



BRIEFING PAPER

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Reuse of graves

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Summary

England and Wales

Shortage of space for burial

In some areas, land for burial is scarce and some burial grounds have closed because they are full. Many people, including some faith groups for whom burial is a religious requirement, do not wish to consider the option of cremation. The reuse of graves has been under consideration for some time as a means of addressing this problem.

Current position

The general position is that buried human remains may not be disturbed without specific authority. Section 25 of the Burial Act 1857 makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty (permission from the Church).

In limited circumstances, London burial authorities already have power to disturb graves older than 75 years for the purpose of deepening the grave to allow further burials to take place. However, in September 2014, the then Justice Minister, Simon Hughes, indicated that the use of the statutory powers by London burial authorities at that time was “almost non-existent”. He said that it would be necessary to look at why the powers available to London burial authorities were not being used before considering whether similar powers should be made available in other areas. Graves have, however, been reused in London with Church permission.

Labour Government consultation

In 2004, the Labour Government consulted on a number of issues relating to burial law, including the reuse of graves. The method suggested (the “lift and deepen” method) involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials. The proposal to reuse graves had a mixed reception.

In its response to the consultation, the Labour Government initially indicated it was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards. However, it later said that this issue was being kept under review but was not being taken forward at that time. Successive Governments have similarly kept the issue under review.

Scotland

In Scotland, graves are referred to as “lair”.

New legislation, the Burial and Cremation (Scotland) Act 2016, provides for the reuse of burial lairs in specified circumstances.

The legislation followed a Scottish Government consultation on a proposed Burial and Cremation Bill, which asked questions about alleviating pressure on burial grounds. Most individuals who responded to the consultation opposed the proposal to reuse burial lairs.

The Scottish Government considered that, despite these objections, the fundamental purpose of the proposal remained valid and would be taken forward, and pointed to the safeguards which would be put in place.

1. Why is reuse of graves being considered?

The reuse of graves has been under consideration for some time as a means of addressing the problem of shortage of space for burial.

1.1 Shortage of space for burial – the problem

Provision of burial grounds is a matter for discretion by relevant local authorities, private companies, or various religious organisations, in the light of demand or tradition.¹

In some areas there is now a scarcity of land available for burial and some burial grounds have closed because they are full. Many people, including some faith groups for whom burial is a religious requirement, do not wish to consider the option of cremation.

The position is particularly acute in London. A Labour Government consultation paper, [Burial Law and Policy in the 21st Century](#), published in 2004, specifically referred to this:

Some seven years ago, the London Planning Advisory Committee (LPAC), working in conjunction with relevant burial authorities and their representatives in London, carried out research into the existing capacity for burials in the Greater London area. According to this research, the Inner London Boroughs were then estimated to have, on average, only some 7 years' burial capacity remaining. The Outer London Boroughs were thought to have sufficient capacity to last a further 18 years. These average capacities concealed wide variations: some Boroughs had virtually no capacity for additional burials. It was for this reason that local authorities began to explore the prospects for burial land outside Greater London, or for using land within Greater London which was otherwise providing alternative amenities.²

The problem of shortage of space for burial is particularly acute in some areas of London. There are also regional variations in the amount of space available

In June 2007, Harriet Harman, who was then Minister of State at the Ministry of Justice, announced the publication of a report of a burial ground survey of England and Wales, and spoke of regional variations in the availability of burial space at that time:

The survey results indicate that less than three-quarters of burial grounds now have room to accept new burials, with only about 20 per cent of all designated burial land as yet unused. Burial grounds with unused burial space predict that the median time remaining until their land will be fully occupied by graves is about 25 to 30 years.

There is considerable regional variation in these values, and, while the survey results do not reflect trends and issues at a very local level, they suggest that there is particular pressure on burial space in predominantly urban areas, and that there will generally be increasing pressure over the next 10 to 20 years.

¹ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, p1

² Ibid p15, footnotes omitted

Our survey has provided us, for the first time, with an essential factual basis on the number, size and usage of burial grounds. This will help inform future policy and operational development.³

The report of an [audit of London burial provision](#), borough by borough, was published in 2011.⁴ It found that provision of burial space remained uneven. A number of boroughs had no supply of burial space at all, some were reliant wholly on created graves,⁵ or had only a limited supply of new grave space, and some had sufficient space for the next twenty years or more.⁶

In September 2013, the BBC reported that it had conducted a survey which suggested that almost half of England's cemeteries could run out of space within the next 20 years.⁷

1.2 Reuse of graves – a possible solution?

The [eighth report](#) of the Select Committee on Environment, Transport and Regional Affairs, published in 2001, argued for legislation to enable reuse (with safeguards):

127. It is the almost universal view of those in the burial industry that reuse is the only long-term solution not only to the lack of burial space, but also to the long-term financial viability of cemeteries. If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave reuse. ... For the reasons stated above, and assuming that the necessary safeguards are included, we are ourselves of the opinion that legislation should be introduced allowing burial to take place in reused graves.⁸

The Labour Government's [2004 consultation paper](#) on burial law and policy set out how the "lift and deepen" method of reusing graves might alleviate the problem of shortage of space:

Although various models might have been considered, the method of re-use recommended by [London Planning Advisory Committee] LPAC was the so-called 'lift and deepen' practice.[⁹] This involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials. Since old remains would occupy less room, and the grave itself would be dug, wherever possible, deeper than has commonly been the practice (perhaps to 3.1 metres, allowing a

³ [HC Deb 5 June 2007 cc11-12WS](#)

⁴ [An Audit of London Burial Provision A report for the Greater London Authority by Julie Rugg and Nicholas Pleace, Cemetery Research Group, University of York](#), 2011

⁵ That is, using space not originally planned for when the cemetery was first laid out, such as areas originally planned as pathways, land between graves and adjacent to paths, and new depth created by adding topsoil, *ibid* pp14 and 34

⁶ *Ibid* p5

⁷ ["Reuse graves in England or run out in 20 years!"](#), *BBC News*, 27 September 2013 [accessed 30 May 2014]

⁸ House of Commons Environment, Transport and Regional Affairs Select Committee, [Cemeteries](#), 2 April 2001, HC 91 2000-01, paragraph 127

⁹ Footnote to text: "Brick or vault graves are unlikely to be appropriate for re-use in this way"

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further three burials above), it was said that, in practice, the grave could be used indefinitely if the cycle were repeated.¹⁰

¹⁰ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, p15

2. What is the current position on reuse of graves?

2.1 Buried human remains not to be disturbed without specific authority

The general position is that buried human remains may not be disturbed without specific authority. Section 25 of the Burial Act 1857 makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty (permission from the Church).

2.2 Exclusive rights of burial

When a grave is purchased, this generally refers to the “exclusive right of burial” for that grave space and not to the purchase of the actual land. A burial authority¹¹ may grant an exclusive right of burial, usually for a period not exceeding 100 years, or the right to burial in any grave space which is not subject to any exclusive right of burial.¹²

The general effect of purchasing the exclusive right of burial is that no one may be buried in the grave without the owner’s permission.

Rights may sometimes be ended by burial authorities, generally if they have not been exercised for 75 years and the relevant notice has been given.¹³ The [Guide for Burial Ground Managers](#), published by the then Department for Constitutional Affairs¹⁴ in November 2005, confirms the position:

2.29 Where the right to burial or to construct a walled grave or vault has not been exercised for 75 years (i.e. no burial has taken place), the right may be extinguished subject to compliance with due notice procedure. These rights may then be granted to any other person. A shorter period applies in London.¹⁵

2.3 Use of remaining space in grave after exclusive rights of burial have ended

The Labour Government’s [2004 consultation paper](#) on burial law and policy outlined how graves might be “fully used” when an exclusive right of burial has expired, or has been ended:

‘Private’ or ‘family’ graves are those where exclusive rights of burial have been granted, formerly in perpetuity, but now generally for a limited period.[¹⁶] Such graves may also contain a

¹¹ Burial authorities are defined to include district councils, the councils of London Boroughs, and parish councils [Local Government Act 1972 section 214](#)

¹² [Local Authorities’ Cemeteries Order 1977](#), SI 1977/204, Article 10. Grants to the Commonwealth War Graves Commission may still be without limit

¹³ Ibid

¹⁴ Now Ministry of Justice

¹⁵ p12

¹⁶ Footnote to text: “Rights of burial may be granted under Article 10 of the Local Authorities’ Cemeteries Order 1977 for a maximum period of 100 years, except in the case of grants to the Commonwealth War Graves Commission which may still be without limit”

number of sequential burials, but only with the consent of the person holding the right of burial. Burial is usually confined to members of the same family, or to more distant relatives, as determined by the holder of the burial rights. Such graves may also be "reused", or, more accurately, fully used, where the exclusive rights of burial have expired or have been terminated and there is still space for additional burials within the grave. Expiry occurs after the specified number of years for which the rights have been granted, usually between 50 and 100 years. The rights may, however, be terminated by burial authorities in advance in circumstances prescribed in the relevant legislation, normally after 75 years.¹⁷

2.4 Reuse with Church of England permission

Section 25 of the Burial Act 1857 (as amended by [section 2 of the Church of England \(Miscellaneous Provisions\) Measure 2014](#)) allows for the disturbance of remains in churchyards and other consecrated ground, with Church permission. The Cemetery Research Group provides this information about the effect of the 2014 Measure:

The Burial Act, 1857 also allowed for exhumations to take place 'from one consecrated place of burial to another by faculty granted by the ordinary for that purpose' without need of a Ministry licence (S25). Essentially, this meant that where an exhumation is taking place in consecrated ground, with any remains re-interred in consecrated ground, then faculty only is required. Under Church law, it has been possible to re-use churchyards for - in some instances - centuries. Each diocese sets its own 'best practice' guidelines on churchyard management.

The Church of England (Miscellaneous Provisions) Measure, 2014 has subsequently made changes to the Burial Act, 1857. S2 of the Measure made a slight amendment to the wording of S25, which now allows for the disturbance of remains in churchyards and other consecrated ground without need for re-interment in consecrated ground. This change of wording permits a 'lift and deepen' approach to grave re-use in consecrated ground without a Ministry of Justice licence. This aspect of the Measure was enacted from January, 2015.¹⁸

The Diocese of Southwark has published advice that there should be an expectation of reuse of graves after 75 years:

Save where burial rights are granted subject to a particular period of years, there should be an expectation that grave spaces will in due course be reused, and this is necessary to economise on land-use at a time when gravespace is a diminishing resource. This is an increasingly urgent problem which all those responsible for churchyards have to face. Sensitive solutions have to be devised and implemented.

Reuse of graves within a period of less than 75 years is likely to cause distress and offence to the living, as well as appearing disrespectful to the dead. But incumbents should promote and publicise policies for the reuse of graves as soon as 75 years have

¹⁷ Footnote to text: "Article 10 and Schedule 2 to the Local Authorities' Cemeteries Order 1977, as amended. Similar provision has been made in certain private Acts." Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, p14

¹⁸ University of York Cemetery Research Group, [Frequently Asked Questions, "Isn't it illegal to disturb human remains?"](#) [accessed 30 May 2017]

elapsed after the most recent burial therein, not least so that those presently arranging a burial are informed of what is likely to happen in the future.

Rather than planning for re-use on a grave-by-grave basis, there is merit in seeking to bring larger areas into re-use as part of a coherent plan.¹⁹

The Cemeteries Research Group states that the City of London Cemetery in Newham is re-using graves with church permission:

In a consecrated section of the site, the local authority is re-using graves by disinterring any remains, and reintering them in a 'designated' grave, so releasing the grave for use by another family. The last interments in these graves took place eighty years ago.

The local authority is operating according to strict protocols, which preclude the disturbance of any remains more substantial than minor bone or coffin fragments. Any remains are placed in a hessian sack before being re-interred in the designated grave, and in no instance are remains cremated or taken away from the site. Hundreds of graves have been made available for re-use using this process.²⁰

2.5 Reclamation and reuse of graves in London

Legislation

In specified circumstances, burial authorities in London may reclaim a grave and then use the remaining space in it, where the rights of interment have not been exercised for 75 years or more and notice has been published.²¹

London burial authorities also have power to disturb graves older than 75 years for the purpose of deepening the grave to allow further burials to take place.²² The [Explanatory Memorandum](#) published with the [London Local Authorities Act 2007](#) provides information about the additional power this Act confers:

Section 74 enables the disturbance of human remains in certain graves, in cases where a burial authority wishes to deepen the grave to enable more burials to take place. Under the City of London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976, burial authorities are already able, if conditions are met, to carry out burials in existing graves without disturbing human remains. They may only do so in respect of graves in respect of which they have extinguished a registered right of burial. The 1969 and 1976 Acts provide that the burial authority is not entitled to extinguish any rights of burial until at least 75 years after the last burial in the grave, and after having made efforts to notify the holder of the right of burial, and allow objections to be made.

¹⁹ Diocese of Southwark, [Reuse of Graves](#) [accessed 18 May 2017]

²⁰ University of York Cemetery Research Group, [Frequently Asked Questions. "But haven't I heard something about grave re-use in London?"](#) [accessed 30 May 2017]

²¹ City of London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976

²² [London Local Authorities Act 2007 section 74](#)

Section 74 will only apply in relation to a grave where a registered right of burial or interment has been extinguished by the burial authority under either the 1969 Act or the 1976 Act. The burial authority would be able to disturb human remains for the purpose of deepening the grave to allow further burials to take place. No human remains may be disturbed under the Section if they have been interred for a period of less than 75 years. Any remains disturbed must be reinterred in the same grave.²³

Guidance

The London Environmental Directors Network has published [detailed guidance](#) on reuse processes.²⁴

Parliamentary debate

In a Westminster Hall debate on burial grounds in February 2007, Harriet Harman stated that the then Government was supporting London boroughs in the reuse of burial grounds over 75 years old:

On the reuse of old burial grounds, we are moving forward innovatively. In the first instance, we are supporting London boroughs in the reuse, at their discretion, of burial grounds that are more than 75 years old. We must proceed with caution and sensitivity because people have deeply held feelings. We are taking the matter forward, but we are starting by looking at how it works in London. That may show that people are prepared to take what is often considered to be a drastic step.²⁵

In September 2014, in response to an adjournment debate on burial space in London, the then Justice Minister, Simon Hughes, indicated that use of the statutory power by London burial authorities was “almost non-existent”:

My hon. Friend referred to, and other Members may be aware of, the reuse scheme available to London burial authorities by virtue of section 74 of the London Local Authorities Act 2007. That provides powers for burial authorities to extinguish the burial right in graves where—this is the crucial point—no interment has taken place for 75 years, and then to reuse the plots by redigging, lowering the existing burial, capping and putting in new bodies on top. Despite that facility having been available for several years now, take-up is almost non-existent. Although the City of London, one of the 33 local authorities in Greater London, reused just under 900 graves in the four years up to 2013, it did this in nearly every case using the powers not in the 2007 Act but those under ecclesiastical law where, on Christian consecrated land, reuse of graves is permitted if the Church authorities issue what is called a faculty. The York research group report that I mentioned earlier confirmed the limited use of these powers under the 2007 Act. It suggested that the reason for this is partly the difficulties involved in establishing who owns the monuments, and similar issues, and partly the administrative complexity of identifying grave ownership.²⁶

²³ [London Local Authorities Act 2007 Explanatory memorandum](#), p13

²⁴ London Environmental Directors Network, Cemeteries, Crematoria and Burial Provision Sub-Group, [Technical Guidance on the Reuse and Reclamation of Graves in London Local Authority Cemeteries](#), October 2013

²⁵ [HC Deb 27 February 2007 c240WH](#)

²⁶ [HC Deb 5 September 2014 c630](#)

Simon Hughes said that it would be necessary to look at why the powers available to London burial authorities were not being used before considering whether similar powers should be made available in other areas:

A number of those who are calling for something to be done have asked that access to the reuse scheme in the 2007 Act that applies in Greater London be extended to apply to the rest of England and Wales. There must clearly be reasons why London councils are not generally making more use of these powers, and before the Government consider legislation to extend the scheme more widely, we need to make sure that we understand the reasons why they have not been used significantly in London.²⁷

3. Government consideration of reuse of graves

3.1 Labour Government consultation

On 15 January 2004, the Home Office published a consultation paper, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#).²⁸ The consultation paper covered a number of issues relating to burial law.

The then Government asked for views on the reuse of graves:

Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be tested, in particular, so as to gauge public concerns and acceptability, and to determine the practicality and economics of any new approach, having regard to the need for any exceptions and safeguards. Comments are therefore invited on the principle as to whether the disturbance of remains would be justified in the interests of preserving and funding local, viable burial grounds, and reducing demands for new land for burials.²⁹

The Government stated that the “lift and deepen” method was its preferred approach, but invited views on any foreseen disadvantages of this method, or advantages of alternative methods.³⁰

3.2 Labour Government response to consultation

The consultation period ended on 13 July 2004. On 7 April 2006, the Department for Constitutional Affairs³¹ published a [summary of responses](#) to the consultation. This indicated that a range of opinions had been received in relation to the proposal to reuse graves:

Most respondents were in favour of pursuing a re-use option for burial grounds, varying from those who considered the practice should be implemented immediately to those who regarded it as very much a last resort which would need careful presentation and handling, or fuller consideration of the financial, logistical and safety implications. The 'lift and deepen' method was preferred, but additional options were proposed, and there was a degree of support for local decisions on the method to be used. There was, however, a substantial minority entirely averse to re-use, especially from the general public.³²

On 5 June 2007, the Ministry of Justice published its response to the consultation, [Burial Law and Policy in the 21st Century The Way](#)

²⁸ At that time the Home Office was responsible for burial matters. In 2005, responsibility was transferred to the Department for Constitutional Affairs, now the Ministry of Justice.

²⁹ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, Question 22, p15

³⁰ *Ibid*, Question 26, p16

³¹ As it was then, now Ministry of Justice

³² [Burial law and policy in the 21st century Response to consultation](#), CP (R) DCA/HO 1/05, p9

[Forward](#).³³ Announcing publication in a written Ministerial Statement, Harriet Harman said that the then Government was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards:

One solution which the Government have been urged to consider is the reuse of burial grounds after a suitable lapse of time. It is a solution which can offer sustainable land use for the future, and the prospects of keeping burial facilities in good order and near to the communities they serve. It is an option which has received wide support.

The Government are now satisfied that it would be right to enable graves to be reused in this way, subject to appropriate safeguards. For example, no grave should normally be reused unless the last burial took place at least 100 years before. And families should have the opportunity to defer reuse of their relatives' graves for at least another generation.

We therefore intend to introduce measures which, using powers available under the Deregulation and Contracting Out Act 1994, will allow local authorities to reuse graves in their cemeteries, if they wish. At the same time, we will develop, in consultation with burial professionals and others, good practice guidance on the reuse of old burial grounds, the provision of burial space generally, and the maintenance of existing burial grounds.³⁴

In March 2008, Bridget Prentice, who was then a junior Justice Minister, said that work was progressing well on the practical details of how proposals to allow local authorities to reuse graves in their cemeteries would operate. At that time, she said that it was expected that an announcement would be made in the near future about how the initiative would be taken forward, including a public consultation exercise.³⁵

However, in April 2009, Lord Bach, who was then a junior Justice Minister, indicated that this issue was still being kept under review but was not being taken forward at that time:

The Lord Bishop of Southwell and Nottingham: ... On 2 April the Parliamentary Under-Secretary of State wrote to the chairman of the Churches Funeral Group explaining that,

“after careful consideration, the Government has concluded that this is not the most appropriate time for taking these matters forward”.

Why, after eight years of discussion, is there a shortage of parliamentary time for legislation, or is there a more fundamental reason?

Lord Bach: My Lords, this remains a sensitive issue; that should not be a surprise to the House. Research indicates that a good proportion of individuals when asked are concerned and doubtful about the issue. I hope that the right reverend Prelate and others

³³ Ministry of Justice, [Burial Law and Policy in the 21st Century The Way Forward](#), Government Response to the Consultation carried out by the Home Office/DCA, June 2007

³⁴ [HC Deb 5 June 2007 cc 11-12 WS](#)

³⁵ [HC Deb 19 March 2008 c1194W](#)

in the House agree that on issues such as this, it is important to take people with you to try to achieve consensus...³⁶

3.3 Reuse of graves kept under review

Coalition Government stance

In July 2012, Jonathan Djanogly, who was then a junior Justice Minister, said that the issue of burial space was “routinely discussed at bi-annual meetings of the Burial and Cremation Advisory Group, which is chaired by the Ministry of Justice”.³⁷ He also stated that, in autumn 2011, he had taken the view that introducing a policy of reusing graves was not critical at that time, but that the then Government had committed to keeping the situation under review.³⁸

On 5 September 2012, there was an adjournment debate on the subject of burial space.³⁹ Helen Grant, then junior Justice Minister, acknowledged the problem of shortage of space for burial in some areas.⁴⁰ However, Ms Grant said that “we have not yet reached the stage where the position is critical or requires Government intervention”, and stated that she did not consider that introducing a policy of reusing graves was critical at that time. The matter, she said, would be kept under review:

Nevertheless, my officials have offered help and advice to burial authorities, and guidance has been issued for burial ground managers so that they can make the best use of their cemeteries. I will, of course, continue to keep the matter under constant and careful review.⁴¹

In September 2014, Simon Hughes confirmed that the issue had continued to be kept under review. He committed to “continue working on and engaging with this issue to make sure that we come to some conclusions on the way forward over the next few weeks and months”.⁴²

Conservative Government

In November 2016, junior Justice Minister, Phillip Lee, said that the Government was considering whether the issue of reuse of graves should be kept under review:

There is already private legislation that, for almost 10 years now, has enabled public burial authorities in London to reuse graves, yet very few have done so. It is therefore not yet clear that pressure on burial space is a national issue requiring central Government intervention. Successive Administrations have kept the situation under review; I and my ministerial colleagues are considering whether that position should continue.⁴³

³⁶ [HL Deb 22 April 2009 cc1497-9](#)

³⁷ [HC Deb 17 July 2012 c638W](#)

³⁸ [HC Deb 16 July 2012 c544W](#)

³⁹ [HC Deb 5 September 2012 cc354-60](#)

⁴⁰ [HC Deb 5 September 2012 cc360](#)

⁴¹ *Ibid*

⁴² [HC Deb 5 September 2014 c632](#)

⁴³ [HC Deb 29 November 2016 c1487](#)

4. The position in Scotland

In Scotland, graves are referred to as “lairs”.

New legislation, the [Burial and Cremation \(Scotland\) Act 2016](#) provides for the reuse of burial lairs.

The legislation followed a Scottish Government [consultation on a Proposed Bill Relating to Burial and Cremation and Other Related Matters in Scotland](#).⁴⁴ Paragraphs 57 to 88 dealt with [Alleviating pressure on burial grounds](#).

The Scottish Government’s [Consultation Analysis Report](#) was published in July 2015. It revealed that there had been a mixed response to the questions relating to [reuse of burial lairs](#) and that most individuals who responded answered only these questions and opposed the proposal:

161 There was clearly considerable concern about the concept of allowing burial lairs to be reused in certain circumstances, and some of the related proposals, particularly from members of the public who responded to the consultation. Given the sensitivity of this topic, this is perhaps unsurprising. The vast majority of individuals who responded to the consultation answered only those questions relating to burial lair reuse, and most of them opposed the proposal, or at least called for more information about the safeguards that would be put in place to govern the process. Most organisations who responded to this issue supported the proposal, although there were a number who did not, including a small number of burial authorities and the National Association of Funeral Directors.

162 As discussed at paragraphs 63 - 65, a variety of reasons were put forward in opposition to the reuse of lairs. A number of people believed that human remains should not be disturbed for any reason. Others were concerned that lairs in which they had an ongoing interest would be reused without the opportunity to object. A number of responses argued that safeguards needed to be set out to detail the process by which lairs would be selected for reuse. Some responses suggested that reusing lairs would harm the heritage and research value of the burial grounds in which they were located.

The Scottish Government considered that, despite these objections, the fundamental purpose of the proposal remained valid and would be taken forward, and pointed to the safeguards which would be put in place:

While remaining a sensitive subject, the benefits of allowing the reuse of burial lairs warrant the proposal being taken forward in legislation, supporting the sustainability of burial grounds and making burial a more affordable and viable option in places where there is severe pressure on burial land. If the policy came into force it would be an option for burial authorities to use in their management of burial grounds; it would not be mandatory.

The Scottish Government will continue to engage with stakeholders to further develop this policy with a view to taking account of the issues raised during the consultation process. This should ensure that the Burial and Cremation (Scotland) Bill

⁴⁴ 26 January 2015

contains provisions which offer a robust process for the reuse of lairs with safeguards built into every stage.⁴⁵

A SPICe [Financial Scrutiny Unit Briefing on the Burial and Cremation \(Scotland\) Bill](#) provides information about the provisions which deal with alleviating pressure on burial grounds:

The Bill enables full, partially full and unused lairs to be restored to use in certain circumstances. The Bill sets out the criteria for burial authorities to identify which lairs may be available for possible restoration. The Bill will be supplemented by regulations which will provide in detail the statutory procedure that must be followed by the burial authority to enable the restoration of lairs.

A lair which contains human remains will be considered potentially suitable for restoration only where the last interment was at least 100 years ago and where the lair appears to be abandoned. A lair which does not contain human remains (i.e., an unused lair) will be considered potentially suitable if 50 years have passed since it was last sold and it appears to the burial authority to be abandoned.

The test of whether a lair is abandoned is not set out in the Bill, but the Scottish Government intends to provide guidance on the restoration process which will set out the factors a burial authority should consider when determining if a lair is abandoned. After a burial authority has identified a suitable lair, it must consult with various organisations to ensure there is no reason why the lair cannot be restored to use.

The burial authority will be required to contact the owner of the lair. In cases where the owner is found and objects to the proposed restoration, the process cannot continue. If the owner cannot be found or no objections are lodged by this stage, the burial authority is required to undertake a public notification exercise.

While the process required is lengthy, it is likely that burial authorities will recover multiple lairs for restoration to use each time, including over numerous burial grounds. Burial authorities will be expected to use this process strategically to identify and recover enough lairs to provide additional capacity for a number of years.⁴⁶

A Scottish Government official has stated, “We are currently working on commencing other parts of the Act at the moment. We estimate that commencement of the reuse provisions will be in 2018”.⁴⁷

⁴⁵ At paragraphs 163-7

⁴⁶ 15/70, 29 October 2015

⁴⁷ Personal communication from SPICe, 6 June 2017

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