

Bill N. 82 - A Bill to regulate Cremation which lead to Act No. XVII of 2019, known as the Cremation Act

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In this article, **Jessica-Ann Spiteri** delves into the Parliamentary statements, the contextual background, as well as the legal aspects surrounding the recently enacted Cremation Act.

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After having graduated with an LL.B (Hons) degree from the University of Malta, Jessica-Ann Spiteri is currently reading for a Masters in Advocacy within the same institution.

On the 3rd of April 2019, Parliament started to discuss Bill no. 82,¹ by which cremation would be legalised in Malta. Cremation or other alternatives started to be discussed mainly because of the ever-growing problems regarding the expansion of cemeteries. Back in 2017, according to an article written for *MaltaToday*:

“parliament’s social committee started discussing the matter and putting together a draft law, which led to the launching of a consultation process on the cremation Bill’s proposals”²

The draft law in relation to cremation was proposed by Hon. Rosianne Cutajar and presented as a private members’ Bill, where parliamentary discussions were held on such matter. It must be kept in mind that discussion in Parliament was preceded by a public consultation process³ on the matter, which was launched by Health Minister Dr Chris Fearne and Hon. Rosianne Cutajar.

After the consultation period ended, there was an evaluation in Parliament, following which the Private Members’ Bill was moved to be debated upon. Once Cabinet members provided their full support on such new law, which would go through Parliament, a process would start for a crematorium to be built.

Discussion in Parliament started on the 3rd of April, where the first reading of the plenary session took place⁴. The government’s whip, Hon. Byron Camilleri, proposed an initial draft of the cremation law, which was to be formulated by 2019.

In the second reading⁵ the Deputy Prime Minister and the Minister for Health, Hon. Dr Chris Fearne, provided the Deputy Speaker with a message from the President of Malta so to read it before the rest of Parliament. It

1 ‘A Bill’ (*Justice Services*, 2019) <<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29539&l=1>> accessed 19 September 2019.

2 ‘Cremation Law To Be In Place By Easter, Will Cost Less Than Traditional Burial’ (*Malta Today*, 2019) <https://www.maltatoday.com.mt/news/national/93150/watch_cremation_law_to_be_in_place_by_

3 ‘Public Consultation On Cremation Launched Parliamentary Debate Will Follow’ (*Times of Malta*, 2019) <<https://timesofmalta.com/articles/view/public-consultation-on-cremation-launched702584>>

4 ‘Parliament Of Malta Plenary Session Sitting No.: 215 - Wednesday, 03-Apr-2019 04:00 PM’ (*Parliament of Malta*, 2019) <<https://parlament.mt/en/13th-leg/plenary-session/ps-215-03042019-0400-pm/>>

5 ‘Parliament Of Malta Plenary Session Sitting No.: 220 - Thursday, 11-Apr-2019 04:00 PM’ (*Parliament of Malta*, 2019) <<https://parlament.mt/en/13th-leg/plenary-session/ps-220-11042019-0400-pm/>> ac-

was explained by the President that matters which relate to cremation, such as the process of cremation licensing, registration for cremation and others are to be explicitly catered for in the new law by Members of Parliament.

Furthermore, via the consideration of the Bills Committee⁶ held on the 7th of May 2019, changes were made to different clauses in the Bill prior to the third reading, most notably with regards to the availability of cremation to the public, application for cremation and also with regards to who is to retain the deceased's ashes, or else, for the remains of the deceased to be disposed of, and who would be the person to carry this out.

In addition, one is to also examine the third sitting⁷ in relation to such topic, where the draft version of such law was read for the third time and was accepted.

So, through such proposed law, cremation would become legal. Criteria would be set for the application of cremation apart from the provision of locations where ashes can be stored or disposed of. Furthermore, a responsible individual has been established, known as the 'Superintendent',⁸ who would be responsible for the issuance of cremation licenses, and also for the registration of cremations.

By the passing of this Bill, Act No. XVII of 2019⁹ was created. With this Act, cremation services could now be offered in Malta. Hon. Rosianne Cutajar was honoured and ecstatic that, since the 29th of May 2019, the Bill which she worked for had become part of the Laws of Malta Prior to the enactment of this law, Malta did not offer individuals any other alternative to traditional burial.

According to Hon. Dr Chris Fearne,¹⁰ Malta was the only country in Europe which did not provide any regulatory framework for alternatives to traditional burials, such as cremation. Prior to the new law's adoption, cremation was to be carried out in a foreign country. The new law allows for people to decide themselves what to do with the ashes. However, ashes can only be

6 'Parliament of Malta Consideration Of Bills Committee Meeting No.: 059 - Tuesday, 07-May-2019 04:30 PM' (*Parliament of Malta*, 2019) <<https://parlament.mt/en/13th-leg/consideration-of-bills-committee/kun-059-07052019-0430-pm/>> accessed 19 September 2019.

7 'Parliament Of Malta Plenary Session Sitting No.: 229 - Wednesday, 29-May-2019 09:00 AM' (*Parliament of Malta*, 2019) <<https://parlament.mt/en/13th-leg/plenary-session/ps-229-29052019-0900-am/>> accessed 19 September 2019.

8 'ACT No. XVII Of 2019' (*Justice Services*, 2019) <<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29598&l=1>> accessed 19 September 2019.

9 Ibid.

10 'New Law Allows Cremation In Malta People Will Have The Flexibility To Decide What To Do With The Ashes' (*Times of Malta*, 2019) <<https://timesofmalta.com/articles/view/new-law-allows-cremation-in-malta711404>> accessed 19 September 2019.

scattered in accordance with Article 29,

“(2) cremated remains may be scattered: (a) at sea, except for recognized bathing areas or harbours; (b) from any aircraft; (c) in any private residence, with the written permission of the owner of such private residence; (d) in any open space specifically designated for the scattering of cremated remains.

(3) The scattering of cremated remains in public urban zones shall not be permitted”¹¹

The new law also caters for perpetrators. If proven guilty of running an illegal crematorium, not only would they be given a hefty fine, but they would also face prison time. The way this new law handles such offence in Article 37¹² is quite interesting, since such offence was immediately thought of and punished even before it could arise. This could be because the deceased human remains wouldn't be treated with respect during cremation which, according to Article 19 of Act No. XVII, is a strict must.

It is also interesting to look into a policy paper on cemeteries, which was published by the Planning Authority in 2015¹³. In such policy paper, the option of cremation was indeed mentioned and explained, but it was made clear that during that time, cremation was not accepted, much less regulated in the Maltese islands.

Furthermore, there was also the option of a burial at sea or other alternative options but in this case, one has to bear in mind in such paper, cultural and religious factors were taken into consideration. Interestingly the process of cryomation or promession¹⁴ was also explained. This occurs when the body is broken down through the process of freeze-drying. On the other hand, to further tackle the issue of overcrowded cemeteries, the idea of alkaline hydrolysis was also mentioned as a possible funeral alternative during the consultation process of such paper.¹⁵

According to Hon. Rosianne Cutajar, cremation not only would help in decreasing of the use of cemetery land, but it would be an environmentally-friendly alternative. It must be remembered that cremation in relation to the keeping or scattering of ashes is a choice made by the deceased's family. Hon. Rosianne Cutajar further emphasised that cremation services would be

11 n 8.

12 n11.

13 'Cemeteries Policy And Design Guidance April 2015' (*Planning Authority*, 2015) <<https://www.planning.gov.mt/publications/cemeteries-policy-and-design-guidance>>

14 Ibid.

15 n 12.

cheaper than traditional burial, especially because costs are considerably high when purchasing a burial plot. Besides, with such new act the expenses of carrying out cremations abroad would be abolished.

Back in 2018 the Malta Humanist Association (MHA)¹⁶ not only urged the government to introduce a venue for non-religious funeral services, but also to provide a crematorium which would be environmentally-friendly. The association also suggested that cremation services were to be cheaper than a traditional burial. Moreover, it made other very interesting suggestions to the government as expressed by the *Times of Malta*, including the fact that such crematorium ought to be low on emissions so as to make it an attractive alternative to the traditional burial system.

It has to acknowledged that up until now, there is no crematorium so to cater for the service of cremation. Back in 2018, a company¹⁷ did propose for a crematorium to be built on a plot of land adjacent to the rear entrance of the Addolorata Cemetery.¹⁸ During that time, the discussion on cremation was still in its early stages and there were no laws which regulated such service. Also, such particular land was classified as ODZ, and trees found in that area were additionally protected. For many reasons, the building such crematorium was rejected as stated in an article found in the electronic gazette *Independent*.¹⁹ This company has tried for many years to introduce cremation, but there are currently no concrete plans for the creation of a crematorium, even though cremation itself is now legal.

According to Hon. Rosianne Cutajar, there were many others in the private sector who expressed an interest in setting up such facility before this Act was passed, and who submitted an application to the Planning Authority, but were subsequently turned down. It was explained that they were turned down because there was no legal framework which regulated such service.²⁰

16 'Cremation Must Be Green And Affordable - Malta Humanist Association MHA Urges Government To Introduce Sizeable Venue For Non-Religious Funeral Services' (*Times of Malta*, 2018) <<https://timesofmalta.com/articles/view/cremation-must-be-green-and-affordable-malta-humanist-association.694404>> accessed 19 September 2019.

17 'Cremation' (*Camilleri Funeral Directors*) <<https://www.camillerifuneraldirectors.com>> accessed

18 'Company Behind Proposed Crematorium Had Been Trying For Years To Introduce Cremation' (*Independent*, 2018) <<https://www.independent.com.mt/articles/2018-04-23/local-news/Company-behind-proposed-crematorium-had-been-trying-for-years-to-introduce-cremation-6736188364>> accessed 19

19 'Planning Application Could Lead To Malta's First Crematorium' (*Independent*, 2018) <www.independent.com.mt/articles/2018-04-23/local-news/Company-behind-proposed-crematori

20 'Proposed Law To Pave Way For Cremation Services Bidding Farewell To Loved Ones Could Become More Affordable For Those Not Owning A Grave' (*Times of Malta*, 2018) <<https://timesofmalta.com/>

It is also worth mentioning that cremation was also introduced for pet owners. However, such service has nothing to do with ACT No. XVII of 2019. This is, of course, a very different scenario which still falls under the subject of cremation. In 2018²¹, the Island Sanctuary Voluntary Organisation²² imported an animal incinerator through which people would cremate their domestic animals. They have gathered enough funds, through the help of public donations, to be pioneers insofar as such a service is concerned.²³

21 'Malta's First Animal Incinerator Has Finally Arrived At The Island Sanctuary' (*LovinMalta*, 2018) <<https://lovinmalta.com/lifestyle/environment/watch-maltas-first-animal-incinerator-has-finally-arrived-at-the-island-sanctuary/>> accessed 19 September 2019.

22 'Island Sanctuary About Us' (*Island Sanctuary*) <<https://islandsanctuary.com.mt/about-us>> accessed 19 September 2019.

23 'Island Sanctuary To Offer Cremation Service For Pets New €24,000 Incinerator Needed' (*Times of Malta*, 2018) <<https://timesofmalta.com/articles/view/island-sanctuary-to-offer-cremation-service-for-pets.667744>> accessed 19 September 2019.

