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Our ref GRSH/ANFA/EDN/152166.00001

Dear Sirs

Burial and Cremation (Scotland) Bill

We refer to the above and to the call for evidence issued by the Local Government and Regeneration Committee on 20 October 2015. On behalf of McInroy & Wood Limited, a company of personal investment managers, we submit the enclosed submission.

Yours faithfully



Grace Smith
CMS Cameron McKenna LLP

Enc.

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Dear Sirs

Burial and Cremation (Scotland) Bill (“the Bill”)

We refer to the call for written evidence on the Bill issued by the Local Government and Regeneration Committee (“**the Committee**”) on 20 October 2015.

McInroy & Wood Limited, established in 1986, is a company of personal investment managers based in the area of Haddington, close to a proposed crematorium which was recently granted planning permission. We have no objection to the general objective of the Bill, which is “*to provide a modern, comprehensive legislative framework for burial and cremation in Scotland*”. This letter is our response to question 6 of the Committee’s call for evidence, i.e. the appropriateness of the removal of existing provisions restricting the proximity of new crematoria to housing.

1. REMOVAL OF EXISTING RESTRICTIONS ON PROXIMITY TO HOUSING

- 1.1 Section 5 of the Cremation Act 1902 (“**the 1902 Act**”) prevents the construction of crematoria less than 200 yards from a dwellinghouse except with the written consent of the owner, lessee and occupier of the dwellinghouse. The Bill will, if enacted, repeal the 1902 Act but does not contain any similar restrictions on the proximity of crematoria to housing. As a result, it would be possible for crematoria to be built within 200 yards of housing without the consent of owners, lessees and occupiers (subject to obtaining the necessary planning and regulatory approvals).
- 1.2 We respectfully submit that the current restriction on crematoria being constructed within 200 yards of housing should be replicated in the Bill. There have, in recent years, been overwhelming expressions of support for retaining the restriction from a number of sources, including the Scottish Government. We have not seen a convincing argument, or indeed any rational justification, to remove the current restriction.
- 1.3 The Burial and Cremation Review Group (“**the Review Group**”), which was established by the Health Minister to review the existing legislation and “*make recommendations on how the legislation could be changed in order to better serve the needs of the people of Scotland*”, considered in 2008 that:

“such limits, converted into metric measurements, should be kept as they ensured a level of privacy and quiet for visiting mourners, helped prevent adverse affects on adjacent houses and protected the public”.
- 1.4 A public consultation was undertaken in 2010 following publication of the Review Group’s report. One of the main findings of the analysis of consultation responses was:

“[t]here was a very high level of agreement that the requirements specifying minimum distances between new crematorium buildings and houses or roads should be maintained when granting planning permission”.

- 1.5 The Scottish Government’s *Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland* (“**the 2015 Consultation**”) published in January 2015 stated that:

“The requirements of section 5 of the 1902 Act help provide a secluded, private space for cremations as well as establishing a suitable distance between crematoria and housing. As such, it is the Scottish Government’s view that a minimum distance should be maintained and that enforcement powers should be introduced to ensure that such requirements are not breached.”

- 1.6 The analysis of the consultation responses shows that over 75% of the many respondents were in favour of retaining the minimum distance and there was “*clear support for strong enforcement of breaches of the minimum distance*”. Despite this, the Policy Memorandum which accompanies the Bill states that “*the Scottish Government is unconvinced that a statutory minimum distance is necessary*”
- 1.7 There is a distinct lack of reasoning provided for this complete u-turn on policy, a policy supported by the Review Group, the public and, until October this year, the Scottish Government itself. We are aware that the Scottish Government has said that few compelling reasons for retaining the distance were offered in the responses to the 2015 Consultation. However, we would suggest that this demonstrates a lack of understanding of its own consultation process. The 2015 Consultation offered the reasons for retaining the minimum distance, as highlighted above, and asked respondents whether they agreed with this. Respondents were only asked to provide an explanation if they did not agree with the Scottish Government’s proposal.
- 1.8 From the initial responses to the Committee’s call for evidence, it appears that there is still strong support for retaining the minimum distance.
- 1.9 It is our submission that the justification for the minimum distance set out in the Review Group’s report and the 2015 Consultation still applies and, for that reason, the Bill should contain provision to replicate the minimum distance contained in the 1902 Act, albeit in metric form. We believe that the importance of ensuring a dignified farewell is a compelling reason for retaining the minimum distance. We also believe that consideration should be given to extending the scope of the minimum distance provision to include other premises which could result in increased noise at a crematorium (e.g. industrial or commercial business premises). Retention of the minimum distance would also ensure consistency of approach throughout Scotland.

2. RETROSPECTIVE EFFECT

- 2.1 If the minimum distance is not to be included in the Bill as passed, we would submit that, in the interests of natural justice, there should be a saving provision included to ensure that the repeal of the 1902 Act does not apply to any crematorium where planning permission has been granted and not implemented prior to the coming into force of the new Act.

- 2.2 In the Policy Memorandum accompanying the Bill, the Scottish Ministers indicate that they will rely on planning authorities to determine whether it is suitable for new crematoria to be built within the area, and makes reference to this being considered in the context of the local development plan amongst other material considerations. Retention of the minimum distance does not preclude such an approach as planning permission will always be necessary and should be granted in accordance with the relevant provisions of the development plan. Moreover, retention of the minimum distance will ensure consistency of approach throughout Scotland.
- 2.3 While there is express mention of the Bill being applied to new crematoria, it does not provide details of how this will affect crematoria to which planning permission has already been granted in the context of the current statutory restriction within the 1902 Act. Clarity on this is necessary to enable all affected parties to understand the full implications of the Bill.
- 2.4 An application for planning permission for the construction of a crematorium within 200 yards of our business premises and residential properties was granted on 9 September 2014. During their consideration of the application, elected members were advised that the crematorium could not be constructed without the approval of adjacent landowners due to the restriction in the 1902 Act. Such consent has not been provided by the owners, lessees and occupiers of the residential properties. Should the Bill be passed and become law without such a saving provision prior to expiration of the planning permission in September 2017, the planning permission could be implemented without the consent of the affected residents. This is a significant change in the circumstances which were applicable at the time of consideration of the planning application. The affected residents would be adversely affected by the removal of an existing statutory right, with retrospective effect.
- 2.5 The extent to which planning authorities will have given specific consideration to residential amenity in respect of houses within 200 yards of a proposed crematorium is not clear, as the development would only take place should affected residents provide their written consent. Removing the minimum distance for crematoria that already have planning permission (but not yet built) prior to the new Act coming into force could have a significant unintended adverse impact on those affected residents.
- 2.6 If the minimum distance is not included in the Bill as passed, it is our view that any proposed crematoria with extant planning permission, which is not currently capable of implementation, should be subject to a new planning application. That would ensure that the determination of the new application would have regard to the circumstances which apply as a result of the provisions of the new Act.
- 2.7 The repeal of the 1902 Act should not have retrospective effect, which would be inequitable. This could be achieved by including a saving provision in the Bill which ensures that the repeal of section 5 of the 1902 Act will not apply to any crematorium where planning permission has been granted and not implemented prior to the coming into force of the new Act.

Yours faithfully

Tim Wood
Chief Executive
McInroy and Wood Ltd