

Funeral director licensing scheme for Scotland

A Scottish Government Consultation

August 2023

Table of Contents

Ministerial Foreword	3
Responding to this Consultation	5
Introduction	7
Section 1 - The Licensing Authority	12
Section 2 - Directory of Funeral Directors Operating in Scotland	14
Section 3 - Compliance Officer	15
Section 4 - Duration, Expiry and Renewal of licences	15
Section 5 - Suspension and Revocation of licences	18
Section 6 - Licence Fees.....	21
Any other comments.....	23
Impact Assessments	24

Ministerial Foreword

Bereavement can be emotionally overwhelming and being able to engage with the practical issues and funeral arrangements can be very difficult. However, it is something everyone is likely to experience at some stage in their life, whether it's the death of a family member, a loved one, or a friend. Having confidence in the care and dignity given to our loved ones, along with the compassionate and professional treatment of those bereaved, can go some way to alleviating that distress. The rare instances where this does not happen satisfactorily can have long-standing impacts on people.

This is why we need to ensure we get the right policy and legal frameworks in place.

Therefore, as Minister for Public Health and Women's Health, I am pleased to launch the Scottish Government's collection of consultations on burial, inspection, funeral director licensing, and alkaline hydrolysis (an alternative to burial and cremation). These consultations seek views on the Scottish Government's proposals for regulations for all four of these topics, which are to be made under the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act').

The 2016 Act fulfils our commitment to implement recommendations made by the Burial and Cremation Review Group (2007), the [Infant Cremation Commission](#) (2014) and the [National Cremation Investigation](#) (2016). The regulation proposals set out in the consultations on burial, inspection and funeral director licensing are key to realising the necessary detail, protection and processes envisaged by the 2016 Act. With your help, we can ensure the right policy and legal frameworks are in place. We can ensure that regulation is fair and proportionate and achieves the aim of protecting the deceased, setting minimum standards of care in the sector, supporting consistency of service and establishing a statutory regulatory function to monitor compliance with the 2016 Act and its codes of practice. In this way, we can provide everyone with greater confidence in the funeral sector in Scotland and promote continual improvement.

We are also taking this opportunity to attain public views on alkaline hydrolysis. When consulting on the 2016 Act we were aware that alternative methods of body disposal, which could sit alongside burial and cremation, were in development. Responses to the Bill consultation showed there was public support for the introduction of new, environmentally friendly alternatives in Scotland. This included alkaline hydrolysis which is already in use in some countries including Ireland, Canada and the USA.

The [Cremation \(Scotland\) Regulations 2019](#) updated how cremation is regulated and introduced revised and updated application forms and registers. It also set out the procedure for the handling of ashes. It is proposed that similar statutory requirements will apply to alkaline hydrolysis.

It is important that we ensure that regulations for any new methods are fit for purpose. So this consultation sets out the ways in which we propose alkaline hydrolysis should be governed and the safeguards which we consider should be put in place to help ensure the high standards that the public can expect with burial and cremation will apply to alkaline hydrolysis. We have also set out areas where the wider legislative framework is well established in order to set out a fuller picture of what providers will be required to comply with in order to offer alkaline hydrolysis.

Our proposal is that alkaline hydrolysis would be an additional choice for people interested in exploring possible alternatives. We are not suggesting it replaces or displaces traditional methods in any way. It is a matter of choice for the individual and we absolutely recognise that many people will not consider it suitable for them or aligned with their beliefs.

Whilst many parts of the 2016 Act and associated regulations are already in place, I recognise that delays caused by the COVID-19 pandemic have impacted progress on the implementation of the remainder of the 2016 Act. I hope that the publication of these consultations demonstrates the progress made since then, working closely with the sector and other stakeholders, and the Scottish Government's continued commitment to developing these important regulations.

I am proud that Scotland is leading the way when it comes to funeral sector regulation. Scotland is the first UK nation to pursue a statutory regulatory regime for the funeral sector. In the Competition and Markets Authority's (CMA) [final report](#) on their funerals market investigation, they recognised Scotland's leadership in this area, and made recommendations to England, Northern Ireland and Wales to establish an inspection and registration regime, as a first step to the establishment of a broader regulatory regime for funeral services, "mirroring the approach taken in Scotland".

I appreciate we are seeking a wide variety of views from the public and from those working in the funeral sector in these consultations. I therefore invite you to respond to any or all of the consultations in this collection and thank you for taking the time to consider our proposals.

Your responses will help shape our next steps.

Jenni Minto MSP
Minister for Public Health and Women's Health

Responding to this Consultation

We are inviting responses to this consultation by 17 November 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). You can access and respond to this consultation [online](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 17 November 2023.

If you are unable to respond using our consultation hub, please complete and return the [Respondent Information Form](#) to:

Burial, Cremation, Death Certification & Anatomy Team
Scottish Government
3 East
St Andrew's House
Edinburgh, EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <https://consult.gov.scot/>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at burialandcremation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <https://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Introduction

1. The Burial and Cremation (Scotland) Act 2016 ('the 2016 Act') received Royal Assent in April 2016. It provides a modern, comprehensive legislative framework for burial and cremation in Scotland. Many of the 2016 Act's provisions are rooted in recommendations made by the Infant Cremation Commission, the National Cremation Investigation and the Burial and Cremation Review Group.
2. The 2016 Act gives Scottish Ministers the power to, amongst other things, establish an inspection regime for burial authorities, cremation authorities and funeral directors and to set up a licensing scheme for funeral director businesses. Key to this is the development of regulations and codes of practice which will be fundamental in ensuring minimum standards of care of the deceased. To promote compliance with the legal requirements within these regulations and codes, Scottish Ministers can appoint inspectors under section 89 of the 2016 Act as Inspectors of Burial, Cremation and Funeral Directors ('Inspectors').
3. Scottish Ministers first appointed the Inspector of Crematoria in March 2015.¹ The Inspector was appointed under the Cremation (Scotland) Regulations 1935, which at that time was the most up-to-date legislation relating to cremation. In April 2019, following the implementation of the new 2016 Act, the Inspector of Crematoria's remit was widened to encompass the whole cremation process and was renamed 'Inspector of Cremation'.
4. The first Inspector of Funeral Directors was appointed in 2017 by Scottish Ministers (by virtue of section 89(1) of the 2016 Act) to review the funeral sector in Scotland, progressing recommendations by the [National Cremation Investigation](#) and fulfilling the recommendations of the [Infant Cremation Commission](#).
5. In October 2020, the Inspector of Crematoria's remit was widened to encompass the entire funeral sector (subsuming the remit of the Inspector of Funeral Directors), and an additional Inspector was appointed. From that time, there has been appointed a Senior Inspector of Burial, Cremation and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors.
6. Some parts of the 2016 Act have already been implemented. Notably, in 2019, Part 2 on cremation was commenced, following which the [Cremation \(Scotland\) Regulations 2019](#) were made. These regulations took forward recommendations from the Infant Cremation Commission and National Cremation Investigation to implement improvements to the cremation process and the handling of ashes in Scotland.

¹ This appointment occurred in January 2015, and thus preceded the 2016 Act. Regulation 2 of the 1935 Regulations (made under the 1902 Act) required every crematoria to be "open to inspection at any reasonable time by any person appointed for that purpose by the Secretary of State or by the Department". The 1902 Act was repealed by the 2016 Act.

7. The purpose of this consultation is to seek views on the implementation regulations for funeral director licensing, which if implemented would create a licensing regime for funeral directors.
8. This consultation is being published as part of a collection of consultations relating to the content of various sets of regulations that will be made under sections of the 2016 Act which have not yet been implemented. They relate to:
 - [Inspection regulations](#)
 - [Burial regulations](#)
 - [Alkaline hydrolysis \(an alternative to burial or cremation\)](#)
9. All consultations in this collection are available at this [link](#) on the Scottish Government Citizen Space website.
10. You are welcome to comment on all parts of this consultation or select only the parts and questions most relevant to you.

Licensing for Funeral Director Businesses

11. Funeral director businesses in Scotland arrange and conduct approximately 62,000 funerals per year.² Existing evidence from the Competition and Markets Authority (CMA)³ and the industry itself⁴ suggests that the UK public assumes funeral directors are already regulated or, at least, have to meet minimum standards. There is in fact no current Scottish regulation specifically applicable to funeral directors other than the provisions of the 2016 Act which have been commenced to date.
12. The 2016 Act provides Scottish Ministers with the power to introduce licensing of funeral directors. Funeral director businesses operating in Scotland are not currently subject to industry specific statutory regulation and do not have to be registered with a regulatory body or hold a licence by law. On a non-statutory basis, representative bodies for funeral directors do support their members to meet professional standards that those bodies set and provide information to the bereaved. These include the [National Association of Funeral Directors \(NAFD\)](#) and the [National Society of Allied and Independent Funeral Directors \(SAIF\)](#). Standards are set by each organisation and are set out in their own non-statutory Codes of Practice.
13. As noted in the introduction, the first Inspector of Funeral Directors was appointed by Scottish Ministers in 2017 to review the funeral sector in Scotland. The Inspector published a [report](#) in August 2019 on completion of their review. The report made recommendations to Scottish Ministers about how funeral

² See NRS website for 2022 Vital Events. Fourth quarter 2022 available [online](#).

³ [Final report \(publishing.service.gov.uk\)](#)

⁴ Dignity Funerals. [Time to Talk About Quality and Standards: What people assume, want and expect from funeral directors](#).

directors should be regulated, including that a licensing scheme should be introduced. Scottish Ministers agreed with the findings and recommendations of the report, and in August 2019 the previous Minister for Public Health, Sport and Wellbeing announced the Scottish Government's intention to develop a licensing scheme for funeral director businesses.

14. It is recognised that a licensing scheme for funeral directors would be complementary to the intended inspection regime for funeral directors, burial authorities and cremation authorities (see [inspection regulations consultation](#)), providing greater oversight for, and transparency about, the industry.

Part 5 of 2016 Act: Introduce a Licensing Scheme for Funeral Directors

15. Scottish Ministers are now proposing to bring into force Part 5 of the 2016 Act to introduce a licensing scheme for funeral directors in Scotland.
16. Part 5 contains the relevant provisions for licensing which will apply to anyone who carries on business as a funeral director in Scotland. As part of the proposed scheme, sections 94 to 96 of the 2016 Act would be commenced to make it an offence to carry on business as a funeral director without obtaining a licence for that business issued by the licensing authority. Where a person operates more than one business they will need to apply for a separate licence for each business.

Aim of Proposed Licensing Scheme for Funeral Directors

17. The licensing regulations are intended to regulate the industry in its care and handling of the deceased. The aim is to ensure that the care and handling of the deceased and the practices of the funeral sector are being delivered in compliance with the minimum standards set by the Scottish Government. It is intended that a consequence of this will be increased confidence in Scotland's funeral director sector.
18. The regulations will provide greater transparency about the Scottish funeral industry, through increased scrutiny of the sector (by way of inspections associated with licence applications and licence renewals), and the publication of a 'directory' of licensed funeral directors, which is easily searchable by the public. It is anticipated that this directory may also bring added benefits such as allowing the licensing authority to communicate inclusively with all funeral director businesses in Scotland. This is something which is not currently possible.
19. The regulations will also keep funeral directors in Scotland accountable for meeting minimum standards of practice as set out in the Funeral Director: [Code of Practice](#) ("the Code") (against which funeral directors will be inspected), the 2016 Act, and, in future, any conditions of licence.⁵ Indeed, we intend that the

⁵ Funeral director businesses will still continue to be subject to other statutory safeguards such as health and safety legislation which are separate to the 2016 Act.

proposed licensing scheme would require funeral director businesses to meet minimum standards of operation in order to be successful in being granted a licence.

20. It is the Scottish Government's view that introducing a licensing scheme that did not link licences to minimum standards would prevent the scheme from effectively ensuring the dignified and appropriate treatment of the deceased and appropriate practices of funeral director businesses. As noted, section 94 of the 2016 Act provides the power for Ministers to introduce a licensing scheme and that a person may not carry on business as a funeral director unless the person holds a licence issued under the scheme in relation to the business. The questions in this consultation therefore proceed on the basis that all funeral director businesses in Scotland will require a licence if the scheme is introduced and that these businesses will only be granted a licence (and allowed to continue operating) if they maintain compliance with the minimum standards.
21. The Scottish Government's position is that to achieve the aim of the proposed licensing scheme, we require to bring into force the option which Parliament has provided in the 2016 Act; namely, to implement a statutory scheme.
22. It is also intended, however, that funeral director businesses will experience benefits from the scheme, including increased public confidence in the quality and reliability of their services, and the reputational benefits that would follow. It will also provide businesses with an impartial and transparent assessment of their compliance with agreed standards, and the ability to advertise their licence status to potential clients.

Content of Proposed Licensing Scheme

23. The Scottish Government views the proposal to bring the licensing scheme into existence as an important part of the overall regulatory framework for funeral directors. This is because the scheme would provide reassurance to the public who can expect that (a) any funeral director business in Scotland is licensed, and (b) that they are therefore meeting minimum standards of care for the deceased and in their practices as funeral director businesses.
24. To enable operation of the licensing scheme, regulations setting out the detail of that scheme will require to be made under section 95 of the 2016 Act. The regulations will set out details about how the licensing scheme will operate. This could include:
- Who is to administer the scheme (the 'licensing authority'),
 - The application forms and the application process (including documents to be submitted with applications),
 - Enabling the licensing authority to grant or refuse an application with or without conditions, specify circumstances where the licensing authority may or must grant or refuse a licence application (and whether that licence may be granted subject to any conditions), and timescales,

- How long a licence lasts, and whether it can be renewed,
- Enforcement-related matters, such as how and in what circumstances a licence might be suspended or revoked,
- How decisions of the licensing authority can be appealed, and
- The implementation of licence application fees.

25. It is intended that, under the proposed inspection regulations (see [inspection regulations consultation](#)), Inspectors will inspect funeral director businesses to assess their compliance with the 2016 Act, regulations, conditions of licence and the Funeral Director: Code of Practice. After each inspection, it is intended they would produce an inspection report, which would be provided to the funeral director business and the licensing authority. It is proposed that these inspection reports would be taken into account by the licensing authority when determining whether to grant or reject licence applications (or renewal applications). It is also intended that the licensing authority would be provided with the power to grant licences with 'conditions', with which a business would have to comply. Compliance with any licence conditions would also be subject to routine and ad-hoc inspections.

Stakeholder Engagement and Further Consultation

26. Stakeholder engagement has been important for informing the Scottish Government's initial proposals for the intended licensing scheme. In 2021, as recommended in the Inspector of Funeral Director's 2019 report, the Scottish Government engaged the funeral sector by establishing a Licensing Regulations Working Group. The Working Group includes representatives from:

- Funeral director businesses,
- Faith-based groups,
- Funeral sector trade associations,
- Local government, and
- Inspectors of Burial, Cremation and Funeral Directors.

27. At time of publication of this consultation, the Working Group has met three times (in May 2022, August 2022, and April 2023) to discuss the development of various aspects of the licensing scheme. Input from the funeral sector on this Working Group has been important for providing professional and technical expertise to the topic of funeral director licensing, to ensure that the functions of the scheme contribute to achieving its overall aim. Their membership, remit and agreed meeting minutes can be found on the Scottish Government [website](#).

28. This consultation on the funeral director licensing scheme will be the first of two consultations on this topic. Section 105(1) of the 2016 Act requires the Scottish Government to prepare a draft of the licensing regulations and consult on them before they are laid in the Scottish Parliament. The content of the draft regulations will be informed by the responses to this consultation. The draft licensing regulations will be published for consultation once they have been fully developed.

Section 1 - The Licensing Authority

29. Section 95(2)(1) of the 2016 Act provides that licensing regulations may “specify who is to administer the scheme”, and names this body the “licensing authority”. The 2016 Act further sets out that, where the relevant powers under section 95 are utilised, the licensing authority is responsible for key decisions such as whether to grant or refuse a licence (or grant a licence with conditions).
30. The Scottish Government intends to utilise the powers in section 95 to name the Scottish Ministers as the licensing authority. In practice, if implemented, this will mean that when determining a licence application Scottish Ministers would be making decisions as the licensing authority.
31. The Scottish Government’s view is that Scottish Ministers are the most appropriate authority to act as the licensing authority as Ministers have (along with other bodies) responsibilities for protecting public health in Scotland. Further, ensuring that the deceased are treated with respect and dignity is a matter of such public interest and concern that it is appropriate that the elected Government of the day is charged with ultimate responsibility in ensuring the minimum standards are met. The decision to grant or refuse a licence application or renewal application is likely to have a direct impact on whether a business can operate, thus impacting on people’s livelihoods. We are also mindful that: it will be more cost effective to use existing resources rather than set up a new body for the licensing authority; that Scottish Ministers already perform similar roles with respect to, for example, Marine Licensing, Fish Health, and administering the PVG scheme via Disclosure Scotland; and that the [2019 Report of the Inspector of Funeral Directors](#) recommended that the Licensing Authority be set within the governance of the Scottish Government.
32. Moreover, Parliament has already determined in the 2016 Act that it would be Scottish Ministers who would decide if a licence should be suspended or revoked (as set out in section 90(h)) (thus deciding if a funeral director business must *stop* operating). The Scottish Government perceives it is also commensurate and appropriate for Scottish Ministers to act as the licensing authority (to determine licence applications, and thus whether a business can *commence* operating).
33. We have been asked by stakeholders in the funeral sector whether an alternative choice might be to appoint Inspectors of Burial, Cremation and Funeral Directors as the licensing authority. However, there is not a discrete ‘agency’ or ‘body’ of inspectors which could collectively act as the licensing authority – inspectors will be appointed individually under the proposed inspection regulations, using powers provided in section 89 of the 2016 Act (see consultation on [inspection regulations](#)). Further, Inspectors are Ministerial Appointees and thus report to Ministers. As such, in response to stakeholder queries regarding whether Inspectors would be a more ‘independent’ licensing authority, they are not entirely independent from Ministerial accountability. As a result, the Scottish Government considers that Inspectors should not act as the licensing authority.

34. Other options included setting up a new body to act as the licensing authority and administer the scheme, or confer this function on an existing body. There are existing examples of 'inspectorates' and of licensing regimes sited in organisations such as local government or regulatory bodies (for example, the Scottish Environmental Protection Agency (SEPA)). These options have been subject to the following considerations.
35. Were the role of licensing authority to be given to an existing body, that would require a suitable body to be identified. It is viewed that for practical reasons Inspectors and the licensing authority would be sited in the same organisation, thus consideration of a suitable body would need to meet the requirements of both. On examination of independent bodies in Scotland and local government, there were no existing bodies with a model that would meet the needs of the funeral sector inspection and licensing regimes. For example, all local authorities are burial authorities and many are cremation authorities, which will be subject to inspection. Therefore there would be a conflict of interest in inspectors being both sited in, and inspecting, local authorities. It is also anticipated that centralising the licensing authority function will be more efficient than siting this in each local authority. Of the other existing 'industry-specific' inspectorates in Scotland, none is considered to be adequate in encompassing the aims of the funeral sector inspection and funeral director licensing regimes.⁶ Overall, due to the unique nature of the funeral sector, we are of the view that there is no existing body that could provide a ready-made solution.
36. We have also considered that the 2016 Act provides that suspension and revocation of licences (where it is triggered by an Inspector recommendation) must be decided by Scottish Ministers – this responsibility cannot be delegated and will always rest with Scottish Ministers. The option of setting up a new body or conferring the licensing authority function on to a different body may therefore create an environment in which regulation of the sector is administered across two organisations with their own governance, funding, etc. This type of governance structure is likely to be overly complex and bureaucratic.
37. Further, we note the Scottish Government's upcoming implementation of a Ministerial Control Framework, in which there is a presumption against the creation of new public bodies, unless there is no alternative and clear public value.⁷ We consider that alternative options are still available for the housing and administration of the licensing authority, and thus a new public body is not currently necessary.

⁶ For example, Scotland does not have a body similar to the Human Tissue Authority which monitors, inspects, and licences organisations that remove, store and use human tissue for research, medical treatment, post-mortem examination, education and training, and display in public. HM Inspector for Anatomy for Scotland is sponsored and supported administratively by the Scottish Government.

⁷ [Letter from Permanent Secretary of the Scottish Government to Convenor of the Finance and Public Administration Committee](#) (2023, 1 June).

38. Finally, the cost implications of setting up a new body or conferring these functions on an existing body also make these options less viable than providing for Ministers to be the licensing authority.
39. Given the above, we are not currently proposing to create a new body or confer the licensing authority function onto an existing body. Our present intention is that Scottish Ministers will be the licensing authority.

Question 1 - Please provide any comments on the proposal to designate Scottish Ministers as the 'licensing authority'.

Section 2 - Directory of Funeral Directors Operating in Scotland

40. There is currently no centralised, public list of funeral director businesses in Scotland.
41. To help achieve the intention of Scotland's funeral sector more transparent, the Scottish Government proposes to maintain a directory of licensed funeral director businesses in Scotland which will be searchable on the Scottish Government website. The intention is to ensure that members of the public who seek to engage a funeral director can easily check whether the funeral director(s) they are considering employing are licensed under the scheme.
42. Further, it is important for Inspectors and the licensing authority to have a directory for the purposes of knowing who is operating as a funeral director in Scotland, to ensure inspection and licensing is comprehensive.
43. It is intended that the directory would include key information such as the funeral director business' name, contact details, and licence number.

Question 2 - Do you agree or disagree with the proposal to publish and maintain a public directory of the licensed funeral directors in Scotland?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Question 3 - Please provide any additional comments

Section 3 - Compliance Officer

44. As set out earlier, an important function of the proposed licensing scheme is to ensure there is accountability for businesses to meet minimum standards, through compliance with the 2016 Act regulations, the [Funeral Director: Code of Practice](#), and any licence conditions.
45. We have been made aware through engagement with funeral director business stakeholders that in some funeral director businesses the business owner may not be involved in the day-to-day operations, or they may be based outwith Scotland. Additionally, certain large companies may be a limited company without individual owners. In these instances, the Scottish Government's position is that the accountability for compliance may be too diffused among employees. Further, that a lack of leadership and coordination within the business In relation to these matters may result in the business not achieving consistent compliance with legislation, the Code of Practice, and any licence conditions.
46. We are therefore intending that regulations will require each funeral director business to name a "compliance officer". This person would be a contact point for the licensing authority and inspectors in relation to compliance matters. It is expected that this person would have responsibility for co-ordinating and having oversight of compliance matters within the business. This could include, but not be limited to highlighting issues where they arise, providing leadership and suggestions in relation to the requirements of legislation, the Code, and any licence conditions, and preparing for inspections.
47. Only one compliance officer would be required for each business, regardless of the number of premises that business operates. This person could be the business owner or a suitable employee as identified by the business.
48. Section 94(2) of the 2016 Act provides that a person may not carry on business as a funeral director unless the person holds a licence issued under the scheme in relation to the business. Therefore, we intend that it is the business owner who remains responsible for compliance with legislation, the Code, and any licence conditions.

Question 4 - Please provide any comments you have about the proposal to require funeral director businesses to identify a compliance officer for their licence.

Section 4 - Duration, Expiry and Renewal of licences

49. The Scottish Government is considering specifying in the licensing regulations that a licence will be valid for a time-limited period. Currently, the Scottish Government is considering making this licence period three (3) years. A licence would therefore be valid for three years from the date of issue unless it is

suspended, revoked or otherwise given up by the licence holder. The Scottish Government is also considering using the powers provided in section 95 of the 2016 Act to charge licence fees for initial licence applications and licence renewal applications.

50. We are seeking views on the consideration to require licences to be renewed every three years.
51. The Scottish Government's position is that requiring licence renewal is an important component of a robust licensing scheme for funeral director businesses and is in keeping with the intentions of the 2016 Act as passed by Parliament, in which licence renewal is provided for in section 95. Specifically, licence renewal will proactively generate communication of the businesses with the licensing authority; provide the licensing authority with a regularly scheduled opportunity to review the information on the licence (e.g. ownership, compliance officer, conditions of licence, criminal convictions notification etc.); provide the licensing authority with a regularly scheduled opportunity to review any conditions of licence; and create an approach in which funeral directors trigger an inspection of their business. We anticipate that this approach may also provide reputational benefits to funeral director businesses that may be associated with advertising to clients that they are subject to regular licence renewals and associated inspections.
52. The Scottish Government's position is that three years is an appropriate licence time-period because it balances the burden on businesses of applying for renewal with the administrative needs of a robust licensing scheme. It is perceived that a longer time period (e.g. five years) would be too long in between renewals (and the associated communication, reviews and routine inspection), given the risk associated with funeral director businesses. These risks relate to the nature of carrying on a business as a funeral director, in which the deceased are handled and prepared for burial or cremation. The Scottish Government is aware of risks to the dignity of the deceased from the [Regulatory model including progressive licensing scheme for funeral directors: report to Scottish Ministers \(2019\)](#); the [Report of the National Cremation Investigation \(2016\)](#); and complaints which have been received by existing Inspectors of Burial, Cremation and Funeral Directors.
53. It is also our position that annual renewals for all businesses would be overly resource-intensive for them and the licensing authority. We note that if complaints or other issues arise about a particular business, ad-hoc inspections can be conducted in between licence renewals.
54. We perceive that having an inspection triggered by a licence renewal application is appropriate for the implementation of a robust and transparent licensing scheme because it ensures that, at the time of determining a renewal application, Inspectors and the licensing authority are confident that the funeral director remains compliant with minimum standards of care of the deceased and funeral director practices.

55. We note that the proposed [inspection regulations consultation](#) sets out our intentions to develop a risk-based approach to **routine** inspections for burial authorities, cremation authorities, and funeral directors. In that consultation we note that Inspectors may determine it is appropriate to inspect funeral directors assessed to be at low risk approximately every three years, similar to other existing regulatory regimes.⁸ If both the inspection regime and licensing regime are implemented as proposed, we intend to synchronise the routine inspections of funeral directors with the inspections for licence renewal. This means that an inspection triggered by a licence renewal application can also serve as the routine inspection for a given low risk funeral director business.
56. For example, if a funeral director business is deemed to be at higher risk, and Inspectors deem it necessary to routinely inspect the business annually, then the business's routine inspections for Year 1 and Year 2 can stand alone. Then, in Year 3 when their licence requires renewal, their renewal inspection can also serve as their Year 3 routine inspection.
57. We note that the proposed requirement for licence renewals will present an administrative (and resource-related) burden to the licensing authority and funeral director businesses. However, the Scottish Government considers this to be proportionate for the implementation of a robust licensing system which ensures compliance with minimum standards of care for the deceased and funeral director practices, thus helping to improve public confidence in the funeral director sector.
58. The Scottish Government's position on licence renewals was informed by discussions with existing Inspectors of Burial, Cremation and Funeral Directors and the Licensing Regulations Working Group.
59. The main alternative to the Scottish Government's proposed approach of time-limited licences would be to grant licences in perpetuity. This would allow businesses to hold licences until they wish to cancel them. Inspectors would still be empowered to undertake regular inspections, and the Scottish Ministers and inspectors would still be able to take enforcement action where appropriate. However, this approach would not provide the benefits listed above, and our position is this could undermine the licensing scheme and reduce public confidence in the scheme.

Question 5 - Do you agree or disagree that funeral director licences should be time-limited, with funeral directors required to apply for renewal?

⁸ For example, see [Fish Health Surveillance Programme](#) and [Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021](#)

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Question 6 - If licences are time-limited, do you think three (3) years is an appropriate length of time for a licence to last?

3 years is too long
3 years is appropriate
3 years is too short
Don't know

Question 7 - Please provide any further comments about the appropriate length of time for a licence to last

Section 5 - Suspension and Revocation of licences

60. The intended aim of the licensing scheme is to regulate the care and handling of the deceased by funeral directors. It will also create an environment in which there is scrutiny and regulation to increase credibility of, and confidence in, Scotland's funeral director sector through greater transparency and accountability. It is intended that as a consequence, the public can be confident in the services being afforded to the deceased (e.g. ensuring respect and dignity are preserved) and in the practices of the funeral sector against statutory minimum standards.

61. To contribute to this aim, an intended function of the licensing scheme is to ensure funeral director businesses are held accountable for complying with all relevant legislation, the [Funeral Director Code of Practice](#) and any conditions of licence. Inspectors will work with funeral director businesses to ensure they are maintaining compliance with these requirements.

62. It is proposed that regulations to be developed will provide for the suspension and revocation of funeral director business licences. It is proposed that suspension would mean a licence is made inoperative for a temporary period, until the concerns raised by the Inspector are appropriately addressed. Revocation would mean that the licence is removed, with no option for reinstating it.

63. The provision by regulations to provide for suspension and revocation of funeral director business licences will involve the interaction of sections 90 (inspection) and 95 (licensing) of the 2016 Act.

64. The proposed approach is as follows:

Suspension or Revocation Under Section 90 of 2016 Act (Inspection Route)

65. Generally, prior to any suspension or revocation action being considered, it is expected that Inspectors would first take an 'improvement approach' to provide businesses an opportunity to improve compliance. If necessary, this would be followed by the issuing of an enforcement notice. These steps are detailed in the [consultation on the Inspection Regulations](#).
66. However, in what is expected to be only the most serious circumstances, if a funeral director business is found, through inspections, to be repeatedly or seriously non-compliant with set standards, the Scottish Ministers will be empowered to decide to suspend or revoke their licence. It is expected that typically suspension would be imposed first, and if necessary be followed by revocation. In these circumstances, suspension or revocation will, in practical terms, follow a route through the *inspection regime*.
67. This will be made possible because Section 90 of the 2016 Act (which provides for an inspection regime) will be commenced to permit an Inspector to recommend that a licence be suspended or revoked. The Act provides that, following on from a recommendation made by the inspectors, it must ultimately be Scottish Ministers who take the decision to suspend or revoke a licence (see [inspection consultation](#)).
68. It is anticipated that any suspension or revocation of a licence through this route would be done as a last resort, generally after other improvement or enforcement measures have been attempted but failed, and thus it is expected that licence suspension or revocation would occur rarely.

Suspension or Revocation Under Section 95 of 2016 Act (Licensing Route)

69. Separately, section 95(2)(l) of the 2016 Act provides for suspension and revocation of licence through the licensing regime. The proposed licensing regulations will set out the circumstances in which the licensing authority may suspend or revoke licences, where this does **not** follow non-compliance with standards discovered through inspections or inspectors' investigations of complaints.
70. We consider that there is one circumstance in which the Scottish Government considers it appropriate to provide powers to the licensing authority in order that the licensing authority may decide whether to suspend or revoke a licence: The licensing authority has been made aware that the licence holder (owner) of a funeral director business has been convicted of certain types of offences, for example a violent crime or fraud.
71. We are seeking views about whether there are any other circumstances in which the licensing authority may decide to suspend or revoke a licence, separate to suspension or revocation which may occur under the inspection route described above. We are also seeking views about what types of convictions may be

appropriate to warrant suspension or revocation of licence. We intend to list categories of convictions which may prompt consideration for a licence suspension or revocation.

72. It is intended that there will be a requirement on the licence holder to notify the licensing authority of relevant convictions.

73. Where a funeral director business has had their licence revoked, the Scottish Government proposes that the person should have to wait a certain period of time before being permitted to apply for another funeral director business licence. We are seeking views on what the most appropriate period would be, including whether the waiting period should be the same for those whose licence has been suspended by either 'route' above.

74. The Scottish Government intends that the proposed licensing regulations would provide for appeals of substantive decisions by the licensing authority (e.g. to reject a licence application, or suspend or revoke a licence). This process would match the process for appeals of Scottish Ministers' decisions to impose enforcement notices – please see [inspection consultation](#) for details on appeals.

Question 8 - Please provide any comments you have on the proposed approach to licence suspensions or revocations, as provided for in the 2016 Act.

Question 9 - In addition to the circumstance noted in paragraph 70, are there any other circumstances in which the licensing authority may decide to suspend or revoke a funeral director business licence?

Question 10 - Please provide any comments on the possible types of convictions which might warrant the licensing authority deciding to suspend or revoke a funeral director business licence.

Question 11 - When a person has their licence revoked, how long should they be required to wait before being allowed to apply for a new licence?

- 1 Year
- 2 Years
- 5 Years
- 10 Years
- Other

Question 12 - Please provide any further comments.

Section 6 - Licence Fees

75. The Scottish Government considers that the proposed licensing scheme will provide certain benefits to businesses, including increased public confidence in the quality and reliability of their services, and the reputational benefits that would follow. In combination with the inspection regime, the proposed licensing scheme is also intended to provide businesses with an impartial and transparent assessment of their compliance with agreed standards, as well as an allocated licence number which is intended to demonstrate the business's compliance with set standards.
76. Further, funeral directors may benefit (directly or indirectly) from the following administrative and inspection work which will be undertaken to keep the inspection and licensing regimes operational:
- Administrative services carried out by the Licensing Authority and its staff, such as the processing of licence applications; record keeping of inspections and other key documentation; maintenance of a directory of licensed funeral directors in Scotland (which could be used for advertising purposes); and regular communication of key information which is relevant to funeral directors.
 - Inspections from Inspectors appointed by Scottish Ministers (provided after each licence application or renewal application, at a minimum), inspection reports, recommendations for improvement if appropriate, and follow-up inspections or discussions if needed.
77. Section 95(2)(p) of the 2016 Act provides for fees to be charged for funeral director licence applications and licence renewal applications. Should the proposed licensing scheme be implemented, costs will be associated with processing licence applications or renewal applications. These costs will include the costs of undertaking inspections of funeral directors, which will be 'triggered' each time a licence application or renewal application is submitted.
78. The Scottish Government therefore proposes to use the powers provided in section 95(2)(p) to charge a proportionate fee for these applications, in order to recover these costs. It is intended these fees will contribute to the cost of administering the scheme.
79. Payment of the fee will be a requirement for the application being processed and the licence being issued.
80. The Scottish Public Finance [Manual](#) sets out that the standard approach charges for public services should be full cost recovery. It is our view that this is appropriate for the costs related to licence applications in this proposed licensing scheme (for example the processing and decision-making in relation to

applications as well as the necessary, associated inspections to inform licence decisions).

81. We also intend for the fee to be formulated with the key principles of fairness and openness, which is a key reason we have discussed the fees' development with the Licensing Regulations Working Group, and why it is included in this consultation. If the proposed licensing scheme is brought into force, any fees will be set out in the regulations for full transparency for the funeral directors who will be impacted.
82. The Scottish Government is currently considering how the proposed licence fee for businesses will be calculated. It is important that the approach chosen is fair to the funeral director businesses who will be impacted by the fee, transparent and ensures that any fee strategy balances, to the extent possible, the differing needs of small, medium, and large businesses.
83. Additionally, the number of funeral director businesses in Scotland (and the number of premises they have) will affect the number of inspectors who are required to inspect them as part of their licence applications and licence renewals, and thus help determine the costs of inspector remuneration and expenses which must be recovered through fees.
84. Because the funeral director industry has not been specifically regulated in Scotland previously, the Scottish Government currently only has estimates of the number of businesses and premises. These estimates will feed into the Business and Regulatory Impact Assessment (BRIA) for the proposed regulations, which itself will inform initial calculations of the licence application (or renewals) fees. If the proposed licensing scheme is implemented, the Scottish Government would attain much more accurate data about the number of funeral director businesses and their premises once it begins receiving licence applications – this information would inform future amendments to the fees, if appropriate.
85. We note that the costs related to the work of Inspectors inspecting burial authorities and cremation authorities will not be included in calculations of funeral director licence fees. There is no licensing scheme for burial and cremation authorities and therefore no associated powers are contained in the 2016 Act which would enable Scottish Ministers to charge fees in this regard. The 2016 Act only provides powers to make regulations in relation to fees charged to funeral director businesses in relation to new licence applications and licence renewal applications.
86. In future, it is proposed that fee amounts would be monitored and kept under review as part of the ongoing administration of the licensing scheme, in line with the cost recovery principle. The actual fee amounts requires to be set out in regulations (by virtue of section 96(2)(p) of the 2016 Act). As a result, any changes to fees would be consulted upon (by virtue of section 105(1) of the 2016 Act) before being approved by Parliament. This means that the funeral sector and

the public will have an opportunity to provide their views on each fee change proposal.

Question 13 - Please provide any comments about the Scottish Government's proposals to charging a fee at the time of a licence application and licence renewal to funeral director businesses.

Any other comments

Question 14 - Please provide any additional views or comments you may have on the proposed licensing regime.

Impact Assessments

As we develop the regulatory scheme proposed in this consultation we will carry out impact assessments. The aim of these assessments is to identify issues that may affect some groups more than others and to consider how we will address these issues. The assessments also explore what impacts the proposed regulations will have on matters such as privacy, equality, child rights and wellbeing and business.

The questions on the potential impacts of the proposals are broken down in line with the formal assessments carried out by the Scottish Government, which are:

- Compliance with The European Convention on Human Rights (ECHR)
- Equality Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Fairer Scotland Duty Assessment
- Islands Community Impact Assessment
- Data Protection Impact Assessment
- Business and Regulatory Impact Assessment
- Strategic Environmental Assessment

We recognise that the proposed reforms will have a much greater impact in some areas than in others and that the proposals may have a minimal or no impact in some areas.

When answering the questions, if your comments relate to a specific proposal, it would be helpful if you could set this out when describing any impacts which you think should be considered.

Human Rights

The [Human Rights Act 1998](#) incorporated the [European Convention on Human Rights \(ECHR\)](#) into UK law. It means that public authorities, such as the Scottish Government, must not act in a way that is incompatible with the rights set out on the ECHR. It is therefore vital that we consider how the proposals will impact on human rights.

Question: Do you have any views on the potential impacts of the proposals in this consultation on human rights?

Equalities

The [Public Sector Equality Duty](#) requires the Scottish Government and other public bodies when they are exercising their functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the [Equality Act 2010](#)
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

For the purposes of the Public Sector Equality Duty, a 'relevant protected characteristic' means age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 sets out nine protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Public Sector Equality Duty includes a requirement for the Scottish Government and other public bodies to have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010.

Question: Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above?

Children's rights

The [UN Convention on the Rights of the Child \(UNCRC\)](#) is an international treaty which sets out the fundamental human rights of all children. [Part 1 of the Children and Young People \(Scotland\) Act](#) places a duty on the Scottish Ministers to (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements and (b) If they consider it is appropriate to do so, take any of the steps identified by that consideration.

All new legislation and policy that is developed by the Scottish Government must consider the impacts on the rights and wellbeing of children up to the age of 18.

Question: Do you have any views on the potential impacts of the proposals in this consultation on children and young people as set out in the UN Convention on the Rights of the Child?

Fairer Scotland Duty

The [Fairer Scotland Duty](#) came into force on 1 April 2018 and places a legal responsibility on named public bodies, including the Scottish Government, to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

This means that as well as considering the impact on people with protected characteristics, the Scottish Government must consider how any proposals will impact on people depending on their economic background. For example, if proposals would have a specific impact on people with low incomes or who live in a deprived area.

Question: Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

Island Communities

[Section 7 of the Islands \(Scotland\) Act 2018](#) states that a relevant authority – which includes the Scottish Ministers – must have regard to island communities when carrying out its functions.

Scotland's islands face particular challenges around distance, geography, connectivity and demography, so it is important that this is considered when developing legislative proposals. It is also important that we ensure the islands receive fair and equitable treatment and that policy outcomes are tailored to their unique circumstances.

Question: Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?

Data protection and privacy

Data protection and privacy impact assessments help the Scottish Government to assess the risks of proposed legislative changes that are likely to affect the way in which personal data is used.

Question: Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

Business

A Business and Regulatory Impact Assessment (BRIA) is used to analyse the costs and benefits to businesses and the third sector of any proposed legislation or regulation, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.

Question: Do you have any views on the potential impacts of the proposals in this consultation on businesses and the third sector?

Environment

In Scotland, public bodies, including the Scottish Government, are required to assess, consult on and monitor the likely impacts that their plans, programmes and strategies will have on the environment. This helps to better protect the environment, aims to ensure that any development is sustainable, and increases opportunities for public participation in decision-making.

Question: Do you have any views on the potential impacts of the proposals in this consultation on the environment?



© Crown copyright 2023



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83521-096-3 (web only)

Published by The Scottish Government, August 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1323222 (08/23)

W W W . g o v . s c o t