

Appendix 2 - Burial and Cremation Legislation - Consultation Paper

Flintshire County Council's Proposed Response

Question No.	Proposals by the Law Commission	Suggested response from FCC:	RAG Status
1	<p>We provisionally propose that there should not be a single uniform burial law applying to private, local authority, Church of England and Church in Wales burial grounds. Instead, we provisionally propose that different aspects of regulation should be introduced for different types of burial grounds, where there is a case for doing so.</p> <p>Do consultees agree?</p>	<i>This is supported and agreed.</i>	Green
2	<p>We provisionally propose that regulation of private burial grounds should encompass any land where the primary purpose is, or has been, burial. Do consultees agree?</p> <p>We invite consultees' views on whether the definition of burial in the Local Authorities' Cemeteries Order 1977 has caused any problems.</p>	<i>Not applicable, as we are a local authority</i>	Green
3	<p>We provisionally propose that:</p> <p>(a) it should be a criminal offence for a person making a burial outside a burial ground to knowingly fail to register it;</p> <p>(b) it should be a criminal offence for a person transferring an interest in that land, or creating a lease of more than 21 years on that land, to knowingly fail to transfer the burial register to the new owner or lessee; or for the lessee to knowingly fail to transfer it to the owner at the end of the lease; and</p> <p>(c) the maximum penalty for these offences should be a fine at level 2 on the standard scale (£500).</p> <p>Do consultees agree?</p>	<i>This is supported and agreed.</i>	Green
4	<p>We provisionally propose that in a local authority cemetery, the religious services that accompany a burial in all areas reserved or consecrated to a religious faith should be restricted to those of that faith, or to no service at all.</p>	<i>This is a potentially contentious and sensitive subject matter, but it is agreed that equality between different faiths should apply. The Council permits mixed denominations within designated faith sections of our cemeteries.</i>	Amber

	Do consultees agree?	<i>In Flintshire, we do have cemeteries that are used by multiple denominations of one faith e.g. Flint and Holywell cemeteries do have specific areas remaining for Roman Catholic and Church of Wales.</i>	
5	We provisionally propose that every burial ground owner should be required to maintain their burial ground in good order appropriate to its current use. Do consultees agree?	<p>Yes.</p> <p><i>A standardised approach to maintenance of burial grounds would be supported either through a statutory code of practice, or a requirement for burial ground operators to publish a management plan in the same way that local authorities are required to do so. Under the Local Authorities' Cemeteries Order 1977 ("LACO 1977"), local authorities are under an obligation to keep its cemeteries in good order and repair, together with buildings, walls and fences.</i></p> <p><i>Enforcement/policing of the management plans or adherence to the statutory code of practice would need to be considered. Would this be through an external auditor or inspector?</i></p>	Green
6	<p>We invite consultees' views on whether problems of poor maintenance of burial grounds are sufficient to impose requirements on burial ground operators, over and above setting a uniform standard of maintenance.</p> <p>We invite consultees to provide examples or evidence of issues with poor maintenance that would potentially justify such requirements.</p> <p>We invite consultees' views as to whether, if further regulatory action should be taken in relation to the maintenance of burial grounds: (1) the Secretary of State should issue a statutory code of practice for burial ground maintenance, following consultation with stakeholders; or</p>	<p><i>The approach to maintaining cemeteries, for instance in relation to grounds maintenance and maintaining memorials, monuments, graves can differ between the local authorities and other burial ground operators. Examples of issues that have been experienced include areas of longer uncut grass or foliage around headstones in some burial grounds, which pose a significant health and safety risk in the form of slips, trip or fall hazards. Another is around covering depressions in ground levels, which could result in slips, trips or falls. Standards could be defined for minimum cutting lengths and frequencies for all burial grounds, although this would need to be mindful of local authority budgets, which are already under increasing pressure and cuts to services. Another aspect relates to unsafe memorials. As a local authority, we currently test all memorial gravestones ("memorials") within</i></p>	Red

	<p>(2) all burial ground operators should be required to publish a management plan on a periodic basis.</p>	<p><i>our cemeteries once every three years to ensure safety and stability, although the HSE recommends a minimum requirement for inspection once every five years. A standardised approach would be welcome in this respect. Unsafe memorials are gravestones that have become loose or unstable and pose a risk of injury to visitors or our employees and any memorials that fail the testing process are temporarily supported by wooden stakes and the grave owners are contacted (where known) to request that they undertake a permanent repair. In addition to the risk caused by unsafe headstones, kerb sets (lengths of stone that surround the perimeter of memorials) are also posing a safety concern within the council's older cemeteries. Whilst the installation of kerb sets is no longer permitted practice in Flintshire, kerb sets were previously introduced in those cemeteries that were not designated "lawned cemeteries." In many instances, the edges of the kerb sets are becoming separated from the main structure of the memorial and are falling into the walkways between graves and partially sinking into the ground, resulting in a trip hazard for visitors and cemetery staff, which may not be easily observed. Again, a standardised approach for addressing these issues would be welcomed.</i></p> <p><i>We would support the introduction of a statutory code of practice, providing that it does not impact on existing council budgets and resources. A code of practice for burial ground maintenance and the publication of management plans for each site would demonstrate best practice in these areas. Any onerous standards to maintain over and above current requirements would need to be funded accordingly either by UK government or Welsh Government.</i></p>	
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7	<p>We provisionally propose that the Secretary of State should continue to be able to authorise inspections of burial grounds. Where an inspection finds that the law is not being complied with, the Secretary of State should be able to issue a notice requiring actions to be taken to bring the burial ground into compliance.</p> <p>Do consultees agree?</p>	<p><i>This is supported and agreed, and this is already current practice. Whilst the Council is supportive of this approach to continue, we believe that such inspections could be undertaken by individual local authorities within their expertise and knowledge of their own burial grounds.</i></p>	Green
8	<p>We provisionally propose the abolition of the offence of failing to adhere to cemetery regulations in section 8 of the Burial Act 1855.</p> <p>Do consultees agree?</p>	<p><i>This is supported and agreed.</i></p>	Green
9	<p>We invite consultees’ views on whether the Secretary of State should have the power to direct that a local authority takes over the management of a burial ground which has failed to comply with the actions required in a notice, and whether local authorities in such circumstances should have the power to charge costs back to the cemetery owner.</p>	<p><i>This would have serious financial implications for the authority and would require additional resources and budget. Whilst it is a sensible option if minimum standards of maintenance and an inspection regime are established, it is doubtful that the authority could recover full costs incurred. Funding should be made available from central UK Government to ensure that local authorities are not financially disadvantaged in these circumstances as otherwise, it would not be possible to adhere to revised law changes. Funding should be provided in perpetuity.</i></p>	Red
10	<p>We invite consultees’ views on what the minimum burial depth should be for bodies buried in a non-perishable coffin, and for bodies buried in perishable</p>	<p><i>This proposal would further complicate the process of constructing a walled grave. It would also add further costs through the provision of a grave liner or additional concrete to</i></p>	Amber

	<p>coffin or wrappings. We provisionally propose that:</p> <p>(1) in all burial grounds there should be six inches of soil between two coffins or bodies which are interred in the same grave; and</p> <p>(2) for walled graves or vaults, there should be a requirement for them to be properly constructed of suitable materials, and for the coffin to be embedded in concrete or enclosed in a separate airtight compartment within 24 hours of the interment.</p> <p>Do consultees agree?</p> <p>We provisionally propose the creation of a new criminal offence of recklessly breaching minimum burial requirements, with a maximum penalty on summary conviction of a fine at level 2 on the standard scale (£500).</p> <p>Do consultees agree?</p>	<p><i>encase the coffin. However, these would be passed on to the families concerned as do all walled grave costs currently.</i></p>	
11	<p>We provisionally propose that, in relation to all cemeteries:</p> <p>(1) it should be a requirement for all burial rights, both exclusive and nonexclusive, and memorial rights, to be issued in writing;</p> <p>(2) where this requirement is not met on the grant of a burial right, the purchaser should be able to request that their burial right is made out in writing, and that where the operator does not comply within a month the Secretary of State should have the power to issue a civil penalty; and</p> <p>(3) that where a burial right has not been issued in writing, there should be a presumption that the right is a statutory exclusive burial right.</p> <p>Do consultees agree?</p>	<p><i>Supported – Flintshire already issue all exclusive and memorial rights in writing via Plotbox</i></p>	Green
12	<p>We invite consultees' views as to whether an optional scheme of statutory exclusive burial rights should be introduced for private cemeteries which are not already governed by their own Act of Parliament.</p> <p>4.74 If consultees support the introduction of an optional scheme of statutory exclusive</p>	<p><i>The issuing of Exclusive Rights of Burial should be best practice for all burial ground operators. Likewise, a process should be in place for the transfer of these rights following the passing of the original owner. Again, the system used by local authorities would show best practice if the rights were to be transferred by, statutory</i></p>	Green?

	<p>burial rights, we invite consultees' views on the following.</p> <p>(1) Should the right be able to be assigned by deed or inherited?</p> <p>(2) Should the right have a maximum duration of 100 years, subject to extension at the discretion of the cemetery operator?</p> <p>(3) Should there be any other features of such a scheme?</p>	<p><i>declaration, form of assignment of proof of executorship. In respect of the duration of the deed, this varies widely currently as some local authorities will have a shorter term and generate revenue from renewals. A standard term would be a good idea and welcomed.</i></p>	
13	<p>We provisionally propose that:</p> <p>(1) in its cemetery, a local authority should have the power to grant a memorial right to any relative of a person buried in a grave if no memorial has been placed on the grave two years after the burial; and</p> <p>(2) if there is a dispute between different relatives, or between the relatives and the owner of the exclusive burial right, a local authority should only have the power to grant the right to a neutral memorial displaying the name of the deceased person and their dates of birth and death.</p> <p>Do consultees agree?</p>	<p><i>This is a highly emotive and sensitive topic. In Flintshire, we will only grant the memorial rights to the registered owner of a grave. We would initially be given this information from the funeral director for new graves, as they have initial contact with the families. If a memorial application is received that is not signed by the registered owner, it isn't approved. We do not agree that a standard memorial should be placed on the grave if a family dispute is ongoing, as it would have the potential to lead to further problems on site if this were to happen.</i></p>	Amber
14	<p>We provisionally propose that a local authority should be permitted to maintain a tombstone, memorial or vault without the consent of its owner, if they have served notice on the owner at their last address known to the authority, and the owner has not objected within three months of such notice being served.</p> <p>Do consultees agree?</p>	<p><i>This is agreed and supported; however, this is likely to incur additional costs for the local authority, which would be a financial risk and there is unlikely to be the ability to recover such costs. In such cases, the local authority should be permitted to remove the tombstone, memorial, monument if it is deemed to be a safety critical issue and no owner can be traced or if the owner has not objected within a certain timeframe. Alternatively, funding would need to be provided by UK government for the local authority to fulfil this duty.</i></p>	Amber
15	<p>We provisionally propose that:</p> <p>(1) a consistent system of burial registration should be introduced;</p> <p>(2) the requirement for burials (of both bodies and cremated remains) to be registered as soon as possible should be retained;</p>	<p><i>Agreed and this is already applied in Flintshire through the Plotbox system. We also agree with the intention to repeal of the criminal offences of failing to register a burial, which seems excessive and not justified.</i></p>	Green

	<p>(3) all burial ground operators should be under a statutory duty to keep the following documents:</p> <p>(a) a burial register;</p> <p>(b) a register of disinterments;</p> <p>(c) a plan of the burial ground; and</p> <p>(d) a register of rights granted; and</p> <p>(4) these records should be kept either electronically or on paper.</p> <p>Do consultees agree?</p> <p>We provisionally propose the repeal of the criminal offences of failing to register a burial:</p> <p>(1) by a private burial ground operator where registration is not governed by an Act of Parliament; and</p> <p>(2) by a Church of England minister when a burial takes place in consecrated ground in a Church of England churchyard without the rites of the Church of England.</p> <p>Do consultees agree?</p>		
16	<p>We invite consultees' views as to whether burial registration documents should be sent to the General Register Office or Historic England when a burial ground closes.</p>	<p><i>Currently burial registration documents are sent to the General Register Office</i></p>	Green
17	<p>We provisionally propose that the criminal offences relating to burying a child as if it were stillborn and burying more than one body in a coffin should be repealed.</p> <p>Do consultees agree?</p>	<p><i>This is supported and agreed given that it is now unlawful for the operator of a burial ground to bury a stillborn child without a certificate from the registrar or an order from the coroner and also unlawful to fail to register a stillborn child.</i></p>	Green
18	<p>We provisionally propose that any grave reuse powers should apply to common or public graves, and to those where exclusive rights of burial have expired, as well as those where exclusive rights of burial have been extinguished.</p> <p>Do consultees agree?</p>	<p><i>We support this proposal. Common and public graves will already be in the ownership of the local authority and likewise if exclusive rights of burial have expired etc., then they will revert to the local authority if not renewed by the grave owner</i></p>	Green
19	<p>We invite consultees' views on the minimum time that must elapse between the last burial in a grave, and the burial rights in that grave being extinguished and the grave being reused.</p> <p>Should it be:</p> <p>(1) 75 years;</p> <p>(2) 100 years; or</p>	<p><i>We would propose that the time that must elapse should be at least a minimum period of 75 years. This would be consistent with the current specified period of when we can reclaim a grave that has been previously sold, but never used for interment by the purchaser.</i></p>	Red

	<p>(3) a different period? We invite consultees' views as to whether there should be a requirement that a grave must not be reused if it still contains significant remains from a previous burial. If so, we invite consultees' views on what should count as "significant remains". We invite consultees' views on whether there is a case for the Secretary of State to be able to permit certain cemeteries to reuse graves after a shorter period of time in exceptional circumstances, and where the people, making burials in the graves which are to be reused, consent to it.</p>	<p><i>Consideration should also be given to 100 years given that relatives / family members may still be alive when a grave is designated for reuse (e.g. people are generally living longer and grandchildren of the deceased are still likely to be alive etc.). 100 years would be the preference.</i></p> <p><i>Concerns have also been raised around memorials/head stones for graves that are reused and how these would be provided for multiple burials within the same grave.</i></p> <p><i>We agree that there should be a requirement that a grave must not be reused if it still contains significant remains from a previous burial; however, this would only be known once the grave is excavated.</i></p> <p><i>A definition of "significant remains" will be required, all graves will contain skeletal remains and remnants of coffins depending on the quality of coffin used at the time of interment. Anything other than this should be classed as significant remains.</i></p> <p><i>We disagree that there is a case for graves to be reused graves after a shorter period of time in exceptional circumstances. What constitutes exceptional circumstances?</i></p> <p><i>Reuse should only be employed after a qualifying time has elapsed, which applies to all burial grounds and graves contained therein. Please refer to previous response above.</i></p>	
20	<p>We provisionally propose that, in any extension of grave reuse and burial right extinguishment powers, notices should be posted: (1) on the burial ground operator's website if they have one; (2) in local newspapers;</p>	<p><i>Agreed; however, such a change will result in additional costs associated with notice requirements and therefore, funding needs to be made available by UK government to cover any associated costs. Funding should be provided in perpetuity. Concerns have also been raised about the</i></p>	Amber

	<p>(3) by the grave and entrances to the cemetery; and (4) should be sent to the last known address of the owner of the burial rights and memorial. Do consultees agree? We provisionally propose that one notice should suffice for both grave reuse and extinguishing burial rights. Do consultees agree?</p>	<p><i>administrative burden that this process is likely to introduce for local authorities when resources are already stretched to capacity.</i></p>	
21	<p>We provisionally propose that in any extension of grave reuse powers, remains which are moved in order to reuse a grave must be either reinterred in the original grave, or in another grave in the same cemetery, below the level of the ground in a grave consisting wholly or substantially of earth. Do consultees agree?</p>	<p><i>Operationally there is unlikely to be space within existing burial grounds for the removed remains to be re-interred in an alternative location within the same cemetery. As per our earlier comments, remains should be placed back in their original grave at a greater depth. Guidance should also be established for the requirement to remove or retain any memorials that are on the existing graves and how new memorials would be included.</i></p>	Amber
22	<p>We provisionally propose that burial ground operators should be required to keep a register of disinterments. Do consultees agree?</p>	<p><i>Agreed. Currently part of Plotbox cemetery management system.</i></p>	Green
23	<p>We provisionally propose that burial ground operators should be required to disclose the fact that a grave has been reused or reclaimed to potential purchasers. Do consultees agree?</p>	<p><i>Agreed. Flintshire currently do this as standard practice.</i></p>	Green
24	<p>We provisionally propose that burial ground operators should be able to apply to the Secretary of State for a decision enabling them to extinguish burial rights in graves and reuse graves, on a case-by-case basis. Do consultees agree? We invite consultees' views on whether applications for grave reuse and reclamation powers should be made: (1) by each burial authority to cover all of their burial grounds; or (2) for each burial ground individually. We provisionally propose that an application for grave reuse and reclamation powers should be accompanied by:</p>	<p><i>Should a local authority have to apply on a case-by-case basis, this would be administratively burdensome and would require additional resources and funding from UK government.</i></p> <p><i>An application for each burial ground individually would be more practical and manageable, but we request that the process does not become bureaucratic.</i></p>	Amber

	<p>(1) a grave reuse and reclamation plan setting out any additional mitigation proposed and identifying the graves which are intended to be affected; and</p> <p>(2) the results of a consultation with those living near the burial ground and those with friends or relatives buried in the burial ground.</p> <p>Do consultees agree?</p>		
25	<p>We provisionally propose that a burial ground, or any other specified area, should be closed to new interments by a decision of the Secretary of State, rather than by Order in Council.</p> <p>Do consultees agree?</p>	<p><i>Further clarification is required on this proposal and whether this relates to churchyards. Flintshire currently has four cemeteries that are closed to new burials; however, they still accommodate re-opening of graves. As a result, they cannot be classified as formally closed.</i></p>	<p><i>Amber Further clarification required</i></p>
26	<p>We provisionally propose that the Secretary of State should have the power to close a burial ground where:</p> <p>(1) there is no useable space for new burials in graves which are free from exclusive burial rights;</p> <p>(2) the legal minimum standard of maintenance or burial specifications have not been complied with; or</p> <p>(3) the burial ground represents a risk to public health.</p> <p>Do consultees agree?</p> <p>We invite consultees' views as to whether there are other reasons why a burial ground should be closed to new interments.</p> <p>We provisionally propose that the Secretary of State must post notice of the intention to close a burial ground at the entrances to the burial ground, and in the London Gazette, for two months before a burial ground can be closed.</p> <p>Do consultees agree?</p>	<p><i>We support this proposal in part.</i></p> <p><i>(1) Is not supported as there could still be reserved grave spaces within the burial ground that can accommodate new burials.</i></p> <p><i>(2) Supported if there was a time period added, i.e. the minimum standard hadn't been reached for 2 years, for example.</i></p> <p><i>(3) Supported</i></p>	<p><i>Amber</i></p>
27	<p>We provisionally propose that the fault element of the offence of burying a body in a closed burial ground should be knowledge that the burial ground has been closed to further burials.</p> <p>Do consultees agree?</p> <p>We provisionally propose that the maximum sentence for the</p>	<p><i>Agreed</i></p>	<p><i>Green</i></p>

	<p>offence of burying a body in a closed burial ground is increased to level 3 on the standard scale of fines, which is currently set at £1,000. Do consultees agree?</p>		
28	<p>We provisionally propose that the existing exceptions to the power to close a burial ground to new interments should be ended, and that the existing exemption in relation to burials with the approval of the Sovereign in St Paul's Cathedral or Westminster Abbey should be extended to include all royal peculiars. Do consultees agree?</p>	<p><i>No particular views</i></p>	<p>N/A</p>
29	<p>We provisionally propose that the Secretary of State should have the power to reopen burial grounds which have been closed to new interments, with the agreement of the burial ground owner, or the incumbent. Burial grounds could be reopened in full, or partially by reference to a particular area or purpose. Do consultees agree?</p>	<p><i>Agreed. However, a set of criteria would need to be created by the Secretary of State for which all elements would need to be met. Appropriate funding would also need to be provided in perpetuity for future maintenance of reopened burial grounds.</i></p>	<p><i>Amber</i></p>
30	<p>We provisionally propose that where a closed Church of England churchyard is reopened, any local authority which has become legally responsible for its maintenance should continue to have that responsibility. Do consultees agree? We invite consultees' views on whether Church of England fees for funerals and burial should be shared with local authorities, or whether an additional fee payable to local authorities should be charged, in relation to reopened churchyards.</p>	<p><i>Not applicable to Flintshire, as we are a Welsh local authority; however, if this were to apply to churchyards in Wales, we would want fees for funerals and burials to be payable to the local authority and we would seek to recover costs for maintaining the cemetery.</i></p>	<p><i>Amber</i></p>
31	<p>We invite consultees' views on whether the Church in Wales should be able to transfer the responsibility for maintaining its churchyards and burial grounds to the community council or county council, on the same model as in place in England.</p>	<p><i>We would not support the proposal to end the Church in Wales' duty to bury parishioners, as this is likely to place additional pressure on other burial grounds, particularly those operated by local authorities. Giving the churches the power to transfer maintenance responsibility to either community councils or Welsh county councils is likely to create a significant additional cost pressure on Welsh local</i></p>	<p><i>Red</i></p>

		<i>authorities, which are already under financial constraints and for which no funding exists within council budgets. Welsh Government's views should also be sought and funding from UK government must be provided to Welsh local authorities if this is adopted.</i>	
32	We provisionally propose that the fault element required for the commission of the offence of unlawful exhumation should be recklessness. Do consultees agree?	<i>Supported</i>	Green
33	We provisionally propose that the maximum penalty for unlawful exhumation should be an unlimited fine on summary conviction, or imprisonment for a term not exceeding three years, or both, on indictment. Do consultees agree?	<i>Supported</i>	Green
34	We provisionally propose that the offence of exhuming human remains without authorisation should include removing human remains from the grave without lifting those remains above ground (so-called "coffin sliding"). Do consultees agree?	<i>Supported</i>	Green
35	We provisionally propose that there should be an exception to the exhumation offence where the exhumation is authorised by a police officer of at least the rank of Inspector, who has reasonable grounds to believe that an exhumation is urgently necessary to prevent forensic evidence from being lost. Do consultees agree?	<i>Supported</i>	Green
36	We provisionally propose that the scheme in the Disused Burial Grounds (Amendment) Act 1981 permitting building on a disused burial ground and exhumation without a licence or faculty, where notice requirements are met, should be extended to all private and local authority burial grounds. Do consultees agree? We invite consultees' views on the appropriate period of time during which an objection by the personal representative or close	<i>Agreed - It would make sense for the timeframe to match those proposed for grave re use etc. therefore Flintshire would recommend minimum 75 years. Please also see earlier comments regarding consideration to be given to 100 years (due to people living longer and likelihood that the grandchildren of the deceased may still be alive). This would be the preference.</i>	Amber

	<p>relatives of a deceased person should prevent building works from taking place on the burial ground in which they are interred. Should it be:</p> <p>(1) 50 years; (2) 75 years; (3) 100 years; or (4) another period?</p> <p>We provisionally propose that it should be a criminal offence to fail to comply with directions issued by the Secretary of State as to how remains exhumed for development purposes should be reinterred or cremated, with a maximum sentence of an unlimited fine on summary conviction, or imprisonment for a term not exceeding three years, or both, on indictment.</p> <p>Do consultees agree?</p>	<p><i>Concerns have been raised by county councillors around church yards/church buildings being historical monuments that would effectively be destroyed in the process.</i></p>	
37	<p>We provisionally propose that:</p> <p>(1) every time a local authority burial authority seeks to exercise powers under articles 10(5) or 16(2) of LACO 1977, it should be required to notify the CWGC; and</p> <p>(2) it should be a requirement for the local authority to share information about which graves it intends to take this action in relation to, and then for the CWGC to confirm whether the grave is a Commonwealth war grave.</p> <p>Do consultees agree?</p>	<p><i>Supported, as this relates to the removal of memorials from graves and the upkeep of memorials, levelling of sunken graves etc. We currently have a list of all our CWGC graves in Flintshire, so this would not be an issue therefore, as we would do this with all CWGC graves as standard practice, just as we do with all other graves. If we had to send the CWGC a list of all graves we intended to act on, it would not be too burdensome as Plotbox would be able to produce a report to send to CWGC.</i></p>	Green
38	<p>We provisionally propose that where a local authority has followed the process to obtain the right to maintain a monument whose owner cannot be contacted:</p> <p>(1) the consent of the CWGC should be required for the local authority to undertake ordinary maintenance to Commonwealth war graves in relation to which they do not own the memorial or the burial rights; and</p> <p>(2) the CWGC should have the right to maintain such graves.</p> <p>Do consultees agree?</p> <p>We provisionally propose that the CWGC should be able to maintain any memorial over a Commonwealth war grave in a</p>	<p><i>Supported</i></p>	Green

	<p>private burial ground without the consent of its owner, if a notice has been served on the owner of the memorial right and they have not responded within three months.</p> <p>Do consultees agree?</p>		
39	<p>We provisionally propose that the CWGC should be informed every time a burial ground operator seeks to extinguish burial rights or reuse a grave, and it should have the power to object to these actions in relation to Commonwealth war graves. Do consultees agree?</p> <p>We provisionally propose that the CWGC should be informed every time a burial ground operator seeks to make a further burial above a grave where the person buried died between 4 August 1914 and 31 August 1921, or between 3 September 1939 and 31 December 1947. The CWGC should have the power to object to the reclamation of Commonwealth war graves. Do consultees agree?</p>	<p><i>Supported, as we already do this for CWGC Graves in Flintshire</i></p>	<p><i>Green</i></p>
40	<p>We provisionally propose that the CWGC should have the right in respect of compulsorily purchased land to remove remains in Commonwealth war graves and to reinter or cremate them, and to remove any memorials. Do consultees agree?</p>	<p><i>No comments</i></p>	<p><i>N/A</i></p>
41	<p>We invite consultees' views on whether the Ministry of Justice should be required to consult with the Commonwealth War Graves Commission in relation to exhumations of deceased people who died during the periods between 4 August 1914 and 31 August 1921, or between 3 September 1939 and 31 December 1947.</p>	<p><i>Supported</i></p>	<p><i>Green</i></p>
42	<p>We provisionally propose the following: (1) private burial ground operators should be required to inform the CWGC when they seek to maintain, remove or</p>	<p><i>Supported</i></p>	<p><i>Green</i></p>

	<p>destroy a tombstone, memorial or other fittings of a grave where the burial was made within the periods between 4 August 1914 and 31 August 1921, or 3 September 1939 and 31 December 1947; and</p> <p>(2) where that grave is a Commonwealth war grave, the CWGC should be granted the right to give or refuse consent to these actions.</p> <p>Do consultees agree?</p>		
43	<p>We invite consultees' views as to whether any new legal requirements at crematoria or burial grounds could help to address the problem of mistaken cremations or burials, and if so, what those requirements could be.</p>	<p><i>The name plate on the coffin should always be checked against the burial certificate or interment notification issued to the attending sexton. Any discrepancies are reported back to the Bereavement Services Office. No further requirements identified.</i></p>	Green
44	<p>We invite evidence from consultees as to whether, in relation to direct cremation, there are cases where the applicant for cremation will not know which crematorium will be used at the time of application. If there are, we invite consultees' views on whether the cremation forms should be amended to accommodate this practice.</p>	<p><i>No comments, as Flintshire County Council does not operate a crematorium</i></p>	N/A
45	<p>We invite consultees' views on the position in the current law that the rules which govern who can apply for cremation, and collect the ashes, are different from the rules which govern who has the legal right to make decisions about dead bodies. We invite consultees to tell us of their experience of the current law and of any problems that they have encountered as a result.</p> <p>We invite consultees' views as to whether the current law strikes the right balance between certainty as to who can apply and receive the ashes, and flexibility in ensuring that a timely funeral happens.</p>	<p><i>No comments, as Flintshire County Council does not operate a crematorium</i></p>	N/A
46	<p>We invite consultees' views on which relationships between two deceased people should mean</p>	<p><i>No comments, as Flintshire County Council does not operate a crematorium</i></p>	N/A

	the law permits their bodies to be cremated together, provided both applicants for cremation give their written consent		
47	We provisionally propose that it should be a requirement that ashes from a cremation should be removed from the cremator before another cremation occurs. Do consultees agree?	<i>No comments, as Flintshire County Council does not operate a crematorium</i>	N/A
48	We provisionally propose that: (1) neither cremation nor any other irreversible funerary method should be permitted in relation to unidentified bodies or body parts; and (2) before any unidentified bodies or body parts are buried, a DNA sample should be taken for storage on the national central database held by the UK Missing Persons Unit. Do consultees agree?	<i>It's not clear what form this duty would take and who would be responsible for obtaining DNA samples?</i>	Amber
49	We provisionally propose that the Department for Health and Social Care should issue new guidance transferring ownership of any pacemakers in relation to which the HN(83)6 consent forms were signed from the NHS to funeral directors. We provisionally propose that, where any funeral director holds a pacemaker which was removed prior to the new guidance being issued, and where they hold a record linking the pacemaker to a specific deceased person: (1) they must post a notice stating that they hold pacemakers removed from bodies of deceased people prior to cremation, and the date range within which they were removed, and that they intend to dispose of them if they are not claimed. The notice should be placed on their website and visibly at their offices; (2) in order to claim a pacemaker a person should have to provide the funeral director with evidence that they are the deceased person's relative, using the	<i>No comments, as Flintshire County Council does not operate a crematorium</i>	N/A

	<p>definition used in LACO 1977, or that they were their cohabitant until they died; and three months after the notice is posted, if the pacemakers are not claimed, the funeral director may dispose of them as they see fit.</p> <p>Do consultees agree?</p> <p>We provisionally propose that, in circumstances where funeral directors hold a pacemaker but do not hold a record linking it with a specific deceased person, they should be able to dispose of the pacemakers as they see fit without issuing a notice.</p> <p>Do consultees agree?</p>		
50	<p>We invite consultees' views on whether the rule that a crematorium cannot be constructed within 200 yards of a dwelling house without the agreement of the owner, occupier and lessee, or within 50 yards of a public highway, should be repealed, or retained. If the rule is retained, we invite consultees' views on whether the distance should be measured from the buildings equipped for cremation, and any other buildings or structures ancillary to the process, or from another location.</p> <p>If the rule is retained, we provisionally propose that the Secretary of State should have to certify a crematorium before it can be used. It should be a requirement for certification to be granted that the plans for the crematorium must have been approved before construction as not breaching the rule.</p> <p>Do consultees agree?</p>	<p><i>This matter will require further consideration by the Council's planning department to ascertain views on any planning implications.</i></p>	Amber
51	<p>We provisionally propose removing the restriction on constructing a crematorium on the consecrated part of a local authority burial ground.</p> <p>Do consultees agree?</p>	<p><i>This matter will require further consideration by the Council's planning department to ascertain views on any planning implications.</i></p>	Amber
52	<p>We provisionally propose that, where a funeral director has held ashes for at least four weeks and wishes to return them to the cremation authority:</p>	<p><i>No comments, as Flintshire County Council does not operate a crematorium</i></p>	N/A

	<p>(1) the funeral director must take reasonable steps to contact the applicant for cremation to determine whether they want to collect the ashes, or want the funeral director to return the ashes to the crematorium;</p> <p>(2) if no response is received within four weeks, the funeral director should have the right to return the ashes to the crematorium where the cremation took place;</p> <p>(3) the cremation authority should have a statutory duty to accept the return of the ashes to them by the funeral director; and</p> <p>(4) where ashes have been returned to the crematorium, the existing process for dealing with uncollected ashes should apply.</p> <p>Do consultees agree?</p>		
53	<p>Are consultees aware of legal mechanisms that have been used to try to prevent ash scattering, and if so, do consultees know whether these measures have been effective?</p>	<p><i>This matter will require further consideration by the Council's planning department to ascertain views on any planning implications.</i></p>	Amber
54	<p>We invite consultees' views on which of the following two options they prefer. Either:</p> <p>(1) option 1: authorisation should be required to remove ash remains from a place of burial when:</p> <p>(a) the ashes are likely to be identifiable. This mean that they are separable from the earth, and that their identity within a plot of land can be ascertained; and</p> <p>(b) those who interred the ashes intended that they should remain identifiable; or</p> <p>(2) option 2: authorisation should be required to remove ash remains from a place of burial when:</p> <p>(a) ashes are interred in a container; or</p> <p>(b) ashes are interred in land where an exclusive burial right exists.</p> <p>We invite consultees' views on whether there should be any more circumstances in which authorisation is required to</p>	<p><i>The legal process for the exhumation of cremated remains is currently followed. However, the use of biodegradable boxes will, in future, make exhumations of cremated remains more difficult as they will not be able to be separated from the earth. We would therefore support option 2</i></p>	Green

	exhume ashes under the second test.		
55	<p>We invite consultees' views on:</p> <p>(1) whether there are circumstances or places in England and Wales where it is difficult for people to find a burial space in locations of their choice;</p> <p>(2) whether our provisional proposals in this Consultation Paper would help to address the availability of burial space;</p> <p>(3) what impact our provisional proposals in this Consultation Paper might have on reducing distress to family and friends of deceased people; and</p> <p>(4) whether more comprehensive or frequent collection of data on burial grounds would be of practical value.</p>	<p><i>This is not an issue that has presented itself within Flintshire to date, and we believe that it is unlikely to occur within the next 15 to 20 years provided current cemetery extensions are completed successfully.</i></p> <p><i>Grave reuse would improve availability of burial space in existing locations and potentially remove capital expenditure pressures to extend or create new cemeteries.</i></p> <p><i>Grave reuse, being a new concept has potential to increase distress to family and friends; however, given it would be a considerable time period that has to pass before reuse could happen under the proposals, we recognise that it is unlikely that direct family members would still be alive / tending to the grave or in the locality. However, graves have the ability to be protected via the extension of the exclusive rights.</i></p> <p><i>Burial data is currently supplied on a regular basis to APSE for our work on Performance Networks. It would be useful if all burial ground operators had to submit a basic form of data for comparison and monitoring purposes.</i></p>	Amber
56	<p>We invite evidence from consultees on:</p> <p>(1) their general perception of the affordability of burial and cremation;</p> <p>(2) the contribution that burial costs and burial plot fees make to the costs that families and friends bear when organising a funeral; and</p> <p>(3) the impact that our proposed reforms might have on reducing or increasing these costs.</p>	<p><i>The gradual increase in numbers of Public Health Funeral requests would indicate that burial costs are becoming more unaffordable. Our local authority budget for public health burials is based on 6 burials per annum and the budget has not increased in a number of years.</i></p> <p><i>Due to the cost-of-living crisis, we have seen the number of public health burials increase to around 20 public health burials per annum year on year, as people cannot afford to pay the costs for funerals. This is likely to continue to increase in the coming years and will put significant pressure on an already constrained budget. It is widely known that third party fees i.e. burial and plot costs are on average around 33% of the total cost of a funeral.</i></p>	Red

		<p><i>Expectations for cemetery maintenance have also increased in the face of decreasing budgets, which of concern.</i></p> <p><i>The proposed reforms will have significant implications for local authorities in terms of additional costs and resources, particularly if churchyards will be able to transfer responsibility for maintaining closed churchyards to local authorities. This represents a significant additional cost and financial risk to Welsh councils. Funding should be provided in perpetuity for this reform.</i></p>	
57	<p>We invite evidence from consultees on:</p> <p>(1) the costs and benefits private burial grounds are likely to see as a result of our provisional proposals;</p> <p>(2) the costs and benefits funeral directors are likely to see as a result of our provisional proposals; and</p> <p>(3) any benefits or costs that are likely to arise if the rules on the siting of crematoria were repealed</p>	No comments	N/A
58	<p>We invite evidence from consultees on:</p> <p>(1) the scale of any benefits that are likely to accrue to local authorities if they obtain grave reuse and reclamation powers;</p> <p>(2) the likely additional cost of maintaining Church of England churchyards if they are reopened, and the level of fees that would be required in order to mitigate that cost;</p> <p>(3) the cost to Welsh local authorities if maintenance responsibility for Church in Wales churchyards could be transferred under the law; and</p> <p>(4) any impact on local authorities that might arise from repealing the rule on the siting of crematoria.</p>	<p><i>The proposed reforms will have significant implications for local authorities in terms of additional costs and resources, particularly if churchyards will be able to transfer responsibility for maintaining closed churchyards to local authorities. This represent a significant additional cost and financial risk to Welsh councils. Additional grave space would be made available through re use. This would increase the operational life of cemeteries, increase revenue generation and reduce potential capital costs for extensions etc. Additional maintenance costs could be significant. Additional budget would need to be made available potentially based on a standard maintenance cost per hectare. Funding should be provided in perpetuity.</i></p>	Red
59	<p>We invite consultees' views on the potential impact of our provisional proposals on costs</p>	<p><i>Costs to Government should increase through the provision of additional annual budget which</i></p>	Red

	to Government, and other operators and owners of burial grounds and crematoria.	<i>should be ring fenced for the purpose of meeting the additional challenges and costs to Local Authorities through the implementation of the proposals.</i>	
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~~~End of Consultation Questions~~