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REPORT TO: Members' Library Service

MEETING DATE: December 2023

BY: Head of Infrastructure

SUBJECT: Response to Scottish Government Consultation on Burial Grounds Management

1 PURPOSE

- 1.1 To note the submission of the Council's response to the Scottish Government consultation on management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland.

2 RECOMMENDATIONS

- 2.1 Members are asked to note the contents of this report and the Council's response to the Scottish Government consultation, which is set out in Appendix 1.

3 BACKGROUND

- 3.1 The Scottish Government published a consultation on 25 August 2023 on 'Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland'. The consultation, which closed on 17 November 2023, can be viewed at: <https://consult.gov.scot/burial-cremation/regulation-burial-scotland/>
- 3.2 The Scottish Government state that their aim is to modernise the legislation governing burial in Scotland by using the regulation making powers set out in the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act'). Their consultation paper sets out a range of proposals and approaches with the aim of clarifying and streamlining existing burial practices and introducing new provisions.
- 3.3 The Council, as Burial Authority, has responded to the consultation and is broadly in agreement with the Scottish Government proposals.
- 3.4 The Council's consultation response is set out in Appendix 1.

4 POLICY IMPLICATIONS

- 4.1 There are no policy implications directly arising from this consultation. If the consultation leads to legislative or policy changes it is anticipated that there will be further guidance on the implications and measures proposed under the new legislation/policies.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None.
6.2 Personnel – None.
6.3 Other – None.

7 BACKGROUND PAPERS

- 7.1 Appendix 1: The Council’s response to the Scottish Government consultation on the ‘Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland’.

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DATE	1 December 2023

Appendix 1: The Council's response to the Scottish Government consultation on the 'Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland'.

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

- 3 months
- 6 months
- 12 months
- Another timeframe

Please give reasons for your answer.

East Lothian Council as Burial Authority is grateful for the opportunity to respond to this consultation.

In response to this question we would suggest a timeframe longer than 12 months, due to the numbers of Exclusive Rights of Burial (EROBs) that would require to be processed. In addition, East Lothian Council is currently in the process of transitioning to a new electronic system to manage and record burials.

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

The content proposed is very comprehensive and looks to have included all necessary details.

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

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

Please give reasons for your answer.

Inspectors, Scottish Government and another Burial Authority would allow for a more general approach as best practice could be achieved.

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

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

Please give reasons for your answer.

2 years would be welcomed as considerable time will be required to collate all of the necessary information.

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

- Yes - it sounds right
 No - it's too often
 No - it's not often enough
 Not sure

Please give reasons for your answer.

Annual review sounds right as regular review will keep all information current.

Question 6 – What is your view on the proposed list of powers (set out in the bullet points above) to be granted to burial authorities to enable them to manage and maintain their burial grounds to a safe standard? (Please refer to paragraph 29 of the consultation document).

- It looks right
 It does not look right
 Some of these powers are unnecessary
 Some powers are missing
 Not sure

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

It looks right, as this is all the core work we currently carry out.

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

Yes

No

Not sure

Please give reasons for your answer.

We attach a notice to all unsafe headstones.

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

1 month

2 months

3 months

6 months

Other

Please give reasons for your answer.

6 months, as the headstone is not imminently dangerous.

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

Signage on gates at entrance to all cemeteries.

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

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

Please explain you reason for choosing this timeframe.

6 months would allow relatives time to attend the graves.

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

These should be made safe as soon as practically possible by the Burial Authority.

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

It is good practice and important for Continuing Professional Development (CPD) that all staff are trained to a minimum standard provided by the Scottish Government.

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

At the present time there has been no requirement or requests for this, however we would address any requests that are made to us.

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

It looks right

- It does not look right
- Some of this is unnecessary information
- There is some information missing
- Not sure

Please give reasons for your answer.

The proposed list is very comprehensive.

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

The proposed accompanying documentation list is very comprehensive and captures all requirements.

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

Yes

- No
- Not sure

Please give a reason for your answer.

Yes, as it would serve as a record.

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

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

Yes

No

Not sure

Please give a reason for your answer.

Yes, as it would serve as a record.

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

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give a reason for your answer.

The proposed list is very comprehensive with all the information required.

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

The list is complete

The list is missing some organisations

The list contains unnecessary organisations

Not sure

Please give a reason for your answer.

Question 20 – Do you think an applicant should be required to submit evidence, alongside the application, to demonstrate that the proposed

burial site is in line with third party agency and local authority rules and guidelines?

Yes

No

Not sure

Please give a reason for your answer.

Yes, as this would help ensure records are kept updated.

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

Some of this is unnecessary information

It looks right

There is some information missing

Not sure

Please give a reason for your answer.

The proposed list is comprehensive.

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

1 week

2 weeks

3 weeks

1 month

Other

Not sure

Please give a reason for your answer.

3 weeks would be reasonable, provided all reports have been submitted from other departments and agencies.

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

It would enable advance planning if the Burial Authority knew in advance, however an application would still have to be submitted at time of death.

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

Yes

No – restrictions should be included in the regulations

Not sure

Please give a reason for your answer.

Ground conditions and layout of area could change over the years.

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

Yes

No

Not sure

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

Local authorities should be able to recoup all costs from the different departments or agencies involved.

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

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give a reason for your answer.

The proposed list is comprehensive.

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

Description of area, coordinates, and photographs of the landscape and location.

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

The appeal decision should be heard by either Scottish Government Inspectors or Sheriff Court.

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

Yes

No

Not sure

Please give a reason for your answer.

Yes, for clarity and to prevent family disputes.

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

Yes

No

Not sure

Please give a reason for your answer.

Yes, to assist with preventing family disputes and for clarity for the Burial Authority.

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

Lair right-holder

Nearest relatives

Other

Please give a reason for your answer.

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

We are supportive of this proposal as it would be a good option for Burial Authorities.

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

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

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

In our view it would be very difficult to check the condition of a coffin without first excavating the lair.

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

- Yes
 No
 Not sure

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

- 3 months
 6 months
 1 year
 2 years
 Other

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

1 year would allow sufficient time to organise.

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

Yes

No

Not sure

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

Yes, in order to record the event.

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

This should be done through a Funeral Director and the remains interred in a burial ground at the expense of the applicant.

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

The procedures we have in place at present should continue.

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

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Please give a reason for your answer.

The proposed list is very comprehensive.

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

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Please give a reason for your answer.

The proposed list of information appears to be comprehensive.

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

Yes

No – too long

No – too short

Not sure

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

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

Yes

No – too long

No – too short

Not sure

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

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

A Burial Authority should publicise the intention to restore the lair with signage at the entrance to cemeteries and a Public Notice in the press.

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

It looks right

It does not look right

Some of this is unnecessary information

There is some information missing

Not sure

Please give a reason for your answer.

The proposed list is comprehensive.

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

The headstone should be retained in the burial ground and referenced to the original lair it belonged to.

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

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

Question 49 - Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above? (Please refer to pages 47 – 48 of the consultation).

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

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

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

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

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

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