

National Committee on Infant Cremation

**Annual Report
2016-2017**

July 2018



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NATIONAL COMMITTEE ON INFANT CREMATION

**ANNUAL REPORT
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1. BACKGROUND

The establishment of a standing National Committee on Infant Cremation was a key recommendation of the Rt Hon. Lord Bonyon's *Report of the Infant Cremation Commission*¹ ('Bonyon Report'; 'Bonyon Recommendations'), which was published on June 17, 2014.

On the same day, the then Minister for Public Health, Mr Michael Matheson, made a formal statement to Parliament in which he accepted all 64 recommendations, including - as a priority - the formation of the National Committee.

The National Committee's main aims and objectives are set out in Recommendations 57 to 62 of the Bonyon Report, and can be summarised as:

- Develop, promote and annually review a Code of Practice on baby and infant cremations which reflects contemporary standards and best practice.
- Ensure all recommendations from the Infant Cremation Commission 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.
- Promote improvements in practice, technology, policy and legislation.
- Report annually to Ministers on standards and practice in baby and infant cremations.

In June 2016, Rt Hon Dame Elish Angiolini published the Infant Cremation Investigation Report which set out 15 general conclusions and recommendations (of which, 2 were general conclusions and 13 were recommendations). The recommendation and conclusions were accepted by Scottish Ministers and the National Committee now provides oversight of the implementation of these recommendations.

The National Committee is chaired by Scottish Government, and has more than twenty members from multiple organisations and sectors including: clinical and neonatal experts; cremator manufacturers; crematoriums and funeral directors representative organisations; bereavement organisations; private and local authority cremation authorities and policy officials from England, Wales and Northern Ireland. There have also been parent representatives on the Committee and its Sub-Groups to help ensure that those who have been most affected by issues in the past are central to improving policy, practice and the law now and in the future.

The Committee recognises the emotional distress and turmoil experienced by many parents and families as a result of some previous infant cremation practices. Because of this, it welcomes the many improvements that have already been made by the organisations involved; it acknowledges that more work needs to be done; and it remains committed to its role in ensuring best practice is the norm in Scotland.

¹ <http://www.gov.scot/Publications/2014/06/8342>

2. COMMITTEE WORKING PRACTICES

Meetings

The National Committee on Infant Cremation met on five occasions: 9 October 2014; 26 January 2015; 11 June 2015; 13 November 2015 and 28 October 2016.

During the meeting on 28 October 2016, it was agreed that the scope of the Committee had changed as result of the publication of Dame Elish Angiolini's report in June 2016. Members agreed that the majority of Lord Bonomy's recommendations were now complete and that the Committee should widen its scope to oversee the implementation of Dame Elish's National Cremation Investigation recommendations and to reflect the work being done on the wider burial and cremation developments set out in the Burial and Cremation (Scotland) Act 2016. To reflect these changes the Committee was subsequently renamed the **National Committee on Burial and Cremation** in April 2017.

Alongside this and in line with the Terms of Reference agreed by the Committee, membership must be reviewed every two years. Following a successful membership review in Spring 2017, the first meeting of the National Committee on Burial and Cremation was held on 12 June 2017.

As well as the main Committee, there were originally five separate Sub-Groups set up: Cremation Practice; Shared Cremations; Training and Communications; Forms and Record-Keeping and Policy and Code of Practice. In 2016, three of the five subgroups completed their remits and subsequently stood down. By June 2017 the Forms and Records subgroup – tasked with developing the new cremation application forms – had also completed their remit and the outstanding work was taken forward and completed by the Cremation Regulations Working Group. In turn, the final active group, the Training and Communications subgroup – developing training materials - subsequently completed its work and was stood down in December 2017.

Transparency and Communication

The National Committee has its own dedicated webpages which are available via the following link:

<http://www.gov.scot/Topics/Health/Policy/BurialsCremation/NationalCommitteeonBurialandCremation/NationalCommitteeonInfantCremation>

The webpages include the approved meeting minutes of the Committee and its Sub-Groups and also a separate 'Resources' section, where Committee and/or related outputs are collated and available. This includes all key documents mentioned within this report.

Following the publication of Dame Elish Angiolini's Report on the National Cremation Investigation, the website was updated to include a link to the original report and the Scottish Government's response. These documents can be found at the following link:

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

Attendance and Participation

Meeting attendance and participation levels have been high since the establishment of the National Committee. We would like to take this opportunity to record our appreciation and thanks to committee members for their input and involvement throughout. Their engagement has been invaluable in fully implementing Lord Bonomy's recommendations and in turn raising the standards and awareness in the industry.

3. PROGRESS AGAINST BONOMY AND ANGIOLINI RECOMMENDATIONS

As of October 2016, the Committee, its Sub-Groups and its member organisations fully completed 27 of the 64 recommendations made by Lord Bonomy which equates to a 42% completion rate.

A further 26 recommendations will be completed by the coming into force of various sections of the Burial and Cremation (Scotland) Act 2016 ("the 2016 Act") which was passed by Scottish Parliament in March 2016. Each section of the 2016 Act must now be brought in to force separately following parliamentary processes. Once the relevant sections of the 2016 Act have been commenced and regulations have been agreed by Scottish Parliament 53 of the 64 recommendations, or 80% will be complete.

Of the remaining 11 recommendations made by Lord Bonomy, 4 are subject to completion by NHS Education for Scotland and were planned for completion in April 2017, 4 are annually recurring and therefore not subject to a 'final completion' as such; 1 may not be directly possible by legislation and is included within the Code of Practice instead and; 2 can only be commenced after other legislation and documentation is in place.

Of the 15 recommendations made by Dame Elish, 2 are general conclusions, 7 will be completed when the regulations of the 2016 Act come in to force, including 4 which relate directly to inspection; 3 are for NHS Education for Scotland and 3 are local authority/NHS/Private Crematorium matters relating to training and sharing of good practice.

A worksheet detailing the outstanding recommendations to be implemented can be found in the separate *Committee Action Plan* document on the National Committee webpage:

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

4. THE BURIAL AND CREMATION (SCOTLAND) ACT 2016

Background and General Information

The Burial and Cremation (Scotland) Act 2016 was passed by the Scottish Parliament on 22 March 2016 and received Royal Assent on 28 April 2016. The Act is primary legislation which grants Scottish Ministers powers to make regulations in secondary legislation.

The Act contains a comprehensive legislative framework for burial and cremation in Scotland. It takes forward the wide-ranging recommendations made by the Burial and Cremation Review Group in its 2007 report², and implemented those recommendations made by Lord Bonyon which required legislative change.

In summary, the topics covered by the Burial and Cremation (Scotland) Act 2016 are:

- the management of burial grounds;
- applications for burial, fees and registers;
- the duration of rights over a lair and restoration to use of lairs;
- private (home) burial;
- exhumation;
- cremation, including duties of cremation authorities, application forms, fees and registers – pregnancy loss is included in each of these processes;
- who may instruct the disposal of human remains;
- inspectors and inspection, as well as the power for Scottish Ministers to introduce licensing of funeral directors;
- the suspension of burial and cremation legislation in response to public health risks (eg, pandemics);
- methods for disposing of human remains which may be introduced in the future; and
- powers for Scottish Ministers to issue statutory codes of practice covering various parts of the funeral industry.

Progress to Date

On 28 December 2016, a number of sections of the Burial and Cremation (Scotland) Act 2016 came into force. The changes primarily concern the regulatory framework for burials in Scotland. To date, burials had been regulated by the Burial Grounds (Scotland) Act 1855 (“the 1855 Act”). On 28 December 2016, the 1855 Act was repealed and was replaced by sections of the 2016 Act or other transitional and transitory arrangements (described below). The repeal of the 1855 Act was necessary to avoid running parallel regulatory regimes. In addition, these Regulations also enabled Scottish Ministers to appoint Inspectors of Funeral Directors and Inspectors of Burial.

Transitional and Transitory Provisions

The 2016 Act is being commenced in stages. The Regulations which came in to force on 28 December 2016, therefore, make transitory arrangements to ensure that burial authorities can continue to perform their role in relation to burial. This will ensure that burial authorities can continue to sell lairs and rights to erect headstones, charge fees and maintain burial registers. These arrangements will remain in place until the rest of the burial provisions come in to force.

² <http://www.gov.scot/Topics/Health/Policy/BurialsCremation/BurialCremationReview>

Burial – sections commenced on 28 December 2016

Section	Title	Description
1 and 2	Meaning of “burial ground” and Meaning of “burial authority”	Provide new definitions to cover all burial grounds (local authority as well as private) and a new definition for burial authorities.
3	Provision of burial ground: local authority	Places a duty on local authorities to provide at least one open burial ground within their local authority area.
4	Provision of burial ground outwith local authority area	Allows local authorities to provide a burial ground which is situated wholly or partly outwith their local authority area.
5	Joint provision of burial ground	Allows two or more local authorities to jointly provide a burial ground.
6	Management of burial ground	Allows Scottish Ministers to make regulations in connection with the management, regulation and control by a burial authority of burial grounds.
7	Right to erect a building	Provides the power to burial authorities to sell a right to erect a building or other structure on a burial ground.
17	Register of rights of burial	Ensures that burial authorities must continue to maintain a register of the sale of rights of burial.
20(1), (2)(a) and (b), (3), (4), (5) and (6)	Fees for burial	This section will be partially commenced to ensure that burial authorities can continue to set and charge fees for burial and will place a duty on burial authorities to publish their fees.

Appointing Inspectors – Sections commenced on 28 December 2016

In 2015 Scottish Ministers appointed an Inspector of Crematoria. While existing cremation legislation enabled Scottish Ministers to appoint the Inspector of Crematoria, there were no similar powers in legislation to enable Scottish Ministers to appoint Inspectors of Burial or Inspectors of Funeral Directors. From 28 December 2016, Scottish Ministers had the power to appoint Inspectors of Burial and Inspectors of Funeral Directors.

Scottish Ministers appointed an Inspector of Funeral Directors in April 2017.

There are no immediate plans to appoint an Inspector of Burial.

The sections of the 2016 Act which allow the appointment of Inspectors and have now come in to force are:

Section	Title	Description
89(1)(a) and (c)*	Appointment of Inspectors	Allows Scottish Ministers to appoint Inspectors of Burial and Inspectors of Funeral Directors.
93	Reports	Makes provision about the preparation and publication of reports.

**Section 89(1)(b) (Inspectors of Cremation) will be brought into force when the provisions regulation cremation at Part 2 are commenced later in 2018.*

Other Provisions

On 28 December 2016, a number of other, more technical, areas of the 2016 Act were commenced. These have been set out below:

Section	Subject matter
101	Acquisition of land
104(1)	Regulations and consultation requirements
110	Repeals
Schedule 2	Repeals Burial Grounds (Scotland) Act 1855 Where the reference the 1855 Act: Scottish Board of Health Act 1919 Church of Scotland (Property and Endowments) Act 1925 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 Local Government etc. (Scotland) Act 1994

Indicative Future Implementation Timescales

Different parts of the 2016 Act will be commenced at different times. Where Regulations are to be made, they will be designed in collaboration with stakeholders and will be subject to public and stakeholder consultation. The timescales below are high level and indicative only.

2017/18:

- Pregnancy loss and cremation, including the commencement of Part 3 of the 2016 Act (Arrangements)
- New powers for Inspectors

2018/19:

- Burial application process, private burial and exhumation
- Lair restoration to use
- Burial ground management regulations

2019 and beyond:

- Regulation of funeral directors
- Appointment of the Inspector of Burial

5. CODE OF PRACTICE

The Committee published its first Code of Practice in December 2015 and agreed at that time that the Code should be subject to annual review. At its meeting in October 2016, the group reviewed the Code of Practice and agreed that no significant updates were required. A small number of minor amendments were made and the updated Code of Practice can be found at: <http://www.gov.scot/Topics/Health/Policy/BurialsCremation/NationalCommitteeonBurialandCremation>

The 3rd Edition of the Code of Practice is due for Committee approval in June 2018 and will be published on the Scottish Government website in due course.

6. INSPECTOR OF CREMATORIA AND INSPECTOR OF FUNERAL DIRECTORS

Inspector of Crematoria

Robert Swanson QPM was appointed to the role of Inspector of Crematoria for Scotland in March 2015.

Since his appointment, the Inspector has undertaken formal inspections of all 29 crematoriums in Scotland and has written individual reports on each. The Inspector formally published his annual report, 2015/16 in May 2017. The Inspector's report can be found at: <http://www.gov.scot/Topics/Health/Policy/BurialsCremation>

During the first round of inspections the Inspector identified that all staff who carry out cremations have completed training, the majority of which are accredited by either the Federation of Burial and Cremation Authorities (FBCA) or Institute of Cemetery and Crematorium Management (ICCM). The Inspector also reported that in every case of baby and infant cremation ashes have been recovered. Adherence to training and the recovery of ashes continues to be monitored. As of June 2017, which this report covers, all baby and infant cremation ashes have been successfully recovered in Scotland since March 2015.

The Inspector has the duty to investigate complaints regarding cremation practice which are referred to him from, or on behalf of, bereaved families. To date the Inspector has dealt with various complaints from bereaved families, and continues to respond and investigate complaints as they are received.

The Inspector's next annual report, covering 2016-18, will be published in Summer 2018.

Inspector of Funeral Directors

A recruitment exercise for an Inspector of Funeral Directors was completed in Spring 2017. The successful candidate, Natalie McKail, was formally appointed by the then Minister for Public Health and Sport, Aileen Campbell, in April 2017. The Inspector of Funeral Directors has been appointed for an initial period of two years. The Inspector initially focused on gaining a detailed understanding of how the funeral

director industry conducts its business. The Inspector is now in the process of compiling a report with a view to making recommendations to Scottish Ministers on how the funeral director industry should be regulated and whether licencing should be introduced as part of this regulation. This report is due before Ministers in December 2018. The Inspector will also make an assessment of how well funeral directors are adhering to the National Committee on Infant Cremation Code of Practice and will publish their findings as part of this report.

7. UPDATED GUIDANCE ON THE CREMATION OF PREGNANCY LOSSES

In 2012, the Scottish Government Chief Medical Officer and Chief Nursing Officer issued revised Guidance to the NHS in Scotland, notifying them that incineration of pregnancy losses (i.e. losses that occurred before 24 weeks' gestation) was no longer acceptable, and that shared cremation was now the minimum standard. All fourteen territorial Health Boards confirmed in 2013 that they were meeting that new minimum standard.

An early piece of work for the National Committee, largely via its Shared Cremations Sub-Group, was to ensure this Guidance was updated to reflect the Bonomy recommendations. The revised version was submitted to Scotland's Chief Medical Officer and Chief Nursing Officer, and was subsequently issued to all NHS Health Boards in June 2015.

It is worth noting that one of the changes introduced, a requirement to 'discuss' all available burial and cremation options with the individual who had experienced the loss, caused concern to some medical professionals working most closely in this area, who felt that in certain circumstances this would cause additional distress to patients. Although the Bonomy recommendation is based on sound principles of ensuring informed consent / authorisation, and despite the option for the patient to decline all discussion, there is a continuing view that actively discussing all options may still be a step too far in some instances, particularly in the context of very early pregnancy loss.

The originally intended update to the CMO letter was postponed to ensure that the updated letter could take account of the changes in practice that will emerge from the new legislation. The chair of the National Committee issued a letter in January 2016 providing a progress update about the work of the Committee.

Throughout the period of this report significant work has been undertaken with NHS Scotland and others to design and deliver new statutory pregnancy loss authorisation forms. These forms will be used by health care providers to record a mother's wishes for the burial or cremation of her pregnancy loss or stillborn child. The introduction of the forms will be accompanied by guidance for health care professionals and sufficient time will be built into the process for staff training. In addition, an updated CMO letter will be circulated to health boards in due course which will provide an update on the new legislation.

8. PUBLISHED CREMATION AUTHORITY POLICY STATEMENTS

The aim of having a standardised policy statement is to ensure accurate information on local cremation practice is available to those who have been bereaved (and the general public). Its secondary purpose is to make it easier for local partners, eg hospitals and funeral directors, to find this information, thus helping to improve the consistency of cremation information provided to those who have been bereaved.

The Inspector of Crematoria conducted checks of all cremation authority websites to ensure that the Policy Statement on Infant Cremations was publically available. In most instances, they were found to be present, and where it was not it was brought to their attention and rectified. Every cremation authority now displays its policy statement online.

9. RELATED ISSUES 2016-17

Dame Elish Angiolini National Investigation

Dame Elish's National Investigation was published on 17 June 2016.

Information about the investigation and the report are available at:

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

Dame Elish made 13 specific recommendations and 2 general conclusions, all of which have been accepted by the First Minister. Oversight of the progress of implementation of these records has been taken forward by the National Committee on Burial and Cremation.

A worksheet detailing the outstanding recommendations to be implemented can be found in the separate *Committee Action Plan* document.

10. FORWARD LOOK

After two years of work and as laid down in the Committee's Terms of Reference, a successful review of membership took place in Spring 2017. The Committee now continues its work as the **National Committee on Burial and Cremation**.

The National Committee will continue to provide oversight of the progress made on implementing Lord Bonyon's recommendations, will monitor the progress and implementation of the recommendations made by Dame Elish Angiolini and will continue to revise the Code of Practice annually.

It will spread its focus across a wider scale, encompassing burial and cremation practice and policy across Scotland. Drawing on its success of implementing change as the National Committee on Infant Cremation it will utilise its expertise to bring improved practices, training and policy into the sector, making it fit for the needs of modern Scotland. It will continue to engage with Government, local authorities, NHS

Boards, trade bodies, parents and other relevant groups and parties to achieve this aim.

**National Committee on Burial and Cremation
June 2018**

NATIONAL COMMITTEE MEMBERSHIP 16/17

Representative Sector	Organisation	Member Name
Chair	Head of Health Protection, Scottish Government	Gareth Brown
Inspector of Crematoria		Robert Swanson
Inspector of Funeral Directors		Natalie McKail
Cremation representative organisations	Institute of Cemetery and Crematorium Management (ICCM)	Bill Stanley
	Federation of Burial and Cremation Authorities	Rick Powell
Manufacturers	Facultatieve Technologies (FT)	Jim Nicholl
Funeral directors	National Association of Funeral Directors (NAFD)	Paul Cuthell
	Society of Allied Independent Funeral Directors (SAIF)	Jim Brodie
Local authority cremation authorities	Glasgow City Council	Brian Devlin
	Edinburgh City Council	Robbie Beattie
Private cremation authorities	Dignity Ltd	David Baxter
	Edinburgh Crematorium Ltd	John Proffitt
Bereavement organisations	Simpsons Memory Box Appeal (SiMBA)	Sara Fitzsimmons
	Sands Scotland	Ann McMurray
	The Miscarriage Association	Helena McLaren
NHS	Heads of Midwifery	Susan Stewart
	NHS Education for Scotland (NES)	Mary Ross-Davie
Neonatologists	Consultant Obstetrician	Dr Dawn Kernaghan
	Consultant Neonatologist	Dr Edile Murdoch
Parent representatives	By arrangement x 2	
UK administrations	Ministry of Justice, England & Wales	Judith Bernstein
	Department of the Environment, Northern Ireland	Julie Broadway
Scottish Government	Senior Medical Officer	Dr Mini Mishra
	Legislation leader (observer)	Cheryl Paris
	Supporting officials	Katrina McNeill and Vicki McKechnie



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