

ENVIRONMENT & ECONOMY OVERVIEW AND SCRUTINY

Date of Meeting	Tuesday, 10 th December 2024
Report Subject	Proposals by the Law Commission to Reform Burial and Cremation Legislation
Cabinet Member	Cabinet Member for Streetscene and Transportation
Report Author	Chief Officer (Streetscene and Transportation)
Type of Report	Operational

EXECUTIVE SUMMARY

On 3rd October 2024, the Law Commission released a consultation paper outlining background information and their proposals to reform the law governing burial and cremation. The Law Commission is seeking to reform the law of burial in England and Wales, which they state is piecemeal, complex, and outdated.

The main areas of proposed reform relate to the following:

- Regulation of Burial Grounds (including maintenance standards)
- Re-Use and Reclamation of Old Graves
- Disused Burial Grounds
- Cremation

The Law Commissions draft proposals are currently open for Public Consultation, which closed on 9th January 2025.

The purpose of this report is to outline the Law Commission's consultation paper and detail the Council's proposed response to the consultation, whilst also providing an overview of the legislative reform proposals and the potential risks and impacts on the local authority in terms of additional duties, costs, and resources.

RECOMMENDATIONS

1	Scrutiny notes the proposed changes to burial and cremation law that are being consulted upon by the Law Commission.
2	Scrutiny endorses the submission of the proposed response to the public consultation on behalf of Flintshire County Council.

REPORT DETAILS

1.00	EXPLAINING THE BACKGROUND TO THE PROPOSED REFORMS TO THE BURIAL AND CREMATION LAWS BY THE LAW COMMISSION
1.01	<p>On 3rd October 2024, the Law Commission published a consultation paper containing their provisional proposals, and open questions on issues relating to law reform on burials and cremation. A link to the full consultation paper is included within this report and a summary document of the consultation paper is available in Appendix 1.</p> <p>The closing date for responses is 9th January 2025.</p>
1.02	<p>Burial law is governed by a complex patchwork of legislation, some of which dates to the 1850s. There are different laws in place for burial grounds which are operated by local authorities, the Church of England, the Church in Wales, and private burial grounds. This has emerged as a result of historical development, and it means that there are gaps in the safeguards which protect the dignity of the people who are buried in burial grounds.</p> <p>Burial space is running out across England and Wales, with the situation worse in some urban areas. Grave reuse has been proposed as a solution to this problem, but reform to permit the reuse of graves must include sufficient safeguards to maintain public support.</p>
1.03	<p>The consultation paper contains provisional proposals for reform on a number of issues. We consider:</p> <ul style="list-style-type: none">• the regulation of burial grounds;• grave reuse and reclamation;• closed and disused burial grounds, and exhumation;• the rights granted to the Commonwealth War Graves Commission; and cremation law. <p>The Law Commission intends to use the responses to the consultation to develop their final recommendations for reform, which ultimately will be published in a report, which they expect to be published towards the end of 2025.</p>
1.04	<p>There are several reforms proposed by the Law Commission to the existing legislation covering both burials and cremations, and the consultation looks at the funerary methods which are currently regulated in England and Wales.</p> <p>Flintshire County Council will only be affected by those relating to burials, as the Council does not manage a crematorium, and these are managed externally by a third-party organisation. However, we have sought to answer questions in relation to cremation where relevant.</p> <p>A full list of the proposals that would impact Flintshire can be viewed in detail within Appendix 2. These have been categorised in a RAG colour-coded “green,” “amber” and “red” depending on their impact and risk to the council.</p>
1.05	<p>Green indicates those proposals that officers believe can be supported, as they will not impact the Council’s services operationally or financially and could help</p>

	<p>to improve how we currently manage the service and standardise the approach for local authorities and other burial ground operators.</p> <p>Amber indicates that the proposals could have an impact on the Council's delivery of services, or the proposal is likely to be contentious or sensitive.</p> <p>Red indicates that the proposals are likely to negatively impact the Council's services either operationally, financially or reputationally, and these have therefore been detailed below along with the corresponding suggested responses to the consultation.</p>
1.06	<p>More details are given below around specific proposals within the reforms that are being consulted upon by the Law Commission, which are likely to have a significant impact on local authorities, in terms of financial costs, resources and risks of liability, as well as potential reputational risks.</p> <p>a) <u>Grave Re-Use</u> The re-use of graves is currently only permitted in London. The operation known as 'lift and deepen' requires the existing remains to be exhumed and then placed back in the grave at a greater depth allowing for two further interments to take place above this level in the same grave.</p> <p>This is a significant change to the burial process and the Law Commission's proposals in this area are 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>b) <u>Closure of Burial Grounds</u> The Law Commission's draft proposals relating to the closure of burial grounds would include the Church in Wales being able to transfer the responsibility for maintaining its churchyards and burial grounds to the community council or county council, on the same model that is in place in England.</p> <p>Flintshire currently has eight closed churchyards (burial grounds), which are under the council's management and were transferred to the authority via a Closure Order and then via either a Parish or Community Council. Adopting the same approach as England would come with significant risks of an influx of closed churchyards, which, in turn, would incur associated additional costs of maintenance and liabilities.</p> <p>If this proposal is approved, it would be essential that additional budget be made available to local authorities to cover the additional costs incurred. Additionally, if the proposal for grave reuse was approved then the local authority could re-open a closed churchyard and receive the revenue obtained from that reuse.</p>
1.07	<p>Comments are being sought from members on the proposed response to the consultation.</p>

2.00	RESOURCE IMPLICATIONS
2.01	<p>Revenue: Grave re-use has the potential to bring in additional revenue from graves that had ceased to contribute revenue through years of non-use. However, the proposal to give 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 authorities, which are already under financial constraints and for which no funding exists within council budgets.</p> <p>Capital: Grave re-use has the potential to reduce the amount of capital expenditure required to extend cemeteries as their operational life span could be extended through this re-use of graves (although there would be a revenue burden).</p> <p>Human Resources: There is potential for additional resource to be required through the demands of a minimum maintenance standard for cemeteries if a statutory code of practice is introduced, and also, through the additional maintenance requirements of closed churchyards, should additional sites be passed over to local authorities.</p> <p>Technology: Changes would be required to our Cemetery Management System to accommodate grave re-use and also the potential addition of more closed churchyards. This would have an associated cost.</p>

3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	<p>The significant risk with the proposals being explored by the Law Commission is the increase in associated costs and resource requirements for additional maintenance requirements through the introduction of a minimum standard and additional closed churchyards being passed to the local authority to maintain. The Council would also carry additional risks in terms of third-party claims on the churchyards.</p>
3.02	<p>Additional budget would need to be allocated to the service to meet these additional demands.</p>

4.00	CONSULTATIONS REQUIRED/CARRIED OUT
4.01	<p>Public consultation on the proposed reforms to burial and cremation legislation is currently being undertaken by the Law Commission. This consultation opened on 3rd October 2024 and closes on 9th January 2025.</p>
4.02	<p>The full consultation documents can be viewed at:</p> <p><u>Law Commission consultation on burial and cremation - Ministry of Justice - Citizen Space - https://lawcom.gov.uk/project/burial-and-cremation/</u></p>

4.03	Consultation undertaken with the Cabinet Member for Streetscene & Transportation via the portfolio Programme Board
4.04	Consultation with the Environment & Economy Overview & Scrutiny Committee on 10 th December 2024.

5.00	APPENDICES
5.01	Appendix 1 – Summary document of all proposals likely to affect Flintshire County Council
5.02	Appendix 2 – Flintshire’s proposed response to the consultation

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Law Commission Consultation Papers can be accessed at the following web address: <u>Burial and Cremation - Law Commission</u> https://lawcom.gov.uk/project/burial-and-cremation/

7.00	CONTACT OFFICER DETAILS
7.01	Contact Officer: Richard Blake, Bereavement Services Manager Telephone: 01352 703360 E-mail: richard.blake@flintshire.gov.uk

8.00	GLOSSARY OF TERMS
(1)	<u>The Law Commission</u> In England and Wales, the Law Commission is an independent statutory body set up by Parliament by the Law Commissions Act 1965 to keep the laws of England and Wales under review and to make recommendations for reforms. The organisation is headed by a chairman and four Law Commissioners.