

Burial and Cremation (Scotland) Bill
Committees Call for Evidence
Submission from the Scottish Prison Service

A. Background to the Call for Evidence

On 20th October the Health and Sport Committee and the Local Government and Regeneration Committee issued a call for evidence in writing or in person as they consider the Burial and Cremation (Scotland) Bill.

We have reason to believe that it would be in the interests of the Scottish Prison Service to submit evidence. Please find below a submission/response from the Scottish Prison Service.

B. The Submission from the Scottish Prison Service

1. The submission's aim is to request amendments that provide for:

- a) A **specific reference** to persons who die in prison, with or without a family or means.
- b) **Added clarity about the responsible authority**, indicating which is the responsible authority in this context; we do not believe this is as clear as it requires to be.
- c) A means of **dispute resolution** when local authorities do not agree which is the responsible authority.

2. Background to the Submission

Noting the rise in Funeral Poverty, the Scottish Prison Service (SPS) are aware of difficulties families experience in meeting funeral costs when their family member dies in custody, and that not all families meet the range of qualifying conditions required to receive assistance from the Social Fund.

As the average age of people in our care in prison increases we are convinced of the need for clarity. We have a particular interest in the matter of who has responsibility for funeral arrangements and costs when the family cannot make or meet these and where there is no next of kin and/or no estate.

There have been occasions when matters of dispute have arisen concerning which local authority is responsible for meeting the costs of a funeral of a person who has died in custody. This has led to an unacceptable delay in funeral arrangements being made. It can be in no-one's interest that these matters are protracted; such circumstances do not promote good grief outcomes.

The SPS wishes to work collaboratively with our partners. It is our desire, in the words of the introduction to the *Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland* to make certain that "the procedures required to ensure a respectful funeral for the deceased" are "straightforward and clear" (p1).

3. Specific Concerns

The Burial and Cremation (Scotland) Bill seeks to establish the legal right to instruct the disposal of a body resides with the nearest relative, in the case of an adult, with those vested with parental rights in the case of a child, with the mother or father in the case of a still-born baby and with the mother in the case of pregnancy loss. It is our understanding that the Bill will not alter the circumstances

that pertain when there is no next of kin, namely that the local authority is responsible for the arrangements, and, in most cases, the cost of a funeral for a person who dies within its area.

The interest of a family and their means are critical factors in the resolution of these matters. A local authority may seek to assist the bereaved family financially but cannot support those who are not eligible. The local authority in which the prison is situated may be called upon to act, however given the existence and interest of a family they may be reluctant to do so, as their responsibility is related to the disposal of a body that otherwise would not be disposed.

This issue is perhaps most acute for national prisons when persons may not have resided in the local authority where the prison is situated prior to their being in custody.

Whilst the proposed legislation, if enacted, will enshrine the right of the nearest relatives, we have identified that some confusion exists when there is *limited or moderated* interest from the family. This can be for a number of reasons:

- A prisoner may have become estranged from their family on account of the nature of the offence for which they have been convicted or a breakdown over time in their family relationships.
- Many prisoners' families struggle economically and if they are not in a position to meet the costs of a funeral and are ineligible to receive support from the Social Fund (UK Department of Work and Pensions), the way the system works means that registering no interest may mean that it is more likely that the local authority where the person has died will meet the costs of the funeral.

Where there is an absence of a family and next of kin cannot be established, recourse is made to the *Ultimus Haeres* Unit, through which local authorities can recover costs from the estate of the deceased, where this exists.

Where there is no family or where a family has means there is clarity. Where there is family but limited means or moderated interest the situation can become complex.

The new Bill, currently at Sections 56-58, *Local Authority Functions*, builds upon the 1948 National Assistance Act and the 1968 Social Work (Scotland) Act through which it is determined that the local authority which has the responsibility for arranging the disposal of the remains is the one in whose area the person died (1948) or the local authority who was providing care for the person (1968). The Burial and Cremation (Scotland) Bill currently states:

56 Disposal of remains: duty of local authority

(1) This section applies where—

(a) a person dies or is found dead within the area of a local authority, and
(b) it appears to the authority that no arrangements have been or are being made under section 46(2) or 47(2) or otherwise for the disposal of the remains.

(2) The local authority must make arrangements for the remains to be buried or cremated.

(3) In making arrangements under subsection (2), the local authority must, so far as known to the authority, have regard to any wishes that the person expressed as to means of disposal of the person's remains.

(4) The local authority may recover from the estate of the deceased person expenses incurred under subsection (2).

(Section 46(2) concerns Arrangements on death of adult and states that

The nearest relative of the adult may make arrangements for disposal of the adult's remains. Section 47 pertains to Arrangements on the death of a child.)

As with the existing legislation, the Bill does not exclude the possibility of dispute between local authorities in the future and is of limited help if disputes do occur.

The perception of one local authority (A - where the person has died) that another local authority (B - where relatives live) is responsible may occur when it appears that local authority B is assisting the family in making arrangements or seeking funding from the Social Fund to meet funeral costs. This may happen in our context when a Community Justice Social Worker (from authority B) may advise the family, there may have been prior contact because a CJSW will have been identified for each prisoner subject to post-release supervision.

In fact the Bill allows A to recognise that B is the responsible authority, if the other local authority is assisting the relatives. It is acknowledged that there may be situations where a local authority seeks to explore whether someone else might be able to arrange the funeral, including the family, who with means, would ordinarily act to make arrangements. The Bill allows for these possibilities in clause 56.1b. This is reasonable, however *another local authority (B) may not necessarily perceive that by offering assistance they are effectively taking on the role of the responsible authority.*

The Bill offers an opportunity to clarify when responsibility passes from one local authority to another, a clarity which would help following a death in custody. This could be done by **the addition of a clause directing that when a local authority makes arrangements, by so doing they accept the designation of 'the responsible authority'** (B1 (b) above).

We also suggest **a further clause that provides a means of dispute resolution** when local authorities do not agree which is the responsible authority (B1 (c)). What the Scottish Prison Service would welcome is a means whereby when an individual dies in custody and there is dispute between local authorities concerning funeral arrangements that, for the sake of the family, prison staff and all concerned, the dispute is resolved quickly.

A cut-off point is required. A given number of days for resolution of any dispute could be stated, ensuring that there was a limit to the period during which a funeral following a death in custody had to be arranged.

We further believe that the new Bill offers **an opportunity to minimise distress by specifically citing prisons** (B1 (a)). Such a reference would place beyond doubt what should happen in the circumstances we have encountered. Other contexts may also be cited, where the law indicates that without a nearest relative's contribution it is the responsibility of the local authority in which the person has died to make arrangements and meet costs.

Our preferred option is to work collaboratively with our statutory partners and others who care for the deceased and their bereaved relatives to agree a Memorandum of Understanding that specifically addresses best practice. A MoU would detail roles and responsibilities, actions to facilitate funeral arrangements, a flow chart and guiding principles to enable good communication and the fast resolution of any disputes.

When a person dies in prison it is the Police who communicate this to the family concerned. When confirmation of this is given the Prison Chaplain offers the family support and acts as a link person

between the prison and the family (should the family so wish). Formal and early communication of Deaths in Custody should be shared between Prison Senior Management, Prison Based Social Work and Community Justice Social Work. A Community Justice Social Worker will have been identified for each prisoner subject to post-release supervision (i.e. prisoners sentenced to four years or more in custody and sex offenders sentenced to six months or more); such arrangements do not exist for those prisoners not subject to supervision upon release or for untried prisoners. In some cases the Community Justice Social Worker may support the family in their approach for funding.

It is noted that “the Smith Commission report on the further devolution of powers to the Scottish Parliament proposes that responsibility for funeral payments, currently part of the regulated Social Fund operated by the Department for Work and Pensions, be transferred to the Scottish Parliament (Section 194).” We believe that were the Bill to detail how the Law applies to specific instances such as prisons it would be in sympathy with proposals that aim to focus on issues as they pertain in Scotland.

Scottish Prison Service
30th November 2015