

28 November 2024

Burial Law in Scotland

Dear Clare Haughey MSP

West Lothian Council are writing as a burial authority in reply to your request for views on the below instruments:

- The Burial and Cremation (Scotland) Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2024
- The Burial (Applications and Register) (Scotland) Regulations 2024
- The Burial (Management) (Scotland) Regulations 2025
- The Burial and Cremation (Inspection) (Scotland) Regulations 2025

The council operate 32 churchyards and cemeteries throughout the region, and process circa. 800 interments each year. The council has established administration and operational procedures and policy related to burial services. The council has concerns regarding the level of new resources potentially required to both develop and then implement the new regulations across administration, training, and operations. The council consider the impact on these areas could be significant, not minor as suggested by Scottish Government. Furthermore, the impacts are not limited to administration and training as suggested by Scottish Government i.e. there are clear and obvious potential operational impacts.

The council has outlined detailed concerns and outstanding questions below in response to individual questions. The reflect the same concerns expressed in October 2023 to Scottish Government. **In summary the council is unlikely to be able comply with the regulations as of 1st March 2025.** Especially as the guidance notes for the new forms are still to be issued.

If the Scottish Government intend to enforce compliance through failure notifications etc, the council consider it would require circa. 12-24 months to restructure and employ and train new staff, rewrite and implement new procedures, implement new inspection and maintenance operations etc.

In summary, the additional (new) workload includes:

- Development of a suite of new administration policies and procedures to reflect new regulations, including statutory forms.
- Development of a suite of new forms/jobs etc. within existing electronic cemeteries systems to reflect new regulations, including statutory forms.
- Development of a cemetery management plan to reflect new regulations.
- Maintenance and repair of buildings, walls, fences and other structures in 'good order' is very open to interpretation and is of concern.

Contact: Health, Social Care and Sport Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email HSCS.Committee@parliament.scot. We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

- Maintain or improve access to and within the burial ground is very open to interpretation.
- Formally programme headstone and memorial inspections and repairs at an acceptable rate.

The council consider that all additional costs to meet new regulations would require equivalent additional annual funds being committed by Scottish Government in the region of £100,000 to £200,000 per annum. These costs cannot currently be predicted accurately due to the lack of detail on what maintenance standards will be required. In the absence of any new investment by Scottish Government, the council anticipate application of regulations would result in an increase in charges (to the public through Funeral Directors) equivalent to any shortfall in Scottish Government investment i.e. likely at least 10% increase in fees associated with burial.

1. What are your views on all or some of the provisions covered in the Burial (Management) (Scotland) Regulations 2025 in relation to the management and maintenance of burial grounds in Scotland, including:

- The requirement to prepare and maintain a publicly accessible burial management plan;

Given that 12 months are available from 1st March to produce this document, this would be achievable with minimal additional resource. However, significant additional resources would be required to create any formal 'contingency' plan (as part of any management plan) that would adequately cover those additional administration, operational, and management resources that could be required to mitigate any significant uplift in interment volume or significant disruption in operations.

- Maintenance and repair of burial grounds;

There is huge potential that this would require significant additional resources. At present West Lothian Council does not have the level of investment to maintain and repair all buildings, walls, fences, and other structures erected on or enclosing its 32 burial grounds. In many cases, these assets are either removed or secured with temporary fencing only. In addition, the maintenance or improvement of access to and within the council's burial grounds would require significant additional resources. At present the council does not have the level of investment to maintain and repair all roads and footpaths within burial ground. At present the council prioritise repair of those roads and footpaths that allow access to burial grounds for burial and maintenance only. Increasingly the council is removing pedestrian footpaths where these fall into disrepair, thus reducing the quality of public access including for wheeled users.

With regard to maintenance of equipment, additional guidance on any specific format of maintenance record that is required would be beneficial. The council maintain equipment and keep records currently, with the approach being standard

across all council services i.e. any unique maintenance and maintenance reporting may not be compatible with existing corporate systems and processes.

- Safety of headstones and other memorials;

This may require significant additional resources. At present the council does inspect and maintain and repair headstones and other memorials. However, the current inspection and maintenance schedule does not allow for inspection of all headstones every 5 years or less. At present the council inspects and maintains headstones until available investment is exhausted i.e. circa 30% are inspected every 5 years. The council will look to make safe any headstones identified as unsafe by third parties. However, the council considers that the level of investment available at present does not allow for a rate of inspection and repair that would reduce risk to a minimal level i.e. all inspected at least every 5 years.

The council consider that notification of the public that headstone inspection will take place on a specific date is not practical i.e. inspections are often carried out on little or no notice due to either ad hoc third-party notification of a safety issue or alternate workload of cemeteries inspectors dictating at short notice when inspections will take place i.e. the council have no dedicated inspectors and existing operational staff complete inspections as and when they can around maintenance, burial, and administration responsibilities. The council consider it adequate that the public are notified of works to headstones, and area of works are secured, and need not be notified of inspections.

- Removal of unauthorised headstones or other memorials;

Additional guidance on how burial authorities can enforce recouping costs from those erecting unauthorised items would be beneficial.

- Training;

The council currently maintain training records for all staff. Additional guidance on if any specific format of training record is required would be beneficial i.e. any unique training records and maintenance reporting of training records may not be compatible with existing corporate systems and processes.

- Designation for use by faith, religious or belief groups.

The regulation puts no specific requirement on council with regard to designating any part of a burial ground. Therefore, the council has no comment.

2. What are your views on all or some of the provisions covered in the Burial and Cremation (Inspection) (Scotland) Regulations 2025, in relation to inspection, enforcement and appeals for burial authorities, cremation authorities and funeral directors?

The provision that inspector's findings include any failure to comply is not clear in so far as failure is not defined adequately across issues including maintenance and administration etc. It is also unclear how any burial authority might be reasonably

expected to address any failure/enforcement notice in the absence of any additional investment.

It is unclear how closure of a burial ground or all grounds under a single burial authority will be addressed by Scottish Government i.e. will there be an expectation that all interments are taking place in neighbouring areas, and these areas have capacity to accommodate?

3. Do you have any specific concerns about any of the instruments outlined above?

The Burial (Applications and Register) (Scotland) Regulations 2024 forms (Form BF1-BF7) are statutory forms that the regulation implies have to be adopted by the council. Adoption of these forms includes capture of significant additional details by the council. These forms will represent a change to both the standard forms currently used both paper and electronic, changes to all associated procedures, and a change to the systems used to record the information they contain. This will require an additional administration and management resource beyond that currently available.

The timeline for implementation is unrealistic. Three months is not a practical timeline for the administrative, training, and operational changes required. The council had historically advised 18 to 24 months as an appropriate timeline (2023 consultation) to implement changes provided additional investment could be identified.

4. In your view, what financial impact could this legislation have on the delivery of burial services?

See introduction to this letter for additional comment.

While it is difficult to determine the specific financial impact, it is anticipated the council would require significant additional resources to initially plan for and develop systems to allow compliance with legislation. Furthermore, the council will require additional resources to comply with the ongoing additional administration and operational pressures associated with the legislation.

In the absence of additional resources, it is anticipated the council could fail any inspection related to compliance. It is anticipated that the council will require additional resources including two FTE posts including one Administration Assistant and one Cemeteries Officer to implement and maintain adherence to the regulations. (Certainly in the short term) It is anticipated that significant additional capital/revenue investment may also be required as and when the required maintenance standard becomes clear i.e. there is insufficient detail at present to determine if current level of maintenance delivered by the council will be considered adequate. If for example the council is to meet a maintenance standard equivalent to its own historic maintenance standard (established prior to budget cuts over recent years), it is anticipated a further five FTE operational posts would be required i.e. one Cemeteries Squad Leader and four Cemeteries Operatives.

In addition, it is anticipated an additional annual capital and revenue investment could be required to ensure burial grounds are maintained in good order, as many areas are currently fenced off rather than repaired due to limited Council resources. Furthermore, the large volume of outstanding historic maintenance issues that have accumulated over decades would require addressing to achieve a baseline of having burial grounds in good order. It is difficult to determine the level of investment required in the absence of detail regarding what would constitute good order maintenance.

Overall, current additional investment required could easily be circa £500,000 to £1,000,000 per annum.

The latest correspondence from Scottish Government appears to include no significant detail on regulatory changes on lair rights, private burial, exhumation, or restorations lairs. The council would request clarity on what if any new responsibilities are to be imposed regarding the aforementioned as this will likely require significant additional investment above and beyond that highlighted above i.e. if new services are required to be provided and additional administrative and operational procedures are to be reviewed and updated etc.

5. The Scottish Government's business and regulatory impact assessment states that burial authorities and funeral directors may experience minor training and administrative impacts associated with the legislation. How might the additional training and administrative requirements laid out under these instruments affect the delivery of these services in practice, and how could these impacts be managed or mitigated?

See introduction to this letter for additional comment.

The council consider the training and administrative impacts are significant (not minor), and there are also significant potential operational impacts. These impacts can be mitigated and managed by additional investment, and by providing additional guidance (particularly on maintenance) that will allow burial authorities to estimate the operational impacts and associated additional investment required to mitigate operational impacts. At present it is estimated that additional investment required in West Lothian could be as high as the value of seven FTE officers and any additional capital/revenue required to meet as yet undefined maintenance and inspection standards.

While Scottish Government did not formally reply to concerns expressed by the council in its reply to consultation in 2023, the council would be grateful if you could please reply to the issues raised in this correspondence by 20th December 2024.

I look forward to hearing from you.

Yours sincerely