

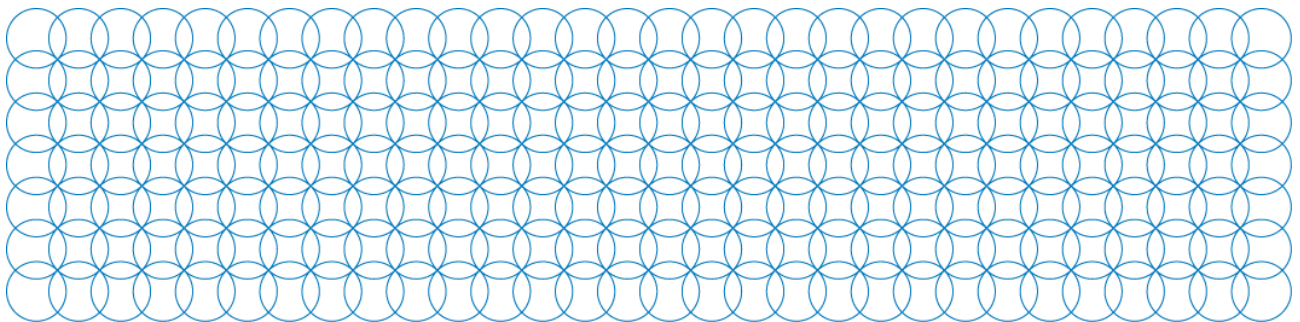


Ministry
of Justice

Consultation on cremation following recent inquiries into infant cremations

This consultation begins on 16 December 2015

This consultation ends on 9 March 2016



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Consultation on cremation

following recent inquiries into infant cremations

A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

About this consultation

- To:** All interested stakeholders, particularly bereaved parents affected by the cremation of a baby; the organisations that support bereaved people; cremation authority staff and their representative organisations; cremation authority medical referees; funeral directors and their representative organisations; medical professionals; anyone else affected by or with an interest in the issues in this consultation document
- Duration:** 16 December 2015 to 9 March 2016
- Enquiries (including requests for the paper in an alternative format) to:** Coroners, Burials, Cremations and Inquiries Policy Team
Area 3.37
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 3555
Fax: 020 3334 2233
Email: coroners@justice.gsi.gov.uk
- How to respond:** Please send your response by 9 March 2016 to:
Coroners, Burials, Cremations and Inquiries Policy Team
Area 3.37
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 3555
Fax: 020 3334 2233
Email: coroners@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published in 2016 at: <https://consult.justice.gov.uk/>

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Foreword

I am pleased to launch this important consultation which seeks views on proposals for a number of changes to the Cremation (England and Wales) Regulations 2008, and for improving other aspects of cremation practice. This area of policy has been a priority for me since I joined the Ministry of Justice following the General Election earlier this year.

On 1 June 2015 David Jenkins published his report into the way infant cremations were carried out at Emstrey Crematorium in Shropshire between 1996 and 2012. The report established that during this period Emstrey Crematorium failed to obtain ashes to return to parents following infant cremations.

Scotland had experienced similar problems. In June 2014 Lord Bonyon's Infant Cremation Commission (ICC) reported that in some Scottish cases parents had been incorrectly told that there had been, or would be, no ashes from their babies' cremations. The Scottish Government has already done much work in response to the ICC report.

Several of the Emstrey report recommendations were for the Westminster Government, but the report also recommended that the Westminster Government consider the ICC's recommendations.

I am clear that bereaved parents should not in future have to experience the additional distress that parents affected by the issues at Emstrey have borne. I am sadly aware, however, of other parents having had similar experiences elsewhere in England.

I am determined that the Government will do what it can to make sure that, following an infant cremation, ashes are returned to parents.

Following this consultation we will carefully consider the responses we have received and will announce the changes that we will be making next year.

Caroline Dinenage
Parliamentary Under Secretary of State for Women, Equalities and Family Justice

Executive summary

Scope of this consultation

This consultation document seeks respondents' views on improving infant cremation legislation and practice in England and Wales.

There are 247 crematoria in England and Wales. Of these, 78 are private businesses.

The cremation of babies, stillborn babies, children and adults is regulated by the Cremation (England and Wales) Regulations 2008¹ ('the 2008 regulations'). Scotland and Northern Ireland operate under separate cremation legislation.

In the context of this document 'infant cremation' refers to the cremation of live birth babies of up to one year old (after any length of gestation) and stillborn babies (of 24 weeks' gestation or more).

This consultation follows the Government's consideration of the reports of:

- David Jenkins – into historic practices at Emstrey Crematorium in Shropshire² ('the Emstrey report')
- Lord Bonyon's Infant Cremation Commission – into practices in Scotland³ ('the ICC report')

We believe that some of the ICC and Emstrey recommendations might be applied not only to infant cremations but also more generally to cremation of children and adults. This document reflects this, and makes it clear when we are proposing a more general application of the recommendations.

More details on the Emstrey and ICC reports are in the 'Background' section of this summary, below.

Proposals

In terms of legislative changes this consultation document seeks views in particular on:

- a proposed new statutory definition of ashes (chapter 2);
- whether regulations should require cremation applicants to make pre-cremation decisions on the collection or scattering of ashes, and what should be done where ashes are not collected (chapter 3);

¹ <http://www.legislation.gov.uk/uksi/2008/2841/contents/made>

² <https://www.shropshire.gov.uk/independent-inquiry-into-infant-cremations/inquiry-report/>

³ <http://www.gov.scot/Topics/Health/Policy/BurialsCremation/CremationCommission>

- whether cremation authorities should be required to retain records for longer (chapter 4).

There is also a discrete chapter (chapter 11) which focuses solely on the cremation of fetuses of less than 24 weeks' gestation which showed no sign of independent life outside the womb. The ICC refers to these as 'non-viable babies'. Such cremations take place but are not currently regulated under the 2008 regulations. The chapter asks whether these cremations should be brought under the regulations.

In terms of improving cremation practice, this document seeks views on whether there should be an inspector of crematoria (chapter 5). It also sets out our proposal to set up a national working group for cremation (chapter 6) and suggests that the working group should consider the training of the cremation and funeral industries (chapter 7) and a technical framework for recovering baby ashes (chapter 9).

The document proposes one or more codes of practice on cremation and training around cremation and seeks views on this (chapter 8). It also seeks views on how to improve the information that bereaved parents receive about cremation (chapter 10).

The document also sets out that we remain supportive of memorials and that our view is that memorials would most appropriately be locally provided (chapter 12).

This document refers to 'parents' throughout. This should be interpreted as 'parent' or 'parents', or other carer(s), as appropriate to the respondent.

Background

David Jenkins' 'Report into infant cremations at the Emstrey Crematorium Shrewsbury'

On 1 June 2015 David Jenkins published his report into the way that infant cremations were carried out at Emstrey Crematorium in Shropshire between 1996 and 2012.

The report established that during this time there had been a failure by the crematorium to obtain ashes to return to parents after the cremation of a baby or stillborn baby. In particular the report detailed the cremation processes and techniques used at Emstrey Crematorium which resulted in there being no ashes. It set out that with suitable equipment and techniques babies' ashes are usually recoverable.

The report, commissioned by Shropshire Council, followed a 2014 BBC investigation (published on its website at the same time as the Infant Cremation Commission report in Scotland, discussed below) which revealed that Emstrey Crematorium had not returned all baby ashes to parents, and that there had been similar practices in other crematoria in England (See section D below).

Since publication of the Emstrey report other families have come forward with similar experiences elsewhere in England.

The Emstrey report's 12 recommendations are at **Annex C**.

Lord Bonyon's Infant Cremation Commission report

The ICC was formed after concerns in Scotland (where there are now 28 crematoria) that parents whose babies had been cremated had in some cases been incorrectly told that there had been or would be no ashes.

The report revealed that many crematorium staff - as well as funeral directors and hospital staff - mistakenly believed that no ashes would be recovered following an infant cremation.

The ICC's June 2014 report followed a report by Dame Elish Angiolini, published in April 2014, of her investigation into historical practices at Mortonhall Crematorium, Edinburgh (which contained 22 recommendations for Edinburgh City Council).

The aims of the ICC were to:

- Review existing policies, guidance, practice and legislation for cremation of babies in Scotland, and to identify weaknesses and inconsistencies.
- Recommend national standards for cremation of babies in Scotland.
- Ensure that those involved following a baby death had a clear and consistent understanding of the process to help them to assist families to:
 - make informed decisions
 - have their babies laid to rest as they wished
 - have confidence that their wishes would be implemented.

The ICC's 64 recommendations are at **Annex D**.

Introduction

The start of each chapter of this consultation document sets out whether the chapter contains proposals to amend the Cremation (England and Wales) Regulations 2008, on which we are seeking views; or simply invites respondents' views on what the way forward should be.

Responses are particularly welcomed from bereaved parents and other family members, plus those working in the funeral and cremation industries and the 247 cremation authorities in England and Wales, but we will of course consider comments from anyone with an interest.

A Welsh language consultation paper is available from the consultation web page.

The Government has carried out a cost assessment which indicates that the proposals are unlikely to lead to significant new costs for private businesses (costs are estimated to be under £1 million) but, equally, are unlikely to lead to savings. We would welcome additional evidence or data in relation to these proposals, in the light of which the cost assessment will be revised and published with the Government's response to this consultation.

Copies of the consultation paper are being sent to organisations with an interest in cremation issues, including:

Action 4 Ashes

Association of Private Crematoria and Cemeteries

British Medical Association

Child Bereavement UK

Childhood Bereavement Network

City of London Cemetery

Co-operative Funeralcare

Coroners

Cremation authorities

Cremation Society of Great Britain

Cruse Bereavement Care

Dignity Funerals

Federation of Burial and Cremation Authorities

General Medical Council

Institute of Cemetery and Crematorium Management

Local Authority Bereavement Services

Local Government Association

London Councils

London Cremations Ltd

Miscarriage Association

National Association of Local Councils

National Society of Allied and Independent Funeral Directors

National Association of Funeral Directors

Royal Colleges

Sands, the stillbirth and neonatal charity

Westerleigh Funerals

Welsh Health Boards

Welsh Local Government Association

This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper, including those from specific faith or belief communities.

The proposals

1. Overarching considerations

This consultation document has 14 chapters, each covering a different theme suggested by the Emstrey and ICC recommendations.

In each chapter, where relevant, we present the Emstrey recommendation(s) followed by the corresponding ICC recommendation(s). We then summarise the current position of the Scottish Government in response to the ICC recommendations. Where relevant we refer to the Burial and Cremation (Scotland) Bill⁴, introduced in Scotland on 8 October 2015.

We have considered the different legislation and organisations that operate in England and Wales on the one hand, and Scotland on the other. In each chapter we propose a way forward for England and Wales, and / or invite respondents' views on issues where we have not yet made a decision on how to proceed.

Seven of the 12 recommendations of David Jenkins' Emstrey report are for the Westminster Government.

Emstrey recommendation 7 states:

I recommend that arrangements be made within Government for the Bonomy Commission's recommendations to be considered more widely for their applicability for infant cremation law and practice.

This document therefore contains our proposals – and in some cases, more open questions – following our consideration of all of the relevant Emstrey recommendations and the 64 recommendations of Lord Bonomy's Infant Cremation Commission (ICC).

Cremation policies and legislation in England and Wales differ from those in Scotland, so where appropriate we have attempted to capture the spirit of the ICC recommendations in the context of England and Wales.

The ICC also made the following overarching recommendations with which we agree and which we have kept in mind when drafting this document:

ICC recommendations

1 *In legislating, devising policy, drafting information and guidance documents, and making arrangements for and conducting baby cremations, the baby and the interests of the family should be the central focus of attention. Parents and families should be given time and space to reach the correct decision for them. Arrangements should be in place at each hospital for on-going contact with parents, particularly mothers, where that contact is necessary.*

⁴ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/92664.aspx>

17 All forms of application prescribed should be designed by the Scottish Government with simplicity and clarity in mind, and all cremation authorities, Health Boards and other healthcare providers should be required to use the forms so prescribed and designed.

64 The Scottish Ministers should keep the cremation and funeral industries under review and should consider, in light of the reports of the National Committee and the independent Inspector, whether further regulation of either is required.

Regarding ICC recommendation 64, we will keep the England and Wales regulations under review. We anticipate that after this current work the next opportunity to review the regulations will dovetail with the Department of Health's planned death certification reforms in due course.

While this consultation focuses on the recommendations of the Emstrey and ICC reports, we are keen in addition to use it to consider other legislative changes to the cremation regulations that respondents feel are important.

Q1 - Do you have any general comments on the cremation process, or on the 2008 regulations⁵? If so please give details.

In relation to stillbirths the ICC made the following recommendations:

ICC recommendations

25 Legislative provisions similar to those in Regulation 20 of the 2008 Regulations (England and Wales) should be introduced requiring appropriate certification of a stillbirth.

27 The provisions of Regulations 13 and 15A of the 1935 Regulations should be amended to apply to stillborn children.

These recommendations proposed that Scotland should adopt the current procedures in England and Wales covering the certification of a stillbirth, and the application for and authorisation of a cremation. The Scottish Government response was that legislation would be amended as recommended by the ICC.

This consultation document does not contain any proposals specific to stillborn babies, although some of the questions are relevant to cremations following stillbirths.

⁵ <http://www.legislation.gov.uk/ukxi/2008/2841/contents/made>

2. Definition of ashes

This chapter considers whether there should be a statutory definition of ashes.

We propose to have a statutory definition of ashes and should be grateful for views on this.

Emstrey recommendation

4 *I recommend that the Cremation Regulations are amended in England, as in Scotland, to give effect to the Bonomy Commission's definition of ashes.*

ICC recommendations

3 *The "ashes" which the cremation authority is obliged to give into the charge of the person who applied for the cremation if he so desires should be defined in legislation as "all that is left in the cremator at the end of the cremation process and following the removal of any metal". That should not preclude the applicant from consenting in advance to the removal of metals, such as coffin nails and artificial joints, and their separate disposal, including as part of a metal recycling scheme.*

4 *Cremation authorities should review their practices immediately to ensure that, in dealing with the "ashes" following cremation, they proceed on the basis that the "ashes" are as defined in the foregoing recommendation.*

5 *The Scottish Government should inform their counterparts in England and Wales and Northern Ireland about the changes in legislation in Scotland to enable them to consider clarification of the definition of "ashes" in identical terms.*

The Burial and Cremation (Scotland) Bill

Part 2 of the Bill defines cremation as the reduction to ashes of human remains by the burning of the remains and the application to the burnt human remains of grinding or other processes. It says that "ashes" does not include metal, and that "human remains" includes, where remains are clothed, in a coffin or with any other thing, the clothing, coffin or other thing.

The Scottish Government said that recommendation 4 was for cremation authorities and the ICCM and FBCA, but it supported the recommendation. Scottish Ministers would write to counterparts in the three UK Governments reflecting this point, and the work of the Commission more generally.

Commentary

There is no clear definition of 'ashes' in the legislation that currently applies in England and Wales. This can mean that, from one crematorium to another, different remains may be considered as ashes after a cremation, and in the past this has led to misunderstanding and confusion. The ICC and Emstrey reports recommended that 'ashes' should be defined in legislation as 'all that is left in the cremator at the end of the cremation process and following the removal of any metal'. Such a definition should help

make sure that any remains left after a cremation will be regarded as ashes, enabling them to be dealt with in accordance with parents' wishes.

We understand that ashes cannot be recovered in every case, particularly following the cremation of some early pregnancy losses.

Q2 - Do you agree that 'ashes' should be defined in legislation as 'all that is left in the cremator at the end of the cremation process and following the removal of any metal'? If not, please explain why.

Q3 - Do you think this definition of ashes would necessitate any change of practices in crematoria? Why / why not?

Q4 - [For cremation authorities] Does your cremation equipment maximise the recovery of ashes (for instance the use of a cremation tray to retain ashes where practicable, and the maintenance of operational conditions that will minimise the loss of any ashes during the process of cremation)? If not, what changes would be required to maximise the recovery of ashes? If there would be any cost implications please provide details of where the costs would arise, and how much you would anticipate them to be.

3. Collection and scattering of ashes

This chapter considers whether, before a cremation can take place, the cremation applicant should be required to specify what they wish to happen to any ashes that are recovered. It examines the following issues:

- a) A requirement for the cremation applicant to say what they wish to be done with the ashes
- b) Non-collection of ashes
- c) Where there are no ashes

We do not as yet have a definitive position regarding these issues and are keen to have respondents' views.

Emstrey recommendation

N/A

Infant Cremation Commission recommendations

18 *The forms prescribed for (a) [stillborn baby] and (c) [individual cremation of a non-viable baby] should contain a question requiring the applicant to specify how the ashes should be dealt with following the cremation. The options available should include retention for a defined period pending a final decision and also later extending the period of retention.*

19 *There should be provision in forms for (a) [stillborn baby] and (c) [individual cremation of a non-viable baby], or on a separate form, for the applicant to authorise a representative, such as the funeral director, to collect the ashes. Where the funeral director is the person authorised, the form should also provide for the consent of the applicant to the funeral director returning the ashes to the crematorium in the event that the applicant does not collect them from the funeral director or give the funeral director instructions as to their disposal within a defined period.*

20 *There should be a specific legislative provision that the cremation should not be authorised to proceed if the application does not contain a clear direction as to how the ashes should be dealt with.*

21 *Where ashes are left in the care of the crematorium on the basis that they will be collected, or to await further instructions within a defined period, the cremation authority may not scatter or inter them unless 14 days' notice of their intention to do has been given to the applicant.*

26 *The duty of cremation authorities as to the handling of ashes set out in Regulation 17 of the 1935 Regulations should be extended to apply to stillborn and non-viable babies.*

41 *In the case of deceased and stillborn babies, on completion of the entry by recording the ashes location or collection and the date thereof, the cremation authority Registrar should be required to send a notice to the applicant confirming which occurred*

and, if scattered or interred, where that was, along with an extract of the full register entry. In the case of the individual cremation of a non-viable baby the Registrar should issue such a notice and extract on request and the form of application should provide for such a request to be made.

The Burial and Cremation (Scotland) Bill

Part 2 of the Bill says that Ministers may regulate for the disposal of ashes by cremation authorities and may make regulations about cremation applications and cremation registers.

Commentary

a) A requirement for the cremation applicant to say what they wish to be done with the ashes

The ICC recommended that, before an infant cremation can take place, the applicant must specify what they wish to be done with the ashes. We believe it is helpful to consider the potential application of this to all regulated cremations, rather than just those of babies.

Please note that the application of such a requirement specifically to fetuses of less than 24 weeks is considered as part of chapter 11. **The questions in this section therefore do not apply to the cremation of fetuses of less than 24 weeks.**

A statutory requirement for applicants for cremation to specify what should happen to the ashes would, most practically, be achieved by adding a section on this to the application form for cremation. This form is already statutory, under the 2008 regulations, for all regulated cremations⁶.

Regarding recommendation 20, the Scottish Government suggested that the application form for cremation might set out the following four potential options for ashes, and that a cremation should not be able to proceed if this information was not completed:

(a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;

(b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;

(c) collection by the applicant or the applicant's appointed representative;

(d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

Additionally, if either of options (c) or (d) is selected, the applicant must sign an additional declaration:

⁶ <http://www.legislation.gov.uk/ukxi/2008/2841/schedule/1/made>

(e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

While this approach may have merit, it may not be necessary to regulate because in practice many cremation companies and / or funeral directors already have their own forms and robust processes to make sure that ashes are dealt with in accordance with applicants' wishes. In addition 2008 regulation 33(2)(m) states that a cremation authority's register must record how ashes were disposed of. Therefore the register already acts as a record of discussions about how an applicant wishes a cremation authority and / or funeral director to deal with ashes.

Q5 - Do you think that a cremation should proceed only if the applicant has specified what should happen to the ashes? Please explain your answer, including any negative impacts and / or cost impact you think there might be.

Q6 - [For cremation authorities and funeral directors] In what percentage of individual cremations are ashes not collected? Why is this, and what do you do when ashes are not collected? Does your cremation authority/company have a formal procedure?

Q7 - Do you think that the statutory application form for cremation in the 2008 regulations should be amended to include options for any ashes which are recovered, or do you think that current non-statutory processes (combined with the cremation authority's statutory duty to record in its register how ashes were disposed of) are sufficient?

Q8 - Do you think that, having recorded the ashes' collection or location in the register, a cremation authority should have to send a copy of the register entry to the applicant? Why / why not?

b) Non-collection of ashes

The ICC recommended a set process for cases where ashes are not collected:

- The cremation application form enables the applicant to authorise someone else to collect ashes, including the funeral director.
- If the funeral director collects the ashes, the form should contain the applicant's agreement to the funeral director returning the ashes to the crematorium if the applicant does not collect the ashes (or instruct the funeral director as to their disposal) within a set period.
- When the period has elapsed, the funeral director may return the ashes to the crematorium, which the crematorium records in its register.
- Where ashes are left with the crematorium awaiting collection or further instructions within a defined period, and that period has elapsed, the cremation authority may scatter or inter the ashes after giving the applicant 14 days' notice.

We are interested in respondents' views on this proposal and on how long funeral directors and cremation authorities should each retain ashes.

Q9 – Do you think the above process for dealing with uncollected ashes is appropriate? If so how long should funeral directors and then crematoria each be required to store such ashes?

c) Where there are no ashes

Despite the best equipment and techniques, we recognise that there may be a small number of cases where there are no ashes remaining at the end of the cremation process. This might be the case particularly for early pregnancy losses.

Q10 - Do you think the cremation application form should state that, whilst every effort will be made to recover ashes, on rare occasions there may be no recoverable ashes? Or do you think this could unnecessarily alarm the majority of applicants, for whom ashes are recovered? If the latter, what do you think would be the best way to make sure applicants were aware of the possibility of there being no ashes?

Q11 - If no ashes are recovered, should the cremation authority be required to advise the applicant of this and the reason; and record this in its register?

4. Cremation authority record-keeping

This chapter considers how long cremation authorities should be required to retain records.

We do not have a definitive view regarding this issue and the questions below and therefore seek respondents' views.

Emstrey recommendation

N/A

Infant Cremation Commission recommendations

36 *The Cremation Register should be a public document and the Scottish Government should make legislative provision to that effect, subject to any restrictions necessary in the interest of privacy and to comply with data protection requirements.*

39 *The registers kept by cremation authorities, Health Boards and other healthcare providers should be preserved indefinitely. All forms of application, certificates and other official documents relating to a cremation should be preserved for a minimum of 50 years. The original should be preserved for 2 years and copies, which may be in electronic form, for the remainder of the 50 years.*

40 *The Scottish Government should form a working group drawn from cremation authorities and providers of software to crematoria to review the available facilities for electronic processing and storage of cremation documents and records, to consider and recommend appropriate improvements to achieve the objects of the recommendations of this Commission, and to consider what additional features and facilities the software manufacturers should be invited to develop, all with a view to ensuring that the systems in use by cremation authorities are as efficient and secure as possible. The working group should also consider and advise on the appropriate requirements for back-up systems. Having regard to the importance of keeping records secure, the working group should also consider and advise whether additional security measures are necessary and what back-up storage systems should be provided.*

The Burial and Cremation (Scotland) Bill

Part 2 of the Bill says that each cremation authority must keep a register of cremations which should be available for public inspection, free of charge, and that copies of register entries must be provided on request for a reasonable charge. The Bill also says that Scottish Ministers may make regulations about the register, with associated criminal offences.

Commentary

The ICC recommended that a (Scottish) crematorium's register should be a public document, whilst respecting privacy and data protection legislation. We believe that

regulation 35 of the 2008 regulations⁷ meets the aim of the ICC recommendation as it already gives a cremation authority the power to allow a person to inspect a register, or to provide them with a copy of (part of) a register.

The ICC also recommended that crematoria should keep registers indefinitely and other documents (forms, certificates and other documents) for at least 50 years (in hard copy for 2 years and electronically thereafter). In England and Wales regulation 34 of the 2008 Regulations states that a cremation authority must retain all documents for 15 years (in hard copy or electronically, although if electronically, the hard copy must still be retained for 2 years).

Under the 2008 Regulations cremation authorities are responsible for arranging their own IT systems, in order to meet the record-keeping requirements of the regulations.

Q12 - Do you believe that it is sufficient for a cremation authority to retain records and forms relating to burial and cremation for 15 years (as they are required to do now)? If you think 15 years is inappropriate, how long should records be kept and why, and what would be the benefit / cost to cremation authorities? If there would be any cost implications please provide details of where the costs would arise, and how much you would anticipate them to be.

Q13 - Do you have any examples of best practice in record-keeping, electronically or in hard copy, that you feel could be usefully shared with other cremation authorities?

⁷ <http://www.legislation.gov.uk/uksi/2008/2841/regulation/35/made>

5. Appointment of an inspector

This chapter considers whether there should be an inspector of cremation authorities and, if so, what the role should look like.

We do not as yet have a definitive position regarding these issues and are keen to have respondents' views.

Emstrey recommendation

2 *I recommend that the Secretary of State exercise his powers under the Cremation Regulations to appoint an independent inspector with powers comparable to those outlined in recommendation 63 of the Bonomy report.*

ICC recommendations

63 *Scottish Ministers should appoint an independent inspector to monitor working practices and standards at crematoria, provide feedback to cremation authorities on how they are performing and to report to the Scottish Ministers as required. The independent inspector should have authority to investigate complaints from the public about working practices and standards at crematoria, to adjudicate upon these complaints and report findings to the Scottish Ministers. The role of the inspector should be extended to the funeral industry in respect of which there is no current provision for inspection.*

The Burial and Cremation (Scotland) Bill

Part 4 of the Bill provides for the (amalgamated or separate) appointment of an inspector for burials, crematoria and funeral directors, and sets out the inspector's (or inspectors') role, powers and responsibilities. It also establishes offences in relation to the inspection regime and the sanctions which the inspector(s) can impose.

Commentary

Both the ICC and Emstrey reports recommend the appointment of an independent inspector with powers to:

- monitor working practices and standards at crematoria;
- provide feedback to cremation authorities on their performance;
- report to Government ministers as required; and
- investigate and adjudicate on complaints from the public relating to working practices and standards at crematoria and to report findings to ministers.

Both reports envisaged that the inspector's remit would not be limited to issues around infant cremation but would include the full range of cremation services. The ICC report also recommended that the inspector's role should extend to the funeral industry.

In light of the ICC's recommendations, the Scottish Government appointed an independent inspector in March 2015. His role is to:

- ensure cremation authorities in Scotland are adhering to current legislation and best practice
- respond to complaints or queries from the public about cremations
- inspect cremation registers and other statutory documentation to ensure they are being completed and maintained appropriately
- provide direction to crematoria managers and staff to ensure they are operating in line with the recommendations of the ICC
- support the development of future primary legislation on burials and cremations.

The Scottish inspector has been appointed to inspect the 28 crematoria in Scotland (which compares to 247 crematoria in England and Wales), on a flexible part time (approximately 2 days a week) basis. He does not have any staff.

Part 4 of the Burial and Cremation (Scotland) Bill makes further provision with regard to the Scottish inspector.

There is existing statutory provision for the inspection of crematoria in England and Wales, and penalties for breaches of regulations, under the Cremation Act 1902⁸. These provisions have not been exercised in recent years.

Q14 - Do you think that the appointment of an inspector would be the most effective way of monitoring working practices and ensuring appropriate standards at crematoria? If so, it would be helpful to have your views on:

- **what you think the inspector's role should be – for example, should it replicate the current remit of the Scottish inspector set out above or should any of these responsibilities be removed or other responsibilities included and, if so, why?**
- **how frequently you think crematoria should be inspected**
- **in what way and how frequently you think the inspector should report to Ministers**
- **whether publicising cremation authority good and bad practice would be an effective way of raising standards**
- **whether you consider that the inspector's remit should include complaints handling**
- **whether you consider that the inspector's remit should extend to the funeral industry**
- **how you think an inspector should be resourced and funded**
- **how you think the independent status of the inspector should be safeguarded**

⁸ <http://www.legislation.gov.uk/ukpga/Edw7/2/8/contents>

Q15 - If you do not think that an inspector would be the most effective way of monitoring working practices and ensuring appropriate standards at crematoria, what alternative approach do you think might be needed to improve standards, and how might this be implemented?

6. National cremation working group

This chapter concerns the creation and operation of a national working group to improve cremation law and practice.

We intend to set up a working group and should be grateful for respondents' views on the question below.

Emstrey recommendation 6

I recommend that a single official, reporting in this respect to a single minister, be given responsibility for coordinating the Government's approach to cremation law and practice and for drawing together into a coherent whole the policies, including environmental policies, of different Government departments on the subject.

ICC recommendations 57-60

The Scottish Government should establish a National Committee with responsibility for baby and infant cremations.

The National Committee should be chaired by a senior Scottish Government official. Its membership should be drawn from authorities, organisations, professions and other bodies with a role in baby and infant cremation, and should include representation from groups or organisations representing affected parents and providing bereavement support.

The National Committee should have power to establish working groups of its membership, with co-opted members where appropriate, to consider specific recommendations from this report. Each of the working groups recommended above would be sub-groups of the National Committee. It would be open to the National Committee to assign to one working group the tasks assigned in more than one recommendation, for example recommendations relating to technical matters and cremation technology could be dealt with by a professional sub-group reporting back to the full Committee. The National Committee should also have the power to establish working groups to consider other issues identified by the National Committee and to report back to the National Committee.

The National Committee should report to Scottish Ministers annually on progress against the recommendations made by this Commission. That annual report should be published on the Scottish Government website.

The Scottish Government response to the ICC recommendations

The Scottish Government said that the National Committee would be established and would hold its first meeting no later than autumn 2014. The National Committee would produce an Action Plan to set out how it would take forward the various recommendations made by the Infant Cremation Commission. That report would provide timescales for all actions and for reporting to Ministers, including a first report no later than 12 months from the first meeting of the National Committee.

Commentary

Both the Emstrey and ICC reports made recommendations aimed at improving the co-ordination of policies relating to the national approach to cremation law and practice. The Emstrey report suggested that this responsibility should be vested in a single Government official. The ICC report instead recommended the establishment of a National Committee with responsibility for baby and infant cremations.

A National Committee has now been established in Scotland, with representatives from the Scottish Government, UK Government, organisations and sectors involved in infant cremation as well as parents. The Committee's aims and objectives are:

- to develop, promote and annually review a Code of Practice on baby and infant cremations which reflects contemporary standards and best practice
- to ensure all recommendations from the ICC are implemented, through a combination of strategic oversight, monitoring and also through direct tasks which will be undertaken by expert Working Groups set up by the National Committee
- to promote improvements in practice, technology, policy and legislation
- to report annually to Ministers on standards and practice in baby and infant cremations

The Government supports better co-ordination of policy development in this area. To that end, our intention is that a national cremation working group will be established to consider in detail and, where appropriate, take forward, the Emstrey and ICC recommendations. Its membership will be drawn from Government departments and other organisations with an interest in this area, together with representatives from across the cremation sector. The group's precise membership, aims and objectives and detailed work plan will be published once confirmed.

Q16 - Should the working group's aims and objectives be similar to those of the Scottish National Committee? Should anything be added, or omitted?

7. Training of crematorium staff and funeral directors

This chapter considers the training that those who work in a) the cremation industry and b) the funeral industry should undertake.

We intend that the national working group should consider this.

a) Training and qualifications of crematorium staff

Emstrey recommendation

5 *I recommend that minimum standards of professional training, and for continuing professional development, be introduced for crematorium supervisory and operating staff.*

ICC recommendations

42 *The Institute of Cemetery and Crematorium Management (ICCM) and Federation of Burial and Cremation Authorities (FBCA) should review their respective technical training programmes in accordance with the requirements identified in Section 11.*

45 *The ICCM should revise their management training scheme to include an element dealing with baby and infant cremation and to make that a compulsory part of study for the certificate in cremation management.*

44 *The ICCM and FBCA should each introduce into their respective technical training programmes provision requiring the trainee technician and his mentor to attend and undertake, in the course of the training period and at a crematorium identified by the Institute or the Association as excelling in the conduct of baby and infant cremations, a full day of training in the conduct of baby and infant cremation on two separate occasions. The trainee should be required to satisfy the examiner of his knowledge and understanding of the methods and techniques of the conduct of baby and infant cremations that enhance the prospects of recovering ashes.*

46 *The person with direct management responsibility for the operation of a crematorium should hold either a qualification in crematorium management or the FBCA certificate of competence to operate cremators or the ICCM intermediate certificate for crematorium technical operations.*

47 *The FBCA should develop and introduce a training programme for continuing professional development.*

The Scottish Government response to the ICC recommendations

The Scottish Government advised that these recommendations were for the ICCM/FBCA but the Scottish Government supported this recommendation. The National Committee proposed at recommendation 57 would have oversight. Both organisations would be expected to confirm when training programmes would be updated to the National Committee and this would be included with the National Committee Action Plan. The issue of training and qualifications would be included in the Code of Practice at recommendation 61. In the meantime cremation authorities would be expected to ensure those with direct management responsibility had appropriate qualifications.

Commentary

The ICC recommended that the individual with direct management responsibility for the operation of a crematorium should be appropriately accredited, either with a qualification in crematorium management; the FBCA's certification of competence to operate cremators; or the ICCM's intermediate certificate for crematorium technical operations.

Professional training is primarily an issue for the ICCM and FBCA. However, the Government agrees with the Emstrey and ICC recommendations in this area. Much work has already been undertaken by the professional bodies in the context of the Scottish National Committee's Action Plan.

Our intention is therefore to remit consideration of these recommendations to the national cremation working group: to review progress already made; to identify where any further work or adjustments might be necessary in the context of England and Wales; and to consider whether training and accreditation should be included in any industry Code of Practice.

Q17 - Should there be a requirement for accreditation, and, if so, should this be set out in a Code of Practice or in legislation? Please give reasons for your response.

b) Training of funeral directors

Emstrey recommendation

NA

ICC recommendations

49. *All providers of training programmes for funeral directors should review them in the light of any legislative changes affecting the cremation of non-viable and stillborn babies and associated administrative procedures.*

50. *All providers of training programmes for funeral directors should devise modules designed to give funeral directors an understanding of the cremation process, the effect it has and the prospects of recovering ashes in baby and infant cremations.*

The Scottish Government response to the ICC recommendations

The Scottish Government considered that this was primarily for funeral directors but it supported these recommendations. The National Committee proposed at recommendation 57 would have oversight of both of these recommendations and representatives of funeral directors in Scotland would be expected confirm progress to the National Committee. These actions would be reflected in the National Committee Action Plan detailed below.

The Scottish Government also considered regulation of the funeral industry although it felt this was outside its remit to look at infant cremations. It advised that it was keen to hear views about the desirability of regulating the funeral industry, balancing ensuring minimum standards and greater scrutiny with financial and administrative costs which may in turn be passed on to bereaved families.

Commentary

The Government agrees with the ICC report recommendations that training for funeral directors should provide an understanding of the cremation process and its effects, and the prospect of recovering ashes in baby and infant cremations; and that training should be reviewed in the light of any legislative changes in respect of baby and infant cremation and its administration. Our intention therefore is that further work on this should be undertaken by the national cremation working group who will be best placed to review developments in this area and to consider whether appropriate provisions should be included in any Code of Practice.

8. Code of practice and cremation authority policy statement

This chapter considers the following:

- a) A national Code (or Codes) of Practice on infant cremation
- b) A cremation authority policy statement

We propose to have one or more Codes of Practice, and that any Code(s) should not be regulatory, in order to allow amendment over time without requiring changes to legislation.

We should be grateful for respondents' answers to the questions below, in order to inform our thinking further.

a) A National Code (or Codes) of Practice on infant cremation

Emstrey recommendation

1 *I recommend that the Government takes steps to ensure a single and authoritative code of practice for baby and infant cremations.*

ICC recommendation

61 *The National Committee should, as a priority, develop a national Code of Practice for baby and infant cremation. Such a Code, which should be informed by the recommendations of this Commission, should set down the minimum requirements for organisations to adhere to when supporting bereaved parents and families through the baby and infant cremation process, and seek to identify best practice to be followed by all bodies involved in baby and infant cremation. The Code of Practice should include general principles and guidance as well as specific technical and operational guidance for cremation authorities, Health Boards and funeral directors, with a view to achieving consistently high standards of practice among all with a role in baby and infant cremation.*

62 *The Code of Practice should be a live document that is not only responsive to developments, but also instrumental in promoting improvements, in practice, technology, policy and legislation. The National Committee should therefore continue to monitor developments in all aspects of activity related to baby and infant cremation and review the Code annually to ensure that it reflects contemporary standards and best practice.*

The Burial and Cremation (Scotland) Bill

The Bill makes provision for Ministers to issue Codes of Practice for burial and cremation authorities and for funeral directors, and requires the Codes to be consulted on when first issued and when subsequently revised.

Commentary

The Emstrey and ICC reports recommend the establishment of a single national Code of Practice on infant cremation. The purpose of this was to set down the minimum requirements for all organisations involved in the support of bereaved parents, and to

identify best practice. The aim was to achieve consistency and high standards of practice among all involved in the management of bereavement and the cremation process. To that end, it was recommended that, in addition to general principles and guidance, the Code of Practice should include specific technical and operational guidance for cremation authorities, healthcare providers and funeral directors.

The Government believes it is right that those who provide services for bereaved parents at such a difficult time in their lives are appropriately qualified to do so, can demonstrate sensitivity and care in their approach, and have the necessary equipment to enable them to deliver ashes when possible. To this end, we support the establishment of a Code of Practice in England and Wales.

The Scottish Government has published an initial, summary, Code of Practice on Infant Cremations⁹ which is reproduced at **Annex A**. The more detailed, final version is due for publication before the end of 2015 and will be reviewed annually by the Scottish National Committee. These draw on the industry Codes established by both the FBCA and ICCM. We therefore intend that the detailed development of a code for England and Wales should be taken forward by the national cremation working group as a matter of priority.

Q18 - To inform work on a Code of Practice, we would be interested in views on the following questions:

- **Taking the Scottish Code of Practice as a basis, what changes, if any, might need to be made in the context of England and Wales – and why?**
- **Should there be separate codes for infant cremation and for cremation more generally – and, if so, why?**
- **Should the code(s) incorporate the technical Code of Practice recommended in the Emstrey report (see Chapter 9 (cremation authority practice on the recovery of ashes) for more details) or should this be developed separately?**
- **Should the Code of Practice (or a separate code on infant cremation) incorporate the code on shared cremation recommended in the ICC report (see chapter 11 for more on shared cremations) or should this be developed separately?**

In order for a national Code of Practice to be effective, it needs to be a living document that is regularly reviewed in the light of developments in industry standards. There will also need to be a mechanism for monitoring and, where necessary, overseeing compliance with the code.

Q19 - We are therefore interested in views on the following issues:

- **Should the Code(s) of Practice be reviewed annually, or less frequently?**
- **How should adherence to the Code(s) be monitored?**
- **Do you think that non-compliance with the Code(s) of Practice should be publicly reported?**

⁹ <http://www.gov.scot/Resource/0047/00478003.pdf>

b) A cremation authority policy statement

ICC recommendation

11 *Each cremation authority should publish a policy statement, which should include a commitment to the sensitive treatment of the baby throughout and to respecting the wishes and needs of parents and families, and also set out the authority's policy on ashes. To ensure clarity and consistency the ICCM and the FBCA should form a joint working group to develop a model policy statement reflecting best practice and allowing for local variation as appropriate.*

The Scottish Government response to the ICC recommendation

This Scottish Government advised that this was for cremation authorities and the ICCM and FBCA, but that the Scottish Government supported the recommendation and expected cremation authorities to respond to this recommendation as a priority, based on advice from ICCM and FBCA. The Scottish Government would support any joint discussions between ICCM and FBCA that may be necessary. The Scottish Government can see no reason why such policy statements cannot be published swiftly. Cremation authorities would be expected to have appropriate policy statement in place by the end of August 2014. Cremation authorities would report progress against this recommendation to the first meeting of the National Committee. The subject of policy statements would be included in the Codes of Practice in recommendations 29 and 61.

Commentary

The ICC report recommended the publication by each cremation authority of a policy statement of its commitments in respect of infant cremation and its policy on ashes. The recommendation encouraged the joint development of a model statement by the representative organisations which would reflect best practice but allow local variation. All cremation authorities in Scotland have now published such an agreed Scottish policy statement.

As in other areas, the Government is aware that a great deal of work has already been undertaken in light of the ICC's recommendation. Our intention is therefore to remit further consideration of the recommendation to the national cremation working group, to review progress already made; to identify where any additional work or adjustments may be necessary in the context of England and Wales; to monitor implementation; and to consider whether appropriate provisions should be included in any Code of Practice.

9. Cremation authority practice on the recovery of ashes

This chapter sets out the Government's intention for the national working group to consider the best technical framework for recovering baby ashes.

Emstrey recommendation

3 *I also recommend that the inspector's responsibilities shall include the promotion of a single national code of practice with regard to cremator technology and techniques for infant cremations so as to maximise the chances of the preservation of ashes that can be returned to the applicant for the cremation.*

ICC Recommendations

8 *As an urgent interim measure, the ICCM and the Federation of Burial and Cremation Authorities (FBCA) should form a joint working group, which should also include two lay persons nominated by the Scottish Government and a representative of Facultatieve Industries Ltd, to consider the various practices and techniques currently employed in baby and infant cremation in full-scale cremators with a view to identifying those practices which best promote the prospect of recovery of ashes inclusive of baby remains and compiling guidance for cremator operators. The working group should identify aspects of the cremation process which could conceivably be changed or improved and into which research ought to be commissioned by the Scottish Government. The working group's endeavours may be assisted by the fact that the majority of cremators in use in Scotland are produced by the same manufacturer, Facultatieve Technologies Ltd.*

9 *Following completion of its work in 8 above, that working group should also consider the operating systems and other features of the cremators in use in Scotland and the practices currently employed with a view to identifying those aspects of the cremation process which could conceivably be changed or improved and into which research ought to be commissioned by the Scottish Government. That should include the practice of cremating babies at the end of the working day and overnight with the cremator operating and monitoring equipment switched off in a way that will cause no material environmental damage and satisfies SEPA that it should be permitted, with a view to increasing the prospects of recovering ashes.*

10 *That working group should consider and advise whether, in light of experience in England and Ireland, and having regard to their efficiency in recovering ashes and the costs of installation and operation, the Scottish Government should commission research into the design and development of small-scale cremators.*

The Scottish Government response to the ICC recommendations

The Scottish Government considered that recommendations 8, 9 and 10 were for the ICCM and FBCA but it supported the recommendation. The Scottish Government would provide any assistance necessary to ICCM and the FBCA to take this work forward. It would work with affected parents to identify two lay members for this group.

The Scottish Government responded that the Working Group would be established as a priority over the summer of 2014 and in due course would become a sub-group of the

National Committee recommended in recommendation 57, once that Committee is established.

6 *All cremation authorities at whose crematoria ashes are not always recovered should liaise with a crematorium or crematoria where ashes are recovered more regularly to share their experiences and information about their respective practices in order to identify changes in practice that should be introduced immediately with a view to increasing the prospects of recovering ashes.*

7 *The cremation authorities which have rejected the use of trays for baby cremations on health and safety grounds should urgently consider, in light of the experience of others, the introduction of a local protocol to allow trays to be used in a way that will expose no one to undue risk.*

2 *The FBCA in the course of their “critical friend” visits to crematoria and the ICCM in their self-assessment questionnaire should address specifically the conduct of baby cremations and recovery of ashes.*

43 *The FBCA should review all published guidance documents to provide clear and fully informed guidance on the prospects of ashes being recovered based on knowledge of skeletal maturity rather than gestational age alone.*

The Scottish Government response to the ICC recommendations

The Scottish Government considered that recommendation 6 and 7 were for cremation authorities but it supported the recommendations and expected all cremation authorities to take immediate steps to ensure practices were adopted to increase the potential for ashes to be recovered. The implementation of the recommendations would be monitored by the National Committee proposed in recommendation 57. The Scottish Government would expect cremation authorities to report at the first meeting of the National Committee on their progress towards implementation of this recommendation.

The Scottish Government considered that recommendation 2 was primarily for the FBCA and ICCM, but it supported the recommendation and the FBCA and ICCM would be expected to amend practice in this way.

The Scottish Government considered that recommendation 43 was for the FBCA but it supported the recommendation. It expected the FBCA to update all published guidance documents which were in use in Scotland as a priority. The FBCA would be asked to confirm to the National Committee which materials would be updated. The issue of Guidance documents would be addressed in the Code of Practice in recommendation 61.

Commentary

The Emstrey and ICC reports together made a number of recommendations relating to the technical framework for recovering baby ashes, with the aim of improving the prospects of recovery. These included establishing a national Code of Practice; setting up an industry working group to identify and promote best practice and to pursue improvement in terms of both processes and technology; liaison between cremation authorities to improve learning from best practice; reviewing the use of baby trays by those cremation authorities which do not use them; closer monitoring by industry bodies of the local conduct of baby

cremations and recovery of ashes; and a review of FBCA guidance relating to the prospect of recovering ashes.

As in other areas, the Government is aware that a great deal of work has already been undertaken in light of these recommendations. The Government therefore intends to remit further detailed work in this area to the national cremation working group, to review progress already made; to identify where any additional work or adjustments may be necessary in the context of England and Wales; to monitor implementation; to consider whether appropriate provisions should be included in any Code of Practice and, if so, whether this should be in an overarching code or, as recommended in the Emstrey report, a separate one dealing specifically with technical issues.

10. Information and guidance for bereaved parents

This chapter considers the information that bereaved parents receive about cremation from funeral directors and healthcare professionals following the loss of a baby and how this might be improved where needed.

We do not as yet have a definitive position regarding these issues and are keen to have respondents' views.

Emstrey recommendation

N/A

ICC recommendations

48. *Mothers of non-viable babies and families of stillborn babies and very young deceased babies considering cremation should be advised where there is a possibility that ashes will not be recovered and reminded of the availability of the option of burial.*

12. *Funeral directors and healthcare staff should include appropriate extracts from the cremation authority policy in information and guidance material given to families.*

51. *Each Health Board, as part of continuously improving the quality of the service, should identify staff who will have responsibility for communicating with families about arrangements for disposal and liaising with funeral directors and crematoria and, as part of their continuous professional development, arrange for their further education and training in the necessary skills, including developing their communication skills, improving their understanding of the roles and responsibilities of colleagues, and providing an appreciation of the capabilities of modern cremation equipment and contemporary cremation practice and the effect of cremation on babies and infants.*

52. *Health Boards should support staff in initiating the formation of local multi-disciplinary working groups comprising all with a role in dealing with the fate of the baby from hospital to crematorium to exchange information, knowledge, understanding, practice and experience, as well as promoting joint training programmes, with the aim of ensuring that all involved are familiar with the facilities available and practices followed locally.*

53. *Health Boards, organisations providing advice, support and guidance to grieving families such as SANDS UK and the Miscarriage Association, funeral directors, the ICCM and FBCA, and any other body providing advice, support and guidance to grieving parents and families should review all publications dealing with cremation that are likely to be distributed to, or seen by, the public to ensure that they include accurate information that is expressed clearly and consistently, including in particular information about the prospects of recovering ashes, and that they contain a reminder of the availability of the option of burial.*

54. *The Scottish Government should establish a working group comprising a representative from each Health Board and chaired by a Scottish Government official to review all guidance documents and information leaflets in use over all Health Boards and private healthcare providers, including those compiled by, or in conjunction with, bodies such as SANDS and the Miscarriage Association, relating to management of pregnancy loss and infant bereavement and arranging disposal, with a view to ensuring consistency*

in that guidance and information, and endeavouring to reduce the proliferation of different documents in use.

The Scottish Government response to the ICC recommendations

(To recommendation 48) The Scottish Government advised that giving information to parents should be part of the Code of Practice proposed in recommendation 61. The National Committee proposed at recommendation 57 will take forward the work to develop the new Code of Practice in recommendation 61.

(To recommendations 12 and 51) The Scottish Government advised that funeral directors and the NHS should ensure the policy statements of relevant cremation authorities were included within information and guidance as soon as possible. The NHS and funeral directors should ensure materials are updated as soon as policies are published by cremation authorities. The implementation of this recommendation would be monitored by the National Committee proposed in recommendation 57, and the first meeting of the Committee would consider progress against the implementation of this recommendation.

The Scottish Government would work with NHS Scotland and the relevant Royal Colleges to ensure appropriate training is available and undertaken. The National Committee proposed at recommendation 57 would have oversight of this recommendation and representatives of NHS Scotland would confirm when training arrangements are in place. This would be reflected in the National Committee Action Plan detailed below. This recommendation would also be addressed in the Code of Practice in recommendation 61.

(To recommendation 52) The Scottish Government advised that this was primarily for Health Boards but the Scottish Government supports such an approach and would expect all Health Boards and other organisations to establish local multidisciplinary groups. The formation of such groups would be overseen by the National Committee proposed at recommendation 57, but work towards the establishment of such groups can progress immediately. The operation of such groups should be seen as good practice and would be included in the Code of Practice proposed at recommendation 61.

(To recommendation 53) The Scottish Government advised that this was for the relevant organisations to take forward but the Scottish Government supported the recommendation. It was important that consistent and accurate information is provided to bereaved families. Organisations should begin updating materials as a priority in light of the findings of the Infant Cremation Commission, and the National Committee proposed at recommendation 57 would oversee this. Regular review of guidance and publications would be included in the Code of Practice proposed at recommendation 61.

(To recommendation 54) The Scottish Government advised that this work would be taken forward by the National Committee proposed at recommendation 57, either within the Committee itself or via a subgroup established for this purpose. This would be reflected in the National Committee Action Plan detailed below.

Commentary

The ICC report made a number of recommendations concerning standards and consistency in the co-ordination and communication of information and guidance to bereaved parents. Some of these recommendations required the involvement of healthcare providers, while others were primarily for cremation authorities and other organisations involved in the support of grieving parents.

As in other areas, the Government is aware that a great deal of work has already been undertaken in light of the ICC's recommendations. The Government therefore intends to remit further consideration of these recommendations to the national cremation working group, to review progress already made; to identify where any additional work or adjustments may be necessary in the context of England and Wales (including where translations into Welsh or other languages may be required); and to consider whether appropriate provisions should be included in any Code of Practice.

Q20 - Do you have any examples of good practice in giving information to bereaved parents? If so, please provide details.

11. Cremation of fetuses of less than 24 weeks' gestation

This chapter examines the possible regulation of the cremation of fetuses of less than 24 weeks. In particular it considers:

- a) What happens now in England and Wales
- b) Overarching issues around the regulation of the cremation of fetuses of less than 24 weeks
- c) An application form and process for the cremation of a fetus of less than 24 weeks
- d) Cremations following pre-24 week pregnancy loss outside a hospital setting
- e) Who should apply for the cremation of a fetus of less than 24 weeks
- f) Witnessing an application form
- g) Keeping records of cremations of fetuses of less than 24 weeks

We do not as yet have a definitive position regarding these issues and are keen to have respondents' views.

Emstrey recommendation

N/A

ICC recommendation

13 *The cremation of non-viable babies should be the subject of legislative regulation.*

14 *Appropriate forms of application for cremation should be prescribed for each of three categories of cremation of babies and infants: (a) stillborn baby; (b) shared cremation of non-viable babies; and (c) individual cremation of a non-viable baby.*

15 *On each form of application for cremation there should be a clear warning, in terms appropriate to that form, that ashes may not be recovered, with provision for the applicant to acknowledge having read that warning. In the case of (b) shared cremations the warning should also state that any ashes recovered will either be scattered or interred, and specify which, at the crematorium.*

16 *In the context of their introduction of a new death certification process, the Scottish Government should review the currently prescribed content of cremation application Form A to ensure that only essential questions are incorporated into the new prescribed forms for (a) [stillborn babies] and (c) [individual cremation of a non-viable baby].*

22 *The forms prescribed for (a) [stillborn baby] and (c) [individual cremation of a non-viable baby] should be completed and signed by the applicant personally, and the applicant's signature should be witnessed by a person who is not a member of the applicant's family and has no part in the arrangements for the cremation.*

23 *It should be provided in legislation that those entitled to apply for cremation are: (i) in the case of (a) [stillborn babies] and (c) [individual cremation of a non-viable baby] the nearest relative as defined by section 50 of the Human Tissue (Scotland) Act 2006; and (ii) in the case of (b) [shared cremation of non-viable babies] a person authorised by the Medical Director of a Health Board or other healthcare provider, and that an application presented by a different person should be accepted only on cause shown, which should be recorded in the register referred to below.*

24 *Senior cremation authority staff should be responsible for the scrutiny of all cremation application forms to satisfy themselves that the applicant is entitled to make the application as mother, nearest relative or on cause shown. There should be legislative provision that, if the cremation authority is not satisfied of the applicant's entitlement to apply, then authority for the cremation to proceed may be refused.*

29 *The Scottish Government should establish a working group comprising representatives of Health Boards, funeral directors, cremation authorities and miscarriage and child bereavement support organisations to consider evolving practices in the arrangement and conduct of shared cremations and to draw up a code of practice setting down minimum standards for shared cremations.*

30 *The 2012 Chief Medical Officer and Chief Nursing Officer Guidance on sensitive disposal should be reviewed and consideration should be given to revising it to take account of the comments made in Section 9.*

31 *Annex C to the CMO and CNO Guidance should be revised to: (i) set out specifically the options for disposal explained to the mother above the space for her signature; (ii) state that ashes may not be recovered following cremation, and that any which are recovered will be scattered or buried at the crematorium; and (iii) state specifically that the standard procedure to be followed where the mother declines to discuss disposal is cremation along with others.*

32 *The form of application for (b) [shared cremation of non-viable babies] should state that each mother has authorised the hospital to arrange a shared cremation, and that such authorisation is held in hospital records.*

33 *Each application for cremation of a non-viable baby should be accompanied by a medical certificate that the pregnancy loss occurred before 24 weeks and showed no signs of life.*

34 *Cremation authorities, funeral directors and Health Boards should review the contractual arrangements in place for shared cremations in light of ICCM guidance contained in Section 6 to satisfy themselves that the respective responsibilities of the parties are so defined as to ensure that such cremations are carried out in a dignified and sensitive manner.*

35 *Each cremation authority should be required by legislation to record the cremation of each deceased baby, stillborn baby and non-viable baby carried out by the cremation authority in a register or registers comprising prescribed columns, every one of which must be completed, including in particular, if the ashes were scattered or buried, the date and their location and, if collected, the date and by whom.*

37 *Each Health Board and other healthcare providers should maintain a register of authorisations in which the crematorium at which the baby was cremated is recorded in a way that will ensure traceability of the link between the baby and the ashes.*

38 *Since responsibility for preserving important records relating to hospital-arranged cremations lies with the hospital or other healthcare provider, a working group comprising Health Board representatives and a representative from the private healthcare sector, chaired by a Scottish Government official, should be appointed by the Scottish Government to review hospital record-keeping practice in all hospitals and other healthcare providers in relation to documents relevant to baby and infant cremations with a view to identifying best practice to be applied across Scotland.*

The Burial and Cremation (Scotland) Bill

Part 3 of the Bill provides for the cremation of non-viable babies. It says that a Scottish Health Authority must give a woman the opportunity to decide what she wishes to do with the remains following a pregnancy loss. The Bill also sets out that a woman may change her mind within 5 weeks of her initial decision if the cremation (or burial) has not yet happened. The authority must record what takes place on a prescribed form and in a register.

The Scottish Government response to the ICC recommendations

The Scottish Government accepted recommendations 30 and 31 and said that the Chief Medical Officer/Chief Nursing Officer Guidance would be updated. For recommendation 16 Form A would be reviewed as part of the implementation of the Certification of Death (Scotland) Act 2011. A working group would be established to consider the issues raised in recommendation 29. The Scottish Government supported recommendation 34, with such cremations to be carried out in accordance with the code of practice which would be developed as per recommendation 29.

What happens now in England and Wales

Current legislation and guidance in England and Wales

In England and Wales, the cremation of foetuses of less than 24 weeks¹⁰ is currently not covered by the 2008 regulations, although some cremation authorities do cremate foetuses of less than 24 weeks (around 38,000 cremations a year, including shared cremations¹¹).

For the purposes of the Human Tissue Act 2004 (the HT Act), which applies in England, Wales and Northern Ireland, foetuses of less than 24 weeks are regarded as the tissue of the mother. The Human Tissue Authority¹² (HTA) regulates organisations that remove,

¹⁰ We define a foetus of less than 24 weeks' gestation as one which showed no signs of life outside the mother's womb. The ICC refers to these foetuses as 'non-viable babies'. (A baby born showing signs of life at any gestation is classified as a live birth.)

¹¹ Source: FBCA

¹² <https://www.hta.gov.uk/>

store and use human tissue for scheduled purposes set out in the HT Act, and has a statutory function to provide advice and guidance.

In March 2015, the HTA published its “Guidance on the disposal of pregnancy remains following pregnancy loss or termination”¹³ (reproduced at **Annex B**). The Guidance sets out that, although under the HT Act consent is not a legal requirement for the disposal of pregnancy remains, in practice the wishes of the woman, and her understanding of the disposal options open to her, are of paramount importance and should be respected and acted upon. Informal discussions with stakeholders while preparing this consultation have firmly reiterated this.

The HTA guidance sets out to hospitals (and also abortion clinics) that women should be given a range of choices for the disposal of a foetus of less than 24 weeks, including cremation. It stresses to medical practitioners the importance of communication with parents regarding what will happen in order that they can make an informed choice that is right for them. It expects medical practitioners to have knowledge of local provision and, where local crematoria are not able to accept foetuses of less than 24 weeks, guidance from the HTA is that medical practitioners should have information about others that may be able to offer this service. The HTA guidance refers to guidance from the ICCM¹⁴ and also from Sands, the stillbirth and neonatal death charity, which are useful resources.

In September 2015 the ICCM, with assistance from Sands, published its “Policy and Guidance for Baby and Infant Funerals”¹⁵. In addition, in 2014 Sands published its guidance for bereaved parents, “Deciding about a funeral for your baby”¹⁶.

For nurses and midwives, there is the Royal College of Nursing October 2015 guidance, “Managing the Disposal of Pregnancy Remains”¹⁷.

Current practice in England and Wales

Hospitals will usually arrange the cremations of foetuses of less than 24 weeks where this service is available in their locality, unless parents wish to make their own cremation arrangements. When arranging a cremation, hospitals arrange (usually for a funeral director) to transport foetuses of less than 24 weeks to a crematorium, accompanied by written confirmation from a midwife that the foetus was less than 24 weeks old and there is written parental consent to cremate.

¹³ https://www.hta.gov.uk/sites/default/files/Guidance_on_the_disposal_of_pregnancy_remains.pdf

¹⁴ <http://www.iccm-uk.com/iccm/index.php>

¹⁵ <http://www.iccm-uk.com/iccm/library/Baby%20and%20Infant%20Funerals%20September%202015.pdf>

¹⁶ <https://www.uk-sands.org/sites/default/files/DECIDING%20ABOUT%20A%20FUNERAL%20SINGLE%20PAGE%20LINKED.pdf>

¹⁷

http://www.rcn.org.uk/__data/assets/pdf_file/0008/645884/RCNguide_disposal_pregnancy_remains_WEB.pdf

We understand that hospitals, crematoria and funeral directors often draw up a formal agreement for the cremation of foetuses of less than 24 weeks. The ICCM has an example form for this in its guidance¹⁸.

The ICCM guidance also advises that local arrangements should be communicated to GPs and other health workers in the community, for cases where the pregnancy loss occurs outside of a hospital setting.

Shared cremations

Particularly for very early pregnancy losses, shared cremation - i.e. where two or more foetuses of less than 24 weeks are cremated together, albeit in individual containers within a larger container - may be offered. In such cases there may be a chapel service at the crematorium. Following a shared cremation the ashes from the separate containers are not individually identifiable, and are usually scattered or buried in the crematorium's designated area.

For shared cremations, cremation authorities and funeral directors do not have personal details of the foetuses of less than 24 weeks, but have a case reference number from the hospital. This enables confidentiality for parents under the Abortion Act 1967.

A question regarding a code of practice on shared cremations is covered in chapter 8.

Sensitive incineration in hospitals

The HTA guidance goes into some detail on the sensitive incineration of foetuses of less than 24 weeks. It advises that this method should be used only where the mother chooses this option or does not want any involvement following the pregnancy loss.

Ashes recovery for foetuses of less than 24 weeks

The HTA guidance says that medical professionals should, when discussing the option of cremation, tell parents that ashes may not always be recovered following the individual cremation of a foetus of less than 24 weeks and advises that Sands has produced guidance on this topic.

b) Overarching issues around regulation of the cremation of foetuses of less than 24 weeks

The ICC recommended that the cremation of foetuses of less than 24 weeks should be regulated. Some of its recommendations on foetuses of less than 24 weeks may apply equally to all cremations – for example that there should be clear statements about what should happen to ashes - and these are addressed elsewhere in this document. There were however specific recommendations for foetuses of less than 24 weeks and these are addressed in this chapter.

In summary the ICC recommended equivalent procedures and forms for the cremation of foetuses of less than 24 weeks as for the cremation of stillborn babies, live birth babies, children and adults. Its recommendations aimed to improve processes, via legislation and

¹⁸ <http://www.iccm-uk.com/iccm/library/Fetal%20Remains%20Policy%20Updated%20Sept2015%20.pdf>

guidance. The overarching intention behind the recommendations appears to be to ensure that parents are informed of their options when making a decision about a cremation; that their wishes are followed; and that there is documentation and an audit trail to demonstrate this.

Q21 - Do you think that the cremation of fetuses of less than 24 weeks should be brought within the scope of the 2008 regulations? Please explain your answer.

Q22 - The regulation of fetuses of less than 24 weeks would include all miscarriages and aborted fetuses¹⁹, from very early in a pregnancy, up to 23 weeks and 6 days' gestation. Do you think that the same regulated application process would be appropriate in all such cases? Please explain your answer.

Q23 - Since the HTA guidance was published in March 2015:

- **in your experience has the number of requests for the cremation of fetuses of less than 24 weeks increased / decreased? Please explain your answer.**
- **are you aware of any occasions when the guidance was not followed? If so please give details.**

Q24 – Regarding crematorium medical referees:

- **in your experience, do crematorium medical referees currently look at the forms for the cremation of fetuses of less than 24 weeks, even though they have no statutory role to do so?**
- **if the cremation of fetuses of less than 24 weeks were regulated, what impact (including cost implications) would this have on the workload of crematorium medical referees?**

Q25 - Do you think that regulating the cremation of fetuses of less than 24 weeks would have an impact on the number of such cremations? Do you envisage any additional costs? If so please provide details of where the costs would arise, and how much you would anticipate them to be.

Q26 - [For cremation authorities] Would regulating the cremation of fetuses of less than 24 weeks necessitate additional equipment in your crematorium due to increased volumes of cremations? If so please provide details of what equipment would be required and what associated costs you would anticipate.

¹⁹ In England and Wales (and Scotland) under the Abortion Act 1967 abortion is legal up until 24 weeks of pregnancy, although most abortions are carried out much earlier than this, that is before 12 weeks (in rare circumstances, an abortion can sometimes be carried out legally after 24 weeks).

c) An application form and process for the cremation of a foetus of less than 24 weeks

The ICC felt that a statutory application form for the cremation of foetuses of less than 24 weeks would ensure consistency of practice, and would place such cremations on the same legislative footing as other kinds of cremations. Having considered the ICC recommendations we consider that an application form could include the following provisions:

- The hospital or parents should complete the cremation application form (as happens now).
- The form should have a section where the hospital, if applying, confirms that it has discussed the option of cremation with the parents and has their consent to proceed.
- In the case of an individual cremation, the form should state that it may not be possible to recover ashes; confirm that the parents understand this; and confirm what the parents wish to happen to any ashes which are recovered.
- In the case of shared cremations, the form should state that any ashes which are recovered will be interred or scattered at the crematorium, and confirm that the parents understand and are content with this.
- The parents should sign the application form.

Q27 - Do you think there should be a statutory application form for the cremation of a foetus of less than 24 weeks, without which a cremation should not take place? Please explain your answer.

Q28 - Have you experienced / are you aware of any problems arising as a result of the forms for the cremation of a foetus of less than 24 weeks not being statutory? If yes, please give details.

Q29 - Do you think that, for a hospital-arranged cremation of a foetus of less than 24 weeks, the application form should confirm that the parents (or in the case of shared cremations, parents of each of the foetuses) have agreed to the hospital applying for the cremation?

Q30 - Do you think that the application form for the cremation of a foetus of less than 24 weeks should state that it may not be possible to recover ashes after the cremation, and confirm that the parents understand this? Or are there other / preferable ways to make this clear to parents? Please explain your answer.

Q31 - Should the application form for the cremation of a foetus of less than 24 weeks require the parents to have stated what should happen to any ashes which are recovered?

Q32 - Should an application form for the cremation of a foetus of less than 24 weeks be different where a parent wishes to arrange the cremation themselves, rather than through the hospital?

Q33 - In your experience is an application for the cremation of a foetus of less than 24 weeks always accompanied by a medical certificate that states that the pregnancy loss occurred before 24 weeks gestation and showed no signs of life? Should such a medical certificate be required for a cremation and why?

d) Cremations following pre-24 week pregnancy loss outside a hospital setting

Some pregnancy losses of foetuses of less than 24 weeks occur outside a hospital or other healthcare setting. If the cremation of foetuses of less than 24 weeks was regulated, applying for a cremation in such cases might be difficult, particularly if there was a requirement for a medical certificate that stated that the pregnancy loss occurred before 24 weeks and that the foetus showed no signs of life.

Q34 - Do you have experience of cremations of foetuses of less than 24 weeks where there has been no medical certificate? If so what has the process been?

Q35 - If the cremation of foetuses of less than 24 weeks were regulated, what should the application process be in cases where there is no medical certificate?

e) Who should apply for the cremation of a foetus of less than 24 weeks

The ICC recommended that in Scotland only certain people should have the right to apply for the cremation of foetuses of less than 24 weeks. The Scottish Government adapted this to propose that 'the woman who has experienced the pregnancy loss' should have the primary right to instruct a cremation. Others would have this right if for any reason the woman was unable to make such an instruction.

In England and Wales, the cremation form, 'Application for cremation of a stillborn baby' (Cremation Form 3) requires the applicant to confirm:

- whether he / she is a parent of the baby and, if not, to explain the nature of the relationship and why he or she is making the application
- whether both parents have been informed of the proposed cremation and, if not, the name of the uncontacted parent and reason for not contacting them
- whether a parent has objected to the proposed cremation

It would then be for a medical referee to consider the form before authorising the cremation.

Q36 - Do you feel that the language of Cremation Form 3, as set out above, is appropriate regarding who can apply for / instruct a hospital to apply for the cremation of a foetus of less than 24 weeks? Or do you think that legislation should define who has the right to apply? Please explain why.

f) Witnessing an application form

The ICC recommended that, in addition to an applicant signing the application form for the cremation, the applicant's signature must be witnessed by a person who is not a member of the applicant's family and who is not involved in the arrangements for the cremation. The aim was to make sure that a person not emotionally or professionally involved in the funeral arrangements could countersign the application form to declare that the applicant had made a decision and fully understood the implications of the decision. Some respondents to the Scottish consultation²⁰ felt that a countersignature was unnecessary, impractical and would place additional stress on families.

Q37 - Do you think that the cremation application form (for any regulated cremation, whether stillborn baby, live birth baby, child or adult) should require countersigning by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Or do you think this may prove impractical, perhaps especially following a very early pregnancy loss/abortion?

g) Keeping records of cremations of fetuses of less than 24 weeks

Hospital record-keeping systems vary across England and Wales. Crematoria have local systems to ensure that there is a traceable link between fetuses of less than 24 weeks and their ashes, using a unique reference number in order to preserve the confidentiality of the parents.

For hospital-arranged cremations, funeral directors may have a contract with a hospital, to transport babies to be cremated from the hospital to the crematorium. In such cases funeral directors do not know the personal details of the babies, and record only details of the coffin. We understand that funeral directors only have personal records for the cremations of fetuses of less than 24 weeks which parents, rather than hospitals, arrange.

Q38 - Should cremation authorities be required by legislation to record the cremation of each fetus of less than 24 weeks in their registers? If so what information should be recorded, bearing in mind the desirability of balancing the need to be able to trace cremations against the need to preserve parents' confidentiality in some cases?

Q39 - How should the cremation authority's register of cremations link to the relevant hospital record? Should the information recorded differ for hospital-arranged cremations, parent-arranged cremations, and shared cremations and, if so, how?

Q40 - Would such a requirement for record-keeping be a new burden on cremation authorities? If there would be any cost implications please provide details of where the costs would arise, and how much you would anticipate them to be.

²⁰ https://consult.scotland.gov.uk/burial-cremation/consultation-on-a-proposed-bill-relating-to-burial/consult_view

12. Memorials

Emstrey Recommendation

N/A

ICC Recommendation

56 *The Scottish Government should form a working group, to include representatives of affected parents and bereavement support groups to consider whether there should be a national memorial dedicated to the babies whose ashes were mishandled or mismanaged and, if so, the form that it should take.*

55 *Where invited to do so by affected parents, local councils/authorities should facilitate discussion for plans for local memorials.*

The Scottish Government response to the ICC recommendations

The Scottish Government responded that recommendation 55 was for local authorities but it supported the recommendation and expected all local authorities to support requests for local memorials. Recommendation 56 would be established as a sub-group of the National Committee proposed at recommendation 57. The Scottish Government would support the development and maintenance of any national memorial.

Commentary

The Government appreciates parents' needs to remember the babies whose ashes were not recovered, and we remain supportive of memorials. Our view is that memorials would most appropriately be locally provided, and that our limited resources would be most effectively focussed on putting in measures which will help to make sure that the failings detailed within the Emstrey and ICC reports do not happen again.

13. Public sector equality duty

The public sector equality duty (at section 149 of the Equality Act 2010, which came into force on 5 April 2011) is a duty on a public authority to have “due regard” to the need to eliminate discrimination, harassment and/or victimisation; to advance equality of opportunity and to foster good relations between those who share a protected characteristic (i.e. age, disability, marriage and civil partnership, pregnancy, race, religion, sex, sexual orientation, gender reassignment) and those who don't.

Muslims, Jews and Bahá'ís do not generally cremate their loved ones, whereas cremation is the usual practice for Sikhs, Hindus, Buddhists, Zoroastrians and Jains, with many Christians also choosing to cremate. The Department for Communities and Local Government is carrying out a separate review to seek the views of faith groups and other members of the community on crematoria facilities and provisions.

The Government does not consider that the proposals in this consultation document would have an adverse impact on those with a protected characteristic.

Q41 - Do you think, however, that anything in this document would have a disproportionate impact on those with a protected characteristic? If so, please give details.

14. Family test

The Family Test was introduced in August 2014. It is a non-statutory duty for all Government departments introducing new policy to consider the impact of their proposals on family life. The test is broken down into five questions which aim to discover if the new policy would have an impact on family formation; families going through key transitions i.e. bereavement, becoming parents, new caring responsibilities; protecting individuals to ensure they are able to play a fully role in family life and ensuring that families at risk of breakdown or going through a separation are not disadvantaged by the policy.

The Government does not consider that the proposals in this document would adversely affect family life – indeed they are intended to do precisely the opposite.

Q42 - Do you think, however, that anything in this document would have an adverse effect on family life? If so, please give details.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1 - Do you have any general comments on the cremation process, or on the 2008 regulations? If so please give details.

Q2 - Do you agree that 'ashes' should be defined in legislation as 'all that is left in the cremator at the end of the cremation process and following the removal of any metal'? If not, please explain why.

Q3 - Do you think this definition of ashes would necessitate any change of practices in crematoria? Why / why not?

Q4 - [For cremation authorities] Does your cremation equipment maximise the recovery of ashes (for instance the use of a cremation tray to retain ashes where practicable, and the maintenance of operational conditions that will minimise the loss of any ashes during the process of cremation)? If not, what changes would be required to maximise the recovery of ashes? If there would be any cost implications please provide details of where the costs would arise, and how much you would anticipate them to be.

Q5 - Do you think that a cremation should proceed only if the applicant has specified what should happen to the ashes? Please explain your answer, including any negative impacts and / or cost impact you think there might be.

Q6 - [For cremation authorities and funeral directors] In what percentage of individual cremations are ashes not collected? Why is this and what do you do when ashes are not collected? Does your cremation authority/company have a formal procedure?

Q7 - Do you think that the statutory application form for cremation in the 2008 regulations should be amended to include options for any ashes which are recovered, or do you think that current non-statutory processes (combined with the cremation authority's statutory duty to record in its register how ashes were disposed of) are sufficient?

Q8 - Do you think that, having recorded the ashes' collection or location in the register, a cremation authority should have to send a copy of the register entry to the applicant? Why / why not?

Q9 – Do you think the above process for dealing with uncollected ashes is appropriate? If so how long should funeral directors and then crematoria each be required to store such ashes?

Q10 - Do you think the cremation application form should state that, whilst every effort will be made to recover ashes, on rare occasions there may be no recoverable ashes? Or do you think this could unnecessarily alarm the majority of applicants, for whom ashes are recovered? If the latter, what do you think would be the best way to make sure applicants were aware of the possibility of there being no ashes?

Q11 - If no ashes are recovered, should the cremation authority be required to advise the applicant of this and the reason; and record this in its register?

Q12 - Do you believe that it is sufficient for a cremation authority to retain records and forms relating to burial and cremation for 15 years (as they are required to do now)? If you think 15 years is inappropriate, how long should records be kept and why, and what would be the benefit / cost to cremation authorities? If there would be any cost implications please provide details of where the costs would arise, and how much you would anticipate them to be.

Q13 - Do you have any examples of best practice in record-keeping, electronically or in hard copy, that you feel could be usefully shared with other cremation authorities?

Q14 - Do you think that the appointment of an inspector would be the most effective way of monitoring working practices and ensuring appropriate standards at crematoria? If so, it would be helpful to have your views on:

- what you think the inspector's role should be – for example, should it replicate the current remit of the Scottish inspector set out above or should any of these responsibilities be removed or other responsibilities included and, if so, why?
- how frequently you think crematoria should be inspected
- in what way and how frequently you think the inspector should report to Ministers
- whether publicising cremation authority good and bad practice would be an effective way of raising standards
- whether you consider that the inspector's remit should include complaints handling
- whether you consider that the inspector's remit should extend to the funeral industry
- how you think an inspector should be resourced and funded
- how you think the independent status of the inspector should be safeguarded

Q15 - If you do not think that an inspector would be the most effective way of monitoring working practices and ensuring appropriate standards at crematoria, what alternative approach do you think might be needed to improve standards, and how might this be implemented?

Q16 - Should the working group's aims and objectives be similar to those of the Scottish National Committee? Should anything be added, or omitted?

Q17 - Should there be a requirement for accreditation, and, if so, should this be set out in a Code of Practice or in legislation? Please give reasons for your response.

Q18 - To inform work on a Code of Practice, we would be interested in views on the following questions:

- **Taking the Scottish Code of Practice as a basis, what changes, if any, might need to be made in the context of England and Wales – and why?**
- **Should there be separate codes for infant cremation and for cremation more generally – and, if so, why?**
- **Should the code(s) incorporate the technical Code of Practice recommended in the Emstrey report (see Chapter 9 (cremation authority practice on the recovery of ashes) for more details) or should this be developed separately?**
- **Should the Code of Practice (or a separate code on infant cremation) incorporate the code on shared cremation recommended in the ICC report (see chapter 11 for more on shared cremations) or should this be developed separately?**

Q19 - We are therefore interested in views on the following issues:

- **Should the Code(s) of Practice be reviewed annually, or less frequently?**
- **How should adherence to the Code(s) be monitored?**
- **Do you think that non-compliance with the Code(s) of Practice should be publicly reported?**

Q20 - Do you have any examples of good practice in giving information to bereaved parents? If so, please provide details.

Q21 - Do you think that the cremation of foetuses of less than 24 weeks should be brought within the scope of the 2008 regulations? Please explain your answer.

Q22 - The regulation of foetuses of less than 24 weeks would include all miscarriages and aborted foetuses, from very early in a pregnancy, up to 23 weeks and 6 days' gestation. Do you think that the same regulated application process would be appropriate in all such cases? Please explain your answer.

Q23 - Since the HTA guidance was published in March 2015:

- **in your experience has the number of requests for the cremation of foetuses of less than 24 weeks increased / decreased? Please explain your answer.**
- **are you aware of any occasions when the guidance was not followed? If so please give details.**

Q24 – Regarding crematorium medical referees:

- **in your experience, do crematorium medical referees currently look at the forms for the cremation of foetuses of less than 24 weeks, even though they have no statutory role to do so?**
- **If the cremation of foetuses of less than 24 weeks were regulated, what impact (including cost implications) would this have on the workload of crematorium medical referees?**

Q25 - Do you think that regulating the cremation of foetuses of less than 24 weeks would have an impact on the number of such cremations? Do you envisage any

additional costs? If so please provide details of where the costs would arise, and how much you would anticipate them to be.

Q26 - [For cremation authorities] Would regulating the cremation of foetuses of less than 24 weeks necessitate additional equipment in your crematorium due to increased volumes of cremations? If so please provide details of what equipment would be required and what associated costs you would anticipate.

Q27 - Do you think there should be a statutory application form for the cremation of a foetus of less than 24 weeks, without which a cremation should not take place? Please explain your answer.

Q28 - Have you experienced / are you aware of any problems arising as a result of the forms for the cremation of a foetus of less than 24 weeks not being statutory? If yes, please give details.

Q29 - Do you think that, for a hospital-arranged cremation of a foetus of less than 24 weeks, the application form should confirm that the parents (or in the case of shared cremations, parents of each of the foetuses) have agreed to the hospital applying for the cremation?

Q30 - Do you think that the application form for the cremation of a foetus of less than 24 weeks should state that it may not be possible to recover ashes after the cremation, and confirm that the parents understand this? Or are there other / preferable ways to make this clear to parents? Please explain your answer.

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Q32 - Should an application form for the cremation of a foetus of less than 24 weeks be different where a parent wishes to arrange the cremation themselves, rather than through the hospital?

Q33 - In your experience is an application for the cremation of a foetus of less than 24 weeks always accompanied by a medical certificate that states that the pregnancy loss occurred before 24 weeks gestation and showed no signs of life? Should such a medical certificate be required for a cremation and why?

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Q37 - Do you think that the cremation application form (for any regulated cremation, whether stillborn baby, live birth baby, child or adult) should require countersigning by someone who is not a member of the applicant's family and who is not involved

in the arrangements for the cremation? Or do you think this may prove impractical, perhaps especially following a very early pregnancy loss/abortion?

Q38 - Should cremation authorities be required by legislation to record the cremation of each foetus of less than 24 weeks in their registers? If so what information should be recorded, bearing in mind the desirability of balancing the need to be able to trace cremations against the need to preserve parents' confidentiality in some cases?

Q39 - How should the cremation authority's register of cremations link to the relevant hospital record? Should the information recorded differ for hospital-arranged cremations, parent-arranged cremations, and shared cremations and, if so, how?

Q40 - Would such a requirement for record-keeping be a new burden on cremation authorities? If there would be any cost implications please provide details of where the costs would arise, and how much you would anticipate them to be.

Q41 - Do you think, however, that anything in this document would have a disproportionate impact on those with a protected characteristic? If so, please give details.

Q42 - Do you think, however, that anything in this document would have an adverse effect on family life? If so, please give details.

Thank you for participating in this consultation exercise.

Annex A

INFANT CREMATIONS SCOTLAND – CODE OF PRACTICE 2015²¹

- 1.** The deceased infant, their family and their friends must be treated with respect, dignity and sensitivity at all times.
- 2.** The principle of informed choice for next of kin must apply to all decision-making discussions and documentation. This must include transparency as to alternative options and applicable costs, and provide clarity over who may hold future decision-making powers.
- 3.** Communication with, and the information available to, family and friends of the deceased must be consistent across all involved organisations and institutions.
- 4.** Next of kin must be allowed some time to reflect and, if necessary, make changes to their initial decisions.
- 5.** Next of kin must be provided with a copy of any documentation signed by them.
- 6.** 'Ashes' is defined as "all that is left in the cremator at the end of the cremation process and following the removal of any metal", irrespective of their composition.
- 7.** All organisations and institutions involved in infant cremations must adhere to the principle of maximising the recovery of ashes when agreeing contracts, arranging and/or conducting infant cremations.
- 8.** Arrangements relating to any hospital-arranged infant cremations must be set out in a contract / be agreed in writing between NHS, funeral director, cremation authority and/or burial authority, as applicable.
- 9.** All organisations and institutions involved in infant cremations must regularly review their own procedures and policies to ensure best practice is maintained.
- 10.** All organisations and institutions involved in infant cremations must establish regular sharing and learning of multi-agency and cross-country best practice.
- 11.** All relevant staff must successfully complete relevant, available training before their involvement in discussing, organising or conducting infant cremations.
- 12.** Records must be accurate, clear, accessible and maintained electronically where possible.
- 13.** All organisations and institutions involved in infant cremations must allow and assist with regular inspection of their premises, personnel, policies, procedures and/or records etc by the individuals or bodies designated by statute for this purpose.
- 14.** All organisations involved in infant cremations, and all their existing or new infant cremation policies, codes of practice, guidance, procedures and processes must ensure

²¹ <http://www.gov.scot/Resource/0047/00478003.pdf>

they adhere to this national Code of Practice, including its Supplementary Guidelines and any accompanying Explanatory Notes.

15. All organisations involved in infant cremations must ensure they are and continue fully compliant with the law in Scotland.

This Code will be reviewed annually by the National Committee on Infant Cremation

<http://www.scotland.gov.uk/Topics/Health/Policy/BurialsCremation/NCIC>

**HUMAN TISSUE AUTHORITY MARCH 2015
GUIDANCE ON THE DISPOSAL OF PREGNANCY REMAINS FOLLOWING
PREGNANCY LOSS OR TERMINATION²²**

Introduction

1. This guidance should inform policies and procedures governing the disposal of pregnancy remains resulting from pregnancy loss or termination of pregnancy in a clinical setting, including NHS and independent hospitals and abortion clinics. It is the result of consultation with key stakeholder groups (see Appendix 1). The geographical extent of the guidance is England, Wales and Northern Ireland.

2. The term ‘pregnancy remains’ is used throughout in relation to all pregnancy losses, for example as a result of ectopic pregnancy, miscarriage or early intrauterine fetal death; it also applies to terminations of pregnancy that have not exceeded the 24th week of pregnancy²³.

3. The guidance does not apply to stillbirths (babies born dead after the 24th week of pregnancy) and neonatal deaths (see paragraphs 34-37). Nor does it apply to the disposal of embryos created in vitro (for fertility treatment or embryo research); these are regulated by the Human Fertilisation and Embryology Authority (HFEA).

4. The Human Tissue Act 2004 (HT Act) makes no distinction between the disposal of pregnancy remains and the disposal of other tissue from a living person; pregnancy remains are regarded as the tissue of the woman. Although under the HT Act, consent is not required for the disposal of pregnancy remains, the particularly sensitive nature of this tissue means that the wishes of the woman²⁴, and her understanding of the disposal options open to her, are of paramount importance and should be respected and acted upon.

5. The guidance sets out the minimum standard expected for the disposal of tissue following pregnancy loss or termination of pregnancy, which is: cremation, burial or incineration in certain circumstances. Incineration should only occur where the woman makes this choice, or does not want to be involved in the decision, or does not express an opinion within the stated timescale (see para 19), and the hospital considers this to be the most appropriate method of disposal. Hospitals that currently do not offer incineration as an option and cremate or bury all pregnancy remains as a matter of routine, should consider whether their policy limits the options given to women and how they would respond should a woman’s preference be for her pregnancy remains to be incinerated.

²² https://www.hta.gov.uk/sites/default/files/Guidance_on_the_disposal_of_pregnancy_remains.pdf

²³ As specified in section 1(1)(a) of the Abortion Act 1967. Late terminations that exceed 24 weeks gestation are subject to the requirements of the Birth and Deaths Registration Act 1953, and must be registered as still-births.

²⁴ Throughout the guidance, we refer to ‘the woman’; however, it should be taken into account that a woman may choose to delegate the decision to her partner, a family member or friend.

6. The guidance applies equally to NHS hospitals and independent sector providers.

7. Guidance on the disposal of pregnancy remains is also available from the Royal College of Nursing:http://www.rcn.org.uk/__data/assets/pdf_file/0020/78500/001248.pdf

The importance of communication and information

8. In all cases, the woman should be made aware that there are options for disposal. She should be given verbal or written information about the options, given the opportunity to discuss them, and supported in an individual and sensitive manner to ensure that she can make a decision that is right for her.

9. The information provided should include an explanation of how the pregnancy remains will be disposed of if the woman does not wish to make a decision and would prefer the hospital to handle the matter. It should also explain who to contact to request a particular disposal option and the timescale for this. Personal, religious or cultural needs relating to the disposal of the pregnancy remains should be met wherever possible. For example, in Islamic teaching, all pregnancy remains must be buried.

10. Some women may not wish to know about the disposal of the pregnancy remains or be involved in decisions about disposal, and may decline the offer of information about the possible options. Providing they have been told that the information is available, establishments should recognise and respect the wishes of those women who choose not to engage in the matter of disposal.

11. Whatever she decides, including whether she declined the offer of information and chose not to be involved in the decision, should be recorded in the woman's medical notes.

12. The loss or termination of a pregnancy, whatever the circumstances, is clearly an exceptionally sensitive and emotional time for a woman. Policies and procedures need to acknowledge and make provision for the fact that, whilst a woman may not wish to engage in discussions about disposal of pregnancy remains (or make a decision), she may change her mind at a later date or ask about what arrangements were made. It is therefore important to ensure that as well as respecting the wishes of those who choose not to be involved at the time, the disposal of pregnancy remains is carried out as outlined within this guidance.

13. Detailed guidance on communication with women regarding pregnancy loss maybe found in guidance from the Stillbirth and neonatal death charity (Sands)[<https://uk-sands.org/resources>].

Developing a disposal policy

14. Hospitals' disposal policies should ensure that pregnancy remains are treated with respect regardless of the circumstances of the loss or termination, and that women are aware that there are disposal options available to them.

15. It is essential that guidance and practice on disposal reflect the sensitivity required when dealing with pregnancy remains. The needs of the woman are of paramount importance in the development of a disposal policy, which should be written in such a way as to make it suitable for women who choose to access it.

16. All staff who may be asked, or expected, to provide information about disposal should be aware of the policy and prepared to discuss it. They should be sensitive to the values and beliefs of a wide range of cultures and religions, particularly those of their local community, whilst at all times remembering that each decision is particular to the individual woman. The staff involved with these discussions should have detailed knowledge of, and understand the practical aspects of, each form of disposal to be able to properly communicate this information to the woman. This might include the likelihood of recovering remains following a cremation, or perhaps the opportunity for some form of memorialisation if burial is chosen.

17. There should be training for staff to equip them to best support the woman in a sensitive and caring manner. Because of the very sensitive nature of the disposal of pregnancy remains, all staff should have access to education about the process and be reminded about access to counselling services should they feel the need for support themselves.

18. The policy and supporting procedures should ensure that disposal of pregnancy remains in line with the woman's wishes take place as soon as practicable after she has communicated her decision.

19. Where the woman has not made a decision about disposal within a locally specified period of time since the pregnancy loss or termination (which should not exceed 12 weeks), the hospital responsible for the woman's care should make arrangements for disposal in line with this guidance. The woman should be made aware of the time period when first given information about disposal options.

20. Records of how and when the remains were disposed of, including, where relevant, the name of the cemetery or crematorium, should be maintained by the hospital in order that full information may be provided at a later date if requested.

Disposal options

21. Cremation and burial should always be available options for the disposal of pregnancy remains, *regardless of whether or not there is discernible fetal tissue*. Sensitive incineration, separate from clinical waste, may be used where the woman makes this choice or does not want to be involved in the decision and the establishment considers this the most appropriate method of disposal.

Cremation

22. Although not covered by The Cremation (England and Wales) Regulations 2008, pregnancy remains may be cremated and most crematoria are willing to provide this service. Establishments will need to negotiate with the local crematoria to agree the level of service to be provided. If this service is not available locally, they should consider negotiating with other service providers further afield. The ICCM's policy and guidance 'The Sensitive Disposal of Fetal Remains' contains a draft agreement which may be helpful to establishments [<http://www.iccm-uk.com/iccm/index.php>].

23. If the establishment is not able to access the services of a crematorium, they should explain to the woman that they will not be able to arrange for the pregnancy remains to be cremated and give her the opportunity to make her own arrangements or identify a crematorium to which the remains may be sent on her behalf.

24. Where the pregnancy remains will be cremated alongside others, the woman should be informed and, if necessary, made aware of what alternative options exist. As a minimum, the remains should be in individual sealed containers, collected together into a larger sealed container. In order to maintain an audit trail, in any communications with the crematorium about shared cremation, hospitals should identify each set of pregnancy remains with either the woman's name or a unique reference/case number if confidentiality needs to be maintained. Patient details should not be shared without the express permission of the woman.

25. When discussing the option of cremation of pregnancy remains, women should be told that ashes may not always be recovered in the case of an individual cremation. Sands has produced guidance on this topic, which can be accessed via their website.

Burial

26. Pregnancy remains may also be buried. Establishments should consult the local burial authorities to establish what level of service is available and if the service is not available locally, they should consider contacting other service providers further afield.

27. Where the pregnancy remains will be buried in the same plot as other sets of remains, the woman should be informed and, if necessary, made aware of what alternative options exist. As a minimum, the remains should be in individual sealed coffins or containers, collected together into a larger sealed container. In order to maintain an audit trail, in any communications with burial authorities about shared burial, hospitals should identify each set of pregnancy remains with either the woman's name or a unique reference/case number if confidentiality needs to be maintained. Patient details should not be shared without the express permission of the woman.

28. When discussing the option of shared burial, the woman should be told that there will be no individual memorialisation available to mark the location of the burial.

Sensitive Incineration

29. Incineration may be used where the woman makes this choice or does not want to be involved in the decision, preferring to leave it to the hospital to make arrangements, or does not make a decision within the stated timescale and the hospital has made a considered decision that this is the most appropriate method of disposal.

30. Although incineration and cremation both involve the pregnancy remains being burnt, they are not the same. It is important that the woman understands what is meant by incineration and the distinction between this and cremation, in order that she can make an informed choice. The staff involved with communicating the information to the woman should have detailed knowledge of the processes to ensure that they are able to properly explain this information.

31. Pregnancy remains should be subject to a different process from clinical waste. They should be packaged and stored separately in suitable containers prior to their disposal, and incinerated separately from clinical waste. Establishments may wish to consider optional additional arrangements they could make to dispose of the tissue sensitively, for example by involving their hospital chaplain or local spiritual leaders. However, the woman's wishes are paramount and where a woman has opted for incineration precisely because she does not wish her pregnancy remains to be given any special status, this should be respected.

32. Where incineration is the disposal method used, it must be done as sensitively as possible. The date of the collection and the location of the incineration should be recorded.

Returning the pregnancy remains to the woman

33. Some women may wish to make their own arrangements for the disposal of their pregnancy remains. It is appropriate in these cases for the hospital to offer advice and assistance, although any costs incurred will normally be the responsibility of the woman. If the woman requests that the remains be returned to her, they should be stored in an appropriate container in a safe place and made available for collection by the woman or her representative. The decision, and the date of collection, should be recorded in the woman's medical notes and she should be given written confirmation that she is entitled to take the remains to make her own arrangements.

Stillbirths and neonatal deaths

34. Babies born dead after the 24th week of pregnancy are defined in law as stillbirths and must be registered as such. This includes late terminations that take place at gestations exceeding 24 weeks. Common law requires that stillborn babies must be buried or cremated.

35. A baby or fetus of any gestational age which is born showing signs of life and dies before the age of 28 days is a live birth and neonatal death. The law requires that where a baby or fetus is born showing signs of life and then dies, their birth must be registered and they must be buried or cremated.

36. While the legal duty to make funeral arrangements following a stillbirth or neonatal death rests with the parents, with their consent, it may be done by establishments on their behalf. In respect of stillbirths, it has long been recognised as good practice for hospitals to offer to arrange and pay towards burial or cremation. If parents would like this, they should be given the opportunity to attend the ceremony.

37. Further guidance on the requirements for the registration and disposal of stillbirths and neonatal deaths is available within the Sands guidelines [<http://www.uk-sands.org/>].

Appendix 1

The following organisations were consulted in the development of this guidance:

Royal College of Nursing

Royal College of Obstetricians and Gynaecologists

Royal College of Midwives

British Pregnancy Advisory Service

Stillbirth and Neonatal Death Charity (Sands)

Miscarriage Association

Institute of Cemetery and Crematorium Management (ICCM)

The Federation of Burial and Cremation Authorities (FBCA)

Care Quality Commission

Department of Health

Ministry of Justice

Frequently asked questions

A set of FAQs which provide more practical information on implementing this guidance are available on the HTA website: <https://www.hta.gov.uk/faqs/disposal-of-pregnancy-remains-faqs>

Annex C

Full list of Emstrey report recommendations

1. I recommend that the Government takes steps to ensure a single and authoritative code of practice for baby and infant cremations.
2. I therefore recommend that the Secretary of State exercise his powers under the Cremation Regulations to appoint an independent inspector with powers comparable to those outlined in recommendation 63 of the Bonomy report.
3. I also recommend that the inspector's responsibilities shall include the promotion of a single national code of practice with regard to cremator technology and techniques for infant cremations so as to maximise the chances of the preservation of ashes that can be returned to the applicant for the cremation.
4. I recommend that the Cremation Regulations are amended in England, as in Scotland, to give effect to the Bonomy Commission's definition of ashes.
5. I recommend that minimum standards of professional training, and for continuing professional development, be introduced for crematorium supervisory and operating staff.
6. I therefore recommend that a single official, reporting in this respect to a single minister, be given responsibility for coordinating the government's approach to cremation law and practice and for drawing together into a coherent whole the policies, including environmental policies, of different government departments on the subject.
7. I recommend that arrangements be made within government for the Bonomy Commission's recommendations to be considered more widely for their applicability for infant cremation law and practice.
8. I recommend that the Council, working with their contractors, ensure that adequate arrangements and financial provision are made to ensure that the crematorium equipment is maintained in good order and at optimum performance, and is renewed promptly when it is time to do so.
9. I recommend that the Council ensure and participate in arrangements for regular liaison with Co-operative Funeralcare, funeral directors, funeral officiants, and

hospitals so as to keep connected with practical service issues and contribute to a high quality of public service being provided at the Emstrey Crematorium.

10. I therefore recommend that the Council ensure that the management arrangements for its bereavement service include expertise and competencies normally associated with personal social care, as well as expertise associated with the technical aspects of cremator technology.
11. I recommend that Co-operative Funeralcare and Shropshire Council ensure that there is a programme of continuing professional development in place for managerial and operating staff at the Emstrey crematorium.
12. I therefore recommend that Co-operative Funeralcare and the Council now consult on and then jointly issue a revised and plainly written Ashes Policy Statement, to be made known to local funeral directors, officiants, and hospitals.

Annex D

Full list of Lord Bonomy's Infant Cremation Commission recommendations

1 In legislating, devising policy, drafting information and guidance documents, and making arrangements for and conducting baby cremations, the baby and the interests of the family should be the central focus of attention. Parents and families should be given time and space to reach the correct decision for them. Arrangements should be in place at each hospital for ongoing contact with parents, particularly mothers, where that contact is necessary.

2 The FBCA in the course of their "critical friend" visits to crematoria and the ICCM in their self-assessment questionnaire should address specifically the conduct of baby cremations and recovery of ashes.

3 The "ashes" which the Cremation Authority is obliged to give into the charge of the person who applied for the cremation if he so desires should be defined in legislation as "all that is left in the cremator at the end of the cremation process and following the removal of any metal". That should not preclude the applicant from consenting in advance to the removal of metals, such as coffin nails and artificial joints, and their separate disposal, including as part of a metal recycling scheme.

4 Cremation Authorities should review their practices immediately to ensure that, in dealing with the "ashes" following cremation, they proceed on the basis that the "ashes" are as defined in the foregoing recommendation.

5 The Scottish Government should inform their counterparts in England and Wales and Northern Ireland about the changes in legislation in Scotland to enable them to consider clarification of the definition of "ashes" in identical terms.

6 All Cremation Authorities at whose crematoria ashes are not always recovered should liaise with a crematorium or crematoria where ashes are recovered more regularly to share their experiences and information about their respective practices in order to identify changes in practice that should be introduced immediately with a view to increasing the prospects of recovering ashes.

7 The Cremation Authorities which have rejected the use of trays for baby cremations on health and safety grounds should urgently consider, in light of the experience of others, the introduction of a local protocol to allow trays to be used in a way that will expose no one to undue risk.

8 As an urgent interim measure, the ICCM and the Federation of Burial and Cremation Authorities (FBCA) should form a joint working group, which should also include two lay persons nominated by the Scottish Government and a representative of Facultatieve Industries Ltd, to consider the various practices and techniques currently employed in baby and infant cremation in full-scale cremators with a view to identifying those practices which best promote the prospect of recovery of ashes inclusive of baby remains and compiling

Guidance for cremator operators. The working group should identify aspects of the cremation process which could conceivably be changed or improved and into which research ought to be commissioned by the Scottish Government. The working group's endeavours may be assisted by the fact that the majority of cremators in use in Scotland are produced by the same manufacturer, Facultatieve Technologies Ltd.

9 Following completion of its work in 8 above, that working group should also consider the operating systems and other features of the cremators in use in Scotland and the practices currently employed with a view to identifying those aspects of the cremation process which could conceivably be changed or improved and into which research ought to be commissioned by the Scottish Government. That should include the practice of cremating babies at the end of the working day and overnight with the cremator operating and monitoring equipment switched off in a way that will cause no material environmental damage and satisfies SEPA that it should be permitted, with a view to increasing the prospects of recovering ashes.

10 That working group should consider and advise whether, in light of experience in England and Ireland, and having regard to their efficiency in recovering ashes and the costs of installation and operation, the Scottish Government should commission research into the design and development of small-scale cremators.

11 Each Cremation Authority should publish a policy statement, which should include a commitment to the sensitive treatment of the baby throughout and to respecting the wishes and needs of parents and families, and also set out the Authority's policy on ashes. To ensure clarity and consistency the ICCM and the FBCA should form a joint working group to develop a model policy statement reflecting best practice and allowing for local variation as appropriate.

12 Funeral Directors and healthcare staff should include appropriate extracts from the Cremation Authority policy in information and guidance material given to families.

13 The cremation of non-viable babies should be the subject of legislative regulation.

14 Appropriate forms of application for cremation should be prescribed for each of three categories of cremation of babies and infants: (a) stillborn baby; (b) shared cremation of non-viable babies; and (c) individual cremation of a non-viable baby.

15 On each form of application for cremation there should be a clear warning, in terms appropriate to that form, that ashes may not be recovered, with provision for the applicant to acknowledge having read that warning. In the case of (b) shared cremations the warning should also state that any ashes recovered will either be scattered or interred, and specify which, at the crematorium.

16 In the context of their introduction of a new death certification process, the Scottish Government should review the currently prescribed content of cremation application Form A to ensure that only essential questions are incorporated into the new prescribed forms for (a) and (c).

17 All forms of application prescribed should be designed by the Scottish Government with simplicity and clarity in mind, and all Cremation Authorities, Health Boards and other healthcare providers should be required to use the forms so prescribed and designed.

18 The forms prescribed for (a) and (c) should contain a question requiring the applicant to specify how the ashes should be dealt with following the cremation. The options available should include retention for a defined period pending a final decision and also later extending the period of retention.

19 There should be provision in forms for (a) and (c), or on a separate form, for the applicant to authorise a representative, such as the Funeral Director, to collect the ashes. Where the Funeral Director is the person authorised, the form should also provide for the consent of the applicant to the Funeral Director returning the ashes to the crematorium in the event that the applicant does not collect them from the Funeral Director or give the Funeral Director instructions as to their disposal within a defined period.

20 There should be a specific legislative provision that the cremation should not be authorised to proceed if the application does not contain a clear direction as to how the ashes should be dealt with.

21 Where ashes are left in the care of the crematorium on the basis that they will be collected, or to await further instructions within a defined period, the Cremation Authority may not scatter or inter them unless 14 days' notice of their intention to do has been given to the applicant.

22 The forms prescribed for (a) and (c) should be completed and signed by the applicant personally, and the applicant's signature should be witnessed by a person who is not a member of the applicant's family and has no part in the arrangements for the cremation.

23 It should be provided in legislation that those entitled to apply for cremation are: (i) in the case of (a) and (c) the nearest relative as defined by section 50 of the Human Tissue (Scotland) Act 2006; and (ii) in the case of (b) a person authorised by the Medical Director of a Health Board or other healthcare provider, and that an application presented by a different person should be accepted only on cause shown, which should be recorded in the register referred to below.

24 Senior Cremation Authority staff should be responsible for the scrutiny of all cremation application forms to satisfy themselves that the applicant is entitled to make the application as mother, nearest relative or on cause shown. There should be legislative provision that, if the Cremation Authority is not satisfied of the applicant's entitlement to apply, then authority for the cremation to proceed may be refused.

25 Legislative provisions similar to those in Regulation 20 of the 2008 Regulations (England and Wales) should be introduced requiring appropriate certification of a stillbirth.

26 The duty of Cremation Authorities as to the handling of ashes set out in Regulation 17 of the 1935 Regulations should be extended to apply to stillborn and non-viable babies.

27 The provisions of Regulations 13 and 15A of the 1935 Regulations should be amended to apply to stillborn children.

28 NHS Scotland should review the provision of the facility of hospital-arranged cremation throughout Scotland with a view to making consistent provision in all Health Boards.

29 The Scottish Government should establish a working group comprising representatives of Health Boards, Funeral Directors, Cremation Authorities and miscarriage and child bereavement support organisations to consider evolving practices in the arrangement and conduct of shared cremations and to draw up a code of practice setting down minimum standards for shared cremations. (9.35)

30 The 2012 CMO and CNO Guidance on sensitive disposal should be reviewed and consideration should be given to revising it to take account of the comments made in Section 9.

31 Annex C to the CMO and CNO Guidance should be revised to: (i) set out specifically the options for disposal explained to the mother above the space for her signature; (ii) state that ashes may not be recovered following cremation, and that any which are recovered will be scattered or buried at the crematorium; and (iii) state specifically that the standard procedure to be followed where the mother declines to discuss disposal is cremation along with others.

32 The form of application for (b) should state that each mother has authorised the hospital to arrange a shared cremation, and that such authorisation is held in hospital records.

33 Each application for cremation of a non-viable baby should be accompanied by a medical certificate that the pregnancy loss occurred before 24 weeks and showed no signs of life.

34 Cremation Authorities, Funeral Directors and Health Boards should review the contractual arrangements in place for shared cremations in light of ICCM Guidance contained in Section 6 to satisfy themselves that the respective responsibilities of the parties are so defined as to ensure that such cremations are carried out in a dignified and sensitive manner.

35 Each Cremation Authority should be required by legislation to record the cremation of each deceased baby, stillborn baby and non-viable baby carried out by the Cremation Authority in a register or registers comprising prescribed columns, every one of which must be completed, including in particular, if the ashes were scattered or buried, the date and their location and, if collected, the date and by whom.

36 The Cremation Register should be a public document and the Scottish Government should make legislative provision to that effect, subject to any restrictions necessary in the interest of privacy and to comply with data protection requirements.

37 Each Health Board and other healthcare providers should maintain a register of authorisations in which the crematorium at which the baby was cremated is recorded in a way that will ensure traceability of the link between the baby and the ashes.

38 Since responsibility for preserving important records relating to hospital arranged cremations lies with the hospital or other healthcare provider, a working group comprising Health Board representatives and a representative from the private healthcare sector, chaired by a Scottish Government official, should be appointed by the Scottish Government to review hospital record-keeping practice in all hospitals and other healthcare providers in relation to documents relevant to baby and infant cremations with a view to identifying best practice to be applied across Scotland.

39 The registers kept by Cremation Authorities, Health Boards and other healthcare providers should be preserved indefinitely. All forms of application, certificates and other official documents relating to a cremation should be preserved for a minimum of 50 years.

40 The Scottish Government should form a working group drawn from Cremation Authorities and providers of software to crematoria to review the available facilities for electronic processing and storage of cremation documents and records, to consider and recommend appropriate improvements to achieve the objects of the recommendations of this Commission, and to consider what additional features and facilities the software manufacturers should be invited to develop, all with a view to ensuring that the systems in use by Cremation Authorities are as efficient and secure as possible. The working group should also consider and advise on the appropriate requirements for back-up systems. Having regard to the importance of keeping records secure, the working group should also consider and advise whether additional security measures are necessary and what back-up storage systems should be provided.

41 In the case of deceased and stillborn babies, on completion of the entry by recording the ashes location or collection and the date thereof, the Cremation Authority Registrar should be required to send a notice to the applicant confirming which occurred and, if scattered or interred, where that was, along with an extract of the full register entry. In the case of the individual cremation of a non-viable baby the Registrar should issue such a notice and extract on request and the form of application should provide for such a request to be made.

42 The ICCM and FBCA should review their respective technical training programmes in accordance with the requirements identified in Section 11.

43 The FBCA should review all published Guidance documents to provide clear and fully informed guidance on the prospects of ashes being recovered based on knowledge of skeletal maturity rather than gestational age alone.

44 The ICCM and FBCA should each introduce into their respective technical training programmes provision requiring the trainee technician and his mentor to attend and undertake, in the course of the training period and at a crematorium identified by the Institute or the Federation as excelling in the conduct of baby and infant cremations, full day of training in the conduct of baby and infant cremation on two separate occasions. The trainee should be required to satisfy the examiner of his knowledge and understanding of the methods and techniques of the conduct of baby and infant cremations that enhance the prospects of recovering ashes.

45 The ICCM should revise their management training scheme to include an element dealing with baby and infant cremation and to make that a compulsory part of study for the certificate in cremation management.

46 The person with direct management responsibility for the operation of a crematorium should hold either a qualification in crematorium management or the FBCA certificate of competence to operate cremators or the ICCM intermediate certificate for crematorium technical operations.

47 The FBCA should develop and introduce a training programme for continuing professional development.

48 Mothers of non-viable babies and families of stillborn babies and very young deceased babies considering cremation should be advised where there is a possibility that ashes will not be recovered and reminded of the availability of the option of burial.

49 All providers of training programmes for Funeral Directors should review them in the light of any legislative changes affecting the cremation of non-viable and stillborn babies and associated administrative procedures.

50 All providers of training programmes for Funeral Directors should devise modules designed to give Funeral Directors an understanding of the cremation process, the effect it has and the prospects of recovering ashes in baby and infant cremations.

51 Each Health Board, as part of continuously improving the quality of the service, should identify staff who will have responsibility for communicating with families about arrangements for disposal and liaising with Funeral Directors and crematoria and, as part of their continuous professional development, arrange for their further education and training in the necessary skills, including developing their communication skills, improving their understanding of the roles and responsibilities of colleagues, and providing an appreciation of the capabilities of modern cremation equipment and contemporary cremation practice and the effect of cremation on babies and infants.

52 Health Boards should support staff in initiating the formation of local multidisciplinary working groups comprising all with a role in dealing with the fate of the baby from hospital to crematorium to exchange information, knowledge, understanding, practice and experience, as well as promoting joint training programmes, with the aim of ensuring that all involved are familiar with the facilities available and practices followed locally.

53 Health Boards, organisations providing advice, support and guidance to grieving families such as SANDS UK and the Miscarriage Association, Funeral Directors, the ICCM and FBCA, and any other body providing advice, support and guidance to grieving parents and families should review all publications dealing with cremation that are likely to be distributed to, or seen by, the public to ensure that they include accurate information that is expressed clearly and consistently, including in particular information about the prospects of recovering ashes, and that they contain a reminder of the availability of the option of burial.

54 The Scottish Government should establish a working group comprising a representative from each Health Board and chaired by a Scottish Government official to review all Guidance documents and information leaflets in use over all Health Boards and private healthcare providers, including those compiled by, or in conjunction with, bodies such as SANDS and the Miscarriage Association, relating to management of pregnancy loss and infant bereavement and arranging disposal, with a view to ensuring consistency in that Guidance and information, and endeavouring to reduce the proliferation of different documents in use.

55 Where invited to do so by affected parents, local councils / authorities should facilitate discussion for plans for local memorials.

56 The Scottish Government should form a working group, to include representatives of affected parents and bereavement support groups to consider whether there should be a national memorial dedicated to the babies whose ashes were mishandled or mismanaged and, if so, the form that it should take.

57 The Scottish Government should establish a National Committee with responsibility for baby and infant cremations.

58 The National Committee should be chaired by a senior Scottish Government official. Its membership should be drawn from authorities, organisations, professions and other bodies with a role in baby and infant cremation, and should include representation from groups or organisations representing affected parents and providing bereavement support.

59 The National Committee should have power to establish working groups of its membership, with co-opted members where appropriate, to consider specific recommendations from this report. Each of the working groups recommended above would be sub-groups of the National Committee. It would be open to the National Committee to assign to one working group the tasks assigned in more than one recommendation, for example recommendations relating to technical matters and cremation technology could be dealt with by a professional sub-group reporting back to the full Committee. The National Committee should also have the power to establish working groups to consider other issues identified by the National Committee and to report back to the National Committee.

60 The National Committee should report to Scottish Ministers annually on progress against the recommendations made by this Commission. That annual report should be published on the Scottish Government website.

61 The National Committee should, as a priority, develop a national Code of Practice for baby and infant cremation. Such a Code, which should be informed by the recommendations of this Commission, should set down the minimum requirements for organisations to adhere to when supporting bereaved parents and families through the baby and infant cremation process, and seek to identify best practice to be followed by all bodies involved in baby and infant cremation. The Code of Practice should include general principles and guidance as well as specific technical and operational guidance for Cremation Authorities, Health Boards and Funeral Directors, with a view to achieving consistently high standards of practice among all with a role in baby and infant cremation.

62 The Code of Practice should be a live document that is not only responsive to developments, but also instrumental in promoting improvements, in practice, technology, policy and legislation. The National Committee should therefore continue to monitor developments in all aspects of activity related to baby and infant cremation and review the Code annually to ensure that it reflects contemporary standards and best practice.

63 Scottish Ministers should appoint an independent Inspector to monitor working practices and standards at crematoria, provide feedback to Cremation Authorities on how they are performing and to report to the Scottish Ministers as required. The independent Inspector should have authority to investigate complaints from the public about working practices and standards at crematoria, to adjudicate upon these complaints and report findings to the Scottish Ministers. The role of the Inspector should be extended to the funeral industry in respect of which there is no current provision for inspection.

64 The Scottish Ministers should keep the cremation and funeral industries under review and should consider, in light of the reports of the National Committee and the independent Inspector, whether further regulation of either is required.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 9 March 2016 to:

Coroners, Burials, Cremations and Inquiries Policy Team

Area 3.37

Ministry of Justice

102 Petty France

London SW1H 9AJ

Tel: 020 3334 3555

Fax: 020 3334 2233

Email: coroners@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from coroners@justice.gsi.gov.uk / 020 3334 3555.

Publication of response

A paper summarising the responses to this consultation will be published in spring 2016. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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