

## **CABINET MEMBER FOR HOUSING AND ENVIRONMENTAL SERVICES**

**Venue: Town Hall, Moorgate  
Street, Rotherham.**

**Date: Monday, 20 December 2004**

**Time: 9.30 a.m.**

### **A G E N D A**

1. To determine if the following matters are to be considered under the categories suggested in accordance with the Local Government Act 1972.
2. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
3. Cremation Metal Residues (Pages 1 - 43)  
- to consider the proposed scheme
4. Exclusion of the Press and Public  
Resolved:- That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in those paragraphs indicated below of Schedule 12A to the Local Government Act 1972:-
5. Cemeteries and Crematorium Service Improvement Plan (Pages 44 - 67)  
(Exempt under Paragraphs 8 and 9 of the Act – proposed purchasing costs for the provision of work/negotiation of terms)
6. Pilot Family Mediation Service (Pages 68 - 70)  
(Exempt under Paragraph 7 of the Act – financial/business affairs of a company other than the Authority)
7. Petition - Unauthorised Work in Council Cemeteries (Pages 71 - 74)  
(Exempt under Paragraph 4 of the Act – services provided by the Council)

### **The following item will be considered as an extra item with the agreement of the Chair**

8. Housing Market Renewal Pathfinder Design Coding (report herewith) (Pages 75 - 88)  
J. Bloy and T. Bell to report.  
- to inform Members of progress and future issues.  
(Exempt under Paragraph 9 of the Act – contains contractual information)



**ROTHERHAM BOROUGH COUNCIL – Delegated Powers**

1.	<b>Meeting:</b>	<b>Cabinet Member for Housing and Environmental Services</b>
2.	<b>Date:</b>	<b>20<sup>th</sup> December 2004</b>
3.	<b>Title:</b>	<b>Cremation Metal Residues</b>
4.	<b>Programme Area:</b>	<b>Neighbourhoods</b>

**5. Summary**

Consideration of the appropriate disposal of metal residues as a result of the cremation process in accordance with waste management legislation.

**6. Recommendations**

**6.1 That Cabinet Member notes the research of the Institute of Cemetery & Crematorium Management and their proposed scheme to recycle metal products following cremation.**

**6.2 That Rotherham Crematorium expresses an interest in joining the scheme to be administered by The Institute of Cemetery & Crematorium Management.**

**6.3 That prior to joining the scheme a consultation exercise with funeral directors and other key stakeholders is held to introduce the scheme to explore means of informing applicants for cremation of the procedure for recycling metal residues. The views of the Cemetery and Crematorium Liaison Group to be reported to Cabinet Member for final consideration.**

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### **7. Proposals and Details**

The Institute of Cemetery & Crematorium Management have recently conducted research into the matter of disposing of metal residues separated from cremated remains, following the cremation process. This followed a statement from the Environment Agency that the current method of disposing of metals within the crematorium grounds is illegal. Advice has been obtained by the Institute from Counsel and the Environment Agency. The options now available to crematoria are:

1. Not to separate the metal from cremated remains following a cremation. This would create practical problems, as the existing plant used for refining remains into powder cannot deal with refining metals. There would be obvious difficulty in the remains therefore being scattered on open ground at the crematorium or elsewhere.
2. To routinely return separated metals to the bereaved families. This would be an unacceptable practice because it would be upsetting and place a burden of disposal of metals residue upon the bereaved.
3. To recycle the metals in an environmentally friendly way in accordance with the Institute of Cemetery & Crematorium Management's Guiding Principles.

It would seem that the option 3 would be the sensible approach and a unanimous vote of members at the Joint Burial and Cremation Authorities Conference were in favour of this approach. Local consultation is proposed to take place in January with our key stakeholders at a meeting of the Cemetery and Crematorium Liaison Group. Consideration to the appropriate means of informing the bereaved will be considered there. The Institute of Cemetery & Crematorium Management have provided a model form for completion by applicants for cremation for consideration, it may be more appropriate to issue an environmental statement to all applicants with information on how to opt out of the scheme should they so wish. A list of questions and answers about the scheme provided by Institute of Cemetery & Crematorium Management is given at Appendix 1

### **8. Finance**

There are no financial implications as the scheme is offered as a free service. The Institute of Cemetery & Crematorium Management will distribute any surplus moneys amongst charities associated with bereavement.

### **9. Risks and Uncertainties**

The issue of recycling metals following cremation is a sensitive issue, which must be dealt with in a transparent appropriate way to avoid criticism or adverse publicity. It is intended to produce literature in an appropriate format to inform the bereaved of the process and the reasons why the action is being taken, full consultation will be carried out with key stakeholders of the service.

### **10. Policy and Performance Agenda Implications**

Inclusion in the scheme will mean that that in delivery of Cremation Services Rotherham will be able to demonstrate an environmentally sound and legal approach to the disposal of metal residues.

**11. Background Papers and Consultation**

Institute of Cemetery & Crematorium Management Scheme for recycling of metals following cremation available in members room.

**Contact Name :** *Richard Gibson, Manager & Registrar, 850344*  
[Richard.gibson@Rotherham.gov.uk](mailto:Richard.gibson@Rotherham.gov.uk)

Appendix 1

## Recycling of Metals Following Cremation

### Your questions answered

The numerous authorities that have so far registered to the scheme have raised a number of questions. Rather than respond individually to these questions it was considered appropriate to provide this additional information to all cremation authorities and companies.

**Q. *As we inter a bodies with metal implants, why can't they be interred with the cremated remains?***

**A.** DEFRA and the Environment Agency has stated that the metal does not constitute waste until it is removed from the cremated remains. Therefore the metals can be interred with the cremated remains on an individual basis. This fact is contained within the recycling pack.

**Q.** What about the burial of a deceased person whose body contains metal implants?

**A.** Burials of bodies is not affected by the scheme as there is no intention to suggest, nor will there be an intention to suggest, that metal implants should be removed from the bodies of deceased persons prior to burial. This answer is the same as for cremated remains (above) where treated on an individual basis.

**Q.** How will we know that any surplus produced by the scheme is used properly?

**A.** Only main-stream death related charities that publish a percentage split between admin costs and amount directly benefiting their objects will be selected. Participating cremation authorities and companies will be consulted prior to any payments being made to charities.

**Q. Are there any other lawful alternatives to recycling and can I apply for an exemption?**

**A.** Yes. The only lawful alternatives are:

1. NOT remove metals from cremated remains and to deliver all to the Applicant for cremation however it is felt that this will not be acceptable to the bereaved as very few requests are received for the return of metals. The consent form contained in the recycling pack has been designed to also give information to the bereaved in order to help them make a decision that is right for them.

2. Apply for a landfill licence however when viewing the procedures for obtaining such a licence and the subsequent listing of a crematorium as a landfill site it is felt that the majority of cremation authorities and companies will not wish to follow this route.

3. Whilst an exemption might be sought it is considered that this might only be given if a suitable alternative to burial in the grounds is not available. The recycling scheme is available and is the only lawful alternative so therefore an exemption might not be forthcoming. Authorities and companies must focus on the environmental issues and any policy that exists within their organisations.

**Q. *Will this mean a lot more work for the crematorium manager?***

**A.** NO. It will actually mean less work. Currently, the metals are collected and periodically a member of staff is required to take the metals into the grounds and bury them. Under the recycling scheme the member of staff will simply place ferrous and non-ferrous metals into their appropriate containers and a representative from Orthometals will collect them periodically thus resulting in a saving of staff time. All of your risk assessments and safe systems for the tasks of burial within the grounds that are required by law will become redundant.

**Q. *What about the question of ownership of the metals and implants?***

**A.** The answer to this is contained in the recycling pack. Counsel's opinion indicated that if a bereaved person did not request the return of metals they would be deemed

as abandoned. The Institute felt strongly that the bereaved should be consulted via the consent form.

***Q. Is there any other Counsel's opinion apart from that obtained by the Institute?***

A. **YES.** The Corporation of London sought its own **independent Counsel's opinion** which mirrors that obtained by the Institute. Other *interim legal* opinion has been published however there is no indication that this is Counsel's opinion.

**Register interest via email to: [Julie@iccm.fsnet.co.uk](mailto:Julie@iccm.fsnet.co.uk)**

**Or letter to: ICCM National Office, City of London Cemetery, Aldersbrook Road, Manor Park, London E12 5DQ**

**Institute of Cemetery and Crematorium  
Management**

**Scheme for the  
Recycling of Metals Following  
Cremation**

June 2004





## Recycling of Metals Following Cremation

For many years metals remaining following cremation have been collected and buried in the grounds of the crematorium. This uses up valuable space within the crematorium grounds and places metals into the ground that will remain there forever. These metals can normally be smelted down and re-used, as is now common practice on the Continent. The re-use of these metals means that we do not need to use up non-renewable resources, these being the metal ores that are mined to create virgin metals.

The Dutch have led the way in the recycling of metals following cremation and it is our intention to work very closely with the Dutch Cremation Federation and contractors who have worked with them over a period of time.

To help you consider this sensitive subject and enable you to assess whether you wish to join the ICCM Metal Recycling Scheme, we have put together a pack that we hope will help you in the process. The pack contains the following:

- A draft guide report that will allow you to put a report to your Committee or Board in order to gain the necessary approval to join the scheme. The same report is going to all cremation authorities so everyone can base their decisions on exactly the same information.
- The ICCM Guiding Principles for Burial and Cremation. This has been recently revised and approved by the Board of Directors to include the recycling of metals following cremation, together with other environmental issues such as use of heat exchange units, improved utilisation of cremators and the improvement of emissions in to the environment.
- Legal advice on the environmentally sensitive disposal of metals following cremation, including clarification from the Environment Agency.
- A model form for obtaining consent from the Applicant for Cremation, by agreeing to the conditions for the environmentally sensitive disposal of any metals that remain following cremation. This form also gives the Applicant the opportunity to claim all metals and have them returned with the cremated remains.
- The scheme in detail, provides further information regarding the operation of the scheme that you may not wish to include in a report. This will give you additional information should questions be asked about the detailed operation of the scheme
- A standard agreement between cremation authorities and the ICCM. This will allow your authority to sign up to a three year arrangement that will ensure all metals following cremation are properly collected and recycled at no cost.

We hope you find the enclosed information useful to you. If you require additional support please feel free to contact our National Office on 020 8989 4661. We will be pleased to provide you with further information if you wish.



## Recycling of Metals Following Cremation

### THE REPORT

#### 1.0 Introduction

- 1.1 Recycling of metals following cremation already takes place on the continent on a very wide scale. Schemes exist in Holland, Germany, Switzerland, Sweden, Austria, Denmark and Belgium. We are only aware of one company that is capable of collecting the full range of metals from crematoria and then transferring them to be smelted into metal granules.
- 1.2 It is the intention of the Institute of Cemetery and Crematorium Management (ICCM) to establish a scheme for crematoria throughout the UK to participate in the recycling of all metals following cremation. Indeed, the latest advice received from Counsel and the Environment Agency in early June 2004, indicates that the current methods of disposal are illegal.
- 1.3 At the Conference held in Southport in September 2003 there was an overwhelming 100% support for the ICCM proposal for recycling of metals following cremation, not one authority indicating that they would be against the principle of such a collection. Based on such support the ICCM has circulated an information pack to all cremation authorities for them to indicate their interest in joining the scheme.
- 1.4 Already almost 25% of crematoria in the UK have indicated their willingness to participate in the scheme, it is hoped that this number will increase substantially given the amount of interest expressed in the scheme to date and the recent legal advice. The recycling of metals following cremation will give each participating authority an opportunity to take part in a scheme that is environmentally friendly, will save valuable land, is legal and is likely to give rise to donations being made to a range of worthy charities.
- 1.5 The following report has been prepared by the ICCM and is intended for circulation to all scheme participants, detailing how the scheme will operate in the UK and how any monies raised from the process would be collected and re-distributed to death related charities.
- 1.4 The aim of this report is to enable interested authorities to gain formal approval from their governing bodies to allow the scheme to start in the summer / autumn of 2004.

#### 2.0 Background

- 2.1 One company is currently providing a metal recycling service across the continent. Based in Holland, they have been providing this service through the Dutch Cremation Federation for the past 6 years. This is the longest contractual arrangement that we are currently aware of. The ICCM has contacted both the Dutch Cremation Federation and the recycling company, which would intend to trade in the UK under the name of 'OrthoMetals', to investigate the possibility of organising a similar scheme in the UK.
- 2.2 At present metals retrieved following a cremation are retained in the crematorium until a sufficient quantity exists for the material to be taken into the crematorium grounds and respectfully buried. Once buried in the grounds these metals will not decompose and will remain in the ground forever. Over time, this will take up more and more space



in the crematorium ground and huge amounts of energy will be wasted mining new ores and producing new metals from non-renewable sources. The FBCA Code of Cremation Practice currently forbids the recycling of metals retrieved following cremation, however, the ICCM Guiding Principles (Appendix 1) have recently been revised and permit the sensitive recycling of metals following cremation. In October 2003 the FBCA, whilst agreeing with the principle of recycling, indicated their concerns relating to the legality of the process. The ICCM has now gained legal advice (Appendix 2), which clearly indicates, under the proper controls, that metals removed from cremated remains should either be recycled or returned to the applicant for cremation. The ICCM considers it appropriate to obtain the consent of the applicant for cremation in order to safeguard cremation authorities.

- 2.3 It is intended that the ICCM will act as a national agent, working directly with OrthoMetals and co-ordinating the collection of implants from crematoria throughout the country. The ICCM will also support authorities in any other way that they are able to, for instance in the provision of standard press releases, should this be required. Any monies raised from the recycling process will be paid to the ICCM, who will offset the operating costs and supervise the re-distribution of the income to a range of charities working in areas that relate, in some way, to death and bereavement.

### **3.0 The Scheme**

- 3.1 The ICCM has held discussions with OrthoMetals, as the European leader in this field, and the Dutch Cremation Federation who have administered the scheme in Holland. Assurances have been received from both sources that the scheme will operate at no cost to authorities and should any income be raised in excess of essential operating costs, the net profits from the scheme will go to charitable institutions.
- 3.2 ICCM will carry out a thorough audit of OrthoMetals to confirm their financial status, however, assurances have already been received from OrthoMetals that they operate an 'open book' accounting system and are happy for the ICCM to inspect their accounts. Likewise, the ICCM will make any recycling account available to participating crematoria and any other interested party for inspection upon request.
- 3.3 Subject to the ICCM being satisfied with the OrthoMetals accounts it is proposed that a three-year contract be established. Contracts will then be set up between the participating cremation authorities and the ICCM for a three-year period. Future contracts will be reviewed in the light of any other companies who may by then be operating the recycling of metals following cremation.
- 3.4 It is essential that the experience of OrthoMetals be utilised in the establishment of this scheme as it is clear that this will be a very sensitive issue in the UK. It will be important that all crematoria involved in the scheme are open and honest about the process to be followed. Authorities in membership of the ICCM Charter for the Bereaved will be required to explain the process of recycling of metals to any enquirer and whenever a member of the public requests an inspection of the crematorium.
- 3.5 General guidance has been issued to crematoria as part of the ICCM Information Pack and ICCM officers will be available to support crematoria should this be required.
- 3.6 It is the intention to obtain the consent from the applicant for cremation for the recycling of all metals identified following cremation and the ICCM has provided a



standard form for crematoria to utilise (Appendix 3). Support to families will be available from the ICCM should this be necessary.

- 3.7 In accordance with the ICCM Guiding Principles, there will be no commercial gain for participating crematoria with the primary advantages relating to the environment and the saving of space.
- 3.8 A detail of the scheme is attached (Appendix 4) along with a copy of a standard agreement between the ICCM and participating cremation authorities (Appendix 5).



## Charter for the Bereaved

### ICCM Guiding Principles for Burial and Cremation

#### **CARING FOR THE COMMUNITY**

All cremation and burial facilities shall be managed with competence and efficiency, to ensure that the entire bereavement experience occurs without error or insensitivity, and meets the religious, secular, ethnic and cultural needs of the bereaved.

The service shall comply with all statutory and Health and Safety requirements.

#### **SERVICE SENSITIVITY**

The burial or cremation of a human body is a highly emotional occasion for those taking part. Each cemetery and crematorium must be managed to create and maintain an atmosphere of solace and respect throughout the entire proceedings. This sensitivity must extend to all staff and contractors working at facilities, through the application of bereavement sensitive specifications.

Members will respond sympathetically to individual funeral needs and shall give a justifiable reason for refusing any specific request.

#### **STAFF**

All staff should possess qualifications and undergo recognised training specific to their duties. The following should be seen as minimum requirements:

Cemetery Charge Hands/Sextons - Cemetery Operatives Training Scheme (Course 1)

Senior Crematorium Technicians - Cremation Technicians Training Scheme Certificates

Cemetery Manager - ICCM Cemetery Management Certificate

Crematorium Manager - ICCM Crematorium Management Certificate

Senior/Joint Service Managers should be in possession of, or working towards, the full ICCM Diploma.

The appointment of all staff must emphasise the need for proper conduct and demeanour, as well as technical expertise. Staff must act and speak in a manner that recognises the sensitivity of bereavement, both during and outside working hours, and should not accept gratuities.

All staff should be willing to operate flexible working hours to meet the requirements of the service. Pay and conditions of service should be suitably adapted to reflect such flexibility.

All staff should be identified by name badges.

#### **ENVIRONMENTAL ISSUES**

Every Charter member shall minimise the impact of bereavement upon the environment. This should encourage the greater use of earth friendly materials and environmentally friendly practices, particularly in:



### General

- Ensuring the use of suitable coffins and containers for burial or cremation. The use of plastics should be minimised with natural materials encouraged wherever possible. Zinc or lead lined coffins cannot be cremated.
- Employing the use of the most environmentally friendly materials in the maintenance of grounds
- Recycling of green waste from grounds maintenance works
- Recycling, where law permits, of any other material for which permission of the applicant for cremation or burial has been obtained

### Burial

- Ensuring the most effective use of land for burial.
- Where possible providing or partnering a provider of woodland burial
- The use of suitable ground for burial so that water borne pollution shall not occur

### Cremation

- Emissions to air are of great concern to the public. All Charter members should actively seek to reduce emissions to the air by the provision of suitable abatement equipment at the earliest possible time.
- Promoting the most effective use of energy within the crematorium. This could include consideration of heat exchange units to capture energy that is currently wasted.
- Ensuring the optimum usage of crematorium plant and equipment including longer operational hours.
- Advising that clothing the deceased in clothes made of natural fibre/materials is acceptable whereas plastic, nylon and other synthetic materials are not acceptable due to the impact on the environment via emissions.

## INDIVIDUAL DISPOSAL

The importance of human beings as individuals and the manner in which they inter-relate with relatives and friends does not diminish in significance following death. It is important for the bereaved to know that the burial or cremation is individually carried out, and the following requirements must, therefore, be met:-

### General conditions

- i) No coffin/container/shroud shall be accepted at a cemetery unless the name of the deceased therein is clearly shown.
- ii) The identity shown on the coffin/container/shroud shall be verified at every funeral.
- iii) If burial is to occur, the body and its coffin/container/shroud shall be placed in the identified grave.
- iv) If cremation is to occur, the body shall be cremated individually and the correct identity shall be maintained throughout the process.
- v) If requested by the Applicant for Cremation or Burial the lid of the coffin or container may be removed for the duration of the chapel service and subsequently replaced prior to the committal (This action cannot be permitted in cases where cause of death is a notifiable disease).



### Requirements relating to burial

- i) After the coffin/container/shroud and body have been committed into the grave, they shall not be removed or otherwise disturbed except for lawful exhumation, by licence and/or faculty or by the order of a Coroner/Procurator Fiscal.
- ii) Immediately after the mourners have departed the graveside, the grave shall be entirely backfilled and made tidy. This work will be completed on the day of the burial and must not extend overnight.

### Requirements relating to cremation

- i) A body shall not be removed from the crematorium after the service of committal, except by order of a Coroner/Procurator Fiscal or for some other valid reason.
- ii) The container and the body shall be placed in a cremator and cremation commenced no later than 72 hours after the service of committal. Where cremation may not be carried out on the same day, the Applicant for Cremation shall be notified.
- iii) The coffin or container with the body inside shall not be opened or otherwise disturbed after the committal other than in exceptional circumstances and then only in the presence of and with the permission of the Applicant for Cremation, or for a lawful purpose as directed by a higher authority.
- iv) Once a coffin or container has been placed in a cremator, it shall not be disturbed until the process of cremation is complete.
- v) On completion, the whole of the cremated remains shall be removed from the cremator and reduced to granular form, except where this is specifically not requested, and shall be disposed of or released according to the instructions of the Applicant for Cremation.
- vi) Cremated remains placed in the Garden of Remembrance shall be treated with reverence and respect. If strewn, they should be obscured by soil or brushing. Where a local practice of strewing in the form of a cross or other pattern has developed, it is acceptable providing it does not result in the unsightly build-up or prolonged visibility of the cremated remains. Cremated remains must be labelled and released in suitable, unused containers and, when sent by registered post or secure carrier, capable of withstanding transit without damage.

### COMMERCIALISATION OF PRODUCTS OR RESIDUES OF CREMATION

The products or residues of a cremation shall not be used for any commercial purpose

### INSPECTION

Everyone has the right to inspect the crematorium or cemetery during normal working hours, upon application to the manager of the facility.

The ICCM Guiding Principles will be regularly reviewed and updated where appropriate, to ensure that they remain relevant and meet the changing needs of the bereaved, the environment and the society in which we all live.

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## Appendix 2 - Legal Advice

### 1.0 **Executive Summary of Advice Received from Counsel and the Environment Agency (produced in full on following pages)**

- 1.1 The following summary of advice from Counsel and from the Environment Agency on the recycling of metals following cremation has a dramatic effect on the way in which crematoria will need to handle such metals in the future. The main points to be extracted from the advice are as follows:
- If any metals are separated from the cremated remains they become waste and must comply with current waste legislation in the way they are handled and disposed of.
  - **The current practice of disposing of metals in the crematorium grounds is illegal.**
  - Ownership of the implants and metals lies with the company/authority as there is no property in a dead body and on the basis of abandonment of metals by both the relatives of the deceased and the NHS.
  - Consent from the applicant is not essential as the metals would be considered as abandoned, by both the relatives of the deceased and the NHS. However, consent would be advisable and is recommended in an 'opt out' format.
  - Metals returned to families, if requested, would not be regulated by the Environment Agency, so no further advice would be required on their disposal or re-use.
  - Neither a license nor an exemption is required for the temporary storage of waste, pending its collection, on the site where it is produced. Crematoria will not, therefore, need to apply for individual exemptions for storing waste prior to collection.
  - All transfer of metals should be recorded using waste transfer notes to comply with the Duty of Care.
  - **The scheme proposed by the ICCM is legal.**
- 1.2 Following the above advice it would appear crematoria have limited options. The options appear to be:
- to not separate the metals from cremated remains. This would create practical problems in that metals would need to be separated for cremulation then rejoined with the cremated remains. It would also mean obvious problems for families who wish to have the remains strewn at your crematorium or elsewhere. It may also mean that containers may need to be re-designed.
  - to routinely return the separated metals to bereaved families. This is likely to be an unacceptable practice, placing an unnecessary burden on the bereaved.
  - to recycle the metals in an environmentally friendly manner in accordance with the ICCM scheme.





## 2.0 Counsel's Advice

# IN THE MATTER OF A SCHEME TO RECYCLE METALS FOLLOWING CREMATION

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## OPINION

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1. I am asked by the Institute of Cemetery and Crematorium Management (ICCM) through its Honorary Solicitor, who is also the Assistant Chief Executive of Newark and Sherwood District Council, to advise as to the legality in principle of a proposed scheme to recycle metals following cremation, and of a draft agreement drawn up to implement the scheme. The matter raises questions of considerable sensitivity. The specific questions which arise are set out at paragraph 10 below. My responses to them are set out from paragraph 30 below.
  
2. In **summary**, my main conclusions are:
  - (i) there are no legal grounds which prohibit retrieval or recycling under the scheme as proposed;
  
  - (ii) the existing practice of storage and burial is, in the absence of a waste management licence, unlawful and a number of offences may be being committed;
  
  - (iii) under the existing definition of waste, the storage of metals by crematoria under the proposed scheme would require a waste management licence, unless a suitable exemption could be found to apply;
  
  - (iv) further amendment of the definition of "waste" in line with the applicable EC Directive would, if brought into effect, significantly alter the position.



### **Background to the Scheme**

3. The scheme proposed would see the ICCM acting as the national promoter for a Dutch company, OrthoMetals, which would collect and recycle metals from participating crematoria. Any profits to the ICCM would be donated to death-related charities. There is not anticipated to be sufficient profit for the question to arise of payments to participating crematoria.
4. The objective of the scheme is to promote the recycling of metals which would otherwise be buried, in the interests of environmental protection and to avoid the using-up over time of valuable space in crematoria. Such recycling is, I understand, now common in a number of European countries.
5. I understand that the metals in question are principally those used in orthopaedic implants, and ferrous metal used within the construction of a coffin. I am informed that precious metals, which may be left with the deceased prior to cremation, are dispersed by the process and while some could be included with the other metals recovered for recycling, none is separately attributable to any specific deceased person. I assume that there may also be some other small residues of non-precious metals remaining from clothing and personal effects with the deceased.
6. Metals retrieved following cremation are at present separated from the ashes and retained until a sufficient quantity have been accumulated, after which they are buried in the grounds of the crematorium. The condition of the metals is such that they do not decompose over time.
7. I understand that the ICCM's guiding principles for burial and cremation allow the sensitive recycling of metal following cremation; and that in the Institute's view there are no legal grounds which would prohibit the retrieval or recycling of the metals in question. It is also the ICCM's view that the present practice of burying such metals in the grounds of a crematorium may be unlawful. I further understand that the Federation of British Cremation Authorities (FBCA) forbids such recycling and that it has queried the legality of the ICCM's proposed scheme.



8. The FBCA has recently published a Note prepared by the Department for Environment, Food and Rural Affairs (DEFRA) and the Environment Agency (EA) on the legal issues involved (4<sup>th</sup> March 2004). This expresses the view that while the ashes from cremation should continue to be regarded as constituting human remains, thus requiring sensitivity in treatment and for ethical reasons remaining outside the waste regulation regime, there is a “strong argument” that once metals have been reclaimed from the ashes they should be considered as waste. Such metals would be subject to the legislation regulating waste management. Disposal of such metals would need to be carried out in accordance with a waste management licence, or appropriate licensing exemption, and would be subject to the holder’s duty of care.
9. DEFRA is currently considering whether legislation should be introduced to control the emission of mercury from crematoria, leading also to changes to the relevant Guidance.<sup>1</sup> My Instructing Solicitor understands that crematoria may be required in the near future to install equipment to filter out mercury compounds used in dental amalgam fillings. The compounds collected would need to be disposed of in accordance with the requirements applicable to other toxic substances. It is possible that disposal of such compounds could involve recycling.

### Questions arising

10. The specific questions arising from my Instructions appear to be as follows:
- (a) are there any legal grounds on which the retrieval or recycling of metals following cremation is prohibited?
  - (b) what, if any, questions of property arise in relation to metal implants?
  - (c) are any questions of ownership sufficiently overcome by the inclusion within an application for cremation (Form A) of a “consent” clause to recycling, such as the draft enclosed with my Instructions?
  - (d) is the present practice of burying metals following cremation unlawful?
  - (e) would recycling, and storage pending recycling, under the proposed scheme require a waste management licence?
  - (f) how are these answers affected by likely proposals as to the abatement of emissions of mercury from crematoria?

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<sup>1</sup> “Secretary of State’s Guidance – Crematoria”, PG5/2 (95), February 1991.



- (g) in the light of the answers to the above, are there any comments on, or are any changes required to, the draft agreement or the proposed “consent” clause in the application for cremation?

### Legal background

11. Before answering these questions, it may be helpful to set out the legal background in relation to the questions concerning property and the scope of the waste control regime.

#### Property issues

12. It has long been established at Common Law that there is no property in the body of a deceased person – ***R v Sharpe*** (1857) 26 LJMC 47 at 48 per Erle CJ. In that case, the Defendant was convicted of a misdemeanour in entering an unconsecrated burial ground, in order to remove his Mother’s body from a Dissenters’ grave and to rebury her in consecrated ground with his Father. It may also be noted that a living person is also not generally considered to “own” their body.<sup>2</sup>
13. Notwithstanding the absence of property in a deceased’s body, the executors have a right to the possession and custody of the body prior to its disposal (***R v Fox*** (1841) 2 QB 246). This right arises from their duty to inter the body and continues until that point – see ***Dobson v N. Tyneside Health Authority*** [1996] 4 All ER 474. It would seem reasonable to infer, in the context of cremation, that the right to possession likewise ceases at that point.
14. The principle stated in ***Sharpe*** is qualified where there has been an application of skill. In the Australian case of ***Doodeward v Spence*** (1908) 6 CLR 406, Griffith CJ said that a corpse or human body parts may become the subject of proprietary or possessory rights when a person, by the lawful exercise of work or skill, has so dealt with a human body or part of a body that it has acquired some attributes which differentiate it from a mere corpse awaiting burial. In ***Dobson*** (cited above) it was said that while the application of skill exception was arguable in relation to stuffing or embalming, fixing

<sup>2</sup> See Law and Medical Ethics: Mason, McCall Smith, and Laurie, 6<sup>th</sup> ed, 2002.



part of a body in paraffin for the purposes of a post-mortem examination did not render that part of the body an item in possession.

15. In the recent criminal case of ***R v Kelly, R v Lindsay*** [1999] QB 621, 3 All ER 741, the Court of Appeal confirmed that although neither a corpse, nor parts of a corpse, were in themselves capable of being property protected by rights, parts of a corpse could be “property” for the purposes of section 4, Theft Act 1968 if they had acquired different attributes by virtue of the application of skill (e.g. dissection or preservation techniques) for exhibition or teaching purposes.
16. In ***Haynes’s case*** (1613 12 Co Rep 113, 2 East PC 652) it was held that it was a felony to steal a winding sheet. The sheet remained the property of the person who provided it.
17. The statute law with regard to the use or possession of a body after death concerns tissue and organs, rather than medical devices such as implants.<sup>3</sup>
18. The issue which arises from the common law rules is the extent to which an implant is a part of the body, and hence may not be the subject of property rights after death, or whether it is separate from the body. There is no relevant statutory or case law authority in relation to rights either of ownership or of possession. Section 1(3) of the Anatomy Act 1984, for example, defines a “body” as “the body of a deceased person” without any qualification in relation to implants. It should be noted, however, that the legislation in this area is currently under review.<sup>4</sup>

### Meaning of waste

19. It is necessary to outline the position as to the meaning of “waste” since if metals retrieved from the process of cremation are waste, their retrieval and recycling will need to be undertaken in accordance with a waste management licence under Part II of the Environmental Protection Act 1990 (EPA 1990) (see below). Any current disposal undertaken without such a licence will be unlawful. If they are not, no need for a licence arises and the present method of disposal would not be unlawful.

<sup>3</sup> Human Tissue Act 1961, Anatomy Act 1984, Human Organ Transplants Act 1989

<sup>4</sup> See website of the Government’s Chief Medical Officer.



20. For the purposes of Part II of the 1990 Act, “waste” includes any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process, which is not an explosive.<sup>5</sup> Any thing which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.<sup>6</sup>
21. None of the categories of waste in section 75(2) of the 1990 Act adequately describes cremation ashes. This is assumed to be the basis for the view taken in the DEFRA/EA Note referred to above that cremation ashes do not fall under the waste management regime.
22. The definition of waste contained in Part II of the EPA 1990 has been modified to include “Directive waste” (a reference to EC Council Directive 75/442 as amended). Directive waste refers to a substance or object in one of a number of specified categories which the producer or person in possession discards, or intends or is required to discard.<sup>7</sup> The categories are relatively specific (“residues of industrial processes”; “residues from pollution abatement processes”). None appears to be adequate to describe the metals retrieved following a process such as cremation.
23. By virtue of section 120 and Schedule 22, Environment Act 1995, the definition of waste in section 75(2) of the 1990 Act and related provisions may be replaced by the EC definition alone (as contained in a new Schedule 2B to the 1990 Act). The presumption in section 75(3) would also be repealed.
24. No date has been set in respect of England or Wales for these legislative changes to be brought into effect. They have been brought in effect in Scotland from 1<sup>st</sup> April 2003, although only for the purposes of the Landfill (Scotland) Regulations 2003, SSI 2003/235.<sup>8</sup> As a function of the Secretary of State the appointing of a date, so far as exercisable in relation to Wales, is now a matter for the National Assembly for Wales.<sup>9</sup>

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<sup>5</sup> section 75(2)(a), EPA 1990

<sup>6</sup> section 75(3)

<sup>7</sup> see Waste Management Licensing Regulations 1994, SI 1994/1056

<sup>8</sup> by virtue of the Environment Act 1995 (Commencement no 21) (Scotland) Order 2003, 20<sup>th</sup> March 2003

<sup>9</sup> National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Article 2, Schedule 2



25. It is, therefore, possible that at a future date a different definition of waste could apply for the purposes of the storage or recycling of metal residues, or that different definitions could apply in different parts of Great Britain. (The relevant provisions do not apply in Northern Ireland). If the definition were changed it would appear that the metals in question would no longer be “waste” (either generally, or in the country concerned) and thus the recycling would no longer be required to conform to the waste management regime.
26. Returning to the present law, under Regulation 6 and Schedule 4, Controlled Waste Regulations 1992, waste from premises occupied by a local authority constitutes “commercial waste” for the purposes of the 1990 Act. This category of waste also includes waste produced by a person discharging public functions - Regulation 6(d). Commercial waste is one category of controlled waste.<sup>10</sup> Thus to the extent that a local authority, acting as burial authority, produces “waste” from a cemetery, those materials will fall to be dealt with in accordance with the licensing regime for controlled waste.
27. Section 33, EPA 1990, makes it a criminal offence to deposit controlled waste, or knowingly to cause or permit it to be deposited in or on any land, or to treat, keep or dispose of it in or on any land (or by means of mobile plant), or knowingly to cause or permit it to be treated, other than in accordance with a waste management licence (sections 33(1) (a) and (b) respectively). It is also an offence to treat, keep or dispose of it in a manner likely to cause environmental pollution or harm to human health (section 33(1) (c)).
28. Several types of activity are thus regulated or prohibited in relation to controlled waste. Those in the first group requiring a licence are:
- depositing it in or on land
  - treating it (which includes recycling – section 29(6))
  - keeping or storing it
  - disposing of it (which includes depositing it in or on land – section 29(6))

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<sup>10</sup> section 75(4), EPA 1990



29. Activities in the second group (treating, keeping or disposing) give rise to an offence only if there is likely to be pollution or harm to health. Pollution occurs where there is a release of substances or articles constituting or resulting from the waste into an environmental medium which is sufficient to be capable of causing harm to man or other living organisms – section 29(3). The escape has to take place from the land where the waste is treated, kept or deposited, or from fixed plant. Harm to health is not defined.

### **Answers to questions arising**

(a) are there any legal grounds on which the retrieval or recycling of metals following cremation is prohibited?

***30. I note in passing that, if any question as to the appropriate powers of local authorities as burial authorities in relation to recycling were to be raised, the general local authority power of well-being (section 2, Local Government Act 2000) would appear to be available, in circumstances where the authority considered the activity likely to promote or improve the environmental or social well-being of the area.***

***31. I note too that the exception in Kelly in relation to property in a deceased's body does not in my view have any application in the context of implants. The exception relating to skill applies only to activities such as dissection which occur after death, underlined by the examples given in Dobson, rather than to surgery undertaken when the deceased person was alive.***

***32. The only potential obstacles to the scheme would seem to arise from property rights, and a number of possibilities have been raised in my Instructions: e.g. given the established common law that there is no property in a deceased's body, do implants form part of the body? If they do not form part of the deceased's body, would any metal residues become the property of the deceased's beneficiaries? Can it be implied that a transfer of ownership of an implant to the living recipient had occurred, or does ownership of an implant remain with the NHS or private health provider?***





- 33. In relation to the metal used in coffins, it seems plain that these have been supplied to the applicant for cremation by the undertaker, who has no continuing ownership of them. Ownership strictly rests with the applicant for cremation. In relation to any other metal residues remaining from the personal effects of the deceased, ownership at the point of cremation rests strictly with the beneficiaries. (I set out my conclusions below at (b) in relation to metal implants to the body, where in a minority of cases the same position may apply).**
- 34. In my view, however, each of the items in question has been abandoned by its owner with its inclusion in the cremation process. Abandonment of goods takes place where possession of goods is quitted voluntarily without any intention of transferring them to another (Stroud's Judicial Dictionary, 6<sup>th</sup> ed). The principle in Haynes's case would not, in my view, be held to apply to a cremation. The circumstances are such that any item left with the deceased will cease to exist immediately, and the abandonment is undertaken in this knowledge and with that intention. The decision in Haynes was, moreover, directed to punishing an act of theft, rather than in a context of disposal in accordance with requirements reflecting public policy. The provision of an opportunity to request the return of the metal residues provides a further ground of distinction.**
35. Taking account of my view of the question at (b) below, I conclude that there are no legal grounds on which retrieval and recycling under the scheme as proposed are prohibited.

**(b) what, if any, questions of property arise in relation to metal implants?**

36. I noted above that a living person is not considered to "own" property in their own body. I can find no authority on the ownership of a medical device such as an implant, which becomes integral within the body. Proceeding, therefore, from first principles it appears that either there has been a sale to the recipient (in the minority of cases where there is a direct contractual relationship between the manufacturer and the patient, generally in the private sector) or, as in the great majority of cases, the implant has been supplied to the NHS or private hospital which abandons the item as part of the process of implantation. I do not consider that the health provider could reasonably argue, in the absence of an agreement or authority to this effect, that the abandonment was meant to be temporary; still less that a hip replacement or other implant was



merely lent to the recipient until their death, and in consequence that it could claim a right of ownership on the patient's death.

37. I have considered as an alternative the possibility that an implant becomes part of the body of the recipient, and thus that no property rights would attach to it after the person's death. On balance, I have rejected that proposition because, notwithstanding that it replaces a part of the body, a metal implant is essentially, as my Instructions describe it, "foreign material". It appears to me to occupy a permanent position within the body, but not to form a part of it.

38. In the case of the implants, the effect of the act of the executor or applicant for cremation (often the same person) in applying for the body to be cremated is to consign to cremation with the body an article which is permanently associated with it.

39. It seems to me that, depending on the circumstances, the position will be either that the implant was abandoned by its owner while the deceased was still alive, and as a result of the cremation ceases to exist as an implant; or, if it was sold direct to the deceased by means of a contract with the manufacturer, it is abandoned to cremation by the beneficiaries in the same way as any other personal effects.

40. The position as to potential disputes between beneficiaries and executor (e.g. in relation to the inclusion in a cremation of precious metals, to which a beneficiary subsequently objects) is no different in this case than in relation to cremation in general.

***(c) are any questions of ownership sufficiently overcome by the inclusion within an application for cremation of a "consent" clause to recycling, such as the draft enclosed with my Instructions?***

41. I have indicated above my view of the role of abandonment in this context.

42. I note from my Instructions that the scope of the clause is described in the briefing note about the scheme as relating to the "environmentally sensitive disposal of *any* metals that remain" (italics added), whereas at paragraph 3.5 of the draft report reference is



made only to “orthopaedic implants”. The clause in Form A as drafted extends to “all metals”.

43. In both the briefing paper and the draft report, however, there is a reference to the giving of permission or consent. The ICCM Guiding Principles also refer to recycling with the “permission” of the applicant. The draft clause as included in Form A, however, allows an applicant to opt out from recycling by requesting the return of the metals, but it does not seek their positive or express permission to the recycling.
44. I consider that this opting-out approach is justified in the light of the need to dispose of the metals in accordance with a waste management licence and according to the hierarchy outlined in my Instructions. If recycling is not undertaken, there will need in each case falling within the waste management regime to another form of disposal which is lawful.
45. The opt out would need to take account of the requirements, where metals are returned to an applicant, of the holder’s duty of care under section 34, EPA 1990. This would require the crematorium to take all reasonable steps to prevent another person from committing an offence under section 33; to prevent the escape of waste from the control of the holder or another person; and, to ensure its transfer only to an “authorised person” under section 34. It may be desirable to confirm with DEFRA/EA that the transfer of small quantities of metals to individual applicants is unlikely to give rise to an infringement of these requirements.

***(d) Is the present practice of burying metals following cremation unlawful?***

46. The present practice is, in my view, unlawful. The description of waste in section 75(2) (a), EPA 1990<sup>11</sup> appears to include the metals in question. Although the language involved leaves something to be desired in this context, the metals in question can be considered either to be an unwanted surplus substance arising from the application of a process or, possibly, a scrap material.

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<sup>11</sup> see paragraph 20 above



47. In addition, the fact that the metals are generally buried indicates that they are normally discarded or dealt with as waste, thereby attracting the presumption in section 75(3) that they are waste.
48. It appears, however, that were a date to be appointed for the EC definition alone – as opposed to the combined definition currently in effect – to apply, those metals would fall outside the definition. Their disposal, in Great Britain or the country concerned, would in consequence fall outside the relevant waste licensing regime. Until such time, however, metal residues from cremation appear to fall within the scope of waste, for whose treatment or disposal a waste management licence is required.
49. The existing practice in relation to burial appears to give rise to two offences. The burial of metals constituting controlled waste, in the absence of a licence or otherwise than in accordance with its terms, is an offence under section 33(1)(a) as a deposit in or on land. Burial of the waste in these circumstances is also an offence under section 33(1) (b), since it is also a disposal in or on land.
50. The present practice as to storage may also give rise to an offence. Depending on the means employed, storing the waste pending burial, other than in conformity with a licence, will be an offence under section 33(1)(b) if the waste is kept on land; or, alternatively, if it is kept by means of mobile plant.<sup>12</sup>
51. Neither of the present practices (burial or storage pending burial) appears likely, other than in exceptional circumstances, to give rise to the offence of causing a likelihood of pollution under section 33(1)(c). To constitute pollution there would need to be an escape of the waste from land or fixed plant, which was of sufficient seriousness to be capable of causing harm, and which the keeping or disposal had made likely. Since the metals are effectively in a stable and solid state when stored and later buried, it seems to me unlikely that an escape would take place, unless the waste were in some way disturbed and then moved.
52. In that event, however, it would be conceivable that the waste could, if stored or disposed of in a sufficient concentration, constitute a hazard; or that, by virtue of its

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<sup>12</sup> as defined in: section 29(9), EPA 1990; Waste Management Licensing Regulations 1994, SI 1994/1056 as amended; Waste Management Regulations 1996, SI 1996/634, as amended.



inert nature, it could cause some harm to other organisms. No offence would have been committed, however, unless the manner either of disposal or of keeping had made that outcome likely.

53. The present practices of storage and burial could, however, give rise to a further offence under the second leg of section 33(1)(c) if the manner in which they were carried out was likely to harm human health (e.g. if on the facts the location or manner of keeping or burial gave rise to danger).

54. It does not appear to me that the act of retrieving the metals from the ashes falls within any of the activities made the subject of offences under section 33.

55. In my view, therefore, a number of offences are likely to be being committed in the present manner of storage and burial. The current practice should be conducted within the terms of a waste management licence, and is unlawful to the extent that it falls outside the terms of such a licence.

***(e) would recycling, and storage pending recycling, under the proposed scheme require a waste management licence?***

56. As with the present practice of storage, the keeping of the metals pending their collection for recycling would need to be undertaken in conformity with a licence, or otherwise within a suitable exemption, and in a manner which avoided a likelihood of causing pollution or harm to human health.

57. The treatment/recycling would, as I understand it, be undertaken by OrthoMetals. The question of a licence for such treatment would, to the extent that it was carried out in this country, be a matter for them; although it would be necessary for the crematoria involved to be able to show compliance with their duty of care in transferring the metals to them.

58. My attention has been drawn to the terms of an exemption applying to sorting depots for the purposes of Part I of the EPA 1990 in respect of certain metal-recycling processes, such as the grading and baling of prescribed quantities of ferrous and non-ferrous metals. Part I contains the regime known as Integrated Pollution Control and



local authorities' authorisation in respect of air pollution<sup>13</sup>. Further consideration may be necessary to establish whether a suitable exemption may be identified in relation to Part II of the 1990 Act dealing with waste management licensing.

***(f) how are these answers affected by likely proposals as to the abatement of emissions of mercury from crematoria?***

59. The effect of these proposed changes to emission requirements, currently being considered by DEFRA, would be that emissions of compounds of mercury used in dental fillings would, because of their toxic nature, have to be disposed of as prescribed, without an opportunity being offered of the return of the residues to relatives.

60. I am not aware that issues as to legal ownership of the metals are being considered in the consultation. I have set out my view on that question above. In my opinion, this proposal is a further indication that metals remaining after cremation are waste and that disposal processes are, therefore, required which accord with the waste management regime. While there is a distinction between metals which are toxic and those which constitute a long-term burden to the environment, this would be reflected in the likelihood of mandatory provision for the disposal of the former and the opportunity under the scheme for an opt-out in relation to the latter.

***(g) in the light of the answers to the above, are there any comments on, or are any changes required to, the draft agreement or the proposed "consent" clause in the application for cremation?***

61. My comments on the agreement are relatively minor. A reference in the preamble to the incorporation of the opt-out provision in Form A would in my view be desirable.

62. An individual crematorium run by a local authority, as distinct from a private crematorium, has no capacity to contract. It would, therefore, be necessary for an

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<sup>13</sup> Part I is to be repealed from a date to be appointed under section 6(2) and Schedule 3 of the Pollution Prevention and Control Act 1999.



officer with delegated authority (which could include the crematorium manager) to be the signatory on behalf of the local authority.

63. I have indicated above that the clause as drafted is an opt-out provision, and that this is in my view appropriate. Care should be taken to avoid the impression being created that the question of whether metal residues are waste is a matter of whether the applicant gives consent. I have commented on the description of the range of metals covered, as described in the briefing paper and report. I would suggest that this be regularised. The agreement suitably reflects the wider range of coverage, allowing for the collection both ferrous and non-ferrous metals (preamble, paragraph 1).

### **Conclusion**

64. The scheme and agreement are in my view lawful. Minor amendments are suggested to the agreement. It would be advisable in discussion of the scheme to clarify the description of the opt-out/consent clause. Further investigation appears to be required of the terms as to whether an exemption may be possible from the requirement for a waste licence for the sorting of metals for recycling by participating crematoria. I would be happy to comment on this point further if required.

DAMIEN WELFARE  
28<sup>th</sup> May 2004

2-3 Grays Inn Square  
London WC1R 5JH



**IN THE MATTER OF  
A SCHEME TO RECYCLE METALS  
FOLLOWING CREMATION**

**OPINION**

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\_\_\_\_\_

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Newark and Sherwood  
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### 3.0 Environment Agency Advice

The following questions were asked of the Environment Agency to obtain clarification on the Counsel's Advice. Environment Agency responses are indicated following each question:

1. Q. From the statement issued by the Environment Agency and circulated by the Federation of British Cremation Authorities it is evident that once metal is removed from the cremated remains (ash) it should be treated as waste and disposed of with due regard to Waste Management Legislation.

***A. For clarity it is worth stating that if the metals are not separated from the ash, and then the ash is buried in the grounds of the crematorium, the Agency would have no intention of regulating this activity.***

2. Q. From a previous conversation, my understanding is that individual crematoria that might adopt the Institute's proposed recycling scheme would not be required to apply for a license to store such metals nor would they be required to apply for an exemption provided that the amount of metal stored does not exceed 50 cubic meters and that collection takes place once in every 12 month period.

***A. Schedule 3 to the Waste Management Licensing Regulations 1994 (WMLR) list the activities that can be carried out without the need for a waste management licence. A copy of the criteria of paragraph 41 is reproduced on the following page, along with a copy of the "relevant objectives" (Paragraph 4 of Schedule 4 of the WMLR) which must also be complied with for the exemption to be lawful. Paragraph 41 is one of the exemptions that are not required to be registered with the Agency.***

3. Q. With regard the subsequent collection of metal stored at crematoria I understand that the carrier will require the appropriate licence.

***A. The carrier will more than likely need to be registered as a carrier of controlled waste, and comply with the requirements of the Duty of Care. Further information on both of these topics is available on our website - just click on the NetRegs link.***

4. Q. The method of burying metals recovered from cremation in bulk in crematorium or cemetery grounds is illegal.

***A. Yes, if the metals and ash are separated - see 1 above.***

5. Q. Applicants for cremation (Executors or nearest surviving relatives) will be provided with appropriate information and given the opportunity to opt out of the scheme via a specific consent form. In the case of an applicant opting out of the scheme any metals recovered from the particular cremation will be delivered to the applicant together with the cremated remains (ash). Would a cremation authority or company be under any obligation to provide applicants with further information relating to the metals delivered with the cremated remains (ash)?

***A. Not in my opinion as if the metals are not separated from the ash, the Agency would have no intention of regulating this activity.***



Further to the above advice the Institute has sought clarification on whether any new definition of waste, in accordance with recent EU guidance, will effect the existing situation and the advice we have obtained. The Environment Agency commented as follows:

***In our opinion the current EU definition of waste will not affect the way in which metals remaining following cremation will need to be treated in the future.***

Item 2 above relates to the WMLR 1994 and the ‘relevant objectives’, as detailed below:

**WASTE MANAGEMENT LICENSING REGULATIONS 1994, as amended  
SCHEDULE 3**

**ACTIVITIES EXEMPT FROM WASTE MANAGEMENT LICENSING**

41. (1) The temporary storage of waste, pending its collection, on the site where it is produced.
- (1A) Sub-paragraph (1) above does not apply to the storage of waste at a place designed or adapted for the recovery of scrap metal or the dismantling of waste motor vehicles.
- (2) Sub-paragraph (1) above shall apply to special waste if -
- (a) it is stored on the site for no more than twelve months;
  - (b) in the case of liquid waste, it is stored in a secure container and the total volume of that waste does not at any time exceed 23,000 litres; and
  - (c) in any other case, either -
    - (i) it is stored in a secure container and the total volume of that waste does not at any time exceed 80 cubic metres; or
    - (ii) it is stored in a secure place and the total volume of that waste does not at any time exceed 50 cubic metres.

And

**Relevant Objectives - Paragraph 4 Schedule 4 to the Waste Management Licensing Regulations 1994 (as amended)**

4. (1) For the purposes of this Schedule, the following objectives are relevant objectives in relation to the disposal or recovery of waste -
- (a) ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without -
- (i) risk to water, air, soil, plants or animals; or
  - (ii) causing nuisance through noise or odours; or
  - (iii) adversely affecting the countryside or places of special interest;



## Appendix 3 - Obtaining Consent

### 1.0 General

- 1.1 Authorities and companies that adopt the ICCM recycling scheme must provide all applicants for cremation with information on the scheme that will enable them to make a decision on whether they require implants and metal residue to be recycled or delivered to them with the cremated remains.
- 1.2 A detailed information sheet can be prepared by utilising the scheme detail contained on the following pages. This information can be printed on the reverse of the consent form or other forms or printed as a stand-alone information sheet. Authorities and companies that convene regular focus group meetings with Funeral Directors and Clergy should place recycling on the agenda in order to empower the aforementioned to also provide accurate information to the bereaved.
- 1.3 **The consent form may be printed on the reverse of the Form A, reverse of or included in a preliminary application, included in a form for consent for disposal of cremated remains or be a stand alone form for the purpose of recycling.** Authorities and companies that adopt the scheme should best decide how securing consent best fits with their own particular administration systems.

**A model consent form has been reproduced on the following page.**

### 2.0 Ensuring Compliance with the Applicant's decision

- 2.1 Internal Systems - It is of vital importance that the method of disposal of implants and metal residue for each cremation is clearly identified to cremation staff before cremation takes place.
- 2.2 The system for issuing specific instructions to cremation staff **MUST** be reviewed in order to ensure that the wishes of the Applicant for cremation are complied with. This may be achieved by amending current instruction sheets, identity cards and associated documentation. Each cremation authority must investigate its own system and employ the necessary methods and safeguards. Where computerised systems are utilised the ICCM will approach the major suppliers in order to give an advanced alert to possible numerous requests being received for modification to their systems.
- 2.3 Where an Applicant requires the return of implants and metal residues the system should ensure that such wishes are complied with wherever possible and that the same care will be taken with metals, as is the case for cremated remains. It should be explained to the relatives that precious metals such as gold and silver melt in the heat and combine with other cremated remains, they will not be recognisable and tiny melted remains may be left in the cremators, in the cremulators and in the cremated remains themselves. Such melted remains cannot be retrieved and positively identified as resulting from a specific cremation; neither can any larger orthopaedic implants or other metals if they have already been placed in the recycling container. Any metals placed within the recycling container should not be tampered with and should remain in the container until collection.



**Model Consent Form:**

**Name of Authority or Company**

**CONSENT FOR THE DISPOSAL OF ORTHOPAEDIC IMPLANTS & METAL RESIDUES**

**Cremation No** .....

**Name of Applicant** .....

**Name of Deceased** .....

**Environmental Policy**

All metals remaining following cremation will be disposed of in the most suitable manner to reduce the impact to our environment. This will include the sensitive recycling of orthopaedic implants and metal residues to avoid the usage of non-renewable resources and comply with existing legislation.

After cremation any metals present will be removed from the cremated remains and held at the crematorium. Periodically, all metal so recovered will be collected and taken to a central point within the UK for recycling.

The Institute of Cemetery & Crematorium Management (ICCM) has contracted the company OrthoMetals to carry out the collection and recycling of metals on a non-commercial, open accounting basis.

All surplus monies derived from the recycling scheme will be distributed amongst selected Charities with confirmation from such charities posted on the ICCM website ([www.iccm-uk.com](http://www.iccm-uk.com)).

Should you wish to dispose of the metals in any other way then please indicate by ticking the box below and metals will be returned to you with the cremated remains.

**TICK ONLY IF YOU REQUIRE ALL METAL RESIDUES TO BE RETURNED TO YOU**

NB Please note that soft metals (e.g. gold and silver) melt into tiny globules and combine with the cremated remains. These are not identifiable and can be dispersed within cremation equipment and the cremated remains and cannot be returned separately. We recommend that precious metals in the form of jewellery are retained by the applicant for cremation and not cremated with the deceased.

I (Name of Applicant for cremation) .....

Hereby accept the above conditions regarding the environmentally sensitive disposal of metals following cremation.

Signed.....

Date.....



#### Appendix 4 - The Scheme in Detail

- 1.1 All metals will be extracted from the cremated remains in the same way as it is at the moment. In other schemes in Europe only non-ferrous metals and implants are collected by OrthoMetals, however, in the UK we intend to achieve the recycling of all metals rather than non-ferrous only.
- 1.2 Containers will be supplied to all participating crematoria. These will be 120 litre wheeled bins of 120 x 55 x 48 cms in size and complete with a lid. Bins will be provided for ferrous metals and non-ferrous. They will be delivered prior to the start of the scheme. At the same time the OrthoMetals staff will introduce themselves to crematoria staff and carry out basic training in the process.
- 1.3 Crematoria staff will separate ferrous metals from non-ferrous metals and place them in separate containers.
- 1.4 Frequency of collection will depend on the amount of available material collected by each crematorium. It is likely that a once a year collection will be sufficient for most crematoria, however, crematoria carrying out large numbers of cremations may need a twice a year collection. This will be assessed at the outset of the scheme and discussed with each crematorium.
- 1.5 Containers will be collected by OrthoMetals using a small truck equipped with a hydraulic lift. As full containers are collected they will be replaced with empty containers.
- 1.6 All crematoria in the scheme will be collected as part of an OrthoMetals collection route. All metals will be recycled in the UK and all carriers and treatment plants will be suitably licensed to comply with UK legislation. The carrier will issue a waste transfer note for each collection; a model waste transfer note is attached at the end of this report.
- 1.7 To ensure the process is properly monitored and is open and honest, it is essential that reliable weights of the material collected are obtained from OrthoMetals and that details of the current market rates are available from a reliable source. OrthoMetals will advise the ICCM of the source of reliable figures for the sale of the recyclable materials and this will be validated.
- 1.8 Weights of recyclable metals received by OrthoMetals will be advised to the ICCM following completion of the collection. This will take the form of a freight bill identifying the weights collected per crematorium. Each crematorium will be informed of the weights collected from their crematorium. All orthopaedic implants will be smelted into granules for industrial use with all other metals being recycled in appropriate ways.
- 1.9 Prior to the start of any collections full health and safety/insurance information will be obtained from OrthoMetals and their sub-contractors including any Health and Safety policies and relevant risk assessments, safe working practices and relevant insurance documentation.



- 1.10 To ensure that start up costs are spread over a reasonable period contractual arrangements between the ICCM and OrthoMetals will be for a minimum of 3 year period. In turn each crematorium should commit to the scheme for the same period.
- 1.11 Should any income be achieved through the contract this shall be based on gross total income, minus a charge for collection, transport, smelting and service improvement costs. This is standard procedure with existing contracts currently operating in Europe. Any monies collected by the ICCM will be donated to death related charities, proper controls will be in place at all times and cremation authorities will be notified of the charities that benefit from this process. Charities will also be notified of all participating crematoria.
- 1.12 A standard agreement between the ICCM and the participating crematoria is attached as Appendix 5.

***Model Waste Transfer Form on following page.***



## Duty of Care Controlled Waste Transfer Note

### DESCRIPTION OF WASTE

**1. Description of the waste being transferred:**

Inert metals following the cremation process

**2. How is the waste contained?**

Loose       Sacks       Skip       Wheeled Container       Other  please describe

**3. What is the quantity of waste? (number of wheeled containers, tonnes etc.):**

*Enter the number of wheeled bins removed from site*

### CURRENT HOLDER OF THE WASTE (TRANSFEROR)

**Full name:**      *Name of Crematorium Manager*

**Name and address of company/authority:**      *Address of company or authority*

**Which of the following are you? (one or more boxes may apply)**

waste producer	<input checked="" type="checkbox"/>	holder of waste management licence	<input type="checkbox"/>	licence no: issued by:
waste importer	<input type="checkbox"/>	exempt from waste management licensing	<input type="checkbox"/>	reason why:
waste collection authority	<input type="checkbox"/>	registered waste carrier	<input type="checkbox"/>	registration no: Issued by:
waste disposal authority (Scotland only)	<input type="checkbox"/>	exempt from requirement to register	<input type="checkbox"/>	reason why:

### PERSON COLLECTING THE WASTE (TRANSFeree)

**Full name:**      *Peter James*

**Name and address of company:**      *Combustion Solutions, Cheltenham Road, Gloucester GL2 0JJ*

**Which of the following are you? (one or more boxes may apply)**

waste collection authority	<input type="checkbox"/>	authorised for transport purposes	<input type="checkbox"/>	specify purpose:
waste disposal authority (Scotland only)	<input type="checkbox"/>	holder of waste management licence	<input type="checkbox"/>	licence no: issued by:
		exempt from waste management licensing	<input type="checkbox"/>	reason why:
		registered waste carrier	<input checked="" type="checkbox"/>	registration no: <i>Carrier's Reg No.</i> issued by: <i>Environment Agency Area</i>
		exempt from requirement to register	<input type="checkbox"/>	reason why:



**Address of place of transfer:** *Name and Address of crematorium*

**Date of transfer:** *Date*      **Time of transfer:** *Time*

**Name and address of broker (if applicable):** OrthoMetals,  
Postbus 321,  
7900 AH Hoogeveen,  
Holland

	<b>Transferor</b>	<b>Transferee</b>
<b>Signature:</b> <i>representative</i>	<i>Of crematorium manager</i>	<i>Of collection</i>
<b>Full name:</b> <i>representative</i>	<i>Of crematorium manager</i>	<i>Of collection</i>
<b>Representing:</b>	<i>Company or Authority</i>	<i>Collection company</i>

Adapted from HMSO Publication "Waste Management The Duty of Care: A Code of Practice, Annex C.8, March 1996".





### **Recycling of Metals Following Cremation**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2004  
 BETWEEN ..... Crematorium of (Insert Address), "Crematorium"(1); The  
 Institute of Cemetery and Crematorium Management of ICCM National Office, Aldersbrook  
 Road, Manor Park, London. E12 5DQ, "ICCM"(2); and OrthoMetals of Hoogeveen,  
 Netherlands, "OrthoMetals"(3)

WHEREAS:-

1. The Crematorium wishes to make arrangements for the collection from the Crematorium of ferrous and non-ferrous metals ("the Metals") extracted from cremated remains for the purposes of recycling.
2. ICCM wishes to co-ordinate and promote the recycling of metal from cremated remains and has accordingly entered into arrangements with OrthoMetals to collect and recycle the Metals from crematoria on its behalf ("the Scheme").
3. In consideration of the ICCM organising and promoting the Scheme it is the intention of the parties that ICCM will retain any net profit arising from the said collection and recycling ("the Payment") as calculated under the terms of this Agreement and will donate the Payment, after deduction of its reasonable administrative and operating expenses, to death related charities or similar purposes

NOW THIS DEED WITNESSETH as follows:-

1. OrthoMetals will collect the Metals from the Crematorium at no cost to the Crematorium subject to the following:-
  - (i) the Metals shall be collected by OrthoMetals on a regular basis to be agreed between OrthoMetals and the Crematorium, such frequency of collection to be determined in accordance with the volume of the metals produced by the Crematorium
  - (ii) in the event of the Crematorium requiring additional collections, a collection charge may be levied by OrthoMetals
  - (iii) OrthoMetals shall respond to any request by the Crematorium for an additional collection within 10 working days



2. OrthoMetals will provide two 120 litre metal containers for recycling the metals and the Crematorium will use these for such purposes. The Crematorium will fill one such container with ferrous metals and one such container with non-ferrous metals. The metal containers shall remain the property of OrthoMetals and shall be returned to OrthoMetals on the determination of this Agreement. Containers will be collected by OrthoMetals using a vehicle equipped with a hydraulic lift. As full containers are collected they will be replaced by empty containers. Waste Transfer Notes will be issued to the Crematorium to comply with the Duty of Care.
3. OrthoMetals will provide basic training to Crematorium staff on the operation of the Scheme.
4. OrthoMetals shall indemnify the Crematorium and ICCM for any loss, damage, costs, claims or other demands arising as a direct consequence of the exercise of this Agreement other than those arising through the direct action or default of the Crematorium and its employees and OrthoMetals shall carry a £5 million public liability insurance to be available for inspection on demand by the Crematorium and/or by ICCM.
5. The Agreement shall commence on the signing hereof and shall remain in force for a period of three years provided that it may be terminated earlier by any of the parties in the following circumstances:-
  - (i) by the service on the remaining Parties of a notice in writing giving not less than three months notice in advance of the intention to terminate the Agreement and specifying the date of such termination
  - (ii) in the event of the breach by any of the parties of any of the terms and conditions set out herein if such breach is not remedied forthwith by the party in default after the breach has been brought to its attention by written notice
  - (iii) any of the parties hereto winding-up or going into voluntary liquidation save for the purpose of amalgamation or reconstruction
6. OrthoMetals will pay ICCM the Payment, if any, to be calculated half yearly in arrears. The Payment shall be the net sum obtained by OrthoMetals from the recycling and sale of the metals after deduction of the following:-



- (i) all transport, administration and associated costs in collecting the metals from the Crematorium and transporting the same to an appropriate recycling plant
  - (ii) a percentage profit and an allowance for service improvements to be first agreed with ICCM
  - (iii) all costs incurred in setting up and operating the Scheme including vehicles, purchasing of metal containers and operating costs. OrthoMetals will use its best endeavours, during the currency of the Agreement, to source a UK recycling outlet for the metals
7. OrthoMetals will provide ICCM with details of the weight of metals collected from each Crematorium participating in the Scheme by way of a freight bill and of current market rates, from time to time, of recycled metals. The Crematorium shall be informed by OrthoMetals of the weight of metals collected after each collection by OrthoMetals.
8. ICCM will distribute the Payment, if any, after deduction of operating costs incurred by ICCM including administrative and ancillary and related expenses to death related charities or other similar charitable purposes at its sole discretion.
9. OrthoMetals undertake to make their accounts available for inspection by the Crematorium and ICCM.
10. ICCM undertakes to make its recycling account available for inspection to the Crematorium.
11. ICCM will support the Crematorium in participating in the Scheme including assisting in the preparation and publication of press releases, explanatory literature, advising on the preparation of any necessary documentation in respect of the cremation process and providing officer support for the administration of the Scheme and, in particular, support to bereaved families who may have queries or concerns relating to the operation of the Scheme



12. In carrying out this Agreement the parties undertake to comply with the ICCM Guiding Principles and, in particular, those relating to the sensitive recycling of metals following cremation.

SIGNED BY \_\_\_\_\_  
On behalf of the Crematorium

SIGNED BY \_\_\_\_\_  
On behalf of ICCM

SIGNED BY \_\_\_\_\_  
On behalf of OrthoMetals

ICCM AGREEMENT WITH ORTHOMETALS



SCHEDULE OF WORK

RECYCLING OF METALS FOLLOWING CREMATION

1. To provide the Occupier with two 120 litre metal recycling containers, one to be filled with ferrous metals one with non-ferrous metals.
2. To undertake regular collection of metals from the Occupier's premises, collections to be determined by volume of metals produced.
3. To respond to additional requests for collection within 10 days.
4. Planned collections to be free of charge, additional collections to be charged as indicated in the Agreement.
5. All metals collected to be sensitively recycled for re-use in other industries

By virtue of paragraph(s) 8, 9 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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of the Local Government Act 1972.

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By virtue of paragraph(s) 7 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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By virtue of paragraph(s) 4 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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By virtue of paragraph(s) 9 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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