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The Scottish Parliament
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Dear Duncan,

BURIAL AND CREMATION (SCOTLAND) BILL

Thank you for the Committee's consideration of the Burial and Cremation (Scotland) Bill and for its Stage 1 report. The Scottish Government welcomes the Committee's support for the principles of the Bill and its key objectives

During the Stage 1 evidence session I attended on 6 January, I made it clear that we will continue to consider all views. I note the Committee's recommendations, and can confirm that I will accept many of them. I have set out detailed responses to the Committee's report in the attachment to this letter. I hope that this provides the Committee with a clear indication of my intentions, and offers assurances that the Bill will bring about important changes for people who experience a pregnancy loss.

I look forward to the ongoing consideration of the Bill by the Committee and by the Scottish Parliament as a whole.

*Yours aye
Maureen*

MAUREEN WATT

Health and sport committee – Burial and Cremation (Scotland) Bill at Stage 1 – Scottish Government Response

1. The Scottish Government has considered the Committee's report and has responded in turn to each recommendation made.

Ashes

Definition (paragraphs 36 – 37)

The Committee agrees with the definition of ashes in the Bill. We are content that this accords with the definition recommended by Lord Bonyon's report. However, we have concerns that the definition of cremation, by referring to 'grinding and other processes', may not adequately enable bereaved families to understand that cremation may include cremulation. We therefore seek clarification from the Scottish Government of how this will be made clear to bereaved families so that those who do not agree with this process can take an informed choice about whether to proceed with cremulation. We invite the Scottish Government to also consider whether 'grinding' as used in the Bill at Section 36(1) should be amended to instead refer to 'cremulation' – a term we understand is more widely understood and used by the cremation sector.

2. The Scottish Government believes that the definition of 'cremation' in the Bill is appropriate. The extent of the definition (i.e. the inclusion of 'and the application to the burnt human remains of grinding or other processes' at section 36(1)) is necessary so that any process which takes place beyond the burning of human remains is included in the definition. Grinding (or cremulation) may not always take place but there will be other processes such as the cooling or drying of the remains that will. The definition is considered flexible enough so that cremation includes the cremulation process where it is used, but does not include it where it is not used. In other words, the process does not need to include cremulation to meet the Bill's definition.

3. The use of 'cremulation' rather than 'grinding' was considered. While it was recognised that this was well understood among cremation professionals and funeral directors, it may be less familiar beyond these specialist interests. As such, the use of 'cremulation' in the definition would in turn have required that term to be defined as it is not in the Oxford English Dictionary. It was considered preferable to refer to 'grinding or other processes' as this described the possible processes after burning has taken place.

4. The Scottish Government intends to provide guidance on this issue to cremation professionals to explain that the definition does not necessarily always include cremulation, but also captures other processes such as the cooling of the burnt remains. In any advice provided by the Scottish Government to the general public about cremation, this process will be explained.

Definition (paragraph 38)

We would also welcome clarification from the Scottish Government of whether the Bill adequately recognises the distinction between cremation and incineration as highlighted by the Law Society of Scotland.

5. In relation to the Law Society of Scotland's evidence to the Committee, the Scottish Government understands that no human remains (of whatever origin or gestation) are disposed of through incineration. This was established by Chief Medical Officer (CMO) advice on the disposal of pregnancy losses up to and including 23 weeks and 6 days gestation issued in July 2012, which stated that 'disposal of any pregnancy losses by way of incineration or clinical waste is no longer considered acceptable'.¹ The guidance was revised in April 2015 to reflect recommendations made by the Infant Cremation Commission.² Nonetheless, the Scottish Government will reflect on the point made by the Law Society.

Disclosure about ashes to applicants (paragraphs 48 – 50)

The Committee notes national guidance has been developed by the National Committee on Infant Cremation to the effect that it is now expected that ashes will be recovered in most circumstances. In particular, we note this guidance is rooted in an accepted discourse about "maximising" the recovery of ashes. We recognise that the use of positive language in the guidance is intentional and designed to promote best practice in the industry.

We note in the policy memorandum to the Bill that the statutory application form for cremation is likely to contain a statement that in some circumstances ashes will not be recovered from a cremation. The Committee considers such phrasing is not in keeping with the accepted discourse about maximising the recovery of ashes.

We therefore consider an alternative phrase may be more appropriate, to the effect that – "If you have requested ashes, it is expected that ashes will be recovered. If ashes are not recovered when they have been requested, the Inspector of Crematoria will investigate". We recommend that the Scottish Government consider this change when it develops the statutory cremation application form.

6. Since the Policy Memorandum was drafted, the Scottish Government's policy on this issue has changed. It has been influenced by work emerging from the National Committee on Infant Cremation, including the guidance referred to in paragraph 48 of the Committee's report. While the final wording of cremation application forms has yet to be decided (and will be prescribed by regulations), the Scottish Government's intention is that they will indicate that ashes should always be recovered. Nonetheless, it is intended that revised cremation application forms will

¹ Scottish Government, 'Disposal of pregnancy losses up to and including 23 weeks and 6 days gestation', 19 July 2012, [http://www.sehd.scot.nhs.uk/cmo/CMO\(2012\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2012)07.pdf).

² Scottish Government, 'Revised guidance on the disposal of pregnancy losses up to and including 23 weeks and 6 days gestation', 17 April 2015, [http://www.sehd.scot.nhs.uk/cmo/CMO\(2015\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2015)07.pdf).

still note that any instance in which ashes are not recovered will be investigated by an inspector.

Disposal of metal (paragraph 67)

The Committee considers it is important that the statutory application form for cremation ensures that, in every case, instructions are sought from the bereaved on the disposal of any metal by-product arising from the cremation process. The Committee seeks confirmation from the Scottish Government of whether it will include this information in the statutory cremation form.

7. The Scottish Government accepts the Committee's recommendation about the disposal of metal. This will be included on cremation application forms to be prescribed in regulations made under the Bill.

Making arrangements for pregnancy loss

Definition of pregnancy loss (paragraphs 75 – 77)

We welcome the Bill's approach to ensuring women can choose what arrangements to make for very early pregnancy losses up to those at 24 weeks. However, the committee notes the concerns about the definition of pregnancy loss and whether it applies to embryos. The Committee welcomes the Scottish Government's confirmation that it will address this issue by way of an amendment at stage 2.

The Committee also notes that in circumstances where a woman has experienced pregnancy loss, she may wish to make her own arrangements for disposing of the remains and this is provided for in the Bill. The Committee recommends to the Scottish Government that guidance is issued to NHS staff advising how to arrange for a woman to take home the remains in a safe and respectful manner.

We also note NHS Lothian's concerns that early pregnancy loss may be considered by some healthcare professionals as 'products of conception' or 'pregnancy tissue'. We therefore seek clarification from the Scottish Government of how it will ensure that healthcare professionals are made aware of the requirements of this Bill in relation to making arrangements for losses during pregnancy.

8. The Chief Medical Officer has issued guidance on the sensitive disposal of pregnancy loss occurring before 24 weeks. This guidance has been revised on a number of occasions, most recently in July 2015 to reflect recommendations made by the Infant Cremation Commission. The Scottish Government intends to revise the guidance again to take account of changes brought about by the Bill, and the matters mentioned by the Committee at paragraphs 76 and 77 of its report will be included in that revision. In addition, the Scottish Government intends to provide training on particular parts of the Bill when it comes into force, and these matters will be included in that.

9. In relation to paragraph 75 of the Committee's report, the Scottish Government will seek to amend the Bill at Stage 2 to clarify that it applies to all pregnancy losses, regardless of the length of gestation.

Seven-day "initial period" of decision-making (paragraph 89)

We welcome the Bill's approach to ensure women who have experienced a pregnancy loss are given a specific time period within which they can consider what arrangements they may wish to make. However we consider that the procedure set out in section 50(4) does not permit adequate flexibility to provide an appropriate patient-centred approach to care. The Committee therefore welcomes the Scottish Government's confirmation that it will consider amending the Bill at Stage 2 to provide for a more flexible approach to recording a woman's decision (including when she does not wish to decide).

10. The Scottish Government intends to lodge a Stage 2 amendment to give effect to this recommendation. The intended purpose of this amendment will be to allow the health authority to record the matters mentioned in section 50(4) as soon as a woman makes her wishes known. The Scottish Government has discussed this with NHS Lothian colleagues, and nothing in this proposed amendment would prevent the health authority discussing options and agreeing an approach with the woman before the end of the pregnancy, where it is known that the pregnancy will not reach full term. This should better support a person-centred approach.

Arrangements by health authorities (paragraphs 100 – 101)

We acknowledge that it may be helpful for some health authorities to be clear about the timescale which must elapse before they can dispose of any remains from pregnancy loss where the woman affected has not been able to decide or wishes the health authority to make the arrangements. However, the Committee notes that there may be circumstances in which the timescale for the duty on health authorities to dispose of remains in section 54 should be extended beyond the end of the relevant period. Similarly, the Committee notes that the mandatory waiting period in section 53 does not provide a suitably flexible approach to enable quicker burial in circumstances where this may be required for cultural or other reasons.

The Committee therefore seeks the Scottish Government's consideration of whether Stage 2 amendments should be brought forward to provide for greater flexibility in the duties on health authorities in sections 53 and 54.

11. The Scottish Government accepts the recommendation made at paragraph 101 of the Committee's report. Accordingly, the Scottish Government will lodge a Stage 2 amendment to section 53 to allow a woman to waive the 7-day period between a health authority being authorised to make arrangements for the disposal of remains and those arrangements being carried out. A woman will not be required to give a reason for wishing to waive the 7-day period.

12. The Scottish Government believes that in many instances this 7-day period will be important; as such it will be the default position, unless the woman waives this period. Guidance and training will be provided to support health authorities in discussing this option with women who have experienced a pregnancy loss.

13. In relation to the 6-week timescale provided in the Bill for a decision to be made about the disposal of the remains of a pregnancy loss, the Scottish Government believes that this should be sufficient in the majority of circumstances. Indeed, this is the timescale set out in the current CMO guidance on this topic. However, section 54(2) of the Bill requires a health authority to make arrangements for the disposal 'as soon as practicable after the end of relevant period'. The Scottish Government believes this provides flexibility for a health authority to go beyond the relevant period where necessary, including where the health authority is continuing to discuss options with the woman. Nonetheless, in light of the Committee's concerns the Scottish Government will consider whether any further clarification is required on this point.

Arrangement by authorised individuals (paragraphs 108 – 110)

We welcome the Bill's provisions that give the woman who has experienced pregnancy loss a range of choices about what arrangements, if any, she would like to put in place for burying or cremating that pregnancy loss.

However, we consider that in circumstances where an authorised individual does not wish to make arrangements for the disposal of pregnancy remains, the Bill should provide a mechanism for giving further consideration to the wishes of the woman who experienced the pregnancy loss.

The Committee therefore invites the Scottish Government to consider amending the Bill at Stage 2 accordingly.

14. The Scottish Government accepts the Committee's recommendation at paragraph 109. As such, the Scottish Government intends to bring forward an amendment at Stage 2 to the effect that where an individual authorised by the woman chooses not to make a decision, the health authority may inform the woman of that fact. The Scottish Government believes that the health authority should be given a power to do this, rather than a duty. This will allow the health authority to exercise discretion. For example, the woman who experienced the loss may have nominated another person to make the decision and informed the health authority that she does not wish to participate any further in the process. Guidance will be provided to support this process. The amendment will reflect the general timings for this process set out in the Bill, but will provide sufficient flexibility so that no-one is rushed into making a decision before a particular deadline.

Given the experiences we heard from women affected by pregnancy loss, we consider it is important that the Bill adequately provides flexibility for those circumstances when a woman may be incapacitated and therefore not able to consider any decisions within some of the specified timescales in the Bill. We therefore seek clarification from the Scottish Government of whether the Bill, as presently drafted, adequately provides flexibility for these circumstances.

We welcome the Minister's clarification that those aged 16 years of age or under who experience pregnancy loss should be supported by family or the health authority in considering what arrangements to make for disposal of that pregnancy loss. However, for young women who may be estranged from their family we consider it important that the health authority has a clear role to support that young woman in considering her choices. We therefore seek confirmation from the Scottish Government of what steps it is taking to ensure that this is the case (including whether the Bill should be amended accordingly).

15. The Scottish Government has considered the issue raised by the Committee at paragraphs 111 to 116 of its report. It is appropriate that the right to instruct the disposal of a pregnancy loss (as well as to make decisions about who else might make such a decision) is vested in the woman who experiences the loss. Where that woman cannot make a decision, for whatever reason, it will ultimately be for the health authority under section 54 to make arrangements where no other arrangements have been made and the relevant period has expired. The duty on the health authority is to make arrangements for the disposal as soon as practicable after the end of the 6 week relevant period. The Scottish Government considers that this provides adequate flexibility for health authorities to take more time to make those arrangements if, for example, the woman was incapacitated during the relevant period and the authority wanted to seek her views after that period.

16. In relation to paragraph 116 of the Committee's report, to be clear, where a woman who is under 16 years of age experiences a pregnancy loss, she will have the right to make the decision about what should happen to the remains. The Scottish Government does not believe that amendments are required to allow health authorities to support young women in considering what arrangements to make for the disposal of pregnancy loss remains – discussions with NHS Boards have suggested that this kind of pastoral support is already provided. Nonetheless, guidance and training on this issue will be provided as the Bill is implemented.

Making arrangements for still-births and on the death of a child

Third trimester pregnancy losses (paragraphs 126 – 127)

The Committee considers there may be sensitive circumstances leading to the loss of a pregnancy after 24 weeks gestation which mean the woman may wish not to be identified on the statutory cremation register. The Committee therefore welcomes the Scottish Government's consideration of how this could be addressed in the Bill by way of a Stage 2 amendment.

We also seek confirmation from the Scottish Government of how the role of the healthcare provider could be strengthened in relation to supporting the woman in making arrangements for burial or cremation where she experiences a stillbirth (particularly when this involves a medical termination).

17. In light of the Committee's concerns around post-24 week terminations, the Scottish Government has considered how the Bill might address such situations. As introduced, the Bill would treat post-24 week terminations in the same way as stillbirths. Evidence given to the Committee (and Scottish Government discussions with NHS Lothian) suggest that this might not be appropriate in all cases. In particular, the extent of support a health authority might give to a woman in this situation warrants a different approach.

18. Accordingly, the Scottish Government is considering a Stage 2 amendment so that a health authority will be able to make arrangements for the disposal of the remains of a post-24 week termination if requested to do so by the woman who experienced the loss (or if she is unable to make arrangements herself). Existing restrictions on the sharing of information in the case of terminations will prevent a health authority informing other people about the termination. As such, while the Scottish Government's intention is to allow the health authority to make arrangements for disposal if requested to do so, the authority will not be able to approach anyone else (for example, a family member of the mother) about this matter.

19. Similarly, the Scottish Government will consider its approach to how pregnancy losses, post-24 week terminations and stillbirths are recorded on the cremation register and the burial register. Both pregnancy losses and post-24 week terminations will be anonymised on the registers, and it may be preferable to also anonymise stillbirths. This will be considered as part of the process of developing the regulations that will prescribe the register and the information to be recorded.

Arrangements by nearest relative (paras 136 – 137)

The Committee welcomes the provisions in the Bill, which clearly set out a priority order of consultation in relation to who may make the arrangements for the burial or cremation following the loss of a child. We would welcome clarification from the Scottish Government of whether the Bill should be amended to allow the health authority to act in those circumstances where the woman has no family or whose family is unable or unwilling to make any arrangements.

We also consider that the provisions currently in the Bill may not adequately reflect those circumstances when a woman undergoes a medical termination after 24 weeks, when other legislation may prohibit the nearest relatives from being contacted, and where the woman is unable to make any arrangements for whatever reason. We therefore seek clarification from the Scottish Government of who should be able to take a decision in those circumstances and whether the Bill, as currently drafted, adequately provides for that decision taking.

20. The Scottish Government is considering lodging Stage 2 amendments in relation to processes involving stillbirths, including in the case of post-24 terminations. These are discussed at paragraphs 17 to 19.

Application forms

Offence provisions (paragraphs 155 – 160)

The Committee considers explanations given to the bereaved in relation to applications for burial and cremation is an important issue. We heard from some witnesses that, since the recent investigations into poor historic practices, some midwives have been reluctant to engage with bereaved parents for fear of giving the wrong information. The Committee also notes the comments by witnesses that the bereaved are often dependent on professionals to explain the options and complete the forms.

The Committee welcomes the creation of statutory application forms for burial and cremation, which will help ensure necessary and consistent information is recorded.

The Committee welcomes that professionals, such as NHS staff and funeral directors, will continue to have a role in explaining options to the bereaved in the application process. We welcome the Scottish Government's commitment to provide further training in this regard. The Committee seeks clarification from the Scottish Government as to how it will assess that bereaved families are adequately informed about the choices they have available to them.

The Committee notes from the evidence provided by the Scottish Government that it intends to change past practices, so that application forms should usually be completed by the applicant, rather than by a healthcare professional or funeral director.

We welcome clarification of whether completing the form on behalf of an applicant will constitute an offence. If this is the case, the Committee would have concerns and reservations, unless false and misleading information had been provided on the form.

The Committee welcomes the intention to create offences where false or misleading information is provided about options for burial or cremation. The Committee notes that the Scottish Government intends to clarify the provisions that provide for criminal offences by bringing forward amendments at Stage 2.

21. It is not the intention that anyone who provides advice on burial and cremation options should be criminalised if the information they provide is inadvertently incorrect. In light of the Delegated Powers and Law Reform Committee's Stage 1 report, the Scottish Government intends to amend section 8 and section 38 to remove the power to create criminal offences in these sections. This will mean that offences in relation to applications for burial are set out in section 9, while offences in relation applications for cremation are set out in section 39.

22. The purpose of section 9(2) is to make it an offence for a person to knowingly provide false or misleading information in a material way or to recklessly provide false or misleading information in a material way. The main purpose of this is to

criminalise the deliberate provision of false information on the burial application form. Section 39(1) has the same effect in relation to applications for cremation. Under section 8(2) of the Cremation Act 1902, it is currently an offence to knowingly provide false information when applying for a cremation. As such, the Bill is restating an existing offence in relation to cremation applications (there is no current statutory application process for a burial, but the Bill will change this and provide for an appropriate offence).

23. For example, the Scottish Government's intention is that application forms will require the applicant to declare that they have the legal right to make such an application. Someone who falsely claims to have the right to instruct the disposal of human remains when applying burial or cremation will commit an offence. Similarly, someone who knowingly provides false information about the cause of death when applying for a burial or cremation would commit an offence.

24. The Scottish Government intends that only information that is necessary to allow a burial or cremation to take place will be asked of applicants. This will reduce the opportunity for deliberately false or misleading information to be provided.

25. Similarly, it is not intended that a person other than the applicant will be prevented from completing an application form for a burial or cremation on behalf of the applicant. The Scottish Government recognises that this situation may happen regularly, particularly where funeral directors are supporting clients. However, it is vital that the information recorded on the application form fully and accurately reflects the applicant's wishes, and that the applicant understands the consequences of his or her choices in making the application (for example, in relation to what will be done with the ashes left after a cremation). The applicant will be required to sign the application form to declare that it is an accurate record of his or her wishes. As such, the applicant will be responsible for the contents of the application. The Scottish Government is also considering whether to require a funeral director to sign the form to declare that he or she has fully discussed the process with the applicant.

26. It is intended that the inspection of funeral directors will enable checks to be made about the quality and level of support given to clients by funeral directors when applying for burial and cremation.

Counselling services (paragraph 165)

The Committee notes the concern expressed by some witnesses that grief and bereavement counselling should be available and offered to all those who require it. The Committee seeks clarification from the Scottish Government of what action it has taken, or is taking, to ensure that all women who experience the loss of a child or pregnancy are directed to appropriate support services, particularly when that loss arises outwith a healthcare setting.

27. The Scottish Government considers that this is not a matter for legislation. However, the Scottish Government intends that advice on bereavement and grief counselling will be provided in revised CMO guidance on the sensitive disposal of pregnancy losses.

Application format (paragraph 172)

The Committee notes the preference of many witnesses for the use of separate statutory cremation forms to deal with different circumstances of loss (i.e. pregnancy loss, still-birth, infant death or adults). The Committee recommends that the Scottish Government considers these responses when it is deciding on the format of the statutory cremation application forms.

28. No decision has yet been taken on the format of application forms made under the Bill. The Scottish Government has established a working group (of which Sands UK and SAIF are members) to consider the wording and content of new forms, and will continue to consider options. The Scottish Government has no particular preference about the final format of the forms, which will be driven by their ease of use for those who must complete them.

Registers

Format (paragraphs 182 – 183)

The Committee notes that a key aim of the Bill is to promote best practice across the cremation industry and to standardise practice wherever possible. In this regard, the Scottish Government has stated its long-term aim is to ensure the registers created under the Bill are kept in electronic form. The Committee therefore recommends that the Scottish Government considers amending the Bill to ensure that records should be kept in electronic form, recognising that a transitional period may be required before this can be achieved.

29. The Scottish Government accepts this recommendation, and will lodge a Stage 2 amendment to require all records under the Bill to be kept electronically. This will be supported by an implementation period to allow stakeholders to ensure that they have IT equipment that will allow them to keep registers electronically and securely.

Data from registers (paragraphs 188 – 189)

The Committee welcomes the Scottish Government's intention to protect a woman's identity on the cremation register in cases where she has lost her baby at or before the twenty-fourth week of gestation.

We seek clarification from the Scottish Government on how it intends to use the data from the cremation register, particularly given the concerns relating to how the figures in the cremation register will compare with figures from the register of deaths in Scotland.

30. It is intended that the cremation of pregnancy losses and stillbirths will be recorded separately from the cremation of adults and children. This will prevent any potential statistical confusion as suggested in the report.

31. The Scottish Government currently does not intend to use data from cremation registers. The central purpose of the registers is to serve as a public record of the carrying out of cremations, as recommended by the Infant Cremation Committee.

Inspection and enforcement

Inspectors' powers: sanctions and offences (paragraph 197)

The Committee notes the power of inspectors to impose sanctions on relevant authorities will be of particular significance in restoring public confidence in the cremation industry. The Committee found it difficult to scrutinise the approach taken to inspection and the sanctions to be applied as this is not specified on the face of the Bill and insufficient information is provided in the supporting documentation. The Committee therefore recommends the Scottish Government consider whether a range of sanctions could be set out on the face of the Bill by way of an amendment at Stage 2.

32. The Scottish Government believes that the Bill provides significant levels of detail about the functions of the various inspection roles. Section 61 sets out the matters for which regulations may make provision. This includes the frequency of inspection visits, reports by inspectors, enforcement of requirements or conditions set by inspectors and penalties for failure to comply with requirements or conditions. Section 62 provides additional powers for inspectors, including access to premises for inspection purposes, while section 64 provides details of reports to be prepared by inspectors. Collectively, this provides a clear statement of the expected role of inspectors. Nonetheless, the Scottish Government intends to lodge a Stage 2 amendment to create clearer limits to the role of the inspector.

33. It is right that the detail of the inspectors' role should be set out in regulations – this level of detailed operational information is better suited to secondary legislation. It will also allow the Scottish Government to work closely with relevant stakeholders in developing regulations. The Bill places a duty on Scottish Ministers to consult with burial authorities, cremation authorities and representatives of the funeral director industry, as well as any other person the Scottish Ministers consider appropriate, before making any regulations under section 66. Such regulations will be subject to the affirmative procedure.

34. Given the different roles that will be carried out by inspectors, it is reasonable that the detail of sanctions that may be imposed is set out in regulations, rather than in primary legislation. This provides greater flexibility, and ensures that specific sanctions can be made in relation to particular sectors or particular activities.

The Committee welcomes the role of inspectors and the Scottish Government's proposal that the inspectors should inspect the whole process of making decisions about burial or cremation.

The Committee, however, notes that the Bill does not provide a power to the inspectors to inspect a health authority despite placing a duty on them to keep a register. The Committee therefore seeks clarification from the Scottish Government as to how this is to be achieved, and whether it considers an amendment should be brought forward at Stage 2 to clarify how the inspectors will undertake their inspection role in relation to health authorities.

35. It is the Scottish Government's intention that inspectors should be able to view health authority records in relation to decisions about cremations, including applications for cremations. This will be done strictly as necessary for the purpose of ensuring that health authorities are carrying out their duties under the legislation and for investigating complaints. Health authority records of this type will form an important part of the audit trail for cremation, particularly about decisions taken about the disposal of remains, and it is appropriate that inspectors should be able to inspect them. Parts of such records may need to be redacted to protect medical confidentiality. It is intended to provide guidance on this matter.

36. The Scottish Government will consider whether the Bill needs to be amended to allow this or whether the Bill as introduced allows inspectors to view such records.

Regulation of funeral directors and codes of practice

Funeral directors (paragraph 211)

We consider that the licensing of funeral directors is an issue of particular sensitivity to those who were affected by the poor historic practices. We therefore agree with the DPLR Committee's recommendation that the licensing of funeral directors should be more fully set out on the face of the Bill. We welcome the Scottish Government's consideration of how to give effect to this recommendation by way of amendments at Stage 2.

37. The Scottish Government believes it is preferable to set out the detail of a licensing scheme for funeral directors in secondary legislation. The key principles of the scheme are set out on the face of the Bill, including that a licence will be required to operate as a funeral director (in response to the Delegated Powers and Law Reform Committee's Stage 1 report, the Scottish Government intends to lodge Stage 2 amendments so that licensing requirements will apply to funeral director businesses rather than funeral directors' premises). It is appropriate that the operational and administrative detail of the scheme is set out in secondary legislation.

38. Since funeral directors have not been licensed previously, it is right that the introduction of a scheme is based on evidence and informed by objective scrutiny of the industry as a whole. The Scottish Government intends that inspectors of funeral

directors appointed under the Bill will be used to review the funeral director industry and make recommendations to the Scottish Ministers about the need for licensing. This will necessarily introduce a delay in the introduction of any such scheme.

39. Should the Scottish Ministers decide to introduce a licensing scheme, the Bill will allow a scheme to be developed which reflects recommendations made by inspectors, including the particular requirements to be granted a licence. This will ensure that any scheme that is introduced responds to particular concerns and is able to achieve specific outcomes. In particular, a licensing scheme must find a balance between driving out rogue operators while supporting legitimate businesses to meet required standards. The Scottish Government believes that the majority of funeral directors provide high-quality services to their customers, and the introduction of a licensing scheme should reflect that fact. The development of a licensing scheme in response to recommendations made by inspectors will enable this approach.

40. It is also important that any licensing scheme introduced can apply to the diverse range of funeral director businesses in Scotland, which include large companies covering the whole of the UK as well as small businesses which arrange a handful of funerals each year. The impact of a licensing scheme on these businesses needs to be considered carefully, ensuring that there is no disproportionate impact on any particular sector of the industry. Again, the approach taken by the Bill will support this aim.

Codes of practice (paragraphs 216 – 217)

We consider that the codes of practice will seek to address a number of issues that relate to sensitive and important matters arising from poor historic practices. As we heard the impact of getting this wrong has a devastating and long lasting impact on parents and families. We therefore welcome the Scottish Government's confirmation to the DPLR Committee that it intends to amend the Bill to the effect that the Scottish Ministers must lay any draft codes of practice before the Scottish Parliament, which it must approve before they can be issued and come into effect.

We also seek clarification from the Scottish Government of the extent to which the codes of practice will seek to continuously improve cremation practices, such that there is equal chance of ash recovery whichever crematorium is used in Scotland.

41. It is intended that codes of practice will be developed in conjunction with the stakeholders to which they will apply. This should ensure that when codes of practice are laid before the Scottish Parliament they reflect a consensus view of how a particular sector should operate. The Scottish Government intends that codes of practice will be used primarily as a tool for inspection, setting out a clear framework against which stakeholders can be assessed. This will provide consistent high standards. It is intended that codes of practice will be reviewed to reflect emerging best practice.

42. Practice improvements made in light of the Infant Cremation Commission's recommendations mean that all crematoriums currently expect to recover ashes in all cremations. This is reflected in the National Committee on Infant Cremation guidance issued by the Scottish Government, which provides clear advice to crematoriums which should maximise the recovery of ashes.³ This approach will be reflected in any code of practice for cremation authorities made under the Bill.

Other issues (paragraph 220)

The Committee notes the cultural and historical sensitivities that have given rise to the Bill. In light of these, the Committee seeks clarification from the Scottish Government as to how it considers that the concerns highlighted by SANDS UK and the principle highlighted by the Muslim Council of Scotland will be addressed in subsequent orders and regulations.

43. The Scottish Government acknowledges the concern raised by Sands UK. In previous published material about the Bill, including the consultation paper, the Scottish Government has explained that certain language is used but is not intended disrespectfully or insensitively to anyone who has experienced particular circumstances. As legislation is necessarily written in legal language, it would not ordinarily make the kind of statement suggested by Sands UK. However, in revised accompanying documents, particularly the Explanatory Notes, the Scottish Government will take the opportunity to make such a statement. Similarly, in guidance issued about relevant parts of the Bill, similar statements will be offered, and the language used in such guidance will reflect its purpose and audience.

44. Similarly, the language used in forms made under the Bill will use language suitable for its audience. This will be the case particularly for application forms for the burial or cremation of the remains of pregnancy losses and children. The Scottish Government has established a working group to consider the development of these forms, including the tone of language and the nature of questions on the form. Sands UK is a member of the working group.

45. Nothing in the Bill will affect the death certification process. Nonetheless, the principle behind the recommendation of the Burial and Cremation Review Group highlighted by the Muslim Council of Scotland will be borne in mind in developing secondary legislation made under the Bill, and the Scottish Government will continue to work with a wide range of stakeholders to ensure that relevant issues are considered from a variety of faith and belief perspectives.

³ Scottish Government, 'National Committee on Infant Cremation: Code of Practice', November 2015, <http://www.gov.scot/Resource/0049/00490188.pdf>.

