
**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 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

Author(s)

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Background Papers: None
Previous Minute Reference: None

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

Contact us at Jacqueline Whitelaw, Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email eitranslationrequest@scotborders.gov.uk.