

Drafting Amendments

The following are drafting amendments compiled by local authorities and relevant organisations. The Scottish Government is asked to provide written comment on these suggestions. Given the tight schedule for evidence taking it would be of assistance if these comments were to be available by the end of the year.

Section 1

Federation of Burial and Cremation Authorities: Mentions 'Primarily' for burial of human remains. In our understanding primarily means, mostly, mainly or largely. The FBCA would like to understand what primarily means in this context.

Part 1 (Section 1) This Section deals with the definition of a "burial ground" and land where burials are carried out, but where no fee is charged. A large number of burial authorities do not charge for the burial of children and as such the FBCA feels that this section should be reworded.

Fife Council: As indicated by the Federation of Burial and Cremation Authorities (FBCA), the word 'primarily' should be removed.

Section 2

Federation of Burial and Cremation Authorities: The FBCA does not consider the definition of a "burial authority" i.e. "the person who owns a burial ground" as appropriate. If the burial ground is provided by a local authority or a private company it will not, other than in very rare cases be owned by "a person". The provision of a burial ground by a private company does not seem to have been included within any definitions in order to allow the company to be a "burial authority".

Fife Council: Use of the word 'person' seems inappropriate to describe a 'burial authority' be it local authority or private enterprise.

Section 3

Federation of Burial and Cremation Authorities: This section states that an authority may provide a burial ground that is situated wholly or partly out with the area of the authority. We understand that if this is the case the authority will be deemed not to have met its duty under the Bill. The FBCA considers this confusing and restrictive, as authorities that are unable to provide suitable facilities within their own areas should be able to provide a joint facility with a neighbouring authority to satisfy their duty.

Section 5

Angus Council: This authority does not currently provide these facilities at all burial grounds and to do so would place a significant burden on resources. It is understood this requirement may be removed at a later stage of the bill.

Inverclyde Council: Places to keep bodies before burial: this section should be removed from the Bill. It is practice that the body is brought to the burial ground immediately ahead of burial, so there is no need for it to be stored at the burial ground ahead of burial, even temporarily.

Section 6

Angus Council: Regulations (2a) & (2b) should not place excessive burdens on authorities to provide unnecessary infrastructure or facilities in the laying out or embellishment of new burial grounds especially in rural locations.

(2) (c) where access to burial grounds is out with burial authority control provision would be welcomed in the regulations that clear access to burial grounds is maintained at all times.

(2) (e) the setting of fees should be at the discretion of the authority.

(2) (f) guidance would be welcomed on minimum levels of training and qualifications such as a certificated scheme that recognises the current skills and experience within burial and cremation authorities.

(2) (i) this authority requests a defined minimum cover depth on human remains (not including ashes) of 3'.

Federation of Burial and Cremation Authorities: The FBCA would hope to see subsequent regulation that sets requirements on the depth that an interment takes place at. If such a minimum depth is not achievable, the regulation should require that other suitable methods of interment are in place such as chamber burial or sealed compartment burial to prevent as far as is possible the escape of any noxious gas from the lair and to ensure the security of the interment.

Section 7

Falkirk Council: There should be a clearer definition of the purpose of the building or other structure which may be erected, e.g. cemetery depot, mausoleum, memorial, etc. For clarity the appropriate sections of the explanatory notes should be inserted into the Bill.

Section 8

Federation of Burial and Cremation Authorities: The FBCA suggests that in the case of a re-opened lair that this Section should require the submission of the previously issued Right of Exclusive Burial, which should have been issued in a single individual's name.

Section 10

Angus Council: (4) (a) Public access to our burial registers is not a service we currently provide free of charge due to the staff time involved. The information is available on-line via a partner agency (Deceased on line) which provides a more accessible point of access and small source of income. Introducing this facility FOC will place a significant burden on our service to provide.

Section 10 & 14 The FBCA is assuming that further regulation will permit the maintenance of the Registers of Interments and Registers of Exclusive Rights of Burial to be maintained electronically.

Section 12

*Commonwealth War Graves Commission: **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

Commonwealth War Graves Commission: 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

Commonwealth War Graves Commission: 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.

Falkirk Council: The bill should restate that the lair lease holder is fully responsible for the safety of the headstone or other memorials for the duration of the lair lease. Any damage or injury to a member of the public should be the responsibility of the lair holder. Scottish ministers should have the power to make regulations about the general management of cemeteries, including strengthening the powers of Burial Authorities to address unsafe, damaged and abandoned lairs and memorials.

Section 16

Federation of Burial and Cremation Authorities: The FBCA feels that the details of a “private burial” should be recorded on the deeds of the property in relation to which the interment took place. This is an issue of vital importance to a person buying a property where a “private burial” has taken place.

Section 20

Federation of Burial and Cremation Authorities: The FBCA feels that this Section contradicts Section 6e. Please explain the difference to be covered by section 6(2)(e).

Section 21

Federation of Burial and Cremation Authorities: The FBCA is not clear from this Section or by reference to Section 8 whether a burial authority can be a private individual or a private company, rather than a local authority.

General Comment: The FBCA felt the use of the word Crematoria would be more appropriate than the use of crematoriums when referring to multiple locations where cremation takes place.

Section 22

Commonwealth War Graves Commission: 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. How will the position of the Commission be safeguarded?

Section 37

Cremation Society of Great Britain: (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)”.

(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).

Federation of Burial and Cremation Authorities: The FBCA is not comfortable with the definition of a “cremation authority”. If the crematorium is provided by a local authority or a private company it will not, other than in very rare cases be owned by “a person”. The FBCA feels strongly that the definition of a crematorium should be extended to include not only the building fitted with equipment for the carrying out of cremations, but also any other building incidental or ancillary to this, such as a chapel, waiting room, book of remembrance room etc.

Section 40

Federation of Burial and Cremation Authorities: The FBCA has already commented on the inappropriateness of a “person being a cremation authority”. In addition we would draw your attention to the fact that the “cremation authority” may lease the crematorium from the owner, a situation that is currently not catered for in this Section of the Bill. (Subsection 1a) The FBCA would draw the Committee’s attention to the fact that the person that carries out a cremation is normally referred to as a crematorium technician, it is totally misleading to have wording such as “A person may not carry out a cremation unless the person is a cremation authority”.

Fife Council: Agree with the comments raised by the FBCA in relation to sections 40 and 41 concerning the terms used to describe ‘owners’ of crematoria and also that consideration be given to guidance on permitting electronic formats of the statutory Cremation Register to be kept.

Section 41

Federation of Burial and Cremation Authorities: The FBCA would seek guidance on whether or not regulation will be put in place to permit the Statutory Cremation Register to be kept in electronic format.

(4) (a): The FBCA has concerns about the Cremation Register being open to the public. This Register contains personal information relating to the Applicant for Cremation and as such, Data Protection issues should be considered in respect of its availability to the public.

Inverclyde Council: The term cremation register should include the electronic storage of records.

Section 65

Angus Council: (In relation to Sections 65-66) The scheme should also be extended to cover monumental masons.