BURIAL AND CREMATION REVIEW GROUP

REPORT

AND

RECOMMENDATIONS

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INDEX

FOREWORD

I have pleasure in submitting the attached report prepared by the Group set up by your predecessor as Health Minister in January 2005.

Our terms of reference required us to look at two main subjects, death certification and the law relating to burial cremation and cemeteries. In looking at the subject of death certification the Group concentrated on proposals designed to ensure that when death occurs there are adequate safeguards in place to meet any concerns about the death that may be in the minds of family or society. The fact that Scotland has so far not suffered from the activities of a Dr Shipman is no guarantee that this will continue. While no number of changes to death certification procedures can eradicate criminal behaviour the Group consider that if either of the suggested models for death certification are implemented the existing very unlikely possibility of a Scottish Dr Shipman appearing will be rendered even more remote.

The need to look at death certification arose out of the recent scandal of Dr Shipman. No such scandal initiated the review of the Burial, Cremation and Cemeteries legislation. Rather the need for it arose from changes in society and the fact that the legislative provisions governing burials and burial grounds were to a large extent over one hundred and fifty years old.

Many of the Group's proposed recommendations represent an updating and regularisation of procedures while others reflect an attempt to deal with current problems, such as the scarcity of burial grounds and the abandonment of graves and memorials. As many of our proposals relate to practical matters the Group would encourage the government to involve the professional bodies most closely concerned with these matters in their eventual implementation.

The Group's work could not have proceeded as it did without the efforts of a number of Scottish Government officials involved in the Group's work. Over the time the Group met there were a number of personnel changes such that only one of those present at the beginning of our work was still involved at the end. The main constant was their professionalism and dedication to the work in hand. On behalf of all the members of the Group I would like to record our sincere thanks for their efforts.

ROBERT BRODIE

SUMMARY OF RECOMMENDATIONS

Death Certification

1. The procedure for certifying deaths should be sensitive to the many different faiths and beliefs in Scotland and ensure as short a delay as possible between death and disposal. **(paragraphs 13 and 14)**.

2. The same certification requirements should apply to all deaths regardless of the method of disposal of the body. **(paragraph 30)**

3. Any partner in a multi-GP practice who has access to information about the deceased may certify death. Any medically registered member of the Hospital team caring for and having information about the deceased may certify death. **(paragraph 32)**

4. Relatives should not have to pay for the forms required for the disposal of the body. **(paragraph 30)**

5. Appropriately trained professional groups such as registered nurses and paramedics should be entitled to verify the fact that life is extinct. **(paragraphs 34-36)**

6. The office of medical referee at crematoria should be abolished. **(paragraph 31)**

7. A statistician to be called a Deaths Investigator should be appointed to enable frequent regular statistical checks to be carried out on all death data. **(paragraph 37)**

8. A new system of death certification should be introduced based on one or other of 2 models proposed by the Group. **(paragraph 27)**

9. One Model involves the appointment of Medical Investigators whose function will be to carry out a comprehensive paper based scrutiny of a 1% random sample of all deaths and up to a further 1% of deaths where concerns have been expressed. In this model only one signature will be required to certify death apart from the deaths which have been subject to comprehensive scrutiny where the death certificate will require to be countersigned by the Medical Investigator. **(paragraphs 38 – 44 and Appendix 2)**

10. The other Model involves the appointment of Medical Examiners whose function will be to carry out a basic scrutiny of all deaths and a comprehensive scrutiny of 1-2% of these deaths. The death certificate in all deaths will require to be countersigned by the Medical Examiner. **(paragraphs 45- 48 and Appendix 3)**

Burials, Cemeteries and Crematoria Management

11. All extant legislation, both primary and secondary, should be repealed and consolidated into a single Act with powers to make as and when necessary appropriate subordinate legislation covering burial, cremation and other forms of disposal. **(paragraph 9)**

12. The right to instruct the disposal of bodies on death should be vested in the nearest relative as defined in section 50 of the Human Tissue (Scotland) Act 2006 (asp 4).
(paragraph 12)

13. All records and forms relating to the disposal of bodies should wherever possible be maintained in electronic form. **(paragraphs 15 and 60)**

14. Regardless of ownership, all cemeteries, burial grounds of whatever type, and crematoria should be subject to the proposed new legislation.
(paragraph 49)

15. Legislation should be enacted to provide that there be a minimum depth of burial of 3 feet from the top of the coffin.
(paragraph 52)

16. Full burial grounds/cemeteries should be available for re-use for internments after a period of non-use of 75 years has elapsed. The necessary legislation should be retrospective. Detailed procedures regarding notice and public advertisement of the proposals etc are proposed. **(paragraphs 55 – 57)**

17. The 'dig and deepen' method of re-use, which will require compliance with the proposed exhumation procedures, should be adopted.
(paragraphs 59 and 69 -73)

18. Gravestones, monuments and memorials should wherever possible, having regard to safety etc, be retained at or close to their original site. They could be re-used provided that any body or person having an interest such as Historic Scotland, the appropriate local authority and any identified descendants do not object. **(paragraph 59)**

19. Unused lairs and lairs which have unused space should, provided certain procedures are fulfilled, be available for re-use. **(paragraph 61)**

20. The sale of lairs in perpetuity should no longer be competent but lairs could be sold with a limited but renewable tenure of 25 years. **(paragraph 62)**

21. The sale of blocks of lairs or multiple lairs should not be permitted. **(paragraph 63)**

22. General provisions for cemetery management should be introduced. These should have regard to the English Local Authority Cemeteries Order 1977 Further matters should also be regulated. **(paragraph 50)**

23. There should be legislation to make clear that "home cremation" is illegal.
(paragraph 65)

24. Burials at home and on private ground should require to be authorised by the Local Authority in accordance with regulations made by Scottish Ministers.
(paragraph 66)

Exhumation

25. A new streamlined administrative procedure, not involving the courts, should be introduced to regulate exhumations. **(paragraphs 68 – 70)**

Exhumation for Re-Use

26. Following on completion of the re-use procedures burial authorities should be empowered to authorise exhumations in accordance with regulations by Scottish Ministers. **(paragraphs 72 and 73)**

Exhumation of Cremated Remains

27. The exhumation of cremated remains should be regulated on the lines of the procedure that applies in Northern Ireland. **(paragraph 74)**

Cremation and burial arrangements for those who die outwith Scotland

28. Responsibility for authorising the cremation of people who die abroad and whose bodies are returned to Scotland should be transferred from the Scottish Government to the COPFS. The COPFS should also be given responsibility for all bodies returned to Scotland regardless of the method of disposal. **(paragraphs 76 and 77)**

29. Arrangements for the transfer of human remains within the UK should so far as possible be made uniform. **(paragraph 80)**

Burial at Sea

30. The existing arrangements for burial at sea are satisfactory. **(paragraph 81 and Appendix 5)**

Foetal Remains

31. Sufficient guidance exists as to the disposal of foetal remains. The Scottish Government should issue an update of the 1992 NHS circular on the disposal of such remains. **(paragraph 82)**

Pandemic Flu/Epidemic/Infectious Disease

32. The power to suspend regulations relating to cremation in the case of a pandemic, epidemic or for any other reason should be extended to apply to burials. This power should be sufficiently flexible to apply to the whole of Scotland or to a specified area. **(paragraph 84)**

33. A statutory obligation should be placed on NHS Boards and others to advise any person such as mortuary staff, embalmers and funeral directors who require to handle the body of anyone who has died because of, or while suffering from, an infectious disease of the cause of death and of the appropriate precautions to be taken. **(paragraph 88)**

BURIAL/CREMATION REVIEW GROUP

Background

1. This Group was set up by the Health Minister in 2005 with the following Terms of Reference;

"To review the Cremation Acts of 1902 and 1952 (and the Cremation (Scotland) Regulations 1935, as amended) and the Burial Grounds (Scotland) Act 1855 as amended, and to make recommendations on how the legislation could be changed in order to better serve the needs of the people of Scotland. This would, where appropriate, recognise the established role of the Procurator Fiscal Service, and take account of policy developments in England (specifically the Shipman Inquiry's work on death certification) and international good practice."

2. In order to facilitate transparency and openness, from the beginning the Group made its papers, agendas and details of membership available on the web at:

http://www.scotland.gov.uk/Topics/Health/burialcremation/intro

3. Papers in which the group made recommendations were specifically excluded from the website. The website was well utilised by members of the public and professionals alike and attracted interest across the UK and worldwide.

4. A number of individuals and organisations made representations to join the Group. The Group was satisfied that its membership, determined by Ministerial invitation, adequately covered the remit set by Ministers. It did, however, seek expert advice from external organisations in regard to particular issues which arose during the course of discussion. This relates particularly to Historic Scotland for information on preservation of historic memorials and Information Services Division (part of NHS National Services Scotland) with regard to statistical data on death and the General Register Office for Scotland on matters relating to death certification. It would like to note it's thanks to those organisations and the individuals concerned for the information and advice they provided.

5. When the Group first met in March 2005 it decided to approach its wide and diverse terms of reference by dividing the work into two main strands, one dealing with death certification and the other with the disposal of the dead including burial and cremation and all matters associated therewith such as the management of cemeteries and crematoria. During the course of its work it reviewed current legislation in force in Scotland and best practice and policy development in the UK and internationally. Other relevant legislation, policy and guidance were also reviewed, in particular the work of the Shipman Inquiry with respect to death certification.

6. For death certification the principal legislation is the Registration of Births, Deaths and Marriages (Scotland) Act 1965. For Burial the extant legislation is The Burial Grounds (Scotland) Act 1855. For Cremation there are 2 Acts, The Cremation (Scotland) Acts of 1902 and 1952 and a variety of Regulations, including the Cremation (Scotland) Regulations from 1935, 1952, 1967, 1985, 2003.

7. The Group has met bi-monthly for the past 2 years and has now concluded its discussions and presents the following recommendations to Cabinet Secretary for Health and Wellbeing and the Minister for Public Health.

General

8. **The Group established early that there were a number of key principles which must be considered before any legislative change. These principles, outlined below, apply across the board to death certification and to burial, cremation or other methods of disposal and underpin each later recommendation.**

9. It was agreed that Scotland's Burial and Cremation and Death Certification legislation requires updating to reflect 21st century life and that new integrated primary legislation is recommended. It is recommended that all current primary and secondary legislation be repealed and consolidated into a single Act covering burial, cremation and other forms of disposal. This legislation should attempt to ensure consistency across Scotland, whether through the legislation itself, or in additional guidelines issued centrally. Furthermore the legislation should be designed to facilitate the availability of affordable local burial or cremation.

10. It was acknowledged that while new legislation is recommended and burial and cremation legislation and policy in Scotland is devolved any new Scottish legislation, policies or procedures should have regard to the fact that many people who are buried or cremated in Scotland will have died in another part of the UK and vice versa. Accordingly it was agreed that any new Scottish legislation or policies should be prepared with the aim that it dovetail into legislation/ polices in the rest of the UK so that, at the very least, no new cross-border difficulties are created.

11. Fundamental to the proper disposal of bodies on death is to ascertain who has the duty of instructing such disposal. In Scots law the orthodox view is that at common law as "there is no legal obligation on any person to dispose of a dead body and no specific requirement as to the method of disposal…the deceased's executor, his next of kin, or his near relatives are entitled to arrange for the disposal of his body and to choose the method of disposal". [Stair Memorial Encyclopaedia, vol 3 (1994) para 503, s v "Burial and cremation" (A G Brand) quoted in Niall R Whitty "Rights of personality, property rights and the human body in Scots law" (2005) 9 Edinburgh Law Review 194 at p 230.]. In England it appears to be the case that the executor or administrator is the possessor of the body for disposal and there is sheriff court authority that in Scotland the position is the same – see Whitty, (2005) 9 Edin LR above at p 231. Professor Whitty's article, however, gives a number of practical and principled reasons why that position should not be followed. These are as follows: (i) an executor's functions in Scotland are administrative and financial so that traditionally he pays, but is not himself responsible, for arranging the funeral. (ii) Most persons (perhaps about 60%) dying in Scotland have no confirmed executor. (iii) Executors are not normally confirmed until weeks or months after the funeral. (iv) It is the surviving spouse and next of kin (not the executor) who have rights to solatium for unauthorised interference with the dead body This seems to imply that they (not the executor, who may be a financial institution or the family solicitor) should have rights to decide issues as to the nature of the funeral and the mode of disposal of the body. (v) There may often be no practical alternative to vesting rights of possession and control in the "nearest relative". Professor Whitty proposes that it should be the "nearest

relative", defined by reference to a statutory prioritised list, in whom rights of possession and control should be vested.

12. The Group recommends that this proposal be implemented by legislation which should adopt the definition of "nearest relative" contained in section 50 of the Human Tissue (Scotland) Act 2006 (asp 4) which in turn follows the definition of that term in the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13) s 254 and applied by Adults with Incapacity (Scotland) Act 2000 (asp 4), s 87(1) as amended. It is the understanding of the Group that this would in effect reflect the current day-to-day practice in Scotland. If there were a dispute, which could not be resolved amicably, among the nearest relatives as to the disposal of the body this should be resolved by way of a summary application to the sheriff.

13. Scotland is a multi-cultural, diverse country with many different faiths and beliefs. Legislation should therefore ensure that these different faiths/beliefs are respected and that there is a choice available in planning for funerals. Indeed many people do not have or follow any particular belief, or may primarily wish to consider the environmental consequences of their own or a nearest relative's funeral and this, too, reinforces the need for choice.

14. The Group was conscious of the desire that society in Scotland places upon there being as short a delay as possible between death and funeral. The present delay of some three to five days is generally accepted although certain faith groups, such as Jews and Muslims, regard a considerably shorter delay to be of critical importance in the practice of their faiths. This delay is caused by a number of factors including the availability of the cemetery/crematorium, weekends and public holidays, the need to advertise the time and place of the funeral and the death certification process. That process takes some 24-48 hours with the longer period relating to disposal by cremation due to the need for certification by a second doctor and the involvement of the crematorium medical referee. Key stakeholders in Northern Ireland where there is a similar culture to Scotland regarding delay have indicated that an additional 1-2 days delay to their current 3-4 day burial pattern would be acceptable to the general public, but that any delay in excess of 2 days would not be.[1] In formulating its proposals for change the Group was sensitive to these matters which reflected the wishes and expectations of the deceased and the bereaved.

15. The electronic keeping and transfer of records and forms should be available wherever possible. This not only minimises time delays, but also ensures that these important records are preserved for future generations.

16. In view of the wide span of interests covered by the individual members of the Group and the expert advice received referred to above the Group did not carry out any consultations as such on its proposals. It would not be surprised, however, were the Scottish Government to decide to undertake wide-ranging consultations on the recommendations contained herein before proceeding with legislation.

[1] Report on Timescales and Resources Required to Operate the New Death Investigation, Certification and Registration System (Sub-group of Interdepartmental Working Group), September 2004, Page 2

Death Certification

17. The Group's remit particularly stated that the established role of the Procurator Fiscal Service (COPFS) (with regard to the investigation of accidental sudden, and suspicious deaths) must be recognised by which the Group understood that this established system was outwith the Group's remit. The COPFS currently investigates around 10% of deaths reported to it because they fall into a variety of defined criteria e.g. unexpected or suspicious deaths, deaths in the workplace. The Group acknowledged that any new death certification or procedure must integrate fully and easily into the relevant legislation and the current COPFS procedures as set out in the COPFS Book of Regulations, which is constantly under review.

Current Practice

18. After a death, the Medical Cause of Death Certificate (Form 11) is completed by the doctor. No fee is payable for this certificate which must be completed to enable the body to be buried and the death registered. The death is registered by a registrar of births deaths and marriages, who issues the form (Form 14) confirming the registration of death. In normal practice it is only after Form 14 has been issued that burial proceeds but it is possible to do so on the basis of the death certificate (Form 11) alone.

19. Additional procedures are required to enable cremation to proceed. Two forms (B and C) must be completed by separate doctors who are paid fees totalling £146.50. This cost is met by the nearest relative.

20. The logic behind the more rigorous checks for cremation dates back to the early 20th century when such checks were introduced as safeguards. Cremation is, clearly, irreversible and, obviously, exhumation to carry out further investigation cannot be carried out. It is understood, however, that once a body has been embalmed and buried there is often little forensic information available even when exhumed.

21. The completion of forms B and C should in theory constitute two separate checks, which are totally independent of each other. However, it is acknowledged that this is often not the case in practice, and many, but not all, doctors completing the second form, Form C, perform only a cursory check. Many of Shipman's patients were cremated, and passed through this independent second check without question.

22. In addition, when a body is cremated, a third doctor, the medical referee at the crematorium performs a final check of all the papers. The medical referee, who must be of at least 5 years professional standing, has the power to refuse cremation if there is any suspicion around the death. He also has the power to order a post mortem examination of the body. The cremation authority pays the medical referee a fee which is recouped through the cremation fee charged by the cremation authority to the nearest relative.

23. Thus in Scotland, as with the rest of the UK, for burial only one doctor is involved, and no fees are payable by the nearest relative. On the other hand for cremation three doctors perform checks and are all paid fees which are, either directly or indirectly paid by the nearest relative.

Proposals for Change

24. The present certification process was reviewed and, in light of Shipman, it was agreed by all that it has weaknesses, particularly in the lack of full, thorough independent scrutiny of cremation forms (Forms B and C). It was considered by all that change was indicated to the current death certification process in Scotland, not only as an outcome of the Shipman Inquiry, but to reflect modern society, facilitate electronic transfer and storage and use of data for public health purposes and to involve the views and needs of the nearest relative in the process. Maintaining the status quo was not an option. It required to be replaced by a more robust system.

25. The Group looked first at the recommendations for a Medical Examiner system contained in the Shipman Inquiry's 3rd Report. It set up a sub-group comprising medically qualified members of the Group to devise a death certification system for Scotland which would fit into the distinctive Scottish legal system and the existing role of the COPFS while closely following the substance of these Shipman recommendations. The system devised by this sub-group can be found in the paper available on line at www.scotland.gov.uk/Topics/Health/burialcremation/5meeting/Paper2.

26. Some members of the Group had concerns about the recommendations contained in the sub-group paper. These concerns related, among others, to cost and the potential for delay in the release of bodies for funeral. Just as these concerns were being voiced the Group learned that the Government was minded not to accept all the recommendations of the Shipman Inquiry so far as they related to England and Wales and Northern Ireland, largely on the grounds that they did not offer good value for money and because they would add a significant delay to the release of the body for a funeral.

27. In light of these developments the Group looked again at the matter with a view to ascertaining whether another less stringent and labour intensive system could be devised which, nevertheless, could provide adequate assurance to the general public in respect of death investigation, certification and registration. This resulted in the two models outlined below, one for a Medical Investigator system and the other for a Medical Examiner system. The Group considered that both models represented a significant improvement on current arrangements albeit at the cost of an increase in the requirement for medically qualified persons, a greater number being needed for the Medical Examiner model. Those who favoured the Medical Investigator model considered that its system of random and targeted scrutiny of around 2% of deaths by a second doctor within the NHS Board governance structures and subject to the NHS accountability systems (the Medical Investigator) represented a proportionate response to the problems revealed in the current arrangements while reducing to a minimum any increase in delay between death and burial/cremation. Those in favour of the Medical Examiner model, predominantly the medical members of the Group, considered that in order to provide reassurance to the public it was necessary that every death certificate should be scrutinised by a second doctor independent of the Health Board but within the NHS (the Medical Examiner) and that the delay inherent in such a second scrutiny was acceptable. As it did not prove possible to reach a consensus in favour of one or other of these models it was decided to set out clearly to Cabinet Secretary for Health and Wellbeing and Minister for Public Health both models, including the pros and cons of each, leaving it to them to make the final decision between the models. The Group also considered a paper from the Royal College of Pathologists, on a third model, but in the light

of the lack of further information, the group decided to limit its consideration to the two recommended models.

28. To assist the Cabinet Secretary for Health and Wellbeing and Minister for Public Health to scrutinise these proposals and their financial implications fully a cost benefit analysis was commissioned of each of the models – see Appendices 2 and 3. A cost benefit analysis was also prepared for the sub-group's original and rejected medical examiner system based on the Shipman Inquiry recommendations - see Appendix 4.

Matters common to both Models

29. Both models incorporate a raft of measures already being implemented to improve clinical governance. Appendix 1 gives a brief explanation of what clinical governance involves and gives examples of how it is being implemented. It is expected that these measures should, either directly or indirectly, lead to improvements in death certification.

30. The Group considered that the present systems for certification (which differ according to whether the deceased is due to be cremated or buried) were cumbersome and had the potential to create difficulty if the nearest relative decided to opt for a cremation at the last minute when a burial had previously been planned. It considered that it would be readily understood and be in the best interests of the public if the same certification process applied regardless of the method of disposal of the body. It also recommends that relatives should not have to pay for the forms required for the disposal of the body.

31. It was considered that the role of medical referee at the crematoria was redundant in both systems proposed. However, these individuals would be ideal candidates to fulfil the role of Medical Investigator or Medical Examiner in either model.

32. While it was not proposed to make any change to the existing arrangements regarding the professional qualifications required of those eligible to certify cause of death regard should be had to the fact that nowadays patients may be with a multi-GP practice, with no responsibility for out of hours care. Accordingly it is recommended that any one of the practice partners, with access to information about the patient, may certify death. So far as deaths in hospital are concerned regard must be had to the shift working patterns of junior doctors. It is, therefore, recommended that any medically registered member of the team caring for and with access to information about the deceased may certify death.

33. Current forms/ certificates were reviewed and a number of issues were identified for improvement. For example, the Medical Cause of Death Certificate (Form 11) which is completed by the doctor, requires a signature from the doctor. This is often difficult for the Registrar of Births Deaths and Marriages to read. To address this it was suggested that the forms be adapted to include a unique identifier for the doctor, such as the General Medical Council (GMC) number. It is recommended that all certificates/forms should be reviewed and made more relevant, easier to complete and importantly, to allow input from the nearest relative and adaptable for electronic use in the future.

- To put death certification into context, of the **56,187** deaths in Scotland in 2004:
- **23%** occurred at home or elsewhere in the community (but not in an institution)

- **58%** occurred in an acute hospital[2]
- **18%** occurred in residential nursing or care homes (community)

Of those **56,187**

- **57.4%** of the total (32,872) were **cremated**[3]
- **2.6%** resulted in an NHS post-mortem
- **24.5% (13,786) were reported to the Procurator Fiscal**
- **10%** (approx[4]) resulted in a Procurator Fiscal instructed post-mortem

34. It is recommended that whatever system for death certification is adopted, power to verify fact of death be given to appropriately trained professional groups such as registered nurses or paramedics. They could not, nor would be they be expected to, give a cause of death, but to verify the fact of life extinct.

35. The power to verify fact of death would allow the removal of a body from place of death (except where a crime had occurred or was suspected to have occurred). For example at present in a nursing home a body may have to wait over night for a local GP to arrive to certify the cause of death before it can be removed. This can be upsetting to both staff and fellow residents. Verification by a registered nurse would allow the body to be removed much earlier.

36. Additional training (at a cost) would be required by these groups of professionals, but this could eventually be incorporated into their current training.

37. It is also recommended that there be instituted a system whereby a statistical check will be carried out on all death data by a Deaths Investigator who would be a statistician based at e.g. the General Register Office for Scotland (GROS) or the Information Services Division (ISD) of NHS National Services Scotland. Specific reports could be run at set periods from GROS death data e.g. daily, weekly, or monthly, to identify unusual results. For instance a GP practice where there are a high number of deaths or where the number of deaths has sharply increased for a particular doctor. It is envisaged that once the system has been set up there would only be a requirement for one statistician and administrative support to carry out this work. Locating these individuals in a pre-existing organisation would minimise costs associated with buildings/ IT support etc.

Medical Investigator Model

38. This model underpins the advances in medical care inherent in the improvements in clinical governance referred to in Appendix 1 and builds on the fact that medicine remains one of the most respected and trusted professions. It involves the appointment of a small number of Medical Investigators. They would probably be recruited from GPs, Pathologists, Forensic Physicians and Consultant grade doctors who have additional qualifications in pathology/forensics, and Crematoria Medical Referees.

[2] Interpolated figure from 2 consecutive COPFS years, Including private hospitals
[3] This is a much lower figure than in England, where in cities the overwhelming majority are cremated.
[4] Interpolated figure from 2 consecutive COPFS years

39. A crucial element of this model, designed to reassure the public and to provide a deterrent against any abuse of the system by doctors, will be a requirement that the Medical Investigators carry out a comprehensive scrutiny of 1 % of all deaths, selected randomly. In addition the Medical Investigators will be required to carry out a comprehensive scrutiny of any death reported to them with a request for such a scrutiny by any person who has legitimate concerns about the cause of death. Those entitled to make such a request will include Registrars of Births, Deaths and Marriages, Funeral Directors and any interested person being a person who has had recent and close contact with the deceased such as a nearest relative, a healthcare professional, an informal or formal carer, or a neighbour. It is estimated that such requests will not be made in respect of more than a maximum of 1% of all deaths.

40. The role of the Medical Investigator would be to undertake a paper-based investigation into the deaths referred to in paragraph 39. This would include viewing the appropriate medical records and taking evidence direct from both the nearest relative and/or those who provided care, including medical care, to the deceased. If these investigations indicated doubt about a particular death, the case would be referred to the Procurator Fiscal. The Investigator would have the power to view the body, but it is not expected that the need to do so would occur often. To permit disposal of the bodies of those investigated the death certificates relating to them would require to be signed by the Medical Investigator.

41. The Medical Investigator would also consider the results from the statistical checks of the Deaths Investigator. These might not necessarily indicate a high proportion of deaths, but would indicate where forms have been poorly completed or data is missing. It would also, importantly, allow patterns of behaviour to be established over time, for both individual doctors, and at a GP practice level or a hospital team.

42. Any data generated by these statistical checks would be split by NHS Board area and would be sent to the Medical Director in that board for action. In the majority of cases it is thought that any action would involve training of doctors, for example in completion of the forms. In the case of investigations which raised grave concerns the Medical Director could refer an individual case to the Poorly Performing Professional process, and/or appropriate authorities such as the Procurator Fiscal, Regulatory bodies, etc.

43. The Medical Director could also request that more detailed reports be run off by the Deaths Investigator or ask that the Medical Investigator look into the records of a particular GP if they were giving cause for concern.

44. The total financial cost of this model is estimated at £1,473,000 to which there should be added the unquantifiable emotional and religious cost of the significantly longer delay involved between death and disposal of the body in the up to 2% of deaths subject to a comprehensive scrutiny. Details of this costing are given in Appendix 2.

Medical Examiner Model

45. This model involves the appointment of a number of medically qualified staff throughout Scotland to be called Medical Examiners with similar qualifications to the Medical Investigators in the Medical Investigator model but with a different role.

46. The task of these Medical Examiners, who would be independent of Health Boards, would be to scrutinise all deaths. This would ensure that every death would be subject to scrutiny by a second doctor although only 1-2% of deaths would be subject to a comprehensive scrutiny; the remainder would have only basic checks carried out and these would not involve the viewing of the body. Each Medical Examiner would have a target number of both "for cause" and random checks.

47. The Medical Examiners would have assistants to carry out some of the tasks including scrutinising the death certificate; talking to the certifying doctor; and talking to relatives where required. All certificates including those scrutinised by assistants would be signed off by the Medical Examiner.

48. The total financial cost of this model is estimated at £3,838,600 to which there should be added the unquantifiable emotional and religious cost of the slightly longer delay involved between death and burial (around 50% of deaths) and the significantly longer delay involved where there is a comprehensive scrutiny of the death (around 2%). Details of this costing are given in Appendix 3.

Burials, Cemeteries and Crematoria Management

49. In Scotland there are both privately and publicly managed cemeteries and crematoria. The majority are publicly run and fall within the remit of Local Authorities. The legislation which governs the operation of cemeteries is restricted to those run by the Local Authority which for this purpose are referred to as "Burial Authorities"; most privately managed cemeteries voluntarily follow the legislation. The legislation which governs the operation of crematoria covers all crematoria regardless of ownership and refers to those running the crematoria as "Cremation Authorities". The Group considered that this should be regularised so that both Local Authority and private cemeteries, including 'green' burial grounds, and crematoria were governed by the same legislation and that overall responsibility for public burial grounds should continue to rest with the Local Authority.

50. As well as there being no modern primary legislation regarding burial there are no general regulations governing the management of cemeteries in Scotland. This lack has caused difficulties to cemetery managers and is in contrast to the situation in England and Wales where general provisions for cemetery management are contained in the Local Authority Cemeteries Order 1977 (LACO). The Group considers that general regulations should be introduced and recommends that in drafting these regulations regard should be had to the provisions of LACO. If this were done it is hoped that procedures could be put in place to enable burial authorities to take positive action to deal with the particular problem of unsafe or abandoned memorials/headstones in existing cemeteries. Were burial authorities to be given the power to repair and conserve such abandoned memorials/headstones even where, as is usually the case, they do not own them, a very positive difference could be made to the management of graveyards. In view of the significant financial implications which this would have, however, no recommendation is made. There should be no problem regarding memorials/headstones erected in the future being abandoned if the recommendation below (see paragraph 62) regarding the limited tenure of the separate rights to burial and the rights to erect a headstone/memorial is implemented. It is also recommended that the following matters be included in any future regulations:-

- Memorial Masons operating in cemeteries/churchyards (both local authority and private) should be able to show that they have the proper training, certificates and accreditation for both business and fixers. At present the national body the national Association of Memorial Masons (NAMM), support the British Register of Accredited Memorial Masons (BRAMM).

- That memorial masons supply a minimum 10 year guarantee for materials and fixing.

- That there are adequate arrangements to ensure that after the guarantee period of 10 years has elapsed regular checks are made as to the safety of memorials the cost of which checks being the responsibility of the owners.

- That owners are encouraged to take out insurance to protect their property.

- That it is clearly stated that all responsibility for memorials/headstones is a matter for the person/s holding the exclusive right to erect a memorial.

51. Current legislation requires that in order to achieve planning permission any new crematorium building must be placed no closer than 200 yards from a dwelling house* or 50 yards from a public road**. The Group considered that such limits, converted into metric measurements, should be kept as they ensured a level of privacy and quiet for visiting mourners, helped prevent adverse affects on adjacent houses and protected the public.

*this distance does not include car parks or gardens of remembrance.
**a road which a roads authority have a duty to maintain [as defined by The Roads (Scotland) Act 1984].

52. At present there is no legislative provision specifying a minimum depth of burial in Scotland although most Burial Authorities adopt the statutory minimum depth of 3 feet which applies in England. The Group considered this to be unsatisfactory and recommends that the matter be regularised by enacting legislation requiring that there be a minimum depth of burial of 3 feet from the surface to the top of the coffin. The number of coffins which can be accommodated in any particular plot has to take account of the prevailing geology of each individual plot, e.g. water table, soil type, and depth of bedrock etc. As these conditions may change over the geographic area and life span of a cemetery, the Group considered the Burial Authority should have the power to specify how many coffins could be placed in a particular plot. One consequence of this would be that, without departing from the general expectation that each plot could accommodate up to three coffins, no guarantees of available burial space in any plot could be given.

53. In the past burial has been affordable and available locally throughout Scotland. The Group regrets that in many parts of Scotland this is no longer the case due to a variety of factors. Prominent among these is the increasing cost of land, and, more importantly, increased development on available land in many cities, towns and rural areas. Although particularly acute in the larger cities this is also increasingly a problem in rural areas where lack of available land for burial has meant that many new burial grounds are sited at a considerable distance from the community that they serve. This can make access by the local community more difficult and in consequence lead to a decline in the number of visitors to the cemetery and a resulting increase in vandalism. Memorials could therefore become unsafe and a hazard to both cemetery maintenance staff and visitors. The increased maintenance cost

of these cemeteries leads to increased charges for maintenance itself and for lairs, making them less affordable for the community. In some areas, such as Edinburgh the local authority has indicated that it expects to run out of burial plots as early as 2040-2050. Scoping studies by the Local Authority have failed to identify any additional land suitable for future use.

54. Burial authorities have the right to manage, regulate and control the burial grounds provided by them. They also have power to sell exclusive rights of burial in burial plots, known as lairs, in perpetuity. This practice, which has been common in Scotland for many years, is unique in UK legislation and unusual worldwide. It means that lairs and memorials several centuries old are still the responsibility of the descendants of those who originally purchased the lair. This responsibility extends to the physical and financial maintenance of both the lair and any headstone, which may have become unsafe due to vandalism or the passage of time. The reality is often that once one or two generations have passed, tracing owners of a lair becomes increasingly difficult for the burial authority and the burden of maintenance of the lair is ultimately borne by the tax payer via the Local Authority.

55. A consequence of the sale of lairs in perpetuity is that in Scotland the re-use of a lair by the Burial Authority or a third party is not possible. The Group noted that recent consultation and subsequent policy developments in England have supported re-use which occurs in many countries. Were re-use to be permitted in Scotland it was suggested that this would help to keep the option of burial available in all areas of Scotland; would help to make burial financially viable for all sectors of the community; and would encourage the sustainability of cemeteries. Following extensive discussion the Group recommends that legislation should be enacted to allow the re-use of full lairs by a Burial Authority where such re-use is required for the sole purpose of internments and where appropriate safeguards, outlined below, are met to ensure that no lair is ever used when nearest relatives express a clear wish that this should not happen. This legislation should be retrospective, to facilitate the regeneration of run-down cemeteries.

56. The legislation should provide that re-use be permitted only after the Burial Authority has recovered ownership of the lair and that could not occur before the lapse of a specified minimum period after the last burial. A period of 75 years is suggested as appropriate since this would allow 2 generations to have elapsed between the last burial and re-use. Re-use could only occur after a reasonable attempt had been made by the burial authority to contact any surviving nearest relative. In the event that such a nearest relative is identified and expresses an objection re-use would not be permitted on the strict understanding that that relative would be responsible for any future maintenance/ upkeep of that lair and/or memorial.

57. It was acknowledged that after 75 years tracing the nearest relative would be difficult as it was unlikely that the original contact details would be up to date. A statutory obligation to place signs in the cemetery concerned for a set period and to advertise re-use intent would ensure that anyone with an interest had the opportunity to object. It is considered that such signs should be in place for at least 12 months, and the intention to re-use could be advertised in the local press. In the case of burial grounds specifically for the use of certain faith/religious communities, or those where individuals from faith/religious groups were buried, there should be consultation with the groups concerned. The burial authority would also be required to carry out appropriate consultations and gain necessary legal consents where it was proposed to re-use a graveyard or lair which was (a) scheduled under the terms of the Ancient Monuments and Archaeological Areas Act 1979; (b) listed under the terms of

the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997; (c) included in a Conservation Area under the terms of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997; or (d) included in the Inventory of Gardens and Designed Landscapes - under the terms of the General Development Procedure Order sites included in the Inventory are a material consideration in the planning process. The appropriate consultee under category (a) would be Historic Scotland; for the remaining categories it would be the local authority. In addition it would be good practice to consult local history/genealogy groups particularly where the sites are undesignated. Local authorities are encouraged to develop conservation strategies for their historic graveyards so that they can manage them in an informed way that balances all interests, and so that they can recognise what designations affect specific graveyards or structures.

58. One purpose of the consultations referred to above is to ensure that proposals for re-use are considered in their proper historical, archaeological landscape and townscape context. The forthcoming Scottish Planning Policy 23 *Planning and the Historic Environment*, which will supersede National Planning Policy Guideline (NPPG) 18 *Planning and the Historic Environment* and NPPG 5 *Archaeology and Planning*, sets out the national planning policy for the historic environment with a view to its protection, conservation and enhancement and is applicable to graveyards. The consultees would be expected to involve and be advised by the departments or bodies including heritage trusts that normally provide them with advice on archaeological and architectural conservation. The burial authorities would be required to pay due regard to any comments/advice given by the consultees with particular reference to ensuring that any monuments of historical, cultural or architectural significance are, wherever possible, preserved (*in situ* where possible), and that nationally significant archaeological resources are preserved *in situ* and within an appropriate setting, and that other archaeological resources are preserved *in situ* where feasible. In this connection it is noted that Historic Scotland has produced a number of documents with guidance on the maintenance, care and protection of burial grounds and carved stones including gravestones as well as operational policy for the document entitled "The Treatment of Human Remains in Archaeology (2006)".

59. The Group discussed a number of methods of re-use and considered that the "dig and deepen" method was the most appropriate. In this method the remains of each individual are carefully and sensitively removed from the original lair, placed in a small container, and clearly and uniquely identified. They are then reburied at the maximum depth back into their original lair. This method ensures that each individual is respectfully re-buried into their original plot and frees up space for future additional burials. Wherever possible all associated gravestones, monuments and memorials should be retained at, or close to their original site and made safe. Where in the course of re-use it proves to be impossible to make gravestones, memorials and monuments safe the Burial Authority should be required to remove them. They could also be re-used provided Historic Scotland (for scheduled sites), the local authority (first point of contact for listed graveyards or structures, graveyards in Conservation Areas, cemeteries included in the Inventory of Gardens and Designed Landscapes, and undesignated sites) and any identified descendants have no objections.

60. Paper records of burials are a valuable tool for genealogical research. In addition to these the Group consider that in the 21st century when re-use occurs both the original records and also notes on where dig and deepen had occurred should be captured electronically where possible, for better access and preservation of records. Scotland's cemeteries form part of our cultural and historical heritage and these records should be readily available to the public. This will serve to promote Scotland's cemeteries as an asset and so encourage sustainability.

61. In addition to the foregoing provisions regarding re-use the Group looked at the possibility of utilising unused but sold lairs and lairs which still have unused space. At present, because lairs are sold in perpetuity, their ownership passes to the descendants (where such descendants can be established) of the original purchaser. A recent survey of burial grounds in Scotland by members of the Group found that there are a considerable number of such lairs which have either never been used, or still have unused space. The Group considered that it would be appropriate to recommend that legislation be enacted to enable the burial authority to resume ownership of such lairs thereby releasing these lairs for future internments. This legislation should enable a burial authority to resume possession of such lairs where a period of at least 25 years has elapsed since the original purchase. The details of the procedure whereby this would be effected should be set out in subordinate legislation. Essential elements of the procedure would be the requirement that the burial authority place a Notice of Intention to Resume Ownership specifying the lair(s) and the name(s) and last known address(es) of the registered owner in one national newspaper and two local newspapers. After the lapse of a period of 12 months without any claims to ownership being intimated the Burial Authority would be entitled by simple resolution duly minuted, to declare that ownership has been resumed and may thereafter dispose of the lair and any available burial space. In the event that the newspaper notices result in a response from someone having rights in the lair(s) it will be open to that person to sell back to the burial authority the lair or any unused portion thereof, for the original purchase price or a proportion thereof.

62. For the future it is recommended that the sale of lairs in perpetuity should cease. In its place there should be a system whereby the exclusive right to bury in a lair could be 'sold' on a limited tenure of 25 years. At the end of that period the tenure could be extended for each subsequent 10 year period thereafter, with no maximum period, provided interest remained. Separate from this the owner of the right to exclusive burial would also be entitled to apply for the right to erect a headstone/memorial on the lair. Such a right would subsist for so long as the exclusive right to burial subsisted. The burial authority in granting any such application would have the power to apply such conditions as it thought reasonable relating to style, size etc. Throughout the period of tenure the maintenance of the lair and, where relevant, any headstone/memorial would be the responsibility of the person having tenure of the lair, who would be responsible for notifying any change in address to the burial authority.

63. In order to minimise the number of unused lairs in future the burial authority should be prohibited from selling blocks of lairs or multiple lairs. Furthermore the burial authority would have the right to refuse the sale of a lair if it has cause to believe that it is not for imminent use.

64. Conscious of the fact that individuals are becoming increasingly interested in the environmental impact of all life decisions, including their own funeral arrangements it is the Group's opinion that there will be an increased interest over coming years in "green burials". Several green burial sites already exist across Scotland and these should be covered by the more general burial legislation, but also have specific provisions to ensure that such sites are protected from any future development and that they offer an affordable alternative to more traditional burial. Promotion and protection of green burial sites will allow them to be fully utilised, not only as burial grounds, but also as green spaces which the local and wider community can utilise.

65. The Group looked at a recent instance of open air "home" cremation, which had taken place in Northumbria. It was thought that under current legislation "home" cremation is not legal, but to prevent any dispute/ legal challenge (as has occurred in England) it is recommended that any future legislation specifically states that open air/ home cremation is not legal.

66. Home burial, which at present is not covered by legislation, although some local authorities have local byelaws, was examined. The Group considered this to be unsatisfactory and recommend that legislation be enacted to regulate this important matter. Regulations should provide that for a burial to take place at home or on private grounds authorisation should be sought from the Local Authority in accordance with a detailed procedure to be specified in the regulations. The local authority would be required to inform the applicant of all the necessary consents that are required from SEPA, planning and other relevant requirements. Applicants should also be advised that in the event of them moving thought would have to be given to visiting rights and whether an exhumation would be required. Records of all home burials should be kept by local authorities. The exhumation of a home burial would be governed by the procedure for exhumations set out in paragraph 69 below.

67. The Group noted and discussed various alternatives to burial and cremation that were being developed such as promession and water resolution. Although it was acknowledged that these technologies are still in their infancy, the Group considered that they, like the traditional methods of disposal, should be regulated. The Group also appreciated that further methods may be developed in the future. Accordingly it is recommended that any new legislation must be adaptable and future-proofed by the enactment of legislation enabling regulations to be made to make provision for possible alternative methods that may emerge.

Exhumation

68. While it did not examine the processes involved in Procurator Fiscal/police exhumations, the Group considered the practice and procedure relating to non-Procurator Fiscal/ police exhumations. Such exhumations require an application being made to the Sheriff by either the Local Authority or the nearest relative. The Group questioned whether it was necessary to involve the court in such matters particularly in view of the necessary consequential expense and delay arising from the involvement of a solicitor and the court process.

69. A cheaper and more streamlined system would assist the process and as a result of looking at systems in place across the UK, the Group concluded that a system similar to that used in England be adopted. This would involve the family completing an application form giving reasons for the exhumation, details of the deceased, the location of the grave where the exhumation is to be carried out and the grave and cemetery where the remains are to be re-interred. Confirmation of the details given by the family would be obtained in the second part of the application form from the Burial Authority responsible for the cemetery in which the deceased is buried. Once both parts of the application form have been completed the form would be submitted, by the Burial Authority, to the Scottish Government for authority to exhume.

70. Within that procedure there should be a facility to deal even more speedily with sensitive applications, such as where the remains of a baby or child are discovered buried at a

shallow depth while preparing a grave for further burials. In these circumstances further excavation of the lair would have to stop until an exhumation licence is obtained. This delay, which is likely to arise at a particularly difficult time for the bereaved, should, so far as possible, be reduced to a minimum.

Exhumation for Re-Use

71. Assuming that the recommendations regarding the re-use of lairs are implemented and that the "dig and deepen" method is adopted it is anticipated that there will be a considerable increase in the number of applications for exhumation.

72. Were these applications to follow the procedure recommended in paragraph 69 above, the Group considered that the system would be in danger of being swamped. Since any such applications would have been preceded by the detailed and time consuming procedure governing re-use set out in paragraphs 57, 58 and 61 the Group recommends that they be dealt with locally. To this end it is suggested that while the power to order such exhumations be vested in Scottish Ministers the legislation should enable them to put in place by regulation a system whereby each burial or cremation authority would be given the power to licence/allow other persons to carry out exhumations. It is envisaged that each authority would have an appointed named individual who would have designated power to act on behalf of that authority in regard to applications for exhumation following completion of the procedures specified in paragraph 60 above for re-use. The names of these individuals would require to be notified to Scottish Ministers and there should be a power to appoint deputies whose names would also be required to be notified to Ministers.

73. The system should be sufficiently flexible to enable an application to be made for a blanket exhumation order in the case of cemetery reuse where it would not be practicable to require separate applications for each individual lair. It should also make provision to ensure that environmental health officers and Historic Scotland are appropriately involved in the decision making process.

Exhumation of Cremated Remains

74. At present the exhumation of cremated remains is unregulated. The Group considered that this gap should be filled by the introduction of a procedure based on that which applied in Northern Ireland. This would involve Scottish Ministers being given legislative power to prescribe a procedure whereby Burial Authorities could grant permission for such exhumations It is envisaged that this procedure could involve the application for such an exhumation being made to the designated individual at each burial authority under the arrangements outlined in paragraph 72 above.

Cremation and Burial arrangements for those who die outwith Scotland

75. At present under Regulation 13 of the 1935 Cremation (Scotland) Regulations cremation of those who die abroad is authorised by Scottish Ministers. In reality this is an administrative role carried out on behalf of Scottish Ministers by the Scottish Government. In England and Wales such deaths are referred to the coroner who has power to hold an inquiry or carry out a post mortem. No equivalent power exists for a deceased individual who is repatriated to Scotland.

76. The current arrangements for authorising such cremations were reviewed and the numerous difficulties were highlighted. It was acknowledged that current arrangements where Scottish Ministers authorise cremations of those who die overseas are unsatisfactory, particularly for the nearest relative. In particular there was concern that no Scottish public authority has the power to request a post mortem where a death has occurred abroad. The nearest relatives may request that a private post mortem be carried out at their expense but before effect can be given to such a request it will be necessary to clarify who has the authority to instruct the post mortem. If the cause of death is suspicious and foul play cannot be ruled out, or the cause of death cannot be established at all, or, as in some circumstances will not be disclosed by the country where death occurred, there is no alternative for Scottish Ministers other than to refuse to allow a cremation to proceed. In such instances the nearest relative can only proceed with a burial, without any alleviation of suspicion, and with no Scottish public authority able to conduct any investigation. This can be particularly distressing if the deceased specifically expressed a wish to be cremated or their particular belief requires it.

77. At present the Scottish Government handles approximately 150 requests for cremation authorisation per year. If the approximate 50/50 split between burial and cremation in Scotland applies to deaths abroad then there will be around 300 deaths per year which could potentially be suspicious. The Group considered that in these cases the needs of nearest relatives would be better served if legislation were enacted to give the COPFS the same powers over all these deaths as it has for suspicious deaths of those who had died in Scotland regardless of the method of disposal of the bodies. The COPFS, however, has stated that it would be unable to take on this task of investigating up to an additional 300 deaths per year although it appears to the Group that only a fraction of such deaths would require a full investigation with a post mortem examination.

78. In the meantime the Group recommended that a leaflet currently being drafted by the Scottish Government Public Health & Wellbeing Directorate on death abroad should be published. This is aimed at the general public and offers advice on repatriation, registration of death and financial help available. This leaflet could be distributed via funeral directors, Registrars of Births, Deaths and Marriages, GP Practices and hospitals, as well as by foreign embassies and consulates.

79. The Group acknowledged that difficulty is also faced when a foreign national dies in Scotland, but that the Group could have little influence over differing requirements made by foreign countries. Advice to funeral directors arranging such repatriations out of Scotland is to contact the consulate/embassy of the deceased foreign national for advice when needed

80. The Group noted that the procedures that apply in the separate parts of the United Kingdom regulating the transfer of human remains within the United Kingdom are not uniform. This can cause difficulties to those involved in the transfer at the very time when the bereaved are at their most vulnerable. As increasing social mobility means that the need for such transfers is also likely to increase, it is recommended that the procedure for transfer of human remains between England, Wales, Northern Ireland and Scotland (and vice versa) should be made uniform whenever possible.

Burial at Sea

81. At present the Maritime and Coastguard Agency (MCA) is responsible for regulating burial at sea. The arrangements are set out in Appendix 5. The Group commended these arrangements.

Foetal Remains

82. At the suggestion of some members the Group looked at the issue of sensitive disposal of foetal remains, including a review of pre-existing guidance issued by a variety of organisations. Although some individual members expressed an opinion that the issue warranted more vigorous scrutiny, the majority of the Group concluded that there was no need to underpin this by statute, given that so much guidance already exists. However, it was recommended that the Scottish Government issue an update of the 1992 NHS circular on disposal of foetal remains. This should be issued following consultation with interested bodies, such as the Royal College of Nurses, Royal College of Obstetricians and Gynaecologists and Institute of Cemetery and Crematoria Management.

Pandemic Flu / Epidemic/ Infectious Disease

83. In the course of its deliberations the Group was asked to consider whether the existing procedures for the identification, certification and disposal of the dead would be sufficient to deal effectively with an episode of mass fatalities such as the 2005 Boxing Day tsunami in SE Asia or a flu pandemic. Such an episode could have an overwhelming effect on routine systems, particularly during a pandemic when the front line workforce may itself be greatly depleted because of illness or the need to care for dependants who are ill.

84. The Group noted that Regulation 15 of the 1935 Cremation (Scotland) Regulations enabled Scottish Ministers to suspend various Regulations pertaining to cremation in the case of an epidemic or for any other reason. The Group considered that this power should be extended so that any regulations relating to identification and certification of the dead, regardless of the method of disposal, could be suspended where necessary. It should not affect the obligation to register deaths under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 as the Registrar General has power under sections 23 and 26 of that Act to extend the period for registration. The proposed power, which should be able to be utilised swiftly, should enable Scottish Ministers to suspend or modify the relevant regulations in any particular locality, localities or throughout the whole of Scotland. The exercise of the power in these extreme circumstances is intended to facilitate the conservation of limited resources and help ensure that the care of the living is the focus of resources during any epidemic.

85. It is also worth noting that for certain infectious diseases, disposal by burial or cremation may be prescribed for public health reasons. This is to protect the health of the general public as well as medical/ funeral professionals.

86. Those in the "front line" who are dealing with bodies need to be protected in a pandemic and any specific precautions which need to be taken by, for example, funeral directors, certifying doctors or crematorium/ mortuary staff should be specified. This guidance is being developed for different groups, and is available on the pandemic flu website: http://www.scotland.gov.uk/Topics/Health/health/AvianInfluenza/PandemicFlu

87. Those within certain faith communities, where relatives and members of the community undertake funeral preparations may also be at risk, and how these communities are made aware of any health risks should be considered in pandemic planning.

88. To underpin these more specific measures, it is recommended that the appropriate NHS Board and other relevant body be placed under a general statutory obligation to inform anyone handling the body of a person who has died because of, or while suffering from an infectious disease of the cause of death and of the necessary precautions that should be taken. People to be informed under this obligation would include mortuary staff, embalmers, funeral directors, or members of the community who prepare the body for burial.

Appendix 1

Clinical Governance

1. Every person using the health services should expect services to be safe, effective, to the required standards and quality assured.

2. The White Paper "Designed to Care", in 1997, announced the Government's intention to introduce clinical governance into NHS Scotland.

3. Clinical governance was described by Sam Galbraith MP, Minister for Health June 1998, as "the vital ingredient which will enable us to achieve a Health Service in which quality of healthcare is paramount. The best definition that I have seen of clinical governance is simply that it means 'corporate accountability for clinical performance'. Clinical governance will not replace professional self regulation and individual clinical judgement, concepts that lie at the heart of healthcare in this country. But it will add an extra dimension that will provide the public with guarantees about standards of clinical care".

4, The Health Act 1999, Section 51 states:

"it shall be the duty of each Health Board, Special Health Board and NHS body to put and keep in place arrangements for the purpose of monitoring and improving quality of healthcare which it provides to individuals".

5. From 1 April 1999, the corporate governance of all NHS bodies in Scotland was required to encompass both financial and quality issues. Clinical governance made quality of care an integral part of the NHS governance framework.

6. Clinical governance creates a culture where the delivery of the highest standard possible of clinical care is understood to be the responsibility of everyone working in the organisation and is built upon partnership and collaboration within healthcare teams and between healthcare professionals and managers. It introduces structures and processes which assure them that this is happening whilst at the same time empowering clinical staff to contribute to the improvement of standards, and involving patients and the public in this process.

7. A key purpose of clinical governance is to support clinical staff in improving quality of care and ensuring that wherever possible poor performance is identified and addressed. Doctors and other health professionals will remain responsible for their clinical decisions, as independent clinical judgement is a vital pillar of service quality. Clinical governance, in this situation is, about putting in place a system within which this judgement is exercised so as to reduce the possibility of poor performance and to ensure that wherever possible problems are remedied before questions of discipline arise. Occasionally clinical governance processes may reveal unacceptable practice and the system must be able to respond in a speedy and effective manner to provide public reassurance.

8. Many clinical governance issues will relate to the organisation and management of clinical services rather than to individual clinical decisions and to the wider clinical environment in which care is delivered. The emphasis is to ensure that the environment supports the clinician to deliver good quality care based on evidence and on sound judgement.

9. Clinical governance overall is about the governance of the health service in clinical areas and thus about accountability and structures and processes. To achieve the desired outcomes of improved quality of care and public reassurance about standards of care, clinical governance needs to be underpinned by a wide range of activities, most of which require to be owned and led by clinicians individually and collectively.

10. The NHS Boards were given guidance to put in place appropriate arrangements to meet their clinical governance responsibilities from 1 April 1999, becoming the means by which NHS Scotland ensured that it delivered continuously improving, safe, high quality care and services for patients, irrespective of who the patient was or where they lived.

11. The contractual and statutory requirements of the GP Contract include "All practices have in place systems of clinical governance which enable quality assurance of its services and promote quality improvement and enhanced patient safety. The underpinning structures within the practice, which will assure embedding of clinical governance through a nominated clinical governance lead".

12. The key principles involve:

Patient focus: services need to be patient focused, involving patients as partners in all choices and decisions about care and treatment;

Clinical Leadership: strong clinical leadership which drives high standards of quality and a commitment to evidence based practice;

Risk Management: risk management processes are implemented to minimise risk in delivery of effective clinical care to patients;

Accountability: responsibility for the quality of clinical care of the individual, teams and organisations;

Openness and Transparency: in the planning, design, delivery and monitoring of services with the involvement of services with the involvement of the patients and the public; and

Resource Efficiency and Effectiveness: including finances, staff and infrastructure.

13. Whilst ensuring that patient and staff confidentiality and the right of clinical staff to exercise individual clinical judgement is not compromised, effective clinical governance is aimed to provide assurance to patients, clinical staff and managers that:

- Quality of clinical care drives decision making and is given the highest priority at every level in the organisation;
- The planning and delivery of services take into account of the perspectives of patients;

- The care delivered meets the relevant standards; and
- Unacceptable clinical practice is detected and addressed.

14. Activities that underpin the clinical governance framework of the NHS Board include:

- Wider clinical environment supports the delivery of high quality care
- Focus on support to provide high quality services
- Evidence based practice, appropriate information to support clinical effectiveness activity, clinical audit and critical incident reporting
- Appropriately trained staff with the required skills and competencies with continuous professional development and retraining where services are redesigned.
- Risk management
- Patient focus and public involvement
- Skills and performance management
- Complaints and mechanisms for staff to raise concerns
- Research and development
- Openness and accountability

15. Clinical governance is not the sum of all these activities but the means by which these activities are brought together into a structured framework and linked to the corporate agenda of the NHS Bodies.

16. Clinical governance should ensure that these activities are pursued in a systematic and documented manner, and that they are co-ordinated in such a way that they are discussed in a shared forum and that the findings of one inform, and are informed by, the others.

17. Clinical governance should also be considered within the broader context of staff, financial, information and research governance.

Examples of some initiatives:

Since the implementation of the new GP contract, GP practices have regular visits from NHS Boards from 2005 for contract monitoring, Quality and Outcomes Framework review (which include lay people and look at areas such as significant event analysis and complaints) and payment verification of the claim for the clinical activity undertaken (review of notes of patients by clinical member of the visiting team).

Most NHS Board have prescribing advisers, who work with prescribers in primary care to improve the quality and safety of prescribing.

GPs and their Practice staff have to undergo annual appraisals and any developmental needs addressed through Continuous Professional Development (CPD). To facilitate the CPD activities, most NHS Boards support the half day closure of GP Practices, every month, to undertake educational and training activities. The appraisal process for GPs is organised nationally through NHS Education and Quality Assured by NHS Quality Improvement Scotland.

Inspectors from the Royal Pharmaceutical Society of Great Britain (RPSGB) visit community pharmacies regularly to check against the standards set by RPSGB.

Dental Practice Advisers, employed by NHS Boards, visit dental practices to check against agreed criteria and standards. The dental standards have been set jointly by NHS QIS and the Care Commission.

As part of ongoing work in this area, Forth Valley is looking at Risk Management in primary care, supported by NHS QIS.

Hospitals have clinical governance systems that look at areas such as healthcare acquired infections (HAI), significant event analysis, etc.

Other statutory requirements apply to all sectors such as Health and Safety, DDA, Child Protection, Adults With Incapacity, etc.

The Care Commission visits Care Homes regularly, where NHS staff can also provide services e.g. GPs, nurses, AHPs and specialists and private hospitals which may treat NHS patients.

Appendix 2

Cost/benefits analysis of Medical Investigator model where 1-2% of deaths are subject to comprehensive scrutiny

Delay

1. This model will not increase the delays between death and disposal in around 98% of deaths, irrespective of the method of disposal. There will in fact be a slight reduction in the delays where cremation is the mode of disposal (around 50% of disposals), unless it is part of the up to 2% of deaths subject to comprehensive scrutiny, as the requirement for death to be certified by a second doctor and the involvement of the crematorium medical referee have both been abolished.

2. In the remaining up to 2% of deaths subject to comprehensive scrutiny there will be an increase in the delay in the timescale for approval to dispose of the body, especially out of hours and in sparsely populated areas. The typical delay between time of death and cause of death being certified is expected to be 24-48 hours. Where death occurs in an urban area during the working week, a further delay of 24-48 hours for scrutiny by the medical investigator will occur. For a death in the community at the weekend or in sparsely populated areas there may be an additional delay of up to 60 hours, therefore, in the worst case scenario a total delay of as much as 6.5 days may occur.

3. Although it was assumed that a delay in the burial or cremation process would mean higher storage costs would be incurred it has been confirmed by funeral directors that no extra cost will be incurred.

4. Any delay in the burial and cremation process may also have an associated unquantifiable emotional and religious cost for certain faith groups.

Staff

5. In this and the Medical Examiner model a statistical analyst (the Deaths Investigator) and an assistant will require to be employed to identify the 1% of death certificates to be subject to comprehensive scrutiny. It is estimated that this will cost £45,000 per year (assuming £30,000 for the analyst and £15,000 for the administrative assistant).

6. Each examiner would require to be supported by an administrative assistant, each of whom, on the basis of the average cost of an Agenda for Change Band 2 officer, will cost £13,500. On the assumption that 4 examiners will be needed (see paragraph 7 below) the total cost for the relevant assistants will be £54,000.

7. On the assumption that approximately 1,100 deaths (2% of all deaths) would be subject to comprehensive scrutiny and that each scrutiny would take approximately a ½ day's work for the Medical Investigator and also for the administrator, it is calculated that this would require 3 Full Time Equivalent investigators to carry out the scrutinies and 1 to

manage the work and the administrators. The cost of 4 investigators (assuming they are paid the mid point of a consultants' salary at £81,500) is £326,000. If, as is likely, these investigators come from within the current NHS workforce this will not represent an additional cost, but the cost of employing replacements for them in the NHS workforce, some £326,000, constitutes part of the cost of this model.

8. The total salary cost associated for this model is therefore estimated at £425,000 (based on 1 statistical analyst plus 1 assistant, 4 medical investigator assistants and 4 replacement consultants).

Training

9. It has been assumed those recruited to fill the role of medical investigator will have the required skills and experience necessary to do the job therefore no initial training will be required.

10. There would be a cost incurred for continuous professional development (CPD). However, as above if these medical investigators are recruited from within the NHS workforce this is not an additional cost as they would be taking part in CPD anyway.

11. Assuming that these investigators are recruited from existing GPs etc then the cost of training 4 replacement/additional GPs and consultants needs to be included; this is likely to be in the region of £250,000[5] each giving a total cost of £1 million.

Accommodation for Additional Staff

12. The additional staff will have to be located somewhere; although there is a possibility that the Deaths Investigator and administrative assistant could be based within GROS however at this stage this cannot be assumed. Similarly, the medical examiners and their assistants under this model (being part of NHS boards) could possibly be located within the NHS for example ISD or another related organisation.

13. If the above staff could be located within existing premises then there would be no additional cost for buying or leasing out premises, the only costs incurred being those running costs such as IT, electricity, furniture etc (see below).

14. As stated at this stage internal location should not be assumed and it is prudent to acknowledge there could be additional costs for premises. Unfortunately, it is very difficult to pin point a cost for accommodation as this depends on where the additional staff would be located, the size and type of building (older buildings tend to be more expensive to run).

15. Due to this measurement problem it has only been possible to flag up the possibility that costs will be incurred for buying or leasing premises. Once a decision is made as to which model is to be adopted and the location of the appropriate staff has been identified it should be possible to calculate the cost of accommodation.

Running costs for additional staff

[5] http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm051021/text/51021w12.htm

16. It is estimated that it will cost £2,000 to provide each employee with furniture and equipment, and a further £2,100 each for additional running costs including IT provision and support, telephone, electricity and cleaning. Based on 4 medical investigators and their assistants plus a deaths investigator and assistant this will cost a total of £41,000.

IT Changes and Support

17. Both this and the Medical Examiner model would require the format of death certificates to be changed to incorporate a unique identifier code for each doctor certifying deaths. A cost would be involved in making this change to the forms, and changing the computer system used by registrars to capture the registration data, however, this cost would be offset by efficiency gains. There would also potentially be a cost in updating the database at GROS (if this is where additional staff where located) in order to collect the additional information. It is estimated that reprinting the medical cause of death certificate (Form 11) to take account of any changes would cost about £6,000.

18. In addition the vital events database, a system used for statistical outputs and analysis and based on the information held on the registration database, would need to be amended to include the unique identifier. It is expected that the cost of this would be in the order of £1,000 bringing the total cost for IT Changes and Support to £7,000.

19. Total Costs for this Model are shown in the Table below.

Total Costs for Medical Investigator Model

Cost	Total Cost
Salary Costs	£425,000
Training to replace GPs etc	£1,000,000
Running Costs for additional staff	£41,000
IT Changes and Support	£7,000
TOTAL	**£1,473,000**

Appendix 3

Cost/benefits analysis of Medical Examiner model where all deaths are scrutinised and 1-2% of deaths are subject to comprehensive scrutiny

Delay

1. This model will not increase the delays between death and disposal where cremation is the mode of disposal (around 50% of disposals) and the deaths are not included in the up to 2% of deaths subject to comprehensive scrutiny. In all other cases there will be an increase in delay due to the need for signature by the medical examiner albeit only slight where disposal is by burial (around 50% of disposals) and is not subject to comprehensive scrutiny.

2. In the up to 2% of deaths subject to comprehensive scrutiny there will be an increase in the delay in the timescale for approval to dispose of the body, especially out of hours and in sparsely populated areas. The typical delay between time of death and cause of death being certified is expected to be 24-48 hours. Where death occurs in an urban area during the working week, a further delay of 24-48 hours for scrutiny by the medical examiner will occur. For a death in the community at the weekend or in sparsely populated areas there may be an additional delay of up to 60 hours, therefore, in the worst case scenario a total delay of as much as 6.5 days may occur.

3. Although it was assumed that a delay in the burial or cremation process would mean higher storage costs would be incurred it has been confirmed by funeral directors that no extra cost will be incurred.

4. Any delay in the burial and cremation process may also have an associated unquantifiable emotional and religious cost for certain faith groups.

Staff

5. In this and the Medical Investigator model a statistical analyst (the Deaths Investigator) and an assistant will require to be employed to identify the 1% of death certificates to be subject to comprehensive analysis. It is estimated that this will cost £45,000 per year (assuming £30,000 for the analyst and £15,000 for the administrative assistant).

6. Each examiner would require to be supported by an administrative assistant, each of whom, on the basis of the average cost of an Agenda for Change Band 2 officer, will cost £13,500. On the assumption that 4 examiners will be needed (see paragraph 7 below) the total cost for the relevant assistants will be £54,000.

7. On the assumption that approximately 1,100 deaths (2% of all deaths) would be subject to comprehensive scrutiny and that each scrutiny would take approximately one ½ day's work for the Medical Examiner and also for the administrative assistant, it is calculated that this would require 3 Full Time Equivalent examiners to carry out the scrutinies and 1 to manage the work and the administrative assistants. The cost of 4 examiners (assuming they are paid the mid point of a consultants' salary at £81,500) is £326,000. If, as is likely, these examiners come from within the current NHS workforce this will not represent an additional

cost, but the cost of employing replacements for them in the NHS workforce, some £326,000, constitutes part of the cost of this model.

8. It has been estimated that a further 6 Full Time Equivalent Medical Examiners with 20 supporting administrative assistants will be required to deal with the basic scrutiny of the remaining 98% of deaths giving a total cost of £759,000.

9. The total salary cost accordingly amounts to £1,184,000 of which £425,000 relates to the comprehensive scrutiny and £759,000 relates to the basic scrutiny.

Training

10. There would be a training cost to replace the medical examiners recruited from current medical staff at an average cost of £250,000 per person. Of this total cost of £2,500,000, £1,000,000 relates to the comprehensive scrutiny and £1,500,000 relates to the basic scrutiny.

Accommodation for additional staff

11. For the reasons given in Appendix 2 no costs have been calculated meantime for accommodation for the additional staff. Nevertheless in view of the increased numbers involved it is less likely that all of the extra staff will be able to be housed in existing premises.

Running costs for additional staff

12. The various running costs for additional staff noted in Appendix 2, amounting to some £4,100 per person, will apply to the staff in this model giving a total of £147,600 (10 Medical Examiners, 24 administrative assistants and 1 deaths investigator and assistant). Of this £41,000 relates to the comprehensive scrutiny and the balance of £106,600 relates to the basic scrutiny.

IT Changes and Support

13. As in the Medical Investigator model a cost of £7000 has been estimated for the various changes that would be needed to be made to IT systems to support the implementation of the changes to the certification process.

14. The total costs for this model are shown in the table below.

Total Costs for the Medical Examiner Model

Cost	Total Cost
Staff Costs	£1,184,000
Training	£2,500,000
Running Costs for additional staff	£147,600
IT Changes and Support	£7,000
TOTAL	**£3,838,600**

Appendix 4

Rejected Model - Cost/benefits analysis of Medical Examiner model based closely on the Shipman Inquiry recommendations where all deaths are subject to comprehensive scrutiny

Delay

1. The medical practitioner who has been most recently involved with the patient or who is familiar with the patient's history should certify the cause of death. This can be difficult sometimes, as patients are registered with a practice for in hours care, with a separate out of hours system. Patients can be seen by any doctor, including locums, in hours and out of hours. A similar situation exist in the hospital setting where junior doctors, although working in teams, work in a shift system and may not be available to sign death certificates for several days, despite being present at death. The quick disposal for burials from the current one doctor certification, (50% of disposals); will be increased through the two doctor certification process for both cremations and burials for all deaths.

2. This may result in an increase in the time before the certification process is complete and the body released for disposal. An increase in time between death and burial or cremation may have an impact on certain faith groups.

3. This model will cause the greatest delay in the timescale for approval to dispose of the body for all deaths, especially out of hours and in sparsely populated areas. The typical delay between time of death and cause of death being certified is expected to be 24-48 hours. Where death occurs in an urban area during the working week, a further delay of 24-48 hours for scrutiny by the medical examiner will occur. For a death in the community at the weekend there may be an additional delay of up to 60 hours, therefore, in the worst case scenario a total delay of as much as 6.5 days may occur.

4. As it has been confirmed that there will be no additional charge for storing the bodies there will be no financial cost for the increased time the bodies will be stored. Despite being no financial cost under this model, there will be a cost to families (emotional for example) as they will have to wait for the release of the body.

Staff

5. This model will require approximately 30 medical examiners to comprehensively review all deaths. If it is assumed that these medical examiners would come from the existing NHS workforce then, as in the other models, this would not represent an additional cost.

6. However, these medical examiners would need to be replaced and therefore there would be a salary cost. Based on a salary of £81,500 the total cost would be £2,445,000.

7. In addition assuming that each of the 30 medical examiners needed 2 assistants, their salary costs will amount to £810,000 (£13,500 each per annum).

8. This would give a total staff cost of £3,255,000

Training

9. If we assume that these medical examiners will mainly be recruited from the existing workforce then they will have to be replaced. At an average cost as before of £250,000 per trainee the total training cost will be £7,500,000.

Accommodation for additional staff

10. The medical examiner or their assistant will need to keep records of the identity of people viewing the body and checking with relatives whether they have concerns. Medical Examiners and their assistants will need an office to work from and appropriate equipment to assist their work. Given the nature of the work it would be most cost effective for Medical Examiners and their assistants to be located throughout the country in order to reduce travel costs and reduce possible delays.

11. Under this model as the medical examiners would be independent of health boards it is more likely that they would have to pay commercial rates for leasing/buying premises. For the reasons identified in Appendix 2 it has not been possible to measure accommodation costs at this stage.

Running costs for additional staff

12. Total running costs are estimated to be £369,000, based on a cost per person as in the other models of £4,100 and a total of 90 people (30 Medical Examiners and 60 administration assistants)

IT Changes and Support

13. As in the other models various changes would need to be made to IT systems to support the implementation of the changes to the certification process. The cost as above has been estimated at £7000.

Other

14. Training would be required across the whole of the health service to provide staff with the appropriate information on the new burial and cremation process. Changes in the process would also need to be communicated to the general public and others involved in the process e.g. funeral directors.

15. The total cost of this rejected model is shown in the table below.

Total Costs for Rejected Model

Cost	Total Cost
Staff Costs	£3,255,000
Training to replace GPs	£7,500,000
Running costs for additional staff	£369,000
IT Changes and Support	£7,000
TOTAL	**£9,631,000**

Appendix 5

FOOD AND ENVIRONMENT PROTECTION ACT 1985, PART II DEPOSITS IN THE SEA (AS AMENDED) (FEPA)

BURIALS AT SEA

Introduction

1. Under the Food and Environment Protection Act 1985 (as amended) a licence is required for the deposit of substances or articles at sea or under the sea bed. (see Annex I and II)

2. In determining whether to issue a licence, the Act charges the licensing authority, in this instance Fisheries Research Services, Marine Laboratory to have regard to the need to protect the marine environment, the living resources which it supports, human health and to prevent interference with other legitimate uses of the sea. The licensing authority must also consider the practical availability of any alternative methods of dealing with the substance or article. Nevertheless the FRS Marine Laboratory recognises that sea burial is a tradition amongst those who have a long association with the sea and will issue a licence if a suitable burial location can be found, and provided certain conditions are met.

General

3. The FRS Marine Laboratory does not encourage burial at sea. This is because a body buried at sea is subject to movement by currents, with the inevitable risk of it being returned to shore or even trawled up in fishing gear. This causes considerable distress to relatives and friends of the deceased, and in order to avoid that risk, the FRS Marine Laboratory recommends that a more acceptable procedure is for cremation and ashes to be scattered at sea. This procedure can be undertaken without a licence.

Obtaining a Licence

4. Under the 1985 Act, the FRS Marine Laboratory as licensing authority, has powers to issue a licence for burial at sea if it is considered appropriate and subject to certain conditions. The licence takes the format of a letter to the undertaker and will contain, amongst other information, the name of the deceased and the date and location at which the burial must take place. The typical format of a licence document is at Annex III.

5. NB: The SEERAD Scottish Fisheries Protection Agency reserves the right to inspect the coffin prior to burial and will give at least one days notice of their intention to do so.

6. If, through adverse weather conditions or other circumstances, burial cannot take place on the date prescribed on the licence, the undertaker must obtain an amendment from the licensing authority.

7. Before a licence can be issued two declarations must be provided to the licensing authority. Firstly, a Certificate of Freedom from Fever and Infection, and secondly a

declaration stating that the conditions concerning burial at sea have been complied with (see paragraphs 8 - 18 below and Annex IV).

Conditions to be Observed

8. Because of the possibility of water-borne infections, a 'Certificate of Freedom from Fever and Infection' must be obtained from the deceased's general practitioner (GP) or hospital doctor before a license is issued. If the doctor is not prepared to issue a certificate, burial at sea will not be permitted.

Embalming

9. The process of embalming is intended to preserve a body by interfering with the natural biological processes of decay. In order to comply with the licensing authority's obligations under the Act to protect the marine environment, burial at sea of embalmed bodies, will not be licensed.

Identification of the Body

10. In the event that a body were to be returned to the land or trawled up in fishing gear, a simple method of identification is required. Ideally the licensing authority would prefer the use of a material which, when no longer required, would break down in the marine environment with minimal side effects. As nothing suitable is readily available the use of a plastic waist band will be permitted.

The Coffin

11. The design of the coffin should be such as to retain the body and weighting for the necessary period. With the exception of the identification band, it should not contain any persistent plastics or lead, copper or zinc.

12. The coffin should be made of solid softwood rather than veneered board. All corners should be butt-jointed for strength and right angled brackets should be screwed internally to strengthen all joints.

13. The objective in specifying the coffin construction is to ensure that only natural and non-toxic materials are used and hence enter the marine environment. Furthermore, the coffin will be subject to considerable stress when entering the sea and during its descent to the sea bed. The licensing authority must ensure that it will survive any impact and carry the body to its final resting place.

14. The coffin should be weighted to ensure that it remains on the seabed. Iron and steel are suitable as is a weak concrete mix, lightweight concrete block are not suitable. At least 100 kg (2 cwt) are needed. It is suggested that the weighting should be evenly distributed and attached to either the coffin or the body to ensure impact on the sea bed in the location where burial takes place.

15. At least 12, 20 mm holes should be drilled in each side and the top of the coffin. Three further holes should be drilled in each of the end boards. This would allow the rapid ingress of water and exit of air so the coffin will sink quickly to the sea bed.

16. The body should not be dressed, but may be surrounded loosely with a cotton or paper sheet.

17. Some biodegradable, absorbent padding may be placed appropriately to absorb any leakage of body fluids.

18. Two steel bands should be placed around the coffin at right angles to ensure that it survives.

Annex I

Letter to applicant

Dear [Sir/Madam/Name]

FOOD AND ENVIRONMENT PROTECTION ACT 1985, PART II DEPOSITS IN THE SEA (AS AMENDED) (FEPA)

BURIALS AT SEA

I acknowledge receipt of your recent enquiry requesting details on the subject of burials at sea.

The FRS Marine Laboratory does not encourage burial at sea. This is mainly because fishing activity around the Scottish coastline is very intense and the risk of a body or coffin being trawled up soon after burial is extremely high. Remains may also be subject to movement by currents with the inevitable risk of their being returned to shore. Obviously, this can cause considerable distress to relatives and friends of the deceased, and in order to avoid that risk, the FRS Marine Laboratory would recommend cremation with the ashes being scattered at sea.

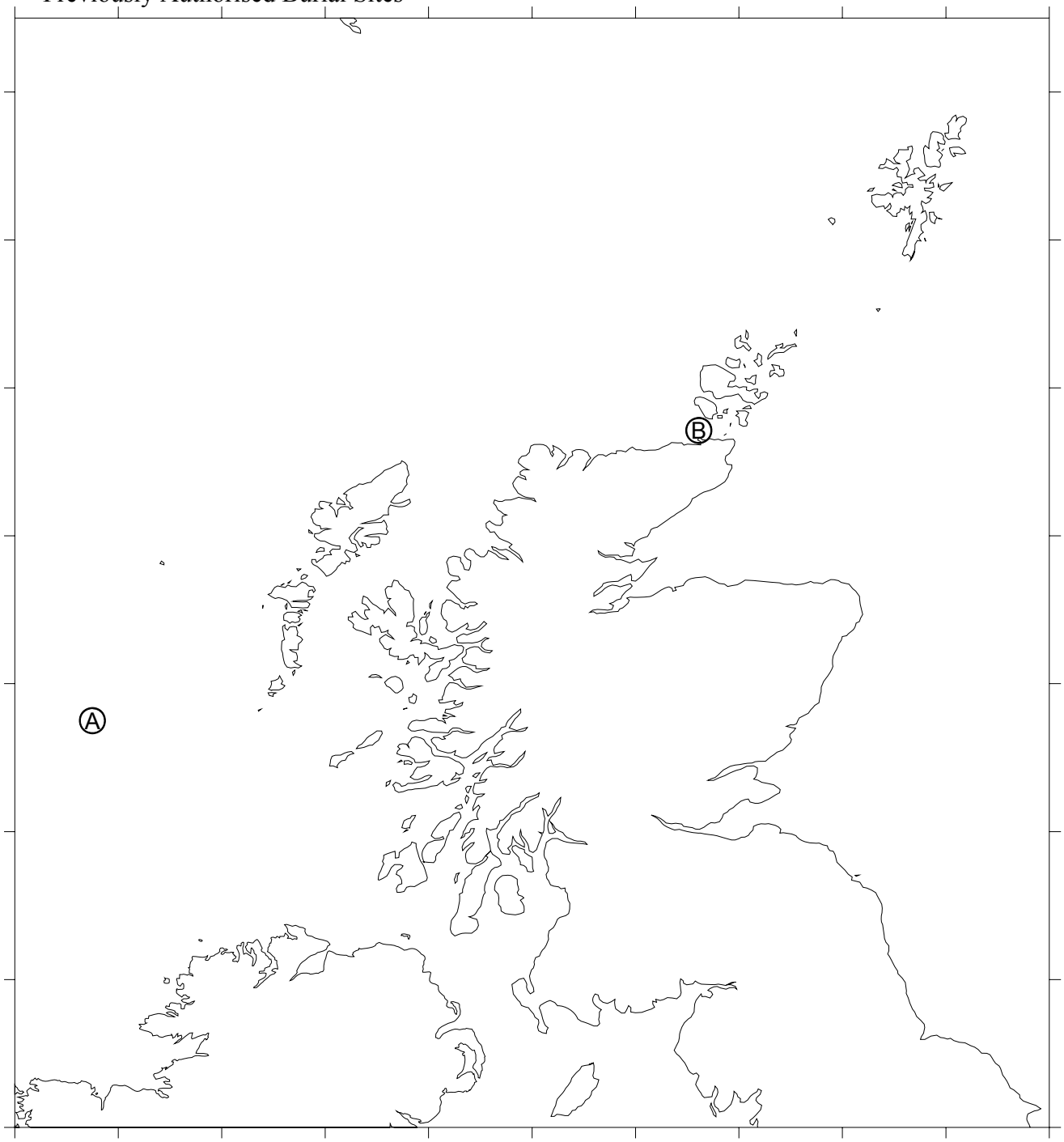
In the past 5 years, however, a limited number of burials in the sea in Scottish waters have been authorised at position 56°45'N 009°15'W. This position is approximately 210 nautical miles due west of Oban and is shown on the attached map as site (A). Since selecting this site, there has been a considerable increase in deep water trawling activity in waters off the coast of Scotland, and we may soon have to consider selecting an even more remote site. Another location authorised in the past is at position 58°42.70'N 003°23.30'W. This position is approximately 15 nautical miles west of John O'Groats and is indicated on the attached map as site (B). (see Annex II)

Current legislation requires that a licence is obtained from this office under Part II of the Food and Environment Protection Act 1985 before a burial at sea can take place. No licence is required for the scattering of cremated remains. I have attached for your information an example licence, headed Annex III, which the FRS Marine Laboratory would issue if permission were granted. This lists the conditions that must be fulfilled. Also attached is a draft of the example declaration, which a Funeral Director has to make to the licensing authority after a burial at sea. In addition, a Certificate of Freedom from Fever and Infection must be obtained from the deceased's general practitioner or hospital doctor. If the doctor is not prepared to issue such a certificate then I am afraid burial at sea will not permitted.

I hope you find the above useful, however, please do not hesitate to contact me if you require further information.

Yours sincerely

Annex II
Previously Authorised Burial Sites



ANNEX III

[Example Licence]

Our ref:

[Date]

Dear [Sir/Madam/Name]

FOOD AND ENVIRONMENT PROTECTION ACT 1985, PART II DEPOSITS IN THE SEA (AS AMENDED) (FEPA)

BURIAL AT SEA

This letter is deemed to be a licence under the Food and Environment Protection Act 1985 (as amended) authorising the burial at sea of the remains of [name of deceased], to be undertaken by the above company in the following location:

[Location]

The following conditions will apply:

- A certificate of Freedom from Fever and Infection must be obtained prior to burial.

- The body must not be embalmed.

- The deceased person must have a narrow plastic band around the waist on which is inscribed your telephone number, and such information as is considered necessary for identification of the body.

- The coffin must not contain any persistent plastic nor any lead, copper or zinc. It must be constructed of solid softwood and not of veneered board. All corners must be buff-jointed and right angled brackets must be screwed internally to strengthen all joints.

- The coffin must be weighted by iron, steel or weak concrete mix with a minimum weight of 100 kg (2 cwt). Lightweight concrete blocks must not be used.

- At least 12 holes, of a minimum diameter of 20 mm, must be drilled in each side and top of the coffin. Three similar holes shall be drilled in each of the end boards.

- The body must not be dressed but may be covered loosely with a cotton or paper sheet.

- At least two steel bands must be placed around the coffin at right angles to ensure it survives the impact on entry to the sea and on arrival at the sea bed.

These are minimum requirements and the coffin must be available for inspection by the licensing authority prior to the burial. At least one day's notice for this inspection will be given.

This licence will expire on [date]; this office must be informed one day prior to the date and immediately after the burial.

Yours [faithfully/sincerely]

[Name]

ANNEX IV

[Example declaration from Funeral Director]

Dear [Sir/Madam/Name]

This letter is the required declaration by us for the Funeral at Sea of [Name of Deceased].

The deceased was placed in his/her coffin in the presence of the undersigned.

The deceased was NOT embalmed.

The deceased was NOT dressed.

The deceased was securely weighted with 100-150 kg (2-3 cwt) of iron and steel.

There was nothing else whatsoever in the coffin.

There was no plastic in the interior of the coffin.

An identification tag was securely attached to the deceased's waist.

Yours [faithfully/sincerely]

[Name]

Annex V

Burying At Sea of Ashes

When burying ashes at sea the following guidelines should be followed:

It is suggested that only natural and non-toxic materials are used and hence enter the marine environment.

The container that the ashes are in should be weighted to ensure that it remains on the seabed.

Several holes should be drilled in each side of the container. This would allow the rapid ingress of water and exit of air so the container will sink quickly to the seabed.

In the event that the container was to be returned to the land or trawled up in fishing gear, a simple method of identification is required. Ideally the licensing authority would prefer the use of a material which, when no longer required, would break down in the marine environment with minimal side effects.

Finally, when an animal is to be scattered, a Certificate from a licensed Veterinarian must be obtained stating that the animal was free from infectious disease.

Environment Protection Group
FRS Marine Laboratory
PO Box 101
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Aberdeen
AB11 9DB

THE BURIAL AND CREMATION REVIEW GROUP

Membership

Robert Brodie - Chairman

Alison Michie - Crown Office * served on the group for a short while

Alistair Carmichael – Crown Office * replaced Alison (as above)

Andrew Riley - Directors of Public Health

David Evans - Royal Environmental Health Institute Of Scotland

David Love - Scottish General Practitioners Committee

David McLay - Crematorium Medical Referees

Dianna Wolfson - Scottish Inter Faith Council

Donald Harley - British Medical Association

Douglas Galbraith - Action for Churches Together in Scotland

Duncan McCallum - The Federation of British Cremation Authorities

George Bell – Convention of Scottish Local Authorities (COSLA)

George Fernie - Medical & Dental Defence Union Scotland

Graeme Brown - National Association of Funeral Directors

Ivan Middleton - Humanist Society Of Scotland

Joan Adam - Royal College of Nursing Scotland

Martyn Evans - Scottish Consumer Council

Robert McCulloch - Institute of Cemetery and Crematorium Management

Salah Beltagui - Scottish Inter Faith Council

Sandra McGregor - Association of Registrars of Scotland

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