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Clerk to the Local Government and Regeneration Committee,
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Burial and Cremation (Scotland) Bill

I would draw the attention of the Committee to clause 40(1)(c), namely the requirement that a cremation be carried out in a crematorium, and suggest that it is entirely inconsistent with the design of the Bill to set this prohibition of open air cremations (or “home” cremations as they are often misleadingly called) in primary legislation. A pyre is but a mode of disposing of a body and it is the only mode of disposing of a body singled out by this Bill for prohibition (in primary legislation). It should, as with all other modes of disposing of a dead body, be left to be regulated (or indeed prohibited) by regulations made under clause 37 (which would require some redrafting) or clause 69. All the points the Government has advanced for prohibiting open air cremations can be addressed in Regulations.

It should be remembered that although Cranston J, in the case of Ghai v Newcastle City Council, ruled that the Cremation Act banned pyres and upheld the ban, he also ruled that the ban did infringe Mr Ghai’s human right to manifest his religion. [The Court of Appeal did not have to determine whether Cranston J was correct in upholding the ban because by the time the Court came to hear Mr Ghai’s appeal he had decided that his religious belief could be satisfied by a cremation in a building. Others may not be so satisfied.] Should a different view be taken of the lawfulness of the ban in a future case, or the technology of pyres or public opinion about them change, it will be far easier for the Government to respond by changing Regulations than by securing a change to the primary Act.

Yours sincerely,

A handwritten signature in black ink that reads "Stephen White". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Stephen White
(co-author of forthcoming *Cremation in Modern Scotland: history, architecture and law*)