



Law Commission

Reforming the law

Comisiwn y Gyfraith

Diwygio'r gyfraith

New Funerary Methods Final Report and Draft Bills



Law
Commission
Reforming the law

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New Funerary Methods

Final Report and Draft Bills

Presented to Parliament pursuant to section 3(2) of the Law Commissions Act 1965; and presented to Senedd Cymru

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The Law Commission

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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Glossary

Alkaline hydrolysis: a **new funerary method** which uses water, alkaline chemicals, heat, and pressure to break down the body of a deceased person into liquid and pieces of bone.

Anglican: a branch of Christianity which developed following the break from the Roman Catholic Church of the **Church of England** during the Reformation in the 16th century. Includes the **Church in Wales**.

Burial at sea: a **funerary method** by which human remains are committed to the sea as a final resting place.

Burial authority: a **local authority** which is empowered by section 214 of the Local Government Act 1972 to operate a cemetery.

Burial ground: land that is, or was, used primarily for the burial of human remains. This encompasses, but is not limited to, **Church of England** churchyards and cemeteries.

Cemetery: the term used for a **burial ground** operated by a **local authority** in the Local Government Act 1972 and also used in the founding Acts of Parliament of a number of private burial grounds.

Church of England: the established **Anglican** church in England and the Crown Dependencies.

Coroner: a specialist judge, appointed by local authorities, who investigates and explains deaths which are violent or unnatural, where the cause of death is unknown, or where the deceased person died while in state detention.

Cremation: the burning of human remains.

Crematorium: a building fitted with appliances for the purpose of burning human remains.

Cremation authority: any person who has opened a **crematorium**. A **burial authority** may be a cremation authority.

Exhumation: the removal of human remains from a place of burial. May also be referred to as disinterment.

Funerary method: a method of disposing of the body of a deceased person. This can be burial, **cremation**, **burial at sea** or a **new funerary method**.

Human composting: a **new funerary method** which uses control of the environment within a sealed container to accelerate the decomposition of the human body into soil.

Local authority: the local government body for a given administrative area.

Modern funerary method: the term we have used for a **new funerary method** in our draft legislation.

New funerary method: a process, other than burial, **cremation** or **burial at sea**, that breaks down the body of a deceased person. Its purpose is to dispose of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

Private cemetery: a **burial ground** in England or Wales which is not owned by a **local authority**, the **Church of England** or the **Church in Wales**. This includes burial grounds owned by other religious groups, companies and charities.

Registrar: a person appointed by a **local authority** to record information on births, deaths, stillbirths, marriages and civil partnerships on the relevant registers. They are responsible to the Registrar General for the technical aspects of their work.

Secondary legislation: law created by ministers (or other bodies) under powers given to them by an Act of Parliament or an Act of the **Senedd**. In this Report the term includes a Welsh statutory instrument within the meaning of section 37A of the Legislation (Wales) Act 2019.

Senedd: Senedd Cymru, known in English as the Welsh Parliament, the devolved legislature of Wales.

Statutory instrument: a form of secondary legislation.

To the Right Honourable David Lammy MP, Lord Chancellor and Secretary of State for Justice.

Chapter 1: Introduction

OVERVIEW

The purpose of this Report

- 1.1 This Report marks the conclusion of the Law Commission's project on New Funerary Methods in England and Wales, which is part of a wider project on the related areas of Burial, Cremation and New Funerary Methods. The Report contains recommendations to the UK Government (in relation to England) and the Welsh Government (in relation to Wales).
- 1.2 Alongside this Report, we are publishing two draft Bills, one for England and one for Wales. If our recommendations are taken forward, they will lead to a new framework, set out in primary legislation, to enable the regulation of new funerary methods. We do not consider whether any specific new funerary methods should be approved. That will be a question for the UK Government and the Welsh Government, if they accept our recommendations and Parliament and the Senedd decide to legislate.

A framework for the regulation of new funerary methods

- 1.3 Burial and cremation are long-established funerary methods. Burial at sea also has a long history although it is not now commonly used in this jurisdiction.
- 1.4 Burial is covered by a patchwork of legislation, including several Burial Acts dating back to the 19th century,¹ making provision for different aspects of the burial process. Cremation is primarily regulated by the Cremation Act 1902, the Cremation Act 1952 and the Cremation (England and Wales) Regulations 2008.² Burial at sea, which is outside the scope of our project, is not explicitly defined in legislation but is understood as a process by which human remains are "committed to the sea as a final resting place".³ Burials at sea are licensed under the Marine and Coastal Access Act 2009.
- 1.5 New 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. There is currently no specific regulation of new funerary methods in England or

¹ Including the Burial Act 1852, Burial Act 1853 and Burial Act 1857.

² SI 2008 No 2841.

³ See Marine Management Organisation, *Guidance: How to arrange a burial at sea in the UK marine area* (15 November 2017) <https://www.gov.uk/guidance/how-to-get-a-licence-for-a-burial-at-sea-in-england>.

Wales. The use of new funerary methods is not expressly prohibited in law, although legislation about death registration may have the effect of prohibiting it.⁴

- 1.6 Two new funerary methods, which we referred to in our Consultation Paper as alkaline hydrolysis and human composting, have been developed and are in use in other jurisdictions. Other new funerary methods may emerge as feasible alternatives in future. At the time of writing, there are no new funerary methods in use in England or Wales. Alkaline hydrolysis was used as a funerary method for the bodies of five deceased people in 2019, as part of a study facilitated by Middlesex and Sheffield Universities.⁵ Although we understand that there is ongoing research into human composting, the process has not been used for human bodies in England or Wales.
- 1.7 Our intention is that the legislative framework to enable the future regulation of individual new funerary methods will contain safeguards and also allow further safeguards to be put in place in future, with the aim of ensuring that these methods are carried out appropriately. It will enable individual providers of new funerary methods to operate securely and conscientiously and to offer a greater choice of funerary methods to members of the public.

Additional material published alongside this Report

- 1.8 In addition to this Report and the accompanying draft Bills,⁶ we are publishing the following documents.
 - (1) Summary of the Report.
 - (2) Easy-read version of the summary.
 - (3) Impact assessment.
- 1.9 We intend to publish a document containing all consultation responses in due course (ensuring respect for confidentiality where requested).

OUR PROJECT

Scope and aims

- 1.10 This Report forms part of our project on Burial, Cremation and New Funerary Methods. The project is part of our 13th Programme of Law Reform, published in 2017. The overall project comprises three related sub-projects:
 - (1) *Burial and Cremation*, on which we published our Report in March 2026;⁷

⁴ For further details of existing legislation in England and Wales and how it relates to new funerary methods, see: New Funerary Methods (2025) Law Commission Consultation Paper No 272 Chapter 3.

⁵ G Robinson, "Alkaline Hydrolysis in the United Kingdom" in R McManus (ed) *The Sustainable Dead* (2023) p 89. See also Resomation, *Successful Study of Water Cremation completed for Yorkshire Water* (24 March 2020) <https://resomation.com/news/successful-study-of-water-cremation-completed-for-yorkshire-water/>.

⁶ Please see Appendices 2 and 3.

⁷ Burial and Cremation (2026) Law Com No 425.

- (2) *New Funerary Methods*, which this Report concludes;
 - (3) *Rights and Obligations Relating to Funerary Methods, Funerals and Remains*, which began in March 2026, and will run until the end of 2027. It will address, among other things, the question of whether a person should be able to make binding decisions about what happens to their body after death; how disputes about such matters should be resolved; the legal status of human remains; and reforms to the law on public health funerals, which are those conducted by a local council where it appears no-one else will make arrangements.⁸
- 1.11 After concluding our work on the third sub-project, we will publish draft legislation that will give effect to our recommendations on Burial and Cremation, as well as those on Rights and Obligations Relating to Funerary Methods, Funerals and Remains.
 - 1.12 The full terms of reference for all three sub-projects are included as Appendix 1 to this Report.
 - 1.13 Some issues are explicitly outside the scope of our project. Those include death certification and registration (other than where directly relevant to new funerary methods), the regulation of funeral directors, and planning and environmental law. A full list of exclusions is included in the terms of reference.

Consultation

- 1.14 We published our Consultation Paper for the New Funerary Methods sub-project on 4 June 2025.⁹ Our consultation period ran until 4 September 2025. During the consultation period we held consultation events in Leeds and London and two online events.
- 1.15 We received 124 responses to our consultation. These included responses from religious communities, local authorities, industry bodies, prospective operators of new funerary methods, funeral directors, celebrants, lawyers, and academics, as well as members of the public responding in a personal capacity.
- 1.16 We have benefitted from discussions with stakeholders throughout this project and are grateful to everyone who has contributed, including those who attended consultation events and submitted consultation responses.
- 1.17 In this Report, we focus on those points made by consultees that, in our view, are necessary to explain how we have reached our final policy recommendations. Alongside this Report, we are publishing an analysis of consultation responses. In due course, we will also publish the consultation responses that we received, ensuring respect for confidentiality where requested by consultees.

⁸ The duty to arrange public health funerals is contained in the Public Health (Control of Disease) Act 1984, s 46.

⁹ New Funerary Methods (2025) Law Commission Consultation Paper No 272.

DEVOLUTION TO WALES

- 1.18 The law on burial and cremation was explicitly included within the areas over which the Welsh Assembly had legislative competence in the Government of Wales Act 2006, as originally passed.¹⁰ Following the move to a reserved powers model,¹¹ neither burial and cremation, nor matters which could be taken to refer to new funerary methods, were reserved to the UK Parliament. That means that the Senedd has competence to legislate in relation to these areas of law.¹² Reforming primary legislation to regulate new funerary methods in Wales would therefore require either an Act of the Senedd, or a legislative consent motion¹³ from the Senedd should the Westminster Parliament legislate for Wales.
- 1.19 This Report is accompanied by two draft Bills: one making provision for England (the Bill for England, at Appendix 2) which would be taken forward by the UK Government and introduced in the UK Parliament, and one making provision for Wales (the Bill for Wales, at Appendix 3) which would be taken forward by the Welsh Government and introduced in the Senedd.
- 1.20 Some issues which are relevant context to this review are reserved to the UK Parliament, including death registration. In Chapter 7, we make a recommendation about consequential amendments to primary legislation on death registration, to enable registration of deaths where a new funerary method is to be used. The amendments in relation to the law in Wales are set out in the draft Bill for Wales.
- 1.21 Paragraph 1(1) of Schedule 7B to the Government of Wales Act 2006 provides that an Act of the Senedd cannot modify the law on reserved matters (which include death registration). However, paragraph 2(1) of Schedule 7B states that paragraph 1 does not apply to a provision that:
- (a) is ancillary to a provision made (whether by the Act in question or another enactment) which does not relate to reserved matters, and
 - (b) has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision.
- 1.22 While this is a matter for both Governments, it appears to us that the consequential amendments to death registration legislation that we recommend in Chapter 7 of this Report fall within this exception. The amendments therefore form part of the draft Bill

¹⁰ Government of Wales Act 2006, Sch 7, pt 1, para 6, as originally passed.

¹¹ Whereby the Senedd has the power to legislate on any matter not specifically reserved in statute to the UK Parliament.

¹² The courts have had little opportunity to scrutinise the Welsh devolution model post-2017. However, in relation to the similar model in Scotland, the Supreme Court found that “anything that does not fall within the matters listed there [in the Schedule setting out reserved matters] must be taken to be within competence”: *Imperial Tobacco v The Lord Advocate (Scotland)* [2012] UKSC 61 at [29]. It also appears to be the view of the Welsh Government that burial and cremation are devolved, see: Welsh Government, Law Wales, *Ecclesiastical law and the Church in Wales* (16 March 2021) <https://law.gov.wales/ecclesiastical-law-and-church-wales>.

¹³ A motion passed by a devolved legislature to indicate that it is content for the UK Parliament to pass a law on a devolved matter.

for Wales. However, it is for the Welsh Government to determine whether these modifications can be included in any future Bill.

OUR RECOMMENDATIONS

- 1.23 In this Report, we make recommendations about the content of new primary legislation that will enable individual new funerary methods to be regulated.
- 1.24 In Chapter 2, we consider the basis for the framework. We recommend that new funerary methods should be defined and regulated separately from existing funerary methods. We also recommend that primary legislation should contain a power for the Secretary of State and the Welsh Ministers to make secondary legislation, in the form of regulations, approving the use of individual new funerary methods and setting out how they should be carried out. In our Consultation Paper, we asked whether licensing should be part of the regulation of new funerary methods. There are several arguments against licensing, and we conclude that appropriate oversight can be ensured without it. We therefore do not recommend that a licensing system should be created.
- 1.25 In our Consultation Paper, we provisionally proposed that the UK Government and the Welsh Government must have regard to three principles when making regulations about new funerary methods. These were: protection of the environment; protection of public health and public safety; and preservation of human dignity. We also sought views on any other principles to which the UK Government and the Welsh Government should be required to have regard. In Chapter 3, we recommend that the three proposed principles should be included in the draft Bills and consider further how the principle that relates to dignity should be expressed.
- 1.26 In Chapter 4, we look in more detail at the power to make regulations. We make recommendations about matters that must, or may, be included in the regulations. These include a recommendation that regulations must include provisions requiring the registration of each use of a new funerary method and setting out how and by whom this registration must be carried out. We also make a recommendation about the procedures for making the regulations, to ensure the appropriate level of parliamentary control.
- 1.27 In Chapter 5, we consider the legal status of new funerary methods that have not been regulated. We recommend that the use of such methods should be prohibited. We also recommend that regulations may be made, enabling trials of new funerary methods to be permitted.
- 1.28 We consider criminal offences in Chapter 6. We recommend that it should be a criminal offence dishonestly to make false representations to procure the use of a new funerary method; this mirrors an equivalent, existing offence relating to cremation. We also recommend that the Secretary of State and the Welsh Ministers should have the power to create new criminal offences in secondary legislation of breaching regulations about individual new funerary methods. We recommend that a maximum penalty for such offences be set out in primary legislation. Finally, we recommend that it should be a criminal offence to use a new funerary method that has not been regulated.

1.29 Chapter 7 contains our recommendations about amendments to existing legislation. We recommend specific amendments to legislation, where these are relevant to all new funerary methods. This includes recommendations about death registration and public health legislation. We also recommend that the Secretary of State and the Welsh Ministers should have the power to make further amendments, in regulations, to legislation relating to burial and cremation, to make provision about individual new funerary methods.

OUR DRAFT BILLS

- 1.30 As mentioned at paragraph 1.19 above, we have produced two draft Bills (one for England and one for Wales), which will give effect to our recommendations. Throughout this Report, we explain in detail how the draft Bills implement each of our recommendations. Explanatory notes are available at <https://lawcom.gov.uk/project/new-funerary-methods/>.
- 1.31 UK Parliament Bills have clauses, while Senedd Bills have draft sections. We therefore refer to clauses in the draft Bill for England and sections in the draft Bill for Wales.
- 1.32 In UK legislation there is a presumption that an Act does not bind the Crown,¹⁴ although provision is often made to displace the presumption. For Acts of the Senedd, the presumption is the reverse, so these Acts do bind the Crown unless provision is made to the contrary.¹⁵ We have not made any provision in relation to Crown application in either of the draft Bills. Consequently, the draft Bill for England does not bind the Crown whereas the draft Bill for Wales does. This is not the result of a deliberate policy decision; it reflects the fact that it will be for the UK Government and the Welsh Ministers to decide whether to make provision displacing the presumptions.

The term “modern funerary method”

- 1.33 The draft Bills are entitled the Modern Funerary Methods (England) Bill and the Modern Funerary Methods (Wales) Bill. As we explain in Chapter 2, the draft Bills contain definitions of a “modern funerary method”.
- 1.34 We have used the word “modern” in the draft Bills, rather than “new”, because funerary methods which are new at the time of writing this Report will not always be new; once a method has been in use for some time it may seem strange to refer to it as a “new” method. It will however remain “modern” by comparison with burial and cremation, which have long been the subject of legislation. Unless we are referring to the specific use of the term “modern funerary method” in the draft Bills, we continue to use the term new funerary method in this Report, as that is the terminology which we have used throughout this review, and stakeholders are familiar with it.

¹⁴ See D Greenberg (ed), *Craies on Legislation*, (13th edition 2025) 11-064 and *R (Black) v Secretary of State for Justice* [2017] UKSC 81.

¹⁵ *Legislation (Wales) Act 2019*, s 28(1).

THE IMPACT OF OUR REFORMS

- 1.35 We asked three consultation questions to gather information and evidence about the impact of our provisional proposals. The first invited consultees to provide data and evidence-based views on the provisional proposal. The second invited consultees to tell us about any possible disadvantages or advantages to certain groups, whether or not these groups are protected under the Equality Act 2010. The third invited views on any likely impacts specific to Wales.
- 1.36 The responses to these questions have contributed to our impact assessment, which is published alongside this Report.

TERMINOLOGY

- 1.37 Where possible, we have tried to avoid using the term “disposal” in this Report, as a number of different stakeholders told us that, understandably, they disliked the term in this context. However, we use the term “disposal” when it is necessary to quote from a source that uses it (including legislation), or where it is essential so that our meaning is clear. We also use the term in the draft Bills, where it is necessary for clarity.
- 1.38 We have sought to avoid some other forms of language in this Report where we are aware they can cause offence or be viewed as problematic. For example, rather than “the deceased”, we have used “deceased people”, “deceased person” or other formulations. Similarly, we do not use the phrase “loved one”, which presupposes how people feel about the person who has died. Although many would see the term “loved one” as appropriate in individual circumstances, for some the relationship with the deceased person may make use of the term inappropriate.

WEB LINKS AND REFERENCES

- 1.39 All web links and references to documents have been checked and are accurate as of 15 May 2026.

ACKNOWLEDGEMENTS

- 1.40 We are grateful to all those who sent us responses to our Consultation Paper and to the individuals and groups who met us during the course of the project.
- 1.41 We would also like to thank the individuals and organisations who helped us to organise, or invited us to participate in, events during our consultation periods and throughout the project, including Dr Imogen Jones at the University of Leeds.
- 1.42 Professor Heather Conway of Queen’s University Belfast has served as the academic advisor to the project since December 2023 and we are grateful for her input. Her contributions have been independent, and do not represent the views of any of the organisations of which she is a member or with whom she is affiliated.
- 1.43 We are also grateful to officials from the Ministry of Justice, with whom we have been in contact throughout our work on this project, and also to officials from the Welsh Government, UK Government departments and public bodies who have met us.

1.44 The Commissioners would like to record their thanks to the following members of staff who worked on this Report: Rebecca Mandal and Andrew Bazeley (team lawyers), Tasha Waller (research assistant), and Connor Johnston (senior lawyer).

Chapter 2: An overview of the regulatory framework

INTRODUCTION

- 2.1 In Chapter 5 of our Consultation Paper, we considered the basis of a framework for the regulation of new funerary methods, drawing on examples from other jurisdictions. We discussed the following options, more than one of which could be used together:
- (1) including new funerary methods in the definition of cremation;
 - (2) introducing a power to make secondary legislation about new funerary methods; and
 - (3) enabling a system of licensing.
- 2.2 In this chapter, we present our analysis and conclusions about these options. We recommend that new funerary methods should be defined and regulated separately from established funerary methods and that there should be a power for the Secretary of State and the Welsh Ministers to make secondary legislation, in the form of regulations, about new funerary methods.¹ We do not recommend that there should be a licensing system for new funerary methods.
- 2.3 We also revisit the meaning of “new funerary method” that we put forward in Chapter 2 of our Consultation Paper and consider how new funerary methods should be defined in the draft Bills. We conclude that “funerary methods” should be defined in the draft Bills as methods for disposing of human remains and “modern funerary methods” as funerary methods other than burial, cremation or burial at sea.²

DEFINING AND REGULATING NEW FUNERARY METHODS SEPARATELY FROM ESTABLISHED FUNERARY METHODS

Provisional proposal in the Consultation Paper

- 2.4 In several states, provinces and territories in the US, Canada and Australia, the regulation of new funerary methods has been achieved by widening the definition of cremation to include either specific methods or new funerary methods more generally.
- 2.5 We concluded that widening the definition of cremation to encompass new funerary methods would not be appropriate in England or Wales. Among other reasons, cremation – defined in the Cremation (England and Wales) Regulations 2008 as “the burning of human remains”³ – has a long-standing and accepted meaning and

¹ As in our Consultation Paper (New Funerary Methods (2025) Law Commission Consultation Paper No 272), when we refer to “regulations”, we mean secondary legislation in the form of regulations. When we refer to “detailed regulation” or “regulation”, we mean to refer more generally to either secondary legislation or, if there was to be a power to make provision for licensing (which we discuss in this chapter), licences.

² For an explanation of the use of the word “modern” in the draft legislation, see para 1.34 of this Report.

³ SI 2008 No 2841, reg 2.

changing it would make the law less clear.⁴ Instead, we provisionally proposed that new funerary methods should be defined and regulated separately from existing funerary methods.

Consultation responses

2.6 A very substantial majority of consultees agreed with our provisional proposal.

Clarity

2.7 Of the consultees who gave a longer text answer, a significant number expressed agreement with our view that defining new funerary methods separately from existing methods such as cremation would help to provide clarity, whether for bereaved people, those offering new funerary methods, or the public more generally. Some consultees noted that there are clear meanings of burial and cremation, within which new funerary methods do not fit. The Federation of Burial and Cremation Authorities (FBCA) highlighted that burial and cremation are well understood and that “adding other methods under this title could lead to a devaluing of the titles and confidence in the processes used”.

Different regulatory requirements

2.8 Many consultees said that defining new funerary methods separately from existing funerary methods would be appropriate as the regulatory requirements are likely to be different. A few consultees noted that although alkaline hydrolysis is sometimes referred to as “water cremation”, it is a distinct process from cremation with different resulting materials. Some consultees also noted that human composting would be likely to require bespoke regulation, referring to the regulations that exist in other jurisdictions about what can be done with the resultant soil.⁵

Personal and religious preferences

2.9 Some consultees expressly agreed with our suggestion that regulating new funerary methods separately may help to take account of people’s personal or religious preferences. Defining new funerary methods separately would allow people to specify accurately their preferred method. A few consultees shared our concern that if new funerary methods were to be included in the definition of cremation this could lead to a risk of other methods being used mistakenly where cremation was desired. The Ecclesiastical Law Society also thought that it would be important for churches which “may already refer to burial and/or cremation... in their laws and regulations” to be certain about the methods to which these terms refer.

Timing

2.10 A few consultees expressed concerns about timing. Thereafter Funeral Services Ltd disagreed with our provisional proposal, asserting that although “we are presented with the unique opportunity to define and regulate in line with society, knowledge and language fit for purpose today and for future generations”, this would take time, which would be detrimental to the “ecological and social” drivers for new funerary methods.

⁴ See New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 5.40 to 5.55 for a detailed discussion of the reasons we viewed this option as inappropriate.

⁵ See New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 4.30 to 4.35.

One consultee, although agreeing with the provisional proposal, expressed concern that it would “create such a bulk of new law that it runs the risk of being dropped by Government”.

Discussion and recommendation

- 2.11 We consider that new funerary methods should be defined and regulated separately from existing methods.
- 2.12 A significant number of consultees agreed with our view that this would make the law clearer. There are already well understood definitions of burial and cremation which do not include new funerary methods. Forcing new methods into these definitions and regulatory schemes would make the law more difficult to understand and may lead to less trust and confidence in the funeral industry as a whole.
- 2.13 New funerary methods may also have distinct regulatory requirements. Consultees noted that, for example, the soil that remains after human composting might need to be regulated in a different way from cremation ashes or other similar material. There may also be different environmental considerations. There will be regulations which apply to cremation and crematoria which should not apply to new funerary methods, and the reverse is also true. Defining and regulating new funerary methods as distinct from established methods will allow for separate and specific oversight and will help to avoid the possibility of gaps in regulation.
- 2.14 This will also allow for people’s personal and religious preferences and requirements to be taken into account. If new funerary methods were to be included in the definition of existing methods, there may be a risk that people’s wishes would not be met. For example, if someone had expressed a wish to be cremated when they die, and alkaline hydrolysis was included in the definition of cremation, it is possible that alkaline hydrolysis might be used on their body when this is not what was intended, due to a lack of understanding by those selecting the funerary method. A separate definition and regulatory framework for new funerary methods would help to avoid this.
- 2.15 Some new funerary methods may have aspects which can be regulated in a similar way to existing methods. Defining new funerary methods separately from existing methods will give those making regulations the flexibility to determine whether regulation similar to that for burial or cremation is appropriate. Separate regulation of new funerary methods will therefore not preclude future regulations mirroring existing rules for burial and cremation. By way of example, in Scotland the approach to the regulation of alkaline hydrolysis set out in the regulations that came into force in March 2026 is similar to the approach to cremation.⁶ The policy note that accompanied the draft form of the regulations stated that “as hydrolysis is a final disposal of human remains, like cremation, it will be subject to the same oversight, requirements and conditions as cremation is”.⁷

⁶ On 2 March 2026, the Hydrolysis (Scotland) (No. 1) Regulations 2026 (SI 2026 No 50) and the Hydrolysis (Scotland) (No. 2) Regulations 2026 (SI 2026 No 50) came into force, made under powers in the Burial and Cremation (Scotland) Act 2016.

⁷ Scottish Government, *Policy Note accompanying the draft of the Hydrolysis (Scotland) (No.1) Regulations 2026* https://www.legislation.gov.uk/sdsi/2026/9780111064443/pdfs/sdsipn_9780111064443_en_001.pdf.

- 2.16 Some consultees thought that it may be quicker to include, for example, alkaline hydrolysis in the definition of cremation, and to regulate it as such. For the reasons detailed above, we consider that it would be preferable to define and regulate new funerary methods separately from established methods. Speed alone would not justify adopting a less effective policy.
- 2.17 Moreover, it may not be faster to regulate new funerary methods as established methods. For example, if new funerary methods were included in the definition of cremation, the cremation regulations would need to be revised to ensure only relevant portions applied to specific new funerary methods, and other specific regulations would need to be passed in any event which only applied to those methods. Therefore, it would not necessarily lead to the faster regulation of new funerary methods. Both primary legislation and specific regulations would be needed for the new method even if the definition of “cremation” was modified to include new funerary methods.
- 2.18 For these reasons, we recommend that new funerary methods should be defined and regulated separately from existing funerary methods

Recommendation 1.

- 2.19 We recommend that new funerary methods should be defined and regulated separately from existing funerary methods.
- 2.20 The draft Bills make provision for modern funerary methods to be regulated separately from existing methods. We explain how modern funerary methods have been defined in the draft Bills at paragraphs 2.40 to 2.49 below. We discuss the power to make regulations at paragraphs 2.61 to 2.69 below.
- ### **DEFINITION OF A NEW (“MODERN”) FUNERARY METHOD**
- #### **Provisional proposal on the meaning of “new funerary method”**
- 2.21 In Chapter 1 of this Report, we explain that new funerary methods are potential alternatives to the established funerary methods of burial, cremation and burial at sea. We will now consider in more depth what a new funerary method is, and how it should be defined in the draft Bills.
- 2.22 In our Consultation Paper, we provisionally proposed that a new funerary method would be:
- (1) a process;
 - (2) other than burial, cremation or burial at sea;
 - (3) that breaks down the body of a deceased person; and
 - (4) which has the purpose of disposing of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

We asked whether consultees agreed with this.⁸

- 2.23 We explained that some processes that may appear to be new funerary methods are simply variations within burial and cremation, for example, natural burial and open pyre cremation. We said that a new funerary method must be distinct from the established funerary methods of burial, cremation and burial at sea.
- 2.24 We also said that the process of a new funerary method should break down the body of a deceased person. However, we wanted to ensure that processes which may break down a body but are intended to preserve, or to carry out research on, the body would not be included. For example, cryonics, or cryogenic freezing, is the process of preserving human bodies at very low temperatures with the intention of reviving them if future technology enables this. We did not consider that processes such as this should be classified, or regulated, as funerary methods. We also did not consider that the work carried out at research facilities that study the decomposition of bodies in a variety of settings (known as human taphonomy facilities, forensic anthropology research facilities or, more controversially, body farms) should constitute carrying out a funerary method.
- 2.25 We found it necessary to use the term “disposing of the body of a deceased person”, as we felt that it was needed here for clarity. The term “disposal” is already used in a similar context in legislation including the Births and Deaths Registration Act 1953,⁹ the Coroners and Justice Act 2009¹⁰ and the Coronavirus Act 2020.¹¹ There is, therefore, already an understanding of what that term means. In our Consultation Paper, we defined funerary method as “a method of disposing of the body of a deceased person” which “can be burial, cremation, burial at sea or a new funerary method”.
- 2.26 We provisionally proposed that the final element of the meaning of a new funerary method should be that it “has the purpose of disposing of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies)”.¹²
- 2.27 In the Consultation Paper, we referred to our “conception” of a new funerary method because it was, at that stage, an idea rather than a definition. Having consulted on that and reached a conclusion about the core elements of a new funerary method, we are now in a position to produce a definition, which is set out in the draft Bills using the statutory language required to incorporate this into legislation.

Consultation responses

- 2.28 A very substantial majority of consultees agreed with our proposal concerning the meaning of new funerary method.

⁸ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 2.29.

⁹ Births and Deaths Registration Act 1953, ss 11, 16, 17, 24 and 41.

¹⁰ Coroners and Justice Act 2009, s 43.

¹¹ Coronavirus Act 2020, Sch 13.

¹² New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 2.29.

- 2.29 Of those who disagreed, three did so because they did not approve either of new funerary methods in general, or of specific methods. Kettering Muslim Association and the British Board of Scholars and Imams expressed disapproval of new funerary methods, and one other consultee indicated that they disapproved of alkaline hydrolysis. We acknowledge these views, whilst noting that the future regulation of individual new funerary methods will not affect the provision of existing methods. People that are opposed to a specific funerary method, for any reason, will still be able to use an alternative method, as they are now.
- 2.30 One consultee stated that neither alkaline hydrolysis nor human composting disposes of the body of a deceased person, rather, “they are a reduction process, leaving the bereaved with a large amount of organic material”. They also suggested that a further point should be added, that “the process clearly exhibits potential benefits over historic burial, cremation and sea burial”. Another consultee suggested that “to make this more future proof the definition could be that a new funerary method is a scientifically, socially and morally acceptable method of human body disposal that is not currently regulated”.
- 2.31 One consultee, whilst agreeing with the provisional proposal, noted that “the only complication that may arise from this definition would be 'in-ground composting'... which, in appearance, falls under the scope of standard burials but may, in practice, represent a significant departure from the practice of standard / natural burials”.
- 2.32 Some consultees who agreed with the provisional proposal made further comments about the wording. The Ecclesiastical Law Society pointed out that “(3) and (4) are to a certain extent overlapping”.

Discussion and recommendation

New funerary methods as distinct from established funerary methods

- 2.33 We note the comment about “in-ground composting” as a process being developed in the US which may represent a “significant departure” from current burial practices. This example underlines the need for the Secretary of State and the Welsh Ministers, when considering whether and how to regulate individual methods, to be able to make clear decisions about whether a method is a new funerary method or a variation within an existing method. It also demonstrates the need to define burial in our draft Bills. We discuss this further at paragraphs 2.44 to 2.45 below.

A process that breaks down the body, which has the purpose and effect of disposal of the body of a deceased person

- 2.34 We agree with the comment that items (3) and (4) in the provisional proposal overlap to a certain extent. It was useful to have the reference to breaking down the body of a deceased person to facilitate consultation on our proposed recommendations. This allowed consultees to understand what we envisaged and enabled us to explain some of the distinctions between new funerary methods and other methods that may also break down the body, such as research at human taphonomy facilities. However, we have concluded that it is not necessary in a legal definition of new funerary methods, so does not appear in the draft Bills.

2.35 We discuss the way that we have reflected our understanding of a new funerary method in the draft Bills further at paragraphs 2.40 to 2.49 below.

Disposal of the body of a deceased person

2.36 One consultee suggested that alkaline hydrolysis and human composting do not dispose of the body of a deceased person. However, the word “disposal”, when used in the context of funerary methods, does not preclude resulting material being left at the end of the process. For example, the word “disposal” is used in the Births and Deaths Registration Act 1953¹³ to refer to cremation even though that process results in ashes. As set out in our Consultation Paper, in our view both alkaline hydrolysis and human composting (as described in the Consultation Paper) would meet our proposed definition of a new funerary method, including the element of disposal.¹⁴ It will be for the respective Governments to assess whether individual methods meet the disposal requirement that we recommend and are hence capable of regulation as a new funerary method.

Suggestions about criteria for approval

2.37 A few comments were made about criteria for approving specific new funerary methods, rather than the meaning of “new funerary method”. We consider in Chapter 3 whether the Secretary of State and the Welsh Ministers should be required to have regard to certain principles when making regulations about new funerary methods. We also explain, in that chapter, that we do not think that a requirement for new funerary methods to be more sustainable than established funerary methods is appropriate.

Conclusion

2.38 We consider that the provisional proposal that we put forward in the Consultation Paper encapsulates the core elements of a new funerary method that should be reflected in the legal definition adopted under the new legal framework. We explain how we have expressed this in the draft Bills at paragraphs 2.40 to 2.49 below.

Recommendation 2.

2.39 We recommend that the legal definition of new funerary method should encompass:

- (1) a process;
- (2) other than burial, cremation or burial at sea;
- (3) that breaks down the body of a deceased person; and
- (4) which has the purpose of disposing of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

¹³ Births and Deaths Registration Act 1953, s 41(1).

¹⁴ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 2.55 to 2.58 and 2.72 to 2.79

Definition of “modern funerary method”

2.40 The draft Bills give effect to this recommendation in the definitions of “funerary method” and “modern funerary method” in clauses 1(2) and 9(2) of the Bill for England and sections 1(2) and 9(2) of the Bill for Wales.¹⁵ Modern funerary methods are, as set out in clause 1(2) and section 1(2), funerary methods other than 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). Funerary methods are defined in clause 1(2) and section 1(2) as “methods for disposing of relevant human remains”. Under clause 9(1) and section 9(1), “relevant human remains” are human remains other than ashes that remain after cremation, or material to which human remains have been reduced following the use of a modern funerary method.

Methods for disposing

- 2.41 We intend that processes of preservation such as cryonics, or cryogenic freezing, as well as research at human taphonomy facilities, will not be capable of regulation as new funerary methods. Modern funerary methods, which may be regulated under the draft Bills, are “methods for disposing” of human remains. The words “for disposing” indicate that the method must have the purpose and effect of disposing of human remains. Methods with the purpose of preservation or research will not come within the definition.
- 2.42 As set out at paragraph 2.25, the term “disposal” is already used in several pieces of legislation in relation to funerary methods.
- 2.43 It is not necessary to refer to breaking down the body of a deceased person in the draft legislation. There is a very strong argument that “disposing”, in the context of new funerary methods, implies that a body is broken down. However, the degree to which the body is broken down, and the resulting materials that arise, will vary between methods. Methods of preservation, as explained above, are excluded from the definition of funerary method, and therefore are outside the scope of regulation. There is therefore no need to introduce the concept of breaking down, in opposition to preserving, in the draft Bills.

Not burial

2.44 We intend that our draft Bills on new funerary methods should not enable the regulation of anything that is already capable of regulation as burial. In our Consultation Paper, we noted that the term “burial” is not exhaustively defined in existing legislation.¹⁶ For clarity, we have included a definition of burial in our draft Bills, rather than relying on the common understanding of the term. We have defined burial, in clause 9(1) and section 9(1), as “the interment of human remains in any place (including any chamber), whether above or below the ground”. The definition reflects the wording of section 214(8) of the Local Government Act 1972, which sets out what may be regulated as a cemetery, and Article 2 of the Local Authorities’ Cemeteries Order 1977 (LACO 1977). The words “including any chamber” ensure that it is clear that burial in a vault comes within the definition of burial.

¹⁵ For an explanation of the use of the word “modern” in the draft Bills, see para 1.34 of this Report.

¹⁶ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 2.8 to 2.12.

2.45 It should be noted that the use and definition of the words “burial” and “interment” were discussed further in our Report on Burial and Cremation. In that Report, we recommended that, in the law relating to burial, “interment” should include the matters set out in Article 2 of LACO 1977. We also recommended that “interment” should include the interment of any part of the body of a deceased person but that it should not include placing cremated human remains in a columbarium above ground.¹⁷ The language in the definition in clause 9(1) and section 9(1) of the draft Bills will need further consideration when the draft Bill for the Burial and Cremation sub-project is prepared, to ensure consistency.

Not cremation

2.46 In clause 9(1) and section 9(1) of the draft Bills, cremation is defined as the burning of human remains. This mirrors the definition in regulation 2(1) of the Cremation (England and Wales) Regulations 2008,¹⁸ which reflects the language used in section 7 of the Cremation Act 1902.

Not burial at sea

2.47 A licence is required for a burial at sea under sections 65 and 66 of the Marine and Coastal Access Act 2009.¹⁹

2.48 Burials at sea (as currently practiced) are deemed to take place outside England and Wales. Notice of removal of a body from England and Wales must be given to a coroner before a licence for burial at sea can be obtained.²⁰ These burials at sea would not be included in the meaning of “modern funerary method” in the draft Bills, because under clause 1(2) and section 1(2) a funerary method (and therefore a modern funerary method) takes place “in England” or “in Wales”.

2.49 However, the obligation to obtain a marine licence extends to waters that may be in England or Wales.²¹ To avoid any possible overlap between regulation of burial at sea under the Marine and Coastal Access Act 2009 and regulation of new funerary methods under the draft Bills, we have excluded “a funerary method that is a

¹⁷ Burial and Cremation (2026) Law Com No 425 Recommendation 3.

¹⁸ SI 2008 No 2841.

¹⁹ The Marine Management Organisation administers marine licences for English waters and Natural Resources Wales administers marine licences for Welsh waters.

²⁰ Under the Births and Deaths Registration Act 1926, s 4 and the Removal of Bodies Regulations 1954 (SI 1954 No 448), reg 4 a body may not be removed from England and Wales until notice has been given to a coroner and four days have passed. The form of notice is set out in The Removal of Bodies Regulations 1954 (SI 1954 No 448), as amended by The Removal of Bodies (Amendment) Regulations 1971 (SI 1971 No 1354).

²¹ The obligation to obtain a marine licence relevantly applies to objects deposited in the sea within “the UK marine licensing area” (Marine and Coastal Access Act 2009, s 65(1)). The UK marine licensing area includes “the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom”. (Marine and Coastal Access Act 2009, ss 66(4), 322(1) and 42(1)(a)). The definition of sea (and therefore the extent of UK marine licensing area) includes “(a) any area submerged at mean high water spring tide; and the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide” (Marine and Coastal Access Act 2009, ss 322(1) and 42(3)).

licensable marine activity for the purposes of Part 4 of the Marine and Coastal Access Act 2009” from the meaning of “modern funerary method”.

A POWER TO MAKE REGULATIONS

Provisional proposal on a power to make regulations

- 2.50 Acts of Parliament and Acts of Senedd Cymru (both of which constitute primary legislation) may give powers to Ministers, or sometimes others, to make secondary legislation. Statutory instruments (including Welsh statutory instruments) are the most common form of secondary legislation and regulations are a type of statutory instrument.
- 2.51 In the Consultation Paper, we provisionally proposed that new primary legislation about new funerary methods should contain a power for the UK Government and the Welsh Government to make secondary legislation, in the form of regulations, approving the use of individual funerary methods and setting out how they should be carried out.²²
- 2.52 We noted that we are aiming to create a legal framework for new funerary methods that is, as far as possible, future-proof and able to respond to the emergence of new methods. We explained that we thought the best way to do this would be to have a power to make regulations about new funerary methods that is not limited to extending the application of existing legislation. We said that any regulations made under this power would need to define clearly the new funerary methods being regulated.

Consultation responses

Support for the provisional proposal

- 2.53 A very substantial majority of consultees agreed with our provisional proposal.
- 2.54 The most common reason given for support for the provisional proposal was flexibility, which included the ability to regulate effectively methods that emerge in future. The Institute of Cemetery and Crematorium Management (ICCM) said:
- as has been useful in crematoria settings, regulations that can be developed over time to anticipate or deal with change as the deathcare landscape changes would be advantageous.
- 2.55 Durham County Council said that “a flexible regulatory power allows the Government to respond to emerging methods and set appropriate standards for each”. The Cremation Society of Great Britain stated that a power to make regulations “would ensure flexibility for the Government to consider and regulate new funerary methods as they emerge – which in turn provides informed and regulated choice for members of the public”.
- 2.56 Some of those who agreed that there should be a power to regulate individual new funerary methods felt that this would be important for creating safeguards, which a few consultees noted would be important for public confidence. Some consultees said that

²² New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 5.70.

a power to make regulations is important to ensure that what constitutes good practice is clear to any new entrants to the market and that there is appropriate oversight, to prevent actions that could risk damaging the dignity of deceased people. A few consultees said that a power to make regulations would give reassurance for individuals wishing to use new funerary methods.

A duty to make regulations?

- 2.57 Our provisional proposal suggested a power, rather than a duty, to regulate new funerary methods. Fiona Cunningham (academic) said that “given the slow pace of regulation related to death and dying”, we “should seriously consider whether a duty should apply to [new funerary methods] where feasibility and public demand have been sufficiently proven”. She stated that some methods, particularly alkaline hydrolysis, are ready to be used “were it not for the unclear legal status of [new funerary methods] in England and Wales”.
- 2.58 On the same issue, the FBCA said that although it had previously been of the opinion that there should be a duty to make regulations, during the consultation period it decided that a power would be acceptable, leaving “the government of the day to decide if a new method should be regulated rather than mandate they have to as this may not be in the wider public interest”.

Reasons for disagreement with the provisional proposal

- 2.59 Some consultees disagreed with the provisional proposal. A few consultees felt that it would be preferable for provisions about individual new funerary methods to be set out in primary legislation, rather than secondary, because of the level of scrutiny by Parliament. Professor Thomas Glyn Watkin KC (academic) said that if secondary legislation were to be used, he “would expect the instrument containing the subordinate legislation to be subject at the very least to the affirmative resolution procedure in both Houses of Parliament”. He stated that he would prefer an “enhanced affirmative procedure”, with:

a duty to publish the instrument in draft prior to it being formally laid, with an opportunity for members to submit amendments to the draft and with a duty on government to respond in writing to each proposed amendment when laying the final instrument for approval in each house.

- 2.60 Stephen White (academic) agreed that there should be a power to make regulations about individual new funerary methods but, because he did not agree that unregulated new funerary methods should be prohibited (as provisionally proposed in Consultation Question 13), said that regulations made under the power “should not extend to “approving them””.

Discussion and recommendation

- 2.61 We consider that primary legislation should contain a power for the UK Government and the Welsh Government to make regulations approving the use of new funerary methods and setting out how they should be carried out.
- 2.62 With a power to make secondary legislation to regulate individual new funerary methods, the respective Governments will be able to respond as new methods

emerge, without needing to pass primary legislation each time a new method is to be regulated. However, the regulatory regime for each method will still be set out in legislation, ensuring that it is clear. The mode of regulation of new funerary methods will therefore be similar to that of cremation, with some provisions set out in primary legislation but most of the details in secondary.

- 2.63 It is appropriate that the power to make regulations for England should lie with the Secretary of State, and the power to make regulations for Wales with the Welsh Ministers. This is in line with the way that regulation-making powers for the UK Government and the Welsh Government are usually expressed.
- 2.64 We note the points put forward by two consultees about parliamentary scrutiny and acknowledge the importance of ensuring the appropriate form of scrutiny for any regulations made under this power. We consider parliamentary control of the regulations at paragraphs 4.83 to 4.106 of this Report. As we set out there, we recommend that an enhanced procedure, with more parliamentary control, should apply the first time the Secretary of State or the Welsh Ministers regulate an individual new funerary method. This is because, following our recommendation in Chapter 5 that the use of unregulated new funerary methods should be prohibited, the first time an individual method is regulated will be the means by which a funerary method that would otherwise be unlawful will be approved.
- 2.65 We have considered the suggestion that there should be a duty to make regulations where feasibility and public demand have been proven. However, we do not think that this would be appropriate. The Secretary of State and the Welsh Ministers should have a discretion about which methods should be regulated. The regulations will be laid before Parliament or the Senedd for approval. Members of the public and stakeholders will be able to provide views to the respective Governments and the UK Parliament, or the Senedd, in the usual ways. Consultees overwhelmingly agreed that a power to make regulations would provide the necessary flexibility and safeguards for the regulatory system to be effective. In addition, it would be very difficult to devise a clear standard that new funerary methods must meet in order to activate the duty.

Recommendation 3.

- 2.66 We recommend that there should be a power in primary legislation, exercisable by the Secretary of State (for England) or the Welsh Ministers (for Wales), to make regulations approving the use of individual new funerary methods and setting out how they should be carried out.

- 2.67 Clause 2(1) of our draft Bill for England and section 2(1) of the draft Bill for Wales give effect to this recommendation. They give the Secretary of State and the Welsh Ministers the power to make regulations about individual modern funerary methods. We discuss the definition of “modern funerary method” at paragraphs 2.40 to 2.49.
- 2.68 When making regulations under clause 2(1) or section 2(1), the Secretary of State or the Welsh Ministers must specify the funerary method being regulated. This will ensure that each method that is regulated is clearly defined.

2.69 We discuss the scope of the regulatory power further in Chapter 4 of this Report.

LICENSING AND OVERSIGHT

Consultation on licensing

- 2.70 Many states or provinces in the US and Canada have systems of licensing for cremation and often other funeral-related services. When new funerary methods are regulated, they are brought within these licensing systems. Under such systems, licences, or permits, are issued to individual providers of new funerary methods. Generally, providers may not operate without a licence or permit.
- 2.71 It would be possible for a licensing system to be set up for new funerary methods in England and Wales, alongside the power for the respective Governments to make regulations. There is, however, currently no system of licensing for burial or cremation in England or Wales. There is also no licensing system for other funeral-related services. The Independent Inquiry into the issues raised by the David Fuller case (the David Fuller Inquiry) has recommended that the UK Government establish an independent statutory regulatory regime for funeral directors in England, with a licensing scheme.²³ At the time of writing, this recommendation has not been adopted.
- 2.72 In the Consultation Paper, we asked an open question about whether licensing should be part of the detailed regulation of individual new funerary methods in England and Wales. We noted that there are arguments for and against the introduction of a licensing system.²⁴
- 2.73 Arguments for a licensing system include the potential for it to provide appropriate safeguards against the improper or unsafe use of new funerary methods. However, the effectiveness of any safeguards would depend on the specifics of the licences, inspection of facilities, and suitable penalties where licence conditions are not met. Similar safeguards could also potentially be provided by regulations only, without the need for licensing.
- 2.74 Another possible advantage of licensing could be flexibility, as licences could be tailored to individual methods, which would be less time-consuming and onerous than making regulations for each method. Licensing could also provide for variations within each method, with different licences for different variations.
- 2.75 One key argument against a licensing system for new funerary methods is that a distinction would be created between the regulation of burial and cremation on the one hand and new funerary methods on the other. We wanted to understand the possible impact of this, including whether it would deter potential providers of new funerary methods, or would provide greater public confidence in new funerary methods.

²³ Independent Inquiry into the issues raised by the David Fuller case, *Phase 2 Report* (15 July 2025) HC 1092 p 207 <https://assets.publishing.service.gov.uk/media/688258b96a7ea0e1ce1d3653/fuller-inquiry-phase-2-report-hc-1092-web-accessible.pdf>.

²⁴ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 5.71 to 5.84.

2.76 To assist us in evaluating the competing arguments, we invited views from consultees in an open question on whether licensing should be part of the regulation of specific new funerary methods.

Consultation responses

2.77 In response to this question consultees identified a number of reasons for and against licensing. The key themes are set out below.

- (1) *Public confidence.* The most frequently cited reason for supporting licensing was that it would increase public confidence and trust in the provision of new funerary methods. For example, Preston City Council stated that licensing “would strengthen the regulation of the industry and therefore instil public confidence in an otherwise new regime”. However, the National Association of Funeral Directors (NAFD) pointed out that increased confidence in new funerary methods might lead to a reduction in trust in existing methods which are not currently licenced.
- (2) *Safeguards.* Some consultees agreed that licensing could provide safeguards against unacceptable or inappropriate use of new funerary methods. For example, one consultee felt that licensing “would be useful in ensuring that new funerary methods are carried out properly, with proper equipment”.
- (3) *Flexibility.* A few consultees picked up on our suggestion that the flexibility of licensing could provide for variations within individual new funerary methods. Kindly Earth Limited/Resomation Limited said that licensing could allow for “variation within individual new funerary methods as technology is developed” as well as “variation in operating models/operators of a new method”.
- (4) *Consistency with other funerary methods.* Some of the consultees who were opposed to licensing, or presented arguments against it, felt that there should be consistency between the regulation of new funerary methods and that of established methods. For example, the Cremation Society of Great Britain noted that “licensing new funerary methods without a similar licensing scheme for burial and cremation would result in an unequal basis upon which funerary methods are governed”.
- (5) *Regulations should be sufficient.* A few consultees stated explicitly that secondary legislation should be sufficient to provide an effective system of regulation, without the need for licensing. For example, Dr Imogen Jones (academic) said that an “effective regulation scheme ought to render the licensing scheme unnecessary”.
- (6) *Cost and administrative burden.* Some of the consultees who supported some form of licensing, or offered arguments both for and against, noted that it should not be overly costly or burdensome.
- (7) *Licensing as a potential barrier.* Some consultees suggested that licensing could act as a barrier to those seeking to provide new funerary methods, imposing greater burdens on new methods compared to existing ones.

- (8) *An overseeing body.* Stotfold Town Council stated that “there should be a body that oversees licensing so that it is robustly regulated”. Another consultee said that “licences should be issued and administered by either a government department or a regulating body. Local authorities shouldn’t be burdened with this”.
- (9) *Licensing of funeral directors.* A few consultees mentioned the recommendations of the David Fuller Inquiry about the statutory regulation of funeral directors, to include a licensing system,²⁵ and the Scottish Government’s plans for a licensing scheme for funeral directors. Fiona Cunningham (academic) noted a “trend towards licensing in the funeral sector in the UK”. Co-op stated a preference for “a streamlined approach, aligning any licensing of new funerary methods with wider licensing reform for the funeral sector”. The NAFD were “supportive of consideration being given to the merits of harmonising standards across the UK”.
- (10) *Licensing to be an option for the respective Governments.* One consultee, Stephen White (academic), although not necessarily in favour of licensing, suggested that “the legislation should allow, but not require, regulations to be made for licensing both premises and equipment for new funerary methods and their operators”.

Discussion

- 2.78 It is important to ensure that detailed regulation of new funerary methods will, as far as possible, minimise the risks that could arise from the operation of new funerary methods. There is a potential risk that operators might carry out new funerary methods in a way that is unsafe or otherwise unacceptable. For example, a new funerary method may be carried out at an inappropriate temperature. This could have a detrimental impact on the environment, or on public health. Alternatively, an operator might carry out a new funerary method in a way that fails to treat human remains in a dignified manner. If the system of regulation does not provide adequate protection against these risks, in addition to the immediate problems that could arise, members of the public may find it hard to have confidence in new funerary methods and the way they are regulated.
- 2.79 We recommend (at paragraph 2.66) that there should be a power for the Secretary of State and the Welsh Ministers to make secondary legislation to regulate individual new funerary methods. We have considered various ways in which our draft legislation can provide safeguards, or enable safeguards to be put in place, against unsafe or inappropriate operation of new funerary methods. In Chapter 6, we make recommendations about criminal offences. In Chapter 3, we recommend that the Secretary of State and the Welsh Ministers must have regard to certain principles when making regulations about new funerary methods.
- 2.80 Licensing is one possible means of regulating new funerary methods, which is used in other jurisdictions. Licensing could provide a form of oversight of the operation of new

²⁵ Independent Inquiry into the issues raised by the David Fuller case, *Phase 2 Report* (15 July 2025) HC 1092 p 207 <https://assets.publishing.service.gov.uk/media/688258b96a7ea0e1ce1d3653/fuller-inquiry-phase-2-report-hc-1092-web-accessible.pdf>.

funerary methods. However, licensing is not the only way that oversight could be provided. As we set out in the Consultation Paper, there are possible advantages and disadvantages of licensing, and these are not clear-cut.²⁶ Consultees' responses demonstrated this.

Possible advantages of licensing

- 2.81 Some consultees agreed with our suggestion that licensing could provide safeguards, ensuring consistent standards and that new funerary methods are carried out properly. However, we noted in the Consultation Paper that the effectiveness of safeguards would depend on the terms of the licences and the extent to which inspections were carried out.²⁷
- 2.82 In our consultation, we wanted to hear about whether a licensing system might increase public trust in the use of a new funerary method. The most common reason given by consultees who supported licensing was that it would increase public trust and confidence that new funerary methods were being carried out properly. We recognise the importance of enabling the public to trust that new funerary methods are regulated appropriately and therefore that they can be used with confidence. Without this, many of the benefits of a system of regulation for new funerary methods, including increased choice, could be lost.
- 2.83 We noted in the Consultation Paper that licensing could provide flexibility in the regulation of new funerary methods, as licences could be tailored to individual methods. Licensing could also provide for variations within each method, with different licences for different variations.²⁸ A few consultees referred to this as an advantage of licensing. We consider it to be the key advantage. However, it would be possible for variations within a method to be covered in regulations. For example, one set of regulations could be made for an individual method, with a schedule setting out the acceptable technical specifications for different forms of the method.

Possible disadvantages of licensing

- 2.84 We thought that the distinction between a licensing system for new funerary methods and the absence of such a system for burial or cremation could deter potential providers and we wanted to hear views on this. Some consultees were opposed to licensing due to the lack of consistency between the regulation of new funerary methods and established methods. This could make the system of regulation of funerary methods difficult for operators. This distinction may also be difficult to understand for those making choices about funerary methods.
- 2.85 In addition, we can see that licensing could be a barrier to some entrants, because they may be discouraged by the different (and potentially more costly and burdensome) regime for new funerary methods. We note that even if the recommendation of the David Fuller Inquiry that funeral directors should be licensed is

²⁶ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 5.71 to 5.81.

²⁷ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 5.74.

²⁸ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 5.73.

taken forward,²⁹ there is no prospect of a licensing system for burial or cremation, and we did not consult on this in our Consultation Paper on Burial and Cremation.³⁰

- 2.86 Furthermore, the lack of consistency that would be created between the regulation of new funerary methods and that of burial and cremation could diminish public trust in new funerary methods (and possibly even in established funerary methods). This distinction could give the impression that new funerary methods are dramatically different in nature from existing methods and potentially less legitimate. The difference would also seem even more strange as new funerary methods became more established. We consider that public confidence in the regulation of funerary methods should depend on the substance of the system of rules, not the form.
- 2.87 In the Consultation Paper, we set out some issues that would need to be considered when setting up a licensing system. One issue was whether an application for a licence would attract a fee.³¹ Some consultees raised concerns about the potential costs of licences being passed on to bereaved people. If there were no fee for a licence, the cost would effectively be absorbed by the public sector. If there were a fee, it is possible that this cost would be passed on. Depending on the amount, this may deter people from using new funerary methods. It may also be a barrier to entry for providers, which would reduce provision and could lead to less innovation in the sector.
- 2.88 There are some other potential issues with setting up a licensing system. It would be possible to give the UK Government and the Welsh Government a power to make regulations about licensing. The respective Governments could then decide whether licensing would be useful for a particular method and design an appropriate system. However, that would mean that all decisions about licensing would be left to secondary legislation, without the same level of democratic scrutiny that is given to primary legislation.
- 2.89 Additionally, in the absence of an existing body, or organisation, that would be an obvious fit for administering licences, those making regulations may need the power to create one. This would be controversial. In its 16th Report of 2017-19, the House of Lords Select Committee on the Constitution stated that the establishment of bodies in secondary legislation is “constitutionally unacceptable”.³² In its response, the UK Government agreed that “the cases where it is justifiable to use powers... to establish public bodies are likely to be few and far between”. It also said that “these kinds of powers must be approached with caution and the rationale for taking them must be

²⁹ Independent Inquiry into the issues raised by the David Fuller case, *Phase 2 Report* (15 July 2025) HC 1092 p 207 <https://assets.publishing.service.gov.uk/media/688258b96a7ea0e1ce1d3653/fuller-inquiry-phase-2-report-hc-1092-web-accessible.pdf>.

³⁰ Burial and Cremation (2026) Law Com No 425.

³¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 5.82.

³² House of Lords Select Committee on the Constitution, *The Legislative Process: The Delegation of Powers* (16th Report of 2017-19, 20 November 2018) HL 225 para 50 <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/225.pdf>.

explained with particular care to Parliament’.³³ If a licensing body was authorised to create rules, this would also be controversial.³⁴ It would be even more problematic if the body had been created by secondary legislation.

Regulations could provide other means of oversight

- 2.90 We noted in the Consultation Paper that whether licensing would provide for more stringent regulation, with more effective safeguards, than regulations alone would depend on the content of regulations.³⁵ This was reflected in consultees’ views. We will now consider this in more detail.
- 2.91 Some consultees felt that licensing would provide additional safeguards, whereas others suggested that robust regulations should be sufficient to ensure that new funerary methods are carried out properly. If there was a requirement for operators to obtain a licence, and if the licence both contained detailed terms and could be revoked if an operator breached those terms, this could give effective oversight of those carrying out new funerary methods. However, it would be possible for a similar level of oversight to be given through regulations, for example by detailed inspection and enforcement provisions.
- 2.92 In a licensing system, a person would usually have to apply for a licence to operate a new funerary methods facility. The level of information that they would need to provide could vary, depending on the system. However, without licensing, it would still be possible to require an application before a facility is opened. To open a crematorium, the person intending to open it must give one month’s notice to the Secretary of State.³⁶ In addition, the Cremation Act 1952 provides that, where a crematorium has been established since the commencement of that Act, cremations cannot take place until the crematorium has been certified to the Secretary of State as complete and properly equipped.³⁷ It would be possible to have a more comprehensive application system for new funerary methods.
- 2.93 Licensing could include some form of regular checks on providers. However, this is not guaranteed. In addition, a system of inspections could be set up regardless of whether licences are required. We suggested precisely such a system in our Consultation Paper, where we said that we thought that detailed regulation of new funerary methods would need to make provision about inspections. We also said that more comprehensive provision may be needed than currently exists for burial and

³³ Government Response to the Lords Constitution Committee Report, *The Legislative Process: The Delegation of Powers* (20 January 2019) para 50 <https://www.parliament.uk/globalassets/documents/lords-committees/constitution/Correswithministers/250119-Government-response-to-Leg-Process-Report.pdf>.

³⁴ See also House of Lords Delegated Powers and Regulatory Reform Committee, *Democracy Denied? The urgent need to rebalance power between Parliament and the Executive* (12th Report of Session 2021-22, 24 November 2021) HL 106 para 107 <https://committees.parliament.uk/publications/7960/documents/211660/default/>.

³⁵ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 5.75.

³⁶ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 3.

³⁷ Cremation Act 1952, s1(1).

cremation, as the use of new technology and new processes may necessitate closer scrutiny, at least while new methods are emerging and developing.³⁸

2.94 An effective system of oversight of new funerary methods would need to deal with what happens if things go wrong. In Chapter 6 of this Report, we make recommendations about the creation of criminal offences in relation to regulated and non-regulated new funerary methods. In response to Consultation Question 8, a few consultees suggested that operators who are convicted of a specific offence should be banned from future operation of new funerary methods, or all funerary methods. If there was to be a system of licensing, this could be dealt with by revocation and refusal of licences. However, it would also be possible to make provision for this in regulations, without licensing. We noted in our Consultation Paper that we thought detailed regulation would need to cover the process of opening a facility and who may do this.³⁹ We also said that provision could be made for the operation of facilities.⁴⁰ Regulations covering either the opening or operation of facilities could potentially be used to set out the circumstances in which a person should be permitted to operate a new funerary method. This could include provisions preventing a person who had been convicted of a relevant criminal offence from operation, if the Secretary of State or the Welsh Ministers thought this was appropriate. We discuss this further in Chapter 4.

Conclusion

2.95 There are several arguments against a licensing system, including the important point that disparity would be created between the regulation of new and established methods. It would be possible to make provision for a similar level of oversight, to ensure sufficient safeguards and public confidence, without the confusion that could arise from having a licensing system solely for new funerary methods. We therefore do not consider that there is a clear rationale for setting out a licensing system for new funerary methods in primary legislation.

2.96 Giving a power to the UK Government and the Welsh Government to create a system of licensing, without a clear conclusion that licensing is the best way to regulate new funerary methods, seems speculative and would be difficult to justify given the potential controversies we have explained above. We therefore do not make any recommendations about a licensing system.

2.97 If future developments indicate that a licensing system is necessary for new funerary methods it will, of course, be open to the Secretary of State or the Welsh Ministers to introduce, and Parliament or the Senedd to enact, primary legislation setting up such a system, including the creation of a new body to administer licences.

2.98 We identified (at paragraphs 2.90 to 2.94 above) various elements of oversight that could be included in regulations, without the need for licensing. For example, provisions about the application process for opening a facility can be made in

³⁸ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.98. For details of the inspection of burial grounds and crematoria, see paras 6.95 to 6.97 of the Consultation Paper.

³⁹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.85.

⁴⁰ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.91.

regulations. One of the key elements of oversight is inspections. We consider that this is so important that we make specific recommendations about an inspection regime. This is covered at paragraphs 4.63 to 4.67. We also want to ensure that the Secretary of State and the Welsh Ministers will have the power to make regulations setting out the circumstances in which a person may be prohibited from carrying out a specified new funerary method, or all new funerary methods, and about revocation of any authorisations. We address this at paragraphs 4.68 and 4.77.

Chapter 3: Principles underpinning the regulation of new funerary methods

INTRODUCTION

- 3.1 In our Consultation Paper, we set out three principles that we considered already underpinned the regulation of established funerary methods. These are: protection of the environment, protection of public health and public safety, and preservation of human dignity.
- 3.2 We asked an open question about whether the UK Government and the Welsh Government should be required to have regard to these principles when making any regulations about individual new funerary methods. We also invited consultees' views on any further principles which the respective Governments should be required to take into account.¹
- 3.3 In this chapter, we consider responses to these questions and explore the principles further. We recommend that the Secretary of State and the Welsh Ministers must have regard to the importance of the following when regulating individual new funerary methods: (1) protecting the environment; (2) protecting the health and safety of the public; and (3) treating human remains with dignity.

CONSULTATION ON PRINCIPLES UNDERPINNING THE REGULATION OF NEW FUNERARY METHODS

- 3.4 There is clear legislative provision for the protection of the environment and of public health and public safety in relation to established funerary methods. For example, the Environmental Permitting (England and Wales) Regulations 2016² set out a permitting regime that applies in different ways to burial and cremation. The Health and Safety at Work etc. Act 1974 and associated guidance published by the Health and Safety Executive apply to workplaces where burial or cremation is carried out. In the Consultation Paper, we suggested that existing legislation could be extended to new funerary methods that are regulated in future, where appropriate.³
- 3.5 Human dignity is also a very important concept in relation to established funerary methods. Although legislation about burial and cremation does not explicitly mention the preservation of human dignity, a significant aim of the system of regulation and burial and cremation is to uphold this principle. For example, burial provisions specifying depth of burial and restrictions on exhumation help to ensure that human remains are treated with dignity.
- 3.6 We explained that we saw no reason to believe that the three principles we put forward (protection of the environment, protection of public health and public safety,

¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 6.51 to 6.52.

² SI 2016 No 1154.

³ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.38.

and preservation of human dignity) would not be taken into account in any future regulation of new funerary methods. However, new funerary methods will be novel, and the public may not have much knowledge about them. We suggested that there could be a benefit of a requirement in primary legislation for the UK Government and the Welsh Government to have regard to these principles when regulating new funerary methods. It may give members of the public more confidence that regulations are being made in an appropriate way. It could also provide a potential route for redress if the principles were clearly not taken into account.

- 3.7 We therefore asked whether the respective Governments should be required to have regard to these principles when making regulations about individual new funerary methods. We also invited consultees' views on any further principles to which the respective Governments should have regard.⁴

CONSULTATION RESPONSES

Support for principles being set out in primary legislation

- 3.8 A substantial majority of consultees said that primary legislation should require the respective Governments to have regard to the three principles when making secondary legislation about new funerary methods. Some consultees thought that only one or two of the three principles should be included.
- 3.9 Only one consultee said explicitly that primary legislation should not require the respective Governments to have regard to any of the principles. This was on the basis that it was "implied with any burial already".

General comments on principles

- 3.10 Fiona Cunningham (academic), while noting that more thought should be given to human dignity, said that the Consultation Paper:
- makes a compelling argument for the significance of these three principles in existing funerary legislation and the public confidence that could be engendered by specifically requiring their consideration.
- 3.11 Kindly Earth Limited/Resomation Limited noted that "there may be instances where the principles conflict". They gave the example of the COVID-19 pandemic, where "usual standards of care of the deceased had to be altered in order to protect public health. Guidance should be provided to account for scenarios such as this".
- 3.12 The Ecclesiastical Law Society queried whether "have regard" is "a strong enough requirement". It said: "perhaps 'must follow' or words to that effect would be better."

Protection of the environment

- 3.13 A substantial majority of consultees were of the view that primary legislation should require the respective Governments to have regard to protection of the environment when regulating individual new funerary methods. A few consultees stated that this is the only principle that should be included.

⁴ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 6.51 to 6.52.

- 3.14 Blackpool Council said that “requiring a baseline of improved environmental performance would not restrict innovation or limit choice”. The Cremation Society of Great Britain said that it is important that protection of the environment is:

tested by independent research and that the environmental footprint is measured on the entirety of any given process/new funerary method, and not simply the emissions which represent only one element of the process.

- 3.15 Thames Water Utilities Limited saw a need for “a statutory obligation on government in primary legislation to consider the environmental aspects of this potential policy change in any secondary legislation”. It also made some comments about the “acceptance of resomation waste liquids”. As we noted in the Consultation Paper, if the resulting liquid from a new funerary method such as alkaline hydrolysis were to be discharged into a public sewer, the occupier of the trade premises would need to obtain consent from,⁵ or enter into an agreement with,⁶ the water company for that area. Issues arising from individual methods would be for the relevant Government to consider if it chooses to regulate such methods in future. If consent needs to be obtained from utility companies, as in the example above, the utility companies would also need to carry out checks and make decisions.

Protection of public health and public safety

- 3.16 A substantial majority of consultees thought that protection of public health and public safety should be included in legislation as one of the principles.
- 3.17 One consultee mentioned “checking the safety of water post alkaline hydrolysis” as an example of the ways in which public health and public safety may be relevant to new funerary methods.

Preservation of human dignity

- 3.18 A substantial majority of consultees thought that preservation of human dignity should be included as one of the principles which the respective Governments must take into account when making regulations. Some emphasised the importance of human dignity for those working in the sector, for example, funeral directors or those offering pastoral support to bereaved people.
- 3.19 However, some consultees said that preservation of human dignity should not be one of the principles. Some of the consultees who thought that this should be one of the principles also expressed reservations about referring to human dignity in legislation.

Dignity as subjective and context-specific

- 3.20 Some consultees noted that the principle of preservation of human dignity may differ across contexts, noting that it may mean different things in different cultures and that the meaning could change over time. Dr Imogen Jones (academic) said that “there is real danger in making assumptions regarding what dignity is or how it is enacted”.

⁵ Water Industry Act 1991, s 118(1).

⁶ Water Industry Act 1991, s 129.

Clarification needed

- 3.21 Some consultees said that there should be more clarity on the meaning of this principle.
- 3.22 Fiona Cunningham (academic) said that “there must be greater clarity on the precise meaning of ‘human dignity’” and that:
- leaving this principle so vague and open-ended for lawmakers and potential opponents seriously risks an unfair imposition of relative, religious or culturally-specific norms on dying and funeral-planning people.
- 3.23 Giving examples from the NAFD’s Funeral Director Code and the FBCA Cremation Code, she stated that the various indicative behaviours in these codes reflect a “limited and practical definition of dignity”.⁷ She suggested that dignity is “an essential principle in any framework given to lawmakers, but must be clearly limited to issues of security, privacy and cleanliness in order to prevent misuse”.
- 3.24 The Ecclesiastical Law Society suggested that “the principle that human remains should always be treated with dignity and respect” may be clearer than “human dignity”, noting that this is expressed in the Advisory Panel on the Archaeology of Burials in England’s publication *Guidance for Best Practice for the treatment of Human Remains Excavated from Christian Burial Grounds in England*.⁸

Potential for litigation

- 3.25 Some consultees raised concerns that the subjectivity of this principle might lead to legal challenges on the basis that specific methods do not meet with the requirements of dignity from the perspective of particular groups or religions, or are otherwise disliked. Some thought that this could lead to delays in introducing new funerary methods.

Other suggestions

- 3.26 Kindly Earth Limited/Resomation Limited suggested that “security” may be needed as an additional principle, noting the contents of Phase 2 Report of the David Fuller Inquiry⁹ which they said:

refers consistently to the security (and dignity) of the deceased in all settings after death and prior to the funeral, in addition to the need for safeguarding policies and procedures to support this.

⁷ Dignity is explicitly mentioned in codes of practice published by these organisations. See NAFD, *UK Funeral Director Code – V3. 10/25 (2025)* <https://www.nafd.org.uk/funeral-director-code>; and FBCA, *Code of cremation practice* (2019) <https://www.fbca.org.uk/code-of-cremation-practice/>.

⁸ Advisory Panel on the Archaeology of Burials in England, *Guidance for Best Practice for the treatment of Human Remains Excavated from Christian Burial Grounds in England* (2nd edition, 2017) https://apabe.org.uk/sites/apabe.org.uk/files/2024-08/APABE_Excavated_Remains_Best_Practice.pdf.

⁹ Independent Inquiry into the issues raised by the David Fuller case, *Phase 2 Report* (15 July 2025) HC 1092 p 207 <https://assets.publishing.service.gov.uk/media/688258b96a7ea0e1ce1d3653/fuller-inquiry-phase-2-report-hc-1092-web-accessible.pdf>.

- 3.27 Wealden Crematorium (owned by Wealden District Council) also suggested accountability of operators of new funerary methods, whether through registration, licensing or “membership of a guiding authority/organisation which sets out guiding principles similar to the ICCM and FBCA”.
- 3.28 One consultee mentioned “respect for religious or cultural practices” and Central Co-op suggested that “cultural and religious sensitivity” should be a guiding principle. The Continuous Improvement Forum for Bereavement Services in South East Wales suggested “consultation with faith groups”. The Society of Local Council Clerks suggested “respect for doctrines and beliefs of Churches and established secular bodies”. Another consultee referred to principles relating to “treatment of the deceased” in Islam.
- 3.29 Other suggestions included transparency, affordability and minimising stress for bereaved people.

DISCUSSION

- 3.30 There was strong support for the inclusion of the three suggested principles in primary legislation. Consultation responses indicate that a provision requiring the respective Governments to consider these principles will allow people to feel more confident that new funerary methods are being regulated appropriately. However, some consultees raised concerns about the principle of preservation of human dignity.

Protection of the environment and protection of public health and public safety

- 3.31 We explained in the Consultation Paper that environmental, health and safety matters relating to new funerary methods can be regulated as for burial and cremation.¹⁰ The respective Governments would always be able to take these into account when regulating individual new funerary methods, just as they appear to have done when regulating burial and cremation. They could also update secondary legislation or guidance that is specifically about the environment, public health or public safety, as needed. However, a substantial majority of consultees were in favour of primary legislation specifying that those making regulations must have regard to the protection of the environment, and of public health and public safety, when regulating individual new funerary methods.
- 3.32 In our Consultation Paper, we said that we anticipated that people might base choices about new funerary methods on environmental reasons, including the relative sustainability of various methods.¹¹ Some responses to this question, and other questions in the Consultation Paper, suggested that this will be the case. A few consultees suggested that new funerary methods should be shown to be more sustainable than established methods before they can be regulated. As set out in the Consultation Paper, we said that if new funerary methods were required to be more sustainable than established funerary methods this could limit the introduction of new funerary methods, particularly given the challenges associated with obtaining clear evidence. However, requiring the Secretary of State and the Welsh Ministers to consider the protection of the environment would ensure that they take environmental

¹⁰ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.38.

¹¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.28.

issues into account when regulating individual new funerary methods (to the extent this would not already be required by other legislation).

- 3.33 No significant concerns were raised about the inclusion of protection of public health and public safety as one of the principles.

Dignity

- 3.34 Although a substantial majority of consultees thought that the preservation of human dignity should be set out as a principle in the draft legislation, some consultees raised concerns about this. Most of these concerns stemmed from the context-specific nature of the concept of human dignity. Some consultees suggested that the meaning of human dignity should be clarified in the draft legislation. Others were of the view that it should not be included.
- 3.35 Human dignity is a very important concept in relation to new funerary methods. We acknowledge the concerns raised by some consultees about the context-specific or vague nature of this concept. We agree that human dignity is open to different interpretations, in different contexts.
- 3.36 We note that the legislation will not compel people to use any particular funerary method; they will have a choice. When regulating a specific method, the relevant Government would therefore not need to ensure that it meets all possible conceptions of human dignity. If, for example, it was clear that one particular faith group or religion was opposed to that method on grounds that it was undignified according to their beliefs, this would not prohibit regulation of that method. If the method were regulated, it would be open to members of that faith or religion to choose to use a different funerary method. They could make this decision for any reason, including that the method is not in line with their conception of human dignity. The method would still be available for those who would like to use it. This is no different from the current position, where people who consider either burial or cremation to be undignified, for religious or other reasons, can choose to avoid that method.
- 3.37 However, in our view it would be useful to be clearer about the meaning of this principle in the context of new funerary methods.
- 3.38 In the Consultation Paper, we noted that a significant aim of the system of regulation of burial and cremation is to ensure that human remains are treated in a dignified manner. We gave examples of burial provisions about depth of burial, restrictions on exhumation and grave reuse.¹² As mentioned at paragraph 3.23 above, dignity is also relevant to codes set out by industry bodies such as the NAFD and FBCA.¹³
- 3.39 We have also considered how the guidance from the Human Tissue Authority (HTA) deals with the question of dignity. The HTA regulates what can be done with human tissue and organs, in relation both to living and deceased people. It issues statutory

¹² New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.45.

¹³ The NAFD is a trade association representing providers of funerary methods. Its constitution now provides that this includes providers of burial, cremation and new funerary methods. The FBCA is a representative body for UK funeral directors. Although membership of these organisations is not mandatory, the content of the codes of such organisations reflects industry standards and practice.

codes of practice giving guidance to, and laying down standards for, those carrying out the activities that it regulates.¹⁴ Under the Human Tissue Act 2004, consent is required for the storage or use of the body of a deceased person for purposes and activities under the Act.¹⁵ The Act contains provisions about the appropriate consent in specific circumstances. For example, consent in writing is required for public display of a body after death.¹⁶ The HTA's remit covers activities such as research on, and public display of, bodies of deceased people, where questions of dignity may be somewhat similar to those that are relevant to funerary methods. Code A of the HTA's Code of Practice states that "ensuring suitable practices where licensable activities are concerned includes ... ensuring that the dignity of deceased people is maintained at all times".¹⁷ Code A also contains a reference to the intention in the Human Tissue Act 2004 that "the dignity of the person, whether living or deceased, is maintained".¹⁸

- 3.40 The focus on the maintenance of dignity of specific deceased people whose bodies are being stored or used under the HTA provisions, and where consent is required, is slightly different from the considerations that the Secretary of State or the Welsh Ministers would need to take into account when regulating new funerary methods.
- 3.41 However, overall, these examples of industry standards and HTA codes, as well as the burial provisions about depth of burial and restrictions on exhumation mentioned above, reflect a desire to ensure that human remains should be treated with dignity. This is the core of the conception of human dignity in the specific context of the regulation of funerary methods. It also shows that this is something that is already referred to and included in existing codes (both statutory and non-statutory).
- 3.42 We consider that the importance of treating human remains with dignity should be set out in the draft Bills, as one of the principles to which the Secretary of State and the Welsh Ministers must have regard when regulating new funerary methods.
- 3.43 Focusing on this core element will provide more clarity than referring, in the draft legislation, to the preservation of human dignity. It should also alleviate some of the concerns of consultees. Although the provision will only require that the principles must be taken into account when regulations are made (and not that, substantively, the regulations must be in line with the principles) nevertheless consultees raised concerns as to how this can be achieved when there may be different conceptions of human dignity. A focus, in the wording of the primary legislation, on the dignified treatment of human remains will be clearer than a reference to the preservation of human dignity.

¹⁴ Human Tissue Act 2004, s 26(1).

¹⁵ See the Human Tissue Act, ss 1(1), 1(2) and 1(3)(a) and Sch 1.

¹⁶ Human Tissue Act, ss 2(4) and 3(3).

¹⁷ Human Tissue Authority, *Code of Practice A: Guiding Principles and the Fundamental Principle of Consent* (30 June 2023) para 75 <https://www.hta.gov.uk/sites/default/files/2023-06/Code%20A%20-%20Guiding%20principles%20and%20the%20fundamental%20principle%20of%20consent.pdf>.

¹⁸ Human Tissue Authority, *Code of Practice A: Guiding Principles and the Fundamental Principle of Consent* (30 June 2023) para 144 <https://www.hta.gov.uk/sites/default/files/2023-06/Code%20A%20-%20Guiding%20principles%20and%20the%20fundamental%20principle%20of%20consent.pdf>.

3.44 As we note at paragraphs 3.50 to 3.52 below, a provision that places a requirement on the respective Governments when making secondary legislation may become the subject of extensive litigation. However, a more precise articulation of the principle, making clear that the treatment of human remains is key, may narrow the arguments that could be made about a perceived lack of dignity inherent in a particular method. It will also help the respective Governments to focus on the questions they will need to ask in order to take account of how remains may be treated in a dignified manner in the context of a specific method.

Conclusion on the three principles

3.45 We recommend that the Secretary of State and the Welsh Ministers must have regard to the importance of the following when regulating individual new funerary methods: (1) protecting the environment; (2) protecting public health and public safety; and (3) treating human remains with dignity. This will focus the regulation maker's mind on these important principles and provide a potential route to redress if they are not taken into account. Additionally, it will help the public, and potential operators, to have confidence that new funerary methods are being considered appropriately.

3.46 The requirement will apply both when an individual new funerary method is being regulated for the first time and when further regulations are being made about a new funerary method that is already regulated.

3.47 The provision will also make clear the importance of these principles, which underpin current regulation of established methods. We do not know which methods may be regulated in future. Setting out these key principles in primary legislation will ensure that there is a clear understanding of the value placed on them by society and lawmakers, which will inform the making of regulations. It will modernise the law to reflect current values and principles that will play a role in the regulation of funerary methods.

3.48 Although there will be a duty for the respective Governments to take the three specified principles in account, as we noted in the Consultation Paper this will, of course, not preclude consideration of other factors.¹⁹ The respective Governments will be required, as a matter of public law, to take all relevant factors into account when making decisions about the content of the secondary legislation. This will involve weighing the various factors in the round, including the three principles.

Requirement to "have regard to"

3.49 The Ecclesiastical Law Society suggested that "must follow", or similar wording, might be better than "have regard to". We have concluded that "have regard to" is appropriate. As noted by Kindly Earth Limited/Resomation Limited, consideration of each principle may lead in different directions. The relative weight that should be given to each principle is a political question that the respective Governments should be free to determine. The phrase "have regard to" will enable the respective Governments to consider different meanings of the principles and how they may interact and then make a decision about how far to apply these to the content of the regulations.

¹⁹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.50.

- 3.50 As mentioned at paragraph 3.25, a few consultees suggested that referring to dignity in the draft legislation may lead to an increase in litigation, because it could provide a route to a legal challenge by those who object to a specific new funerary method (on the basis that the method does not meet with their personal, or religious, requirements).
- 3.51 A provision that places a requirement on the respective Governments when making secondary legislation does have the potential to become the subject of litigation, in this case on the basis that the relevant Government has not had regard to the three principles. We are recommending the requirement in this case because we think it is important. If the relevant Government failed to fulfil the requirement, there should be a route for challenge.
- 3.52 To demonstrate that it had fulfilled the requirement to “have regard to” the principles, the relevant Government would need to show that the principles had been considered. We anticipate that this evidence could take the form of ministerial submissions, notes of meetings, or correspondence. The relevant Government would not need to show that it had reached a substantive outcome that is in line with the principles.

Other suggestions from consultees

- 3.53 In response to our question about any further principles to which the respective Governments should have regard, consultees made various suggestions. As set out at paragraphs 3.26 to 3.29 above, these included security, accountability, transparency, affordability, minimising stress for the bereaved, religious and cultural practices.
- 3.54 As we explain earlier, the three principles which we discuss above already underpin the regulation of burial and cremation, and we think that they should underpin the regulation of new funerary methods. The other matters suggested by consultees may also be relevant to the regulation of new funerary methods. However, we do not consider that they have the same central importance in relation to funerary methods. Therefore, it would not be appropriate to include them alongside the three principles in the draft Bills.
- 3.55 For example, transparency about processes and outcomes – including environmental impact – by operators of funerary methods is important. It would be open to the Secretary of State or the Welsh Ministers to make regulations about information that must be provided to the public about new funerary methods. It would also be open to the Secretary of State or the Welsh Ministers to consider the cost of a new funerary method when regulating that method. Likewise, they may well consider the impact of regulations on bereaved people. However, these do not amount to overarching principles that the regulation-maker should be required to consider in all cases, as with the three principles we identified.
- 3.56 Security, which was also put forward as an additional consideration, seems to be (at least in part) closely connected with the principle of treating human remains with dignity. The consultee who raised this also mentioned the Phase 2 Report of the David Fuller Inquiry. This report made various recommendations aimed at protecting the security and dignity of the deceased, including the establishment of a statutory regime for regulation of funeral directors, an independent statutory regulatory regime for “those who store and care for deceased people” and mandatory standards for

direct cremation businesses.²⁰ It will be for the UK Government to respond to these. As set out above, we recommend that treating human remains with dignity should be included as one of the principles to which the respective Governments must have regard when making regulations about new funerary methods. This will ensure that where issues of security fall within the concept of dignified treatment of human remains and are relevant to the regulation of individual methods, they are considered. In relation to this, it is important that the power to make regulations is broad enough to encompass provisions about maintenance and safety. In Chapter 6 of this Report, we make recommendations about criminal offences that would apply to operators of regulated and unregulated new funerary methods. We also make recommendations about monitoring and enforcement of compliance at paragraphs 4.63 to 4.68.

- 3.57 Some consultees mentioned religious and cultural practices. Religion or belief is a protected characteristic under the Equality Act 2010. One of the main aims of introducing a framework for new funerary methods is to enable people to have more choice. None of our recommendations will have the effect of requiring anyone to use a particular method. Different faiths already have contrasting views on burial and cremation. If other funerary methods are made available in future, this will not have an impact on religious practices.²¹ We therefore do not consider that it is necessary for our draft legislation to require the respective Governments to consider cultural or religious practices when regulating new funerary methods. We say more about the equality-related impacts of our work in our impact assessment.

Conclusion on other suggestions

- 3.58 We anticipate that many of the additional matters that have been suggested will be relevant when regulations are made. Some of them fall within the three principles that will be set out in the legislation. Beyond this, as mentioned above, the respective Governments will need to take all relevant factors into account. However, we do not think that it is necessary or appropriate to include reference to the other suggestions in draft legislation.

²⁰ Independent Inquiry into the issues raised by the David Fuller case, *Phase 2 Report* (15 July 2025) HC 1092 <https://assets.publishing.service.gov.uk/media/688258b96a7ea0e1ce1d3653/fuller-inquiry-phase-2-report-hc-1092-web-accessible.pdf>. A direct cremation is a cremation that takes place without a concurrent funeral service.

²¹ We have sought to ensure that there will be no inadvertent impact on religious practices. In Chapter 2, we rejected the option of including new funerary methods in the definition of cremation, noting that it could lead to the possibility that methods other than cremation could be used when they may not have been wanted and may be contrary to religious requirements.

Recommendation 4.

3.59 We recommend that, when regulating individual new funerary methods, the Secretary of State and the Welsh Ministers must have regard to the importance of the following principles.

- (1) Protecting the environment.
- (2) Protecting public health and public safety.
- (3) Treating human remains with dignity.

3.60 This recommendation is given effect by clause 1 and section 1 of the draft Bills. These provide that in exercising any functions under the draft Bills, which will include making regulations, the Secretary of State and the Welsh Ministers must have regard to the importance of the three principles set out in the recommendation.

Chapter 4: The regulatory power

INTRODUCTION

- 4.1 In Chapter 2, we recommend that the Secretary of State and the Welsh Ministers should have a power to make regulations approving the use of specific new funerary methods and setting out how they should be carried out. In this chapter, we discuss this power in more detail.
- 4.2 Registration of burials and cremations is an important part of the system for keeping records about deaths. There is a strong rationale for ensuring that each use of a new funerary method must be registered in broadly the same way as a burial or cremation is currently. In our Consultation Paper, we provisionally proposed that primary legislation should require that each use of a new funerary method on the body of a deceased person must be registered. We also provisionally proposed that primary legislation should stipulate that regulations made about individual new funerary methods must set out how and by whom this registration must be carried out.¹
- 4.3 In this chapter we now recommend that the requirement for registration, as well as the details of how and by whom this must be done, must be set out in any regulations about individual new funerary methods. This will mirror the position for cremation.
- 4.4 In our Consultation Paper, we also made a provisional proposal about the breadth of the power to regulate new funerary methods, to help inform our drafting of the power to ensure that it will enable regulations to be made about all relevant matters. We discussed various matters that may need to be regulated and asked whether consultees agreed. We also asked whether consultees were aware of any other matters that may need regulation.² In this chapter, we consider responses to these questions about the breadth of the power and explain whether and how we make provision in the draft Bills for the matters that were raised.
- 4.5 We also consider the appropriate procedure for regulations made about individual new funerary methods to be approved by Parliament or the Senedd. We conclude that an enhanced procedure, with a high level of parliamentary scrutiny, should apply the first time a new funerary method is regulated.
- 4.6 We cover some elements of the power to make regulations in other chapters. For example, we discuss a power to make provision for trials in Chapter 5 and a power to create criminal offences relating to regulated new funerary methods in Chapter 6.

¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.81.

² New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 6.82 to 6.120.

REGISTRATION OF USE OF NEW FUNERARY METHODS

Background

- 4.7 All burials and cremations must be registered. This is separate from the registration of deaths, although the two systems interact.³ We discuss amendments to legislation about death registration, relating to new funerary methods, in Chapter 7.
- 4.8 The requirements to register a burial are set out in various pieces of legislation and differ depending on where it takes place, whether in a local authority cemetery, Church of England burial ground, private cemetery, or other burial ground. It is a criminal offence knowingly and willingly to make a false statement or entry in a burial register,⁴ and knowingly and willingly to destroy, injure, forge or falsify a burial register.⁵ In our Report on Burial and Cremation, we recommended that a consistent system of burial registration should be introduced.⁶
- 4.9 As set out in the Cremation (England and Wales) Regulations 2008,⁷ cremations must be registered by a registrar appointed by the cremation authority.⁸ The registrar keeps a permanent register of all cremations that take place at a crematorium, including specified information such as details of the deceased person.⁹ It is a criminal offence wilfully to make a false statement with a view to procuring a cremation.¹⁰ It is also a criminal offence to breach the 2008 Regulations.¹¹
- 4.10 A comprehensive system of registration of burials and cremations is very important. It ensures a record is kept which may be of value in relation to the investigation of crime. It may also be of practical and emotional significance to those tracing their family history.
- 4.11 If this was not extended to new funerary methods, it would undermine the comprehensive nature of the current system of registration and create an unnecessary and unhelpful divergence in the law. There is therefore a strong rationale for ensuring that each use of a new funerary method must be registered in broadly the same way as a burial or cremation.

³ Under the Births and Deaths Registration Act 1953, s 15, every death in England and Wales must be registered by the registrar of births and deaths for the sub-district in which the death occurred.

⁴ Forgery Act 1861, s 37; and Perjury Act 1911, s 5(b).

⁵ Forgery Act 1861, s 36.

⁶ Burial and Cremation (2026) Law Com No 425 para 6.87.

⁷ SI 2008 No 2841.

⁸ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 32(1). Under reg 2(1), a cremation authority is any burial authority or any person who has opened a crematorium.

⁹ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 33(1).

¹⁰ Cremation Act 1902, s 8(2).

¹¹ Cremation Act 1902, s 8(1).

Provisional proposal on registration

- 4.12 In our Consultation Paper, we provisionally proposed that the requirement for registration should be set out in primary legislation, to ensure that it is clear and accessible.¹²
- 4.13 However, we thought that the details of how and by whom the registration must be carried out should be set out in secondary legislation at a later stage. It might be difficult to identify who must carry out the registration before detailed regulation of individual methods has been set out, because the people involved with use of the method will not have been identified. For example, as set out at paragraph 4.9 above, the duty to register a cremation lies with the registrar appointed by the cremation authority.¹³ The cremation authority is a burial authority or other person who has opened a crematorium.¹⁴ Regulations about individual new funerary methods may similarly provide that a person who has opened a facility for that method must appoint a registrar. However, it would be open to the Secretary of State or the Welsh Ministers to make different provisions for the authorisation and organisation of facilities for individual new funerary methods. The requirements for registration may also vary between methods. For example, regulation 33(2) of the Cremation (England and Wales) Regulations 2008¹⁵ sets out the particulars that must be included in entries in a cremation register. Many of these will be relevant to the registration of new funerary methods. However, one of the items is the date of the cremation.¹⁶ If a new funerary method takes longer than one day, it may be necessary for the date of the start of the process to be registered, as well as other dates, for example, the date that the process ends.
- 4.14 Requiring these details to be set out in secondary legislation would also ensure parity with cremation. If the Secretary of State or the Welsh Ministers wanted to change the detailed registration requirements for cremation and for new funerary methods, they could make these changes by an amending secondary legislation. We therefore provisionally proposed that primary legislation should require that when regulations are made about the use of a new funerary method, these must include provision about how and by whom each use should be registered.¹⁷

Consultation responses

Reasons for agreement with our provisional proposal

- 4.15 A substantial majority of consultees agreed with our provisional proposal. Some of the consultees giving a longer text response explicitly agreed with our view that there should be consistency with burial and cremation legislation.
- 4.16 Some consultees thought that our provisional proposal would help to ensure that accurate records are kept, safeguarding against bad practice. Central Co-op thought

¹² New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.81.

¹³ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 32(1).

¹⁴ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 2(1).

¹⁵ SI 2008 No 2841.

¹⁶ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 33(2)(b).

¹⁷ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.81.

that the requirement to register each use of a new funerary method “ensures traceability, transparency, and proper record-keeping, which are vital for public confidence and legal compliance”. The FBCA felt that our provisional proposal would “allow for accurate records and the option for future scrutiny”.

- 4.17 Some consultees also noted that clear registration requirements would enhance public confidence.

Location of remains

- 4.18 A few consultees thought that regulations should also specify that the location of remains should be recorded. Fiona Cunningham (academic) gave the example of “whether soil from human composting was returned to the family or spread in a specific location”. Another consultee noted that keeping a record of the location of cremation ashes is important “with the rise in genealogy, and where somebody may have been unable to attend a funeral but wishes to pay their respects at a later date”.

Burial of remains

- 4.19 The Ecclesiastical Law Society suggested that the equivalent cremation regime should be mirrored as, if a minister is to bury remains following a new funerary method, “that minister needs to know (i) whose remains they are burying and (ii) what process was used”.

Other considerations

- 4.20 Agreeing with our provisional proposal, Stephen White (academic) thought that regulations should include a requirement to register “when and where” the new funerary method took place. Another consultee believed that registration should also include “how, when, where and who was responsible for carrying out the method”.
- 4.21 One consultee discussed the “considerable costs involved” with maintaining a register of each use of a new funerary method. He noted that, in the future, operators of new funerary methods may go into liquidation which would mean that “the computerised systems, typically incompatible with each other, will need a new home”. He suggested that:

the Registrar of Deaths should maintain the only record on what happened to the body. Such a centralised process would be known to all. If necessary, the new funerary processes would simply send a monthly record of all 'disposals'. That removes the need for a sophisticated registration process at each and every location.

Discussion and recommendations

Registration of the use of a new funerary method

- 4.22 There was strong support amongst consultees for a requirement that each use of a new funerary methods is registered. Consultees recognised that a system of registration and record keeping for funerary methods provides important safeguards.
- 4.23 Creating a record of every use of a new funerary method will help with traceability and future scrutiny. It could facilitate the investigation of crimes. It may be also useful for those researching their family history and could be beneficial when tracking the uptake

or popularity of new funerary methods. Consultees noted that a system of accurate record keeping may further public confidence in new funerary methods.

- 4.24 There is a compelling case that legislation should require that the use of a new funerary method on the body of a deceased person must be registered. In the Consultation Paper, we provisionally proposed that the requirements should be set out in primary legislation. However, we recommend that instead primary legislation requires that the Secretary of State and the Welsh Ministers, when making regulations about new funerary methods, must include provision requiring the registration of the use of a new funerary method. The duty to register a cremation is set out in secondary legislation.¹⁸ The position for new funerary methods will therefore mirror that for cremation.
- 4.25 We also recommend that, as we provisionally proposed, the Secretary of State and the Welsh Ministers must set out details about who will carry out the registration, and how, when and where they must do this in secondary legislation. This will enable the Secretary of State and the Welsh Ministers to provide for appropriate registration requirements for new funerary methods as and when they are regulated, ensuring this can be tailored to each method. It will be clearer if the duty to register appears in the secondary legislation, along with the details of how this must be done.
- 4.26 We note the suggestion that there should be a centralised registration system, maintained by the Registrar General (who is responsible for registration of deaths), for registrations of burial, cremation and new funerary methods. The reasons given for this were the costs of maintaining a register and the possibility of the operators of new funerary methods going into liquidation.
- 4.27 It would be outside the scope of this sub-project to make recommendations about the systems of registration of burials or cremations. In our Report on Burial and Cremation, we recommended that a consistent system of burial registration should be introduced.¹⁹ However, we have not been told about any problems with the system of registration of cremations and we did not make any recommendations about creating one system for burial and cremation. It would be open to the respective Governments to revise the system of registration in future, if it was considered necessary.
- 4.28 Overall, giving the respective Governments a duty to make provisions requiring the registration of the use of a new funerary method when regulating that method, and to set out how and by whom the registration must be done, has clear benefits for operators, the public and bereaved people.

Burial of remains

- 4.29 When regulating a new funerary method, the Secretary of State and the Welsh Ministers will be able to make provision for what should happen to remains that are left after the method has been carried out. We discussed this at paragraph 6.110 of the Consultation Paper²⁰ and it is part of Recommendation 8 in this Report. As with

¹⁸ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 32(1).

¹⁹ Burial and Cremation (2026) Law Com No 425 para 6.87.

²⁰ New Funerary Methods (2025) Law Commission Consultation Paper No 272.

cremation, there may be new funerary methods where it is possible to bury the remains. For example, the powder that remains after alkaline hydrolysis could be buried. If such methods are regulated, the relevant Government should also have the power to make provision for registration of the burial of these remains.

- 4.30 Legislation relating to registering the burial of cremated remains varies depending on the type of burial ground. Some of the relevant legislation makes explicit reference to cremated remains. For example, the Local Authorities' Cemeteries Order 1977 (LACO 1977) makes provision for registration of burials in local authority cemeteries.²¹ Article 2(2) states that burial includes "the interment of cremated human remains". Similarly, the Parochial Registers and Records Measure 1978 contains a requirement to register burials in Church of England cemeteries,²² where "burial" includes "the disposal of cremated remains".²³
- 4.31 Section 32 of the Cemeteries Clauses Act 1847 states that private cemeteries established using that Act are required to keep a register of burials in the consecrated part "according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England". Section 1 of the Registration of Burials Act 1864 provides that "all burials in any burial ground in England which are not now by law required to be registered shall be registered". In this Act, burial does not expressly include burial of cremated remains. However, "burial", or "burial ground" are not exhaustively defined. As there is no definition of burial the ordinary meaning applies, and our understanding of practice within the sector is that this is deemed to include cremated remains.
- 4.32 LACO 1977 is secondary legislation and can therefore be amended by secondary legislation. However, the primary legislation mentioned above can only be amended by secondary legislation where primary legislation has granted a power to do this. We recommend that the Secretary of State and the Welsh Ministers should have the power to require the registration of burial of remains following an individual new funerary method.
- 4.33 This will ensure that provisions on the registration of burial could be made to apply to the burial of remains following new funerary methods, as appropriate. It will be up to the Church of England to decide whether they want to make provision for burial of remains following the use of a new funerary method in Church of England burial grounds. If so, it could amend the definition of burial in section 25(1) of the Parochial Registers and Records Measure 1978.
- 4.34 In our Report on Burial and Cremation, we recommended that there should be a uniform system of burial registration that will apply to all burial grounds (except Church of England burial grounds).²⁴ If this recommendation is implemented, this could also make the position on the burial of remains following a new funerary method easier to understand.

²¹ Local Authorities Cemeteries Order 1977, art 11.

²² Parochial Registers and Records Measure 1978 (Church Measures 1978 No 2), s 3.

²³ Parochial Registers and Records Measure 1978 (Church Measures 1978 No 2), s 25(1).

²⁴ Burial and Cremation (2026) Law Com No 425 para 6.87.

4.35 We also recommended, in our Report on Burial and Cremation, that the (non-exhaustive) definition of “burial” used in LACO 1977 should be applied to private burial grounds.²⁵ We are due to publish draft legislation on Burial and Cremation (and our third sub-project on Rights and Obligations relating to Funerary Methods, Funerals and Remains) in 2028. If this provision is to be set out in draft primary legislation, we will need to consider provision for new funerary methods at that stage.

Location of remains

4.36 Some consultees thought that there should be a system to register the location of remains following a new funerary method, whether or not they are buried. These powers may be necessary to enable inspections to take place or otherwise investigate concerns.

4.37 A person applying for cremation must indicate on the prescribed form what should happen to the ashes.²⁶ If the applicant has not given any instructions, or if the ashes are not collected in line with those instructions, the cremation authority may inter or scatter them.²⁷ Every cremation must be registered and the registration must include a note of the way in which the ashes were disposed of.²⁸ As set out above, at paragraphs 4.30 to 4.31, if ashes are interred in a burial ground this must also be registered, although the requirements differ depending on the type of burial ground. However, where the ashes have been removed from the crematorium by family or friends, it is likely that there will be no record of the location.

4.38 The regulation-maker may decide that the position should be the same for remains following new funerary methods. However, it is possible that they may consider that the location of the remains (beyond burial of the remains, which we discuss above) from a specific new funerary method must be recorded in all cases. It should have the power to make provision for this in the regulations.

4.39 For example, the regulation-maker may decide that soil from human composting should not be treated as remains, but instead as other material resulting from the use of a new funerary method. We said in our Consultation Paper that the respective Governments should have the power to make regulations about what happens to other materials, beyond remains, that are left behind following the use of an individual new funerary method.²⁹ They should also have the power to require that the location of such material is recorded, if this is considered appropriate.

Criminal offences

4.40 As set out above, it is a criminal offence knowingly and willingly to make a false statement or entry in a burial register,³⁰ knowingly and willingly to destroy, injure, forge

²⁵ Burial and Cremation (2026) Law Com No 425 para 2.81.

²⁶ Burial and Cremation (2024) Law Commission Consultation Paper No 263 para 11.44.

²⁷ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), reg 30(3).

²⁸ Cremation (England and Wales) Regulations 2008 (SI 2008 No 2841), regs 32(1) and 33(1)(m).

²⁹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 Chapter 6.

³⁰ Forgery Act 1861, s 37; and Perjury Act 1911, s 5(b).

or falsify a burial register,³¹ or wilfully to make a false statement with a view to procuring a cremation.³² At paragraph 6.30 of this Report we recommend that a similar offence, of dishonestly making a false statement to procure the use of a new funerary method, should be created.

4.41 Also in relation to cremation, it is a criminal offence to breach the Cremation (England Wales) Regulations 2008.³³ At paragraph 6.70 of this Report we recommend that the respective Governments should have the power to create a new criminal offence of breaching specified regulations about individual new funerary methods. It would therefore be open to the respective Governments to make the breach of any registration requirements a criminal offence. This would mirror the position for cremation.

Recommendation 5.

4.42 We recommend that, when making regulations about individual new funerary methods, the Secretary of State and the Welsh Ministers must:

- (1) require that the use of a new funerary method on the body of a deceased person must be registered; and
- (2) set out how and by whom this registration must be carried out.

4.43 The draft Bills give effect to this recommendation in clause 2(3) of the draft Bill for England and section 2(3) of the draft Bill for Wales. When the Secretary of State or the Welsh Ministers exercise the power to make regulations in clause 2 or section 2, those regulations must require the carrying out of a regulated modern funerary method to be registered, make provision about how and by whom that registration is to be performed, and make provision about how and by whom the register is to be kept.

Recommendation 6.

4.44 We recommend that the Secretary of State and the Welsh Ministers should have the power to require the registration of burial of remains following an individual new funerary method.

4.45 This recommendation is given effect by clause 10(4) of the draft Bill for England and section 10(4) of the draft Bill for Wales. The power in this clause and section will enable the Secretary of State or the Welsh Ministers to amend primary legislation to include the burial of remains following the use of a specified modern funerary method

³¹ Forgery Act 1861, s 36.

³² SI 2008 No 2841. This is set out in the Cremation Act 1902, s 8(2).

³³ Cremation Act 1902, s 8(1).

in the meaning of burial. If they do this, registration of burial of these remains will be required. This power is explained in more detail at paragraphs 7.81 to 7.86.

Recommendation 7.

4.46 We recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations requiring the recording of the location of remains or material resulting from the use of a new funerary method, whether the remains or material have been buried or not, following the use of a specific new funeral method.

4.47 This recommendation is given effect by clause 2(3)(f) and (g) of the draft Bill for England and section 2(3)(f) and (g) of the draft Bill for Wales. These provisions ensure that regulations made under the power in clause 2(1) or section 2(1) may set out what may be done with remains, or resulting material, and registration requirements in relation to this.

THE SCOPE OF THE REGULATORY POWER

Provisional proposal and consultation on the breadth of the regulation-making power

4.48 In our Consultation Paper, we explained that we will not be making any recommendations about which specific new funerary methods should be approved and regulated. However, we need to ensure that any power for the respective Governments to make regulations about individual methods will be sufficient to encompass all matters that might need to be covered. As we intend to create a framework which is future-proof, as far as possible, this should include anything that we think may be needed to enable the regulation of currently unknown funerary methods.

4.49 We set out some key areas which we considered may need to be the subject of regulations:

- (1) opening and closing facilities, including who may do so, the application process and any notice period;
- (2) location of facilities, including provisions about where facilities may, or may not, be sited (for example, to ensure appropriate solemnity and peace, or to avoid noise pollution);
- (3) operation and maintenance of facilities, including standards of maintenance, training for operators, health and safety, and record keeping;
- (4) elements of the process, including details about how a specific new funerary method must be carried out (for example, at a particular temperature or pressure);
- (5) inspection of facilities, to allow the Secretary of State or the Welsh Ministers to authorise inspections of facilities where new funerary methods are carried out;

- (6) appointments, such as the appointment of medical referees or registrars (mirroring the system for cremation);
- (7) the removal of medical devices prior to the new funerary method being carried out;
- (8) application procedures on behalf of a deceased person, including provision about who can apply for the use of a new funerary method, prescribed forms, and application processes;
- (9) circumstances in which a specific new funerary method may not be used, for example if it might pose a risk to public or environmental health;
- (10) what may or must be done with human remains after the process;
- (11) dealing with fetal remains (it should be possible for pre-24-week pregnancy losses to be provided for in relation to the regulation of new funerary methods);
- (12) whether new funerary methods can be used on unidentified bodies or body parts; and
- (13) rights and obligations, including the matters to be considered in our third sub-project on Rights and Obligations Relating to Funerary Methods, Funerals and Remains.³⁴

4.50 We provisionally proposed that the power to make detailed regulation about new funerary methods should be broad enough to encompass the matters set out above.³⁵

4.51 We also asked whether consultees knew of any other matters that may need to be included in regulation of individual new funerary methods, beyond the matters set out above. We noted that responses to this question may include views on the potential content of regulation of specific new funerary methods, although whether and how specific new funerary methods should be regulated will be a question for the respective Governments to address in future.³⁶

Consultation responses

4.52 A very substantial majority of consultees agreed with the provisional proposal that the power to regulate individual new funerary methods should be broad enough to encompass the matters set out at paragraph 4.49 above. Some consultees expressly endorsed the idea that we should create a framework which is future-proof as far as possible. Others emphasised the need for the power to be broad enough to regulate new funerary methods in the same way as burial and cremation as far as possible. For example, the FBCA noted that it is “important that a level playing field is presented between existing methods such as burial or cremation and any new funerary method”.

³⁴ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

³⁵ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.120.

³⁶ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.121.

4.53 A few consultees referred to the possibility of regulations about the observation, or viewing, of individual new funerary methods. One consultee noted that some bereaved people are helped by observing cremations, although “one of the US composting processes already prohibits all viewing of the process”. He thought that “the need for transparency is paramount to give the bereaved confidence in the process”.

Discussion and recommendations

4.54 A very substantial majority of consultees agreed that the regulation-making power should be broad enough to encompass the matters we had discussed in the Consultation Paper. The main argument against our proposed approach was that the power we proposed is, as a matter of principle, too broad. This is, in effect, a fundamental objection to the regulation of new funerary methods by means of secondary legislation. While we do not agree with this objection – not least because it is not possible to devise a legal framework in primary legislation for funerary methods that have yet to be developed – we accept the underlying point that parliamentary oversight of the regulation of new funerary methods is extremely important. We discuss parliamentary control at paragraphs 4.83 to 4.106 below, concluding that an enhanced procedure, with a high level of parliamentary scrutiny, should apply the first time that regulations are made about a particular new funerary method.

4.55 In light of this, our view remains that the breadth of the power that we proposed is broadly appropriate. However, some of the matters set out at paragraph 4.49 above, that we proposed to include within the scope of this power, require further explanation or refinement in light of matters raised by consultees, recommendations made in our Report on Burial and Cremation,³⁷ or other conclusions reached in this Report. We deal with these below.

4.56 The power we advocate will achieve substantial, although not complete, equivalence with regulation making powers available in relation to burial and cremation. Equivalence was a recurrent theme among consultees, and we agree that it should be open to the respective Governments to regulate elements of new funerary methods in the same way as cremation, if they wish. This would enable the respective Governments to decide to make similar provisions for cremation and new funerary methods and allow for equivalent safeguards. This could be useful for practitioners who currently work in the funeral sector whose practice may expand to include new funerary methods as they will already understand some of the relevant regulations and processes. It could also increase public confidence in the system of regulation of new funerary methods. For that reason, we have sought to ensure that the power to regulate individual new funerary methods should be broad enough to encompass all matters which could be covered by the duty to make regulations about cremation in section 7 of the Cremation Act 1902.

Elements of the process - observation

4.57 One matter suggested by consultees which was not mentioned expressly in our Consultation Paper is the power to make regulations about the observation of new funerary methods, for example by friends or family members. There are currently no

³⁷ Burial and Cremation (2026) Law Com No 425.

regulations about the viewing of the cremation process, although such regulations could be made under the power in section 7 of the Cremation Act 1902, which provides that regulations are to be made “prescribing in what cases and under what conditions the burning of any human remains may take place”.³⁸

4.58 We agree that the observation of new funerary methods may be an important way to promote public confidence, by allowing openness and transparency in their use. This does not necessarily require regulation. There would also be other ways of creating confidence in new funerary methods in general, for example the use of educational materials. For individual new funerary methods, the respective Governments may decide not to make regulations about whether the process could be observed by bereaved people, but instead leave it up to operators, as with cremation. However, it is possible that restrictions may need to be put in place, for example to say that one part of a process could be observed but another cannot (because of health and safety concerns). For that reason, we agree that observation should fall within the scope of the power we recommend. However, it does not require an express reference within the statutory scheme: the power we provisionally proposed (and which we now recommend) to regulate “elements of the process” is broad enough to encompass observation.

Unidentified bodies

4.59 In our Report on Burial and Cremation, we noted that hospital trusts in possession of a deceased person’s body are under a common law duty to bury or cremate the remains when no one else is able to do so. Local authorities are under a duty to arrange the burial or cremation of the body of an unidentified person who has died or been found dead in their area, if no-one else appears to be making the arrangements.³⁹ However, cremation should not be chosen where the authority has reason to believe that it would be against the person’s wishes.⁴⁰

4.60 In that Report, we recommended that neither cremation nor any other irreversible funerary method should be permitted in relation to unidentified bodies or body parts.⁴¹ When we refer to an “irreversible” new funerary method, we mean a new funerary method that would not provide the opportunity for another, alternative, funerary method to be carried out if the person’s identity is discovered later. Burial is appropriate for unidentified bodies, because if a person’s identity is discovered after their body has been buried, it is likely (unless a very long time has passed) that their remains could be exhumed and cremated.

4.61 In the Burial and Cremation Report, we said that the finality of cremation could prevent those affected by missing family members and friends from knowing whether their relative had been found, or from having an identifiable final resting place for them. We noted that our recommendation is also likely to be in line with respecting religious

³⁸ It was noted in *Ghai v Newcastle City Council (Ramgharia Gurdwara, Hitchin and another intervening)* [2009] EWHC 978 (Admin) that in Newcastle City Council’s West Road crematorium, mourners were permitted to view the entire cremation process.

³⁹ Public Health (Control of Disease) Act 1984, s 46(1).

⁴⁰ Public Health (Control of Disease) Act 1984, s 46(3).

⁴¹ Burial and Cremation (2026) Law Com No 425 para 12.135.

rights insofar as it preserves the deceased person's potential religious choice of not being cremated, while maintaining the option for cremation at a later date if the remains are identified.⁴²

- 4.62 To give effect to the policy we have recommended in the Burial and Cremation Report (and as we suggested in our Consultation Paper on New Funerary Methods) the regulations for each irreversible new funerary method will need to state that the method may not be used for unidentified bodies or body parts. The regulation-making power will need to be broad enough to allow for this.⁴³

Inspections

A duty to inspect

- 4.63 In our Consultation Paper, we said that regulation of new funerary methods would need to include provision about inspections.⁴⁴ We also noted that, at least while new methods are emerging and developing, more comprehensive provision in relation to inspections may be needed than currently exists for burial and cremation.⁴⁵ However, we were not specific at that stage as to whether the respective Governments should have a power or a duty to make provision about inspections.
- 4.64 By way of context, in Chapter 2, we concluded that it would not be appropriate to recommend the creation of (or a power to create) a system of licensing for new funerary methods. One of the main arguments against licensing is that it should be possible to make provision for a similar level of oversight – the key advantage relied upon by those supporting licences – without licensing. Inspections, in our view, are a vital means of achieving this oversight.
- 4.65 In light of this, we consider that inspections will be key to an effective system of oversight for new funerary methods, and we therefore recommend that the respective Governments must make provision about inspections, including the appointment of an inspector, when regulating individual new funerary methods.
- 4.66 This requirement does not currently apply when regulations are made about cremation: the Secretary of State may appoint a person to inspect crematoria but is not required to do so. However, the divergence is justified because new funerary methods are novel and are likely to involve more complex processes. It will be up to the respective Governments how to implement inspections and make decisions about, for example, how regular they should be. It would be possible for this to change over time. For example, when a new funerary method is first regulated, inspections may be frequent. However, as that method becomes more established it may be decided that inspections could be carried out less frequently.

⁴² Burial and Cremation (2026) Law Com No 425 para 12.134.

⁴³ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.119.

⁴⁴ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.98.

⁴⁵ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.98. For details of the inspection of burial grounds and crematoria, see paras 6.95 to 6.97 of the Consultation Paper.

4.67 This recommendation, and the discussion of how it is given effect in the draft Bills, is set out at paragraphs 4.81 to 4.82 below.

Other elements of monitoring and enforcement of compliance

4.68 To ensure that the duty we recommend to make regulations about inspections is effective, the Secretary of State and the Welsh Ministers will need to have powers to make regulations about how compliance with the regulations may be monitored and enforced. For example, it may be necessary to require an operator to provide information. It may also be necessary for an inspector to be able to gain entry to premises as part of an inspection, for example, if an operator has gone out of business or refuses entry. It may also be necessary for the Secretary of State or the Welsh Ministers to revoke any authorisation that was previously granted, permitting a person to operate a new funerary method. The power we recommend should be broad enough to enable the Secretary of State and the Welsh Ministers to make regulations covering these matters.

Conclusion on the breadth of the power

4.69 We recommend that the power to make regulations should be broad enough to encompass the matters set out at paragraphs 6.85 to 6.119 of our Consultation Paper, at paragraph 4.70 above. We also recommend that the power to make regulations should include the power to make regulations about monitoring and enforcement of compliance, and revocation of any authorisations to carry out a new funerary method. As set out at paragraph 4.81, we recommend that there should be an obligation to make provision for inspections, so we do not mention it explicitly in this recommendation, although it is included in monitoring and enforcement of compliance.

Recommendation 8.

4.70 We recommend that the power to make regulations about individual new funerary methods should be broad enough to encompass the following matters:

- (1) opening and closing facilities;
- (2) location of facilities;
- (3) operation and maintenance of facilities;
- (4) elements of the process;
- (5) appointments;
- (6) medical devices;
- (7) application procedures on behalf of a deceased person;
- (8) circumstances in which a specific new funerary method may not be used;
- (9) remains;
- (10) fetal remains;
- (11) unidentified bodies;
- (12) rights and obligations;
- (13) monitoring and enforcement of compliance; and
- (14) circumstances in which any authorisations may be revoked.

4.71 Clause 2(1) of the draft Bill for England and section 2(1) of the draft Bill for Wales enable the Secretary of State or the Welsh Ministers to make secondary legislation to regulate individual modern funerary methods. This clause and section are discussed at paragraphs 2.67 to 2.68 of this Report.

4.72 Some of the matters set out in Recommendation 8 will fall within the ambit of this power without the need to mention them in the legislation. For example, clause 2 and section 2 do not specifically set out a power to make regulations about whether medical devices must be removed prior to the use of a modern funerary method. However, we have made explicit provision for some matters, for clarity (including where it may otherwise be unclear whether they are included in the power). For example, clause 2(2) and section 2(2) of the draft Bills set out some of the matters about which regulations may be made under the powers in clause 2(1) and section 2(1), including the manner, places or circumstances in which a modern funerary method may be carried out. The wording “among other things” in clause 2(2) and

section 2(2) makes clear that this is not intended to be an exhaustive list of all the matters that may be covered by the powers in clause 2(1) and section 2(1).

- 4.73 The power to make provision in relation to fetal remains is contained in clause 5 and section 5 of the draft Bills. Where an individual modern funerary method is regulated, similar provision could be made in relation to fetal remains. In this clause, fetal remains includes the remains of an embryo. This is to ensure that provision could be made about all pre-24-week pregnancy remains. It will not be possible for any trials to be permitted (under clause 4 or section 4) in relation to fetal remains.
- 4.74 The spelling “foetus” is sometimes used, including in existing UK primary legislation.⁴⁶ However, this was originally based on an unetymological spelling of the word in Latin and predominated until the early twentieth century.⁴⁷ “Fetus” is now more common, including in medicine,⁴⁸ and is used in the Burial and Cremation (Scotland) Act 2016.⁴⁹ It is on this basis that we have used the spelling “fetal remains” in the draft Bills.
- 4.75 Monitoring and enforcement of compliance is covered by clause 3 of the draft Bill for England and section 3 of the draft Bill for Wales. They set out powers that may be conferred by regulations. These include powers to require a person to attend a place to answer questions, powers of entry, search, seizure or retention and power to dismantle facilities or take samples of substances.
- 4.76 Under clause 3(3) and section 3(3), provision may be made conferring powers to use reasonable force or enter a private dwelling, but only with a warrant. This is in line with Home Office guidance on powers of entry.⁵⁰
- 4.77 Clause 2(2)(e) and section 2(2)(e) ensure that it is clear that regulations may provide for authorisations that are required, including documentation or application processes. We consider that it is obvious that regulations about the revocation of any authorisations could also be made and there is no need to specify this. Regulations could set out circumstances which would automatically lead to the revocation of an authorisation, for example, if an operator is convicted of a specific criminal offence. There would also be other ways of providing for revocation. For example, regulations made about inspections under clause 3 or section 3 could provide that an inspector could decide to revoke an authorisation following an inspection.

⁴⁶ Nine Acts of Parliament use this spelling, including the Abortion Act 1967, the Human Fertilisation and Embryology Act 1990 and the Civil Partnerships, Marriages and Deaths (Registration) Act 2019.

⁴⁷ See Etymonline, *Etymology of oe* (2026) <https://www.etymonline.com/word/oe>; see also JD Boyd and WJ Hamilton, *Foetus—or Fetus?* (1967) 1 *British Medical Journal* 425 <https://pmc.ncbi.nlm.nih.gov/articles/PMC1841520/>.

⁴⁸ See Chapterhouse, *Fetus vs Foetus – Spellings for Proofreaders and Editors* (2021) <https://www.chapterhousepublishing.co.uk/fetus-vs-foetus-spellings-for-proofreaders-and-editors/>.

⁴⁹ For example, Burial and Cremation (Scotland) Act 2016, s 107.

⁵⁰ Home Office, *Powers of entry guidance for departments* (2018) p 8 <https://www.gov.uk/guidance/powers-of-entry>. This states “Wherever possible, legislation for powers of entry of any kind ought to include provision for a Magistrate’s warrant to act as a backstop power”.

- 4.78 When the Secretary of State or the Welsh Ministers regulates a modern funerary method, clause 3(4)(b) or section 3(4)(b) obliges them to also make such provision for monitoring and enforcement of compliance as they consider appropriate.
- 4.79 Taken together, these provisions will enable regulations to be made to ensure that compliance with legislation may be monitored, and about how breaches may be enforced.
- 4.80 We discuss clause 3(2)(b) and section 3(2)(b), the power to create criminal offences, and clause 3(2)(c) and section 3(2)(c), the power to confer powers to impose civil sanctions, in Chapter 6.

Recommendation 9.

- 4.81 We recommend that, when making regulations about individual new funerary methods, the Secretary of State and the Welsh Ministers must make provision about the inspection of facilities.

- 4.82 This recommendation is given effect by clause 3(4)(a) and section 3(4)(a), which states that the Secretary of State or the Welsh Ministers must ensure that when a modern funerary method is regulated, provision is made about the inspection of facilities, by a person appointed by or under the regulations. This person could be appointed as a standing inspector or to carry out specific inspections.

PARLIAMENTARY SCRUTINY

Possible procedures for statutory instruments

- 4.83 We recommend in Chapter 2 that the Secretary of State and the Welsh Ministers should have the power to make regulations approving the use of individual new funerary methods and setting out how they should be carried out. In this chapter, we have made recommendations about the scope and nature of that power.
- 4.84 The regulations will be set out in a statutory instrument (SI).⁵¹ Where primary legislation contains a power to make an SI, it should set out the level of parliamentary control needed for the statutory instrument to become, or remain, law.
- 4.85 SIs made by the UK Government may follow a negative or affirmative procedure. The affirmative procedure involves more parliamentary scrutiny. Welsh SIs made by the Welsh Ministers may follow the Senedd annulment, Senedd confirmation or Senedd approval procedure. The Senedd approval procedure involves the highest level of parliamentary scrutiny. Where even more scrutiny than with the affirmative or Senedd approval procedure is required, an enhanced procedure, with additional requirements, may apply.

⁵¹ We include in this term Welsh statutory instruments within the meaning of section 37A of the Legislation (Wales) Act 2019.

Negative/ Senedd annulment procedure

4.86 Most SIs that are subject to the negative procedure are first “made” (signed into law with a specified date for coming into force) and then presented to (laid before) Parliament. They will then remain, or become, law if 40 days pass without a resolution of Parliament to annul the SI. A similar procedure exists in the Senedd, referred to as the Senedd annulment procedure (see section 37E of the Legislation (Wales) Act 2019).

Affirmative/ Senedd approval/ Senedd confirmation procedure

4.87 Under these procedures, the SI must be approved by Parliament or the Senedd.

4.88 Some of these SIs must be laid before Parliament in draft form and can only become law once they have been approved (the draft affirmative, or Senedd approval, procedure). Others are laid after being made and can only become law (or remain law) following Parliamentary approval (the made affirmative, or Senedd confirmation procedure).

Enhanced procedures

4.89 In certain cases, the UK Parliament or the Senedd has prescribed additional requirements that must be met before regulations can be made under the “draft affirmative” or “Senedd approval procedure”. Sometimes this is known, in the UK Parliament, as an “enhanced affirmative” or “super affirmative” procedure.

4.90 In such cases, a draft of the regulations and an explanatory statement may be presented to Parliament or the Senedd. Parliamentary or Senedd committees will then consider the draft and may recommend amendments, which must be considered by the relevant Governments. Following this, the relevant Government can lay a draft SI in line with the draft affirmative/ Senedd approval procedure, as described above.

Regulations about individual new funerary methods

4.91 If the Secretary of State or the Welsh Ministers decide that they want to regulate a new funerary method that has not been regulated before, they will need to make secondary legislation, in the form of regulations, defining that new funerary method and setting out how it may be carried out. These regulations may include provision about any matters that are deemed to fall within the power to make regulations that was granted in the primary legislation.

4.92 Once the regulations described above have been made, they may need to be amended. This could involve changing existing regulations or adding new provisions.

4.93 We have considered which procedure would be appropriate for the different types of provisions that may be made in the regulations.

Additional scrutiny

4.94 When a new funerary method is regulated for the first time, this will be significant. The respective Governments may need to make difficult, and potentially controversial, decisions about whether the method should be regulated or not. They will also need to decide how it should be defined, and therefore which possible forms of the method will be lawful.

4.95 It seems appropriate that a higher form of scrutiny than that afforded by the procedures described at paragraphs 4.83 to 4.88 above should apply in this case. Under procedures set out in the draft Bills, the Secretary of State or the Welsh Ministers (as the case may be) must consult such persons as they consider appropriate before laying the regulations before Parliament or the Senedd. Parliamentary or Senedd committees will have the opportunity to comment on the proposed legislation before it is laid in draft form under the affirmative/ Senedd approval procedure. This could be beneficial in ensuring that all angles have been covered and to aid transparency for members of the public.

Draft affirmative/ Senedd approval procedure

4.96 Some of the matters that may be covered by regulations (after the first time a specific method is regulated) are significant enough to warrant the use of the draft affirmative/ Senedd approval procedure. Part of our recommendation is that these procedures must be used for provisions that:

- (1) amend the definition of a specific new funerary method that has been regulated previously;
- (2) create criminal offences for breach of a provision in the regulations (this is discussed in more details at paragraphs 6.52 to 6.76 below);
- (3) confer a power to impose a civil sanction for breach of a provision in the regulations;
- (4) make provision about trials; or
- (5) amend primary legislation.

4.97 We also recommend that the draft affirmative/ Senedd approval procedure should apply to provisions that confer certain powers which do not already exist in the regulation of new funerary methods.

4.98 This will apply to provisions that:

- (1) confer powers of inspection, entry, search, seizure or retention and related powers; or
- (2) confer power to use reasonable force or enter a private dwelling, on the authority of a warrant, for the monitoring and enforcement of compliance with the regulations.

4.99 The effect of this will be that if regulations for an individual new funerary method contain powers of entry that are the same as those that already exist in relation to another new funerary method that has been regulated, the draft affirmative/ Senedd approval procedure will not be required. However, if the new regulations confer powers of entry that do not already exist in relation to another method, the draft affirmative/ Senedd approval procedure will apply.

4.100 Powers of entry (and related powers) are intrusive by nature. This part of the recommendation is intended to ensure sufficient parliamentary scrutiny of such

powers. However, where Parliament or the Senedd has already approved equivalent powers in relation to other methods, we do not consider it necessary to require parliamentary time for further debates.

Made affirmative/ Senedd confirmation procedure

4.101 Section 47(1)(a) of the Public Health (Control of Disease) Act 1984 provides that the Secretary of State may make regulations “imposing any conditions and restrictions with respect to means of disposal of dead bodies otherwise than by burial or cremation”. Regulations for Wales could be made under this provision by the Welsh Ministers.⁵² In Chapter 7, we recommend that section 47(1)(a) should be repealed.

4.102 As we explain at paragraphs 7.46 to 7.51, it is conceivable that the UK Government or the Welsh Government may need to enable the use of a non-regulated new funerary method as a response to a public health emergency. For reasons we explain in those paragraphs, once section 47(1)(a) has been repealed, we consider that it would be appropriate for the relevant Government to be able to use a less time-consuming procedure if they consider it necessary for reasons of urgency and in the interests of public health or public safety.

4.103 We therefore recommend that where the Secretary of State or the Welsh Ministers make a declaration that, for reasons of urgency, it is necessary in the interests of public health or public safety, any regulations that may ordinarily be made using the draft affirmative or Senedd approval procedure may instead be made using the made affirmative or Senedd confirmation procedure. This will include those where additional measures would be required the first time that regulations are made for a specific method. See paragraphs 4.94 to 4.95 for the full explanation of this part of the recommendation.

Negative/ Senedd annulment procedure

4.104 The negative/ Senedd annulment procedure should be used for all other regulations. This will strike the right balance between ensuring parliamentary approval and enabling the regulations to be amended swiftly where needed, without taking up parliamentary time.

⁵² Functions under the Public Health (Control of Disease) Act 1984 have been transferred to the Welsh Ministers by The National Assembly for Wales (Transfer of Function) Order 1999, Sch 1.

Recommendation 10.

4.105 We recommend that the following procedures should apply to regulations made about individual new funerary methods.

- (1) An enhanced version of the draft affirmative/ Senedd approval procedure the first time that regulations are made about a specific new funerary method.
- (2) Draft affirmative/ Senedd approval procedure for provisions that:
 - (a) amend the definition of a specific new funerary method that has been regulated previously;
 - (b) create criminal offences for breach of a provision in the regulations;
 - (c) impose a civil sanction for breach of a provision in the regulations;
 - (d) make provision about trials; or
 - (e) amend primary legislation.
- (3) Draft affirmative/ Senedd approval procedure for provisions that:
 - (a) confer powers of inspection, entry, search, seizure or retention and related powers; or
 - (b) confer power to use reasonable force or enter a private dwelling, on the authority of a warrant, for the monitoring and enforcement of compliance with the regulations;where such powers do not already exist in the regulation of new funerary methods.
- (4) Made affirmative/ Senedd confirmation procedure where the Secretary of State or the Welsh Ministers make a declaration that, for reasons of urgency, this is necessary in the interests of public health or public safety.
- (5) Negative/ Senedd annulment procedure for all other provisions.

4.106 This recommendation is given effect by clause 11 of the draft Bill for England and section 11 of the draft Bill for Wales, which set out the procedures that will apply to different regulations, and by Schedule 2 to each of the draft Bills, which sets out the additional scrutiny requirements for first-time regulations.

Chapter 5: The status of non-regulated new funerary methods

INTRODUCTION

- 5.1 There is currently no explicit legislative prohibition on the use of new funerary methods. Legislation about the registration of deaths may have the effect of criminalising the use of new funerary methods, but this is unclear and there is no case law on the matter.¹
- 5.2 In Chapter 2 of this Report, we recommend that the Secretary of State and the Welsh Ministers should have a power to make regulations enabling the use of individual new funerary methods. In this chapter, we consider the status of new funerary methods that are not regulated under this power. We recommend that the use of such methods should be prohibited, so that only methods that have been regulated may lawfully be used. In Chapter 6 of this Report, we consider the appropriate sanction and penalties for breach of the prohibition.
- 5.3 New methods that are in development may need to be tested before they are ready to be regulated as a new funerary method. We consider this issue in this chapter and recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations setting out how trials of new funerary methods may be approved and carried out.

PROHIBITION ON THE USE OF NON-REGULATED FUNERARY METHODS

Provisional proposal on prohibiting the use of non-regulated new funerary methods

- 5.4 In our Consultation Paper, we provisionally proposed that primary legislation should explicitly prohibit the use of a new funerary method which has not been regulated.² A legislative framework through which new funerary methods may be regulated will give certainty for providers about how they can and should operate and help the public to have confidence that new funerary methods are regulated appropriately. We did not consider there was a benefit to allowing other methods to be used with no regulation in place.

Consultation responses

Support for the provisional proposal

- 5.5 A substantial majority of consultees supported the provisional proposal. Some consultees expressly agreed with our assessment about public confidence and certainty for providers.

¹ For further details, see paras 3.41 to 3.64 of our Consultation Paper (New Funerary Methods (2025) Law Commission Consultation Paper No 272).

² New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.14.

- 5.6 Consultees noted that if a new funerary method was ineffective, this could cause significant distress and may have a detrimental impact on the environment or on human dignity.

Innovation

- 5.7 Of the consultees who disagreed with the provisional proposal and added a longer-form response, most were concerned that prohibiting the use of non-regulated funerary methods could stifle innovation by preventing trials of developing methods. A few consultees stated that they would support the provisional proposal if trials were made possible.

Discussion and recommendation

- 5.8 We consider that the use of non-regulated funerary methods should be prohibited. In Chapter 2 of this Report, we recommend that there should be a power for the Secretary of State and the Welsh Ministers to make secondary legislation about individual new funerary methods. It is important to have a coherent system for regulation of new funerary methods. If there was no prohibition on the use of non-regulated funerary methods, it would be possible for some methods to be highly regulated whilst any that have not been regulated could be used with almost no restrictions. This could create unfairness and a lack of protection for people using unregulated methods.
- 5.9 A prohibition on the use of non-regulated funerary methods will be an important protection against potentially irresponsible or dangerous operation of non-regulated new funerary methods. It will bring clarity to the law and help to enable public confidence in the regulation of new funerary methods.
- 5.10 Some consultees were concerned that the prohibition could stifle innovation. At paragraph 5.60 below, we recommend that the Secretary of State and the Welsh Ministers should be able to make regulations enabling trials of new funerary methods to be authorised. Those carrying out authorised trials will not breach the prohibition on the use of non-regulated funerary methods. This should ensure that innovation can happen whilst balancing the need for controls, in the form of oversight of trials carried out on the bodies of deceased people.

Recommendation 11.

- 5.11 We recommend that the use of a new funerary method which has not been regulated should be prohibited.

- 5.12 This recommendation is given effect by clause 6 of the draft Bill for England and section 6 of the draft Bill for Wales. This clause and section provide that it is a criminal offence to carry out a modern funerary method that has not been regulated under clause 2 or section 2 (the main regulation-making power) or clause 4 or section 4. Clause 4 and section 4 enable regulations to be made about trials and are discussed at paragraphs 5.62 to 5.67 below.

- 5.13 We discuss the creation of a new criminal offence of breaching this prohibition, and the maximum penalty for that offence, in Chapter 6.

TRIALS OF NEW FUNERARY METHODS

Consultation on a power to make provision for trials

- 5.14 Alkaline hydrolysis and human composting are at an advanced stage of development and are already in use in other countries. A study of alkaline hydrolysis has taken place in England.³ It is possible that further trials may be needed for these methods. New methods may also emerge in the future that would need to be tested before they could be brought to the point of being ready to be regulated as a new funerary method.
- 5.15 Trials may help to highlight key issues and therefore determine the content of future detailed regulation about the method. Some form of authorisation would need to be considered to try to ensure that, for example, trials involving experimental technology which were unsuccessful did not cause distress to bereaved people or compromise the preservation of human dignity.
- 5.16 If the use of new funerary methods that have not been regulated is prohibited, as we recommend above, then unless provision is made to enable trials, or testing, of new funerary methods that are being developed but have not yet been regulated, this will also be prohibited.
- 5.17 We said that the respective Governments could be given a power to make regulations enabling the use of trials, alongside the general power to regulate new funerary methods. In our Consultation Paper, we invited consultees' views on whether it should be possible to make provision for trials. We suggested that each trial would likely need to be approved before it took place and that it may be appropriate for the respective Governments to do this.⁴ Under this model, if approved trials on a non-regulated funerary method were carried out, any prohibition on the use of those methods (and therefore any sanction for breach of the prohibition) should not apply.

Consultation responses

Innovation

- 5.18 Some consultees explicitly agreed that enabling provision for trials of new funerary methods would allow for innovation in the sector.
- 5.19 The Co-op noted that:

there is currently limited scientific evidence relating to new funerary methods – an issue that has slowed their implementation in the UK and abroad. Only by trialling new methods can providers establish their environmental impact, test whether they

³ G Robinson, "Alkaline Hydrolysis in the United Kingdom" in R McManus (ed) *The Sustainable Dead* (2023) p 89. See also Resomation, *Successful Study of Water Cremation completed for Yorkshire Water* (24 March 2020) <https://resomation.com/news/successful-study-of-water-cremation-completed-for-yorkshire-water/>.

⁴ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 6.122 to 6.126.

can be delivered safely and feasibly, and ensure they uphold dignity for the deceased.

- 5.20 It was, conversely, suggested by one consultee that the use of trials could stifle innovation. Fiona Cunningham (academic) thought that “the ambiguous legal status of [new funerary methods] in the UK has hampered research which would be valuable to lawmakers, businesses and the public” and stated that regulation of trials should not be imposed in a way that stifled innovation or delayed matters unduly.

Confidence

- 5.21 Some consultees noted that provision allowing trials to be authorised would help to evaluate, or enhance public confidence in, new funerary methods.
- 5.22 Blackpool Council thought that enabling trials “could foster greater public understanding and acceptance of new methods, building confidence in their safety and appropriateness if they were to become regulated”. Central Co-op believed that “approved trials are essential for evaluating safety, public response, and operational feasibility before any full-scale implementation”.

Safeguards and authorisation

- 5.23 Some consultees were concerned that there should be adequate safeguards for trials.
- 5.24 Quaker Social Action said that trials ought to:
- ensure that methods are as safe and respectful as possible before approval. Given the delicate nature of these trials and the potential impact on public health, the environment, the dignity of the person who has died and their family and friends it is also important there are regulations to require safeguards.
- 5.25 The Local Government Association agreed, saying that the three principles we identified in the Consultation Paper (and discuss further in Chapter 3 of this Report) should apply to trials.
- 5.26 Stotfold Town Council expressed concerns about the potential accuracy of trial results. Another consultee stated that trials should be “limited, so that they aren’t a backdoor way of performing unregulated new funerary methods”.
- 5.27 A few consultees thought that there should be a system of permitting, or licensing, for trials.

Scope

- 5.28 Kindly Earth Limited/Resomation Limited believed that the power to make provision for trials should be “broad enough to allow for a range of potential objectives”. These could include testing the efficacy of a process, assessing attitudes to a new funerary method and assessing environmental impacts.
- 5.29 The NAFD noted that “there must be a clear commercial pathway to allow for research and development into future new funerary methods, prior to approved trials”.
- 5.30 A few consultees mentioned that there should be consideration of consent.

Procedure

- 5.31 Professor Thomas Glyn Watkin KC (academic) suggested that primary legislation should set out what regulations for trials would be required to cover, and that these regulations “should be subject to the affirmative resolution procedure in both Houses”.

Discussion and recommendation

- 5.32 We are of the view that the respective Governments should have the power to make regulations enabling the use of trials of new funerary methods that have not yet been regulated.

The reasons trials may be needed

- 5.33 In Recommendation 11 above, we recommend that the use of non-regulated new funerary methods should be prohibited. In Chapter 6, we recommend that breaching this prohibition should be a criminal offence. If no provision is made for trials, a new funerary method will either be regulated or prohibited (and it will be a criminal offence to carry out a prohibited method). Although methods may be developed and tested to some extent, it would not be lawful to carry out testing of non-regulated new funerary methods on the bodies of deceased people. This could mean that development is halted or slowed. It could alternatively mean that new funerary methods are regulated before they are properly understood, or have been shown to work.
- 5.34 Several consultees supported the possibility of trials because it would enable innovation within the sector. The responses of a few consultees suggested that they thought trials would be mandatory, so that new funerary methods could only be regulated following a trial. It will be for the respective Governments to decide if trials are needed when determining whether to regulate a particular new funerary method. They could decide that it is appropriate for a specific new funerary method to be regulated without the need for trials, for example because there is extensive data and evidence available from other jurisdictions. Enabling the respective Governments to make provision for trials is intended to permit innovation that would otherwise be prohibited, but it will be up to each Government to decide whether trials are needed in particular circumstances.
- 5.35 A trial process may also help to ensure that regulations for an individual new funerary method are effective and appropriately detailed, taking account of the information from the trials.
- 5.36 In addition, we agree with those consultees who noted that trials could also aid public confidence. People may be more open to using a new funerary method that has been through a trial that has shown that the method is safe and effective.

The nature and scope of the power

A process for authorisation

- 5.37 We recommend that the Secretary of State and the Welsh Ministers should have the power to set out a process by which trials can be authorised, either by them or another person.
- 5.38 Some consultees suggested that licences, or permits, should be issued for trials. In Chapter 2, we set out the disadvantages of making provision for a licensing system for

the regulation of new funerary methods more widely and do not recommend that a licensing system should be taken forward. One significant disadvantage of a licensing system would be the inconsistency with the regulation of burial and cremation. As trials would be relevant to new funerary methods only, and not burial or cremation, there would be no inconsistency issue if licences could be issued for trials of new funerary methods.

- 5.39 In addition, any system of licensing for trials would be on a much smaller scale than a system of licensing for regulation of all new funerary methods. In Chapter 2, we note that the creation in secondary legislation of a separate body to run a system of licensing would be controversial, but it is much less likely that a separate body would be needed to licence trials. We consider that it is appropriate for the authorisation for each trial to take the form of a permit, which will set out the method, the person who will carry out the trial and the period during which the trial will take place.
- 5.40 We do not think that primary legislation should be overly prescriptive about the matters which should be included in the regulations, as requirements may vary. Trials may be conducted for new funerary methods which are in use elsewhere or are very close to the point of regulation but may also be conducted for wholly new funerary methods; the nature and extent of oversight needed in these two scenarios may differ significantly. However, we consider that it is appropriate that the respective Governments should have the power to set out, in regulations, limits that should apply to trials that can be authorised. For example, they may wish to specify a maximum number of bodies of deceased people that may be used in any authorised trial. The permit for an individual trial could then specify a number of bodies up to that maximum.
- 5.41 The NAFD commented that there should be a pathway for research and development, prior to approved trials. In our discussions with stakeholders, and through our consultation, we have not identified any specific problems with research of new funerary methods that would occur prior to trials taking place. We therefore do not think there is a need for the power to make regulations about trials of new funerary methods to cover earlier research or development.

Consent

- 5.42 A few consultees stated that consent should be required for a person's body to be used in a trial of a new funerary method.
- 5.43 Under the Human Tissue Act 2004, consent is required for the storage or use of the body of a deceased person for purposes and activities under the Act. These include anatomical examination, public display, transplantation, and research (in connection with disorders, or the functioning, of the human body).⁵ The Act contains provisions about appropriate consent. For example, consent in writing is required for public display of a body after death.⁶

⁵ Human Tissue Act 2004, ss 1(1), 1(2) and 1(3)(a) and Sch 1.

⁶ Human Tissue Act 2004, ss 2(4) and 3(3).

- 5.44 A trial of a new funerary method would, similarly, be unusual. We consider that it would be appropriate for consent to be obtained prior to the use of a body in a trial of a new funerary method, prior to death, from the person whose body is to be used.
- 5.45 In our third sub-project, on Rights and Obligations Relating to Funerals, Funerary Methods and Remains, we will consider whether the decisions about funerary methods that a person made before their death should be binding.⁷ This is slightly different from the question of whether consent should be required for the use of a person's body in a trial of a new funerary method. If a person consents to the use of their body in a trial of a new funerary method, this will not be binding. The consent will not have the effect of making it mandatory that the trial proceed. Rather, the trial could not go ahead without consent.
- 5.46 We recommend that when the Secretary of State or the Welsh Ministers make regulations about trials under this power, the regulations must require that a person's body may only be used in a trial of a new funerary method if that person has consented to this prior to their death. The regulations must set out the manner, form and nature of this consent.

Application process and monitoring compliance

- 5.47 We recommend that the power should also enable the respective Governments to make provision for an application process and a process of monitoring compliance with the terms of the authorisation. An application process will be needed so that the relevant Government can determine which trials should be approved. Compliance with the terms of the authorisation may need to be monitored for reasons of health and safety, or so that the efficacy of the trial can be confirmed.

Enforcement

- 5.48 At paragraphs 4.68 and 4.74 to 4.75 we discuss enforcement powers that may be included when secondary legislation is made to regulate individual new funerary methods. Regulations about the procedure for trials may also include these enforcement powers. These powers, for example to require the provision of information or to enter premises, may be required to monitor compliance with the authorisation for the trial. We therefore recommend that the enforcement powers may be included in regulations made about trials.

Registration

- 5.49 In Chapter 4, we recommend that regulations made about a new funerary method must require each use of that new funerary method to be registered and to set out how and by whom the registration is to be carried out. If regulations are made enabling trials of new funerary methods to take place, those regulations must make provision for each use of the new funerary method (as part of the trial) to be registered. This will ensure that the use of trials will not have an adverse impact on record-keeping.

⁷ Law Commission, *Rights and Obligations Relating to Funerary Methods, Funerals and Remains* (2023) <https://lawcom.gov.uk/project/rights-and-obligations-relating-to-funerary-methods-funerals-and-remains/>.

Burial of remains

- 5.50 It was suggested, in the consultation responses, that provision should be made to allow for trialling the interment of remains following a new funerary method, if appropriate.
- 5.51 We discuss burial of remains following the use of a new funerary method in Chapter 4. In Recommendation 6, we recommend that the respective Governments should have the power to require the registration of burial of remains following the use of a new funerary method. There is a power, in clause 10(4) and section 10(4) of the draft Bills, to make amendments to primary legislation (that relates or refers to burial and cremation). This will enable the Secretary of State or the Welsh Ministers to amend primary legislation to include the burial of remains following the use of a specified modern funerary method in the meaning of burial so that registration of burial of these remains will be required.
- 5.52 It is possible that trials of new funerary methods may need to include trials of the interment of remains. It is also possible that the burial of remains will be wanted, even if it does not need to be trialled. If remains are buried following the use of a new funerary method during a trial, it is appropriate that these should be registered in line with the law on burial.
- 5.53 We will therefore ensure that the power for the respective Governments to make regulations about trials includes a power to provide that where specified types of remains are buried following a trial of a new funerary method, the law on burial of remains will apply. The regulations can set out the process by which remains are to be specified (so that the law on burial of remains will apply to those remains).

Principles

- 5.54 In our Consultation Paper, we asked whether the respective Governments should be required to consider certain principles before making secondary legislation about individual new funerary methods.⁸ Some consultees suggested that the principles mentioned in the Consultation Paper (protection of the environment, protection of public health and public safety and the preservation of human dignity) should also underpin provisions in relation to trials.
- 5.55 In Chapter 3 of this Report, we recommend that the respective Governments must have regard to the importance of protecting the environment, protecting public health and public safety and treating human remains with dignity when making regulations about new funerary methods. It is appropriate that this requirement should apply to any regulations made about trials. If a method is trialled, it may be regulated in future, and the trials could help inform the content of detailed regulation. It is therefore appropriate that the system of authorisation for trials, which will be set out in secondary legislation, should be designed with the principles in mind.

Procedure for regulations

- 5.56 Professor Thomas Glyn Watkin KC (academic) suggested that primary legislation should set out the matters which regulations for trials would be required to cover, and

⁸ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.51.

any regulations should be subject to the affirmative procedure. We discuss the appropriate procedures for regulations made under powers in our draft legislation in Chapter 4. At paragraph 4.105 we recommend that regulations about trials should be subject to the draft affirmative/ Senedd approval procedure.

Conclusion

- 5.57 Overall, we consider that enabling regulations to be made about trials of new funerary methods may help to determine whether a method is ready and appropriate for wider use, as well as the content of detailed regulation of the method. It may also help to encourage innovation in the sector.
- 5.58 Regulations made under this power could make provision for an application process and a process by which individual trials may be authorised (whether by the relevant Government or another appointed person) and monitored. A trial will be for a limited period and the regulations may specify other limits on the trials that may be authorised, for example, a maximum number of bodies that may be used in each trial.
- 5.59 The regulations must require a person's consent to be given in order for their body to be used in a trial.

Recommendation 12.

- 5.60 We recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations enabling trials of new funerary methods to be authorised.
- 5.61 We recommend that when the Secretary of State or the Welsh Ministers make regulations under this power, the regulations must:
- (1) require that a person's body may only be used in a trial of a new funerary method if that person has consented to this prior to their death; and
 - (2) set out the manner and form of this consent.
- 5.62 This recommendation is given effect by clause 4 of the draft Bill for England and section 4 of the draft Bill for Wales. Clause 4(1) and section 4(1) give the Secretary of State and the Welsh Ministers the power, with a view to determining whether a modern funerary method should be regulated under the Act, to make regulations permitting a person to carry out the method for a limited period of time, in accordance with the regulations and the terms of a written permit. A written permit is to be issued by the Secretary of State or the Welsh Ministers, although under clause 10(2) and section 10(2) of the draft Bills, they may confer a function on another person specified in, or appointed under, the regulations.
- 5.63 Regulations must provide that the method may only be carried out in accordance with a written permit and also the regulations (clause 4(2) and section 4(2)). Under clause 4(3) and section 4(3), regulations made under clause 4(1) or section 4(1) must require a permit to specify the method, the person to whom it is granted and the period for which it is granted.

- 5.64 Clause 4(3)(b) and section 4(3)(b) require that the regulations provide that trials may be used only where consent has been given by the person whose body is to be used in the trial. Clause 4(3)(c) and section 4(3)(c) require provision to be made about the manner and form of the consent.
- 5.65 As with fully regulated methods, clause 4(3)(d) to (f) and section 4(3)(d) to (f) state that regulations must require the registration of each use of a modern funerary method during any trial and make provision for how and by whom the registration must be carried out and the register kept.
- 5.66 Clause 4(4) and section 4(4) provide that any regulations made about trials under clause 4(1) or section 4(1) may make (or authorise a permit to make) any provision that may be made under clauses or sections 2 or 3. However, under clause 4(5) and section 4(5), a permit may not be authorised to create criminal offences or impose fixed monetary penalties. This will ensure that the Secretary of State and the Welsh Ministers will have the power to make provision for all relevant matters. This may include monitoring compliance with the terms of a permit and enforcement. They may also make provision about what is to be done with remains or other remaining material, and registration requirements for these. This means that regulations may provide that if remains that are specified, for example, in the permit for the trial, are buried then this burial must be registered.
- 5.67 Clause 1 and section 1 of the draft Bills provide that the Secretary of State and the Welsh Ministers must have regard to the importance of protecting the environment, protecting public health and public safety and treating human remains with dignity when exercising functions under the draft Bills. These principles must therefore be considered when regulations are made about trials.

Chapter 6: Criminal Offences

INTRODUCTION

6.1 In this chapter, we consider the creation of new criminal offences, or powers to create criminal offences, to ensure that the system of regulation of new funerary methods will be enforceable.

Elements of a criminal offence

6.2 The “external elements” of an offence are the elements other than those that relate to the state of mind of a defendant. These can be divided into:

- (1) “conduct elements”: what the defendant must be proven to have done or have failed to do;
- (2) “consequence elements”: the result of the defendant’s conduct; and
- (3) “circumstance elements”: other factors or states of affairs that must be shown to have existed (such as, for example, the falsity of a statement).¹

6.3 The “fault element” (or “mental element”) of an offence is the state of mind that the defendant must have had at the relevant time to be sufficiently culpable. Where at least one of the external elements does not have a corresponding fault element, this is known as strict liability. When the defendant is charged with a strict liability offence, the prosecution does not have to prove intention, recklessness or even negligence in relation to the strict liability elements.

Background: relevant criminal offences

6.4 Some offences that relate to burial and cremation are relevant to our discussion in this chapter.

6.5 Under section 25 of the Burial Act 1857, it is a criminal offence to remove human remains (which includes cremated remains) from any place of burial unless one of three conditions below is complied with.

- (1) the remains are removed in accordance with a faculty (from the consistory court);²
- (2) they are removed in accordance with a proposal under the Care of Cathedrals Measure 2011 (No 1); or

¹ This approach is set out in Reform of Offences Against the Person (2015) Law Com No 361 para 2.3.

² A faculty, in this context, is a form of legal permission. Remains buried at cathedrals are governed other than by faculty and can be removed in accordance with authority by the Cathedrals Fabric Commission for England or a fabric advisory committee under the Burial Act 1857, s 25(2)(b).

- (3) if the remains are not interred in consecrated land, they are removed under a licence from the Secretary of State and in accordance with any conditions attached to that licence.

6.6 The following criminal offences in the Cremation Act 1902 relate specifically to cremation.

- (1) It is a criminal offence to contravene regulations made under that Act (currently the Cremation (England and Wales) Regulations 2008) or knowingly to carry out, procure or take part in a cremation except in accordance with the provisions of the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008.³ A person who commits this offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently £1,000).⁴
- (2) It is a criminal offence wilfully to make false representations to procure the burning of any human remains. Any person who does this is liable to a term of imprisonment not exceeding two years, in addition to any civil penalty otherwise incurred.⁵

6.7 There are other statutory offences which are relevant to the way in which the bodies of deceased people are treated. For example, under the Human Tissue Act 2004, a person who removes, stores or uses the body of a deceased person without consent to use it for what is called a “scheduled purpose” is liable to a fine or imprisonment for up to three years, or both.⁶ Purposes are listed in Schedule 1 and include public display, research, and transplantation.⁷

Regulated new funerary methods

6.8 In the Consultation Paper, we provisionally proposed two new criminal offences to mirror cremation law. The first was an offence of dishonestly making false representations to procure the use of a new funerary method. In this chapter, we consider consultation responses and recommend that this criminal offence should be created, with a maximum penalty (as provisionally proposed) of an unlimited fine and/or a term of imprisonment of up to two years.⁸

6.9 The second offence we provisionally proposed was that of procuring or attempting to procure the use of a new funerary method with intent to conceal an offence or impede a prosecution. This was intended to mirror the offence of procuring or attempting to procure a cremation with intent to conceal an offence or impede a prosecution. We

³ SI 2008 No 2841.

⁴ Cremation Act 1902, s8(1).

⁵ Cremation Act 1902, s8(2).

⁶ Human Tissue Act 2004, s 25(1) and (2).

⁷ Human Tissue Act 2004, s 16(2) and Sch 1.

⁸ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.72.

note that the cremation-related offence has been repealed.⁹ We are therefore not proceeding with a recommendation in relation to this offence.

- 6.10 We also invited views from consultees on whether a third criminal offence of breaching regulations about individual new funerary methods should be set out in primary legislation or, alternatively, the respective Governments should be given the power to create criminal offences in regulations.¹⁰ In this chapter, we conclude that, although such powers can be controversial, it is appropriate for a power to be given in this case.

Non-regulated new funerary methods

- 6.11 In Chapter 5 of this Report, we recommend that the use of new funerary methods that have not been regulated under the new framework should be prohibited. In the Consultation Paper, we provisionally proposed that it should be a criminal offence to breach such a prohibition.¹¹ In this chapter, we discuss the possible offence of carrying out a new funerary method which is not regulated and the appropriate fault element of the offence. We had provisionally proposed that to be guilty of this offence, the defendant must know that they are carrying out a new funerary method and that they must know, or be reckless as to whether, the method is regulated.
- 6.12 We provisionally proposed that the maximum penalty for this offence should be more severe than for the existing offence of carrying out, procuring or taking part in a cremation except in accordance with cremation legislation (a fine at level 3 on the standard scale, currently £1,000). We also invited consultees' views on whether the maximum penalty for the new offence should be a period of imprisonment.¹²
- 6.13 In this chapter, for the reasons we set out below, we recommend that it should be a criminal offence to carry out a new funerary method which is not regulated, where the defendant knows that the method is not regulated and knows, or is reckless as to whether, the method is regulated. We recommend that the maximum penalty should be: on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court (or both); and, on indictment, a fine or three years' imprisonment (or both).

CRIMINAL OFFENCE OF MAKING FALSE REPRESENTATIONS TO PROCURE THE USE OF A REGULATED NEW FUNERARY METHOD

Provisional proposal in the Consultation Paper

- 6.14 Section 8(2) of the Cremation Act 1902 provides that it is a criminal offence wilfully to make any false representation, or sign or utter any false certificate, with a view to

⁹ The offence was previously set out in the Cremation Act 1902, s 8(3) and was repealed by Criminal Law Act 1967, Sch 3, part III. The offence is set out, in error, at paras 6.55 and 7.19 of the Consultation Paper (New Funerary Methods (2025) Law Commission Consultation Paper No 272).

¹⁰ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.73.

¹¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.14.

¹² New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 7.48 to 7.49.

procuring the burning of human remains. The maximum penalty for this offence is a period of imprisonment not exceeding two years.

- 6.15 In our Consultation Paper, we provisionally proposed that there should be a similar offence relating to the use of new funerary methods: that of making false representations to procure the use of a new funerary method. We provisionally proposed that dishonesty, rather than wilfulness, should form part of the offence to reflect the modern understanding of false representation, as exemplified in the Fraud Act 2006.¹³
- 6.16 We provisionally proposed a maximum penalty of an unlimited fine or two years' imprisonment (with varying limits within this, depending on whether conviction is summary or on indictment).

Consultation responses

- 6.17 A substantial majority of consultees agreed with our provisional proposal.

Consistency and reassurance

- 6.18 Some consultees noted their agreement that it would be appropriate to mirror the offences in the Cremation Act 1902 for consistency. Blackpool Council said that this would prevent "confusion and over complications". Wealden Crematorium (owned by Wealden District Council) stated that "there is no good reason for the primary legislation to differ from that which is included in the Cremation Act 1902".
- 6.19 One consultee believed that the provisional proposal would "give reassurance to potential customers and relatives of deceased persons that everything is legitimate and above board".

Maximum penalty

- 6.20 The substantial majority of consultees who agreed with the provisional proposal therefore agreed with the proposed maximum penalty.
- 6.21 Fiona Cunningham (academic) said: "it is also appropriate that the offence is given an equivalent penalty to cremation -- I see no reason why the penalty in this case should be more or less severe."
- 6.22 A few consultees disagreed. Dr Imogen Jones (academic) said:
- I think that the criminal law should only be invoked as a last resort when there is demonstrable harm. These are serious penalties, and I do not think that imprisonment is helpful or appropriate. It would be better to focus on financial penalties, removal of licences, and so on. A properly formulated regulatory framework would facilitate this.
- 6.23 By contrast, South Kesteven District Council said: "we do not believe the scale of the fines or the limited prison sentences are enough to deter offenders". One consultee suggested that the fine and prison term should be increased.

¹³ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.47.

6.24 The Continuous Improvement Forum for Bereavement Services in South East Wales said that if a person was convicted of one of these offences, they should be “banned from using that method again”. One consultee thought that a ban on “any position in the death/ funeral [industry]” would be appropriate.

Discussion and recommendation

False representations offence

6.25 A substantial majority of consultees agreed with our provisional proposal for a new criminal offence of making false representations to procure the use of a new funerary method. Consultees broadly agreed with the reasoning we gave in the Consultation Paper for the creation of the offence. Where consultees provided comments, the most common reason given for agreeing with the provisional proposal was consistency with existing cremation law.

6.26 We have considered the principle of minimal criminalisation: that criminalisation should be a last resort (as also mentioned by one consultee), only used when other alternatives are insufficient to respond to the harmfulness and wrongfulness of the conduct in question.¹⁴ In this case, we consider that (as with the cremation-related offence) other forms of enforcement would be insufficient and that a criminal offence is necessary.

6.27 We consider that the provisionally proposed offence should be created. We therefore recommend that it should be a criminal offence dishonestly to make false representations to procure the use of a new funerary method.

Maximum penalty

6.28 We consider that parity with the maximum penalty for the cremation-related offence is appropriate. We recommend that the maximum penalty for the new offence should be an unlimited fine and/or a term of imprisonment of up to two years. We do not consider that there is any rationale for not including the possibility of a prison term, when imprisonment of up to two years may be imposed for the comparable cremation-related offence.

6.29 A few consultees suggested that anyone convicted of the offence should be banned from carrying out new funerary methods, or from working in the funeral sector. For the avoidance of doubt, a person who makes false representations to procure the use of a new funerary method is likely to be someone arranging the use of a new funerary method (for example, a family member who deliberately lies on an application form) and not an operator. But the underlying point - that the commission of this type of criminal offence may be relevant to whether someone should be authorised, or should continue to be authorised, to be an operator - is an important one, which we discuss in Chapters 2 and 4.

¹⁴ D Husak, *Overcriminalization: The Limits of the Criminal Law* (2008).

Recommendation 13.

6.30 We recommend that it should be a criminal offence dishonestly to make false representations to procure the use of a new funerary method, with a maximum penalty of:

- (1) on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court (or both); and
- (2) on indictment, a fine or two years' imprisonment (or both).

6.31 The new criminal offence of dishonestly making false representations to procure the use of a modern funerary method is set out in clause 7 of the draft Bill for England and section 7 of the draft Bill for Wales. The maximum penalty for the offence is set out in clause 7(3) and section 7(3).

CRIMINAL OFFENCE OF BREACHING REGULATIONS ABOUT INDIVIDUAL NEW FUNERARY METHODS

Consultation

6.32 Under the Cremation Act 1902, it is a criminal offence to contravene regulations made under that Act (currently the Cremation (England and Wales) Regulations 2008) or knowingly to carry out, procure or take part in a cremation except in accordance with the provisions of the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008.¹⁵ A person who commits this offence is liable, on summary conviction (in magistrates' courts), to a fine not exceeding level 3 on the standard scale (currently £1,000).¹⁶

6.33 In the Consultation Paper, we noted that it would be possible to include a similar offence in the draft legislation for new funerary methods: carrying out, procuring or taking part in the use of a new funerary method except in accordance with regulations made about that new funerary method.¹⁷

6.34 However, we also said that doing so would mean that this offence would be created before it was known which new funerary methods the offence related to or the content of the regulations governing the use of those methods. Future regulations about new funerary methods may be more detailed than the regulation governing cremation. There may be no way of distinguishing in advance between breaches for which a criminal penalty would be appropriate, and those for which it would not. There would, however, be some flexibility in terms of the penalty imposed for individual cases, as long as it was within the maximum penalty for the offence.

¹⁵ SI 2008 No 2841.

¹⁶ Cremation Act 1902, s 8(1).

¹⁷ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.55.

- 6.35 One way to mitigate these concerns would be, instead of setting out the criminal offence in primary legislation, for the legislation to include a power for the respective Governments to create criminal offences in secondary legislation for breaches of regulations about new funerary methods. With a power to create criminal offences, the relevant Government would be able to make informed decisions about the appropriate scope of each offence and the associated maximum penalty in each case, depending upon the method and the nature of the new offences. This would allow the relevant Government to distinguish between trivial and non-trivial breaches of the regulations and only criminalise those breaches which were serious enough to warrant a criminal sanction. We said that the affirmative procedure should apply to regulations made under this power.¹⁸
- 6.36 However, in the Consultation Paper, we noted that the use of powers to create criminal offences in secondary legislation has been criticised by the House of Lords Constitution Committee¹⁹ and the Delegated Powers and Regulatory Reform Committee (DPRRC). Criminal offences created by secondary legislation are not subject to the same scrutiny as those set out in primary legislation. The DPRRC has stated that it expects a “compelling justification” for the components of a criminal offence to be set out in secondary legislation.²⁰
- 6.37 We said that we thought that there may be a justification in this case. It is vital to ensure that there are sanctions for operators and others who fail to adhere to legislation about new funerary methods, which might have serious consequences. However, we cannot know precisely what the content of future regulations relating to new funerary methods might be, particularly for methods that are not currently available elsewhere. We thought that it may therefore be appropriate to give the respective Governments the power to create criminal offences in this case.
- 6.38 We invited views from consultees on whether the criminal offence of breaching regulations about individual new funerary methods should be set out in primary legislation or, alternatively, the respective Governments should be given the power to create offences in regulations.²¹

Consultation responses

- 6.39 Some consultees expressed support for including the offence in primary legislation, while others favoured a power to create offences.

¹⁸ We describe various procedures for secondary legislation at paras 4.83 to 4.90 of this Report.

¹⁹ See House of Lords Select Committee on the Constitution, *The Legislative Process: The Delegation of Powers* (12th Report of 2017-19 Session, 20 November 2018) HL 225 paras 8 and 46 <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/225.pdf>.

²⁰ House of Lords Delegated Powers and Regulatory Reform Committee, *Guidance for Departments* (December 2023) para 12 <https://committees.parliament.uk/publications/42694/documents/263159/default/>.

²¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 6.73.

Setting out a criminal offence (of breaching any future regulations) in primary legislation

- 6.40 Some consultees said that setting out a criminal offence in primary legislation would be appropriate, because it would mirror the approach taken for cremation, and provide clarity.
- 6.41 However, consultees also acknowledged the difficulties, identified in our Consultation Paper, with setting out an offence of breaching regulations in primary legislation before the content of future regulations is known.
- 6.42 A few consultees favoured this option because they thought it would take less time. One consultee said: “based on the past, I feel that Government would be tardy as regards secondary legislation”. The Good Funeral Guide CIC thought that “given the significant pressure on Government time from multiple other areas, it seems possible that option (1) would be the better one”. Central Co-op mentioned “immediate enforceability”.
- 6.43 A few consultees commented that the suggested maximum penalty, a fine of £1,000, does not seem high enough for the offence. Eastbourne Borough Council felt that “conviction should carry a prison sentence”.

A power to create criminal offences in secondary legislation

- 6.44 Some consultees supported the option of a power to create criminal offences because it would give the respective Governments flexibility and help to future-proof the system of regulation. It would also enable secondary legislation to be created for offences that are relevant to each new funerary method.
- 6.45 Some consultees believed that this option would result in a higher maximum penalty than that which applies to the current cremation-related offence and supported it on this basis.
- 6.46 Fiona Cunningham (academic) expressed “significant reservations” about this option, saying that the “inflammatory and sensational nature of public discourse” around new funerary methods:
- could fuel excessive penalties which discourage adoption by funeral operatives and 'other' [new funerary methods] as uniquely sinister or dangerous compared to burial and cremation.
- 6.47 The FBCA noted that “leaving the offences to be included in the secondary legislation is not without controversy” and did not support this option. However, Stroud Town Council felt that “the use of the affirmative resolution procedure will ensure appropriate scrutiny”.

Discussion and recommendation

Setting out a criminal offence (of breaching any future regulations) in primary legislation

- 6.48 The strongest arguments in favour of setting out the criminal offence in primary legislation are that it provides clarity and avoids the issues associated with using secondary legislation to create criminal offences. This is the approach taken with cremation, where the criminal offence of carrying out, procuring or taking part in a

cremation except in accordance with the provisions of the Cremation Act 1902 and regulations made under it is set out in primary legislation.²²

- 6.49 A few consultees commented that they thought that setting out a criminal offence in primary legislation would mean that the offences were in place sooner. However, this is unlikely to be significant, from a practical point of view. The primary legislation would need to be passed before the first regulations about a new funerary method are in place. It is possible that the primary legislation may be passed some time before any secondary legislation is made. However, any criminal offences created in primary legislation would only be relevant once regulations had been made enabling the use of one or more individual methods. It is also likely that the provisions creating the criminal offence would only be commenced once regulations had been made. If there was a power to create criminal offences in secondary legislation, we anticipate that these provisions would be set out when regulations are made about individual methods. We therefore do not think that timing is a strong reason for proceeding with the first option.
- 6.50 The main argument against primary legislation providing that any breach of future regulations made about individual new funerary methods would be a criminal offence is that it would criminalise breaches of minor or technical regulations. Crown Prosecutors apply a “public interest” test, whereby they consider whether a prosecution is needed in the public interest. In doing so, they balance factors for and against prosecution such as the suspect’s culpability and the harm caused to form an overall assessment.²³ This might safeguard against prosecution for breaches of minor or technical regulations. However, it is insufficient to depend on discretion to prevent over-criminalisation. Although discretion and the public-interest test can mitigate occasional over-criminalisation, heavy dependency on these safeguards means that the offence is not well designed. It would leave the system reliant on the hope that those who are not in compliance with minor regulatory requirements are neither reported nor prosecuted, rather than ensuring from the outset that the scope of the offence is appropriately confined.²⁴ If the offence is to be set out in primary legislation, it must be accepted that it is possible that all breaches of regulations could be prosecuted.
- 6.51 Guidance could be used to provide a further safeguard. Minor and technical requirements relating to the operation of new funerary methods could be set out in guidance rather than secondary legislation. That way, breaches of such requirements would not be capable of giving rise to criminal liability. However, this would be unsatisfactory as the regulations we recommend in this Report would not set out a comprehensive system of rules for the operation of new funerary methods, giving rise to fragmentation of the law and reducing the clarity of the legal framework. In addition, there would be no clear enforcement mechanisms for a breach of guidance.

²² Cremation Act 1902, s 8.

²³ Crown Prosecution Service, *The Code for Crown Prosecutors* (26 October 2018) paras 4.11 and 4.14 <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

²⁴ See *Modernising Communications Offences* (2021) Law Com No 399 paras 6.36 and 6.113.

A power to create criminal offences in secondary legislation

- 6.52 Alternatively, if the respective Governments had the power to create offences in secondary legislation, they could decide which regulatory breaches should be criminal offences once they knew which new funerary methods will be regulated and the content of those regulations. This would be beneficial because it would avoid the situation described above, where all breaches of future regulations, the content of which would not be known at the time the primary legislation is passed, would be criminalised. It would allow a distinction to be drawn between minor and technical breaches of the regulations, breach of which is not serious enough to warrant a criminal sanction, and other more serious breaches, where a criminal penalty may be justified.
- 6.53 As we have noted, such powers can be controversial, due to the lower level of parliamentary scrutiny of criminal offences created in secondary legislation. However, the DPRRC has acknowledged that they can be justified in some cases.
- 6.54 In particular, the DPRRC has previously accepted that there are exceptional circumstances for creating criminal offences in delegated legislation where there is a risk that setting out criminal offences in primary legislation, relating to the breach of provisions set out in future regulations, would produce the wrong results. This may arise where it is impossible to know who could commit an offence by breaching these regulations or where it would be difficult to ascertain the severity of this offence. Consequently, there is a risk that setting out the provisions in primary legislation will give rise to criminal offences that are defective or disproportionate. Alternatively, there is the risk that primary legislation which aims to delineate those regulatory provisions whose breach would merit a criminal offence would be unclear.²⁵
- 6.55 The DPRRC has also explained that powers to create criminal offences may be justified where they are “limited to specific purposes (for example, failure to comply with requirements imposed by the regulations)”.²⁶
- 6.56 A power to create criminal offences for breaches of provisions set out in future regulations of new funerary methods is relatively narrow. In addition, similar issues arise regarding the potential for disproportionate and inappropriate criminal penalties, or a lack of clarity were criminal offences to be set out in primary legislation. It would not be possible to know which breaches of future regulatory provisions should give rise to a criminal offence. It may also be difficult to set out who could potentially commit these criminal offences.
- 6.57 Any provision of primary legislation would be unclear were it only to require criminal penalties for breaches of sufficiently serious requirements of future regulations, or to

²⁵ House of Lords Delegated Powers and Regulatory Reform Committee, *Sanctions and Anti-Money Laundering Bill* (7th Report of Session 2017–19, 17 November 2017) HL 38 paras 28-30 <https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/38/3803.htm>.

²⁶ House of Lords Delegated Powers and Regulatory Reform Committee, *Energy Bill: Parts 7 – 13* (11th Report of Session 2021-22, 13 October 2022) HL 66 para 19 <https://publications.parliament.uk/pa/ld5803/ldselect/lddelreg/66/6603.htm>.

allow future regulations to set out those provisions which, if breached, would not give rise to a criminal offence.

6.58 Further, there is an established parliamentary practice of permitting the creation of criminal offences in secondary legislation, to accompany and give effect to powers to regulate the carrying out of potentially dangerous activities, in order to promote the public interest or protect public safety. For example, powers have been conferred to create criminal offences in secondary legislation to complement and give effect to powers to regulate:

- (1) the safety of air transport services;²⁷
- (2) functions conferred on local authorities in relation to looking after and accommodating children;²⁸
- (3) standards on the railways;²⁹
- (4) fisheries, with a view to preventing disease (among other things);³⁰
- (5) the safety of cosmetic procedures;³¹
- (6) the decommissioning of carbon storage installations;³²
- (7) responses to marine oil pollution incidents.³³

6.59 In the case of new funerary methods, a power limited to creating criminal offences in relation to breach of the regulations would be consistent with this established practice. Such a power would ensure that there would be clarity and legal certainty, in regulations, about the specific breaches that may give rise to a criminal penalty.

6.60 To help to alleviate concerns about the respective Governments being given an unfettered power to create new offences, the maximum penalty for the commission of such offences should be set out in the primary legislation.

6.61 In addition, we consider that it would be appropriate for the respective Governments also to have the power to impose a civil sanction, in the form of a fixed monetary penalty, for conduct which could be a criminal offence. This will further ensure that the powers can be used flexibly so that penalties are imposed that are appropriate to the breaches. The availability of an alternative, less stigmatising means of enforcement reduces the likelihood of criminal sanctions being imposed inappropriately.

²⁷ Civil Aviation Act 1982, s 7(2)(b).

²⁸ Social Services and Well-being (Wales) Act 2014, s 94B.

²⁹ Transport Act 2000, s 247(6).

³⁰ Fisheries Act 2020, s 39(2).

³¹ Health and Care Act 2022, Sch 19, para 7(1).

³² Energy Act 2023, s 93(3).

³³ Energy Act 2023, s 297(7).

- 6.62 Weighing up the competing arguments, our view is that – while not a perfect solution – a power to create criminal offences in relation to breach of the regulations is preferable to setting out a criminal offence in the draft Bills. Although the former option entails a lesser degree of parliamentary scrutiny than the latter, it is consistent with the approach taken in other similar regulatory frameworks as set out at paragraph 6.58 above. As we discuss at paragraphs 6.65 to 6.66 below, the level of parliamentary scrutiny can be maximised under this option by use of the draft affirmative/ Senedd approval procedure.
- 6.63 Crucially, this option avoids the criminalisation of trivial acts or acts committed by persons not within the contemplation of Parliament or the Senedd at the time the offence is enacted: situations which, as we note at paragraph 6.54 above, the DPRRC has recognised as disproportionate and defective. Further, this option will give rise to a clearer legal framework, setting out expressly which breaches can give rise to criminal sanctions thereby engendering legal certainty and promoting the rule of law. For these reasons, we recommend that the Secretary of State and the Welsh Ministers should have the power to create new offences in secondary legislation of breaching regulations about individual new funerary methods, together with a corresponding power to make regulations conferring a power to impose civil (financial) penalties.
- 6.64 The precise wording of the recommendation differs slightly from that used in our consultation question to ensure that the recommendation accurately reflects the scope of the existing criminal offence that applies in the cremation context.

Parliamentary scrutiny

- 6.65 In the Consultation Paper, we said that the affirmative procedure should apply to regulations made under this power.³⁴ We recommend that a draft affirmative/ Senedd approval procedure should apply. The regulations must be laid in draft form before the UK Parliament or the Senedd and approved before they are made. This will ensure a higher level of parliamentary scrutiny for the creation of new criminal offences. This recommendation is set out at paragraph 4.105 above, which contains the recommended procedures for different types of regulations made under powers in the draft Bills.
- 6.66 The first time that regulations are made about an individual new funerary method, they will be subject to additional procedures, with even more parliamentary scrutiny. This would apply to any regulations made about criminal offences which are included in the first regulations for a method.

Maximum penalty

- 6.67 As set out above, we consider that the maximum penalty for criminal offences that can be created under the power should be set out in the draft Bills.
- 6.68 A few consultees felt that a maximum penalty of a fine of £1,000 would be too low. Some consultees said that they thought there should be a power to create criminal

³⁴ We describe various procedures for secondary legislation at paras 4.83 to 4.90 of this Report.

offences because they believed that this would result in a higher maximum penalty than that which applies to the current cremation-related offence.

6.69 However, we did not receive any detailed comments about why a higher penalty than that which attaches to the cremation-related offence should apply. We recommend that the maximum penalty should be the same as for the cremation-related offence. The potential harm that could arise from criminal offences created using this power could be very similar to the harm which could arise from the cremation-related offence, for example in relation to the impact on friends or relatives. It is conceivable that the harm could be higher, for example, if there would be a highly detrimental impact on the environment if a specific method was carried out inappropriately. However, without knowing which methods may be regulated in future, it is not possible to conclude that the harm would definitely be higher. Although we are trying to future-proof the framework for the regulation of new funerary methods as far as possible, we do not think that speculatively including a higher maximum penalty is appropriate. It would be open to either Government to bring forward further primary legislation in future if a method emerged that necessitated a higher penalty for specific breaches.

Recommendation 14.

6.70 We recommend that:

- (1) the Secretary of State and the Welsh Ministers should have the power to create new offences in secondary legislation of breaching regulations about individual new funerary methods; and
- (2) the maximum penalty for these offences should be, on summary conviction (in magistrates' courts), a fine at level 3 on the standard scale (currently £1,000).

6.71 We recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations conferring a power, where conduct amounts to an offence, to impose a civil penalty (in the form of a fixed monetary penalty of an amount not exceeding the maximum penalty for the offence).

6.72 This recommendation is given effect by clauses 3(2)(b) and 3(2)(c), and sections 3(2)(b) and 3(2)(c), of the draft Bills.

6.73 Clause 3(2)(b) and section 3(2)(b) give the Secretary of State and the Welsh Ministers the power to create new criminal offences in secondary legislation for the purposes of enforcement of the regulations and sets out the maximum penalty.

6.74 These provisions would enable the Secretary of State or the Welsh Ministers to create a criminal offence of carrying out a modern funerary method in breach of regulations about individual new funerary methods. They would likewise enable the creation of an offence of, for example, breaching a condition of a permit (issued in accordance with regulations made under clause 4 or section 4) for a trial.

- 6.75 Clause 3(2)(c) and section 3(2)(c) provide that the Secretary of State and the Welsh Ministers can make regulations conferring a power, where conduct amounts to an offence, to impose a civil penalty, in the form of a fixed monetary penalty of an amount not exceeding the maximum penalty for the offence. Clause 3(6) and (7), and section 3(6) and (7), set out matters that may, and must, be included in these regulations. Clause 3(8) of the Bill for England provides that amounts recovered in respect of fixed monetary penalties are to be paid into the Consolidated Fund (into which most revenue from taxation, fines and penalties is paid). Similar provision is made at section 3(8) of the Bill for Wales in respect of the Welsh Consolidated Fund.
- 6.76 Under clause 11(3) and section 11(3) (and clause 11(11)(a) and section 11(11)(a)) the draft affirmative/ Senedd approval procedure will apply to regulations made using these powers.

CRIMINAL OFFENCE OF USING A NON-REGULATED NEW FUNERARY METHOD

Consultation on a new offence of using non-regulated new funerary methods

“Carrying out” only

- 6.77 We provisionally proposed that it should be a criminal offence to procure, take part in or carry out a non-regulated new funerary method.³⁵
- 6.78 Section 8 of the Accessories and Abettors Act 1861 provides that a person who aids, abets, counsels or procures (now commonly referred to as assists or encourages) the commission of an indictable offence may be tried and punished as a principal offender. Section 44 of the Magistrates’ Courts Act 1980 provides that a person who aids, abets, counsels or procures the commission of a summary offence may be tried for that offence. Part 2 of the Serious Crime Act 2007 criminalises encouraging or assisting someone to commit a crime, without the need for a substantive offence to have occurred. If a person committed the new offence of carrying out a non-regulated new funerary method, then (under the 1980 Act) a second person, who assisted or encouraged the commission of the offence, could be prosecuted as if they had themselves committed the new offence. A person who assisted or encouraged the use of a non-regulated new funerary method could also be prosecuted under the 2007 Act, whether or not the new offence had been committed. We consider that the 1861 Act, 1980 Act and 2007 Act would cover all the conduct that we would want to criminalise in relation to “procuring” or “taking part”. We therefore focus only on the provisionally proposed offence of *carrying out* a non-regulated new funerary method.

Consultation on fault element

- 6.79 We provisionally proposed that, to be guilty of the offence of carrying out a new funerary method which is not regulated, the defendant must know that they are carrying out a new funerary method.³⁶ We also invited consultees’ views on whether there should also be a corresponding fault element as to regulation, so that the defendant must also either know that the new funerary method is not regulated or be

³⁵ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.45.

³⁶ This would be a fault element corresponding to a “conduct” element – see para 6.2 above.

reckless as to whether the new funerary method is regulated.³⁷ We asked whether, alternatively, consultees thought there were any reasons that would justify having no fault element for this part of the offence, so a person could be guilty even if they do not know that the new funerary method they are carrying out is not regulated and are not reckless as to whether the new funerary method is regulated.³⁸ As we explain at paragraph 6.3 above, an offence without a fault element is known as one of strict liability.

- 6.80 Each of the external elements of a criminal offence will usually have a corresponding fault element. Determining culpability for an offence, therefore, usually includes consideration of the state of mind of the defendant. There are some exceptions to this, where it is justified. We did not think it likely that it would be justified in this case, but we asked consultees whether there were any reasons not to include a fault element for this part of the offence, so that someone lacking any fault element as to whether the new funerary method they are carrying out is regulated could still be culpable.

Consultation on maximum penalty

- 6.81 The offence of cremating human remains other than in accordance with the cremation legislation has a maximum penalty of a level 3 fine (currently £1,000). In the Consultation Paper, we provisionally proposed that the maximum penalty for the new offence should be higher than this.³⁹
- 6.82 We said that we thought that the potential harm that might arise from this offence could be greater. With the cremation offence, although the person has contravened the regulations relating to cremation, they have still used a recognised funerary method. With the new offence, any new and unregulated method may have been used. The potential harm that might arise from the use of a non-regulated funerary method could be very serious. If a method emerged that, for example, was dangerous to public health or the environment or would have a detrimental impact on human dignity, it might be appropriate for a more severe penalty to be imposed.
- 6.83 We also invited views from consultees on whether the maximum penalty should be a period of imprisonment.⁴⁰

Consultation responses

Consultation responses on the offence and the fault element

- 6.84 A substantial majority of consultees agreed that it should be a criminal offence to use a non-regulated new funerary method. A few consultees, for example the FBCA, raised concerns about innovation and emphasised that such a provision would make the need for trials even more pressing.

³⁷ This would be a fault element corresponding to a “circumstance element” – see para 6.2 above

³⁸ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.47.

³⁹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.48.

⁴⁰ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.49.

- 6.85 A substantial majority of consultees agreed that to be guilty of the offence of carrying out a new funerary method which is not regulated, the defendant must know that they are carrying out a new funerary method.
- 6.86 There were mixed responses to the question about whether there should be a fault element as to regulation. Some consultees expressed support for including no fault element, but without giving any reason why strict liability was appropriate, for example simply saying that a lack of knowledge should not be an excuse. One consultee expressed support for strict liability on the basis that “nobody should proceed with any funerary method without fully understanding the law on such issues”.
- 6.87 Some consultees expressed reservations about strict liability. Central Co-op said that “this could unfairly penalise individuals acting in good faith or without access to clear regulatory information”. Kindly Earth/Resomation Limited felt the fault element is required “for example to protect a potentially innocent employee who is not aware of the regulatory status of a new funerary method their employer is operating”. The NAFD said that “liability must not fall on those who are unknowing”.
- 6.88 Dr Imogen Jones (academic) said:

I see no special reason here for suggesting that new funerary methods are such that there should be no fault element. By making the fault element one of recklessness rather than intention there is already broad scope to capture those who do not care about the law... I am not aware of any empirical evidence that there is sufficiently widespread use of unregulated methods to justify strict liability.

- 6.89 Fiona Cunningham (academic) said that including a fault element would “allow penalties to remain fair and proportionate”. She also noted:

This seems particularly significant given the relative simplicity of operating some [new funerary method] machinery (some [alkaline hydrolysis] units, for instance, do not require the same continuous monitoring as cremation), and the reliance on casually contracted staff members in some areas of the funeral industry.

- 6.90 Stroud Town Council stated that the inclusion of a fault element “ensures proportionality in enforcement and distinguishes deliberate or negligent breaches from innocent mistakes”. Durham County Council said that the proposed fault element “balances deterrence with fairness”.

Consultation responses on maximum penalty being higher than for cremation-related offence

Reasons for agreeing

- 6.91 The majority of consultees agreed with the provisional proposal that the maximum penalty should be more severe than for the cremation-related offence. Those that agreed with the provisional proposal did so for the following reasons.
- (1) Some consultees agreed with our suggestion that the potential harm arising from the offence (for example in relation to human dignity or public safety) could be greater than that arising from the cremation-related offence.

- (2) The risks (for example, environmental or health-related risks) that might arise from carrying out non-regulated new funerary methods cannot be clearly foreseen.
- (3) A higher penalty would recognise the importance of compliance with the regulatory system and increase public confidence.

Reasons for disagreeing

6.92 Dr Imogen Jones (academic) said:

I do not agree that the use of a new funerary method is a risk to dignity or harm per se. The risks in these areas come not from the use of a new method, but in the granular detail of what that method entails and the way that it is explained to the next of kin.

6.93 Some consultees disagreed with the provisional proposal on the basis that there should be parity with the cremation-related offence.

6.94 The National Society of Allied and Independent Funeral Directors said that the penalty for carrying out a non-regulated new funerary method should not be higher than for the cremation-related offence. It said:

If anything it should be less severe based on the potential lack of knowledge regarding new funerary methods compared to the long established cremation legislation.

Comments on the maximum penalty for the cremation-related offence

6.95 A few consultees, whether agreeing that the maximum penalty for the new offence should be higher than the maximum penalty for the cremation-related offence or not, said they thought the maximum penalty for the cremation-related offence is too low.

Consultation responses on the inclusion of imprisonment in the maximum penalty

6.96 Some consultees commented that imprisonment would be appropriate because it would act as a deterrent and reflect the seriousness of the offence.

6.97 Some consultees discussed the circumstances in which imprisonment might be appropriate. For example, a few consultees thought that it could be imposed for repeated or multiple breaches. One consultee said that the possibility of imprisonment should “potentially” be included “if perhaps more than one offence has been committed”.

6.98 Some consultees felt that imprisonment would not be appropriate under any circumstances. Quaker Social Action said: “while this would be a serious offence, we do not believe that imprisonment is the right approach. If the penalty were to be higher we would be more supportive of a larger fine.” It noted that the speculation about the degree of harm the offence might cause means “it would be difficult to legislate fairly with this level of uncertainty”. Dr Imogen Jones (academic) queried what “would justify this intervention above and beyond those offences which already exist in relation to public health”.

Discussion and recommendations

The fault element

- 6.99 A substantial majority of consultees agreed with our provisional proposal that it should be a criminal offence to carry out a new funerary method which is not regulated. A few consultees were concerned about the impact on innovation and stated that those carrying out trials must be excluded from liability. As explained in Chapter 5, we recommend that the prohibition on the use of non-regulated new funerary methods should not apply to those carrying out authorised trials.
- 6.100 We recommend that it should be a criminal offence to carry out a non-regulated new funerary method (other than by way of an authorised trial). This will bring clarity to the law and ensure that the prohibition on the use of non-regulated new funerary methods (discussed in Chapter 5) can be enforced.
- 6.101 As we explained in the Consultation Paper, a criminal offence would usually include a fault element corresponding to each “external element” of the offence.⁴¹ For this offence, the external elements are that the defendant was carrying out a new funerary method and that the new funerary method was not regulated.
- 6.102 A substantial majority of consultees agreed with our provisional proposal that, to be guilty of the criminal offence of carry out a non-regulated new funerary method, the defendant must know that they are carrying out a new funerary method. This will ensure that someone who takes an action with no knowledge that the action is part of a new funerary method would not be guilty of the offence. In the Consultation Paper, we gave the example of a person who delivers chemicals to a facility.
- 6.103 We asked consultees for views on any reasons that would justify having no fault element for the second element (that the new funerary method was not regulated). This would mean that as long as a person knew they were carrying out a new funerary method, they could then be guilty of this offence regardless of their state of mind in relation to whether the new funerary method was regulated. Alternatively, we invited consultees’ views on a fault element of knowledge or recklessness, so a person carrying out the new funerary method must have been reckless as to whether or not the new funerary method was regulated (or known that it was regulated) to be guilty.⁴²
- 6.104 Some consultees commented that not knowing that the new funerary method is not regulated should not prevent someone from being guilty of the offence. We agree and this is why we had suggested that knowledge or recklessness could be required for this part of the offence. If a person did not know that the new funerary method was not regulated because they had not done any research into this, and were aware of the risk that it was not regulated, they could still be guilty of the offence on the basis that they were reckless.
- 6.105 Consultees expressed concerns about strict liability and said that it would be fairer and more appropriate to include a fault element. A few consultees gave examples of

⁴¹ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.31.

⁴² New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 7.47.

employees or contracted staff members whose conduct should not be criminalised without evidence of knowledge or recklessness.

Conclusion on the fault element

- 6.106 Very few consultees provided reasons as to why there should be no fault element for whether the new funerary method is regulated. We agree with the consultees in relation to strict liability. We consider that without a fault element there is a risk that the offence could apply to those who are not sufficiently culpable.
- 6.107 We recommend that it should be a criminal offence to carry out a new funerary method which is not regulated. To be guilty of this offence, the defendant must know that they are carrying out a new funerary method. The defendant must also know that, or be reckless as to whether, the new funerary method they are carrying out is unregulated.

Maximum penalty

- 6.108 Some consultees disagreed with our suggestion that the potential harm arising from this offence could be greater than that arising from the cremation-related offence. We acknowledge that the harm from a specific commission of the cremation-related offence could be higher than a specific commission of the new offence.
- 6.109 However, we are concerned with the range of possible harm. Having weighed the competing arguments, for the reasons set out below, we consider that the maximum harm that could arise from the new offence is higher than for the cremation-related offence. The maximum penalty simply denotes the highest possible penalty; decisions will be made in each individual case, and lower penalties will be imposed when this is considered appropriate when sentencing takes place.
- 6.110 Of the consultees who felt that the maximum penalty for this offence should be higher than the existing maximum penalty for the cremation-related offence, some felt that imprisonment could be appropriate due to the potential seriousness of the offence. Other consultees disagreed and felt there was no justification for the possibility of a prison sentence being imposed.
- 6.111 We set out at paragraphs 6.5 to 6.7 above some of the offences that relate to burial and cremation, or are otherwise relevant to the way in which the bodies of deceased people are treated. It is useful to consider the penalties for some of these, to assist us in reaching a conclusion on the appropriate maximum penalty for the new offence.
- 6.112 As set out at paragraph 6.5 above, under section 25 of the Burial Act 1857 it is a criminal offence to remove human remains from any place of burial unless certain conditions are complied with. The worst examples of this crime would involve the harmful disturbance of a body that has already been laid to rest. This, clearly, would constitute undignified treatment of human remains. The maximum penalty for this offence is currently a fine not exceeding level 1 on the standard scale. In our Report on Burial and Cremation, we recommended that this should be increased to an

unlimited fine or imprisonment for up to the general limit in a magistrates' court, or an unlimited fine or imprisonment for a term not exceeding three years on indictment.⁴³

6.113 Under the Human Tissue Act 2004, a person who removes, stores, or uses the body of a deceased person without consent to use it for a "scheduled purpose" is liable to imprisonment for up to three years (and/or a fine).⁴⁴ The term "scheduled purpose" includes public display, research, and transplantation.⁴⁵ We think that the harm arising from this offence could be higher than that arising from the new offence. For example, displaying the body of a deceased person in public is very unusual and, without consent, it would constitute undignified treatment of human remains.

6.114 The offences described above criminalise conduct which may constitute a failure to treat human remains with dignity and have the potential for significant distress to be caused to the public. We consider that the potential harm that could arise from the new offence could, in extreme cases, be similar to the harm that could arise from the offence of unlawfully exhuming a body or using the body of a deceased person for purposes such as research or public display without consent.

6.115 A person who is guilty of the new offence may have carried out any method of disposal that is not regulated, which could cause environmental damage, danger to public health and widespread distress. It could also lead to undignified treatment of human remains. Existing common law offences of outraging public decency and prevention of a lawful and decent burial are unlikely to be sufficient to respond to the harmfulness of the conduct of this offence.⁴⁶

Conclusion on maximum penalty

6.116 In light of this, we consider that a fine at level 3 is too low a maximum penalty for the new offence. The maximum penalty should be higher than that for the cremation-related offence and that it should be similar to the maximum penalty for existing offences that may also involve conduct that constitutes undignified treatment of human remains.

6.117 We consider that the maximum penalty for this new criminal offence should be: on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court (or both); and, on indictment, a fine or three years' imprisonment (or both).

6.118 Some consultees considered that the maximum penalty for the cremation-related offence to be too low. However, reviewing the penalty level for this offence falls outside the scope of this sub-project. We did not consult on this in our sub-project on Burial and Cremation and we have not heard that the maximum penalty for the cremation-related offence has given rise to any problems.

⁴³ Burial and Cremation (2026) Law Com No 425 para 10.39.

⁴⁴ Human Tissue Act 2004, ss 25(1) and (2).

⁴⁵ Human Tissue Act 2004, Sch 1.

⁴⁶ The Law Commission's upcoming project on Offences Against Dead Bodies will include consideration of these common law offences (Law Commission, *Offences Against Dead Bodies* (2025) <https://lawcom.gov.uk/project/offences-against-dead-bodies/>).

Recommendation 15.

6.119 We recommend that it should be a criminal offence to carry out a new funerary method which is not regulated or carried out as part of an authorised trial. To be guilty of this offence, the defendant must know that they are carrying out a new funerary method and know that, or be reckless as to whether, the new funerary method is not regulated.

6.120 We recommend that the maximum penalty for the offence of carrying out a new funerary method which is not regulated, or carried out as part of an authorised trial, should be:

- (1) on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court (or both); and
- (2) on indictment, a fine or three years' imprisonment (or both).

6.121 This recommendation is given effect by clause 6 of the draft Bill for England and section 6 of the draft Bill for Wales.

6.122 Clause 6(1) and section 6(1) set out the criminal offence of disposing of relevant human remains by an unregulated modern funerary method where the person knows that they are doing so and knows or is reckless as to whether the method is unregulated. An unregulated modern funerary method is, under clause 6(2) and section 6(2), one that is not regulated under clause 2 or section 2 (the main regulation-making power) or clause 4 or section 4 (in relation to trials). Relevant human remains means human remains other than the ashes that remain after cremation, or material to which human remains have been reduced by a modern funerary method.

6.123 Clause 6(3) and section 6(3) of the draft Bills set out the maximum penalty for this offence.

Chapter 7: Amendments to existing legislation

INTRODUCTION

- 7.1 In this Report we make recommendations for a framework, set out in primary legislation, through which individual new funerary methods can be regulated in future. In this chapter, we explain how existing legislation will need to be amended to ensure the system of regulation will be coherent and interact appropriately with current law and the systems of regulation of established funerary methods.
- 7.2 We make recommendations about amendments to primary legislation where these will be relevant to all new funerary methods. This includes amendments to legislation on death registration and public health. Our intention in making these amendments is that regulated new funerary methods should be treated in the same way as burial and cremation, where possible.
- 7.3 We also recommend that there should be a power for the respective Governments to make further amendments to legislation about burial and cremation, where these may be relevant to some (but not necessarily all) new funerary methods, in regulations.
- 7.4 Finally, the Cremation Act 1902 states that certain cremation-related expenses shall be deemed to be part of the funeral expenses of a deceased person. To ensure that similar provision could be made for new funerary methods, we recommend that the respective Governments should have a power to provide that expenses relating to a new funerary method are to be treated as funeral expenses for specific purposes.
- 7.5 In many cases, both of our draft Bills (for England and for Wales) will need to make amendments to the same provisions. We have drafted each Bill as if it is the first of the two to be passed. If one Bill is passed, the drafting of the other will need to be changed so that the amendments are expressed correctly, to reflect the text of the legislation being amended at that time.

DEATH REGISTRATION

Provisional proposal on death registration

- 7.6 In Chapter 3 of our Consultation Paper, we set out the prohibitions and criminal offences contained in legislation about the registration of deaths that may be relevant to the use of new funerary methods. We provisionally proposed that the legislative requirements for death registration should be broadly the same for regulated new funerary methods as for burial and cremation.¹

¹ See paras 3.41 to 3.64 of our Consultation Paper (New Funerary Methods (2025) Law Commission Consultation Paper No 272) for a detailed discussion of the relevant statutory provisions.

Consultation responses

- 7.7 A very substantial majority of consultees agreed with our provisional proposal that the legislative requirements for death registration should be broadly the same for approved, regulated new funerary methods as for burial and cremation.
- 7.8 Consultees agreed that this approach would be simpler than creating wholly new registration requirements for new funerary methods. Consultees also noted that having broadly the same death registration requirements would make the law clearer for both industry practitioners and bereaved people. The importance of ensuring the legislative requirements for new funerary methods are just as stringent as those applying to existing funerary methods was cited as another reason in favour of this approach.
- 7.9 Some consultees highlighted the benefit of good record keeping. Having an accurate system of records could help to minimise distress to bereaved people and may uphold the dignity of the deceased person. Consultees further told us that maintaining the continuity of records would be vital, for example, for legal, historical and investigative purposes.

Discussion and recommendation

- 7.10 It seems clear that the requirements in legislation relating to death registration should be broadly the same for an approved and regulated new funerary method as for burial and cremation, and consultees did not suggest otherwise. This will make registration simpler for bereaved people, operators and local authorities. Broadly similar requirements will help to ensure accurate record-keeping and limit confusion or mistakes.
- 7.11 We recommend that the primary legislation governing death registration should be amended so that the requirements are broadly the same for a regulated new funerary method as for burial and cremation. This should also apply to new funerary methods being carried out as part of an authorised trial.
- 7.12 The respective Governments will have to consider amendments that may be needed to secondary legislation when individual new funerary methods are regulated. This will include consideration of regulation 49(2) of the Registration of Births and Deaths Regulations 1987,² which sets out circumstances in which a registrar may give a certificate for disposal before registration “for the purpose of burial or cremation”. Possible amendments to the certificates issued by the registrar will also need to be considered.

² SI 1987 No 2088.

Recommendation 16.

7.13 We recommend that the primary legislation governing death registration should be amended so that the requirements are broadly the same for a regulated new funerary method, and for new funerary methods carried out in an authorised trial, as for burial and cremation.

7.14 The specific amendments necessary to achieve this are set out below. For a more detailed discussion of the existing legislation, see paragraphs 3.41 to 3.64 of our Consultation Paper.³

7.15 The registration of deaths is a matter reserved to the UK Parliament. We explain at paragraphs 1.20 to 1.22 the basis on which we have included consequential amendments to the Births and Deaths Registration Act 1926 and the Births and Deaths Registration Act 1953 in the draft Bill for Wales.

Amendments to the Births and Deaths Registration Act 1926

7.16 Section 1(1) of the Births and Deaths Registration Act 1926 provides that “the body of a deceased person shall not be disposed of” unless a specified certificate or an order of a coroner has been delivered to “the person effecting the disposal”. The specified certificates are those given under section 11(2) or (3) or section 24 of the Births and Deaths Registration Act 1953. It is an offence to breach this provision.

7.17 In section 12 of the 1926 Act, “disposal” is defined as “disposal by burial, cremation or any other means and ‘disposed of’ has a corresponding meaning”. However, also in section 12, the definition of “person effecting the disposal” in the 1926 Act is limited to:

the person by whom or whose officer the register of burials in which the disposal is to be registered is kept, except that in the case of a burial under the Burial Laws Amendment Act 1880 in the churchyard or graveyard of a parish or ecclesiastical district the expression “person effecting the disposal” shall be construed as referring to the relative, friend, or legal representative having charge of or being responsible for the burial of the deceased person.

7.18 Clauses 2(3) and 4(3)(d) to (f), and sections 2(3) and 4(3)(d) to (f), of the draft Bills oblige the respective Governments, when regulating a modern funerary method or making regulations about trials, to make provision requiring registration of each use of a modern funerary method and setting out details of how and by whom this must be done and kept.

7.19 Paragraph 1 of Schedule 1 to each of the draft Bills amends section 12 of the 1926 Act so that, where a modern funerary method has been regulated under clause 2 or section 2 (the main regulation-making power) or clause 4 or section 4 (in relation to trials), the “person effecting the disposal” will be the person by whom the disposal is to be registered under the Modern Funerary Methods Act. This will be the person who

³ New Funerary Methods (2025) Law Commission Consultation Paper No 272.

has been identified in the regulations made about an individual modern funerary method, or trials of individual methods. The prohibition on disposal in section 1(1) of the 1926 Act will not apply when a regulated modern funerary method is used, or an authorised trial is being carried out, if the relevant certificate is given to the person responsible for registering the disposal.

Amendments to the Births and Deaths Registration Act 1953

- 7.20 Our draft Bills contain amendments to section 24 of the Births and Deaths Registration Act 1953. Certificates are issued by the registrar under sections 24(1) or (2) but may not be issued under this section in cases where a coroner's order has been issued authorising disposal of the body. Section 24(3) of the 1953 Act then obliges a person who receives a certificate from the registrar under section 24(1) or 24(2) to transmit it to "the person effecting the disposal of the deceased person".
- 7.21 Paragraph 2 of Schedule 1 to each of the draft Bills amends section 24 of the Births and Deaths Registration Act 1953. In paragraph 2(3) of Schedule 1 to the draft Bills, a definition of "authorised funerary method" is added to section 24(6) of the 1953 Act to include burial, cremation, regulated new funerary methods and new funerary methods carried out as part of a permitted trial. The person effecting the disposal, in the case of a regulated new funerary method, will be the person by whom the disposal is to be registered by virtue of the draft Bills. This amendment is made for clarity and to reflect the fact that the use of non-regulated new funerary methods will be prohibited under the new legislation.

PUBLIC HEALTH

- 7.22 The Public Health (Control of Disease) Act 1984 contains various provisions that relate to established funerary methods. We consider below how these should be amended in relation to new funerary methods.

Section 45C

- 7.23 Under section 45C(1) of the Public Health (Control of Disease) Act 1984, regulations may be made "for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination".
- 7.24 Section 45C(3)(c) states that regulations made using this power may include making restrictions or requirements in the event of, or in response to, a threat to public health. Under section 45C(4)(c), this includes "restrictions or requirements relating to the handling, transport, burial or cremation of dead bodies". Under section 45D(1), any restriction must be proportionate.
- 7.25 This provision should be amended so that restrictions or requirements may also be made about a new funerary method that has been regulated under the draft Bills, or is being carried out as part of a trial.

Section 45H

- 7.26 Section 45H of the Public Health (Control of Disease) Act 1984 contains a power for a justice of the peace to make an order for health measures in relation to a "thing" (as

opposed to in relation to persons or premises, a power which is contained in section 45I).

7.27 Under section 45H(1) and (2)(d), this includes the power to make an order that a dead body should be buried or cremated if:

- (1) the dead body is or may be infected or contaminated,
- (2) the infection or contamination is one which presents or could present significant harm to human health,
- (3) there is a risk that the dead body might infect or contaminate humans, and
- (4) it is necessary to make the order in order to remove or reduce that risk.

7.28 Section 45H should be amended so that a justice of the peace could also make an order in these circumstances that a specific, regulated new funerary method could be used on the dead body. It will be up to the justice of the peace to decide whether that method is appropriate in the circumstances of the individual case. If the order specifies that, for example, burial, cremation or a specified new funerary method may be used, it will be up to the local authority to decide which of these methods to choose.

Section 46

7.29 Section 46(1), (2) and (2A) of the Public Health (Control of Disease) Act 1984 sets out a duty for local authorities to bury or cremate the body of any person who has died or been found dead within their area, where no other suitable arrangements have been made. This is known as a public health funeral.

7.30 These provisions should be amended so that local authorities will have the option to use a regulated new funerary method instead of burial or cremation. This will not require a local authority to use a new funerary method over burial or cremation, but instead will give them a choice.

7.31 Under section 46(3), an authority shall not cremate a body under section 46(1) or (2) where they have reason to believe that cremation would be contrary to the wishes of the deceased person. This provision should be amended so that a local authority must also not use a new funerary method on the remains of a deceased person where they have reason to believe that the method would be contrary to the person's wishes. This will provide the same protection of the person's wishes in this context as with cremation. In particular, if a person's religion is known, and that religion prohibits the use of a specific new funerary method, it is important that such a method is not used.

7.32 Section 46(4) provides that section 46(1) and 46(2) "do not affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person". This provision should be amended so that no enactment regulating or authorising the use of a regulated new funerary method on the body of a deceased person is affected.

7.33 We will consider public health funerals further in our third sub-project on Rights and Obligations Relating to Funerals, Funerary Methods and Remains.

Section 47

7.34 Section 47(1)(a) of the Public Health (Control of Disease) Act 1984 states that the Secretary of State:

may make regulations imposing any conditions and restrictions with respect to means of disposal of dead bodies otherwise than by burial or cremation... which may appear to be desirable in the interests of public health and public safety.

7.35 We consider below whether repeal or amendment of section 47(1)(a) is appropriate, in light of our recommendations for a framework to enable the regulation of new funerary methods.

7.36 In the Consultation Paper, we set out the legislative history.⁴ It appears that the provision (which came from previous Acts) was originally intended to enable the closure of loopholes in relation to alternative methods such as burial at sea, which were considered to be lawful but were unregulated. We speculated that, since the provision was placed in an Act making provision for public health, it may have been intended for use solely in connection with control of disease. However, this was unclear.

7.37 We did not make a provisional proposal about this, although we noted that when making our final recommendations, we would need to consider section 47(1)(a) and that if it appeared to be redundant it may be appropriate to recommend repeal.⁵

7.38 Section 47(2) of the 1984 Act provides that “the power to make regulations under this section shall be exercisable by statutory instrument”. No parliamentary procedure is specified here, or elsewhere in the Act. There would therefore be no requirement for this statutory instrument to be laid before Parliament.

7.39 As we noted in the Consultation Paper, the provision is limited in scope and could not be used to set out a comprehensive framework for the regulation of new funerary methods.⁶ On the face of it, the provision could be used to impose conditions or restrictions (in the interests of public health and public safety) on any method that is not burial or cremation. Of these methods, only burial at sea is currently regulated. However, as set out in the Consultation Paper, death registration legislation may have the effect of prohibiting the use of methods other than burial, cremation or burial at sea. It is not entirely clear how the section 47(1)(a) power would, or could, be used in relation to new funerary methods.

7.40 In this Report, we recommend that the respective Governments should have the power to regulate individual new funerary methods (see paragraph 2.66), and that it should be a criminal offence to carry out a non-regulated method (see paragraph 6.119). This will have implications for the power in section 47(1)(a), as we explain below.

⁴ New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 3.13 to 3.18.

⁵ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 3.39.

⁶ New Funerary Methods (2025) Law Commission Consultation Paper No 272 para 3.36.

Regulated new funerary methods

- 7.41 If the draft Bills become law and one of the respective Governments wants to impose conditions or restrictions on a regulated method in the interest of public health and public safety, they will be able to do this by making regulations under the powers set out in the legislation. The parliamentary procedure for this would depend on the subject matter of the provision. For example, if the UK Government (in relation to England) wanted to make a provision changing the definition of a new funerary method, this would be subject to the draft affirmative procedure. If it wanted to make a provision changing the temperature which must be reached inside a vessel for a specific method, this would be subject to the negative procedure. If the Welsh Ministers wanted to make similar provision for Wales, the change of definition would be subject to the Senedd approval procedure and the temperature change would be subject to the Senedd annulment procedure.
- 7.42 As discussed above, there is a power in section 45C of the 1984 Act for the “appropriate Minister” to make regulations “for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales”. Under section 45C(3)(c) this power may impose, or enable the imposition of, “restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health”. Under section 45C(4)(c), this may include a restriction or requirement “relating to the handling, transport, burial or cremation of dead bodies”. Under section 45D(1), any restriction must be proportionate. We discuss, at paragraphs 7.23 to 7.25 above, our recommendation that this provision should be amended so that restrictions or requirements may also be made about regulated new funerary methods.
- 7.43 The parliamentary procedure for regulations made under section 45C will either be negative or affirmative/ Senedd annulment or Senedd approval. The negative/ Senedd annulment procedure will apply if the instrument contains a declaration that it does not impose, or enable the imposition of, “(a) a special restriction or requirement,⁷ or (b) any other restriction or requirement which has or would have a significant effect on a person's rights”. Otherwise, the draft affirmative/ Senedd approval procedure will apply,⁸ unless the instrument contains a declaration that the person making it believes that it is necessary, for reasons of urgency, for it to be made without a draft being laid, when the made affirmative procedure will apply.⁹
- 7.44 If section 45C is amended in line with our recommendation, most provisions that could have been made under section 47(1)(a) in relation to regulated new funerary methods could be made under the amended section 45C. There will need to be a “threat to public health”, which is not required under section 47(1)(a). However, it seems likely that provision would only be made under section 47(1)(a) if there were such a threat. One other difference is that regulations under section 45C may require an affirmative/ Senedd approval procedure and otherwise will require the negative/ Senedd

⁷ Under s 45C(6), a special restriction is one that can be imposed by a justice of the peace under ss 45G(2), 45H(2) or 45I(2).

⁸ Public Health (Control of Disease) Act 1984, s 45Q.

⁹ Public Health (Control of Disease) Act 1984, s 45R.

annulment procedure, whereas there is no parliamentary procedure for regulations made under section 47.

- 7.45 It is appropriate that, as set out above, once a new funerary method has been regulated, the parliamentary procedure for regulations made about burial, cremation or regulated new funerary methods under the power in section 45C should be the same.

Non-regulated new funerary methods

- 7.46 Section 47(1)(a), in its original form in the Births and Deaths Registration Act 1926, was brought in because the Government of the time wanted the ability to make rules about methods that were unregulated but may be in use. Burial at sea was the example given during the passage of the original legislation.¹⁰ At present, the power in section 47(1)(a) could be used by the respective Governments to regulate a new funerary method in a limited way. This may be necessary in the context of a public health emergency, or if a specific disease made burial or cremation dangerous to public health. An amendment to death registration legislation may be needed to enable this, or at least to clarify the position.
- 7.47 As, in this Report, we recommend that the use of non-regulated new funerary methods should be prohibited, such methods should not be in use. If they were, the operator could be prosecuted under the new criminal offence.¹¹ It would therefore be unnecessary, and entirely illogical, to impose a condition stating that a non-regulated new funerary method should be used in a certain way.
- 7.48 We think it is conceivable that the respective Governments may need to enable the use of a non-regulated new funerary method as a response to a public health emergency. For example, if a disease emerged and burial and/or cremation could not be used on the bodies of those who had died of that disease, it may be considered necessary to regulate a new funerary method so it could be used as an alternative. Under the current legislation, the respective Governments could impose conditions or restrictions on any new funerary method in the interest of public health and public safety. The new framework would allow it to make regulations using the powers set out in the draft Bills. As these would be the first regulations about a specific method, the additional requirements set out in Schedule 2 to each of the draft Bills would apply.
- 7.49 As it is possible that the power in section 47(1)(a) could currently be used to regulate a previously unregulated new funerary method, albeit in a limited way, we consider that it would be appropriate for the respective Governments to be able to use a less time-consuming procedure if they consider it necessary, for reasons of urgency, in the interests of public health or public safety. We think that the made affirmative/ Senedd confirmation procedure would be appropriate. This is the procedure that would apply to regulations made under section 45C (about regulated funerary methods) where the regulations impose, or could enable the imposition of, a restriction or requirement

¹⁰ Hansard (HL), 7 December 1926, vol 65, col 1283-1284.

¹¹ See Recommendation 15 of this Report.

which would have a significant effect on a person's rights (or a restriction that could be imposed by a justice of the peace), and which needs to be made urgently.

- 7.50 Under the made affirmative/ Senedd confirmation procedure, regulations would be made and laid before the UK Parliament or the Senedd but would not remain law for more than 28 days unless they were approved. We think that this strikes the right balance between urgency and the need to ensure parliamentary control.
- 7.51 In Chapter 4, we make a recommendation about the parliamentary procedures that should apply to different types of regulations made under the draft Bills. In that chapter, we recommend that, for the reasons set out above, where the Secretary of State or the Welsh Ministers make a declaration that it is urgently necessary in the interests of public health or public safety, any regulations that may ordinarily be made using the draft affirmative/ Senedd approval procedure, including where there are additional requirements for first-time regulations, may instead be made using the made affirmative/ Senedd confirmation procedure.

Burial at sea

- 7.52 As we explained in our Consultation Paper, the text of section 47 has come, largely unmodified, from the Births and Deaths Registration Act 1926, via the Public Health Act 1936.¹² When the 1926 Act was taken through Parliament, Viscount Gage (for the Government) indicated that the Bill added safeguards to reduce “loopholes... for the concealment of crime”. Viscount Gage said that for:

disposal of a body by means other than burial or cremation – such as burial at sea ... there seems to be no safeguard at present whereby criminal practices can be prevented, with any degree of certainty.¹³

- 7.53 Burial at sea is now regulated by means of the Marine and Coastal Access Act 2009. The Marine Management Organisation administers marine licences for English waters and Natural Resources Wales administers marine licences for Welsh waters. In a public health emergency, it would be possible for these organisations to change their approach to issuing licences.
- 7.54 We are not aware that there is still any intention for the section 47 power to apply to burial at sea, and it seems very unlikely that the repeal of section 47(1)(a) would have any practical consequences in relation to burial at sea. The question of whether the respective Governments should have the ability to make regulations about burial at sea in a public health emergency is out of the scope of this project. The respective Governments can consider this further if needed.

Conclusion

- 7.55 If our recommendations in this report are taken forward for implementation, the power in section 47(1)(a) will not be needed, for the reasons set out above. We recommend that this provision should be repealed.

¹² New Funerary Methods (2025) Law Commission Consultation Paper No 272 paras 3.13 to 3.18.

¹³ Hansard (HL), 7 December 1926, vol 65, col 1283-1284.

Recommendation 17.

- 7.56 We recommend that amendments should be made to the following sections of the Public Health (Control of Disease) Act 1984, to bring provision for regulated new funerary methods into line with provision for burial and cremation: 45C, 45H and 46.
- 7.57 We recommend that section 47(1)(a) of the Public Health (Control of Disease) Act 1984 should be repealed.

7.58 This recommendation is given effect by paragraph 5 of Schedule 1 to the draft Bills.

CHILDREN BEING LOOKED AFTER BY A LOCAL AUTHORITY

Children Act 1989

- 7.59 Schedule 2 to the Children Act 1989 contains provisions about support for children and families provided by local authorities in England. Paragraph 20 of that Schedule sets out actions that must, or may, be taken by a local authority when a child who is being looked after by them dies.¹⁴ Under paragraph 20(1)(c), the local authority may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility¹⁵ for the child, arrange for the child's body to be buried or cremated.
- 7.60 If a child who is being looked after by a local authority dies, the authority should be able, with the same consent requirements as for other funerary methods, to arrange for a regulated new funerary method to be used as an alternative to burial or cremation. This will put regulated new funerary methods on the same footing as established funerary methods. There will be no obligation on local authorities to use a particular funerary method.
- 7.61 Paragraph 20(3) states that cremation may not be used “where it does not accord with the practice of the child's religious persuasion”. The same should apply to the use of a regulated new funerary method.
- 7.62 Paragraph 20(6) states that paragraph 20 does not affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person. This should be amended so that nothing in the paragraph will affect any enactment regulating or authorising the use of a regulated new funerary method on the body of a deceased person.

¹⁴ A looked after child is a child who has been in the care of, or provided with accommodation by, a local authority for more than 24 hours (Children Act 1989, s 22). This may be in foster care or a residential children's home (among other forms of accommodation), and the child can be in the care of the local authority under various different legal bases, such as a care orders or a voluntary agreement.

¹⁵ “Parental responsibility” is defined in the Children Act 1989, s 3 as someone who has “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”.

Social Services and Well-being (Wales) Act 2014

- 7.63 The Social Services and Well-being (Wales) Act 2014 contains the same provisions for Wales as the Children Act 1989 does for England. We recommend that the same changes should be made. These are set out below.
- 7.64 Section 125 sets out actions that a local authority must, or may, take in the event of the death of a child that it is looking after. Under section 125(1)(c), a local authority may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated. This section should be amended so that a local authority can arrange for a regulated new funerary method to be used, as an alternative to burial or cremation. This will put regulated new funerary methods on the same footing as established funerary methods. There will be no obligation on local authorities to use a particular funerary method.
- 7.65 Section 125(3) prohibits the use of cremation where it does not accord with the practice of the child's religious persuasion. The same should apply to the use of a regulated new funerary method. A regulated new funerary method should not be used if the use of the method does not accord with the practice of the child's religious persuasion.
- 7.66 Section 125(6) states that section 125 shall not affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person. This should be amended so the section does not affect enactments regulating or authorising the use of a regulated new funerary method on the body of a deceased person.

Recommendation 18.

- 7.67 We recommend that amendments should be made to the following, to bring provision for regulated new funerary methods into line with provision for burial and cremation.
- (1) Paragraph 20 of Schedule 2 to the Children Act 1989 (in relation to England).
 - (2) Section 125 of the Social Services and Well-being (Wales) Act 2014 (in relation to Wales).

- 7.68 This recommendation is given effect by paragraph 6 of Schedule 1 to the draft Bills.

PROVISION AND FACILITATION OF INFRASTRUCTURE

Local Government, Planning and Land Act 1980

- 7.69 Under the Local Government, Planning and Land Act 1980, the Secretary of State may designate an area of land as an urban development area.¹⁶ Section 135 provides

¹⁶ Local Government, Planning and Land Act 1980, s 134.

that, for the purposes of regenerating an urban development area, the Secretary of State shall establish a corporation, known as an urban development corporation.

- 7.70 Under section 136A, an urban development corporation in England may provide or facilitate the provision of infrastructure for the purpose of regeneration of its area. “Infrastructure” is defined in subsection (3)(f) as including “cremation or burial facilities”. This definition should be amended to also include facilities carrying out regulated new funerary methods.

New Towns Act 1981

- 7.71 Under the New Towns Act 1981, the Secretary of State may make an order designating that an area of land should be developed as a new town by a corporation established under this Act, if it is expedient in the national interest.¹⁷ Section 3 provides that the Secretary of State shall by order establish a corporation, called a development corporation, for the purposes of the development of each new town which has been designated under the Act.

- 7.72 The objects of a development corporation are to secure the laying out and development of the new town.¹⁸ For these purposes, a development corporation established for the purposes of a new town in England may provide or facilitate the provision of infrastructure.¹⁹

- 7.73 Section 4A(3)(f) states that ““infrastructure” means... cremation or burial facilities”. This definition should be amended to include facilities for the carrying out of regulated new funerary methods.

Housing and Regeneration Act 2008

- 7.74 The Housing and Regeneration Act 2008 established the Homes and Communities Agency (the HCA), which is now known as Homes England.²⁰

- 7.75 Section 2 of the 2008 Act sets out the objects of the HCA, which includes securing “the regeneration or development of land or infrastructure in England” (section 2(1)(b)) with a view to meeting the needs of people living in England.²¹ Under section 7, the HCA may provide and facilitate the provision of infrastructure.

- 7.76 Section 2(3)(f) defines “infrastructure” as including “cremation or burial facilities”. This definition should also encompass facilities carrying out regulated new funerary methods. This means that the HCA may also provide and facilitate the provision of these under section 7.

¹⁷ New Towns Act 1981, s 1.

¹⁸ New Towns Act 1981, s 4.

¹⁹ New Towns Act 1981, s 4A.

²⁰ Gov.uk, *Homes and Communities Agency (Trading as Homes England)* (2022) https://find-and-update.company-information.service.gov.uk/officers/ftGBO5WUOnE_M-6vnqfMcse_LyM/appointments.

²¹ Housing and Regeneration Act 2008, s 2(2) states that England does not include Greater London.

Localism Act 2011

- 7.77 Under the Localism Act 2011, the Mayor of London may designate any area of land in Greater London as a Mayoral Development Area and must notify the Secretary of State of the designation.²² Under section 198 of the 2011 Act, when the Secretary of State receives notification of the designation of a Mayoral Development Area, they must establish by order a corporation for the area, which is a Mayoral Development Corporation (MDC). The object of an MDC is to secure the regeneration of its area.²³
- 7.78 Section 205 states that an MDC may provide and facilitate the provision of infrastructure. Section 205(4)(f) states that ““infrastructure” means... cremation or burial facilities”. This definition should be amended to include facilities for the carrying out of regulated new funerary methods. This will enable MDCs to provide and facilitate the provision of these facilities, as they can with cremation or burial facilities.

Recommendation 19.

- 7.79 We recommend that amendments should be made to the following Acts, to bring provision for regulated new funerary methods into line with provision for burial and cremation.
- (1) Section 136A of the Local Government, Planning and Land Act 1980.
 - (2) Section 4A of the New Towns Act 1981.
 - (3) Section 2 of the Housing and Regeneration Act 2008.
 - (4) Section 205 of the Localism Act 2011.

- 7.80 This recommendation is given effect by paragraphs 5 to 8 of Schedule 1 to the draft Bill for England. The provisions referred to in this recommendation do not apply to Wales, so the recommendation is not reflected in the draft Bill for Wales.

A POWER TO AMEND PRIMARY LEGISLATION

- 7.81 We have described amendments that should be made to existing legislation in the draft Bills. However, it is likely that further amendments will be needed in relation to individual new funerary methods, once they are regulated.
- 7.82 For example, the respective Governments may need to consider amendments to the following legislation.
- (1) Section 25 of the Burial Act 1857 prohibits the exhumation of human remains that have been buried without a licence or other permission. It may be appropriate that specific remains from some new funerary methods should be subject to the prohibition on exhumation without permission. The prohibition

²² Localism Act 2011, s 197.

²³ Localism Act 2011, s 201(1).

currently applies to the ashes that remain after cremation. It is possible that the respective Governments would decide that the powder that remains after alkaline hydrolysis should be treated in the same way so that exhumation of these remains is prohibited. However, the soil from human composting may be treated in a different way and it may be decided that the prohibition should not apply.

- (2) Section 32 of the Cemeteries Clauses Act 1847 and section 1 of the Registration of Burials Act 1864 contain obligations about the registration of the burial of remains. It may be necessary to amend these provisions to make clear that burial includes the burial of specific remains following an individual new funerary method, and therefore that the provisions about registration of the burial of remains would apply. We also discuss this at paragraphs 4.29 to 4.35 of this Report.
- (3) Under section 48(1) of the Public Health (Control of Disease) Act 1984, where retention of a dead body would endanger the health of any person, a justice of the peace may make an order that the body must be buried within a specified period of time. Under section 48(2) of the 1984 Act, the relatives or friends of a deceased person shall be deemed to comply with the order if they cause the body to be cremated within the specified period, or immediately. This provision may need to be amended so that the relatives or friends of a deceased person shall be deemed to comply with the order if they cause the body to undergo a specific new funerary method within the specified period. It is not appropriate to make an amendment to primary legislation in the draft Bills, such that any new funerary method can be used as an alternative to burial or cremation in these circumstances. This provision is intended to ensure that burial or cremation can take place quickly if needed. Some new funerary methods may take months, so it may not be appropriate for these methods to be an option under this provision. These are decisions that the respective Governments should be able to make when they are regulating individual new funerary methods.

7.83 We therefore recommend that the Secretary of State and the Welsh Ministers should have the power to amend or repeal legislation that has effect in relation to burial or cremation, so that it applies also to an individual new funerary method. This will ensure that they will be able to make consequential amendments that are specific to individual methods that are regulated in future.

7.84 We note that there are various provisions in primary legislation about tax that relate to burial and cremation.²⁴ Tax is outside the scope of the project. It will be a matter for the respective Governments to consider whether tax legislation needs to be amended and, if so, how to do this.

²⁴ Ss 46 to 49 of the Corporation Tax Act 2009 set out rules for calculating the profits of cemeteries or crematoria (and, in relation to crematoria, the maintenance of memorial garden plots). There is similar provision in relation to income tax in ss 169 to 172 of the Income Tax (Trading and Other Income) Act 2005.

Recommendation 20.

7.85 We recommend that the power for the Secretary of State and the Welsh Ministers to make regulations about individual new funerary methods should include a power to amend or repeal legislation that has effect in relation to burial or cremation, so that it applies also to an individual new funerary method.

7.86 This recommendation is given effect by clause 10(4) and section 10(4) of the draft Bills.

FUNERAL EXPENSES

7.87 Section 9 of the Cremation Act 1902 provides that charges or fees as set out in a table approved by a Local Government Board, or any other expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of the deceased person. This provision does not identify the purposes or legislation for which expenses may be deemed to be funeral expenses.

7.88 Funeral expenses are mentioned in various pieces of primary (and secondary) legislation. For example, section 34 of the Administration of Estates Act 1925 states that funeral expenses can be paid out of the estate of a deceased person. In the Sentencing Code,²⁵ section 133 provides that a compensation order requiring an offender to pay compensation for personal injury, loss or damage arising from an offence, to make payments for funeral expenses. Sections 136 and 138 make further provisions about this. “Funeral expenses” are not defined in either of these Acts.

7.89 The respective Governments may wish to provide that certain expenses incurred in connection with the use of a new funerary method should be deemed to be part of the funeral expenses of the deceased, for specific purposes.²⁶ We do not know which new funerary methods will be regulated, so it would be very difficult to identify now which expenses should be deemed to be funeral expenses.

7.90 The Secretary of State and the Welsh Ministers should have the power to designate certain expenses relating to regulated new funerary methods as funeral expenses, for purposes specified in the regulations. They will then be able to make decisions about individual methods, as they are regulated.

²⁵ The Sentencing Code was brought in by the Sentencing Act 2020.

²⁶ We note that s 172 of the Inheritance Tax Act 1984 provides that in determining the value of a person's estate immediately before their death, allowance shall be made for reasonable funeral expenses. As mentioned, tax is outside the scope of the project. It will be for the respective Governments to decide how to address this, if necessary

Recommendation 21.

7.91 We recommend that the Secretary of State and the Welsh Ministers should have the power to provide that expenses relating to a new funerary method are to be treated as funeral expenses for specific purposes.

7.92 This recommendation is given effect by clause 2(2)(i) and section 2(2)(i) of the draft Bills.

Chapter 8: Recommendations

Recommendation 1.

- 8.1 We recommend that new funerary methods should be defined and regulated separately from existing funerary methods.

Paragraph 2.19

Recommendation 2.

- 8.2 We recommend that the legal definition of new funerary method should encompass:
- (1) a process;
 - (2) other than burial, cremation or burial at sea;
 - (3) that breaks down the body of a deceased person; and
 - (4) which has the purpose of disposing of the body of a deceased person (and not, for example, the purpose of preserving or researching bodies).

Paragraph 2.39

Recommendation 3.

- 8.3 We recommend that there should be a power in primary legislation, exercisable by the Secretary of State (for England) or the Welsh Ministers (for Wales), to make regulations approving the use of individual new funerary methods and setting out how they should be carried out.

Paragraph 2.66

Recommendation 4.

8.4 We recommend that, when regulating individual new funerary methods, the Secretary of State and the Welsh Ministers must have regard to the importance of the following principles.

- (1) Protecting the environment.
- (2) Protecting public health and public safety.
- (3) Treating human remains with dignity.

Paragraph 3.59

Recommendation 5.

8.5 We recommend that, when making regulations about individual new funerary methods, the Secretary of State and the Welsh Ministers must:

- (1) require that the use of a new funerary method on the body of a deceased person must be registered; and
- (2) set out how and by whom this registration must be carried out.

Paragraph 4.42

Recommendation 6.

8.6 We recommend that the Secretary of State and the Welsh Ministers should have the power to require the registration of burial of remains following an individual new funerary method.

Paragraph 4.44

Recommendation 7.

8.7 We recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations requiring the recording of the location of remains or material resulting from the use of a new funerary method, whether the remains or material have been buried or not, following the use of a specific new funeral method.

Paragraph 4.46

Recommendation 8.

8.8 We recommend that the power to make regulations about individual new funerary methods should be broad enough to encompass the following matters:

- (1) opening and closing facilities;
- (2) location of facilities;
- (3) operation and maintenance of facilities;
- (4) elements of the process;
- (5) appointments;
- (6) medical devices;
- (7) application procedures on behalf of a deceased person;
- (8) circumstances in which a specific new funerary method may not be used;
- (9) remains;
- (10) fetal remains;
- (11) unidentified bodies;
- (12) rights and obligations;
- (13) monitoring and enforcement of compliance; and
- (14) circumstances in which any authorisations may be revoked.

Paragraph 4.70

Recommendation 9.

8.9 We recommend that, when making regulations about individual new funerary methods, the Secretary of State and the Welsh Ministers must make provision about the inspection of facilities.

Paragraph 4.81

Recommendation 10.

8.10 We recommend that the following procedures should apply to regulations made about individual new funerary methods.

- (1) An enhanced version of the draft affirmative/ Senedd approval procedure the first time that regulations are made about a specific new funerary method.
- (2) Draft affirmative/ Senedd approval procedure for provisions that:
 - (a) amend the definition of a specific new funerary method that has been regulated previously;
 - (b) create criminal offences for breach of a provision in the regulations;
 - (c) impose a civil sanction for breach of a provision in the regulations;
 - (d) make provision about trials; or
 - (e) amend primary legislation.
- (3) Draft affirmative/ Senedd approval procedure for provisions that:
 - (a) confer powers of inspection, entry, search, seizure or retention and related powers; or
 - (b) confer power to use reasonable force or enter a private dwelling, on the authority of a warrant, for the monitoring and enforcement of compliance with the regulations;

where such powers do not already exist in the regulation of new funerary methods.
- (4) Made affirmative/ Senedd confirmation procedure where the Secretary of State or the Welsh Ministers make a declaration that, for reasons of urgency, this is necessary in the interests of public health or public safety.
- (5) Negative/ Senedd annulment procedure for all other provisions.

Paragraph 4.105

Recommendation 11.

8.11 We recommend that the use of a new funerary method which has not been regulated should be prohibited.

Paragraph 5.11

Recommendation 12.

8.12 We recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations enabling trials of new funerary methods to be authorised.

8.13 We recommend that when the Secretary of State or the Welsh Ministers make regulations under this power, the regulations must:

- (1) require that a person's body may only be used in a trial of a new funerary method if that person has consented to this prior to their death; and
- (2) set out the manner and form of this consent.

Paragraph 5.60

Recommendation 13.

8.14 We recommend that it should be a criminal offence dishonestly to make false representations to procure the use of a new funerary method, with a maximum penalty of:

- (1) on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court (or both); and
- (2) on indictment, a fine or two years' imprisonment (or both).

Paragraph 6.30

Recommendation 14.

8.15 We recommend that:

- (1) the Secretary of State and the Welsh Ministers should have the power to create new offences in secondary legislation of breaching regulations about individual new funerary methods; and
- (2) the maximum penalty for these offences should be, on summary conviction (in magistrates' courts), a fine at level 3 on the standard scale (currently £1,000).

8.16 We recommend that the Secretary of State and the Welsh Ministers should have the power to make regulations conferring a power, where conduct amounts to an offence, to impose a civil penalty (in the form of a fixed monetary penalty of an amount not exceeding the maximum penalty for the offence).

Paragraph 6.70

Recommendation 15.

8.17 We recommend that it should be a criminal offence to carry out a new funerary method which is not regulated or carried out as part of an authorised trial. To be guilty of this offence, the defendant must know that they are carrying out a new funerary method and know that, or be reckless as to whether, the new funerary method is not regulated.

8.18 We recommend that the maximum penalty for the offence of carrying out a new funerary method which is not regulated, or carried out as part of an authorised trial, should be:

- (1) on summary conviction, an unlimited fine or imprisonment for a term not exceeding the general limit in a magistrates' court (or both); and
- (2) on indictment, a fine or three years' imprisonment (or both).

Paragraph 6.119

Recommendation 16.

8.19 We recommend that the primary legislation governing death registration should be amended so that the requirements are broadly the same for a regulated new funerary method, and for new funerary methods carried out in an authorised trial, as for burial and cremation.

Paragraph 7.13

Recommendation 17.

8.20 We recommend that amendments should be made to the following sections of the Public Health (Control of Disease) Act 1984, to bring provision for regulated new funerary methods into line with provision for burial and cremation: 45C, 45H and 46.

8.21 We recommend that section 47(1)(a) of the Public Health (Control of Disease) Act 1984 should be repealed.

Paragraph 7.56

Recommendation 18.

8.22 We recommend that amendments should be made to the following, to bring provision for regulated new funerary methods into line with provision for burial and cremation.

- (1) Paragraph 20 of Schedule 2 to the Children Act 1989 (in relation to England).
- (2) Section 125 of the Social Services and Well-being (Wales) Act 2014 (in relation to Wales).

Paragraph 7.67

Recommendation 19.

8.23 We recommend that amendments should be made to the following Acts, to bring provision for regulated new funerary methods into line with provision for burial and cremation.

- (1) Section 136A of the Local Government, Planning and Land Act 1980.
- (2) Section 4A of the New Towns Act 1981.
- (3) Section 2 of the Housing and Regeneration Act 2008.
- (4) Section 205 of the Localism Act 2011.

Paragraph 7.79

Recommendation 20.

8.24 We recommend that the power for the Secretary of State and the Welsh Ministers to make regulations about individual new funerary methods should include a power to amend or repeal legislation that has effect in relation to burial or cremation, so that it applies also to an individual new funerary method.

Paragraph 7.85

Recommendation 21.

8.25 We recommend that the Secretary of State and the Welsh Ministers should have the power to provide that expenses relating to a new funerary method are to be treated as funeral expenses for specific purposes.

Paragraph 7.91

Appendix 1: Terms of Reference

BURIAL, CREMATION AND NEW FUNERARY METHODS – TERMS OF REFERENCE

- 1.1 The Law Commission’s review will seek to create a future-proof legal framework to address what happens to our bodies after we die. It will seek to make recommendations that will provide modern, certain and consistent regulation across different funerary methods. It will also seek to allow individuals to make decisions about what will happen to their bodies after they die which the law will respect, and to provide a fair and modern framework for decision-making by the deceased person’s family where they have not made an advance choice.
- 1.2 So that the review can make clear progress and deliver efficiently, it will be divided into three separate phases.
- 1.3 The first two phases will consider methods of disposal:
 - (1) burial and cremation, and
 - (2) new funerary methods.
- 1.4 The final phase will consider who has the legal authority and responsibility to make decisions about a dead person’s body, including the status of the deceased’s own wishes.

Principles

- 1.5 Our review will be informed by the following five principles:
 - (1) sensitivity about the importance of the treatment of the dead within families and communities;
 - (2) fairness and diversity within the law, to reflect the variety of family structures;
 - (3) sustainability in the environmental impacts of disposal and land use;
 - (4) adaptability of the law so that it is modern and future-proof;
 - (5) resilience in the law in the face of future emergencies.

Phases 1 and 2: Funerary methods

- 1.6 The review’s consideration of the laws governing different funerary methods will consider the current laws governing burial and cremation, as well as the need for regulation of new funerary methods.

Phase 1: Burial and cremation

- 1.7 In relation to burial, the review will aim to rationalise and simplify the law governing burials and exhumation in all types of burial grounds, including the law governing –

- (1) the burial process;
- (2) regulation of burial spaces, including memorials and burial rights;
- (3) the maintenance of burial grounds;
- (4) the opening and closing of burial grounds, and the transfer of responsibility to local authorities;
- (5) the extent to which the law of burial applies to interred ashes or other types of remains from new processes;
- (6) legal authority for grave re-use; and
- (7) legal authority to exhume a body, and any issues relating to exhumation.

The review will not consider the law governing burials at sea or the removal of bodies outside of England or Wales. It will not consider reducing or removing any exceptions or special provisions applying to graves under the care of the Commonwealth War Graves Commission, but may consider improving them or extending them.

- 1.8 In relation to cremation, the review will aim to place the rules governing cremation into a modern legislative framework. It will include specific consideration of –
- (1) accommodating new technologies and diverse religious practices;
 - (2) the rights of family and friends to register an objection to a cremation;
 - (3) planning and siting crematoria (and the disjunct with planning permission criteria);
 - (4) entitlement to ashes following a cremation and rules governing where ashes may be scattered (including public policy concerns that may arise); and
 - (5) any issues about the ownership of medical implants and devices.

Phase 2: New funerary methods

- 1.9 In relation to new funerary methods, the review will aim to introduce a legislative framework to regulate them, which will include consideration of –
- (1) what makes something a lawful funerary method, including with reference to environmental and public health concerns;
 - (2) what regulation or powers of regulation of new funerary methods are necessary;
 - (3) the interaction with death registration requirements; and
 - (4) necessary rules in relation to any remains resulting from any new funerary process.

Phase 3: Rights and obligations relating to funerary methods, funerals and remains

1.10 The review will consider the status of a person's own decisions about what happens to their remains, as well as the law which governs the determination of who has the responsibility for and authority to make decisions about our bodies after we die.

1.11 This phase will include consideration of –

- (1) the ability of a person to make a legally binding decision about what should happen to their body after they die, and their funeral;
- (2) in the absence of a decision by the deceased, who has the right to make decisions about their body and the funeral, how their decisions could be challenged, and the rules governing how the disputes should be resolved (including disputes between parents or other family members);
- (3) who should bear responsibility for a dead body, including the rules and standards applying to public health funerals; and
- (4) the legal status, including ownership of or rights and responsibilities in relation to, dead bodies and human remains.

1.12 In this final phase, we will also consider any remaining or overarching issues which have emerged during the course of the project.

Areas out of scope of the project

1.13 The following matters are out of scope of the review:

- (1) death certification and registration;
- (2) the regulation of funeral directors;
- (3) the Church of England's common law duty to bury parishioners and those who die in the parish;
- (4) regulation of methods of preservation of human remains;
- (5) burial at sea;
- (6) planning and environmental law;
- (7) other issues relating to body parts, such as organ donation, post-mortem reproduction and police investigations; and
- (8) criminal offences that may be committed in relation to human remains, including in relation to desecration.

Appendix 2: Draft Bill for England

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Modern Funerary Methods (England) Bill

[PRE-INTRODUCTION]

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Regulation of modern funerary methods

- 1 Regulatory principles and key concepts
- 2 Regulation of modern funerary methods
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[PRE-INTRODUCTION]

A

B I L L

TO

Make provision for the regulation of modern funerary methods in England; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Regulation of modern funerary methods

1 Regulatory principles and key concepts

- (1) In exercising functions under this Act, the Secretary of State must have regard to the importance of—
 - (a) treating human remains with dignity,
 - (b) protecting the environment, and
 - (c) protecting public health and safety.
- (2) In this Act—

“funerary method” means a method for disposing of relevant human remains in England;

“modern funerary method” means a funerary method other than—

 - (a) burial,
 - (b) cremation, or
 - (c) a funerary method that is a licensable marine activity for the purposes of Part 4 of the Marine and Coastal Access Act 2009 (see section 66 of that Act).

2 Regulation of modern funerary methods

- (1) The Secretary of State may by regulations make provision regulating a specified modern funerary method.
- (2) Regulations under this section may (among other things) include provision about—
 - (a) the manner of carrying out a modern funerary method;
 - (b) the places or circumstances in which a modern funerary method may be carried out;

- (c) the persons who may carry out a modern funerary method;
 - (d) the design, construction or maintenance of facilities or equipment for use in, or in connection with, a modern funerary method;
 - (e) authorisations that are required in relation to the disposal of relevant human remains by a modern funerary method (including documentation or application processes relating to such authorisations);
 - (f) what is to be done with—
 - (i) any material to which relevant human remains are reduced by a modern funerary method;
 - (ii) anything else that results from a modern funerary method;
 - (g) registration requirements in relation to what is done under paragraph (f);
 - (h) the charging of fees in respect of the exercise of functions conferred by the regulations;
 - (i) purposes for which expenses relating to a modern funerary method are to be treated as funeral expenses;
 - (j) the keeping of records;
 - (k) the provision of information to persons specified in the regulations or the public.
- (3) The Secretary of State must exercise the powers under this section to ensure that there is, in relation to each specified modern funerary method, provision—
- (a) requiring the registration of each disposal of relevant human remains by the method,
 - (b) about how and by whom that registration is to be performed, and
 - (c) about how and by whom the register is to be kept.

3 Enforcement regulations

- (1) The Secretary of State may by regulations make provision for the purposes of monitoring and enforcing compliance with regulations under section 2.
- (2) Regulations under this section may (among other things) include provision—
- (a) conferring—
 - (i) powers of inspection;
 - (ii) powers of entry, search, seizure or retention;
 - (iii) powers to require the provision of information or the production of items;
 - (iv) powers to require an individual to attend at a place and answer questions;
 - (v) powers to dismantle facilities or equipment or take samples of substances;
 - (b) creating offences punishable on summary conviction with a fine not exceeding level 3 on the standard scale;
 - (c) conferring power to impose on a person a fixed monetary penalty, where it is shown beyond reasonable doubt that the person has engaged in conduct amounting to an offence under the regulations.

- (3) Regulations under this section may confer powers to do the following, but only on the authority of a warrant issued by a justice of the peace—
 - (a) use reasonable force;
 - (b) enter a private dwelling.
- (4) The Secretary of State must exercise the powers under this section to ensure that there is, in relation to each modern funerary method regulated under section 2—
 - (a) provision about the inspection of facilities by a person appointed by or under regulations under this section, and
 - (b) such other provision for the purposes of monitoring and enforcing compliance as the Secretary of State considers appropriate.
- (5) Subsections (6) and (7) apply where regulations under this section confer power to impose a fixed monetary penalty.
- (6) The regulations may include provision—
 - (a) about the procedure to be followed in imposing a penalty;
 - (b) about the amount of a penalty, which must not exceed the maximum amount that could be imposed on summary conviction;
 - (c) for the imposition of interest or additional penalties for late payment;
 - (d) conferring rights of appeal against a penalty;
 - (e) about the enforcement of a penalty.
- (7) The regulations must provide that—
 - (a) no penalty may be imposed under the regulations on a person in respect of conduct amounting to an offence if—
 - (i) proceedings have been brought against the person for that offence in respect of that conduct and the proceedings are ongoing, or
 - (ii) the person has been convicted of that offence in respect of that conduct, and
 - (b) no proceedings may be brought against a person in respect of conduct amounting to an offence if the person has been given a penalty under the regulations in respect of that conduct.
- (8) Amounts recovered in respect of fixed monetary penalties under regulations under this section are to be paid into the Consolidated Fund.

4 Permission for testing of modern funerary methods

- (1) The Secretary of State may by regulations make provision enabling the Secretary of State to permit a person to carry out a modern funerary method for a limited period, with a view to determining whether that method should be regulated under section 2.
- (2) The Secretary of State must exercise that power to ensure that the method may be carried out only in accordance with—
 - (a) the terms of a written permit given to the person by the Secretary of State, and

- (b) the regulations.
- (3) Regulations under this section must—
 - (a) require a permit to specify—
 - (i) the method that it relates to;
 - (ii) the person to whom it is granted;
 - (iii) the period for which it has effect;
 - (b) provide that the disposal of human remains by a method is permitted only where the person concerned gave their consent before death to the disposal of their remains by that method;
 - (c) make provision about the manner and form in which that consent is to be given;
 - (d) require the registration of each disposal of relevant human remains by a permitted method;
 - (e) make provision about how and by whom that registration is to be performed;
 - (f) make provision about how and by whom the register is to be kept.
- (4) Regulations under this section may make, or require or authorise the terms of a permit to make, any provision that could be made in regulations under section 2 or 3, subject to subsection (5).
- (5) Regulations under this section may not authorise a permit to make provision that could be made under section 3(2)(b) or (c) (offences and fixed monetary penalties).

Fetal remains

5 Regulation of methods for disposing of fetal remains

- (1) This section applies where a modern funerary method is regulated under section 2.
- (2) The Secretary of State may make regulations in relation to the disposal of fetal remains by the same method.
- (3) Regulations under this section may include any provision that could (or must) be made under section 2 or 3 in relation to the disposal of relevant human remains.
- (4) In this section “fetal remains” includes the remains of an embryo.

Offences

6 Offence of using unregulated modern funerary method

- (1) A person commits an offence if the person disposes of relevant human remains in England by an unregulated modern funerary method—
 - (a) knowing that they are carrying out a modern funerary method, and

- (b) knowing that, or being reckless as to whether, that method is unregulated.
- (2) For the purposes of this section a modern funerary method is “unregulated” if it is not regulated under section 2 or 4.
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding three years or a fine (or both).

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

- (1) A person commits an offence if the person dishonestly makes a false representation for the purpose of procuring the disposal of relevant human remains in England by a modern funerary method to which regulations under section 2 or 4 apply.
- (2) Subsections (2) to (5) of section 2 of the Fraud Act 2006 (fraud by false representation) apply for the purposes of subsection (1).
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

General

8 Consequential amendments

Schedule 1 makes consequential amendments to other legislation.

9 Interpretation

- (1) In this Act—
 - “burial” means the interment of human remains in any place (including a chamber), whether above or below the ground;
 - “cremation” means the burning of human remains;
 - “human remains” includes the remains of a still-born child, within the meaning given by section 41(1) of the Births and Deaths Registration Act 1953;
 - “relevant human remains” means human remains other than—
 - (a) material to which human remains have been reduced by cremation in accordance with regulations under section 7 of the Cremation Act 1902;

- (b) material to which human remains have been reduced by the use of a modern funerary method in accordance with regulations under section 2 or 4.
- (2) For the meaning of “funerary method” and “modern funerary method”, see section 1.

10 Regulation-making powers

- (1) Regulations under this Act may make—
 - (a) consequential, supplementary, incidental, transitional, transitory or saving provision;
 - (b) different provision for different purposes or areas.
- (2) Regulations under this Act may confer a function (including a function involving the exercise of a discretion) on any person specified in or appointed under the regulations.
- (3) Regulations under this Act may provide that the processing of information in accordance with the regulations is not in breach of—
 - (a) any obligation of confidence owed by the person processing the information, or
 - (b) any other restriction on the processing of information (however imposed).
- (4) Regulations under section 2 or 3 may amend or repeal provision contained in an Act that relates or refers to burial or cremation.
- (5) The provision that may be included in regulations under subsection (4) includes consequential provision amending an Act.
- (6) In this section “processing” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

11 Parliamentary procedure for regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Subject to subsection (5), the first regulations under section 2 in relation to a particular modern funerary method are subject to the procedure set out in Schedule 2.
- (3) Subject to subsection (5), the following are subject to the affirmative procedure—
 - (a) regulations under section 2 that change the way a modern funerary method is specified in regulations under that section;
 - (b) regulations under section 3(2) or (3), except where the only provision made by those regulations is provision conferring powers mentioned in section 3(2)(a) or (3) that are already conferred, for other purposes, by existing regulations under section 3;
 - (c) regulations under section 4;

- (d) regulations under section 5, where they include provision of a kind that could be made under section 3(2) or (3), except where the only such provision confers powers mentioned in section 3(2)(a) or (3) that are already conferred, for other purposes, by existing regulations under section 5;
 - (e) regulations under subsection (4) or (5) of section 10.
- (4) Any other regulations under this Act are subject to the negative procedure.
- (5) Regulations referred to in subsection (2) or (3) may be made without complying with that subsection if the instrument containing the regulations contains a declaration that the Secretary of State is of the opinion that it is necessary in the interests of public health or safety to make the instrument urgently.
- (6) After an instrument is made in reliance on subsection (5), it must be laid before Parliament.
- (7) The regulations contained in an instrument made in reliance on subsection (5) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (8) But if on any day during that period, on proceedings on a motion that (or to the effect that) the instrument be so approved, either House of Parliament comes to a decision rejecting the instrument, the regulations cease to have effect at the end of that day instead.
- (9) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
 - (a) Parliament is prorogued or dissolved, or
 - (b) both Houses are adjourned for more than 4 days.
- (10) Subsections (7) and (8) do not—
 - (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
- (11) For the purposes of this section—
 - (a) where regulations are subject to “the affirmative procedure”, the instrument containing them may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament;
 - (b) where regulations are subject to “the negative procedure”, the instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Any provision that may be made by regulations under this Act subject to the affirmative or the negative procedure may be made by regulations subject to the procedure set out in Schedule 2.

- (13) Any provision that may be made by regulations under this Act subject to the negative procedure may be made by regulations subject to the affirmative procedure.

12 Extent

This Act extends to England and Wales only.

13 Commencement

This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

14 Short title

This Act may be cited as the Modern Funerary Methods (England) Act 2026.

SCHEDULES

SCHEDULE 1

Section 8

CONSEQUENTIAL AMENDMENTS

Births and Deaths Registration Act 1926

- 1 In section 12 of the Births and Deaths Registration Act 1926 (definitions), for the definition of “person effecting the disposal” substitute—
- ““person effecting the disposal”—
- (a) in the case of a burial under the Burial Laws Amendment Act 1880 in the churchyard or graveyard of a parish or ecclesiastical district, means the relative, friend, or legal representative having charge of or being responsible for the burial of the deceased person;
 - (b) in the case of a disposal by a method regulated under section 2 or 4 of the Modern Funerary Methods (England) Act 2026, means the person by whom the disposal is to be registered by virtue of that Act;
 - (c) in any other case, means—
 - (i) the person by whom the register of burials in which the disposal is to be registered is kept, or
 - (ii) the person by whose officer that register is kept.”

Births and Deaths Registration Act 1953

- 2 (1) Section 24 of the Births and Deaths Registration Act 1953 (certificates as to registration of death) is amended as follows.
- (2) In subsection (3), after “disposal” insert “, by an authorised funerary method,”.
- (3) For subsection (6) substitute—
- “(6) In this section—
- “authorised funerary method” means—
- (a) burial,
 - (b) cremation, or
 - (c) a method regulated under section 2 or 4 of the Modern Funerary Methods (England) Act 2026;
- “person effecting the disposal”—
- (a) in the case of a burial under the Burial Laws Amendment Act 1880 or section 4 of the Welsh Church (Burial Grounds) Act 1945, in the churchyard or graveyard of a parish or ecclesiastical district, means the relative, friend or legal personal

- representative having charge of or being responsible for the burial of the deceased person;
- (b) in the case of a disposal by a method regulated under section 2 or 4 of the Modern Funerary Methods (England) Act 2026, means the person by whom the disposal is to be registered by virtue of that Act;
- (c) in any other case, means –
- (i) the person by whom the register in which the disposal is to be recorded is kept, or
 - (ii) the person by whose officer that register is kept.”

Local Government, Planning and Land Act 1980

- 3 In section 136A(3) of the Local Government, Planning and Land Act 1980 (meaning of “infrastructure”) in paragraph (f), after “facilities” insert “or facilities for the carrying out of any method regulated under section 2 of the Modern Funerary Methods (England) Act 2026”.

New Towns Act 1981

- 4 In section 4A(3) of the New Towns Act 1981 (meaning of “infrastructure”) in paragraph (f), after “facilities” insert “or facilities for the carrying out of any method regulated under section 2 of the Modern Funerary Methods (England) Act 2026”.

Public Health (Control of Disease) Act 1984

- 5 (1) The Public Health (Control of Disease) Act 1984 is amended as follows.
- (2) In section 45C(4) (restrictions and requirements that may be imposed or enabled), after paragraph (b) insert –
- “(ba) a restriction or requirement relating to the carrying out of any method regulated under section 2 or 4 of the Modern Funerary Methods (England) Act 2026;”.
- (3) In section 45H(2) (restrictions and requirements that may be imposed), after paragraph (c) insert –
- “(ca) in the case of a dead body in England, that the body be disposed of by a method regulated under section 2 of the Modern Funerary Methods (England) Act 2026;”.
- (4) In section 46 (burial or cremation by local authority) –
- (a) for subsection (1) substitute –
- “(1) Subsection (1A) applies where –
- (a) a person has died or been found dead in the area of a local authority, and

- (b) it appears to the authority that no suitable arrangements for the disposal of the body have been or are being made, otherwise than by the authority.
 - (1A) It is the duty of the local authority to cause the body to be disposed of—
 - (a) where the person died or was found dead in the area of a local authority in England, by—
 - (i) burial,
 - (ii) cremation, or
 - (iii) a method regulated under section 2 of the Modern Funerary Methods (England) Act 2026;
 - (b) where the person died or was found dead in the area of a local authority in Wales, by—
 - (i) burial, or
 - (ii) cremation.”
 - (b) in subsection (2)—
 - (i) omit “to be buried or cremated”;
 - (ii) at the end insert “to be disposed of by—
 - (a) burial,
 - (b) cremation, or
 - (c) a method regulated under section 2 of the Modern Funerary Methods (England) Act 2026.”;
 - (c) in subsection (3), for “(1)” substitute “(1A)”;
 - (d) after subsection (3) insert—
 - “(3A) An authority must not cause a body to be disposed of under subsection (1A) or (2) above by a method regulated under section 2 of the Modern Funerary Methods (England) Act 2026 where they have reason to believe that method would be contrary to the wishes of the deceased.”;
 - (e) in subsection (4), at the end insert “, or any provision made by or under the Modern Funerary Methods (England) Act 2026”;
 - (f) in subsection (5), for “(1)”, substitute “(1A)”;
 - (g) for the heading substitute “Funerary methods”.
- (5) In section 47(1) (regulations about dead bodies), in paragraph (a), after “disposal” insert “in Wales”.

Children Act 1989

- 6 In paragraph 20 of Schedule 2 to the Children Act 1989 (death of children being looked after by local authorities in England)—

- (a) in sub-paragraph (1)(c) for “to be buried or cremated” substitute “to be disposed of by—
 - (i) burial,
 - (ii) cremation, or
 - (iii) a method regulated under section 2 of the Modern Funerary Methods (England) Act 2026”;
- (b) in sub-paragraph (3), after “cremation” insert “or the use of a method regulated under the Modern Funerary Methods (England) Act 2026”;
- (c) in sub-paragraph (6), for “burial, cremation or anatomical examination of” substitute “disposal by any method specified in sub-paragraph (1)(c), or the anatomical examination of,”.

Housing and Regeneration Act 2008

- 7 In section 2(3) of the Housing and Regeneration Act 2008 (interpretation), in the definition of “infrastructure”, in paragraph (f), after “facilities” insert “or facilities for the carrying out of any method regulated under section 2 of the Modern Funerary Methods (England) Act 2026”.

Localism Act 2011

- 8 In section 205(4) of the Localism Act 2011 (meaning of “infrastructure”), in paragraph (f), after “facilities” insert “or facilities for the carrying out of any method regulated under section 2 of the Modern Funerary Methods (England) Act 2026”.

SCHEDULE 2

Section 11(2)

SUPER-AFFIRMATIVE PROCEDURE FOR FIRST REGULATIONS

Prior consultation

- 1 If the Secretary of State is proposing to make regulations under section 2 which would be the first regulations under that section in relation to a particular funerary method, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Draft regulations

- 2 (1) If, after consultation, the Secretary of State considers it appropriate to proceed with the making of the regulations, the Secretary of State must lay before Parliament—
 - (a) draft regulations, and
 - (b) a document which explains the regulations.

- (2) The Secretary of State may not act under this paragraph before the end of the period of twelve weeks beginning with the day on which the consultation began.

Draft regulations approved

- 3 (1) The Secretary of State may make regulations in the terms of the draft regulations laid under paragraph 2 if, after the expiry of the 40-day period, the draft regulations are approved by a resolution of each House of Parliament.
- (2) But the procedure in paragraph 4 is to apply to the draft regulations instead of the procedure in this paragraph if—
 - (a) either House of Parliament so resolves within the 30-day period, or
 - (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.

Scrutiny extended

- 4 (1) The Secretary of State must have regard to—
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations,made, during the 60-day period, with regard to the draft regulations.
- (2) If after the expiry of the 60-day period the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (3) If after the expiry of the 60-day period the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
 - (a) revised draft regulations, and
 - (b) a statement giving a summary of the changes proposed.
- (4) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.

Interpretation

- 5 (1) For the purposes of this paragraph regulations are made in the terms of draft or revised draft regulations if they contain no material changes to their provisions.
- (2) In this Schedule, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.

- (3) For that purpose no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

Appendix 3: Draft Bill for Wales

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Modern Funerary Methods (Wales) Bill

[DRAFT]

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Regulation of modern funerary methods

- 1 Regulatory principles and key concepts
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Modern Funerary Methods (Wales) Bill

[DRAFT]

An Act of Senedd Cymru to make provision for the regulation of modern funerary methods in Wales; and for connected purposes.

Having been passed by Senedd Cymru and having received the assent of His Majesty, it is enacted as follows:

Regulation of modern funerary methods

1 Regulatory principles and key concepts

- (1) In exercising functions under this Act, the Welsh Ministers must have regard to the importance of—
 - (a) treating human remains with dignity,
 - (b) protecting the environment, and
 - (c) protecting public health and safety.

- (2) In this Act—

“funerary method” (“*dull angladdol*”) means a method for disposing of relevant human remains in Wales;

“modern funerary method” (“*dull angladdol modern*”) means a funerary method other than—

- (a) burial,
- (b) cremation, or
- (c) a funerary method that is a licensable marine activity for the purposes of Part 4 of the Marine and Coastal Access Act 2009 (see section 66 of that Act).

2 Regulation of modern funerary methods

- (1) The Welsh Ministers may by regulations make provision regulating a specified modern funerary method.
- (2) Regulations under this section may (among other things) include provision about—
 - (a) the manner of carrying out a modern funerary method;
 - (b) the places or circumstances in which a modern funerary method may be carried out;
 - (c) the persons who may carry out a modern funerary method;
 - (d) the design, construction or maintenance of facilities or equipment for use in, or in connection with, a modern funerary method;
 - (e) authorisations that are required in relation to the disposal of relevant human remains by a modern funerary method (including documentation or application processes relating to such authorisations);
 - (f) what is to be done with—

- (i) any material to which relevant human remains are reduced by a modern funerary method;
 - (ii) anything else that results from a modern funerary method;
 - (g) registration requirements in relation to what is done under paragraph (f);
 - (h) the charging of fees in respect of the exercise of functions conferred by the regulations;
 - (i) purposes for which expenses relating to a modern funerary method are to be treated as funeral expenses;
 - (j) the keeping of records;
 - (k) the provision of information to persons specified in the regulations or the public.
- (3) The Welsh Ministers must exercise the powers under this section to ensure that there is, in relation to each specified modern funerary method, provision—
- (a) requiring the registration of each disposal of relevant human remains by the method,
 - (b) about how and by whom that registration is to be performed, and
 - (c) about how and by whom the register is to be kept.

3 Enforcement regulations

- (1) The Welsh Ministers may by regulations make provision for the purposes of monitoring and enforcing compliance with regulations under section 2.
- (2) Regulations under this section may (among other things) include provision—
- (a) conferring—
 - (i) powers of inspection;
 - (ii) powers of entry, search, seizure or retention;
 - (iii) powers to require the provision of information or the production of items;
 - (iv) powers to require an individual to attend at a place and answer questions;
 - (v) powers to dismantle facilities or equipment or take samples of substances;
 - (b) creating offences punishable on summary conviction with a fine not exceeding level 3 on the standard scale;
 - (c) conferring power to impose on a person a fixed monetary penalty, where it is shown beyond reasonable doubt that the person has engaged in conduct amounting to an offence under the regulations.
- (3) Regulations under this section may confer powers to do the following, but only on the authority of a warrant issued by a justice of the peace—
- (a) use reasonable force;
 - (b) enter a private dwelling.
- (4) The Welsh Ministers must exercise the powers under this section to ensure that there is, in relation to each modern funerary method regulated under section 2—

- (a) provision about the inspection of facilities by a person appointed by or under regulations under this section, and
 - (b) such other provision for the purposes of monitoring and enforcing compliance as the Welsh Ministers consider appropriate.
- (5) Subsections (6) and (7) apply where regulations under this section confer power to impose a fixed monetary penalty.
- (6) The regulations may include provision—
- (a) about the procedure to be followed in imposing a penalty;
 - (b) about the amount of a penalty, which must not exceed the maximum amount that could be imposed on summary conviction;
 - (c) for the imposition of interest or additional penalties for late payment;
 - (d) conferring rights of appeal against a penalty;
 - (e) about the enforcement of a penalty.
- (7) The regulations must provide that—
- (a) no penalty may be imposed under the regulations on a person in respect of conduct amounting to an offence if—
 - (i) proceedings have been brought against the person for that offence in respect of that conduct and the proceedings are ongoing, or
 - (ii) the person has been convicted of that offence in respect of that conduct, and
 - (b) no proceedings may be brought against a person in respect of conduct amounting to an offence if the person has been given a penalty under the regulations in respect of that conduct.
- (8) Amounts recovered in respect of fixed monetary penalties under regulations under this section are to be paid into the Welsh Consolidated Fund.

4 Permission for testing of modern funerary methods

- (1) The Welsh Ministers may by regulations make provision enabling the Welsh Ministers to permit a person to carry out a modern funerary method for a limited period, with a view to determining whether that method should be regulated under section 2.
- (2) The Welsh Ministers must exercise that power to ensure that the method may be carried out only in accordance with—
- (a) the terms of a written permit given to the person by the Welsh Ministers, and
 - (b) the regulations.
- (3) Regulations under this section must—
- (a) require a permit to specify—
 - (i) the method that it relates to;
 - (ii) the person to whom it is granted;
 - (iii) the period for which it has effect;

- (b) provide that the disposal of human remains by a method is permitted only where the person concerned gave their consent before death to the disposal of their remains by that method;
 - (c) make provision about the manner and form in which that consent is to be given;
 - (d) require the registration of each disposal of relevant human remains by a permitted method;
 - (e) make provision about how and by whom that registration is to be performed;
 - (f) make provision about how and by whom the register is to be kept.
- (4) Regulations under this section may make, or require or authorise the terms of a permit to make, any provision that could be made in regulations under section 2 or 3, subject to subsection (5).
- (5) Regulations under this section may not authorise a permit to make provision that could be made under section 3(2)(b) or (c) (offences and fixed monetary penalties).

Fetal remains

5 Regulation of methods for disposing of fetal remains

- (1) This section applies where a modern funerary method is regulated under section 2.
- (2) The Welsh Ministers may make regulations in relation to the disposal of fetal remains by the same method.
- (3) Regulations under this section may include any provision that could (or must) be made under section 2 or 3 in relation to the disposal of relevant human remains.
- (4) In this section “fetal remains” includes the remains of an embryo.

Offences

6 Offence of using unregulated modern funerary method

- (1) A person commits an offence if the person disposes of relevant human remains in Wales by an unregulated modern funerary method—
 - (a) knowing that they are carrying out a modern funerary method, and
 - (b) knowing that, or being reckless as to whether, that method is unregulated.
- (2) For the purposes of this section a modern funerary method is “unregulated” if it is not regulated under section 2 or 4.
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding three years or a fine (or both).

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

- (1) A person commits an offence if the person dishonestly makes a false representation for the purpose of procuring the disposal of relevant human remains in Wales by a modern funerary method to which regulations under section 2 or 4 apply.

- (2) Subsections (2) to (5) of section 2 of the Fraud Act 2006 (fraud by false representation) apply for the purposes of subsection (1).
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

General

8 Consequential amendments

Schedule 1 makes consequential amendments to other legislation.

9 Interpretation

(1) In this Act—

"burial" ("*claddu*") means the interment of human remains in any place (including a chamber), whether above or below the ground;

"cremation" ("*amlosgi*") means the burning of human remains;

"human remains" ("*gweddillion dynol*") includes the remains of a still-born child, within the meaning given by section 41(1) of the Births and Deaths Registration Act 1953;

"relevant human remains" ("*gweddillion dynol perthnasol*") means human remains other than—

- (a) material to which human remains have been reduced by cremation in accordance with regulations under section 7 of the Cremation Act 1902;
 - (b) material to which human remains have been reduced by the use of a modern funerary method in accordance with regulations under section 2 or 4.
- (2) For the meaning of "funerary method" ("*dull angladdol*") and "modern funerary method" ("*dull angladdol modern*"), see section 1.

10 Regulation-making powers

(1) Regulations under this Act may make—

- (a) consequential, supplementary, incidental, transitional, transitory or saving provision;
 - (b) different provision for different purposes or areas.
- (2) Regulations under this Act may confer a function (including a function involving the exercise of a discretion) on any person specified in or appointed under the regulations.
- (3) Regulations under this Act may provide that the processing of information in accordance with the regulations is not in breach of—
- (a) any obligation of confidence owed by the person processing the information, or
 - (b) any other restriction on the processing of information (however imposed).

- (4) Regulations under section 2 or 3 may amend or repeal provision contained in an Act of Senedd Cymru, an Assembly Measure or an Act of the Parliament of the United Kingdom, that relates or refers to burial or cremation.
- (5) The provision that may be included in regulations under subsection (4) includes consequential provision amending an Act of Senedd Cymru, an Assembly Measure or an Act of the Parliament of the United Kingdom.
- (6) In this section “processing” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

11 Procedure for regulations

- (1) Regulations under this Act are to be made by Welsh statutory instrument.
- (2) Subject to subsection (5), the first regulations under section 2 in relation to a particular modern funerary method are subject to the procedure set out in Schedule 2.
- (3) Subject to subsection (5), the following are subject to the Senedd approval procedure—
 - (a) regulations under section 2 that change the way a modern funerary method is specified in regulations under that section;
 - (b) regulations under section 3(2) or (3), except where the only provision made by those regulations is provision conferring powers mentioned in section 3(2)(a) or (3) that are already conferred, for other purposes, by existing regulations under section 3;
 - (c) regulations under section 4;
 - (d) regulations under section 5, where they include provision of a kind that could be made under section 3(2) or (3), except where the only such provision confers powers mentioned in section 3(2)(a) or (3) that are already conferred, for other purposes, by existing regulations under section 5;
 - (e) regulations under subsection (4) or (5) of section 10.
- (4) Any other regulations under this Act are subject to the Senedd annulment procedure.
- (5) Regulations referred to in subsection (2) or (3) may be made without complying with that subsection if the instrument containing the regulations 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 regulations urgently.
- (6) Regulations made in reliance on subsection (5) are subject to the Senedd confirmation procedure.
- (7) For the purposes of section 37D(3)(a) of the Legislation (Wales) Act 2019 (anaw 4), the period specified in relation to regulations made under subsection (5) is 28 days beginning with the day on which the regulations are made.
- (8) Any provision that may be made by regulations under this Act subject to the Senedd approval procedure or the Senedd annulment procedure may be made by regulations subject to the procedure set out in Schedule 2.

12 Coming into force

This Act comes into force at the end of the period of two months beginning with the day on which it receives Royal Assent.

13 Short title

This Act may be referred to as the Modern Funerary Methods (Wales) Act 2026.

SCHEDULE 1

(introduced by section 8)

CONSEQUENTIAL AMENDMENTS

Births and Deaths Registration Act 1926 (c. 48)

- 1 In section 12 of the Births and Deaths Registration Act 1926 (definitions), for the definition of “person effecting the disposal” substitute—

“ “person effecting the disposal” —

- (a) in the case of a burial under the Burial Laws Amendment Act 1880 in the churchyard or graveyard of a parish or ecclesiastical district, means the relative, friend, or legal representative having charge of or being responsible for the burial of the deceased person;
- (b) in the case of a disposal by a method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act 2026 (asc 00), means the person by whom the disposal is to be registered by virtue of that Act;
- (c) in any other case, means—
 - (i) the person by whom the register of burials in which the disposal is to be registered is kept, or
 - (ii) the person by whose officer that register is kept.”

Births and Deaths Registration Act 1953 (c. 20)

- 2 (1) Section 24 of the Births and Deaths Registration Act 1953 (certificates as to registration of death) is amended as follows.
- (2) In subsection (3), after “disposal” insert “, by an authorised funerary method,”.
- (3) For subsection (6) substitute—

“(6) In this section—

“authorised funerary method” means—

- (a) burial,
- (b) cremation, or
- (c) a method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act 2026 (asc 00);

“person effecting the disposal” —

- (a) in the case of a burial under the Burial Laws Amendment Act 1880 or section 4 of the Welsh Church (Burial Grounds) Act 1945, in the churchyard or graveyard of a parish or ecclesiastical district, means the relative, friend or legal personal representative having charge of or being responsible for the burial of the deceased person;

- (b) in the case of a disposal by a method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act 2026 (asc 00), means the person by whom the disposal is to be registered by virtue of that Act;
- (c) in any other case, means—
 - (i) the person by whom the register in which the disposal is to be recorded is kept, or
 - (ii) the person by whose officer that register is kept.”

Public Health (Control of Disease) Act 1984 (c. 22)

- 3 (1) The Public Health (Control of Disease) Act 1984 is amended as follows.
- (2) In section 45C(4) (restrictions and requirements that may be imposed or enabled), after paragraph (b) insert—
- “(ba) a restriction or requirement relating to the carrying out of any method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act (asc 00),”.
- (3) In section 45H(2) (restrictions and requirements that may be imposed), after paragraph (c) insert—
- “(ca) in the case of a dead body in Wales, that the body be disposed of by a method regulated under section 2 of the Modern Funerary Methods (Wales) Act (asc 00);”.
- (4) In section 46 (burial or cremation by local authority)—
- (a) for subsection (1) substitute—
- “(1) Subsection (1A) applies where—
- (a) a person has died or been found dead in the area of a local authority, and
- (b) it appears to the authority that no suitable arrangements for the disposal of the body have been or are being made, otherwise than by the authority.
- (1A) It is the duty of the local authority to cause the body to be disposed of—
- (a) where the person died or was found dead in the area of a local authority in Wales, by—
- (i) burial,
- (ii) cremation, or
- (iii) a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00);
- (b) where the person died or was found dead in the area of a local authority in Wales, by—
- (i) burial, or
- (ii) cremation.”

- (b) in subsection (2A)—
 - (i) omit “to be buried or cremated”;
 - (ii) at the end insert “to be disposed of by—
 - (a) burial,
 - (b) cremation, or
 - (c) a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00).”;
 - (c) in subsection (3), for “(1)” substitute “(1A)”;
 - (d) after subsection (3) insert—
 - “(3A) An authority must not cause a body to be disposed of under subsection (1A) or (2A) above by a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00) where they have reason to believe that method would be contrary to the wishes of the deceased.”;
 - (e) in subsection (4), at the end insert “, or any provision made by or under the Modern Funerary Methods (Wales) Act 2026 (asc 00)”;
 - (f) in subsection (5), for “(1)”, substitute “(1A)”;
 - (g) for the heading substitute “Funerary methods”.
- (5) In section 47(1) (regulations about dead bodies), in paragraph (a), after “disposal” insert “in England”.

Social Services and Well-being (Wales) Act 2014 (anaw 4)

- 4 In section 125 of the Social Services and Well-being (Wales) Act 2014 (death of children being looked after by local authorities in Wales)—
- (a) in subsection (1)(c), for “to be buried or cremated” substitute “to be disposed of by—
 - (i) burial,
 - (ii) cremation, or
 - (iii) a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00)”;
 - (b) in subsection (3), after “cremation” insert “or the use of a method regulated under the Modern Funerary Methods (Wales) Act 2026 (asc 00)”;
 - (c) in subsection (6), for “burial, cremation or anatomical examination of” substitute “disposal by any method specified in subsection (1)(c), or the anatomical examination of,”.

SCHEDULE 2
(introduced by section 11(2))

ENHANCED PROCEDURE FOR FIRST REGULATIONS

Prior consultation

- 1 If the Welsh Ministers are proposing to make regulations under section 2 which would be the first regulations under that section in relation to a particular funerary method, the Welsh Ministers must consult such persons as the Welsh Ministers consider appropriate.

Draft regulations

- 2 (1) If, after consultation, the Welsh Ministers consider it appropriate to proceed with the making of the regulations, the Welsh Ministers must lay before Senedd Cymru—
- (a) draft regulations, and
 - (b) a document which explains the regulations.
- (2) The Welsh Ministers may not act under this paragraph before the end of the period of twelve weeks beginning with the day on which the consultation began.

Draft regulations approved

- 3 (1) The Welsh Ministers may make regulations in the terms of the draft regulations laid under paragraph 2 if, after the expiry of the 40-day period, the draft regulations are approved by a resolution of Senedd Cymru.
- (2) But the procedure in paragraph 4 is to apply to the draft regulations instead of the procedure in this paragraph if—
- (a) Senedd Cymru so resolves within the 30-day period, or
 - (b) a committee of Senedd Cymru charged with reporting on the draft regulations so recommends within the 30-day period and Senedd Cymru does not by resolution reject the recommendation within that period.

Scrutiny extended

- 4 (1) The Welsh Ministers must have regard to—
- (a) any representations,
 - (b) any resolution of Senedd Cymru, and
 - (c) any recommendations of a committee of Senedd Cymru charged with reporting on the draft regulations,
- made during the 60-day period with regard to the draft regulations.
- (2) If after the expiry of the 60-day period the draft regulations are approved by a resolution of Senedd Cymru, the Welsh Ministers may make regulations in the terms of the draft regulations.

- (3) If after the expiry of the 60-day period the Welsh Ministers wish to proceed with the draft regulations but with material changes, the Welsh Ministers may lay before Senedd Cymru—
 - (a) revised draft regulations, and
 - (b) a statement giving a summary of the changes proposed.
- (4) If the revised draft regulations are approved by a resolution of Senedd Cymru, the Welsh Ministers may make regulations in the terms of the revised draft regulations.

Interpretation

- 5 (1) For the purposes of this paragraph regulations are made in the terms of draft or revised draft regulations if they contain no material changes to their provisions.
- (2) In this Schedule, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Senedd Cymru.
- (3) For that purpose no account is to be taken of any time during which Senedd Cymru is dissolved or in recess for more than four days.

Bil Dulliau Angladdol Modern (Cymru)

[DRAFFT]

CYNNWYS

Rheoleiddio dulliau angladdol modern

- 1 Yr egwyddorion rheoleiddiol a'r prif gysyniadau allweddol
- 2 Rheoleiddio dulliau angladdol modern
- 3 Rheoliadau gorfodi
- 4 Caniatâd i brofi dulliau angladdol modern

Gweddillion ffetws

- 5 Rheoleiddio dulliau ar gyfer gwaredu gweddillion ffetws

Troseddau

- 6 Trosedd defnyddio dull angladdol modern heb ei reoleiddio
- 7 Trosedd darparu gwybodaeth anwir er mwyn caffael dull angladdol modern wedi ei reoleiddio

Cyffredinol

- 8 Diwygiadau canlyniadol
- 9 Dehongli
- 10 Pwerau i wneud rheoliadau
- 11 Y weithdrefn ar gyfer rheoliadau
- 12 Dod i rym
- 13 Enw byr

Atodlen 1 - Diwygiadau canlyniadol

Atodlen 2 - Gweithdrefn uwch ar gyfer y rheoliadau cyntaf

Bil Dulliau Angladdol Modern (Cymru)

[DRAFFT]

Deddf gan Senedd Cymru i wneud darpariaeth ar gyfer rheoleiddio dulliau angladdol modern yng Nghymru; ac at ddibenion cysylltiedig.

Gan ei fod wedi ei basio gan Senedd Cymru ac wedi derbyn cydsyniad Ei Fawrhydi, deddfir fel a ganlyn:

Rheoleiddio dulliau angladdol modern

- 1 Yr egwyddorion rheoleiddiol a'r prif gysyniadau allweddol
 - (1) Wrth arfer swyddogaethau o dan y Ddeddf hon, rhaid i Weinidogion Cymru roi sylw i bwysigrwydd—
 - (a) trin gweddillion dynol ag urddas,
 - (b) diogelu'r amgylchedd, ac
 - (c) diogelu iechyd a diogelwch y cyhoedd.
 - (2) Yn y Ddeddf hon—

ystyr "dull angladdol" ("*funerary method*") yw dull ar gyfer gwaredu gweddillion dynol perthnasol yng Nghymru;

ystyr "dull angladdol modern" ("*modern funerary method*") yw dull angladdol heblaw—

 - (a) claddu,
 - (b) amlosgi, neu
 - (c) dull angladdol sy'n weithgaredd morol trwyddedadwy at ddibenion Rhan 4 o Ddeddf y Môr a Mynediad i'r Arfordir 2009 (gweler adran 66 o'r Ddeddf honno).
- 2 Rheoleiddio dulliau angladdol modern
 - (1) Caiff Gweinidogion Cymru drwy reoliadau wneud darpariaeth sy'n rheoleiddio dull angladdol modern penodedig.
 - (2) Caiff rheoliadau o dan yr adran hon (ymhlith pethau eraill) gynnwys darpariaeth ynghylch—
 - (a) modd cyflawni dull angladdol modern;
 - (b) ym mha leoedd neu o dan ba amgylchiadau y caniateir cyflawni dull angladdol modern;
 - (c) y personau y caniateir iddynt gyflawni dull angladdol modern;
 - (d) dylunio, adeiladu neu gynnal a chadw cyfleusterau neu offer i'w defnyddio mewn dull angladdol modern neu mewn cysylltiad â dull angladdol modern;

- (e) awdurdodiadau sy'n ofynnol mewn perthynas â gwaredu gweddillion dynol perthnasol drwy ddull angladdol modern (gan gynnwys dogfennau neu brosesau ymgeisio sy'n ymwneud â'r awdurdodiadau hynny);
 - (f) yr hyn sydd i'w wneud â'r canlynol—
 - (i) unrhyw ddeunydd y mae gweddillion dynol perthnasol wedi eu lleihau iddo drwy ddull angladdol modern;
 - (ii) unrhyw beth arall sy'n deillio o ddull angladdol modern;
 - (g) gofynion cofrestru mewn perthynas â'r hyn a wneir o dan baragraff (f);
 - (h) codi ffioedd mewn perthynas ag arfer swyddogaethau a roddir gan y rheoliadau;
 - (i) y dibenion y mae treuliau sy'n ymwneud â dull angladdol modern i'w trin fel treuliau angladd mewn perthynas â hwy;
 - (j) cadw cofnodion;
 - (k) darparu gwybodaeth i bersonau a bennir yn y rheoliadau neu i'r cyhoedd.
- (3) Rhaid i Weinidogion Cymru arfer y pwerau o dan yr adran hon i sicrhau bod yna ddarpariaeth, mewn perthynas â phob dull angladdol modern penodedig—
- (a) sy'n ei gwneud yn ofynnol i bob gwarediad ar weddillion dynol perthnasol drwy'r dull gael ei gofrestru,
 - (b) ynghylch sut y mae'r cofrestriad hwnnw i'w gyflawni a chan bwy, ac
 - (c) ynghylch sut y mae'r gofrestr i'w chadw a chan bwy.

3 Rheoliadau gorfodi

- (1) Caiff Gweinidogion Cymru drwy reoliadau wneud darpariaeth at ddibenion monitro a gorfodi cydymffurfiaeth â rheoliadau o dan adran 2.
- (2) Caiff rheoliadau o dan yr adran hon (ymhlith pethau eraill) gynnwys darpariaeth—
 - (a) sy'n rhoi—
 - (i) pwerau archwilio;
 - (ii) pwerau i fynd i mewn, chwilio, ymafael neu gadw;
 - (iii) pwerau i'w gwneud yn ofynnol i wybodaeth gael ei darparu neu i eitemau gael eu dangos;
 - (iv) pwerau i'w gwneud yn ofynnol i unigolyn fod yn bresennol mewn lle ac ateb cwestiynau;
 - (v) pwerau i ddatgymalu cyfleusterau neu offer neu i gymryd samplau o sylweddau;
 - (b) sy'n creu troseddau y mae modd eu cosbi ar euogfarn ddiannod drwy ddirwy heb fod yn uwch na lefel 3 ar y raddfa safonol;
 - (c) sy'n rhoi pŵer i osod cosb ariannol benodedig ar berson, pan ddangosir y tu hwnt i amheuaeth resymol fod y person wedi cymryd rhan mewn ymddygiad sy'n gyfystyr â throedd o dan y rheoliadau.
- (3) Caiff rheoliadau o dan yr adran hon roi pwerau i wneud y canlynol, ond dim ond ar awdurdod gwarant a ddyroddir gan ynad heddwch—

- (a) defnyddio grym rhesymol;
 - (b) mynd i mewn i annedd breifat.
- (4) Rhaid i Weinidogion Cymru arfer y pwerau o dan yr adran hon i sicrhau bod yna, mewn perthynas â phob dull angladdol modern a reoleiddir o dan adran 2—
- (a) darpariaeth ynghylch archwilio cyfleusterau gan berson a benodir gan neu o dan reoliadau o dan yr adran hon, a
 - (b) unrhyw ddarpariaeth arall at ddibenion monitro a gorfodi cydymffurfiaeth y mae Gweinidogion Cymru yn ystyried ei bod yn briodol.
- (5) Mae is-adrannau (6) a (7) yn gymwys pan fo rheoliadau o dan yr adran hon yn rhoi pŵer i osod cosb ariannol benodedig.
- (6) Caiff y rheoliadau gynnwys darpariaeth—
- (a) ynghylch y weithdrefn sydd i'w dilyn wrth osod cosb;
 - (b) ynghylch swm cosb, na chaniateir iddi fod yn fwy na'r uchafswm y gellid ei osod ar euogfarn ddiannod;
 - (c) ar gyfer gosod llogau neu gosbau ychwanegol am dalu'n hwyr;
 - (d) sy'n rhoi hawliau i apelio yn erbyn cosb;
 - (e) ynghylch gorfodi cosb.
- (7) Rhaid i'r rheoliadau ddarparu—
- (a) na chaniateir gosod cosb o dan y rheoliadau ar berson mewn perthynas ag ymddygiad sy'n gyfystyr â throedd—
 - (i) os oes achos wedi ei ddwyn yn erbyn y person am y drosedd honno mewn perthynas â'r ymddygiad hwnnw a bod yr achos yn parhau, neu
 - (ii) os yw'r person wedi ei ddyfarnu'n euog o'r drosedd honno mewn perthynas â'r ymddygiad hwnnw, a
 - (b) na chaniateir dwyn achos yn erbyn person mewn perthynas ag ymddygiad sy'n gyfystyr â throedd os yw'r person wedi cael cosb o dan y rheoliadau mewn perthynas â'r ymddygiad hwnnw.
- (8) Mae symiau a adenillir mewn perthynas â chosbau ariannol penodedig o dan reoliadau o dan yr adran hon i'w talu i Gronfa Gyfunol Cymru.

4 Caniatâd i brofi dulliau angladdol modern

- (1) Caiff Gweinidogion Cymru drwy reoliadau wneud darpariaeth sy'n galluogi Gweinidogion Cymru i ganiatáu i berson gyflawni dull angladdol modern am gyfnod cyfyngedig, gyda golwg ar benderfynu a ddylai'r dull hwnnw gael ei reoleiddio o dan adran 2.
- (2) Rhaid i Weinidogion Cymru arfer y pŵer hwnnw i sicrhau mai dim ond yn unol â'r canlynol y caniateir cyflawni'r dull—
- (a) telerau hawlen ysgrifenedig a roddwyd i'r person gan Weinidogion Cymru, a
 - (b) y rheoliadau.
- (3) Rhaid i reoliadau o dan yr adran hon—

- (a) ei gwneud yn ofynnol i hawlen bennu—
 - (i) y dull y mae'n ymwneud ag ef;
 - (ii) y person y mae'n cael ei rhoi iddo;
 - (iii) y cyfnod pryd y mae'n cael effaith;
 - (b) darparu mai dim ond pan fo'r person dan sylw wedi rhoi ei gydsyniad cyn marw i waredu ei weddillion drwy'r dull hwnnw y caniateir i weddillion dynol gael eu gwaredu drwy ddull;
 - (c) gwneud darpariaeth ynghylch y modd a'r ffurf y mae'r cydsyniad hwnnw i'w roi;
 - (d) ei gwneud yn ofynnol i bob gwarediad ar weddillion dynol perthnasol drwy ddull a ganiateir gael ei gofrestru;
 - (e) gwneud darpariaeth ynghylch sut y mae'r cofrestriad hwnnw i'w gyflawni a chan bwy;
 - (f) gwneud darpariaeth ynghylch sut y mae'r gofrestr i'w chadw a chan bwy.
- (4) Caiff rheoliadau o dan yr adran hon wneud unrhyw ddarpariaeth y gellid ei gwneud mewn rheoliadau o dan adran 2 neu 3, yn ddarostyngedig i is-adran (5), neu ei gwneud yn ofynnol i delerau hawlen wneud hynny neu awdurdodi telerau hawlen i wneud hynny.
- (5) Ni chaniateir i reoliadau o dan yr adran hon awdurdodi hawlen i wneud darpariaeth y gellid ei gwneud o dan adran 3(2)(b) neu (c) (troseddau a chosbau ariannol penodedig).

Gweddillion ffetws

- 5 Rheoleiddio dulliau ar gyfer gwaredu gweddillion ffetws
- (1) Mae'r adran hon yn gymwys pan fo dull angladdol modern wedi ei reoleiddio o dan adran 2.
 - (2) Caiff Gweinidogion Cymru wneud rheoliadau mewn perthynas â gwaredu gweddillion ffetws drwy'r un dull.
 - (3) Caiff rheoliadau o dan yr adran hon gynnwys unrhyw ddarpariaeth y gellid (neu y mae'n rhaid) ei gwneud o dan adran 2 neu 3 mewn perthynas â gwaredu gweddillion dynol perthnasol.
 - (4) Yn yr adran hon mae "gweddillion ffetws" yn cynnwys gweddillion embryo.

Troseddau

- 6 Trosedd defnyddio dull angladdol modern heb ei reoleiddio
- (1) Mae person yn cyflawni trosedd os bydd yn gwaredu gweddillion dynol perthnasol yng Nghymru drwy ddull angladdol modern heb ei reoleiddio—
 - (a) gan wybod ei fod yn cyflawni dull angladdol modern, a
 - (b) gan wybod bod y dull hwnnw heb ei reoleiddio, neu gan fod yn ddi-hid a yw'r dull hwnnw heb ei reoleiddio.
 - (2) At ddibenion yr adran hon mae dull angladdol modern "heb ei reoleiddio" os nad yw wedi ei reoleiddio o dan adran 2 neu 4.
 - (3) Mae person sy'n cyflawni trosedd o dan yr adran hon yn agored—

- (a) ar euogfarn ddiannod, i garchar am gyfnod heb fod yn hwy na'r terfyn cyffredinol mewn llys ynadon neu ddirwy (neu'r ddau);
- (b) ar euogfarn ar dditiad, i garchar am gyfnod heb fod yn hwy na thair blynedd neu ddirwy (neu'r ddau).

7 Trosedd darparu gwybodaeth anwir er mwyn caffael dull angladdol modern wedi ei reoleiddio

- (1) Mae person yn cyflawni trosedd os bydd yn gwneud sylwadau anwir yn anonest er mwyn caffael gwarediad gweddillion dynol perthnasol yng Nghymru drwy ddull angladdol modern y mae rheoliadau o dan adran 2 neu 4 yn gymwys iddo.
- (2) Mae is-adrannau (2) i (5) o adran 2 o Ddeddf Twyll 2006 (twyll drwy sylwadau anwir) yn gymwys at ddibenion is-adran (1).
- (3) Mae person sy'n cyflawni trosedd o dan yr adran hon yn agored—
 - (a) ar euogfarn ddiannod, i garchar am gyfnod heb fod yn hwy na'r terfyn cyffredinol mewn llys ynadon neu ddirwy (neu'r ddau);
 - (b) ar euogfarn ar dditiad, i garchar am gyfnod heb fod yn hwy na dwy flynedd neu ddirwy (neu'r ddau).

Cyffredinol

8 Diwygiadau canlyniadol

Mae Atodlen 1 yn gwneud diwygiadau canlyniadol i ddeddfwriaeth arall.

9 Dehongli

(1) Yn y Ddeddf hon—

ystyr "amlosgi" ("*cremation*") yw llosgi gweddillion dynol;

ystyr "claddu" ("*burial*") yw daearu gweddillion dynol mewn unrhyw le (gan gynnwys siambr), boed uwchben y ddaear neu o dani;

mae "gweddillion dynol" ("*human remains*") yn cynnwys gweddillion plentyn marw-anedig, o fewn yr ystyr a roddir i "still-born child" gan adran 41(1) o Ddeddf Cofrestru Genedigaethau a Marwolaethau 1953;

ystyr "gweddillion dynol perthnasol" ("*relevant human remains*") yw gweddillion dynol heblaw—

- (a) deunydd y mae gweddillion dynol wedi eu lleihau iddo drwy amlosgi yn unol â rheoliadau o dan adran 7 o Ddeddf Amlosgi 1902;
- (b) deunydd y mae gweddillion dynol wedi eu lleihau iddo drwy ddefnyddio dull angladdol modern yn unol â rheoliadau o dan adran 2 neu 4.

(2) I gael ystyr "dull angladdol" ("*funerary method*") a "dull angladdol modern" ("*modern funerary method*"), gweler adran 1.

10 Pwerau i wneud rheoliadau

(1) Caiff rheoliadau o dan y Ddeddf hon wneud—

- (a) darpariaeth ganlyniadol, darpariaeth atodol, darpariaeth ddeilliadol, darpariaeth drosiannol, darpariaeth ddarfodol neu ddarpariaeth arbed;
 - (b) darpariaeth wahanol at ddibenion gwahanol neu ar gyfer ardaloedd gwahanol.
- (2) Caiff rheoliadau o dan y Ddeddf hon roi swyddogaeth (gan gynnwys swyddogaeth sy'n ymwneud ag arfer disgrisiwn) i unrhyw berson a bennir yn y rheoliadau neu a benodir o dan y rheoliadau.
- (3) Caiff rheoliadau o dan y Ddeddf hon ddarparu nad yw prosesu gwybodaeth yn unol â'r rheoliadau yn torri'r canlynol—
- (a) unrhyw rwymedigaeth gyfrinachedd sydd ar y person sy'n prosesu'r wybodaeth, neu
 - (b) unrhyw gyfyngiad arall ar brosesu gwybodaeth (sut bynnag y caiff ei osod).
- (4) Caiff rheoliadau o dan adran 2 neu 3 ddiwygio neu ddiddymu darpariaeth a gynhwysir mewn Deddf gan Senedd Cymru, Mesur Cynulliad neu Ddeddf gan Senedd y Deyrnas Unedig, sy'n ymwneud â chladdu neu amlosgi neu sy'n cyfeirio atynt.
- (5) Mae'r ddarpariaeth y caniateir ei chynnwys mewn rheoliadau o dan is-adran (4) yn cynnwys darpariaeth ganlyniadol sy'n diwygio Deddf gan Senedd Cymru, Mesur Cynulliad neu Ddeddf gan Senedd y Deyrnas Unedig.
- (6) Yn yr adran hon mae i "prosesu" yr un ystyr ag sydd i "processing" yn Neddf Diogelu Data 2018 (gweler adran 3 o'r Ddeddf honno).

11 Y weithdrefn ar gyfer rheoliadau

- (1) Mae rheoliadau o dan y Ddeddf hon i'w gwneud drwy offeryn statudol Cymreig.
- (2) Yn ddarostyngedig i is-adran (5), mae'r rheoliadau cyntaf o dan adran 2 mewn perthynas â dull angladdol modern penodol yn ddarostyngedig i'r weithdrefn a nodir yn Atodlen 2.
- (3) Yn ddarostyngedig i is-adran (5), mae'r canlynol yn ddarostyngedig i weithdrefn gymeradwyo'r Senedd—
- (a) rheoliadau o dan adran 2 sy'n newid y ffordd y pennir dull angladdol modern mewn rheoliadau o dan yr adran honno;
 - (b) rheoliadau o dan adran 3(2) neu (3), ac eithrio pan fo'r unig ddarpariaeth a wneir gan y rheoliadau hynny yn ddarpariaeth sy'n rhoi pwerau a grybwyllir yn adran 3(2)(a) neu (3) sydd eisoes wedi eu rhoi, at ddibenion eraill, gan reoliadau presennol o dan adran 5;
 - (c) rheoliadau o dan adran 4;
 - (d) rheoliadau o dan adran 5, pan fônt yn cynnwys darpariaeth o fath y gellid ei wneud o dan adran 3(2) neu (3), ac eithrio pan fo'r unig ddarpariaeth o'r fath yn rhoi pwerau a grybwyllir yn adran 3(2)(a) neu (3) sydd eisoes wedi eu rhoi, at ddibenion eraill, gan reoliadau presennol o dan adran 5;
 - (e) rheoliadau o dan is-adran (4) neu (5) o adran 10.
- (4) Mae unrhyw reoliadau eraill o dan y Ddeddf hon yn ddarostyngedig i weithdrefn annilysu'r Senedd.

- (5) Caniateir i reoliadau y cyfeirir atynt yn is-adran (2) neu (3) gael eu gwneud heb gydymffurfio â'r is-adran honno os yw'r offeryn sy'n cynnwys y rheoliadau yn cynnwys datganiad bod Gweinidogion Cymru o'r farn ei bod yn angenrheidiol gwneud y rheoliadau ar frys er budd iechyd neu ddiogelwch y cyhoedd.
- (6) Mae rheoliadau a wneir drwy ddibynnu ar is-adran (5) yn ddarostyngedig i weithdrefn gadarnhau'r Senedd.
- (7) At ddibenion adran 37D(3)(a) o Ddeddf Deddfwriaeth (Cymru) 2019 (dccc 4), y cyfnod a bennir mewn perthynas â rheoliadau a wneir o dan is-adran (5) yw 28 o ddiwrnodau sy'n dechrau â'r diwrnod y gwneir y rheoliadau.
- (8) Caniateir i unrhyw ddarpariaeth y caniateir ei gwneud drwy reoliadau o dan y Ddeddf hon yn ddarostyngedig i weithdrefn gymeradwyo'r Senedd neu weithdrefn annilysu'r Senedd gael ei gwneud drwy reoliadau sy'n ddarostyngedig i'r weithdrefn a nodir yn Atodlen 2.

12 Dod i rym

Daw'r Ddeddf hon i rym ar ddiwedd y cyfnod o ddau fis sy'n dechrau â'r diwrnod y mae'n cael y Cydsyniad Brenhinol.

13 Enw byr

Caniateir cyfeirio at y Ddeddf hon fel Deddf Dulliau Angladdol Modern (Cymru) 2026.

ATODLEN 1

(a gyflwynir gan adran 8)

DIWYGIADAU CANLYNIADOL

Deddf Cofrestru Genedigaethau a Marwolaethau 1926 (p. 48)

- 1 Yn adran 12 o Ddeddf Cofrestru Genedigaethau a Marwolaethau 1926 (diffiniadau), yn lle'r diffiniad o "person effecting the disposal" rhodder—
- " "person effecting the disposal" —
- (a) in the case of a burial under the Burial Laws Amendment Act 1880 in the churchyard or graveyard of a parish or ecclesiastical district, means the relative, friend, or legal representative having charge of or being responsible for the burial of the deceased person;
 - (b) in the case of a disposal by a method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act 2026 (asc 00), means the person by whom the disposal is to be registered by virtue of that Act;
 - (c) in any other case, means—
 - (i) the person by whom the register of burials in which the disposal is to be registered is kept, or
 - (ii) the person by whose officer that register is kept."

Deddf Cofrestru Genedigaethau a Marwolaethau 1953 (p. 20)

- 2 (1) Mae adran 24 o Ddeddf Cofrestru Genedigaethau a Marwolaethau 1953 (tystysgrifau ynghylch cofrestru marwolaeth) wedi ei diwygio fel a ganlyn.
- (2) Yn is-adran (3), ar ôl "disposal" mewnosoder ", by an authorised funerary method,".
- (3) Yn lle is-adran (6) rhodder—
- "(6) In this section—
- "authorised funerary method" means—
- (a) burial,
 - (b) cremation, or
 - (c) a method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act 2026 (asc 00);
- "person effecting the disposal" —
- (a) in the case of a burial under the Burial Laws Amendment Act 1880 or section 4 of the Welsh Church (Burial Grounds) Act 1945, in the churchyard or graveyard of a parish or ecclesiastical district, means the relative, friend or legal personal representative having charge of or being responsible for the burial of the deceased person;

- (b) in the case of a disposal by a method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act 2026 (asc 00), means the person by whom the disposal is to be registered by virtue of that Act;
- (c) in any other case, means—
 - (i) the person by whom the register in which the disposal is to be recorded is kept, or
 - (ii) the person by whose officer that register is kept.”

Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 (p. 22)

- 3 (1) Mae Deddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984 wedi ei diwygio fel a ganlyn.
- (2) Yn adran 45C(4) (cyfyngiadau a gofynion y caniateir eu gosod neu eu galluogi), ar ôl paragraff (b) mewnosoder—
- “(ba) a restriction or requirement relating to the carrying out of any method regulated under section 2 or 4 of the Modern Funerary Methods (Wales) Act (asc 00),”.
- (3) Yn adran 45H(2) (cyfyngiadau a gofynion y caniateir eu gosod), ar ôl paragraff (c) mewnosoder—
- “(ca) in the case of a dead body in Wales, that the body be disposed of by a method regulated under section 2 of the Modern Funerary Methods (Wales) Act (asc 00);”.
- (4) Yn adran 46 (claddu neu amlosgi gan awdurdod lleol)—
- (a) yn lle is-adran (1) rhodder—
- “(1) Subsection (1A) applies where—
- (a) a person has died or been found dead in the area of a local authority, and
 - (b) it appears to the authority that no suitable arrangements for the disposal of the body have been or are being made, otherwise than by the authority.
- (1A) It is the duty of the local authority to cause the body to be disposed of—
- (a) where the person died or was found dead in the area of a local authority in Wales, by—
 - (i) burial,
 - (ii) cremation, or
 - (iii) a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00);
 - (b) where the person died or was found dead in the area of a local authority in Wales, by—
 - (i) burial, or
 - (ii) cremation.”

- (b) yn is-adran (2A)—
 - (i) hepgorer “to be buried or cremated”;
 - (ii) ar y diwedd mewnosoder “to be disposed of by—
 - (a) burial,
 - (b) cremation, or
 - (c) a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00).”;
 - (c) yn is-adran (3), yn lle “(1)” rhodder “(1A)”;
 - (d) ar ôl is-adran (3) mewnosoder—
 - “(3A) An authority must not cause a body to be disposed of under subsection (1A) or (2A) above by a method regulated under section 2 of the Modern Funerary Methods (Wales) Act 2026 (asc 00) where they have reason to believe that method would be contrary to the wishes of the deceased.”;
 - (e) yn is-adran (4), ar y diwedd mewnosoder “, or any provision made by or under the Modern Funerary Methods (Wales) Act 2026 (asc 00)”;
 - (f) yn is-adran (5), yn lle “(1)”, rhodder “(1A)”;
 - (g) yn lle’r pennawd rhodder “Funerary methods”.
- (5) Yn adran 47(1) (rheoliadau ynghylch cyrff marw), ym mharagraff (a), ar ôl “disposal” mewnosoder “in England”.

Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (dccc 4)

- 4 Yn adran 125 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (marwolaeth plant sy’n derbyn gofal gan awdurdodau lleol yng Nghymru)—
- (a) yn is-adran (1)(c), yn lle “gael ei gladdu neu ei amlosgi” rhodder “gael ei waredu drwy—
 - (i) ei gladdu,
 - (ii) ei amlosgi, neu
 - (iii) dull a reoleiddir o dan adran 2 o Ddeddf Dulliau Angladdol Modern (Cymru) 2026 (asc 00)”;
 - (b) yn is-adran (3), ar ôl “amlosgi” mewnosoder “neu ddefnyddio dull a reoleiddir o dan Ddeddf Dulliau Angladdol Modern (Cymru) 2026 (asc 00)”;
 - (c) yn is-adran (6), yn lle “claddu, amlosgi neu gynnal archwiliad anatomegol o gorff y person ymadawedig” rhodder “gwaredu corff y person ymadawedig drwy unrhyw ddull a bennir yn is-adran (1)(c), neu drwy gynnal archwiliad anatomegol ohono”.

ATODLEN 2
(a gyflwynir gan adran 11(2))

GWEITHDREFN UWCH AR GYFER Y RHEOLIADAU CYNTAF

Ymgynghori ymlaen llaw

- 1 Os yw Gweinidogion Cymru yn bwriadu gwneud rheoliadau o dan adran 2 sef y rheoliadau cyntaf o dan yr adran honno mewn perthynas â dull angladdol penodol, rhaid i Weinidogion Cymru ymgynghori â'r personau hynny y mae Gweinidogion Cymru yn ystyried eu bod yn briodol.

Rheoliadau drafft

- 2 (1) Os yw Gweinidogion Cymru, ar ôl ymgynghori, yn ystyried ei bod yn briodol bwrw ymlaen â gwneud y rheoliadau, rhaid i Weinidogion Cymru osod gerbron Senedd Cymru—
- (a) rheoliadau drafft, a
 - (b) dogfen sy'n esbonio'r rheoliadau.
- (2) Ni chaiff Gweinidogion Cymru weithredu o dan y paragraff hwn cyn diwedd y cyfnod o ddeuddeg wythnos sy'n dechrau â'r diwrnod y dechreuodd yr ymgynghoriad.

Cymeradwyo rheoliadau drafft

- 3 (1) Caiff Gweinidogion Cymru wneud rheoliadau gan ddilyn ffurf y rheoliadau drafft a osodwyd o dan baragraff 2 os yw'r rheoliadau drafft, ar ôl i'r cyfnod o 40 o ddiwrnodau ddod i ben, wedi eu cymeradwyo drwy benderfyniad gan Senedd Cymru.
- (2) Ond mae'r weithdrefn ym mharagraff 4 i fod yn gymwys i'r rheoliadau drafft yn hytrach na'r weithdrefn yn y paragraff hwn—
- (a) os yw Senedd Cymru yn penderfynu felly o fewn y cyfnod o 30 o ddiwrnodau, neu
 - (b) os yw pwyllgor yn Senedd Cymru a chanddo'r gorchwyl o adrodd ar y rheoliadau drafft yn argymhell felly o fewn y cyfnod o 30 o ddiwrnodau ac nad yw Senedd Cymru drwy benderfyniad yn gwrthod yr argymhelliad o fewn y cyfnod hwnnw.

Ymestyn gwaith craffu

- 4 (1) Rhaid i Weinidogion Cymru roi sylw—
- (a) i unrhyw sylwadau,
 - (b) i unrhyw benderfyniad gan Senedd Cymru, ac
 - (c) i unrhyw argymhellion gan bwyllgor yn Senedd Cymru a chanddo'r gorchwyl o adrodd ar y rheoliadau drafft,
- a wneir yn ystod y cyfnod o 60 o ddiwrnodau mewn cysylltiad â'r rheoliadau drafft.
- (2) Os yw'r rheoliadau drafft wedi eu cymeradwyo drwy benderfyniad gan Senedd Cymru ar ôl i'r cyfnod o 60 o ddiwrnodau ddod i ben, caiff Gweinidogion Cymru wneud rheoliadau gan ddilyn ffurf y rheoliadau drafft.

- (3) Os yw Gweinidogion Cymru, ar ôl i'r cyfnod o 60 o ddiwrnodau ddod i ben, yn dymuno bwrw ymlaen â'r rheoliadau drafft ond gyda newidiadau o sylwedd, caiff Gweinidogion Cymru osod gerbron Senedd Cymru—
 - (a) rheoliadau drafft diwygiedig, a
 - (b) datganiad sy'n rhoi crynodeb o'r newidiadau a gynigir.
- (4) Os yw'r rheoliadau drafft diwygiedig wedi eu cymeradwyo drwy benderfyniad gan Senedd Cymru, caiff Gweinidogion Cymru wneud rheoliadau gan ddilyn ffurf y rheoliadau drafft diwygiedig.

Dehongli

- 5 (1) At ddibenion y paragraff hwn mae rheoliadau wedi eu gwneud gan ddilyn ffurf y rheoliadau drafft neu'r rheoliadau drafft diwygiedig os nad ydynt yn cynnwys newidiadau o sylwedd i'w darpariaethau.
- (2) Yn yr Atodlen hon, mae cyfeiriadau at y cyfnodau "30 o ddiwrnodau", "40 o ddiwrnodau" a "60 o ddiwrnodau" mewn perthynas ag unrhyw rheoliadau drafft yn gyfeiriadau at y cyfnodau o 30, 40 a 60 o ddiwrnodau sy'n dechrau â'r diwrnod y gosodwyd y rheoliadau drafft gerbron Senedd Cymru.
- (3) At y diben hwnnw nid oes unrhyw ystyriaeth i gael ei rhoi i unrhyw adeg pan fydd Senedd Cymru wedi ei diddymu neu ar doriad am fwy na 4 diwrnod.

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