

Explanatory Notes to the draft Modern Funerary Methods (Wales) Bill

INTRODUCTION

- 1.1 These Explanatory Notes relate to the draft Modern Funeral Methods (Wales) Bill (“the Bill”), which gives effect to the recommendations made by the Law Commission in its report, *New Funerary Methods*, published on 4 June.¹ They have been produced by the Law Commission to assist the reader of the Bill. They do not form part of the Bill and they have not been endorsed by Senedd Cymru.
- 1.2 These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy, and set out additional information on how the Bill will affect existing legislation in this area.
- 1.3 These Explanatory Notes would best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.
- 1.4 The Bill will, if enacted, enable the regulation of individual modern funerary methods in Wales.

SUMMARY AND BACKGROUND

- 1.5 Modern funerary methods are ways of dealing with the bodies of deceased people that are potential alternatives to the established methods of burial, cremation and burial at sea. They may also be referred to as new funerary methods, although “modern funerary methods” is the term used in the Bill.
- 1.6 The Law Commission’s project on New Funerary Methods was part of a wider project on Burial, Cremation and New Funerary Methods. The wider project was commenced in 2022, as part of the Law Commission’s Thirteenth Programme of Law Reform, initially under the title “Disposal of the Dead”.
- 1.7 While the Law Commission comes to its conclusions independently, this project was supported by the Ministry of Justice.
- 1.8 Further information on the policy and background to the Law Commission’s recommendations is provided in its final report, *New Funerary Methods*, as well as the consultation paper which preceded it.
- 1.9 There is currently no specific regulation of modern funerary methods in Wales.

COMMENTARY ON PROVISIONS OF THE BILL

- 1.10 The Bill contains 13 sections and 2 Schedules.

¹ Law Commission, *New Funerary Methods* (2023) <https://lawcom.gov.uk/project/new-funerary-methods/>.

Section 1: Regulatory principles and key concepts

- 1.11 Section 1 requires the Welsh Ministers, when exercising functions under the Bill, to have regard to the importance of the three principles set out in section 1(1).
- 1.12 Section 1(2) contains definitions. A “modern funerary method” is a funerary method that is not burial, cremation or a funerary method that is a licensable marine activity under Part 4 of the Marine and Coastal Access Act 2009 (burial at sea). A “funerary method” is defined as “a method for disposing of relevant human remains in Wales”. The term “relevant human remains” is defined in section 9(1).

Section 2: Regulation of modern funerary method

- 1.13 Section 2 enables the Welsh Ministers to make regulations about a specified modern funerary method. It contains a non-exhaustive list of matters that may be covered by such regulations.
- 1.14 Section 2(3) requires the Welsh Ministers to include in any such regulations a requirement for each disposal of relevant human remains (as defined in section 9(1)) to be registered. The regulations must also set out how and by whom the registration is to be performed and the register kept. Existing legislation provides that burials and cremations must be registered. This section will ensure that registration of each use of a modern funerary method will also be required, bringing the regulation of modern funerary methods into line with that of burial and cremation.

Section 3: Enforcement regulations

- 1.15 Section 3(1) empowers the Welsh Ministers, when regulating a specified modern funerary method, to include provision for the purposes of monitoring and enforcing compliance with the regulations. Section 3(4) requires the Welsh Ministers to exercise those powers to make provision about the inspection of facilities, and such other provision for monitoring and enforcing compliance as the Welsh Ministers consider appropriate.
- 1.16 Section 3(2) sets out a non-exhaustive list of matters that may be covered by such regulations. Under section 3(2)(b), the regulations may create summary offences punishable with a fine (not exceeding level 3 on the standard scale). Under section 3(2)(c), the regulations may confer power to impose a fixed monetary penalty. Section 3(6) and (7) contains further details about what must, or may, be included in regulations that confer a power to impose a fixed monetary penalty.
- 1.17 Section 3(3) provides that regulations made under this section may confer powers to use reasonable force or enter a private dwelling, but only on the authority of a warrant issued by a justice of the peace.

Section 4: Permission for testing of modern funerary methods

- 1.18 Section 4 gives the Welsh Ministers the power to make regulations enabling a modern funerary method to be carried out for a limited period, with a view to determining whether that method should be regulated under section 2. This would enable trials of modern funerary methods to be authorised.

- 1.19 Under section 4(2), such regulations must provide that the trialled method may be carried out only in accordance with the terms of a written permit from the Welsh Ministers (which must specify the method, the person and the period) and the regulations. The regulations may make, or authorise the terms of a permit to make, any provision that could be made under sections 2 or 3, except that a permit may not be authorised to create criminal offences (under section 3(2)(b)) or to confer a power to issue fixed monetary penalties (under section 3(2)(c)).
- 1.20 Under section 4(3)(d), regulations made under section 4 must require the registration of each disposal that is part of the trial and make provision setting out how and by whom the registration is to be performed and the register kept. Disposals during a trial will therefore be required to be registered, as are disposals by modern funerary methods that are regulated under section 2.

Section 5: Regulation of methods for disposing of fetal remains

- 1.21 Section 5 enables the Welsh Ministers to make regulations about the disposal of fetal remains (which, under section 5(4), includes the remains of an embryo), by a method that has been regulated as a modern funerary method under section 2.
- 1.22 The regulations may make any provision that could, or must, be made under sections 2 or 3 in relation to the disposal of relevant human remains. Regulations about trials (under section 4) may not be made in relation to fetal remains.

Section 6: Offence of using unregulated modern funerary method

- 1.23 Section 6 sets out a new criminal offence of disposing of relevant human remains by a modern funerary method that has not been regulated under section 2 or 4.
- 1.24 Under section 6(1), to be guilty of the offence a person must know that they are carrying out a modern funerary method. They must also know, or be reckless as to whether, that method is unregulated.
- 1.25 Section 6(3) sets out the maximum penalty for the new offence.

Section 7: Offence of providing false information to procure regulated modern funerary method

- 1.26 Section 7 sets out a new criminal offence of dishonestly making a false representation for the purpose of procuring the disposal of relevant human remains in Wales by a modern funerary method (which has been regulated under section 2 or 4).
- 1.27 Section 7(2) applies subsections (2) to (5) of section 2 of the Fraud Act 2006, which make provision about the meaning of a false representation.
- 1.28 Section 7(3) sets out the maximum penalty for the new offence.

Section 8: Consequential amendments

- 1.29 Section 8 introduces Schedule 1, which makes amendments to existing legislation.

Section 9: Interpretation

- 1.30 Section 9 defines a number of important terms used in the Bill.

Section 10: Regulation-making powers

- 1.31 Section 10 sets out various provisions about regulations that may be made under the Act.
- 1.32 Section 10(2) provides that a function (including a function involving the exercise of a discretion) may be conferred on any person specified in or appointed under the regulations.
- 1.33 Section 10(3) enables regulations to provide that processing of information in accordance with them (where, under section 10(6), processing has the same meaning as in the Data Protection Act 2018) is not in breach of restrictions on the processing of information. Under section 186 of the Data Protection Act 2018, section 10(3) of the Bill will not override the obligations or rights in data protection law that are specified in section 186.
- 1.34 Section 10(4) contains a power for the Welsh Ministers to amend or repeal primary legislation that relates or refers to burial or cremation. Under section 10(5), this includes consequential provision to any primary legislation. This is intended to enable the Welsh Ministers to make necessary legislative amendments that are specific to individual modern funerary methods that are regulated in future.

Section 11: Procedure for regulations

- 1.35 Section 11(1) provides that the regulations made under the Bill are to be made by Welsh statutory instrument. Section 11 sets out the procedures that will apply to regulations made under various powers in the Bill.
- 1.36 Section 11(3) sets out the regulations that will be subject to the Senedd approval procedure.
- 1.37 Section 11(4) provides that any other regulations made under the Bill will be subject to the Senedd annulment procedure.
- 1.38 Under section 11(5) to (6), the Senedd confirmation procedure will apply where the statutory instrument contains a declaration that the Welsh Ministers are of the opinion that it is necessary in the interests of public health or safety to make the instrument urgently. Section 11(7) makes provision about timing.
- 1.39 Section 11(2) introduces Schedule 2, which sets out the procedure to be used when the first regulations under section 2 in relation to a particular modern funerary method are made.

Sections 12 to 13

- 1.40 The final two sections of the Bill deal with technical matters (coming into force and short title). Their meaning is self-explanatory.

Schedule 1: Consequential amendments

- 1.41 Schedule 1 is introduced by section 8. It sets out amendments to existing legislation about registration of deaths, public health and the death of children being looked after by local authorities.

1.42 The purpose of the amendments in Schedule 1 is to ensure that the relevant legislation will apply to modern funerary methods as it does to burial and cremation.

Schedule 2: Enhanced procedure for first regulations

1.43 Schedule 2 is introduced by section 11(2). It sets out the enhanced procedure that is to be used when the first regulations under section 2 in relation to a particular modern funerary method are made. Section 11(8) makes clear any provision that would otherwise be subject to the Senedd approval procedure or the Senedd annulment procedure may be included in regulations that are subject to the procedure in Schedule 2.