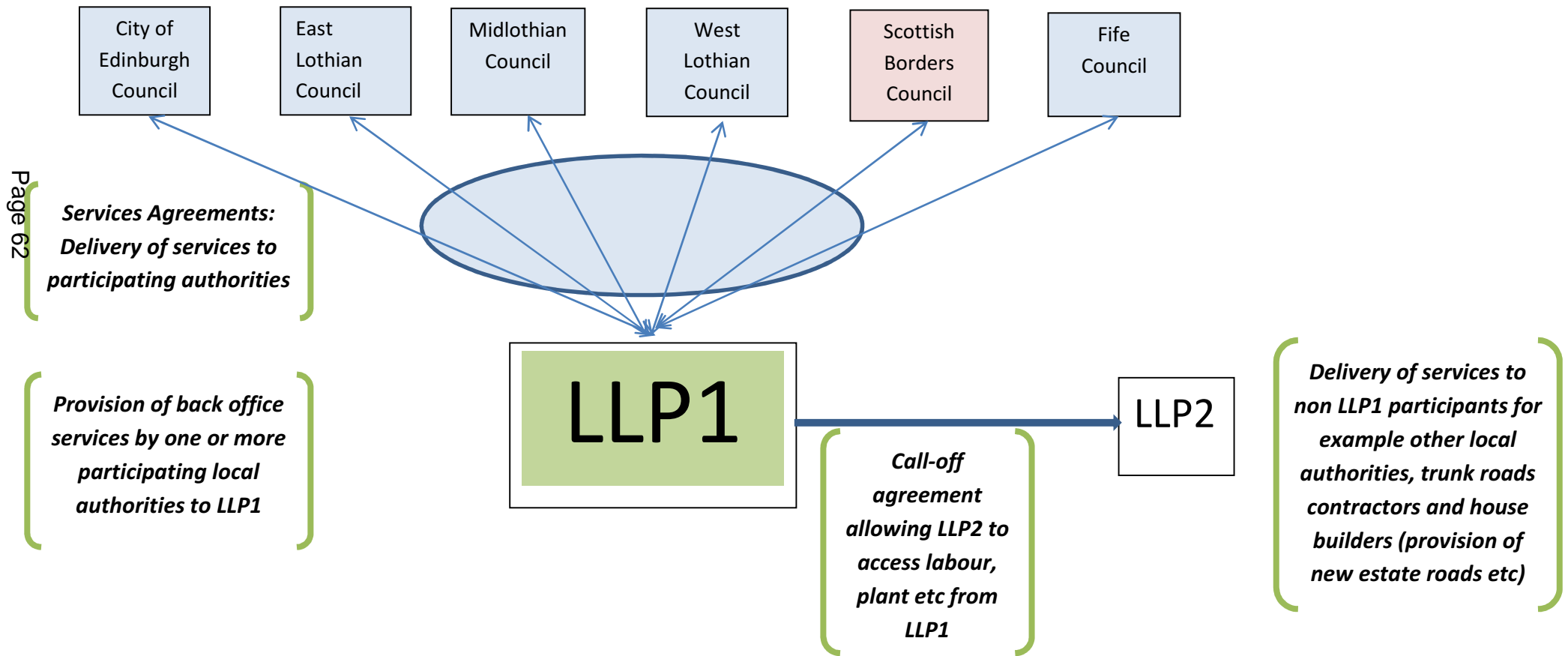
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ELBF Proposal Summary

Areas to be considered for collaboration – Asset Management, Joint Procurement, Flood Risk Management, New Roads & Street Works Acts (co-ordinating roads projects), Weather Forecasting, Traffic Signal Maintenance, Road Safety, Structures (bridges etc), Street Lighting, Training, Packaging of Roads Maintenance Contracts.



Edinburgh, Lothians, Borders & Fife Roads Collaboration Programme (ELBF proposal) and SBC roads services

Report by Service Director Commercial Services

EXECUTIVE COMMITTEE

12 May 2015

1 PURPOSE AND SUMMARY

- 1.1 **The purpose of this report is to seek a decision to review the operating model of the Council's wider roads services to ensure that they are best placed to maximise services to the Borders, operate effectively in the external market place and in future be capable of interfacing if required with a proposed Edinburgh, Lothians, Borders & Fife Roads Collaboration Programme (ELBF proposal) facilitated by the Improvement Service.**
- 1.2 **The report goes on to recommend not joining the ELBF proposal in light of unproven and unquantified benefits but instead maintaining a watching brief to enable the Council to re-assess the proposal in the future.**
- 1.3 This report was considered by Administration Policy Working Group on the 21 April 2015 and the recommendations reflect their recommendations to the Executive Committee.
- 1.4 The background sets out the ELBF proposal in the context of the National Roads Maintenance Review. Behind both is a national agenda behind the sharing of roads services to reduce costs and improve efficiency. As part of this agenda the ELBF proposal seeks to set up governance arrangements to look at sharing roads services in the ELBF region. The proposal would involve the creation of a limited liability partnership jointly owned by the ELBF local authorities, the structure of which is outlined in Appendix 1.
- 1.5 Roads services under consideration for sharing would cover the following areas:-
1. Asset Management
 2. Joint procurement
 3. Flood Risk management
 4. New Roads & Streetworks Act (co-ordinating roads projects)
 5. Weather Forecasting
 6. Traffic Signal Maintenance
 7. Road Safety
 8. Structures (bridges etc)
 9. Street Lighting
 10. Training
 11. Packaging of Roads Maintenance Contracts

- 1.6 If it were to join the ELBF proposal the Council would need to retain its gritting and responsive repairs capacity within the Borders and make sure that generally, any service changes reduce costs and improve efficiency without adversely impacting upon service levels in the Borders.
- 1.7 The Council would also need to retain the right to decide the level to which it participates in any ELBF shared roads service arrangements and retain the right to decline to participate in arrangements that the Council regards as detrimental to roads services in the Borders.
- 1.8 In the meantime consideration needs to be given to the best operating model for SBC roads services to ensure that it can maximise its services to the Borders, operate effectively in the external market place and in future, if required, be capable of interfacing effectively with ELBF.
- 1.9 If the Council and other ELBF authorities do not constructively engage in the ELBF proposal (and other local authorities in similar initiatives across Scotland), it is likely that option D of Option 30 of the National Roads Maintenance Review would be pursued by the Scottish Government. This would involve a re-structuring of roads authorities across Scotland.

2 RECOMMENDATIONS

2.1 I recommend that the Executive Committee agrees that :-

- (a) The Council reviews the operating models of its wider roads services to ensure that they are best placed to maximise services to the Borders, operate effectively in the external market place and in future, if required, be capable of interfacing with the ELBF proposal. A recommendation for the most advantageous operating model for roads services to be reported back to the Executive Committee for approval.**
- (b) The Council should not join the ELBF proposal in light of unquantified and unproven benefits, but should maintain a watching brief to enable the Council to re-assess the proposal in the future.**

3 BACKGROUND

- 3.1 The Edinburgh, Lothians, Borders and Fife Councils (ELBF) have an informal roads collaboration network. Each council delivers the same roads services and officers meet from time to time to share information and experience. Out of this there is some joint working and joint procurement mainly for specialist services such as weather forecasting and roads surveying.
- 3.2 The services in common across the group include:-
1. Roads repairs
 2. Rock salt and gritting
 3. Surface treatments
 4. Traffic light maintenance
 5. Road safety audits
 6. Roads surveying
 7. Weather forecasting
 8. Clarence call centre (except SBC)
 9. Flood risk management
- 3.3 The total projected spends on roads services across ELBF (revenue and capital) is around £162M for 2015/16. Of this around £72M are capital works and a further £40M of revenue works is anticipated to be contracted out to either the private sector or in-house trading operations.
- 3.4 The Improvement Service is facilitating work to build on the informal ELBF collaboration network to create a formal collaborative arrangement that would reduce costs and drive through efficiencies for all participants. This flows from Scottish Government initiatives towards shared services generally and there is huge potential to be had through the sharing of roads services across Scotland.
- 3.5 In this context there is an ongoing National Roads Maintenance Review (the Review) being taken forward in phases. The Review is being led by a Task Group comprising a former chair of SCOTS (the Society of Chief Officers of Transportation in Scotland), the Improvement Service, Messrs Halcrow/CH2M Hill (engineers) and Mssrs Pricewaterhouse Coopers (accountants) in consultation with SCOTS, COSLA, SOLACE and Transport Scotland.

- 3.6 Phase 2 of the Review was published in 2011 which identified 30 separate options to be taken forward. Of these a key option was identified as Option 30 which was to undertake work to "Explore the optimum delivery of roads maintenance services". This work was completed in 2012 and the findings were:-
1. Current roads maintenance delivery services across Scotland's 32 local authorities are unlikely to be sustainable into the future.
 2. Their needs to be standardised financial roads reporting across local authorities backed by more robust Key Performance Indicators and benchmarking.
 3. A number of options for future roads services provision were considered and the leading option is Option C, which centres on shared services. If this transpires not to bring anticipated benefits, then Option D becomes the preferred option, which centres on a structural change of roads services across Scotland.
 4. The standardisation of a variety of strategies could be developed pan Scotland in the short term and progressed as a pilot.
- 3.7 The initiative to formalise the ELBF roads collaboration network therefore follows on from Option C of Option 30 of Phase 2 of the Review.

4 ELBF ROADS COLLABORATION PROPOSAL (ELBF PROPOSAL)

- 4.1 The ELBF proposal has been developed in consultation with officers from the ELBF roads services and facilitated by the Improvement Service. The aim has been to establish a platform through which various roads services can be formally considered for sharing across the ELBF region. Areas under consideration for sharing include those listed in paragraph 4.5 below.
- 4.2 The approach adopted is "Governance First". This means that an ELBF governing body is formally established first and various services are then considered for sharing, including joint procurements.
- 4.3 A number of models for the governance body were considered including a Joint Committee, Joint Board, Company Limited by Guarantee, Company limited by Shares and Limited Liability Partnership (LLP). Of these the LLP was considered as offering the most benefit and most appropriate solution for needs for the ELBF authorities.
- 4.4 The proposed LLP would:-
1. Agree a common vision and strategic objectives.
 2. Agree a strategy for taking forward collaborative projects.
 3. Assess potential operating models for the shared delivery of various roads services identified as collaborative projects.
 4. Agree on a collaborative project by collaborative project basis, as to what extent shared services are taken forward, ranging from limited to fully integrated shared services.

4.5 11 areas for new or increased collaboration have been identified for collaborative projects:-

1. Asset Management
2. Joint procurement
3. Flood Risk management
4. New Roads & Streetworks Act (co-ordinating roads projects)
5. Weather Forecasting
6. Traffic Signal Maintenance
7. Road Safety
8. Structures (bridges etc)
9. Street Lighting
10. Training
11. Packaging of Roads Maintenance Contracts

4.6 For each collaborative project it is envisaged that each party would be able to decide their degree of participation, with the return proportionate to their respective input. In other words it is anticipated that each participant can be selective about which services it chooses to share and to what extent.

4.7 A key advantage for an LLP arrangement is that the participants are able to award each other works without the need to go through lengthy and costly EU procurement procedures.

4.8 The proposed structure is set out in Appendix 1. LLP 1 would be the principle vehicle through which shared services would be delivered. Service Level Agreements would be put in place between LLP1 and the participating authorities receiving those services. LLP1 in turn would borrow, hire or take a transfer of resources from participating authorities to deliver those services.

4.9 Should LLP1 wish to deliver services to non-participating organisations (for example trunk roads contractors or Transport Scotland) then it would use the LLP2 vehicle (which would be a subsidiary of LLP1). LLP2 would hire resources as necessary from LLP1 to deliver the services and would be able to act competitively in the same way as a private contractor.

5 SCOTTISH BORDERS COUNCIL POSITION

5.1 For the Council the ELBF proposal offers the potential to:-

1. Review a wide range of roads services to ascertain whether shared services would be advantageous with a view to reducing costs and improving efficiency. In particular there could be benefits to the Council in the areas of Asset Management, Joint Procurement, Flood Risk Management, Weather Forecasting, Traffic Signal Maintenance and Training. This would potentially involve a number of Council services that undertake and interact with roads services.
2. Enable SBC Contracts (the Council's roads maintenance and civil engineering works contracting arm) to participate in more roads maintenance contracts.

- 5.2 The Council however has been forward thinking through its close working relationship with trunk roads contractor AMEY with the Council being Amey's main sub-contractor for Transport Scotland's SE Scotland trunk roads maintenance contract. Sub-contract work includes winter maintenance and support to Amey's emergency response by Neighbourhood Operations and SBC Contracts undertakes surfacing works South of the Edinburgh bypass. This potentially aligns towards a re-structuring of roads services advocated in the National Roads Maintenance Review (see paragraph 3.6(3) – Option D). The benefits of this would have to be retained in any negotiations with ELBF.
- 5.3 Notwithstanding the positive aspects the Council would need to be careful how it engages with the ELBF proposal. In particular it would need to be aware that:-
1. The Council would need to ensure that it retains access to resources to deliver roads services to the Borders to at least the same standard as present. In particular it would need to ensure it retains the capability to maintain gritting levels and responsiveness to reactive maintenance such as pothole repairs.
 2. SBC Contracts is a major trading organisation and the budgeted £652K per annum surplus it generates is used to help fund other Council services. It also makes a significant contribution to Neighbourhood Services budgets. Whatever roads maintenance contracts arrangements are agreed within ELBF, care must be taken to ensure the Council's overall financial position is not compromised and that any trading operation continues to assist the Council in exercising its powers of well-being.
 3. The SBC Contracts position is recognised in the ELBF proposal though the details of any roads maintenance contractual arrangements have yet to be thought through, negotiated and agreed. Consideration therefore needs to be given to the best operating model for SBC Contracts in its potential interface with ELBF shared roads services.
 4. The Council would be a relatively junior partner in an ELBF arrangement and would need to take care to ensure that in any governance arrangement, it has the ability to opt out of any shared service arrangements that would be pre-judicial to it.
- 5.4 Strategically in light of the ongoing work from the National Roads Maintenance Review and the ELBF proposal which follows on the back of this, the Council would need to participate in these developments, whilst ensuring there is no loss of roads services to the Borders. However, before participating the Council would need to determine the best operating model for its wider roads services to enable it to maximise service provision in the Borders, operate in the external market place and if required into the future, interface with ELBF.

6 WAY FORWARD AND PROPOSAL

- 6.1 The above was considered by Administration Policy Working Group on 21st April 2015 and following their deliberations it is proposed that :-
1. The Council reviews the operating models of its wider roads services to ensure that they are best placed to maximise services to the Borders, operate effectively in the external market place and in future, if required, be capable of interfacing with the ELBF proposal. A recommendation for the most advantageous operating model for roads services would be reported back to the Executive Committee for approval.
 2. The Council should not join the ELBF proposal in light of unquantified and unproven benefits, but should maintain a watching brief to enable the Council to re-assess the proposal in the future.

7 IMPLICATIONS

7.1 Financial

- (a) There are no immediate financial implications arising from this report, though adopting the best operating model for its roads services and in particular SBC Contracts would improve the prospects of the latter being able to achieve its budgeted surplus. Currently SBC Contracts is budgeted to generate a surplus of around £652k per annum, which is used to help fund other Council services.
- (b) The ELBF proposal potentially offers the prospect of enabling SBC contracts to participate in more contracting opportunities provided the interface between SBC Contracts and ELBF is set up appropriately. To make a success of this SBC Contracts must be able to operate competitively in a very tough contracting market place.

7.2 Risks and Mitigations

If the Council and other ELBF authorities do not constructively engage in the ELBF proposal (and other local authorities in similar initiatives across Scotland), it is likely that option D of Option 30 of the National Roads Maintenance Review would be pursued by the Scottish Government. This would involve a re-structuring of roads authorities across Scotland possibly through combining Transport Scotland's trunk roads regions with local authorities. This risk is mitigated as much as reasonably possible by the Council engaging constructively with the ELBF proposal and joining should the right conditions prevail for the Council.

7.3 Equalities

An Equalities Impact Assessment has been carried out on this proposal and it is anticipated that there are no adverse equality implications.

7.4 Acting Sustainably

The sharing of roads services across the ELBF region offers the prospect of making better use of roads resources.

7.5 Carbon Management

There are unlikely to be material effects on carbon emissions as a result of the proposals in this report.

7.6 Rural Proofing

In negotiating to be part of the ELBF proposal care needs to be taken to ensure that the capacity of roads services in the Borders is maintained.

7.7 Changes to Scheme of Administration or Scheme of Delegation

No changes which are required to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

8 CONSULTATION

- 8.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy & Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and their comments incorporated in this report.

Approved by

Andrew Drummond-Hunt

Service Director Commercial Services Signature

Author(s)

Name	Designation and Contact Number
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Background Papers: None

Previous Minute Reference: None

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**RESPONSE TO SCOTTISH GOVERNMENT'S CONSULTATION
PAPER ON A PROPOSED BILL RELATING TO BURIAL AND
CREMATION AND OTHER RELATED MATTERS IN SCOTLAND**

Report by Service Director Neighbourhood Services

EXECUTIVE

12 May 2015

1 PURPOSE AND SUMMARY

- 1.1 The report seeks approval of the response to the Scottish Government's Consultation Paper on a proposed Bill relating to burial and cremation and other related matters in Scotland.**
- 1.2 The Scottish Government recognises that legislation relating to burial and cremation in Scotland is in need of consolidation and modernisation. They have produced a Consultation Paper (see Appendix1) which sets out a range of proposals and questions. The outcomes from the replies to Consultation Paper will inform a Burial and Cremation Scotland Bill. Responses to the Consultation Paper have to be submitted by 24 April 2015. It has been agreed with officials from the Scottish Government that the final response can be confirmed following the agreement of the Council's Executive at its meeting on 12 May 2015.

2 RECOMMENDATION

- 2.1 I recommend that the Executive approves the response to the Consultation Paper on a proposed Bill relating to burial and cremation and other related matters in Scotland as set out in Appendix 2.**

3 BACKGROUND

- 3.1 The Scottish Government recognises that legislation relating to burial and cremation in Scotland is in need of consolidation and modernisation. They have produced a Consultation Paper (see Appendix 1) which sets out a range of proposals and approaches in response to the recommendations of the Burials and Cremation Review Group and the Infant Cremation Commission.
- 3.2 The Burials and Cremation Review Group was set up in 2005 by the then Minister of Health to review the Cremation Acts of 1902 and 1952 (and the Cremation (Scotland) Regulations 1935 as amended) and the Burial Grounds (Scotland) Act 1855 as amended, and to make recommendations on how the legislation could be changed in order to better serve the needs of the people of Scotland. Several of its recommendations relating to burial and cremation have not implemented and these are being considered again in the Consultation Paper.
- 3.3 The Infant Cremation Commission was established in April 2013 by the Minister for Public Health to examine the policies, practice and legislation related to the cremation of infants in Scotland. It published its report in June 2014 making 64 recommendations all of which were accepted by the Scottish Government.
- 3.4 The two sets of recommendations from the *Infant Cremation Commission* and the *Burial and Cremation Review group* referred to in the Consultation have mainly been felt to be reasonable in their approach and measured in terms of their potential impact.
- 3.5 It is intended that the outcomes from the replies to Consultation Paper will inform a Burial and Cremation Scotland Bill. Responses to the Consultation Paper have to be submitted by 24 April 2015. It has been agreed with officials from the Scottish Government that the final response can be confirmed following the agreement of the Council's Executive at its meeting on 12 May 2015.

4 LOCAL CONTEXT

- 4.1 Scottish Borders Council fulfils a variety of legal duties which may be impacted as a result of the outcome of the consultation. These duties include Planning, Burials, Environmental Health and Registration of Deaths.
- 4.2 The Council manages 154 burial grounds and undertook approximately 768 burials in 2014-15, of which approximately 5 were assisted funerals and a further 163 were cremated remains. There are currently two crematoriums operational in the Scottish Borders, one in the Central Borders at Melrose and one to the Eastern Borders at Houndwood, both are operated by the private sector. It is estimated that approximately 600 cremations of local people took place in the Scottish Borders in 2014-15. There were 1,295 deaths registered in the Scottish Borders in 2014-15.

- 4.3 The two cremation authorities which operate in the Scottish Borders are the appropriate local bodies to respond on the areas included within the consultation relating to Cremation forms and procedures, Pregnancy loss, Cremation register, Accreditation of Cremation Authority staff and the inspector of Crematoria. It is understood that both cremation authorities do intend to respond to the consultation.
- 4.4 The Council works in partnership with NHS Borders to provide a Still and Neo-Natal Death burial space located at Wairds Cemetery, Melrose. The Council involvement in provision of the area is limited to maintenance, grave digging and interment. NHS Borders is the responsible body liaising with families and funeral directors to coordinate and administer the activities undertaken in the area.

5 CONSULTATION RESPONSE

- 5.1 The consultation covers both burials and cremations. The Council is a Burial Authority only and does not operate any crematoria in the Scottish Borders (see paragraph 4.2 above). This means that the Council is in a better position to respond to only the burials aspect of the consultation.
- 5.2 The most important aspects of the response from the perspective of the burials service, is about the re-use of graves and the possible ending of the sale of lairs in perpetuity.
- 5.3 The re-use of graves has the potential to be controversial when it involves exhuming and then reburying at a deeper depth those that had previously been interred. The proposal would effectively provide burial authorities with the option to re-use grave space, thus relieving the pressure on land and existing grave space that is evidenced in the case study attached to the consultation, but also at a smaller level through the operational life spans that cemeteries in the Borders have. Other benefits may include reduced costs in providing new burial space however any financial assumptions would need to reflect the costs in remediating a cemetery to make it fit for re-use. The response agrees that the re-use of grave space is reasonable. However, in the event that the consultation leads to changes in legislation which enables burial authorities to re-use graves, the option remains for an authority such as Scottish Borders Council to continue with creation and allocation of new burial ground should it so choose.
- 5.4 The possible ending of sale of lairs in perpetuity, infringes on a persons long term interest in a lair. However it has the potential to generate financial revenues to the Council which had previously not been possible, and it may help increase the operational capacity of older cemeteries. It may also help when it comes to maintaining cemeteries as there will be a current link and contact between the person/s who have purchased the right of burial and the Council.
- 5.5 In forming the response officers have engaged with a range of other Council services and NHS Borders as well as the two local cremation authorities in the Borders.

6 IMPLICATIONS

6.1 Financial

There are no financial implications arising from this report as it is the response to a Scottish Government Consultation Paper.

6.2 Risk and Mitigations

The risks of not of not responding to this consultation is that the views of Scottish Borders Council would not be considered in the response to the Consultation.

6.3 Equalities

There are no direct equalities issues arising from this report as it is a response to a Consultation Paper.

6.4 Acting Sustainably

There are no implications arising from the report.

6.5 Carbon Management

There are no implications arising from the report.

6.6 Rural Proofing

There are no implications arising from the report.

6.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made.

7 CONSULTATION

7.1 The Corporate Management Team, Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into this report.

7.2 The Depute Chief Executive People, Depute Chief Executive Place, the Corporate Transformation Services Director, Director of Public Health, the Chief Social Work Officer, the Chief Officer Health & Social Care Integration, the Service Director Children & Young People, the Service Director Neighbourhood Services and the Service Director Commercial Services have also been consulted and any comments received have been incorporated into this report.

Approved by

Service Director Neighbourhood Services Signature

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Background Papers: None
Previous Minute Reference: None

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Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland

This consultation paper considers a range of sensitive and emotive subjects. Some of the issues discussed take place at times of great distress and deal with difficult and harrowing experiences. The language of the consultation paper is necessarily legalistic and technical, and it is necessary to discuss the subject matter in an objective and dispassionate way. This approach is essential to ensuring that a legal framework is developed which ensures that appropriate dignity and respect is shown when carrying out burials and cremations. The use of such language should not be taken as being disrespectful to those who have experienced some of the circumstances considered in the consultation paper.

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Ministerial foreword



Death touches us all and there are few times more difficult than when a loved one dies. At such moments, the procedures required to ensure a respectful funeral for the deceased should be straightforward and clear. We should expect to be able to bid farewell in a dignified way that provides comfort to those left behind, and we should expect to know that the remains of our loved ones will be handled compassionately and appropriately.

When that does not happen, the weight of grief is compounded by anger at systematic failures at this most sensitive of times. No-one should be faced with this situation, and one way to reduce the likelihood of such occurrences is to modernise the legal framework for burial and cremation in Scotland. This consultation paper invites views on various proposals for a new Bill relating to burial and cremation and other related matters.

Many of the recommendations considered by the consultation paper were made by the Infant Cremation Commission chaired by Lord Bonomy. The Commission was convened to recommend improvements in the way that cremations of babies and infants are carried out, in response to historical poor practice at a number of crematoria across Scotland, details of which emerged in 2012. Families facing the unimaginable situation of the death of a baby or infant were given unclear or incorrect information about the cremation process, particularly about whether or not ashes would be recovered. My predecessor in this post, Michael Matheson, established the Commission to examine practice and recommend ways to ensure that this situation could not be repeated.

The Commission made sixty-four recommendations, many of which are already being taken forward by the newly established National Cremation Committee. Other recommendations require legislative change, and this consultation paper sets out proposals to give effect to those recommendations.

Several of the other recommendations in the consultation paper were made by the Burial and Cremation Review Group. The Group was convened in 2005 to consider ways to improve procedures following a death in Scotland. Several of the Group's recommendations have already been implemented in the Certification of Death (Scotland) Act 2011, but recommendations designed to improve practices relating to burial and cremation have not yet been taken forward. These remaining recommendations cover a wide range of issues, including the general management

of graveyards, proposals to ease pressure on burial land and modernising the legal framework for burial and cremation, as well considering new methods which involve neither cremation nor burial. Collectively, these recommendations represent the most radical overhaul of burial and cremation practices for well over 100 years, and will provide a legal process that is fit for 21st Century Scotland.

In addition to the recommendations from the Burial and Cremation Review Group and the Infant Cremation Commission, the consultation paper also considers various other related proposals. Increasing numbers of people are finding that the cost of a funeral is too much to bear, and at a time of grief many people are struggling to afford to provide a dignified funeral for their loved one. Funeral poverty is not something that that should happen in modern Scotland, and the consultation paper considers ways to end this situation.

The paper also makes proposals about the regulation of the funeral industry. While there are a number of professional bodies for the funeral industry, there is no formal regulatory system. I am keen to explore whether regulating the industry, including the appointment of inspectors, will bring improvements and benefits.

My intention is that the recommendations should be taken forward in new legislation, which will replace the existing legislation covering these issues. I believe that the proposals set out by this consultation paper will provide a legal framework for burial and cremation in Scotland that will meet the needs of 21st Century Scotland and afford due dignity during one of the most difficult times any of us will face.

A handwritten signature in black ink that reads "Maureen Watt". The signature is written in a cursive style with a horizontal line at the end.

Maureen Watt MSP
Minister for Public Health

Introduction

Overview

1 The legislation relating to burial and cremation in Scotland is in need of consolidation and modernisation. The main primary legislation is old and increasingly inadequate for the needs of 21st Century Scotland. Burial legislation is over 150 years old, while the legislation covering cremation is over 100 years old. In addition, recommendations made by various expert groups in recent years have further hastened the need for the legislative framework to be overhauled and updated.

2 Relatively few amendments have been made to the Burial Grounds (Scotland) Act 1855 since its introduction, and it is no longer sufficient for modern purposes. The Act places duties on administrative units which no longer exist, such as Parochial Boards, and does not give current Burial Authorities the power they require. New powers are needed to ensure that modern practices can be implemented so that burial remains an affordable and realistic option.

3 In contrast, the Cremation Act 1902 and the Cremation (Scotland) Regulations 1935 have been amended many times, with the effect that the legal framework for cremation can be confusing and difficult to follow. A series of amendments have sought to address various issues and maintain the currency of the legislation, but recent events have demonstrated that gaps remain. These require to be filled to provide a comprehensive legislative framework for cremation in Scotland.

4 The Scottish Government will bring forward new legislation to address these issues. The proposed Burial and Cremation (Scotland) Bill (this may not be the final title of the Bill) will provide a modern and comprehensive legal framework for burial and cremation in Scotland, including other methods of respectfully and sensitively disposing of human remains, as well as various related topics. The bulk of the proposals which will form the basis of the Bill are based on the recommendations of two groups.

Burial and Cremation Review Group

5 In 2005 the then Minister for Health established the Burial and Cremation Review Group with the following terms of reference:

‘To review the Cremation Acts of 1902 and 1952 (and the Cremation (Scotland) Regulations 1935, as amended) and the Burial Grounds (Scotland) Act 1855 as amended, and to make recommendations on how the legislation could be changed in order to better serve the needs of the people of Scotland. This would, where appropriate, recognise the established role of the Procurator Fiscal Service, and take account of policy developments in England (specifically the Shipman Inquiry’s work on death certification) and international good practice.’¹

¹ <http://www.scotland.gov.uk/Resource/Doc/217184/0058192.pdf>.

6 The Group was chaired by Sheriff Robert Brodie, and included representatives from the Crown Office, the medical profession, the legal profession, the funeral industry and religious and faith groups, among others. The Group issued a report in October 2007, which contained 33 recommendations.² A consultation on the Group's recommendations took place in 2010.³ The recommendations are listed at Annex A of this consultation paper.

7 Many of the recommendations concerned improvements to the certification of death in Scotland. Following consultation, these were implemented by the Certification of Death (Scotland) Act 2011.⁴ Other recommendations relating to burial and cremation were not implemented. Although the 2010 consultation considered these issues, those recommendations not yet implemented are again being considered as part of this consultation.

8 The responses to the original consultation were published in September 2010.⁵ These will be taken into account when developing policy, but the length of time since the issues were last considered, as well as the wider context of subsequent events, warrants a fresh examination. Accordingly views are again sought on several of the Group's recommendations with a view to implementing them in the proposed Bill.

Infant Cremation Commission

9 The other recommendations considered in the consultation paper are those made by the Infant Cremation Commission. In response to concerns about previous practices in the cremation of infants, in April 2013 the Minister for Public Health announced the creation of an independent Commission to examine the policies, practice and legislation related to the cremation of infants in Scotland. The Commission was chaired by the Rt Hon Lord Bonomy and considered a range of issues. It published its report in June 2014, making 64 recommendations, all of which were accepted by the Scottish Government.⁶ It is intended to take many of these forward in the Burial and Cremation (Scotland) Bill, while others which do not require legislation are being taken forward under the remit of the National Cremation Committee, which was established recently in line with the Commission's recommendations.

10 A number of other issues have arisen separately from these reports, and these will also be considered in this consultation paper and, depending on the views expressed in the consultation, implemented through the Bill.

11 Broadly speaking, this consultation paper is divided into the recommendations from the Burial and Cremation Review Group and the Infant Cremation Commission. In general, the issues which each group considered lend themselves to a natural

² <http://www.scotland.gov.uk/Topics/Health/Policy/BurialsCremation/BurialCremation>.

³ <http://www.scotland.gov.uk/Publications/2010/01/26131024/0>.

⁴ <http://www.legislation.gov.uk/asp/2012/8/contents>.

⁵ <http://www.scotland.gov.uk/Publications/2010/09/29092728/0>.

⁶ Report of the Infant Cremation Commission, <http://www.scotland.gov.uk/Publications/2014/06/8342>; Scottish Government response, <http://www.scotland.gov.uk/Publications/2014/06/6362>.

split. In particular, many of the recommendations from the Commission are self-contained and require detailed and specific examination, not least those which relate to pregnancy loss. In some areas – for example, the right to instruct the disposal of a body – both the Group and the Commission examined the same issue, although in different contexts, and the consultation paper considers such issues collectively.

The consultation process

12 The consultation paper sets out a range of proposals and approaches in response to the recommendations of the Burial and Cremation Review Group and the Infant Cremation Commission. Throughout the consultation paper, views are sought on certain issues and specific questions are asked. Consultees are invited to provide as much information as they wish in answering questions. More general views are also welcome, and consultees are invited to express their views on any issues they feel should be considered but which are not discussed in the consultation paper.

13 All responses received to the consultation will be taken into consideration in developing the Burial and Cremation (Scotland) Bill. In line with standard Scottish Government practice, consultation responses will be published online where the consultee has given permission. A Respondent Information Form (RIF) is included in the consultation paper for that purpose.

The legislative framework

Extant legislation

14 The legislation covering burial and cremation in Scotland is old, dating back to 1855 and 1902 respectively. As a result of amendments over the years, particularly to cremation legislation – often because of more modern legislation being introduced on related topics or changes required to reflect practice – the legal framework is piecemeal, with various provisions having been added or repealed since the introduction of the primary legislation. There has never been a systematic review and overhaul of the legislation governing burial and cremation, and much of it is no longer sufficient for the needs of 21st Century Scotland.

15 There are several pieces of legislation covering this subject:

- Burial Grounds (Scotland) Act 1855⁷
- Burial Grounds (Scotland) Amendment Act 1886⁸ (which amended the 1855 Act)
- Cremation Act 1902⁹
- Cremation (Scotland) Regulations 1935¹⁰
- Cremation Act 1952¹¹ (which amended the 1902 Act)
- Cremation (Scotland) Regulations 1952¹²
- Cremation (Scotland) Amendment Regulations 1967¹³
- Cremation (Scotland) Amendment Regulations 1985¹⁴
- Cremation (Scotland) Amendment Regulations 2003¹⁵

While this legislation has been amended substantially over the years, it has not been comprehensively updated or consolidated.

16 One of the Burial and Cremation Review Group's key recommendations was that the current legislative framework should be updated and modernised. This will require repealing existing primary and secondary legislation and replacing it with a single piece of primary legislation, which will contain regulation-making powers. New regulations will need to be introduced to replace existing regulations. As with the primary legislation, this will provide the opportunity to consolidate and modernise secondary legislation.

17 This approach will consolidate those parts of the existing framework which continue to be relevant, but will enable them to be modernised and considered afresh. It will also implement the recommendations of the Burial and Cremation Review Group and the Infant Cremation Commission. These recommendations

⁷ <http://www.legislation.gov.uk/ukpga/Vict/18-19/68/contents>.

⁸ <http://www.legislation.gov.uk/ukpga/Vict/18-19/68>.

⁹ <http://www.legislation.gov.uk/ukpga/Edw7/2/8/contents>.

¹⁰ <http://www.iccm-uk.com/iccm/library/CremRegs1935Scotland.pdf>.

¹¹ <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/31/contents>.

¹² <http://www.iccm-uk.com/iccm/library/CremRegs1952Scotland.pdf>.

¹³ <http://www.legislation.gov.uk/uksi/1967/398/contents/made>.

¹⁴ <http://www.legislation.gov.uk/uksi/1985/820/contents/made>.

¹⁵ <http://www.legislation.gov.uk/ssi/2003/301/contents/made>.

cover new provisions which will be introduced into legislation for the first time, as well as updating existing provisions to reflect modern needs and practices.

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Extent of legislation

Cemeteries

18 Scotland has both publicly and privately run cemeteries. Those which are publicly run are managed and operated by local authorities. Current legislation regarding the operation of cemeteries applies only to those which are operated by local authorities, which for this purpose are referred to as 'Burial Authorities'.

19 While the legislation relates only to publicly run cemeteries, most private operators tend to follow the legislation voluntarily.

Crematoria

20 There are 27 crematoria in Scotland, 14 of which are operated by local authorities, with 13 privately operated and one operated jointly by a local authority and a private company. A list of the crematoria in Scotland is at Annex B. Legislation which relates to cremation applies to all crematoria, regardless of whether they are publically or privately owned. The legislation refers to the operators as 'Cremation Authorities'.

21 The Burial and Review Group recommended that the new legal framework should apply to all cemeteries, regardless of whether they are publicly or privately run, and all crematoria. Overall responsibility for public burial grounds should remain with local authorities. This approach will provide a consistent legal framework governing all cemeteries and crematoria.

22 Given that all Cremation Authorities are required to comply with current legislation, this proposal should not place any particular new legislative burdens on crematorium operators. Similarly, although private operators of cemeteries are not required to comply with current legislation, the fact that the majority do so voluntarily should minimise any additional legislative burdens as a result of this proposal. Nonetheless, the Scottish Government will carry out a full Business and Regulatory Impact Assessment (BRIA) to assess the likely impact of this proposal.

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Places where other forms of disposal are carried out

23 The Burial and Cremation Review Group considered new techniques for disposing of human remains. Although many of these techniques are still being developed, it is likely that there will be demand for them in the future. None of these methods are yet in operation in Scotland, but they have the potential to become so – this is discussed in more detail at paragraphs 29-30. The Group recommended that new legislation should be made in such a way as to allow these techniques to be used in the future as appropriate.

24 It is not proposed to legislate for any specific alternative technique at the moment. However, it may be sensible to broaden the scope of the primary legislation to ensure that any new technology or method for disposing of human remains which is introduced in Scotland at a later date falls within the legal framework.

25 In view of the development of an increasing number of alternative techniques, it is proposed that legislation should apply to the places where such practices may be carried out.

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

26 Similarly, there is increasing demand for currently available environmentally friendly methods of disposing of human remains, such as natural burial. New legislation will allow such methods to be regulated appropriately.

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Private burial and cremation

27 Home burial is not covered by legislation, but is not illegal in Scotland. The Burial and Cremation Review Group recommended legislating for home burial to remove any uncertainty and to ensure that the practice is in line with burials carried out by Burial Authorities. A home burial would require various authorisations, including permission from the Local Authority and consent from any other relevant organisation, such as SEPA. Each organisation would be required to maintain its own records of the burial, but the main record of the burial would be that kept by the local authority. It is proposed that the Burial and Cremation (Scotland) Bill will provide powers for Scottish Ministers to make regulations setting out the detail of home burial requirements.

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Q7 - In making legal provision for home burial, what factors should be considered?

28 Unlike home burial, private cremation (ie, cremation which occurs outside a recognised crematorium) is illegal. To achieve absolute clarity, the Burial and Cremation Review Group recommended that legislation should state that private cremation is not legal. Regulation 3 of the Cremation (Scotland) Regulations 1935 states that ‘no cremation of human remains shall take place except in a crematorium of the opening of which notice been given to the Secretary of State and to the Department’. In repealing existing legislation to create a new, modernised legislative framework, it is proposed to retain this restriction that cremations may take place only in crematoria.

Q8 - Are there are any reasons why private cremation should not remain illegal?

Alternative methods

29 The Burial and Cremation Review Group considered various alternative means of disposing of human remains, including burial and cremation techniques which are considered more environmentally friendly than traditional methods, such as natural burial, which does not involve chemicals. The Group also considered new techniques which do not involve burial or cremation. For example, resomation involves placing the body in a chemical solution, which breaks down the body to leave bone ash and a sterile liquid. Other techniques include promession, which involves the body being freeze-dried and then vibrated into ashes, which are then buried. These and other techniques are currently in different stages of development, although some have been legislated for in various jurisdictions – for example, the Government of New South Wales has included resomation in its legal definition of cremation.¹⁶

30 Since many of the existing techniques are still in development, and as it is likely that more new techniques will be developed, it is proposed that the Burial and Cremation (Scotland) Bill should include a power for Scottish Ministers to make regulations in relation to specific techniques. This will allow particular techniques to be regulated when they are considered viable and acceptable for use in Scotland.

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Definition of ‘ashes’

31 There is no clear definition of ‘ashes’ in current legislation. In practice various different remains may be considered as ashes after a cremation, and in the past this has led to misunderstanding and confusion. The Infant Cremation Commission recommended that ‘ashes’ should be defined in legislation as ‘all that is left in the cremator at the end of the cremation process and following the removal of any

¹⁶ See section 49 of the Public Health Regulation 2012, <http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+311+2012+cd+0+N>.

metal'. This will provide a single definition which will ensure that any remains left after all cremations will be regarded as ashes.

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Minimum distance between crematoria and housing

32 Section 5 of the 1902 Act states that 'no crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority'. The Burial and Cremation Review Group considered that such minimum distances should be maintained (converted to metric measurements) when modernising the legislation, and in the 2010 consultation, the majority of responses to this issue agreed.

33 Since then it has become apparent that in a small number of cases this minimum distance has not been complied with, resulting in legal disputes between homeowners and occupiers and developers. In such instances, it is likely that planning requirements have been met fully, since land use conditions imposed by other legislation are not necessarily material considerations when making planning decisions. It is the responsibility of developers or landowners to ensure that other legal requirements are met.

34 The requirements of section 5 of the 1902 Act help provide a secluded, private space for cremations as well as establishing a suitable distance between crematoria and housing. As such, it is the Scottish Government's view that a minimum distance should be maintained and that enforcement powers should be introduced to ensure that such requirements are not breached.

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

The right to instruct the disposal of human remains

Overview

35 There is currently no legal provision regarding who has the right to instruct the disposal of human remains in Scotland, which normally involves arranging for the disposal of the body, including the method of disposal. In practice, this is commonly carried out by the nearest relative or next-of-kin of the deceased, although it may also be performed by the executor. This lack of legal clarity can cause problems. In particular, the potential use of the executor may be problematic: as the Burial and Cremation Review Group noted, there is no confirmed executor in around 60% of deaths in Scotland, and the executor may not be confirmed until after the funeral. Moreover, the executor's functions are primarily administrative and financial and do not extend to arranging the funeral.

36 The Burial and Cremation Review Group considered the issue and recommended that the right to instruct the disposal of a body should be vested in the nearest relative. Given the wider focus of this consultation, the issue being considered here is who should have the right to instruct the disposal of human remains – this will allow the issue to be considered in the context of stillborn babies and pregnancy loss. The Group's recommendation remains valid for this wider context.

37 The Infant Cremation Commission made recommendations designed to provide a robust framework for who is entitled to apply for the cremation of stillborn babies and pregnancy loss. The Commission recommended that in the case of stillborn babies and the individual cremation of pregnancy loss the person who is entitled to apply for cremation is the nearest relative as defined by Section 50 of the Human Tissue (Scotland) Act 2006. In the case of the shared cremation of pregnancy loss, the person entitled to apply for cremation is a person authorised by the Medical Director of a Health Board or other medical provider. This is discussed in more detail below.

Death of an adult

38 The Group recommended that the definition of 'nearest relative' should be the same as in Section 50 of the Human Tissue (Scotland) Act 2006:

'the nearest relative is the person who immediately before the adult's death was –

- (a) the adult's spouse or civil partner;
- (b) living with the adult as husband or wife or in a relationship which had the characteristics of the relationship between civil partners and had been so living for a period of not less than 6 months (or if the adult was in hospital immediately before death had been so living for such a period when the adult was admitted to hospital);
- (c) the adult's child;
- (d) the adult's parent;
- (e) the adult's brother or sister;

- (f) the adult's grandparents;
- (g) the adult's grandchild;
- (h) the adult's uncle or aunt;
- (i) the adult's cousin;
- (j) the adult's niece or nephew;
- (k) a friend of longstanding of the adult'

39 This follows common practice in Scotland, which includes the next of kin or surviving spouse having rights to solatium (ie, damages for pain and suffering) for unauthorised interference with the dead body, and would avoid the potential problems caused by using the executor.

40 Where there was a dispute over who should have the right to instruct the disposal of a body, the Group recommended that this would be resolved by making a summary application to a sheriff.

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Death of a child

41 The Infant Cremation Commission also recommended using this definition in particular circumstances, and cited the Burial and Cremation Review Group's recommendation. This definition should be unambiguously applicable in the case of the death of an adult, but is more problematic where a child (including a baby) has died, and also in the case of stillbirths and pregnancy loss. Nonetheless, alternative proposals for instructing the disposal of the body when a child dies, which reflect the spirit of the original recommendation and follow the same general approach as Section 50, should provide appropriate outcomes. Proposals for who should have the right to instruct the disposal of a pregnancy loss are considered at paragraphs 154-155.

42 In the case of the death of a child, the 2006 Act offers a useful alternative definition. Section 10 relates to a child who dies under 12 years of age, and allows decisions to be made by 'a person who immediately before the death of a child under 12 years of age had parental rights and parental responsibilities in relation to the child (but who is not a local authority)'. The 2006 Act makes a distinction between children over and under 12 years of age because children over 12 years of age can make decisions about the donation of their organs in the event of their death. This distinction does not need to apply for the circumstances of instructing the disposal of a body. Similarly the restriction relating to a local authority is not relevant in the case of the disposal of a body.

43 For the purposes of the Burial and Cremation (Scotland) Bill it is proposed that the person who has the right to instruct the disposal of the body where a child has died should be a person who immediately before the death of the child had parental rights and parental responsibilities in relation to the child. It is proposed that this should apply in the death of any person below the age of 16 years, which would

allow the definition at Section 50 of the 2006 Act to be used for any person aged 16 years or over. Where the person who had parental rights and parental responsibilities in relation to the child cannot make such a decision, the Bill should offer a range of other people in whom this power should be vested. This would be based on Section 50 and would represent a range of familial connections.

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Stillborn babies

44 A further definition is required for the purposes of stillborn babies. There are no directly comparable definitions in other legislation that can act as a model, but it is still possible to offer alternatives which capture the spirit of the recommendations. The nearest equivalent is in the language used by the Registration of Births, Deaths and Marriages (Scotland) Act 1965 for registering a stillbirth, in which 'mother' and 'father' are used.¹⁷

45 It is proposed that in the case of a stillbirth the right to instruct the disposal of the body should be vested in the 'mother' or 'father'. Where for any reason it is not possible for the mother or father to do this, a list of alternative people who have familial links to the mother and father should be used for the purposes of instructing the disposal of the body; this could be based on Section 50 of the 2006 Act.

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Additional requirements in the case of a stillborn baby, pregnancy loss and the death of a child

46 The Infant Cremation Commission recommended that in cases relating to babies and stillbirths an application by a person other than those described at paragraphs 43 and 45 should be accepted only on cause shown (ie, where a valid reason can be demonstrated). Given the additional definitions proposed, it is suggested that this same requirement is also applied to the deaths of people under the age of 16 years. The use of the definition of 'nearest relative' at Section 50 of the 2006 Act for the death of people aged 16 years and over provides sufficient flexibility so that similar provisions are not required for instructing the disposal of the body in the death of an adult.

47 This approach provides a specified list of who may instruct the disposal of human remains, but allows for alternative arrangements where necessary. Where

¹⁷ <http://www.legislation.gov.uk/ukpga/1965/49/contents>.

such an application is accepted, the reason should be recorded in the Cremation Register (which is discussed in more detail at paragraphs 168-175).

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

The management of cemeteries

48 One of the Burial and Cremation Review Group's key concerns was around the management of cemeteries, particularly those which had fallen into disrepair. The Group identified the lack of regulations governing the general management of cemeteries in Scotland as a problem, leaving Burial Authorities with limited power to take action to address unsafe or abandoned cemeteries, graves and headstones and other memorials. The Group suggested that the introduction of regulations similar to the Local Authorities' Cemeteries Order 1977 which apply to England and Wales might help address this situation.¹⁸ The 1977 Order provides for the general management of cemeteries, including the care and maintenance of headstones and memorials, one of the Group's main concerns.

49 The Group made a number of specific suggestions that might be included in such regulations to enable better care of cemeteries in Scotland. These include requiring stonemasons working on memorials to be appropriately accredited; guarantees for masonry work carried out in cemeteries, and the ability for the Burial Authority to take action to ensure the continued safety and quality of memorials beyond that guarantee period; and encouraging the owners of memorials to take out insurance. Collectively, these steps should provide a comprehensive legal framework for the management of cemeteries and should enable Burial Authorities to provide better upkeep of cemeteries, including addressing unsafe or damaged memorials.

50 Similarly, while the Group did not make any other recommendations relating to the way in which coffins are buried apart from establishing a minimum burial depth (see paragraph 53), issues such as distances between adjacent lairs and the maximum number of coffins within a particular area are provided for in the 1977 Order. Issues like these could be addressed in any regulations that were introduced in Scotland to govern the general management of cemeteries.

51 While noting the potential value of introducing such regulations, the Group stopped short of recommending their introduction because of the potential financial burden that would be placed on Burial Authorities. Nonetheless, the Scottish Government is keen to explore whether such regulations would enable better management of cemeteries and is interested in views about providing a power for Scottish Ministers to make general regulations for the management of cemeteries. If the Bill did include the power for Scottish Ministers to make such regulations, further consultation on the content and scope of the regulations would be undertaken ahead of their proposed introduction. The potential impact on Burial Authorities would also be considered in a Business and Regulatory Impact Assessment (BRIA).

52 An alternative option would be for the Scottish Government to introduce guidance on the management of cemeteries. This would not be statutory, so Burial Authorities would not be required to follow the guidance, but would be encouraged to do so. Guidance would at least provide a framework for the consistent management of cemeteries, something that is currently absent.

¹⁸ <http://www.legislation.gov.uk/ukxi/1977/204/contents/made>.

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Minimum burial depth

53 There is currently no legal minimum depth of burial in Scotland. In England, the Local Authorities' Cemeteries Order 1977 provides for a statutory minimum burial depth of 3 feet, and most Burial Authorities in Scotland choose to follow this. The Burial and Review Group recommended that a minimum burial depth of 3 feet from the surface to the top of the coffin should be implemented by the Burial and Cremation (Scotland) Bill.

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Burial and cremation records

54 The Burial and Cremation Review Group recommended that all records and forms pertaining to burial and cremation in Scotland should be maintained electronically wherever possible, and should be transferable electronically.

55 The Group made no mention of how long such records should be kept. The Scottish Government has published a Code of Practice for records management in NHS Scotland, and this provides some useful models for records retention.¹⁹ NHS records relating to the disposal of fetal remains should be kept for 30 years, as should records which relate to blood and tissue donation and forensic medicine, as well as mortuary records. However, CMO guidance on the disposal of pregnancy losses up to and including 23 weeks and 6 days gestation issued in July 2012 recommended that records relating to the disposal should be retained for a minimum of 30 years, but 50 years as good practice.²⁰ The Infant Cremation Commission subsequently recommended that records relating to the cremation of any baby should be retained for a minimum of 50 years. However, the Cremation Register is to be kept in perpetuity (see paragraph 175), meaning that it may not be possible to create a permanent link between cremation records kept by Health Boards and the Cremation Register.

56 As such, the Scottish Government is seeking views on whether all burial and cremation records should be retained for a minimum of 50 years, whether in hard copy or electronically, as advised by the CMO guidance, or whether they should be stored indefinitely. Apart from the Cremation Register, the majority of such forms will be those kept by Health Boards.

57 The Commission also recommended that a working group should be established to consider the development of greater consistency, security and best practice in the electronic processing and storage of cremation records. Given the wider context of this consultation, it is proposed that this group should also consider burial records, as well as any other methods of disposing of human remains that might be introduced in Scotland.

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

¹⁹ Scottish Government Records Management: NHS Code of Practice (Scotland) Version 2.1 (January 2012), <http://www.scotland.gov.uk/Resource/Doc/366562/0124804.pdf>.

²⁰ Scottish Government, “Disposal of pregnancy losses up to and including 23 weeks and 6 days gestation” (July 2012), [http://www.sehd.scot.nhs.uk/cmo/CMO\(2012\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2012)07.pdf).

Alleviating pressure on burial grounds

Overview

58 The Burial and Cremation Review Group examined the increasing pressure on burial land in Scotland. There are a number of reasons for this pressure, including high levels of development and subsequently higher land prices. The Group noted that this situation is prevalent across Scotland, but particularly in urban areas. There is considerable pressure on land in Edinburgh, for example, and scoping work undertaken by the City of Edinburgh Council at the time of the Burial and Cremation Review Group had not identified any potential land for future use.²¹

59 This situation has had a number of consequences, including contributing to the rising cost of burial and leading to new cemeteries being sited increasingly far from communities. Some cemeteries have also closed because no more space is available. The Group suggested that this had the potential to cause various problems, including reducing the number of visitors to burial grounds which in turn might increase the likelihood of vandalism and gravestones and memorials falling into disrepair, as well as generally reducing the availability of burial as an option. The Group made several recommendations to reduce the current pressure on burial land.

End of sale of lairs in perpetuity

60 Key to these recommendations is the reuse of burial lairs in given circumstances, as well as bringing back into use some lairs which are sold but which have unused space. The sale of burial lairs in perpetuity has been allowed in Scotland for many years – this means that the descendants of those people who bought the lair originally still have exclusive rights of use, but are also responsible for the upkeep and maintenance of the lair, including any headstones or other memorials. In practice, it can be difficult to trace the owners of such lairs after the first two generations. As such, burial lairs may remain unused or fall into disrepair while the care of the lair defaults to the local authority.

61 The Group recommended that the sale of burial lairs in perpetuity should end and be replaced by a limited tenure of 25 years in the first instance, which could be extended in 10-year periods for as long as interest in the lair remained, either through the original purchaser or someone else to whom the interest passed. This would still allow a person to purchase a lair and have exclusive rights to bury in that lair for a given period of time, but would require that interest to be maintained and renewed in 10-year periods to ensure that a current link was maintained between the lair and its owner.

62 In order to maintain his or her interest at the end of the initial 25-year period, it is proposed that the owner of the lair (or his or her representative) would have to contact the Burial Authority to extend his or her ownership. The Burial Authority would be required to maintain an up-to-date register of lairs and their owners, but the responsibility for taking action to extend ownership at the end of either the initial 25-

²¹ Burial and Cremation Review Group, *Report and Recommendations*, paragraph 53.

year period or any subsequent 10-year period would fall to the owner or the owner's representative. If the original ownership is not extended at the end of the period, ownership would revert to the Burial Authority. The cost of both the original purchase and any subsequent extension of the interest would be set by the Burial Authority.

63 This proposal would reduce the current risk that the Burial Authority loses contact with the owner of a lair, and would place the responsibility of maintaining an interest in the lair on the owner, whether the original owner or someone to whom ownership has passed. This should help ensure that an active interest in a lair was maintained, helping to prevent lairs falling into disrepair.

64 During these periods of tenure, the owner of the lair would have the sole right to apply for the erection of a headstone or memorial on the lair, and would also be responsible for the upkeep of the lair. The Burial Authority would be able to place restrictions and conditions on the size and type of headstone or memorial.

65 The sale of burial lairs is currently undertaken by Burial Authorities, and no change to this situation is proposed. However, the Group recommended that it should no longer be possible to sell blocks of lairs or multiple lairs to an individual. It also recommended that the Burial Authority should have the right to refuse a sale if it believes that it will not be used imminently, although the Group did not specify what was meant by 'imminently'. As such, views are sought on what period should constitute 'imminent' in this context. The Scottish Government's view is that no lairs should be sold if it is unlikely that they will be used within the initial 25 year period.

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Reuse of full lairs and use of partially-full and unused lairs

66 In conjunction with the recommended end to the sale of burial lairs in perpetuity, the Group also considered the reuse of full lairs and the use of lairs which have unused space, and recommended both as ways to further reduce pressure on burial grounds. This is something that may already happen in family lairs, and is a practice that is becoming increasingly prevalent elsewhere beyond family plots.

Shortage of burial land in London has led to the introduction of legislation which allows the reuse of graves in particular circumstances (see case study), and in 2004 the UK Government consulted on this issue as it pertains to England and Wales generally.²² In other countries it is common practice - Germany and Sweden both reuse graves after between 20 and 30 years, and several other European countries also routinely reuse graves after a given period of time, including Italy and Greece.

67 It is not proposed that graves in Scotland would automatically be reused after a given period of time; rather that certain graves may be considered for reuse where appropriate to help alleviate pressure on burial land. If this proposal were to be accepted and implemented in legislation, strict safeguards would exist to ensure that any such use was done appropriately and sensitively.

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Full lairs

68 In the case of full lairs, only those where the last burial took place at least 75 years ago and where the Burial Authority has taken ownership of the lair or intends to do so (because the owner cannot be traced) would be considered for reuse. Having identified potentially suitable lairs, the Burial Authority would be expected to undertake various consultations to ensure that there were no reasons why the lair could not be reused.

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

69 The initial consultation would be to ensure that the potential reuse of a lair took account of relevant heritage and planning matters. As such, relevant authorities (for example, Historic Scotland) would require to be consulted and the Burial Authority would be required to obtain appropriate legal permits where a lair was scheduled under the terms of the Ancient Monuments and Archaeological Areas Act 1979; listed under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; included in a Conservation Area under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; or included in the Inventory of Gardens and Designed Landscapes in Scotland.

70 Where it is proposed to reuse lairs in cemeteries which are used for particular religious and faith groups or where a given lair is in a section of a cemetery used by a particular religious or faith group, the Burial Authority must specifically consult with that community. If the community objected to the proposal, reuse could not take place.

71 Only if no objections are received from relevant authorities and any religious or faith groups with a specific interest in given lairs will Burial Authorities be able to proceed to publically advertising its intention to reuse the lair.

²² http://www.dca.gov.uk/consult/buriallaw/buriallaw_cp0105.htm#conspaper.

72 The Burial Authority would be required to advertise its intention to reuse the lair for a period of at least 12 months; this would allow anyone with an interest in the lair, including family members, to object to the proposed reuse. The Burial Authority would be required to place notices in the cemetery and use a variety of other means to advertise its intentions, including for example the local press and the internet. If any surviving relative came forward to object to the reuse of the lair, then reuse would not be permitted.

73 A key aim of the Burial and Cremation Review Group is to find ways to stop lairs falling into disuse and disrepair. Advertising its intention to reuse a lair may help to identify someone who has rights in relation to the lair – for example, a descendent of the original owner. As such, ordinarily the objector would then become responsible for upkeep and maintenance of the lair and any memorials. However, the requirement to become responsible for the lair should not be a disincentive to objecting to the potential reuse of a lair.

74 If someone who is not a surviving relative objected to the proposed reuse of the lair, the Burial Authority should consider whether that objection should prevent the lair being reused. If the Burial Authority decided to continue with the reuse, it would be required to state publically their reasons for rejecting the objection. Where such an objection stopped the proposed reuse, the objector should not become responsible for the lair. Instead, the Burial Authority should remain responsible.

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

75 If, having undertaken relevant consultations, there are no objections to the reuse of the lair, the Burial Authority may reuse the lair for burial.

76 Where a lair is reused, the Burial Authority will be responsible for the upkeep of the original headstones and memorials that remain *in situ*, while the new owner of the lair will be responsible for the upkeep of any new headstones and memorials that he or she erects on the lair.

Unused lairs

77 In some cases lairs may have unused space or be unused entirely; for example, where a lair has been purchased in perpetuity but has either not been used to its full capacity or has not been used at all. It is proposed that in such instances, Burial Authorities should be able to take similar steps to enable the use of these lairs. Lairs in this category which have not been used for 25 years could be considered for use, rather than the 75 years required for the reuse of full lairs. Additionally, potential reuse could be considered only where the Burial Authority has taken ownership of the lair because the owner cannot be traced. All other safeguards would remain the same, including the need for the Burial Authority to consult with any relevant religious and faith groups or authorities such as Historic Scotland and to advertise the proposed use for a period of at least 12 months. As with the proposed reuse of lairs, any objection from a surviving relative would prevent the use of an unused or partially full lair by the Burial Authority. The surviving relative would then assume ownership of the lair, including becoming responsible for its maintenance and upkeep.

78 Where a non-family member objects to the potential reuse of a lair which is not full, the Burial Authority should consider whether the objection should prevent the lair being reused. Where it agrees that the lair should not be reused, the Burial Authority will need to consider whether the objector should become responsible for the upkeep of the lair. If not, the Burial Authority would remain responsible for the lair's maintenance.

79 It is important that the potential to become responsible for the upkeep of a lair does not act as a disincentive to someone objecting to its potential reuse.

80 If, having undertaken relevant consultations, there are no objections to the use of an unused or partially full lair, the Burial Authority may reuse the lair for burial. The upkeep of any memorials or headstones associated with a new burial will be the responsible of the new owner of the lair. Any other memorials or headstones associated with previous burials on the lair will be the responsibility of the Burial Authority.

Techniques involved in reusing lairs

81 The Burial and Cremation Review Group recommended the use of the 'dig and deepen' technique where lairs are to be reused. This involves temporarily exhuming the original remains from a lair, placing them into a new container and reburying them in the same lair at a greater depth. A new interment can then take place at a shallower depth within the lair. This is a technique that is used elsewhere, including London (see case study). This process has the advantage of enabling a lair to be reused while allowing the original remains to stay in the same lair.

82 If accepted, it is proposed that the Burial and Cremation (Scotland) Bill would permit the use of 'dig and deepen' in the circumstances described above and would enable Scottish Ministers to make regulations to provide detail on how 'dig and deepen' would be carried out.

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Q36 - Are any other techniques available that should be considered?

83 Where lairs are reused, it would ordinarily be expected that original headstones and memorials would be retained *in situ*, or as close as possible to their original site. One of the Burial and Cremation Review Group's central concerns was to prevent burial sites and individual lairs falling into disrepair, and so in reusing a lair it would be expected that the Burial Authority would seek to make any original headstones or memorials safe where necessary.

84 Headstones may be reused – again, this is something that is common elsewhere, including London (see Case Study), where the back of the headstone is often used, allowing for a new inscription while preserving the original. The reuse of original headstones or monuments could take place only where there are no objections from conservation authorities, the Local Authority or any surviving relatives or other interested parties.

85 Where it is not possible to make headstones and memorials safe, the Burial Authority would be expected to remove them. As with the initial proposal to reuse a lair, the removal of headstones and memorials should be done in consultation with appropriate conservation authorities.

86 The Burial and Cremation Review Group recommended that any reuse of lairs, including moving or removing monuments and headstones, should be recorded to provide a full record of the activity that has taken place, and that such records should be electronic. Such records should be permanent as part of the genealogical, historical and archaeological record of the country. It is proposed that this will be provided for in the proposed Burial and Cremation (Scotland) Act.

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

87 It is intended that if these proposals are accepted and implemented in legislation, they would have retrospective effect. This would enable Burial Authorities to consider the reuse of lairs as soon as the legislation was implemented.

This would be an important way for Burial Authorities to being to tackle the pressure on burial grounds. It would also help to improve the general upkeep of burial grounds, particularly those which are in disrepair.

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Exclusion of certain categories of grave

88 The only lairs which will be considered for reuse are those which have not been used for 75 or 25 years, depending on the circumstances, and where ownership cannot be traced. For certain categories of lairs – Commonwealth War Graves, for example – these two criteria are unlikely to be met. Nonetheless, it may be worth establishing categories of graves which will not be considered for reuse.

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Case study: London

Legislative framework

The shortage of burial land in London has led to the introduction of legislation to address this pressure.²³ Particular Burial Authorities in London have the power to take ownership of a plot which has not been used for 75 years or more and use that plot for new burials. Legislation allows some Burial Authorities, depending on under which Act the cemetery was opened, to reuse graves by exhuming the human remains in a given plot, reburying them deeper in the original plot and then using that plot for a new burial. It is also possible to carry out a new interment without disturbing the original interment, so long as sufficient burial depth remains.

Strict safeguards exist around the use of these powers. In both cases, the Burial Authority can act only where the plot has been unused for at least 75 years. The Burial Authority must also extinguish the right of interment or burial which exists in

²³ The City of London (Various Powers) Act 1969; the London Local Authority Act 2007.

relation to a given plot – this can happen generally only where the person who holds the lease for the right to bury in the grave cannot be traced. These powers also allow the Burial Authority to move, remove and reuse any memorials which exist at the plot being considered.

The Burial Authority is required to give notice of its intentions. This must include notice in a local newspaper on two consecutive weeks and public notices posted at every entrance to the cemetery. Public notices must be displayed for at least 6 months. If no objection is lodged the Burial Authority may reuse the grave.

The legislation also prevents the sale of a grave for longer than 100 years, ending the previous practice which allowed graves to be sold in perpetuity.

City of London Cemetery and Crematorium

The City of London Cemetery and Crematorium is one of the largest municipal crematoria in Europe, and uses this legislation to both enable the ongoing availability of burial space and to preserve monuments. Using the original burial records, the Burial Authority identifies graves which are suitable for reuse. The Burial Authority tends to identify graves in groups of 200 (although the 200 graves are not necessarily located next to each other). Notices are then posted in various locations around the cemetery, as well as in local newspapers and on the cemetery website, for six months, during which time anyone with an interest in a given grave can object to its proposed reuse.

Reclaimed graves are made available for new use with a lease of 50 years. Such graves are referred to as Heritage Graves, and help to support the sustainability of the cemetery.²⁴ Additionally, the Burial Authority operates a Heritage Programme which encourages the leasing of existing graves where the original rights of burial have been extinguished and the reuse of existing monuments by using the back of the original monument for the new interment.²⁵ This enables the Burial Authority to maintain plots which might otherwise have fallen into disrepair, as well as making available additional burial space.

Where it is not possible to reuse the original memorial it may be removed and broken up, with the debris used elsewhere in the cemetery, for example as marble chips in footpaths. Previous preservation work undertaken in the mid-20th Century means that many of the remaining memorials are less than 65 years old, which in turn means that many of the graves identified for reuse do not have the original memorial in place.

The Burial Authority has developed various local protocols which it applies in identifying graves for potential reuse, including not using any graves where the coffin is intact or where the original remains have not fully decomposed. Similarly, the Burial Authority tries to respond sensitively to any objection that might be raised to a grave being proposed for reuse, and tends to accept an objection without opposition.

²⁴ <http://www.cityoflondon.gov.uk/things-to-do/green-spaces/cemetery-and-crematorium/conservation-and-heritage/Pages/Grave-reuse.aspx>.

²⁵ <http://www.cityoflondon.gov.uk/things-to-do/green-spaces/cemetery-and-crematorium/conservation-and-heritage/Pages/Grave-reuse.aspx>.

Since 2009, around 1000 graves have been reused in this way. The Burial Authority makes various efforts to track the owner of the grave, and in only a small number of cases has there been an objection to the reuse of a particular grave. In such instances, the family of the original owner has taken ownership of the grave and become responsible for its maintenance. Generally, there has been widespread acceptance of the reuse of graves in this way, and the Burial Authority has a well-managed programme of reusing graves, allowing the sensitive sustainability of the cemetery.

Exhumation

89 The Burial and Cremation Review Group considered only practice and procedure relating to exhumations which do not involve the Procurator Fiscal or the police. The Group took the view that the current procedure, which requires an application to be made to the Sheriff by either the nearest relative or the local authority, is unnecessarily bureaucratic, lengthy and costly. Based on practice elsewhere, including in England, the Group recommended a new streamlined process.

90 The proposed process would require the family to complete an application for exhumation, detailing the reason for exhumation, information about the deceased and other information about the location of the grave and the site for interment. The relevant local authority would be required to confirm these details. The Group recommended that the completed application would then be submitted to the Scottish Government for authority to exhume.

91 Since the Scottish Government would have no particular expertise or knowledge of the reason for exhumation beyond what was set out in the application form, it is instead proposed that the submitted application should be sent for authorisation to the inspector that is discussed at paragraphs 178-181. This should allow for more expert scrutiny of the application.

92 While this process should allow applications to be dealt with quickly, the process should contain a facility to enable certain sensitive applications to be dealt with even more speedily, for example where the remains of a child required to be exhumed. If these proposals are accepted, the Burial and Cremation (Scotland) Bill would give Scottish Ministers power to make regulations for the exhumation process. A full consultation on this process would take place when the regulation-making power was exercised.

Exhumation for reuse of full lairs

93 A different process is proposed for exhumation for the purpose of reusing full lairs. In this instance, the Burial and Cremation Review Group recommended that Burial Authorities should be permitted to carry out exhumations without the need to seek authority from the Scottish Government (or the inspector, as per the alternative proposal at paragraph 91). Instead, Burial Authorities would have the authority to carry out such exhumations on the completion of the consultative process described at paragraphs 69-75 as long as no objections had been lodged. It is considered that the statutory notice and consultation process would provide sufficient safeguards to ensure that Burial Authorities can carry out exhumations for this purpose only when appropriate to do so. This process would also enable large numbers of exhumations where it would be impractical or resource intensive to require an individual authorisation for each exhumation – for example, where a full or closed cemetery (or a section of a cemetery) was being brought back into use by reusing full lairs.

94 If this proposal is accepted, the Burial and Cremation (Scotland) Bill would give Scottish Ministers the power to make regulations for this purpose, including

specifying which Burial Authority officials would have the power to authorise exhumations for the purpose of reusing full lairs.

Exhumation of cremated remains

95 There is no legal framework covering the exhumation of cremated remains (ie, those which have been placed in a container for interment). The Group recommended that this should be addressed, following a similar procedure for that proposed for the exhumation of buried remains whereby an application would be made to the Scottish Government, although, in line with the alternative proposal for the authorisation of exhumations, this could be done by the inspector.

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Exhumation for archaeological purposes

96 There is some uncertainty about who may authorise an exhumation for archaeological purposes, including what responsibilities lie with the Burial Authority. There is a lack of legal clarity about the legal powers to carry out such an exhumation. While the need to undertake an exhumation for this purpose will be relatively uncommon, it is proposed that the Burial and Cremation (Scotland) Bill should set out a clear process for such circumstances.

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Pandemics and mass-fatality events

97 The Cremation (Scotland) Regulations 1935 allow for the suspension of regulations governing cremation in the event of an epidemic or other similar reason. The Burial and Cremation Review Group recommended that the same power should be extended to cover any relevant regulations governing burial. Accordingly, the Burial and Cremation (Scotland) Bill will contain provision to enable any relevant burial regulations to be suspended in particular situations, such as pandemics and mass-fatality events. Such a suspension may apply to the whole of Scotland or to specific areas, depending on the nature of the incident which has given rise to the need for the regulations to be suspended.

98 It will be necessary to ensure that new legislation relating to cremation continues to allow for the suspension of cremation regulations in the event of an epidemic or other similar reason. This suspension would apply to all categories of cremation.

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Informing staff of particular causes of death

99 The Burial and Cremation Review Group recommended that professionals who are required to handle the bodies of people who have died because of an infectious disease which continues to pose a threat after death should be informed of the cause of death before they handle the body so that any necessary precautions can be taken. The Group proposed to make it a statutory obligation for the relevant NHS Board or other relevant body to inform staff as necessary.

100 Under section 91 of the Public Health (Scotland) Act 2008, health boards are already under a duty to inform certain people when a person dies of an infectious disease, had an infectious disease before they died of another cause or was contaminated before they died (even if the contamination did not cause the death).²⁶

101 In such circumstances, the health board is required to inform 'any person who appears to the board to be responsible for the disposal of the person's body'. The health board must tell such people the nature of any risk to public health as a result of the disease or contamination. The health board must also provide advice on any precautions which it thinks should be taken. This requirement satisfies the Group's recommendation and no further action is proposed.

²⁶ <http://www.legislation.gov.uk/asp/2008/5/contents>.

Cremation forms and procedures

Power for Scottish Ministers to prescribe cremation forms

102 Section 7 of the Cremation Act 1902 provides the regulation-making power which allows Scottish Ministers to prescribe forms for authorising cremations. The current Form A (used to apply for a cremation) is prescribed by the Cremation (Scotland) Regulations 1935, as amended by the Cremation (Scotland) Regulations 1952, the Cremation (Scotland) Amendment Regulations 1967, the Cremation (Scotland) Amendment Regulations 1935 and the Cremation (Scotland) Amendment Regulations 2003. As discussed at paragraphs 16 and 17 it is intended to repeal the existing legal framework to provide a consolidated and modernised legislation. This regulation-making power will be preserved in the new framework.

103 The Commission noted a lack of certainty about whether the current Regulation 17, which relates to the return of the ashes to the applicant, applies to the cremation of stillborn children. Regulation 17 relates specifically to 'the cremation of a deceased person'. While the Commission argued that this Regulation applies to a stillborn child, it acknowledged that the interpretation is open to challenge, and recommended amending the Regulation so that it applies clearly and unambiguously to stillborn children.

104 Similarly, the Commission noted that the Mortonhall Investigation Report raised concerns about whether Regulation 15A, which relates to the cremation of body parts, applied to stillborn children. The Regulations define 'body parts' to mean 'any organs and tissue removed from a deceased person during the course of a post-mortem examination'. The Commission recommended amending this so that stillborn children are covered by this Regulation. There may also be questions over the extent to which regulations apply to pregnancy loss.

105 The new legislative framework will be constructed to apply unambiguously to the categories considered by the Commission, so that there is both legal clarity and a straightforward process for applying for a cremation.

Current procedures

106 The Infant Cremation Commission considered the current procedures for the cremation of babies, stillborn babies and pregnancy loss and identified a number of weaknesses in the system. In particular, a single form prescribed by the Cremations (Scotland) Regulations 1935 (Form A) is used to authorise all cremations which are prescribed currently by legislation. However, this is not adequate for every situation and does not provide a means for clearly and unambiguously recording appropriate information, including what should be done with cremation ashes. The Commission also noted that there are no statutory provisions covering the cremation of pregnancy loss and considered this to be problematic.

107 The Commission made a number of recommendations to address this situation, with particular focus on improving the forms used to authorise cremation. Some of the recommendations are specific to particular circumstances, while others apply to all the circumstances considered by the Commission. The Scottish

Government accepted all the Commission's recommendations. Those which require legislative change will be considered in this consultation paper, with a view to implementing them in the proposed Burial and Cremation (Scotland) Bill.

108 The absence of cremation forms suitable for certain situations, as well as the lack of a formal process for pregnancy loss, has led to the development of practice whereby Cremation Authorities often adapt or supplement Form A with non-statutory forms in order to capture particular information for a given circumstance. This has led to the development of inconsistent practices.

109 To enable consistency and clarity, the Commission has recommended the introduction of specific cremation forms for particular circumstances:

- Stillborn children
- The shared cremation of pregnancy loss
- The individual cremation of pregnancy loss

110 There are a number of options to achieve this. The Certification of Death (Scotland) Act 2011 inserts a new section into the Registration of Births, Deaths and Marriages (Scotland) Act 1965 which allows Scottish Ministers to make regulations prescribing forms for the cremation of a deceased person or stillborn child. The section is constructed so that references to 'body' also relate to body parts. It is not planned to commence this section until March 2015. However, this does not cover the cremation of a pregnancy loss.

111 As such, it is proposed that the Burial and Cremation (Scotland) Bill should contain powers for Scottish Ministers to make regulations covering all categories of cremation, including the power to prescribe cremation authorisation forms. This approach will allow each form to be prescribed specifically and will enable further changes to be made to forms where required. The general approach being proposed by the Scottish Government is to give Scottish Ministers the power to make regulations to prescribe forms. That regulation-making power would be in primary legislation. This approach would enable regulations to be made as required using a relatively quick and straightforward parliamentary process. This approach means that the consultation paper is seeking views on general principles involved in forms, leaving the detail and wording of forms to be consulted on separately when those regulations require to be made.

112 In addition, the existing Form A will continue – in revised form – to be used for any deceased person who was born alive (including babies and infants).

113 The Commission has recommended that there should be statutory forms for several different categories of cremation. However, several of the recommendations apply to multiple forms – for example, statements about the recovery of ashes and what should be done with ashes, as well as the general approach of making forms as simple and easy to complete as possible. As such, it may be possible to prescribe a single application form for all categories of cremation, rather than having specific but similar forms for each category. The form would require certain sections to be completed in all cases – for example, the applicant should be required to make certain decisions about ashes – but particular sections could be left blank if they

were not relevant to the cremation for which the application was being made. The form would still be set out in a clear and easy-to-understand way.

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

114 There are currently 12 different forms used for cremations in Scotland, although they are not all relevant in every application. The provision of a single form would help simplify the process of applying for a cremation and would reduce the bureaucracy involved in the process.

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

115 This consultation paper covers the broad principles of improving the burial and cremation regime. More detailed consultation will be undertaken when regulations are being drafted, including the content and design of any cremation authorisation forms. The Commission has suggested the form used for authorising the cremation of stillborn babies in England and Wales under the Cremation (England and Wales) Regulations 2008 as a useful model.²⁷ This will be considered when any forms are being designed.

Any deceased person who was born alive (including babies and infants)

116 The current form used to authorise cremations is Form A, prescribed by regulations made under Regulation 7 of the Cremation Act 1902, which have been amended on a number of occasions. The Commission recognised that Form A is used currently for all cremations and so was beyond its remit. Nonetheless, it felt that changes should be made to Form A. In particular, the Commission considered that Form A will continue to be relevant for the cremation of babies, but recommended a number of improvements to the form. Many of the recommendations for Form A would also be relevant for other categories of cremation.

117 The Commission suggested that these could be done as part of the changes which would be implemented as part of the Certification of Death (Scotland) Act 2011. The 2011 Act amends the 1902 Act by inserting new sections which allow Scottish Ministers to make regulations to prescribe cremation forms. It also inserts a new section into the 1965 Act which allows Scottish Ministers to make regulations about 'the certificates or other documentation required for the interment, cremation or other disposal of the body of a still-born child or deceased person'. These new sections are not yet in force.

118 The biggest challenge to making the proposed changes to Form A under the powers inserted by the 2011 Act is that neither fully covers all categories which require to be included. The changes to the 1902 Act refer to 'human remains', while

²⁷ <http://www.legislation.gov.uk/ukxi/2008/2841/contents/made>.

the changes to the 1965 Act refer to a 'still-born child or a deceased person'. As such, neither option fully and unambiguously applies to all categories of cremation under consideration.

119 It is therefore the Scottish Government's intention to use the proposed Burial and Cremation (Scotland) Bill to give Scottish Ministers the power to prescribe cremation forms which will apply to all relevant categories of cremation.

Statement of what should happen to any ashes recovered

120 A key recommendation to improve Form A (and indeed all other cremation application forms which will require to be implemented in response to the recommendations of the Commission and other legislative changes) is to include a mandatory section requiring the applicant to specify what should happen to the ashes.

121 The Commission recommended that a revised Form A should set out four potential options for ashes:

- (a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;
- (b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;
- (c) collection by the applicant or the applicant's appointed representative;
- (d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

122 If either of options (c) or (d) is selected, the applicant must sign an additional declaration:

- (e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

123 The cremation will not be able to proceed if this proposed mandatory section of the revised Form A is not complete.

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

Statement that ashes may not be recovered

124 The revised Form A should also make clear that in the case of the cremation of a very young child, it may not be possible to recover ashes. The applicant must

also sign the form to acknowledge that he or she has read and understood this information. The cremation will not be able to proceed if this declaration has not been made by the applicant.

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Collection of ashes

125 The Commission recommended that the revised Form A should enable the applicant to authorise someone else to collect any ashes which are recovered, including the Funeral Director. If the Funeral Director is authorised to collect the ashes, the form should also enable the applicant to authorise the Funeral Director to return the ashes to the crematorium if the applicant does not collect them or instruct the Funeral Director as to their disposal within two years. When that two-year period has elapsed, the Funeral Director may return the ashes to the crematorium. The crematorium will be required to record this information in the cremation register.

126 Where ashes have been left with the crematorium awaiting collection or awaiting further instructions within a defined period, and that period has elapsed, the Cremation Authority may not scatter or inter the ashes unless 14 days' notice of the intention to do so has been given to the applicant.

127 This process for allowing someone else to collect any ashes that are recovered will also apply to the cremation of stillborn babies and the individual cremation of a pregnancy loss.

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

128 Some of the Commission's recommendations for a revised Form A are also relevant for the other recommended forms. These are covered at paragraphs 136 and 137.

Stillborn children

129 There is currently no specific application form for the cremation of a stillborn baby. Cremation Authorities tend to amend Form A, a practice which the Infant Cremation Commission described as unsatisfactory. The Commission made a number of recommendations to address this, including the introduction of a separate application form for the cremation of a stillborn baby. Accordingly, the proposed Burial and Cremation (Scotland) Bill will give Scottish Ministers a power to make regulations relating to the cremation of stillborn children, including prescribing cremation application forms (although Scottish Ministers have this power through the

amendments made to the Registration of Births, Deaths and Marriages (Scotland) Act 1965 by the Certification of Death (Scotland) Act 2011).

130 The Commission noted a number of key issues which require to be addressed. There is some ambiguity as to whether the current legislation concerning ashes being given to the applicant applies to the cremation of a stillborn baby, because Regulation 17 of the 1935 Regulations refers to 'the remains of a deceased person'. While the Commission was of the view that this did extend to stillborn babies, this will be put beyond doubt in the course of repealing the existing legislation to be modernised and consolidated in a new legal framework as per the recommendations of the Burial and Cremation Review Group. The definition of 'ashes' which is discussed at paragraph 31 will also make this clear.

131 Similarly, there is uncertainty about whether the current definition of 'body parts' for the purposes of cremation applies to stillborn babies. To remove this uncertainty the new legal framework will define 'body parts' so that stillborn babies are included for the purposes of cremation.

132 In line with the recommendations of the Infant Cremation Commission, the form for applying for the cremation of a stillborn baby will note that ashes may not be recovered, but will require the applicant to state what should be done with any ashes which are recovered. The options offered in Form A, as described at paragraphs 121 and 122 should be offered in this circumstance.

133 The cremation will not be able to proceed if the applicant has not specified how any ashes recovered are to be managed.

134 The applicant should have the option of the ashes being retained for a defined period pending a final decision, and of extending the period of retention if necessary. If the Funeral Director is authorised to collect the ashes, the form should also enable the applicant to authorise the Funeral Director to return the ashes to the crematorium if the applicant does not collect them or instruct the Funeral Director as to their disposal within two years. When that two-year period has elapsed, the Funeral Director must provide the applicant with 14 days' notice that they intend to return the ashes to the crematorium. If no response to this notice is received, the Funeral Director may return the ashes to the crematorium. The crematorium will be required to record this information in the cremation register. This is the same process proposed for the revised Form A.

135 The Commission recommended that the form used to authorise the cremation of stillborn babies must be completed and signed by the applicant. The applicant's signature must be witnessed by a person who is not a member of the applicant's family and who is not involved in the arrangements for the cremation.

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Q59 – Should application for other categories of cremation require a countersignature?

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Forms – general

136 In addition to its recommendations about particular categories of cremations, the Infant Cremation Commission made a number of recommendations which cover all forms, and these will be reflected in revised and new forms.

137 Certain principles will be followed in the design of each of these forms:

- All forms will be written and structured to ensure simplicity, clarity and consistency.
- Only information essential to the cremation will be sought.
- All Cremation Authorities will be required to use the correct forms provided for in legislation for each particular category of cremation as appropriate, without alteration.
- The cremation will not be able to proceed if mandatory sections of the revised Form A, or any other cremation application form, are not complete.

Q61 - What information should be considered essential for the cremation application?

Cremation Authority approval of cremation forms

138 The Commission recommended that in all cases, senior Cremation Authority staff should be responsible for scrutinising cremation authorisation forms to ensure that all legal requirements have been met, including that the applicant is entitled to make an application; that they have acknowledged that no ashes may be recovered; and that they have clearly indicated what should happen to any ashes which are recovered. If the Cremation Authority is not satisfied that these or any other legal requirements have been met, the cremation cannot proceed.

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Forms for burial

139 There is currently no equivalent process for arranging a burial, and there are no statutory forms (although Burial Authorities may use forms which they have developed themselves). There are no particular issues with the process of arranging a burial (notwithstanding the lack of available space), and neither the Burial and Cremation Review Group nor the Infant Cremation Commission made any recommendations about the introduction of forms for applying for a burial.

140 Nonetheless, it may be worth considering whether it would be beneficial to introduce statutory forms for applying for burial. This would provide a parallel process to that which exists for cremation, including the potential for greater scrutiny of practices. Given the proposals to introduce new inspector roles, one function of an inspector could be to inspect burial forms to ensure compliance. There are clear benefits to introducing burial forms, but doing so would also introduce additional bureaucracy, which may add to the cost of a burial and which may also increase the length of time required to arrange a burial.

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Pregnancy loss

141 The Infant Cremation Commission made a number of recommendations relating to the cremation of a pregnancy loss of less than 24 weeks gestation. While many of the considerations are the same as for other categories – for example, clear statements about what should happen to ashes – the complexities of this particular situation require a different approach. The only pregnancy losses considered in this section are those which occur before 24 weeks gestation.

142 The Commission noted the lack of regulation for the cremation of pregnancy losses of less than 24 weeks gestation and reflected on the difficulty and distress this could cause people dealing with this situation. The Commission recommended that the cremation of such pregnancy losses should be the subject of legislative regulation, and the proposed new legislative framework will ensure that there are equivalent procedures and forms for the cremation of pregnancy losses of less than 24 weeks gestation as for infant cremations and the cremation of stillborn babies.

143 The Commission considered the current practices relating to the cremation of pregnancy losses of less than 24 weeks gestation. In particular, it debated the shared cremation of such pregnancy losses and agreed that this practice should continue to be offered as an option. The Commission made various recommendations designed to improve processes generally. The recommendations are a mixture of improvements to practice and guidance, as well as suggested legislative changes.

144 The key guidance to Health Boards on the disposal of pregnancy losses up to and including 23 weeks and 6 days gestation was published by the Scottish Government in April 2012 through CMO guidance.²⁸ This substantially modernised and improved previous guidance, and was in part a response to concerns about inconsistent practices. The guidance will be updated again in response to recommendations made by the Infant Cremation Commission, and this will be done under the remit of the National Cremation Commission. As well as providing advice on the sensitive disposal of the remains of pregnancy loss of this gestation, the guidance includes various non-statutory forms to be used in the process of authorising and applying for the cremation of a pregnancy loss.

145 In line with the Infant Cremation Commission's recommendations, this section focuses on the cremation of pregnancy losses of less than 24 weeks gestation. Burial of such a pregnancy loss is an option, but was beyond the scope of the Commission's remit. Nonetheless, the Scottish Government is interested in views on whether a comparable process for burial is required.

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

²⁸ Scottish Government, "Disposal of pregnancy losses up to and including 23 weeks and 6 days gestation" (July 2012), [http://www.sehd.scot.nhs.uk/cmo/CMO\(2012\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2012)07.pdf).

Cremation of pregnancy loss of less than 24 weeks gestation by hospital

146 The Commission made several recommendations to improve the process involved in authorising the cremation of a pregnancy loss which occurred before 24 weeks gestation, particularly the forms used, and many of those recommendations are within the scope of this consultation. In many cases, the cremation or burial of such a pregnancy loss will be organised by a Health Board (for example, where the pregnancy loss occurred in a hospital) with the agreement of the mother, although the mother may wish to make her own arrangements.

147 The Commission noted that some pregnancy losses of less than 24 weeks gestation do not occur within a hospital or other healthcare setting, and recognised that this might cause difficulties if applying for cremation, particularly given the recommendation that cremation of such a pregnancy loss cannot proceed without a medical certificate that states that the pregnancy loss occurred before 24 weeks and showed no signs of life. The Scottish Government is therefore seeking views on whether an alternative process is required in this situation – for example, agreement from the Procurator Fiscal that the cremation can proceed.

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

148 Where a Health Board organises the cremation of a pregnancy loss of less than 24 weeks gestation, the legal application for cremation is made by a person authorised to do so by the Medical Director of a Health Board (or other healthcare provider if that is the case). Where the hospital is applying for the cremation this is true for both individual cremations and shared cremations. The Commission did not recommend any changes to this procedure, but suggested improvements to the process by which the mother agrees to the Health Board making arrangements for the disposal of a pregnancy loss.

Mother's agreement to cremation

149 Before the Health Board can organise the cremation of a pregnancy loss of less than 24 weeks gestation, it must discuss the options with the mother and secure her consent to proceed. The form used currently to record the mother's wishes and consent is set out at Annex C of the CMO guidance. This allows the mother to declare that the cremation options have been explained to her and states that the pregnancy loss will be disposed of by the hospital in accordance with the procedures outlined. The Commission recommended that the options for disposal should be set out clearly on the form, which is not the case currently. The options should include shared cremation and individual cremation, as well as shared burial and individual burial, with an explanation of what each involves.

150 The Commission also recommended that the same form should state that it may not be possible to recover ashes, but should set out options for what should happen to any ashes which are recovered. In the case of shared cremations, the form should state that any ashes which are recovered will be interred or scattered at the crematorium and should state which action will occur. For individual cremation, the form should provide the following options for any ashes which are recovered:

- (a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;
- (b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;
- (c) collection by the applicant or the applicant's appointed representative;
- (d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

151 If either of options (c) or (d) is selected, the applicant must sign an additional declaration:

- (e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

152 These are the same options which are proposed for other cremation forms.

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Mother declines to discuss options

153 Where the mother declines to discuss disposal, the current form allows her to declare that she has declined to discuss the matter and that she understands that the hospital will proceed according to their standard procedure, without setting out the details of that procedure. The Commission has recommended that the form should state clearly what procedure will be followed in these circumstances.

Right to instruct the disposal of a pregnancy loss of less than 24 weeks gestation

154 In the case of the individual cremation of a pregnancy loss of less than 24 weeks gestation, the Commission recommended the use of Section 50 of the 2006 Act for the right to instruct the disposal of the remains. As discussed at paragraphs 35-47, this is not wholly suitable and an alternative definition is required which reflects the spirit of the recommendation and is modelled closely on Section 50.

155 In keeping with the language of the Scottish Government guidance on the disposal of such pregnancy losses, it is proposed that the right should be vested in 'the woman who has experienced the pregnancy loss'. A list of other people who may instruct the disposal of the body if for any reason the woman is unable to make such an instruction should be provided. This list would be based on the list proposed at paragraph 38.

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Hospital's application for cremation

156 Once a decision has been made and the mother's consent obtained, the Health Board is required to complete an application for cremation. The applicant is a person authorised by the Medical Director of the Health Board to make an application for cremation. The form for this purpose is currently provided at Annex F of the CMO guidance, and is not statutory. The Commission recommended that an application for the cremation of such a pregnancy loss must be accompanied by a medical certificate that states that the pregnancy loss occurred before 24 weeks gestation and showed no signs of life. The form enables the person authorised by the Medical Director to declare that relevant medical certificates pertaining to the pregnancy loss (or in the case of shared cremation to each pregnancy loss) are held by the Health Board. The current form is structured for shared cremations (although theoretically could be used for individual cremations), and there is no specific form for individual cremations.

157 The Commission recommended that the form should expressly state that the mother (or in the case of shared cremations, each mother) has agreed to the hospital applying for the particular kind of cremation. For individual cremations, the form should require the applicant to declare that the mother has agreed what should happen to any ashes which are recovered, and that this is recorded in the appropriate authorisation form.

158 The CMO guidance sets out some timescales for carrying out cremations. Where the mother has authorised the hospital to carry out the cremation, the hospital is required to do so 'as soon as practicable' after authorisation is received. No specific timescale is given. The CMO guidance advises that if the mother has not authorised the hospital to carry out the cremation or has not notified the hospital that she wishes to make her own arrangements within six weeks of the date of the pregnancy loss occurring, the hospital should make arrangements for disposal. The Scottish Government is seeking views on whether there should be a maximum length of time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation. The form to be used to apply for a shared cremation could be used to record the date on which the shared cremation will take place.

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

159 These forms are not statutory. While the Commission suggested that the introduction of the CMO guidance has improved practice, prescribing these forms through legislation would ensure consistency in all cases, and would place the cremation of pregnancy losses of less than 24 weeks gestation on the same legislative footing as other kinds of cremations. It is proposed that the Burial and

Cremation (Scotland) Bill will contain a power for Scottish Ministers to make regulations pertaining to the application for cremation of pregnancy losses of less than 24 weeks gestation. In the meantime, the forms provided in the CMO guidance – as revised by the National Cremation Commission where appropriate – should continue to be used.

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

Private cremation of a pregnancy loss of less than 24 weeks gestation

160 A mother may choose to organise a cremation herself, without the involvement of a Health Board. Where the pregnancy loss has occurred at a hospital, the Scottish Government guidance provides a form for the hospital to release the pregnancy loss to the mother so that she can make her own arrangements for cremation. This form is provided by the CMO guidance and is not statutory. The hospital should keep this form along with other forms relating to the pregnancy loss.

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

161 Currently there is no form for application for the cremation of a pregnancy loss, but the Commission found that all crematoria in Scotland will carry out such a cremation. Nonetheless, it is appropriate that a statutory form is provided for this purpose. It is proposed that the Bill will contain a provision enabling Scottish Ministers to make regulation which prescribe the form to be used for the application for the cremation of a pregnancy loss.

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

162 In such cases, the applicant should be the mother, and her signature must be witnessed by someone who is not a member of the applicant's family and who is not involved in the arrangements for the funeral. The purpose of this recommendation is to ensure that the applicant is fully aware of the implications of the cremation, including that it may not be possible to recover ashes. However, the Committee's recommendation about who should witness the application may prove to be impractical, and views are sought on who should be able to witness the application for cremation of pregnancy loss of less than 24 weeks gestation.

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

163 As with other cremation forms, the form should state that it may not be possible to recover ashes, but should set out the options for any ashes which are recovered. These should be:

- (a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;
- (b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;
- (c) collection by the applicant or the applicant's appointed representative;
- (d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

164 If either of options (c) or (d) is selected, the applicant must sign an additional declaration:

- (e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

165 These are the same options for other categories of cremation. It will not be possible for a cremation to proceed if the application does not state clearly how any ashes recovered are to be dealt with.

166 An application for the cremation of such a pregnancy loss must be accompanied by a medical certificate that states that the pregnancy loss occurred before 24 weeks and showed no signs of life. The potential difficulty of this recommendation where the pregnancy loss did not occur in a healthcare setting is noted at paragraph 147.

167 As with other cremation application forms, the form for authorising the individual cremation of a pregnancy loss of less than 24 weeks gestation should enable the applicant to authorise someone else to collect any ashes which are recovered, including the Funeral Director. If the Funeral Director is authorised to collect the ashes, the form should also enable the applicant to authorise the Funeral Director to return the ashes to the crematorium if the applicant does not collect them or instruct the Funeral Director as to their disposal within two years. When that two-year period has elapsed, the Funeral Director must provide the applicant with 14 days' notice that they intend to return the ashes to the crematorium. If no response to this notice is received, the Funeral Director may return the ashes to the crematorium. The crematorium will be required to record this information in the cremation register.

Cremation register

168 Regulation 18 of the 1935 Regulations currently provides for a cremation register, which each Cremation Authority is required to keep. Cremation Authorities must record details of 'all cremations carried out', which existing legislation means applies to deceased infants and adults, as well as the cremation of body parts. The wording of the legislation means that there is some uncertainty as to whether the requirements to register cremation details extends to stillborn children – this is the same issue as discussed at paragraph 103. In practice, Cremation Authorities do register the details of cremations of stillborn children. The cremation of pregnancy loss tends not to be recorded on the cremation register, but all crematoria keep a non-statutory register of pregnancy loss cremations.

169 The Infant Cremation Commission recommended that a statutory cremation register should be maintained by all Cremation Authorities and that all cremations, including those of stillborn children, the individual cremation of a pregnancy loss and the shared cremation of pregnancy losses, must be recorded.

170 The register should contain the following columns, which should be completed as relevant for each cremation:

- Any number assigned to the cremation by the Cremation Authority
- The date of the cremation
- The name and gender of the person or stillborn child cremated
- The address, occupation and age of the person cremated
- Whether the person cremated was married or a civil partner, a widow, widower or surviving civil partner, or single
- The date on which the person cremated died or the stillbirth occurred
- In the case of the cremation of a pregnancy loss, the hospital where the record of the mother's authorisation for cremation is stored
- In relation to the cremation of body parts, the date and place of the burial or cremation of the body of the deceased person or stillborn child from whom the body parts came
- The body part(s) cremated
- The name and address of the applicant
- Whether any ashes recovered were collected by the applicant or his or her representative
- The date on which any ashes were collected
- If the ashes were not collected, whether they were interred or scattered
- If the ashes were not collected, the date on which they were interred or scattered

171 This list is based on the register prescribed by the Cremation (England and Wales) Regulations 2008.

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

172 Records pertaining to the cremation of a pregnancy loss should not identify the mother. Instead, the cremation should be recorded using a unique numerical identifier, which should be linked to the relevant hospital record.

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

173 The Cremation Register should be a public document, with relevant safeguards and data protection considerations applied. Currently, only the applicant is able to view the register. The Infant Cremation Commission noted that this had on occasion prevented family members, including parents, being able to see the register. The Commission considered the issue and did not identify any reasons why the Cremation Register should not be a public document, as long as relevant steps were taken to protect personal data accordingly.

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

174 The Commission was of the view that the Cremation Register may be kept electronically. The Commission also recommended that the Scottish Government should establish a working group to review the available technology for electronic record storage. This will be taken forward separately, as discussed at paragraph 57.

175 The Commission recommended that the Cremation Register should be retained indefinitely. This is in line with the Cremation (England and Wales) Regulations 2008, which refers to the register as 'permanent'.

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Accreditation of Cremation Authority staff

176 The Infant Cremation Commission recommended that the individual with direct management responsibility for the operation of a crematorium should be appropriately accredited. This includes either a qualification in crematorium management; the Federation of Burial Cremation Authorities' certification of competence to operate cremators; or the Institute of Cemetery and Crematorium Management's intermediate certificate for crematorium technical operations. Options for checking a person's accreditation would need to be considered. One option is to place this responsibility with the proposed Inspector of Crematoria, which is discussed at paragraphs 178-181.

177 The Scottish Government initially agreed that this would be reflected in the Code of Practice recommended by the Commission. However, there may be value in providing for this in legislation.

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Inspector of crematoria

178 The Infant Cremation Commission recommended that Scottish Ministers should appoint an independent inspector to monitor working practices and standards at crematoria and give feedback to crematoria about their performance, including advice on matters where improvement is required. The inspector would also have a duty to report to Scottish Ministers. The role would include the power to investigate complaints made by members of the public about practices and standards at crematoria. The Commission also recommended that the role should be extended to cover the funeral industry generally – this is discussed in more detail at paragraphs 182-190.

179 There is provision in existing legislation to appoint an inspector of crematoria. Regulation 2 of the 1935 Regulations states that ‘Every crematorium shall be open to inspection at any reasonable time by the person appointed for that purpose by the Secretary of State or by the Department’ but says nothing about how that appointment should be made, its role or arrangements for reporting to Scottish Ministers. The Scottish Government has already taken steps to appoint an Inspector of Crematoria under existing legislation, and will set out the details of the role in the job description, including its scope and reporting arrangements to Scottish Ministers.

180 Given the lack of detail in current legislation, and the proposed repeal of the existing legislative framework, it is proposed to bring forward new legislation to enable Scottish Minister to appoint an Inspector of Crematoria, and to set out in legislation the extent of the role and its powers. The consultation paper notes various additional functions which could be undertaken by the Inspector, including approving exhumation applications (see paragraphs 89-96) and checking the accreditation of cremation staff (see paragraph 176).

181 Although it has not been proposed by either the Infant Cremation Commission or the Burial and Cremation Review Group, there may be value in broadening the Inspector of Crematoria role to include the inspection of cemeteries and Burial Authorities. The range of proposals relating to cemeteries and Burial Authorities increases the importance of a formal inspection regime which could ensure that appropriate standards and practices are maintained. The inspector could also play a role in ensuring that Burial Authorities follow correct procedures when planning to reuse lairs, and could additionally be responsible for authorising requests to exhume remains.

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Regulation of the funeral industry

182 The Infant Cremation Commission noted concerns raised during its deliberations about the lack of regulation of the funeral industry. As the Commission's remit was to consider improvements required in procedures relating to the cremation of babies, stillborn babies and pregnancy losses, it felt that this was beyond its scope. Nonetheless, the Commission recommended that the Scottish Government should consider whether regulation of the funeral industry was required. Any proposals to regulate the funeral industry would need to be consulted on in detail, but general principles can be considered here.

183 Regulation of the funeral industry in other countries is not widespread, but has been implemented in various jurisdictions, either in whole or part. In Ontario, Canada, for example, people acting as funeral directors or operating funeral establishments are required to be licensed, with licensing requirements set out in legislation. The initial requirements for licensing include the need for individuals to have successfully undertaken relevant training; to have passed professional exams set by the Board established to manage the funeral industry; and to participate in regular inspection. Legislation also sets out the requirements for the renewal of licences.²⁹

184 In Australia, the Government of New South Wales has used legislation to prescribe a range of funeral processes, particularly in relation to the handling of bodies. The legislation also requires the keeping of a register of people who operate mortuaries and crematoria, and includes provisions for the inspection of mortuaries, crematoria and cemeteries. However, the industry has not been regulated as far as requiring particular qualifications for people who are acting as funeral directors.³⁰

185 In the USA, the Federal Trade Commission (FTC) Funeral Industry Practices Rule (which applies to all states) offers financial protection to people when making funeral arrangements.³¹ This includes requiring funeral directors to provide a full itemised list of costs for each funeral. Additionally, the FTC provides general advice on funeral arrangements to help people be better informed when planning a funeral and purchasing particular services. Individual states have also established regulatory regimes which govern the practices and standards of the funeral industry in those particular states. In the UK, people arranging funerals are offered some financial protection through the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, although this is limited.³²

186 Although regulation of the funeral industry is still relatively uncommon, an increasing number of jurisdictions have recently considered regulating the funeral industry, including Ireland³³ and New Zealand.³⁴ The Scottish Government will

²⁹ Funeral, Burial and Cremation Services Act 2002, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02f33_e.htm.

³⁰ Public Health Act 2010, <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+127+2010+cd+0+N>; Public Health Regulation 2012,

<http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+311+2012+cd+0+N>.

³¹ <http://www.consumer.ftc.gov/articles/0300-ftc-funeral-rule>.

³² <http://www.legislation.gov.uk/uksi/2001/544/contents/made>.

³³ <http://hospicefoundation.ie/wp-content/uploads/2013/11/Funeral-industry.pdf>.

continue to monitor developments in these countries to inform the potential regulation of the Scottish funeral industry.

187 Were regulation to be considered desirable, there are numerous possible models for regulating the funeral industry based on the examples of other jurisdictions. Requiring those acting as funeral directors to be licenced would establish consistent minimum standards of training across the industry. Such a system could be supported by an inspector, and a range of sanctions – including the suspension or removal of a funeral director’s licence to practice – could be introduced in response to poor performance or failure to meet standards. A licensing regime could also be used to help support sound businesses by placing particular financial requirements on those applying for a licence. In Ontario, for example, a licence will not be granted where the applicant is not considered to be financially responsible. Any proposal to licence the funeral industry would be accompanied by a Business Regulatory Impact Assessment and full consultation.

188 A licensing scheme supported by an inspection regime would provide a comprehensive way to ensure minimum standards in the funeral industry. While this would bring benefits, it would also be a large and costly process, both to establish and run. There are a number of other regulatory models which could provide assurance about industry standards and practice. As a minimum, the funeral industry could be required to be self-regulating. This would be similar to the existing model, but the Scottish Government could provide clear guidance on what was expected of funeral directors. This would also require some system of sanction if any funeral director did not meet guidance standards, and it is not clear what sanctions could exist in a system of self-regulation.

189 Before any final decisions are made, the Scottish Government is keen to hear views about the desirability of regulating the industry. While regulation would ensure minimum standards and allow for greater scrutiny of the industry, including the ability to prevent people who do not adhere to standards from practising, it may also add to the financial and administrative burden of funeral directors. Such additional costs may in turn be passed on to bereaved families.

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

³⁴ <http://www.lawcom.govt.nz/project/review-burial-and-cremation-act-1964/issues-paper/34>.

190 Depending on views expressed in this consultation, the Scottish Government may undertake a more detailed consultation on the proposed regulation of the funeral industry, including requirements for licensing and relicensing.

Funeral poverty

191 A further issue which requires to be considered in Scotland is funeral poverty. The Scottish Government believes that funerals are a vital public service and that no-one should be prevented a dignified funeral because of cost. Similarly, no-one should be forced into debt by the cost of organising a funeral for their loved one. Recent research by Citizens Advice Scotland (CAS) suggests that basic funeral costs in the UK have risen on average by 7% each year since 2004. In Scotland, the average basic cost of a burial (ie, funeral director's costs; burial lair and interment fee; and minister/celebrant/officiant fee) is £3,240. The average basic cost of a cremation is £2,610. These basic costs do not include items such as flowers, a wake and a memorial, which can add an average additional cost of £1815. When such items are included, the average cost of a burial in Scotland is £5055 and the average cost of a cremation in Scotland is £4425.³⁵

192 While this is the average cost, funeral costs vary significantly across Scotland. CAS research found that local authority burial costs (the combined cost of interment and the lair) range from £680 to £2,716.50. The average cost of a local authority burial in Scotland is £1,181.77, against the UK average of £1,500. Local authority cremation costs range from £485 to £730, with the average being £569.50. Private cremations cost between £585 to £830.

193 CAS research suggests that some local authorities are increasing funeral costs to reduce overall budget pressures, rather than charging on a cost-recovery basis. Funeral costs are not consistently published on local authority websites (CAS found that some local authorities did not publish this information at all), making it difficult to know in advance how much a funeral might cost, and how much each individual element will cost.

194 There are few financial support mechanisms available to those who are struggling to afford the cost of a funeral. The UK Department of Work and Pensions operates a social fund which provides a financial contribution to funeral costs for those on low incomes. There is a range of qualifying conditions for access to the fund, and any money provided must be paid back, often from the deceased person's estate – this can add additional financial burdens to people who are already struggling to afford the cost of a funeral. Research by the University of Bath found that during 2012-13 only 53% of 66,000 applications to the fund were successful, with an average payment of £1,225, significantly below the average basic funeral costs in Scotland. Grants made from the fund can be used only for particular elements of the funeral cost. Applicants to the fund are required to provide details of the funeral plan, meaning that they must agree to particular funeral costs without necessarily having the means to pay for them.³⁶ The Smith Commission report on the further devolution of powers to the Scottish Parliament proposes that responsibility for funeral payments, currently part of the regulated Social Fund operated by the Department for Work and Pensions, be transferred to the Scottish Parliament.

³⁵ Citizens Advice Scotland, 'The Real Deal: Funeral Costs', June 2014, <http://www.cas.org.uk/system/files/Real%20Deal%20-%20Funeral%20Costs.pdf>.

³⁶ University of Bath, 'Funeral poverty in the UK: issues for policy', January 2014, <http://www.bath.ac.uk/ipr/pdf/policy-briefs/affording-a-funeral.pdf>.

195 In response to these pressures, it is proposed to impose a legislative duty on Local Authorities to publish up-to-date burial and cremation costs on their websites in a clear and easily accessible way. Another option which may help to reduce funeral poverty is to require Local Authorities to charge on a cost-recovery basis. If responsibility for the benefit currently paid from the DWP Social Fund is transferred to the Scottish Parliament, this will provide further options for tackling funeral poverty. This will be the subject of a separate consultation.

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

Annex A

List of cremation forms under the existing legislative framework

Form	Title	Purpose	Regulations (all made under the Cremation Act 1902)	Applies to
A	Application for Cremation	Formal application for cremation for any cremation which falls within the scope of the 1902 Act and 1935 Regulations	Cremation (Scotland) Regulations 1935 (amended by Cremation (Scotland) Regulations 1952)	All cremations under 1902 Act and 1935 Regulations
AA	Application for cremation of body parts	Formal application for the cremation of body parts for any cremation which falls within the scope of the 1902 Act and 1935 Regulations	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.
B	Certificate of Medical Attendant	Signed by the medical practitioner who cared for the deceased at death to certify cause of death; may also be signed by the deceased's regular medical practitioner if he or she can identify the cause of death	Cremation (Scotland) Regulations 1935 (amended by Cremation (Scotland) Amendment Regulations 1985)	All cremations under 1902 Act and 1935 Regulations
C	Confirmatory Medical Certificate	Signed by another medical practitioner in addition to the person who signs Form B – this is to confirm the cause of death independently.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations
D	Certificate after Post Mortem Examination	Signed by the person who carried out a post mortem. Where a post mortem is carried out, Forms B and C are not required.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations where a post mortem has been carried out

DD	Certificate on release of body parts	Used to confirm that the body parts were removed during the course of a post mortem on the deceased.	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.
E(1)	Procurator Fiscal's Certificate	Used by the Procurator Fiscal to declare that the cause of death would not require further medical examination. Where a PF is involved Forms B and C are not required.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations where a PF is involved.
E(2)	Coroner's Certificate	Used by the Coroner to declare that the cause of death would not require further medical examination where death occurred in England or Wales and cremation is to take place in Scotland.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations where a coroner in England or Wales has been involved.
F	Authority to Cremate	Used by Medical Referee to confirm that all legal requirements have been satisfied – authorises the Superintendent of the Crematorium to carry out the cremation.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations
FF	Authority to cremate body parts	Used by Medical Referee to confirm that all legal requirements have been satisfied – authorises the Superintendent of the Crematorium to carry out the cremation of body parts.	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.

G	Register of Cremations	Used by the Registrar appointed by each Cremation Authority to register each cremation.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations
GG	Register of Cremations of Body Parts	Used by the Registrar appointed by each Cremation Authority to register each cremation of body parts.	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.
H	Certificate of Anatomical Examination	Used where the body to be cremated has undergone anatomical examination as per the Anatomy Act 1832 – mainly for the purposes of education and training	Cremation (Scotland) Amendment Regulations 1967	Cremation where the body has been examined as per the Anatomy Act 1832.

Stillborn children

Regulation 16 of the 1935 Regulations (as amended by the 1967 Regulations) covers the cremation of stillborn children. Under current cremation legislation there is no form prescribed specifically for the application for cremation of a stillborn child made under cremation legislation. However, before authorising the cremation of a stillborn child, the Medical Referee must see a certificate of registration and a certificate that the child was stillborn signed by the relevant medical practitioner. The certificate of registration is prescribed by the Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms) (Scotland) Amendment Regulations 2009, made under the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

Annex B

List of crematoria in Scotland

Crematorium	Operator
Hazlehead Crematorium	Aberdeen City Council
Parkgrove Crematorium	Parkgrove Crematorium Ltd
Cardross Crematorium	Argyll & Bute Council
Borders Crematorium	Westerleigh Group
Roucan Loch Crematorium	Roucan Loch Crematorium Company
Dundee Crematorium	Dignity Crematoria
Mortonhall Crematorium	City of Edinburgh Council
Seafield Crematorium	Edinburgh Crematorium Ltd
Warriston Crematorium	Edinburgh Crematorium Ltd
Falkirk Crematorium	Falkirk Council
Dunfermline Crematorium	Fife Council
Kirkcaldy Crematorium	Fife Council
Craigton Crematorium	Glenhaven Funeral Services Ltd
Daldowie Crematorium	Glasgow City Council
Linn Crematorium	Glasgow City Council
Maryhill Crematorium	Scottish Cremation Society Ltd
Inverness Crematorium	Highland Council
Greenock Crematorium	Inverclyde Council
Moray Crematorium	Dignity Crematoria
Holmsford Bridge Crematorium	Dignity Crematoria
Holytown Crematorium	North Lanarkshire Council and Dignity Crematoria
Perth Crematorium	Perth & Kinross Council
Paisley Crematorium	Paisley Cemetery Company Ltd
Masonhill Crematorium	South Ayrshire Council
South Lanarkshire Crematorium	South Lanarkshire Council
Clydebank Crematorium	West Dunbartonshire Council
West Lothian Crematorium	Westerleigh Group

ANNEX C

Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>	Please tick as	<input type="checkbox"/>

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

Annex D

List of consultation questions and consultation response form

How to complete this response form

1 Each question in the consultation paper is listed below. Respondents are invited to answer as many questions as they wish to, and there is no requirement to answer every question. Completing this form as a Word document allows responses to be provided directly on to the form, although respondents may choose to respond in other ways.

2 Some questions provide a check box to provide a response - to mark a box, double-click it and then select 'Checked' from the menu. Where several questions are asked under the same number, the initial question is the one that should be answered using the check box. Further information can be provided by inserting free text under the heading 'Additional information'.

3 Where no check box is provided, responses are sought in the form of free text, which can be inserted under the heading 'Response'.

4 At the end of the questions consultees are invited to provide any other information which they feel is relevant.

5 Once completed this form can be emailed to burialandcremationbill@scotland.gsi.gov.uk or posted to:

Burial and Cremation Consultation
Scottish Government
3E St Andrew's House
Edinburgh
EH1 3DG

6 When returning responses please also complete and return the Respondent Information Form at Annex C. **The closing date for responses is Friday 24 April 2015.**

The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes No Don't Know

Additional information:

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Response:

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Yes No Don't Know

Additional information:

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

Yes No Don't Know

Additional information:

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes No Don't Know

Additional information:

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Yes No Don't Know

Additional information:

Q7 - In making legal provision for home burial, what factors should be considered?

Response:

Q8 - Are there any reasons why private cremation should not remain illegal?

Yes No Don't Know

Additional information:

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Yes No Don't Know

Additional information:

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Yes No Don't Know

Additional information:

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes No Don't Know

Additional information:

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response:

The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes No Don't Know

Additional information:

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes No Don't Know

Additional information:

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Yes No Don't Know

Additional information:

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes No Don't Know

Additional information:

The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes No Don't Know

Additional information:

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes No Don't Know

Additional information:

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Yes No Don't Know

Additional information:

Burial and cremation records

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Yes No Don't Know

Additional information:

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

50 years Indefinitely Other period

Additional information:

Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes No Don't Know

Additional information:

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes No Don't Know

Additional information:

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Response:

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Yes No Don't Know

Additional information:

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Response:

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Yes No Don't Know

Additional information:

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes No Don't Know

Additional information:

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Yes No Don't Know

Additional information:

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Yes No Don't Know

Additional information:

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response:

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Response:

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Response:

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

Response:

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Yes No Don't Know

Additional information:

Q36 - Are any other techniques available that should be considered?

Response:

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes No Don't Know

Additional information:

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Yes No Don't Know

Additional information:

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

Response:

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Yes No Don't Know

Additional information:

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Yes No Don't Know

Additional information:

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Yes No Don't Know

Additional information:

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Yes No Don't Know

Additional information:

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Yes No Don't Know

Additional information:

Exhumation

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes No Don't Know

Additional information:

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Yes No Don't Know

Additional information:

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Yes No Don't Know

Additional information:

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Yes No Don't Know

Additional information:

Pandemics and mass-fatality events

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Yes No Don't Know

Additional information:

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Yes No Don't Know

Additional information:

Cremation forms and procedures

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

Yes No Don't Know

Additional information:

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

Yes No Don't Know

Additional information:

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Yes No Don't Know

Additional information:

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

Yes No Don't Know

Additional information:

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Yes No Don't Know

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Yes No Don't Know

Additional information:

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

Response:

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes No Don't Know

Additional information:

Q59 – Should application for other categories of cremation require a countersignature?

Yes No Don't Know

Additional information:

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Yes No Don't Know

Additional information:

Q61 - What information should be considered essential for the cremation application?

Response:

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Response:

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Yes No Don't Know

Additional information:

Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes No Don't Know

Additional information:

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes No Don't Know

Additional information:

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes No Don't Know

Additional information:

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes No Don't Know

Additional information:

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Yes No Don't Know

Additional information:

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

Yes No Don't Know

Additional information:

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

Yes No Don't Know

Additional information:

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes No Don't Know

Additional information:

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes No Don't Know

Additional information:

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes No Don't Know

Additional information:

Cremation register

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes No Don't Know

Additional information:

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes No Don't Know

Additional information:

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes No Don't Know

Additional information:

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes No Don't Know

Additional information:

Accreditation of Cremation Authority staff

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice Legislation Don't Know

Additional information:

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response:

Inspector of crematoria

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes No Don't Know

Additional information:

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Yes No Don't Know

Additional information:

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Yes No Don't Know

Additional information:

Regulation of the funeral industry

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Yes No Don't Know

Additional information:

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes No Don't Know

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes No Don't Know

Additional information:

Funeral poverty

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Yes No Don't Know

Additional information:

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Yes No Don't Know

Additional information:

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

Response:

Any other relevant issues

Please use this space to provide information about relevant issues which are not covered in the consultation paper or any topic which you think should be considered:



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ANNEX C

Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation

Scottish Borders Council

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Newtown St Boswells

Melrose

Roxburghshire

Postcode TD6 0SA

Phone

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Are you content for your **response** to be made available?

Please tick as appropriate
 Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

Annex D

List of consultation questions and consultation response form

How to complete this response form

1 Each question in the consultation paper is listed below. Respondents are invited to answer as many questions as they wish to, and there is no requirement to answer every question. Completing this form as a Word document allows responses to be provided directly on to the form, although respondents may choose to respond in other ways.

2 Some questions provide a check box to provide a response - to mark a box, double-click it and then select 'Checked' from the menu. Where several questions are asked under the same number, the initial question is the one that should be answered using the check box. Further information can be provided by inserting free text under the heading 'Additional information'.

3 Where no check box is provided, responses are sought in the form of free text, which can be inserted under the heading 'Response'.

4 At the end of the questions consultees are invited to provide any other information which they feel is relevant.

5 Once completed this form can be emailed to burialandcremationbill@scotland.gsi.gov.uk or posted to:

Burial and Cremation Consultation
Scottish Government
3E St Andrew's House
Edinburgh
EH1 3DG

6 When returning responses please also complete and return the Respondent Information Form at Annex C. **The closing date for responses is Friday 24 April 2015.**

The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes No Don't Know

Additional information:

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Response:

There is a need for a legal definition around the issue of rights of inheritance of title deeds for burial lairs, to clarify the process of who has the rights to make decisions if the original lair holder is deceased.

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Yes No Don't Know

Additional information:

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

Yes No Don't Know

Additional information:

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes No Don't Know

Additional information:

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Yes No Don't Know

Additional information:

Q7 - In making legal provision for home burial, what factors should be considered?

Response:

- A. Who would be the responsible authority for overseeing the legal process?
- B. And what criteria would be used to legislate?

Consideration should also be given to:-

1. any restrictions to certain ownerships of land such as estates and farms with provision made for removing or the maintenance of burial sites following changes of ownership
2. Provisions on minimum standards for burial (depth, coffin, soil types which should correspond with those in place in the industry). A pre-assessment of any proposed site would be necessary to check if it is suitable, and clarification provided as to who should carry this out.
3. Grave digging and internment for home burials should be carried out by competent staff to ensure appropriate health and safety procedures followed.
4. Prior approvals should be required from the responsible authority and whether this could be incorporated into existing paperwork.
5. Compliance monitoring arrangements
6. Proximity to other properties, other environmental restrictions such as water, archaeology
7. SEPA

Q8 - Are there are any reasons why private cremation should not remain illegal?

Yes No Don't Know

Additional information:

It is critical that cremations from a legal and public transparency and confidence perspective are carried out only in regulated crematoriums.

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Yes No Don't Know

Additional information: No. No

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Yes No Don't Know

Additional information:

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes No Don't Know

Additional information:

These restrictions are unnecessary and inappropriate. The existing controls are historic and pre-date current planning and environmental legislation by a number of decades. Modern practice, technical controls and legislative requirements now ensures that emissions and impacts on the environment and surrounding properties are minimal.

If the distance thresholds remain then they must be clarified what they relate to, the cremator, the building or the land boundaries.

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response: It should be carried out properly by the regulating authorities. SEPA and the local Planning authority regulate developments of this nature by applying current planning and environmental legislation.

The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes No Don't Know

Additional information: If there is no-one available as defined in list then does the right then pass the local authority or other appropriate body

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes No Don't Know

Additional information: If there is no-one available as defined in list then does the right then pass the local authority or other appropriate body

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Yes No Don't Know

Additional information:

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes No Don't Know

Additional information: No

The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes No Don't Know

Additional information:

Given the problems of maintaining grave stones in cemeteries a set of regulations are essential.

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes No Don't Know

Additional information: There may be a case for both regulations and guidance

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Yes No Don't Know

Additional information: To facilitate re-opening graves there may be occasions where this minimum requirement isn't achievable.

Burial and cremation records

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Yes No Don't Know

Additional information: There is a good case for maintaining physical hard copies of records as well as date records, to act as a back up in the event of loss of access or complete loss of records through technology failure and to retain the physical record for future scrutiny

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

50 years Indefinitely Other period

Additional information: Records should be kept indefinitely as burials, over time and memorials become heritage in their own right and are frequently researched. The records would be crucial to this research in future. However storage of digital data indefinitely may bring its own challenges and costs as technology changes over time

Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes No Don't Know

Additional information:

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes No Don't Know

Additional information:

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Response: It doesn't need to be restricted to family members, so long as the process is transparent and clear and consistent guidance is provided on line of inheritance to service teams.

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Yes No Don't Know

Additional information: Local Authorities need to retain the ability to decide on a case by case basis, presale and multiple presale contributes to the Councils budget in the current context but reduces the operational capacity of a cemetery. Factors such as how much operational capacity is available within a cemetery as well as when the plot is likely to be required for use should dictate if the pre sale of land is allowed.

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Response: The Scottish Government view is a reasonable one to adopt, i.e., plots to be used within 25 years of purchase.

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Yes No Don't Know

Additional information: Un-used lairs – Agree with the proposal. Partial lairs- concerns over the proposal and the attractiveness of the proposal to those being offered to share a lair. Full lairs – In addition to the concerns over re use of partial lairs, concerns are also expressed over the practical implications of dig n deepen, including equipment, costs, SEPA ground water requirements amongst other issues

Historic burial liars, particularly those dating from the 18th and 19th century, have archaeological implications which must be addressed before re-use is considered. It is concerning that only designated sites and monuments have been taken into account when considering heritage impacts. Historic Scotland will have a very narrowly focused role in this regard, and this needs to be acknowledged. The major proportion of historic churches and churchyards are, in fact, undesignated and fall under the Local Authority's remit with respect to heritage impacts through statutory planning. Many of these churches, church ruins and churchyards are medieval in origin, and some are known to be older (Early Christian from 6th to 11th centuries AD) but were never designated as such by Historic Scotland or their predecessors. As such Historic Scotland will not have a view on their re-use as it is outside their remit. The re-use of layers in designated or undesignated examples have the potential to disturb buried archaeological and human remains that date from quite early periods and are of regional or national significance. The consultation paper has not sufficiently taken into account the safeguarding of the heritage within the

majority of historic cemeteries in Scotland which are undesignated. This is true for both public and private cemeteries.

In addition, pre 1856 cemeteries will often have no clear lairs, and there will be burials that are not visible through headstones. It is not clear how the Burial Authority will treat pre-existing burials and remains where no clear burial exists. These individual burials are protected by the Right to Sepulchre in Scots Law, and this must be taken into account. This holds for both public and private cemeteries.

The Burial Authorities should seek advice from archaeologists who advise the Local Authorities as well as the national authorities. The Local Authority, as with these national agencies, should be allowed to object on the basis of impacts to significant undesignated heritage. Many historic cemeteries are also of profound interest, or even managed by, local heritage interest groups. They certainly have a vested interest and should also be consulted if their involvement in a cemetery is known.

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes No Don't Know

Additional information: There are concerns over re-use of full lairs 75 years or older where there are highly likely to be archaeological implications. The Borders contains a significant number in older cemeteries pre-1856. However those concerns aren't the same for newer settlements and cemeteries in the region.

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Yes No Don't Know

Additional information:

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Yes No Don't Know

Additional information: Notification could be made via local community organisations and networks, such as Community Councils, and religious groups/churches.

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response:

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Response: Other interested parties including but not limited to the following, Religious organisations, local residents, friends, affiliated organisations, public health services, SEPA.

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Response: It is felt that a non-family member would need to demonstrate that they had valid connection to lair, or that their objection was based on particular and evidenced historical and or cultural reasons.

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

Response: The burden of requiring the objector to assume maintenance responsibilities is unclear, greater clarity is required on what mechanism is envisaged to enable this to be pursued.

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Yes No Don't Know

Additional information: Dig and deepen has potential for significantly impacting buried archaeology as well as disturbing older burials that have a Right to Sepulchre (raising ethical issues). Safeguards including exclusion, excavation or monitoring to protect or record archaeological assets and buried memorials. SEPA groundwater requirements.

Q36 - Are any other techniques available that should be considered?

Response: Mausoleums, above ground interment

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes No Don't Know

Additional information:

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Yes No Don't Know

Additional information:

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

Response: Yes Mausoleums, above ground interment

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Yes No Don't Know

Additional information:

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Yes No Don't Know

Additional information:

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Yes No Don't Know

Additional information:

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Yes No Don't Know

Additional information: No

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Yes No Don't Know

Additional information:

Exhumation

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes No Don't Know

Additional information:

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Yes No Don't Know

Additional information:

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Yes No Don't Know

Additional information:

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Yes No Don't Know

Additional information:

Pandemics and mass-fatality events

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Yes No Don't Know

Additional information:

At present it is best practice for exhumation of archaeological remains, including those outside established cemeteries (e.g. ancient cemeteries, chance discoveries of human burials from all periods of history and prehistory, ancient human remains without a clear burial) for both Police Scotland and/or the Local Authority archaeologist to be contacted for consultation and advice. The archaeological input is crucial as the disturbance of ancient or indeed significant historical, burials can contain a wealth of information on the individual who is buried and the society in which they lived. In certain circumstances, exhumation should be undertaken only under archaeological conditions so that the information can be preserved by record. Historic Scotland manages a 'Human Remains Call-off Contract' (an on-call contracted archaeological organisation who can respond to chance discoveries) for this purpose, though this is often over-subscribed and the discovery of just a single ancient cemetery, or many ancient burials within a known cemetery, can significantly impact this budget. While the best practice for both Police and archaeologists to assess and if necessary excavate/exhume a burial is acknowledge, the legislative background for this is not clear as the consultation document suggests. Guidance for governing this process has been produced by the Association of Local Government

Archaeology Advisors for Scotland (ALGAO: Scotland) and was sent to Procurator Fiscals in Scotland. However, regardless of this best practice, human burials of archaeological significance have been destroyed in the past both by the finders and by police where the knowledge of the best practice has been lacking.

There is a need for legal clarity on this issue. However it is considered that the current best practice (Police and archaeological assessment without disturbance, followed by archaeological excavation/exhumation and post-excavation analysis and appropriate reporting) should be enacted as a legal duty for Burial Authorities and Local Authorities. This should apply to planned or unplanned exhumations of burials older than 1856 within or outside cemeteries. We would also welcome formal guidance and training principally for Procurator Fiscals and the police on this issue. In addition, the Human Remains Call-Off Contract administered by Historic Scotland (and soon by the new body Historic Environment Scotland) should be better resourced to meet the challenge of the chance discovery of human burials, or for this resource to be passed to Local Authority archaeological advisory services.

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Yes No Don't Know

Additional information: This is a sensible approach

Cremation forms and procedures

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

Yes No Don't Know

Additional information:

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

Yes No Don't Know

Additional information:

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Yes No Don't Know

Additional information:

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

Yes No Don't Know

Additional information:

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Yes No Don't Know

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Yes No Don't Know

Additional information:

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

Response:

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes No Don't Know

Additional information:

Q59 – Should application for other categories of cremation require a countersignature?

Yes No Don't Know

Additional information:

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Yes No Don't Know

Additional information:

Q61 - What information should be considered essential for the cremation application?

Response:

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Response:

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Yes No Don't Know

Additional information: Especially if the issue of re-use of burial plots is likely to become law

Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes No Don't Know

Additional information:

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes No Don't Know

Additional information:

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes No Don't Know

Additional information:

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes No Don't Know

Additional information:

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Yes No Don't Know

Additional information:

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

Yes No Don't Know

Additional information:

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

Yes No Don't Know

Additional information:

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes No Don't Know

Additional information:

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes No Don't Know

Additional information:

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes No Don't Know

Additional information:

Cremation register

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes No Don't Know

Additional information:

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes No Don't Know

Additional information:

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes No Don't Know

Additional information:

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes No Don't Know

Additional information:

Accreditation of Cremation Authority staff

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice Legislation Don't Know

Additional information:

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response:

Inspector of crematoria

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes No Don't Know

Additional information:

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Yes No Don't Know

Additional information:

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Yes No Don't Know

Additional information:

Regulation of the funeral industry

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Yes No Don't Know

Additional information: Complaints relating to the funeral industry are extremely rare, suggesting the market is self regulating and effective. There are existing consumer protection regulations in place already relating to Consumer Protection from Unfair Trading Regulations 2008, covering issues including pricing, aggressive practices and the requirement to provide all material information before being committed to a contract

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes No Don't Know

Additional information: In the event that regulation is implemented consideration may also be given to existing arrangements for Estates agents. Here operators are legally required to be part of a redress scheme, where failure to register results in a fixed penalty notice. Examples of such a redress scheme include the property ombudsman. Business must have complaints procedures in place which ultimately agree to abide by the decision of the ombudsman.

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes No Don't Know

Additional information: an alternative may be that through the previously mentioned redress scheme an ombudsman may be an appropriate model to follow.

Funeral poverty

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Yes No Don't Know

Additional information:

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Yes

No

Don't Know

Additional information: it should up to local authorities to take a view on this matter

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

Response:

Any other relevant issues

Please use this space to provide information about relevant issues which are not covered in the consultation paper or any topic which you think should be considered:

P30 on ID and contamination of bodies – note existing powers and obligations under the Public Health (Scotland) Act 2008.

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