



## BRIEFING PAPER

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# Infant cremation

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## Summary

### **The issues**

Some well publicised cases have highlighted differences in practice, over a number of years, in the cremation of infants both in Scotland and in England and Wales. It became apparent that parents had received ashes from some crematoria but not from others. The availability of ashes after the cremation of an infant appears to have been dependent, at least in part, on the equipment and cremation technique used, and also on how the relevant authority defined “ashes”. At the time these problems emerged, there was no statutory definition of “ashes” either in England and Wales or in Scotland, and there was a difference of opinion among industry professionals about the meaning of the term.

There have also been cases where parents were told that no ashes would be recovered, whereas in fact there had been ashes, which were sometimes disposed of without the parents’ knowledge.

There have been a number of reports on infant cremation, all of which made recommendations, following which action has been taken to address the problems which they identified.

### **Scotland**

Relevant reports in Scotland include the Mortonhall Investigation Report, the Infant Cremation Commission (Bonomy Commission) Report, and the Report of the National Cremation Investigation. These have led to a number of developments with the result that, in nearly all circumstances, parents should receive ashes from the crematorium.

A National Committee on Infant Cremation was established to oversee the implementation of many of the Infant Cremation Commission’s recommendations. The Committee has published a Code of Practice which sets out the key principles and minimum standards for all organisations conducting infant cremations.

The Burial and Cremation (Scotland) Act 2016 includes provisions which respond to recommendations made by the Infant Cremation Commission, including a statutory definition of “ashes”. The provisions relating to cremation are not yet in force.

An Inspector of Crematoria for Scotland has been appointed.

### **England and Wales**

The Emstrey Report, published in 2015, investigated what had happened in a specific crematorium, but also made recommendations of national significance. The Government has since confirmed its focus on ensuring that ashes are available from infant cremations, and that they are returned to parents.

Following a Government consultation on the issue, the cremation regulations were amended to introduce a statutory definition of ashes. Further new regulations added a new section on cremation forms to make applicants aware that in some rare circumstances, such as in the cremation of a stillborn baby, no ashes may be recovered. In addition, the Government established a National Cremation Working Group to advise on technical matters related to other proposed reforms, including whether there should be an inspector of crematoria.

The Federation of Burial and Cremation Authorities and the Institute of Cemetery and Crematorium Management (among others) have a single universally agreed Policy Statement and Best Practice Guidance for infant cremation in England and Wales.

# 1. Emergence of problems connected to infant cremation

## 1.1 The first issue: are ashes available following the cremation of an infant?

Some well publicised cases highlighted differences in practice, over a number of years, in the cremation of infants both in Scotland and in England and Wales. It became apparent that parents had received ashes from some crematoria but not from others.<sup>1</sup>

The availability of ashes after the cremation of an infant appears to have been dependent, at least in part, on the equipment and cremation technique used, and also on how the relevant authority defined “ashes”.

At the time these problems emerged, there was no statutory definition of “ashes” either in England and Wales or in Scotland. The [Report into Infant Cremations at the Emstrey Crematorium Shrewsbury](#) considered the difference of opinion among industry professionals, at that time, about the meaning of the term:

The Mortonhall report records a fundamental difference of opinion between the two leading professional organisations in the UK involved in the process of cremation. The Federation of Burial and Cremation Authorities considered that ashes consist of cremulated bone, to the exclusion of any other source of ash obtained from the burned coffin, clothing, or soft toys cremated along with the baby. The Institute of Cemetery and Crematorium Management, on the other hand, considered ashes to include all ashes from the cremation, both cremulated bone, as well as ash from items which were mementos or part of the fabric of the baby’s last resting place. Dame Elish comments in her report that the absence of a definition has caused ambiguity and confusion for those involved in the practice of cremation and is a significant underlying cause of the distress now being suffered by next of kin in Scotland.<sup>2</sup>

Quoting from the Scottish reports, the Emstrey report went on to consider the technical aspects of cremation, and the challenging process of recovering ashes in baby and infant cremations.

## 1.2 The second issue: what happens to any ashes which are recovered?

There have also been cases where parents were told that no ashes would be recovered, whereas in fact there were ashes, which were sometimes disposed of without the parents’ knowledge.

At a time when there was no statutory definition of “ashes”, parents received ashes only from some crematoria

Even where ashes were recovered, they were not always returned to parents

<sup>1</sup> [Mortonhall Investigation Report](#), April 2014, p9

<sup>2</sup> [Report into Infant Cremations at the Emstrey Crematorium Shrewsbury](#), May 2015, paragraph 3.14

This issue was the focus of the investigation into what had happened over a period of decades at Mortonhall Crematorium in Edinburgh.<sup>3</sup>

## 1.3 Reports

There have been a number of reports on infant cremation, all of which made recommendations, including:

- In Scotland:
  - [Mortonhall Investigation Report](#), April 2014;
  - [Report of the Infant Cremation Commission](#), (the Bonomy Commission), 17 June 2014.
- In England and Wales:
  - [Report into Infant Cremations at the Emstrey Crematorium Shrewsbury](#), May 2015.

Information about these reports, and the action which has been taken to address the problems they identified, is provided in the following sections of this briefing paper.

## 1.4 What does “infant” mean in this context?

### England and Wales

The Emstrey report dealt generally with the cremation of a child of over 24 weeks gestation and up to 12 months old (with some exceptions):

The terms of reference for the inquiry provided for the inclusion of cases of infant cremation where the child was of over 24 weeks gestation and up to 12 months old. The rationale for these parameters was that foetuses of less than 24 weeks gestation are not subject to statutory regulation as to registration and cremation formalities, and I am advised that public health statistical convention is to use the term “infant” for children of up to one year old. The inquiry’s terms of reference did however allow discretion for a case to be included within the scope of our investigation, if a family contacted the inquiry team and asked that their child be included within our investigation, even though the child’s age was otherwise outside our scope.<sup>4</sup>

### Scotland

The Bonomy Commission used a wider definition:

5.1 The Commission’s remit relates to “babies and infants”. That terminology was used to enable the Commission to address all cases where it could be suggested that there might be no ashes following cremation, and has been interpreted by the Commission as covering any pregnancy loss prior to the 24th week of gestation, stillborn children and infants up to about 2 years of age. Pregnancy losses will generally be referred to within this Report as “non-viable babies”.<sup>5</sup>

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<sup>3</sup> See, for example, [Mortonhall baby ashes: Report says scandal was a 'great tragedy'](#), *BBC News*, 30 April 2014 [accessed 3 October 2018]

<sup>4</sup> [Report into Infant Cremations at the Emstrey Crematorium Shrewsbury](#), May 2015, paragraph 1.10

<sup>5</sup> [Report of the Infant Cremation Commission](#), 17 June 2014, paragraph 5.1

## 2. Infant cremation in Scotland

### Summary

Following reports of ashes from infant cremations being available only from some crematoria and not from others, and of ashes which were recovered being disposed of without the knowledge of parents, a number of reports of investigations have been published.

These include the Mortonhall Investigation Report, the Infant Cremation Commission Report, and the Report of the National Cremation Investigation.

These have led to a number of developments with the result that, in nearly all circumstances, parents should receive ashes from the crematorium.

A National Committee on Infant Cremation was established to oversee the implementation of many of the Infant Cremation Commission's recommendations. The Committee has published a Code of Practice which sets out the key principles and minimum standards for all organisations conducting infant cremations.

The Burial and Cremation (Scotland) Act 2016 includes provisions which respond to recommendations made by the Infant Cremation Commission, including a statutory definition of ashes (the provisions relating to cremation are not yet in force).

An Inspector of Crematoria for Scotland has been appointed.

### 2.1 Mortonhall Investigation Report

In 2012, the press reported that the parents of babies who had been cremated at the Mortonhall Crematorium had not had their babies' ashes returned to them, while the parents of babies who had been cremated at other crematoria had received their babies' ashes. It was also reported that ashes from infant cremations had been recovered at Mortonhall, at least some of which were buried by crematorium staff.<sup>6</sup>

Following press reporting of this case, it emerged that similar issues might exist in other crematoria in Scotland.

In January 2013, the City of Edinburgh Council commissioned the former Lord Advocate of Scotland, Rt Hon Dame Elish Angiolini DBE QC, to undertake an independent investigation into the historical practices at Mortonhall Crematorium. The remit of the report was to establish the facts regarding practices relating to the cremation of babies at Mortonhall Crematorium and to learn lessons to ensure best practice for the future.<sup>7</sup>

The [Mortonhall Investigation Report](#) was published in April 2014. It made 22 recommendations, including:

- It is recommended that the Scottish Government should commission research to identify best practice in achieving remains in the cremation of foetuses, stillborn babies and

<sup>6</sup> Gina Davidson, "[Mortonhall scandal: Grieving parents refused babies' ashes as mass grave at Crematorium revealed Mortonhall Crematorium](#)", *Edinburgh Evening News*, 5 December 2012 [accessed 3 October 2018]

<sup>7</sup> City of Edinburgh Council, Mortonhall Investigation [accessed 11 October 2016]

neonatal babies. This research should also examine the most effective equipment. ...

- Unless a crematorium can demonstrate their competence in achieving remains and show consistent evidence of the sensitive treatment of next of kin in such cases it is recommended they should not be permitted to continue the cremation of these babies.
- Until such time, it may be that centres of excellence in this most difficult and sensitive final act of care should be identified to parents and the funding for such cremations withdrawn from those crematoria that do not provide an adequate service to next of kin.<sup>8</sup>

## 2.2 Infant Cremation Commission

On 16 April 2013, Scottish Ministers established the Infant Cremation Commission. Its Chair was Lord Bonyon. The remit of the Commission was:

to review the current policies, guidance and practice in Scotland in relation to the handling of all recoverable remains (ashes) following the cremation of babies and infants, and to make recommendations for improvement to ensure that: parents and other bereaved relatives receive clear and consistent advice and information about the disposal of such remains and have their wishes adhered to; and that any such remains are treated sensitively and compassionately.<sup>9</sup>

On 17 June 2014, the Commission published its [Report of the Infant Cremation Commission](#). It found that, in some Scottish cases, parents had been incorrectly told that there had been, or would be, no ashes from their baby's cremation.

The report made 64 recommendations to improve infant cremation practice, some for the Scottish Government and others for those more directly involved in the cremation of babies and infants, primarily the NHS, Funeral Directors and Cremation Authorities. The recommendations included:

- a statutory definition of "ashes";
- regulation of cremation of babies of less than 24 weeks gestation; and
- an urgent review of cremation practices within Scotland.

The recommendations are set out in full in section 2 of the Report.<sup>10</sup>

On 17 June 2014, the Scottish Government published its [response](#) to the Report and accepted all the recommendations of the Infant Cremation Commission "without reservation". The Annex to the response provides detailed comments from the Scottish Government on each of the Commission's recommendations, and sets out how each recommendation would be taken forward, and by when.

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<sup>8</sup> At p525

<sup>9</sup> Scottish Government, [Report of the Infant Cremation Commission](#) [accessed 3 October 2018]

<sup>10</sup> [Report of the Infant Cremation Commission](#), 17 June 2014, pp5-12

The Report led to a number of developments set out below.

## 2.3 National Committee on Infant Cremation

A [National Committee](#) was established to oversee the implementation of many of the Commission's recommendations. It is chaired by Scottish Government, and has more than twenty members from various organisations and sectors.

The Committee's main aims and objectives are set out in Recommendations 57 to 62 of the Report of the Infant Cremation Commission, which the Scottish Government has summarised as follows:

- Develop, promote and annually review a Code of Practice on baby and infant cremations which reflects contemporary standards and best practice
- Ensure all recommendations from the Infant Cremation Commission are implemented, through a combination of strategic oversight, monitoring and also through direct tasks which will be undertaken by expert Working Groups set up by the National Committee.
- Promote improvements in practice, technology, policy and legislation
- Report annually to Ministers on standards and practice in baby and infant cremations.<sup>11</sup>

The National Committee on Infant Cremation Code of Practice sets out the key principles and minimum standards for all organisations conducting infant cremations. It carries this statement:

It is expected that all relevant organisations will adhere to this Code of Practice, ensuring that their applicable policies, procedures, practice, and both internal and public facing documentation are fully aligned with its requirements.

The Code is to be reviewed on an annual basis. The [first edition](#) was published in November 2015, and the [second edition](#) in February 2017. The [Third Annual Report of the National Committee on Infant Cremation](#), published on 19 July 2018, states that "the 3rd Edition of the Code of Practice is due for Committee approval in June 2018 and will be published on the Scottish Government website in due course".

Further resources are available on the Scottish Government website: [National Committee Resources for Organisations](#).<sup>12</sup>

## 2.4 Inspector of Crematoria for Scotland

In March 2015, the Scottish Government announced the appointment of Robert Swanson QPM as HM Inspector of Crematoria for Scotland.<sup>13</sup>

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<sup>11</sup> Scottish Government, [National Committee on Infant Cremation](#) [accessed 3 October 2018]

<sup>12</sup> Accessed 3 October 2018

<sup>13</sup> Scottish Government, [Appointment of Scotland's Inspector of Crematoria](#), 12 March 2015 [accessed 3 October 2018]



The Scottish Government said that the Inspector of Crematoria would:

- ensure Cremation Authorities in Scotland are adhering to current legislation and best practice;
- respond to complaints or queries from the public about cremations;
- inspect cremation registers and other statutory documentation to ensure they are being completed and maintained appropriately;
- provide direction to crematoria managers and staff to ensure they are operating in line with the recommendations of the Infant Cremation Commission;
- support the development of future primary legislation on burials and cremations.<sup>14</sup>

## 2.5 National Investigation into Infant Cremations

On June 17, 2014, the Minister for Public Health announced the establishment of a National Investigation into circumstances surrounding historic infant cremation practices in Scotland. The Minister said that the Mortonhall Investigation Report provided specific answers to affected families in the Edinburgh area, as well as some wider recommendations; and that Lord Bonomy's Infant Cremation Commission Report provided national recommendations for future improvements. However, the Minister acknowledged that families from some other areas of Scotland were still seeking answers.

The National Investigation was led by Dame Elish Angiolini and investigated over 200 cases, across fourteen crematoria. It submitted a [report to Ministers](#) in June 2016.

The Scottish Government has published its [formal response](#), accepting in full the recommendations made in the report, including:

- Introduction of a criminal sanction to prohibit the cremation of a nonviable foetus, stillborn baby or infant with an unrelated person.
- Appointment of inspectors of funeral directors (under powers given to Scottish Ministers in the Burial and Cremation (Scotland) Act) who will take forward a review of the industry and make recommendations about the introduction of a licensing regime.
- Work with the National Cremation Committee to supervise the introduction of the Burial and Cremation (Scotland) Act and continue to drive improvement and reform throughout the industry in Scotland.<sup>15</sup>

The Minister for Public Health, Aileen Campbell, said the Scottish Government would take forward any outstanding actions

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<sup>14</sup> Ibid

<sup>15</sup> Scottish Government news release, [National Cremation Investigation](#), 27 June 2016 [accessed 3 October 2018]

identified in the report. She set out how the position in Scotland had already changed:

“While I understand it may be little comfort for those who have been affected in the past, much has changed in Scotland since these issues first came to light.

“We have brought forward legislation to overhaul policy and practice in the burial and cremation industry, introduced a new inspection regime for crematoria and worked to improve staff training, particularly in the NHS.

“I am committed though to driving forward further improvement and we will now work to progress any outstanding actions that have been identified by the Investigation”.<sup>16</sup>

## 2.6 Burial and Cremation (Scotland) Act 2016

### The Act

The [Burial and Cremation \(Scotland\) Act 2016](#) was passed by the Scottish Parliament on 22nd March 2016. It includes provisions which are in direct response to recommendations made by the Bonomy Commission requiring legislative change.

Among other things, the Act provides definitions of “cremation” and “ashes”:

(1) In this Act, “cremation” means the burning of human remains; and includes—

(a) where a grinding process is applied to the burnt human remains, that process, and

(b) where any other process is applied to the burnt human remains, that other process.

(2) In this Act, “ashes” means the material (other than any metal) to which human remains are reduced by cremation.

(3) In this section—

“coffin” includes any type of receptacle,

“human remains” includes, where remains are clothed, in a coffin or with any other thing, the clothing, coffin or other thing.<sup>17</sup>

The [Report of the National Cremation Investigation](#) summarises the topics on cremation covered by the Act:

- Duties of cremation authorities, applications, fees and registers – pregnancy loss is included in each of these processes;
- Who may instruct the disposal of human remains;
- Inspectors and inspection, as well as the power for Scottish Ministers to introduce licensing of Funeral Directors;
- The suspension of burial and cremation legislation in response to public health risks (for example, pandemics);

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<sup>16</sup> Ibid

<sup>17</sup> [Burial and Cremation \(Scotland\) Act 2016, section 45](#)

- Methods for disposing of human remains which may be introduced in the future;
- The ability of Scottish Ministers to issue codes of practice covering various parts of the funeral industry; and
- A statutory definition of ashes.<sup>18</sup>

The Report states that the Act also includes provisions on a range of other Bonomy recommendations “that will improve procedures for the cremation of babies and infants, and which will additionally make improvements to cremation procedures generally”.<sup>19</sup>

## Implementation

The Act is to be introduced in stages. The Scottish Government has said that various pieces of secondary legislation need to be laid before Parliament before individual sections of the Act can be brought into force.<sup>20</sup>

Part 2 of the Act, which deals with cremation, is not yet in force. An [update on implementation of the Act](#), published in Summer 2018, sets out a summary of proposed implementation timescales, adding “please note that these are suggested dates and are subject to Parliamentary timescales”.<sup>21</sup> Draft cremation regulations have not yet been laid.

## 2.7 Information for parents and families

The National Committee on Infant Cremation has published some FAQs under the heading, [What has changed in Scotland?](#) These provide a summary and overview of the practical consequences of the developments which have taken place in this area and include:

### **1. Will parents always get their child's ashes back from the crematorium from now on?**

Yes, in nearly all circumstances. If any parents or families don't receive ashes, then Scotland now has an Inspector of Crematoria who can and will investigate on their behalf.

### **2. In what circumstances might there still not be ashes?**

This might only happen with very early pregnancy losses, but all crematoria now have to do whatever they can to try to recover ashes, so they can still be recovered depending on the specific arrangements. All the professionals involved are now sharing information and learning from each other, which means that parents and families will be given much better support and information when making difficult decisions like this about cremation and other funeral options.

### **3. Why did this happen?**

One important reason was that some crematorium staff in different parts of the country thought that only 'coffin ash' was recovered after an infant cremation, and that they didn't need to

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<sup>18</sup> The Rt Hon Dame Elish Angiolini DBE QC, [Report of the National Cremation Investigation](#), 17 June 2016, p13

<sup>19</sup> Ibid, p14

<sup>20</sup> Scottish Government, [Burial and Cremation \(Scotland\) Act 2016](#) [accessed 3 October 2018]

<sup>21</sup> Implementation of the Burial and Cremation (Scotland) Act 2016 Summer 2018 Newsletter No. 3 [accessed 3 October 2018]

give this ash back to families. We now know from experts that this was wrong, and from many of the parents directly involved that this was not what they wanted. So the law about what 'ashes' means is being changed and all crematorium staff, the NHS and funeral directors have now been trained that families should receive these ashes. This means that, from now on, this will never be a reason for not returning ashes to parents and families.

#### **4. What else in the law is changing?**

All of the law on burial and cremation in Scotland is being completely updated. This will bring a lot of different changes but most importantly for infant cremation, it will include providing families with clearer legal ways to state their wishes and decisions on how they want their loved ones to be laid to rest.

#### **5. What is the Infant Cremation Code of Practice?**

This is a completely new Code of Practice, developed with help from directly affected parents, that makes it clear to everyone about who should be doing what, how and when. For the first time, these are shared standards already agreed by all professionals working in this area, which means parents and families can much more easily find out what standard of service they can expect, whether it is from a funeral director, a nurse or doctor, or a crematorium.

#### **6. Where can I find the Code of Practice?**

Your local funeral director, crematorium or hospital should be able to provide you with this. It is also published on the Publications section of the Scottish Government website as the 'National Committee on Infant Cremation – Code of Practice':

[National Committee on Infant Cremation - Code of Practice](#)

#### **7. What does the Inspector of Crematoria do?**

The Inspector of Crematoria in Scotland is the first such inspector anywhere in the UK. He regularly inspects every crematorium in Scotland to ensure they are working to the required standards. He is also there to investigate any complaints and concerns raised with him by the public, which means that parents and families now have someone they can go to for help in those situations.<sup>22</sup>

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<sup>22</sup> Scottish Government, [National Committee on Infant Cremation What has changed in Scotland? Q & A](#) [accessed 3 October 2018]

## 3. Infant cremation in England and Wales

### Summary

There were also cases in England and Wales where no ashes were returned to families following the cremation of a baby or unborn child. The Emstrey Report, published in 2015, investigated what had happened at a specific crematorium but also made recommendations of national significance.

In a 2015 Westminster Hall debate on infant cremation in England, Caroline Dinenage, who was then junior Minister for Women and Equalities and Family Justice, said that the Government was focussing on ensuring that ashes were available from infant cremations, and that they were returned to parents.

In December 2015, the Government launched a consultation with the aim of ensuring that “no other family should go through the pain of not having their baby’s ashes returned to them”. The Government published its response in July 2016, since when cremation regulations have been amended to introduce a statutory definition of ashes. Further new regulations added a new section on cremation forms to make applicants aware that in some rare circumstances, such as in the cremation of a stillborn baby, no ashes may be recovered. In addition, the Government has established a National Cremation Working Group to advise on technical matters related to other proposed reforms, including whether there should be an inspector of crematoria.

The Federation of Burial and Cremation Authorities and the Institute of Cemetery and Crematorium Management (among others) have a single universally agreed Policy Statement and Best Practice Guidance for infant cremation in England and Wales.

The report of an internal investigation into the working procedures for infant cremations at Hull Crematorium was published in July 2017. This recognised that, in the past, there had been “a number of historical inconsistencies” regarding the checking of instructions and record keeping.

### 3.1 Emstrey Report

Following a BBC Radio Shropshire news item in June 2014,<sup>23</sup> Shropshire Council commissioned the Emstrey report, at the request of bereaved families, to look into cases where no ashes were returned to families following the cremation of a baby or unborn child.

The Shropshire news report followed the publication of the Mortonhall Report in Scotland.

The inquiry began in December 2014 and was led by David Jenkins. The remit of the inquiry was:

- to review the policies, practices and procedures adopted by Emstrey Crematorium and its partners when carrying out infant cremations during the previous fifteen-year period, and

<sup>23</sup> See, [Baby ashes not given by Shrewsbury's Emstrey Crematorium](#), BBC News, 3 June 2014 [accessed 3 October 2018]

- to publish a series of findings and recommendations.

The [Report into Infant Cremations at the Emstrey Crematorium Shrewsbury](#) was published on 1 June 2015. The report established that between 1996 and 2012, Emstrey Crematorium failed to obtain ashes to return to parents following infant cremations.

Although the report was commissioned by Shropshire Council and its terms of reference were local to Shropshire, the report included a number of recommendations of national significance to improve infant cremation practice, including:

- that the Government should take steps to ensure a single and authoritative code of practice for baby and infant cremations;<sup>24</sup>
- that the Secretary of State exercise his powers under the Cremation Regulations to appoint an independent inspector with powers comparable to those outlined in recommendation 63 of the Bonomy report;<sup>25</sup>
- that the inspector's responsibilities should include the promotion of a single national code of practice with regard to cremator technology and techniques for infant cremations so as to maximise the chances of the preservation of ashes that could be returned to the applicant for the cremation;<sup>26</sup>
- that the Cremation Regulations be amended in England, as in Scotland, to give effect to the Bonomy Commission's definition of ashes - as "all that is left in the cremator at the end of the cremation process and following the removal of any metal";<sup>27</sup>
- that minimum standards of professional training, and for continuing professional development, be introduced for crematorium supervisory and operating staff;<sup>28</sup>
- that a single official, reporting to a single minister, be given responsibility for coordinating the Government's approach to cremation law and practice and for drawing together into a coherent whole the policies, including environmental policies, of different Government departments on the subject;<sup>29</sup>
- that arrangements be made within government for the Bonomy Commission's recommendations to be considered more widely for their applicability for infant cremation law and practice.<sup>30</sup>

### 3.2 Westminster Hall debate

On 8 July 2015 there was a Westminster Hall debate on Cremation of Infants (England).<sup>31</sup>

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<sup>24</sup> Paragraph 5.16

<sup>25</sup> Paragraph 5.20

<sup>26</sup> Paragraph 5.21

<sup>27</sup> Paragraph 5.22

<sup>28</sup> Paragraph 5.23

<sup>29</sup> Paragraph 5.24

<sup>30</sup> Paragraph 5.25

<sup>31</sup> [HC Deb 8 July 2016 cc151-166WH](#)

Daniel Kawczynski (Conservative), who led the debate, said that constituents had called for the appointment of a full time inspector of crematoria and that crematoria should have to report to the inspector when they were not confident that ashes had been created in a particular case. He stated that constituents also wanted a national cremation investigation team, able to investigate historical cases.

Responding to the debate, Caroline Dinenage, who was then junior Minister for Women and Equalities and Family Justice, said that the Government was focussing on ensuring that ashes were available from infant cremations, and that they were returned to parents. She also said that the Government would carefully consider the recommendations of the Emstrey report and of the Bonomy Commission.

The Minister also spoke of ensuring good practice across the country and of the requirements of industry codes of practice:

More generally, we need to ensure that the industry knows, in no uncertain terms, what good looks like, and that good practice must be installed across the country. I am aware that the Federation of Burial and Cremation Authorities felt that Lord Bonomy's report, which came a year before the Emstrey report, had been a wake-up call for crematoriums. The FBCA and Institute of Cemetery and Crematorium Management codes of practice require crematoriums to recover ashes for families wherever possible. I also understand that crematoriums have been working with funeral directors to ensure good and consistent practice following both reports. The technology now allows for far more sophisticated cremation programmes for infants than 20 years ago, and such programmes increase the recovery of ashes after cremation.

### 3.3 Government consultation and response

On 16 December 2015, the Ministry of Justice published its [Consultation on cremation following recent inquiries into infant cremations](#). The consultation document asked for views on improving infant cremation legislation and practice in England and Wales. It followed the Government's consideration of the recommendations of both the Emstrey report and of Lord Bonomy's Infant Cremation Commission (in Scotland).

Announcing the consultation, Caroline Dinenage spoke of improving the situation for the future:

I am clear that what happened at Emstrey, and sadly also at other crematoria, should never happen again. No other family should go through the pain of not having their baby's ashes returned to them. That is why I am taking action to make sure that after a cremation infant ashes should always be returned to their families.

A majority of the 12 Emstrey report recommendations were for the Westminster government, including the recommendation that we consider the ICC's 64 recommendations. In July, I announced our intention to consult on these recommendations and that consultation starts today.<sup>32</sup>

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<sup>32</sup> [WS405 \[on Cremations\], 16 December 2015](#)

The consultation document invited comments on, among other things:

- a proposed new statutory definition of ashes (chapter 2);
- whether regulations should require cremation applicants to make pre-cremation decisions on the collection or scattering of ashes, and what should be done when ashes are not collected (chapter 3);
- whether there should be an inspector of crematoria (chapter 5);
- a proposal to set up a national working group for cremation (chapter 6) which should consider the training of the cremation and funeral industries (chapter 7);
- a technical framework for recovering baby ashes (chapter 9);
- the cremation of foetuses of less than 24 weeks' gestation which showed no sign of independent life outside the womb (Chapter 11).

The consultation ended on 9 March 2016 and the Government published its [response](#) on 7 July 2016.

Announcing publication of the response in a written Ministerial statement, Caroline Dinenage said that her aim was to “ensure that no bereaved parent suffers in future as many have suffered in the past”.

The Minister outlined the proposed changes:

- Introduce a statutory definition of ashes.
- Amend statutory cremation forms to make sure that applicants' wishes in relation to recovered ashes are explicit and clearly recorded before a cremation takes place.
- Where parents choose a cremation following a pregnancy loss of a foetus of less than 24 weeks' gestation, we will bring such cremations into the scope of our regulations, like all other cremations. I must stress that we have no plans to alter parents' current choices following a pre-24 week pregnancy loss, so parents will continue to be able to choose between cremation, burial and sensitive incineration or they can ask the hospital to make all arrangements on their behalf.
- Establish a national cremation working group of experts to advise us on a number of technical matters related to our proposed reforms, such as the detail of new regulations and forms, codes of practice and training for cremation authority staff, information for bereaved parents, and whether there should be an inspector of crematoria.<sup>33</sup>

### 3.4 New cremation regulations

#### 2016 Regulations

New regulations, the [Cremation \(England and Wales\) \(Amendment\) Regulations 2016](#) came into effect on 1 October 2016.<sup>34</sup> The new regulations amend the Cremation (England and Wales) Regulations

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<sup>33</sup> [WS67 \[on Cremations\], 7 July 2016](#)

<sup>34</sup> [SI 2016/883](#)



2008 (the “2008 Regulations”) and include a statutory definition of ashes:

“ashes” means all the material left in the cremator after a cremation, and following—

(a) the removal of any metal, and

(b) any subsequent grinding or other process which is applied to the material.

The term “ashes” had not been defined previously in the 2008 Regulations.

An [Explanatory Memorandum](#) published with the new regulations set out why the Government had decided to introduce the definition:

7.6 Following analysis of the consultation responses, our view is that having a clear statutory definition of ashes will create consistent good practice by cremation authorities across England and Wales. Defining ‘ashes’ as anything (other than metal) left in the cremator following a cremation will provide clarity that cremation authorities should deal with all that is in the cremator in accordance with cremation applicants’ wishes. The statutory definition will apply to all regulated cremations, not just infant cremations.

The Explanatory Memorandum also stated that there had been widespread support for the definition among those who responded to the Government’s consultation, and that it would address problems experienced previously by some bereaved parents:

8.3 Almost all of those who responded to the consultation supported the proposed statutory definition of ashes. Most felt that it would provide clarity for cremation authorities when recovering ashes. It would also address the problem that some bereaved parents had experienced whereby they were told that no ashes from their baby would be recovered from the cremation, only ashes from the coffin or personal items, and they would not receive those ashes. In many cases parents found out many years later that ashes from their babies had been recovered and disposed of without their knowledge, which caused them great distress.

## 2017 Regulations

Further regulations, the [Cremation \(England and Wales\) \(Amendment\) Regulations 2017](#) came into effect on 6 April 2018.<sup>35</sup>

Among other things, the regulations introduced new forms for use in applying for a cremation. They include a section for the applicant to confirm their wishes regarding the return of ashes following the cremation. The forms also provide a new section to make applicants aware that in some rare circumstances, such as in the cremation of a stillborn baby, no ashes may be recovered.<sup>36</sup>

The [Explanatory Memorandum](#) published with the regulations provides further information.

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<sup>35</sup> [SI 2016/1238](#)

<sup>36</sup> [HCWS389 \[on Cremation Regulations\], 21 December 2017](#)

### 3.5 National working group

In a written ministerial statement made on 8 September 2016, the then junior Justice Minister, Dr Phillip Lee, said that the Government had set up a National Cremation Working Group:

The group is made up of representatives from the cremation and funeral industries, voluntary organisations who support bereaved parents, medical professionals and other government departments with an interest in cremation. In the coming months it will provide expert input into our work to further improve cremation legislation and practice. The group's first priority will be amending statutory application forms regarding options for disposal of ashes, and bringing the cremation of foetuses of less than 24 weeks' gestation into the remit of the cremation regulations.<sup>37</sup>

The Government has stated that it will ask the working group to consider the content of a national code of practice for infant cremation, as well as the need for guidance in other specific areas regarding infant cremations.<sup>38</sup>

In November 2016, Phillip Lee set out the membership of the Working Group.<sup>39</sup>

### 3.6 Industry policy and best practice documents

The Federation of Burial and Cremation Authorities (FBCA),<sup>40</sup> and the Institute of Cemetery and Crematorium Management (ICCM),<sup>41</sup> together with the Cremation Society of Great Britain (CSGB) and the Association of Private Crematoria and Cemeteries (APCC) have a single universally agreed [Policy Statement](#) and [Best Practice Guidance](#) for infant cremation in England and Wales.<sup>42</sup>

### 3.7 Hull Crematorium internal investigation

The report of an internal investigation into the working procedures for infant cremations at Hull Crematorium was published in July 2017. This recognised that, in the past, there had been “a number of historical inconsistencies” regarding the checking of instructions and record keeping:

From the Council's perspective these mostly relate to the cremation application process, a lack of clarity of appropriate consent for the cremation to take place and incorrect or incomplete information being given to parents at the time of the death of their baby.<sup>43</sup>

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<sup>37</sup> [HCWS139 \[on Cremation regulations\] 8 September 2016](#)

<sup>38</sup> [Explanatory Memorandum to the Cremation \(England And Wales\) \(Amendment\) Regulations 2016 2016 No. 883](#), paragraph 9.1

<sup>39</sup> [PQ 48512 \[on National Cremation Working Group\], 9 November 2016](#)

<sup>40</sup> [Federation of Burial and Cremation Authorities website](#) [accessed 3 October 2018]

<sup>41</sup> [Institute of Cemetery and Crematorium Management website](#) [accessed 3 October 2018]

<sup>42</sup> [Federation of Burial and Cremation Authorities website](#) [accessed 3 October 2018]

<sup>43</sup> Hull City Council, [Internal Investigation into the Working Procedures for Infant Cremations at Hull Crematorium](#), paragraph 5.1

The Report stated that “parents believed that there would be no ashes when, in fact, they were produced, as documented within the records Bereavement Services have retained”.<sup>44</sup>

The Report commented that some of the issues raised had national significance:

Some of the issues identified raise queries about the adequacy of cremation legislation nationally and also highlight the need for closer working relationships with the local NHS Trust. It is, therefore, appropriate that the Council contributes to the work of the National Working Party set up by Government to look at these issues and make recommendations to Government in relation to current cremation legislation.<sup>45</sup>

Hull City Council said that it had already undertaken a number of remedial actions, as outlined in the report, to address the issues identified in the investigation. In addition, it listed a number of points which were still to be progressed.<sup>46</sup>

Further information is provided in an associated Hull City Council press release, [Hull City Council statement: Internal Investigation into the Working Procedures for Infant Cremations](#).<sup>47</sup>

It was reported that bereaved parents, who were not given ashes, had called for an independent inquiry.<sup>48</sup>

The Government had previously said that it did not intend to order further inquiries and reiterated the action it had taken:

The government is supportive of local investigations into historic infant cremation practices but does not plan to order such inquiries in Hull or elsewhere. Our clear priority since we received the Emstrey report in June 2015 has been to put measures in place across England and Wales to prevent such distressing infant cremation practice ever happening again. That is why we held a consultation which closed in March, announced our proposals in light of consultation responses in July, introduced a new statutory definition of ashes in October and have put in place a National Cremation Working Group of experts which is now advising us on more complex regulations and new statutory forms which will come into effect in 2017. The Working Group, which includes Action for Ashes Hull, will also assist us in developing new codes of practice, training and information for bereaved families.<sup>49</sup>

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<sup>44</sup> Ibid, paragraph 5.3

<sup>45</sup> Ibid, paragraph 5.4

<sup>46</sup> Ibid, section 6

<sup>47</sup> 25 July 2017 [accessed 3 October 2018]

<sup>48</sup> Frances Perraudin, “[Hull: dozens of families given wrong details on babies’ remains](#)”, Guardian, 26 July 2017 [accessed 3 October 2018]

<sup>49</sup> [PQ 54807 \[on Cremation: Babies\], 2 December 2016](#)

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