

SPICe Briefing

Burial and Cremation (Scotland) Bill: Stage 3

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16/32

Richard Marsh

This briefing provides a summary of the parliamentary scrutiny of the Burial and Cremation (Scotland) Bill prior to the Stage 3 proceedings which are scheduled to take place on Tuesday 22 March 2016.

It is designed to provide a summary of the main issues associated with the Bill during its passage through the Scottish Parliament so far and the amendments made at Stage 2. It does not provide a comprehensive discussion of all the issues raised in relation to the Bill.

SPICe Briefing 15/70 [Burial and Cremation \(Scotland\) Bill](#) provides information on the Bill as introduced.



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INTRODUCTION

The [Burial and Cremation \(Scotland\) Bill](#) was introduced in the Parliament on 8 October 2015. The Health and Sport Committee and Local Government and Regeneration Committee are scrutinising the Bill.

The Health and Sport Committee was designated the lead committee at Stage 1 and has the task of considering the general principles of the Bill, as well as those parts of the Bill which relate to losses during pregnancy. The Local Government and Regeneration Committee was designated a secondary committee.

The intention of the Bill is to provide a modern, comprehensive legislative framework for burial and cremation. The Scottish Government's [Policy Memorandum](#), outlines that existing legislation dates back over 100 years, and is increasingly unable to meet the needs of Scottish society. The Policy Memorandum states that the Bill will "create legislation which is fit for twenty-first century Scotland" through:

- Repealing primary acts relating to burial and cremation;
- Modernising relevant provisions; and
- Introducing new provisions.

The Bill itself consists of six parts covering burial, cremation, arrangements, inspection, miscellaneous issues (including licensing, codes of practice and regulation) and general issues. Many of the Bill's provisions are rooted in recommendations made by various review groups, particularly the [Infant Cremation Commission](#) and the [Burial and Cremation Review Group](#).

STAGE 1

In its [Stage 1 report](#) on the Bill the Health and Sport Committee supported the general principles of the Bill. The Committee noted that the evidence the received considered that the Bill supported the objective to provide a modern and comprehensive legal framework for burial and cremation in Scotland.

The Committee outlined where the Bill needed clarification and amendment to ensure, as much as possible, that previous poor practices are never repeated. The Committee also recognised that there is an on-going role for the Scottish Parliament in scrutinising any forthcoming regulations.

In its [Stage 1 report](#) the Local Government and Regeneration Committee supported the general principles of the Bill in so far as they related to matters that fell within their remit. However, the Stage 1 report found the Bill to be "lacking in ambition" with regards to an "opportunity to fundamentally change how the funeral industry operates in Scotland. "

PARLIAMENTARY CONSIDERATION

Table 1 below summarises the various stages of parliamentary consideration at Stages 1 and 2.

Table 1: Summary of Parliamentary Consideration Bill introduced

Bill Introduced	8 October 2015
Stage 1 General Principles	
Health and Sport Committee: Stage 1 evidence	Took evidence at meetings on 5 and 12 January 2016
Local Government and Regeneration: Stage 1 evidence	Took evidence at meetings on 4 November 2015, 9 December 2015, 6 and 13 January 2016
The Local Government and Regeneration Committee Stage 1 report published	1 February 2016
Stage 1 debate	11 February 2016
Scottish Government response to the Committee Stage 1 Report	11 February 2016
Stage 2 Consideration of amendments	Health and Sport Committee on 8 March 2016 Local Government and Regeneration Committee on 9 March 2016
Stage 3 Final Consideration (Plenary Debate)	Tuesday 22 March

STAGE 2

Stage 2 offers an opportunity for any MSP to propose amendments to a Bill, although only members of the lead committee can vote on any amendments that are lodged. Maureen Watt MSP (Minister for Public Health) ('the Minister') took forward the Scottish Government amendments at Stage 2.

The Health and Sport Committee has the task of considering the general principles of the Bill, as well as those parts of the Bill which relate to losses during pregnancy. The Local Government and Regeneration Committee considered other parts of the Bill.

Amendments at Stage 2 are available [online](#) grouped by the issues raised by each Committee. For the Health and Sport Committee the [following issues](#) were addressed:

- Meaning of "cremation"
 - The Stage 1 Report raised "concerns that the definition of cremation, by referring to 'grinding and other processes', may not adequately enable bereaved families to understand that cremation may include cremulation. We therefore seek clarification from the Scottish Government of how this will be made clear"
- Handling and disposal of ashes
 - The Stage 1 Report states "it is crucial that the Scottish Government's policy in this area is clearly set out on the face of the Bill."
- Recovery of ashes
 - The Stage 1 Report states "We also seek clarification from the Scottish Government of the extent to which the codes of practice will seek to continuously

improve cremation practices, such that there is equal chance of ash recovery whichever crematorium is used in Scotland.”

- Arrangements: still-birth
 - The Stage 1 Report states “We also seek confirmation from the Scottish Government of how the role of the healthcare provider could be strengthened in relation to supporting the woman in making arrangements for burial or cremation where she experiences a still-birth (particularly where this involves a medical termination).”
- Disposal of remains: nearest relative
 - The Stage 1 Report states that the Committee would “welcome clarification from the Scottish Government of whether the Bill should be amended to allow the health authority to act in those circumstances where the woman has no family or whose family is unable or unwilling to make any arrangements.”
 - The Stage 1 Report also considered circumstances when a woman undergoes a medical termination after 24 weeks, when other legislation may prohibit the nearest relatives from being contacted. The Committee sought “clarification from the Scottish Government of who should be able to take a decision in those circumstances and whether the Bill, as currently drafted, adequately provides for that decision taking.”
- Arrangements: losses during pregnancy
 - The Stage 1 Report sought “clarification from the Scottish Government of how it will ensure that healthcare professionals are made aware of the requirements of this Bill in relation to making arrangements for losses during pregnancy.”

For the Local Government and Regeneration Committee the [following issues](#) were addressed:

- Burials
 - The Stage 1 Report suggested it was unclear whether and how the Bill will help local authorities to better manage burial grounds. The Committee recommended “the Bill be amended to require a management scheme. The Bill should require the Scottish Government to consult in advance burial authorities and others with an interest about the detail of the regulations.”
- Offences
 - The Stage 1 Report stated that the “terms of offences should be specified on the face of the Bill.”
- Registers and keeping information
 - The Stage 1 Report recommended that “the Bill be amended at Stage 2 to require records to be held electronically.”
- Codes of practice
 - The Stage 1 Report welcomed “the Scottish Government’s commitment to amend the Bill to require codes of practice to be approved by the Scottish Parliament.”
- Fees
 - The Stage 1 Report asked the Scottish Government “to investigate further the potential to utilise regulations, the licensing and inspection regimes and codes of practice to encourage greater transparency of costs and, if possible, include requirements for the display of a tariff for a simple funeral.”

- The Stage 1 Report asked “for early sight of the terms of reference for the [Scottish Government’s] review of funeral costs and the timescale for its completion and to be kept advised of progress made.”
- Private burials
 - The Stage 1 Report stated the Committee was “supportive of all burial authorities being placed under the same duties and having the same powers.”
- Exhumation
 - The Stage 1 Report stated the Committee was “not fully convinced the reuse of lairs in the short-term will remedy the pressure on existing cemeteries.” The Stage 1 Report also stated “as more lairs reach the 100 and 50 year triggers we consider the policy has the potential to bring some measure of sustainability. Crucially though, we consider this policy might be undermined if burial authorities opt not to reuse occupied lairs.”
- Restoration to use of lairs
 - The Stage 1 Report outlined that it would be “helpful if the Scottish Government could provide us in advance of Stage 2 a comparison table which sets out the costs of restoring a lair which has not been used, restoration of an occupied lair, and the financial benefit accrued from reusing a lair.”

The Bill as amended at Stage 2 is available [online](#) with a total of 190 amendments. This includes 50 amendments relating to the issues raised by the Health and Sport Committee and 140 amendments relating to the issues raised by the Local Government and Regeneration Committee.

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RELATED BRIEFINGS

[SB 15-70 Burial and Cremation \(Scotland\) Bill](#)

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