

The Highland Council

Community Services Committee – 4 February 2016

Agenda Item	15
Report No	COM 12/16

Scottish Cremations and Burials Bill consultation

Report by Director of Community Services

Summary

This report informs Members of the call for written evidence by the Scottish Government on the Burials and Cremations Bill (Scotland) 2015 which closed in Dec 2015. The report also provides details of the work required to implement the forthcoming legislation.

1. Background

- 1.1 The Burial and Cremation (Scotland) Bill was introduced in the Parliament on 8 October 2015. The intention of the Bill is to provide a modern, comprehensive legislative framework for burial and cremation.
- 1.2 The Bill consists of six parts covering burial, cremation, arrangements, inspection, miscellaneous issues (including licensing, codes of practice and regulation) and general issues. Many of the Bill's provisions are rooted in recommendations made by various review groups, particularly the Infant Cremation Commission and the Burial and Cremation Review Group.
- 1.3 A previous report Ref COM/241/15 on the Scottish Governments initial consultation on the Bill was presented to the Community Services Committee on 4 June 2015.
- 1.4 A copy of the call for written evidence and the legislative documents has been placed on the Members Intranet site with hard copies in the Members lounge. It is also available on the Scottish Government website <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/92664.aspx>
- 1.5 The responses to the call for written evince and questions is provided in Appendix A.

2. Consultation on committee stage of legislation

- 2.1 The legislation consultation invited views on certain aspects of the new Bill relating to burial and cremation and other matters. Many of the changes were recommendations made by the recent Infant Cremation Commission. Several other changes are recommendations from the Burial and Cremation Review Group convened in 2005 to consider ways to improve procedures following a

death in Scotland. The remaining changes cover a wide range of issues, including the general management of burial grounds, proposals for easing pressure on burial land and modernisation of the legal framework.

- 2.2 Several of the changes, especially those concerning easing pressure on burial grounds concern reuse of lairs. The response provided confirmed such proposals are contrary to the cultural significance of burial in the Highlands. The legislation recognises this by providing the Burial Authority the right of reuse.
- 2.3 The Bill consolidates previous legislation to provide clarity for the management of burial grounds which is supported. Which will replace historic legislation; the law on burial in the Burial Grounds (Scotland) Act 1855, the law on cremation in the Cremation Act 1902 and various regulations, most notably the Cremation (Scotland) Regulations 1935, along with various other sets of regulations which subsequently amended the 1935 Regulations.
- 2.4 There is however concern that the legislative changes could impose future cost burdens imposed upon Burial Authorities. The Scottish Government recognises this and has confirmed that subsequent consultation to establish implementation and guidelines will take into account resource issues.
- 2.5 The Scottish Government will be publishing guidelines for the introduction of the legislation, with some parts implementable quickly whilst other sections will require industry consultation and agreement to establish the processes, such as licensing of funeral directors.
- 2.6 As part of the legislative process there will be a need to review our current policies and procedures to bring them into line with the new requirements. It is intended to undertake this from April 2016 to March 2017 with an initial action plan in development, which will be finalised on publication of the national guidance. Cost implications will be assessed as part of the review and managed where practicable through process review.
- 2.7 The National Committee on the Cremation of Infants recommendation 55, was that "Where invited to do so by affected parents, local councils / (cremation) authorities should facilitate discussion for plans for local memorials on appropriate memorials". It is intended that a facility is provided at Kilvean for those parents and that this would take the form of the provision of a memorial plaque, the cost of this provision would be covered by the authority as part of the service.

3. Implications

- 3.1 There are no Equalities; Climate Change/Carbon Clever; Risk and Gaelic and Rural implications at this time.
- 3.2 The legislation will place some additional duties on the Council as Burial and Cremation Authority. It is intended that the review of policies and procedures will manage any resource implications to mitigate the effect.

3.3 There is an additional legal requirement for the Burial Authority to maintain a record of private burials when they are advised by third parties.

Recommendation

The committee is invited to:

- i) homologate the response of the Director to the Scottish Government call for written evidence; and
- ii) note the development of the draft action plan for implementing the forthcoming legislation.

Designation:

Date: 21st January 2016

Author: Robin Pope

Background Papers: Scottish Government – Draft legislation and consultation..

Available on the members' information page, hard copies are available in the members lounge.

Report Ref COM/241/15 to Community Services Committee 4 June 2015

Appendix A

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

Response to questionnaire

THE SCOTTISH GOVERNMENT'S LOCAL GOVERNMENT AND REGENERATION COMMITTEE CALL FOR WRITTEN EVIDENCE BURIAL AND CREMATION (SCOTLAND) BILL.

Local Government and Regeneration Committee's call for views

Highland Council supports the introduction of legislation governing the regulation of burial grounds and crematoria in Scotland. Our responses to specific questions relating to the bill are:

1. Whether proposals for the restoration of lairs are appropriate (sections 24-35)?

Highland Council uses a strategic approach to the provision of additional burial ground capacity and has capital programme to delivery new and extended burial grounds with four developments completed over the past three years, and 2 due to open in 2015/16.

Our response to the Consultation on the proposed Bill relating to restoration of lairs confirmed that in particular for cultural reasons Highland Council are in general un-supportive of the re-use or restoration of lairs where exhumation would be required. Highland Council does consider that in certain specific circumstances there is the potential for the restoration of full or partially full lairs. We will assess this potential further once the legalisation has completed its parliamentary process.

The introduction of a right for a Burial Authority to repurchase unused lairs after a period of 50 years has passed since purchase and can be established through tests that the registered owner no longer requires the lair is supported.

2. Whether provisions on the reuse of headstones would be appropriate?

As per our response to the Consultation on the proposed Bill relating to restoration of lairs, Highland Council are not in general supportive of the re-use of headstones in the Highlands and consider that the proposal would in general be impractical.

3. The appropriateness and extent of the roles which should be undertaken by inspectors of burial, crematorium and funeral directors (primarily Part 4)?

Highland Council supports the introduction of inspectors and considers the proposed roles as outlined in Part 4 of the Bill to be appropriate and proportionate which we expect would improve the delivery of funeral services to the public.

4. The appropriateness and extent of the proposed regulation of funeral directors (primarily Part 5)?

Highland Council agrees with the appropriateness and extent of the proposed regulation of funeral directors.

5. The extent to which the Bill will address funeral costs and what, if any, further measures the Bill could contain?

Funeral poverty is a growing issue across Scotland and Highland Council are currently working to determine what measures can be introduced in the Highlands to provide support. Highland Council would suggest that consideration be given through the Bill to introduce the concept of the provision low cost funeral package which would provide assistance in helping with funeral poverty, and that this be developed during the future implementation stages

Local Authorities should have a legal obligation to clearly advertise up to date burial and cremation costs. Highland council publishes its chargers on the Councils website and updates each April.

The Bill confirms the existing requirement for a Burial Authority to maintain a register of private burials, however it is Highland Councils opinion that the legal responsibilities to publish costs for burials and cremations should remain with the private owners.

Highland Council does not charge for burials or cremations of children under 16 years of age, for stillborn babies or for pregnancy losses. Whilst Highland Council does not agree to the Bill introducing prescribed fees or charges, we would support the introduction of national policy covering the provision of charges for burial or cremation of children less than 16 years of age.

6. The appropriateness of the removal of existing provisions restricting the proximity of new crematorium to housing?

There are two issues that should be taken into consideration regarding the removal of existing provisions restricting the proximity of new crematorium:

1. The minimum distance in the Cremation Act 1902 is likely to have been introduced to protect residents from emissions, improved SEPA mission control regulations has reduced the impact.
2. Provision of a quiet and peaceful environment for the crematorium and gardens thereby mitigating noise from adjacent dwellings during services.