



**Consultation on a Proposed Bill Relating to Burial and Cremation and
Other Related Matters in Scotland**
Response from the Scottish Council of Jewish Communities

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The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this response we have consulted widely among members of the Scottish Jewish community, and in particular with all leaders of all the religious groupings in Scotland.

The legislative framework

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 Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?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

We strongly support legislation to ensure consistent standards in all cemeteries as current inconsistencies can sometimes cause unnecessary delays to burials. For example, although Council-owned cemeteries in Edinburgh permit burials on Sunday and bank holidays, the private cemeteries currently used by the Orthodox and Liberal communities do not, even though the Jewish community has offered to meet all overtime payments. By contrast, in Glasgow, Council cemeteries do not permit burials on Sunday or bank holidays even using the Community's own staff from its private cemetery, which does carry out burials on Sunday and bank holidays. This has occasionally been the cause of lengthy delays with consequent extreme distress to the bereaved families, for example when someone who died on a Wednesday afternoon on the day before Christmas or New Year, could not be buried until the following Tuesday. We urge that regulation should be introduced to prevent this inconsistency, and permit funerals to take place on any day of the week.

Care should, however, be taken to avoid conflicts of interest, for example if local authorities were to be both regulator and one of the service providers.

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

We are not aware of a need for any additional powers.

3. 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

4. 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

5. 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

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

Yes No Don't Know

We agree that the Bill should contain provisions to regulate home burial.

7. In making legal provision for home burial, what factors should be considered?

We do not have a view on this question.

8. Are there any reasons why private cremation should not remain illegal?

Yes No Don't Know

9. 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

We agree that all methods should be regulated but do not wish to comment on any alternative method in particular.

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

Yes No Don't Know

We agree that, to prevent the repetition of past misunderstandings and mistakes, there should be a comprehensive and inclusive legal definition of "ashes", and agree with the proposed wording.

11. 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

We do not have a view on this question.

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

We agree that all regulations should be appropriately enforced.

The right to instruct the disposal of human remains

13. 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

In general we agree that the right to instruct disposal of a body should be vested in the nearest relative. However, there are occasions when this may not be appropriate or may not be possible. For example, if the deceased was Jewish and his or her nearest relative is not, if the nearest relative has stated that he or she intends to arrange disposal in a way that is known not to have been the wish of the deceased, or if the nearest relative cannot be contacted. There should, in such cases, be provision either for vesting right of disposal in another relative who will arrange for disposal according to the wishes of the deceased, or, if none such is available, in an appropriate authority of the relevant branch of Judaism.

In cases in which someone known to be Jewish has either died without relatives, or none can be contacted within a reasonable time, right of disposal should be vested in an appropriate authority in the Jewish community. In cases when the branch of Judaism practiced by the deceased is not known, a representative body such as the Scottish Council of Jewish Communities will be able to assist.

We also agree with the proposal that disputes should be resolved by summary application to a sheriff, although we would hope this would only rarely be required, because of the cost and delay. There should be an expedited procedure to enable the matter to be resolved as speedily as possible, since delay itself may frustrate one party's case, for example if the issue itself is that of speedy burial in accordance with religious custom.

It should be noted that many observant Jews do not use the telephone, carry items outwith a building, drive, or write during Shabbat (from dusk on Friday until after

dark on Saturday) and festivals (some of which last for two days), unless necessary to save life, when other religious obligations must (not "may") be set aside in order to do so. Religiously observant relatives may not, therefore, be contactable during these times, and will not be able to attend at any premises outwith walking distance, sign papers, etc. On such occasions burial is necessarily delayed until the following day.

- 14. 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

In the vast majority of cases we would agree that the person with parental rights and responsibilities should make the relevant decision. However, in the case of a child fostered or adopted outwith his or her own faith community, we would recommend that a recognised authority from the relevant faith community should also be involved in the decision.

- 15. 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

- 16. 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

We agree with this proposal in relation to stillbirths, pregnancy loss, and the death of a child. We do not, however, agree that intervention of another person on cause shown should be confined to children, but urge that this provision should also be extended to include adult deaths.

The management of cemeteries

- 17. 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

We do not agree that this power should be vested in Scottish Ministers since some proposed actions might be inappropriate in the case of cemeteries belonging to particular faith communities.

18. 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

We support the introduction of non-statutory guidance to “provide a framework for the consistent management of cemeteries”.

19. 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

The acceptable minimum depth may vary from one cemetery to another depending, for example, on the local risk of flooding, and we suggest that this should be reflected in any regulations and be subject to agreement cemetery by cemetery with the inspectorate.

Burial and cremation records

20. 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

We agree that records of all types of disposal should be stored and transferred electronically whenever possible.

21. 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

Alleviating pressure on burial grounds

22. Do you agree that the sale of lairs in perpetuity should be ended?

Yes No Don't Know

Judaism regards the human body as sacrosanct, and requires that it should always be treated with dignity. This requirement applies not only before, but also after burial without any time limit, and we therefore have serious concerns with the proposals to end the sale of lairs in perpetuity.

23. 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

We strongly disagree with the proposal for an initial tenure of only 25 years, subsequently renewable in 10 year periods, as this would inevitably result in disturbance to the human remains of those people without surviving relatives, or

whose relatives were no longer traceable or who did not wish to accept responsibility for the grave.

24. 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?

The transfer of lairs in a cemetery associated with a particular faith or community should be restricted to people approved by the appropriate authority in the relevant faith or community.

25. 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

See our response to Q26.

26. 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?

We disagree with this proposal, and with the Scottish Government's view that "no lairs should be sold if it is unlikely that they will be used within the initial 25 year period", since the reservation of lairs well in advance of their intended use can often contribute to the wellbeing of those for whom they are reserved, serving as a tangible assurance that their wishes will be respected after death. We therefore strongly support the many faith communities that reserve lairs in advance in order to ensure, for both theological and psychological reasons, that members can be buried together, and separately from those of other faiths or none.

27. 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

We are particularly concerned that what is in effect confiscation of unused lairs in burial grounds that have been established by a particular religious community for use in accordance with its own rites, might result in those lairs being used by others, thus nullifying the entire religious purpose of the arrangement contrary to established norms respecting the autonomy and diversity of different faiths and religions. This would be extremely distressing to the community, since great importance is given to being buried in a Jewish cemetery.

Graves should only be re-used if explicit permission has been obtained both from the family of the deceased and, in the case of cemeteries associated with a particular faith or community, from the appropriate authority in that faith or community.

28. Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes No Don't Know

Whatever the timescale, graves should only be re-used if explicit permission has been obtained both from the family of the deceased and, in the case of cemeteries

associated with a particular faith or community, from the appropriate authority in that faith or community.

29. 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

We welcome the proposal that, “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.”

30. 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

In the case of cemeteries associated with a particular faith or community, notices should also be published in newspapers and on websites that are targeted at that faith or community.

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

Paragraph 73 of the consultation paper states that “someone who has rights in relation to the lair – for example, a descendent of the original owner” who objected to the reuse of a grave “would then become responsible for upkeep and maintenance of the lair and any memorials”, while paragraph 74 states that “If someone who is not a surviving relative objected to the proposed reuse of the lair ... the objector should not become responsible for the lair.” That is inequitable. Objecting to the reuse of a grave should not impose any financial obligation on the person concerned, whether or not a relative of the deceased.

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

Relevant authorities in the relevant faith or community should have a right to object in the case of cemeteries associated with a particular faith or community.

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

In order to determine the legitimacy of an objection, the views and background of the deceased should be considered, and the nature of the cemetery in which he or she is buried.

34. 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?

Objectors, whether or not family members, should not become liable for the maintenance of lairs. There should not be any financial disincentive to object to the reuse of a lair.

35. Do you agree that the ‘dig and deepen’ method should be used to allow the reuse of full lairs?

Yes No Don't Know

The reuse of full lairs, whether by means of ‘dig and deepen’ or any other method, should only be permitted if explicit permission has been obtained both from the family of the deceased and, in the case of cemeteries associated with a particular faith or community, from the appropriate authority in that faith or community.

36. Are any other techniques available that should be considered?

We do not have a view on this question.

37. Do you agree that headstones and memorials may be reused if appropriate?

Yes No Don't Know

The reuse of headstones and memorials should only be permitted if explicit permission has been obtained both from the family of the deceased and, in the case of cemeteries associated with a particular faith or community, from the appropriate authority in that faith or community.

38. 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

Every effort should be made to ensure that headstones and memorials remain safe, but where this is not possible, we agree that they should be removed, where possible in consultation with the family of the deceased and, in the case of cemeteries associated with a particular faith or community, with the appropriate authority in that faith or community. However, to ensure that the grave remains identifiable, at the minimum a simple marker, including the name of the person buried in the relevant lair should be placed on the grave, and full records must be kept both of those buried in each lair and of what has been done with the headstones and memorials that have been moved.

39. 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?

We do not have a view on this question.

40. 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

Whatever the timescale, lairs should only be re-used if explicit permission has been obtained both from the family of the deceased or of the purchaser of an unused lair and, in the case of cemeteries associated with a particular faith or community, from the appropriate authority in that faith or community.

41. 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

In addition to notices in the local press and internet, in the case of cemeteries associated with a particular faith or community, notices should also be published in newspapers and on websites that are targeted at that faith or community.

42. 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

43. 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

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

Yes No Don't Know

Exhumation

45. 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

46. 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

The exhumation process to provide for the reuse of full lairs should include explicit permission having been obtained both from the family of the deceased and, in the case of cemeteries associated with a particular faith or community, from the appropriate authority in that faith or community.

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

Yes No Don't Know

48. Do you agree with the proposed approach for the exhumation of cremated remains?

Yes No Don't Know

49. 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

Pandemics and mass-fatality events

50. 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

We agree with the suspension of regulations that could delay burial during pandemics or following a mass-fatality event. We do not, however, agree that the proposed regulations regarding the obtaining of explicit permission for the reuse of graves should be suspended on such occasions.

Cremation forms and procedures

Note: Cremation is not permitted by Orthodox Judaism but is used by some members of the Liberal and Reform Jewish communities.

51. 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?

Yes No Don't Know

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

Yes No Don't Know

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

Yes No Don't Know

54. 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

We do not have a view as to any additional options that might be offered.

55. 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

If it is the case that ashes may not be recoverable after the cremation of a very young child, then this should be clearly stated on the form.

56. 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

We do not have a view on the proposed timings.

57. 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?

We do not have a view on this question.

58. 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

We do not have a view on this question.

59. Should application for other categories of cremation require a countersignature?

Yes No Don't Know

We do not have a view on this question.

60. 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

We do not have a view on this question.

61. What information should be considered essential for the cremation application?

We do not have a view on this question.

62. 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?

We do not have a view on this question.

63. Is there any need for the introduction of statutory forms for applying for a burial?

Yes No Don't Know

The introduction of a statutory form for applying for a burial might cause further delays which would be particularly distressing to those faith communities that require burials to be carried out as soon after the death as possible.

Pregnancy loss

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

Yes No Don't Know

We do not have a view on this question.

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

Yes No Don't Know

We do not have a view on this question.

66. 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

We do not have a view on this question.

67. 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

We do not have a view on this question.

68. 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

We do not have a view on this question.

69. 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

We do not have a view on this question.

70. 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

We do not have a view on this question.

71. Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes No Don't Know

We do not have a view on this question.

72. 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

We do not have a view on this question.

73. 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

We do not have a view on this question.

Cremation register

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

Yes No Don't Know

We do not have a view on this question.

75. Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes No Don't Know

We do not have a view on this question.

76. 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

77. Do you agree that the Cremation Register should be retained indefinitely?

Yes No Don't Know

Accreditation of Cremation Authority staff

78. 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

We do not have a view on this question.

79. How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

We do not have a view on this question.

Inspector of crematoria

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

Yes No Don't Know

81. 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

We do not have a view about any additional functions that the inspector should carry out.

82. 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

Regulation of the funeral industry

83. 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

84. 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

We do not have a view on this question.

85. 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

We are concerned that the introduction of several layers of new regulatory authorities could potentially result in additional delay to burial. This would be particularly distressing to those faith communities that require burials to be carried out as soon after the death as possible.

Funeral poverty

86. 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

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

Yes No Don't Know

We do not have a view on this question.

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

We do not have a view on this question.

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:

We welcome the fact that this legislation recognises the material differences between burial and cremation, and would urge that the opportunity be taken to restore that distinction to other legislation, such as the Certification of Death (Scotland) Act 2011, in which it is not recognised.