



**CWGC**  
Commonwealth War Graves Commission

## **Burial and Cremation (Scotland) Bill**

### **Response to the Local Government and Regeneration Committee**

#### **Introduction**

The Commonwealth War Graves Commission wishes to respond to the Local Government and Regeneration Committee's call for written evidence and would be willing to give oral evidence to the Committee should this been deemed appropriate. It has also responded to the Health and Sport and Finance Committees written call for evidence, under separate cover.

The Commission has only responded in relation to those parts of the Bill that are relevant to it, which include those sections for maintenance provisions and lair re-use. The Commission has not commented on any provisions unrelated to the work of the Commission. The Commission responded fully to the initial consultation on 9 April 2015 (Respondent Reference 098) before the Bill was published and met the Burial and Cremation Team to discuss the Commission's main concerns.

#### **Background**

Under its Royal Charter obligations, the Commission is responsible in perpetuity for the care and commemoration of the graves and memorials of those Commonwealth Armed Forces who died during the two World Wars. It currently cares for approximately 21,000 graves and memorials in 1,275 sites across Scotland. These burial grounds range from local authority run cemeteries and churchyards from all denominations to dedicated military cemeteries, which the Commission owns, such as Lyness Naval Cemetery, Orkney. The Commission maintains these graves directly through its own maintenance teams, or indirectly through councils and contractors. War casualties are commemorated on standard pattern Commission headstones as well as private personal memorials erected by the family.

The Commission owns the burial rights to a number of war graves in Scotland. As the Commission is responsible for war graves in perpetuity, owning burial rights allows it to protect its position as far as possible. The Commission does not currently own burial rights to all war graves in Scotland. This is discussed further, below.

For the purposes of the Bill, the Commission is deemed to be a burial authority as it owns dedicated military cemeteries across Scotland. It will therefore be bound by any provisions in the Bill relating to burial authorities.

#### **Responses to specific questions included in the Committee's call for evidence:**

##### **1. Whether the proposals for the restoration of lairs are appropriate (sections 25-37)?**

**Section 24:** The Commission is explicitly mentioned in Section 24 of the Bill as being a party that must be consulted before a lair is restored.

**Implications on the Commission:** The Commission is supportive of the provisions mentioning the Commission specifically. This provision is particularly important as many of the war graves for which the Commission is responsible are over 100 years old, and without this provision, could be re-used.



**Clarity Sought:** The Commission would like to see clarity to the provisions in Section 24(5)(b). It is unclear whether, upon receiving the objection, the burial authority could continue with the land reuse upon the expiry of 10 years, without any consultation with the parties included in Section 24(4). Where possible, the Commission would like to see the burial rights in any war graves identified as part of a re-use provisions, transferred to the Commission to ensure long-term protection for war graves. The Commission believes this transfer should be done free of charge and without a time limit by the burial authority as the Commission has responsibility for the care and maintenance of the war graves in perpetuity.

**Section 26:** Allows graves to be re-used where the burial rights holder cannot be found.

**Implication to the Commission:** Unlike section 25(1), section 26 does not specify that it applies only where none of the persons in section 24(3) have objected.

**Clarity sought:** For clarity and consistency with section 25, the Commission seeks an addition, to state that section 26 only applies where the persons in section 24(3) have not objected.

**Section 35:** Provides that burial authorities must have regard for guidance issued in relation to sections 24-34 and restoration to use. It states that Ministers must consult persons which they consider appropriate.

**Implications to the Commission:** With a wide reaching interest in over 21,000 war graves across Scotland, the ramifications to the Commission and the graves which it is responsible for, are high, particularly with the extensive use of Regulations and Guidance that will be produced as a result of the Bill.

**Clarity Sought:** The Commission therefore seeks to be a statutory consultee in relation any guidelines and regulations produced as a result of the Bill.

## **2. Whether provisions on the reuse of headstones would be appropriate?**

The Commission would be against the re-use of war grave headstones.

## **3. The appropriateness and extent of the roles which should be undertaken by inspectors of burial, crematorium and funeral directors (primarily Part 4)?**

The Commission, as a burial authority for a small number of sites, would wish to be consulted about provisions relating to the inspectors of burial.

## **4. The appropriateness and extent of the proposed regulation of funeral directors (primarily part 5)?**

The Commission does not wish to comment on these provisions.

## **5. The extent to which the Bill address funeral costs and what, if any, further measures the Bill could contain?**



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The Commission would like to see provisions obliging cemetery authorities to transfer burial rights to war graves to the Commission, free of cost.

**6. The appropriateness of the removal of existing provisions restricting the proximity of new crematorium to housing?**

The Commission does not wish to comment on these provisions.

**General Response to the Bill:**

The Commission is generally supportive of the Bill and what it seeks to achieve. The Commission is grateful to the Burial and Cremation Team for specifically consulting with it prior to the publication of the Bill. It notes that it is specifically mentioned in key provisions of the Bill and that is recognised as being a key stakeholder. However, the Commission notes that the legislation allows for a vast amount of regulations and guidelines to be produced and the Commission's main concern in relation to the Bill is that these regulations and guidelines could impact the Commission in a number of ways. In order to protect the Commission's position and the war graves in its care, it seeks to be explicitly mentioned a consultee when such guidelines and regulations are being drafted.

In addition to the specific questions above, the Commission also seeks minor amendments to the Bill and comments on specific sections of the Bill, as stated below.

**Additional Comments on Specific Provisions:**

For ease of reference each section which may affect the Commission is detailed below together with the Commission's comments:

**Section 6:** It is noted that by regulations, Scottish Ministers may make provisions for control in relation to a number of matters.

**Implications for the Commission:** As a burial authority for a small number of burial grounds, the Commission may become subject to these regulations, which may impose greater obligations on it. Where the Commission completes work at a burial ground under the control of another burial authority could impose greater obligations on the Commission as a result of the new regulations.

**Clarity Sought:** The Commission therefore seeks confirmation that we will be consulted and be allowed to comment on any proposed regulations.

**Section 10:** Burial authorities must, subject to the regulation, keep a burial register. It is noted that Scottish Ministers can specify that such registers could be kept in a specified form and manner.

**Implications on the Commission:** As the Burial authority for a small number of sites in Scotland, the Commission may be required to keep a register in a different format to which it currently holds such information. This could have cost implications on the Commission.



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**Clarity Sought:** The Commission seeks confirmation that keeping such registers will not be onerous on the Commission. If the manner and form specified for keeping a registers differs from how the Commission keeps its current own registers, the Commission seeks an exemption consider the very small number of sites that it owns.

**Section 12: Implications for the Commission:** The Commission is responsible for war graves in perpetuity. Under Section 12 a burial authority could refuse an application made by the Commission for burial rights.

**Clarity Sought:** The Commission seeks amendments to the Bill to explicitly state that burial authorities must grant exclusive right of burials to it, where the grave is a war grave.

**Section 13:** Provides that a right of burial will be extinguished at the end of the period of 25 years beginning on the day on which the right was sold, and a person may apply for extensions of 10 year durations.

**Implications for the Commission:** It is unclear whether burial rights already granted will be included in this extinguishment provision. As the Commission is responsible for 21,000 graves across Scotland, having to apply for extensions in relation to these rights will be time consuming, expensive and onerous for the Commission. It is noted that the burial authority may also refuse an application for extension if it considers reasonable to do so.

**Clarity Sought:** The Commission seeks amendments to the Bill to provide that burial rights previously granted will not be affected by these provisions. It further seeks that amendments to the Bill provide that burial rights granted to the Commission will not be extinguished after 25 years and will be granted to the Commission in perpetuity.

**Section 15:** It is noted that the burial right holder has the right to erect a headstone. This provision does not appear to permit parties not owning the burial rights to erect a headstone on the grave.

**Implications for the Commission:** Whilst the Commission owns a number of burial rights for war graves across Scotland, it does not own the burial rights to a number of graves. The Commission is concerned that it may not be permitted to erect headstones on all the graves which it is responsible.

**Clarity Sought:** The Commission therefore seeks an amendment to provide that, subject to the burial authority's permission, the Commission may erect a headstone on a lair, where it is not the burial rights holder.

**Section 22:** The Commission's Charter obligations mean that the Commission is responsible for the care and commemoration of war graves including the casualties remains. The Bill allows regulations to be drafted in relation to exhumations and the Commission wishes to be consulted on the draft provisions. In England, the Commission is consulted by the Ministry of Justice where there are human remains to be exhumed so that war graves cannot be inadvertently exhumed without the Commission's knowledge.

**Clarity Sought:** The Commission would seek similar provisions in Scottish regulations so that the Commission would be notified in the event that a war grave is likely to be disturbed.