

25th November 2015

MD/SEC/SRJ

Local Government and Regeneration Committee
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Dear Sirs

CALL FOR VIEWS – BURIAL AND CREMATION (SCOTLAND) BILL

Thank you for the invitation to comment on the proposed Burial and Cremation (Scotland) Bill. Much of it is to be commended. However, the Cremation Society of Great Britain wishes to comment particularly on question 6 of your invitation – **The appropriateness of the removal of existing provisions restricting the proximity of new crematorium to housing**

1. The Society is the pioneer of cremation in Great Britain. It built and operated Great Britain's first working crematorium at Woking, Surrey, and has been intimately connected with the development of cremation not only in Great Britain but elsewhere in the world. Its former Secretary was for many years the Secretary-General of the International Cremation Federation. Three academic members of the Society's Council, whose disciplines are history, sociology, architecture and law, are about to publish a book on the History of Cremation in Scotland. They would be willing for members of the Committee to seek their advice as individual experts.
2. Existing provisions (section 5 of the Cremation Act 1902) restrict the proximity of new crematoria not only to housing but also to public highways (which can include footpaths). The Government's Consultation Paper on the Bill asked only about the retention of the barrier (200 yards) from housing, although the Council has been informed that the question was intended to refer also to the barrier (50 yards) from highways. The Consultation (2010) on the recommendations of the Burial and Cremation Review Group did ask about the distance from highways. There was "a very high level of agreement" among respondents that the barrier from both houses and highways should be maintained.
3. Two views can be taken of the appropriateness of maintaining the restrictions in section 5. Some, and perhaps this is the view of the 75% of respondents to the Consultation on the Bill who wish the restrictions to be retained, believe that section 5 ensures that funerals can be conducted in peaceful and dignified surroundings in every part of the country, and that its retention becomes even more important as suitable and convenient sites for crematoria become more difficult to find. Others take the view that section 5 was passed, not for the benefit of mourners, but for the benefit of

neighbouring householders and passers-by; and now that planning law is much more developed, the location of crematoria can be left to be determined by planning authorities in the same way that the location of other facilities to which neighbours and passers-by might object is determined. The present situation, the Council suggests, is an acceptable compromise between these views. Section 5 has never totally prevented the development of crematoria within the existing restrictions. Since 1902 promoters of crematoria have obtained fifteen Private or Local Acts of Parliament, including two (Greenock and The Merchant's House in Glasgow) in Scotland, disapplying section 5.

The Council would make the following points, should the restrictions be retained.

4. The Council would not object to the distance that must be kept between a crematorium and neighbouring properties whose owners do not consent being reduced to 100 yards.
5. The point on the site of a crematorium from which the distance is to be measured should be made absolutely clear. It is not clear at present. The point has never been judicially determined but administrators and cremation interests have accepted that it includes, among other things, chapels and ground used for the dispersal of ashes. The Council strongly urges that it should be measured from buildings housing cremators.
6. The Bill should make clear that the restrictions apply not only to the construction from scratch of a crematorium but also to the conversion and adaptation of an existing structure to a crematorium and to the extension of a crematorium.
7. The restrictions are now essentially a planning matter. They should be removed from the Cremation Act and incorporated in planning legislation. Until 1980 they were invariably enforced to the letter because the plans and sites of crematoria had to be approved by the Secretary of State for Scotland. Now planning authorities may (and do) grant permission for crematoria whose location violates section 5 because the Cremation Act is not a planning Act and the enforcement of section 5 is a matter of discretion for procurators fiscal.
8. (The most minor of points), in the interest of avoiding prolixity the definition of crematorium— a building fitted with equipment for the carrying out of cremations”—should be amended to “a building fitted with equipment for carrying out cremations or “a building with equipment for carrying out cremations” or “a building equipped for carrying out cremations”.

The Council would make the following point, should the restrictions be abolished.

9. The Society has always insisted on the importance of cremation authorities complying with the law (however irksome they may find it). It is an offence for a cremation authority to carry out a cremation in a crematorium built in violation of section 5. The Council strongly urges on the Committee that, should section 5 be repealed as the Bill proposes, the repeal should be drafted in such a way as to leave no doubt that it does not legalise retrospectively cremations carried out in crematoria built unlawfully in violation of section 5.

The Council would make the following points on other aspects of the Bill.

10. Local authorities derive their power to build and operate crematoria at least from the Cremation Acts. It is vitally important that after the repeal of the Acts they should still be able to do so.

11. Clause 37(1)(d) – replace the words “in relation to” with “their”. The Clause would then read “The Scottish Ministers may by regulations make provision about ... (d) persons employed by cremation authorities (including their training, qualifications and membership of professional organisations)”.

12. Clause 37(3) makes it an offence for “a cremation authority” to fail to comply with Ministerial regulations made under the Clause. Clause 37(5) defines a cremation authority as “a person who owns a crematorium”. The owners of crematoria sometimes contract out the running and management of their crematoria to companies. The Clause should make clear that if one of these companies (or their employee) is responsible for a breach of the regulations, it commits the offence (even if the cremation authority does so too).

Yours faithfully

Miriam Deacon
Secretary

For and on behalf of
The Cremation Society of Great Britain