

# **Report to Scottish Ministers on the introduction of a regulatory model including Progressive Licensing scheme for Funeral Directors in Scotland**

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**Scottish Government**  
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**Submitted December 2018**

# Introduction

1. The Burial and Cremation (Scotland) Act 2016 is a potent platform for change, with significant and fundamental opportunities for public reassurance and calibration of the operating landscape of the work of Funeral Directors in Scotland. In setting out provisions for the introduction of three independently appointed Inspectors for Cremation, Burial and Funeral Directors, Scottish Ministers set a direction for proportionate scrutiny and accountability in areas of work which are less well understood or visible to the wider public and consumers of these services.
2. The work of the Inspector of Crematoria has allowed greater understanding of operational practices in Scotland, improved practice in relation to infant cremation such that the recovery of ashes is consistently reported to National Committee for Burial and Cremation at 100% and a greater opportunity for sharing of good practice. In taking account of this excellent work, the focus for the programme of activity for the Inspector of Funeral Directors in this first eighteen months has initially been to gain an understanding of the granular operational activity across Scotland, to understand the nature and scale of the work, the business models and investment approaches, the culture and leadership within businesses, transformation programmes and the areas of good and less desirable practice. In addition, the Inspector has gained insight from wider stakeholder engagement, complaint investigation and responses to whistle-blowing reports.
3. It is also recognised that this has been a period of significant introspection for those working in this area, coupled with unprecedented external public and political scrutiny with business leaders and key stakeholders managing within an environment of considerable uncertainty. It is recognised also that collaborative and cross sectoral work to develop appropriate responses to funeral poverty and affordability challenges is on-going, service design for the devolved Social Security Funeral Expenses Assistance and formal reviews by the Competition and Markets Authority (CMA) and HM Treasury have been announced and are in the early stages of development, with a recent [interim report](#) from the CMA published on 29<sup>th</sup> November 2018.
4. These competing and often complimentary agendas necessitate a considerable and concerted response from the sector which should be recognised and acknowledged. In developing the approach to quality standards through the introduction of a statutory Code of Practice, a regulatory framework through inspection and enforcement, and dialogue as to the challenges, opportunities, risks and outcomes from a licensing framework, the consistency and quality of participation and engagement from the sector is to be commended.

## Assessment of current picture

5. Information held by the Scottish Government indicates that there are approximately 700 funeral director businesses and company branches in Scotland. There are a number of funeral director businesses that, in addition to their main business, operate one or multiple branches. Of the 700 businesses and company branches initial information indicates that there are approximately 450 individual funeral director businesses and approximately 250 funeral director branches. Large businesses, such as Co-operative Funeralcare and Dignity, operate the majority of these branches across Scotland. It is however recognised by many that the dynamics of the business network in Scotland is evolving more rapidly in the last few years more so than in the last twenty, reportedly due to the uncertainty of the future, and also with active expansion and acquisition programmes being evident.
6. It is expected that numbers of funerals in Scotland will increase from the approximately 57,000 base line and response to this demand and the changing face of customer expectations will determine the future and nature of the work. In addition, many Funeral Director businesses are considering the way in which they engage with the bereaved through pre and at need channels, such as on-line funeral booking tools and concerted marketing and media campaigns. This creates a new arena in which businesses are delivering their services, and has either the potential to improve customer choice empowering the bereaved to achieve a respectful funeral tailored to their requirements, or if done poorly creating confusion and consequential distress.
7. It is recognised that significant efforts are being made to ensure clarity of service descriptors, however it is the view of the Inspector that those efforts need to continue throughout this period of significant change to protect the public and to ensure customer choice is delivered without compromising quality and standards of service.

## Delivering quality standards

### Code of Practice

8. The existing programme of activity in the past 18 months encompasses development work and collaboration with the sector to define and calibrate a set of accepted, proportionate and applicable standards for operational practice for the work of Funeral Directors in delivering good quality funeral services. This is articulated in a refined working draft of the statutory Code of Practice for Funeral Directors as allowed for in section 97 of the primary legislation.
9. Contributions and position papers from a wide range of key stakeholders have helped inform and shape the Code of Practice. This includes the two main trade organisations the National Association of Funeral Directors ([NAFD](#)) and The National Society of Allied and Independent Funeral Directors ([SAIF](#)), and both independent and corporate representation. These contributions have aimed to ensure that the Code of Practice represents modern and good practice expectations for service in Scotland, befitting of the needs and expectations of customers and the communities they serve. A draft of the statutory Code will be subject to formal governmental consultation in the coming months, with the overall aim to produce a Code which is understood and readily applied by businesses in Scotland, thus delivering public reassurance of good standards of service, a fair and equitable trading environment and a platform for further consumer understanding of quality and service outcomes.

## **Inspection Regulations**

10. Sections 90-92 of the 2016 Act also set out provision for a regulatory framework through inspection and enforcement to be developed. This approach is a principal and underpinning tenet of many other regulatory regimes such as Health and Safety legislation, environmental compliance regulations and is one which is already familiar to those operating Funeral Director businesses in Scotland. Work is currently underway to collectively consider and determine the intended outcomes, what an appropriate interface should look like, how these functions would be discharged by an inspector or inspectors, frequency and nature of inspections, consequences and sanctions in both a public and non-public way.
11. In addition, and entirely legitimately, considerations of the need for transparency of decision making, consistency of approach and implementation, appeals and due process through suitable governance have been raised by representatives of the sector to ensure a proportionate and fair application of any inspection programme. It is anticipated that this work will continue into early 2019 through the Scottish Government Inspection Regulation Working Group, and will result in a defined process and governance arrangement such that the regulations made by Parliament will benefit from cross stakeholder buy in and ownership.
12. It is expected that these two key areas of delivery – the Code of Practice and Inspection Regulations – will provide an operating environment in Scotland where a defined set of quality standards will be applied and embedded with appropriate determination of compliance. As a result consumer confidence in those areas of service which are less accessible to them by nature of the work being provided, and emotional impacts of the customer interaction with the business, should be improved. There is a recognition amongst many of the key stakeholders and leaders within Scotland that these elements are appropriate in modern times, with the need to ensure intended outcomes are achieved, but that the increasingly understood expectation from the public being such that many believe that these checks and balances are already in place.

## **Trade associations and wider business**

13. It is also important to recognise the existing and on-going work from within parts of the sector to provide a basis of reassurance to the public, making use of well-defined and implemented internal compliance vehicles such as internal audits and trade body membership requirements and inspections. The work to develop independent channels of regulatory interaction by formal regulation, should therefore recognise and value these elements. In order to design an efficient and effective model each system should recognise the intended outcomes, limitations and benefits of the other. It is interesting to note and should be acknowledged that dialogue to this effect has been initiated with exploration of complaint management processes, delivery of inspection programmes and data sharing between trade bodies, the Government and the Inspector under active consideration. In addition, the focus and emphasis of the work of the trade organisations is being examined, such that in the future it could provide members with preparatory input in advance of an independent government inspection.

14. That being said, it is also recognised that the work of the sector is also represented by businesses who provide services to the bereaved who are not members of any recognised trade organisation, or who have engaged in any formal capacity with the government or Inspector. Whilst the work outlined in the [Inspector of Funeral Directors Annual Report](#) – published August 2018, sets out initial activity to better understand the profile of business activity in Scotland, this does not represent a definitive understanding of which businesses provide services to the bereaved.
15. Limitations of the current formal evidence base are clear at a time when there is a need to understand the activities, locations and business relationships which exist and there is lack of evidential clarity as to the level of competence and experience of the leaders, individuals and teams who provide support and care. That being said, it is not the view of the Inspector that this is a sector which is wholly or substantially non-compliant, findings from inspections and engagement activity demonstrates good and improving practice in many areas, along with some areas for improvement being identified. However, there is a clear requirement for an improved, legislatively based and dynamic understanding of the business and activity profile in Scotland. This will allow for an effective regulatory framework to be developed which enables an appropriately defined threshold for quality standards, a resource intelligent and risk based inspection and enforcement interface, and a public reassurance mechanism for matters of significant concern to be raised and addressed by improved practice.
16. The inspection and enforcement of a Code of Practice provisions set out in the Act allow for elements of these necessary outcomes to be delivered, but do not allow for a business to notify the Inspector or government as to their business activity or operational location. In order for accountability and calibration of standards through inspection and enforcement, a provision requiring, as a minimum, formal notification of business trading and operational activity is required. The full implementation of all provisions within the Burial and Cremation (Scotland) Act 2016, will allow for this notification process to be commenced.

## Customer Expectations

17. Recent evidence has been developed by a number of key businesses and stakeholders in the funeral sector to understand the expectations of the public and the bereaved in relation to the current controls and compliance measures. Dignity commissioned the report 'Time to talk about quality and standards', the Competition and Markets Authority issued the aforementioned 'Funerals market study: Interim report and consultation' and the NAFD has surveyed their members to help shape their policy direction with questions related to raising standards in the funeral industry (Annex A).
18. The participant responses in Dignity's commissioned report demonstrates an expectation from those who have accessed the services of a Funeral Director that there are already common standards of operational practice, and that businesses are subject to quality and standards regulation. In the piece of qualitative research published by Dignity, the realisation that this was not the case evoked a very strong reaction from participants in the survey group. This reaction is met by a strong desire from a number of stakeholders and businesses within Scotland who deliver these services to introduce a proportionate and appropriate form of regulation – "a level playing field for all".

## Engagement with Stakeholders

19. To ensure a fair and accurate understanding of the strategic approach and operational practice of the sector, and to aid understanding of the intended outcomes from a legislative perspective, significant resource and capacity on all sides has been focussed on ensuring open and transparent dialogue between the Inspector, Government and those working in funeral business or trade bodies. This has taken the form of formal deliberative processes, conference attendance and presentations, presentations to Executive meetings for trade organisations, Short Life Working Group participation and collaboration, and a variety of formal and informal meetings and discussions. The Inspector has also undertaken a series of Inspection visits over the course of the last 18 months to better understand the operational reality of funeral businesses in different parts of the country.
20. There has also been a number of focussed meetings in later months with the specific intent to engage with colleagues and practitioners as to the potential impacts, opportunities and challenges which the introduction of a licensing provision might produce.
21. Details of these formal sessions are set out for reference:
  - September 2018** - SAIF Charter Annual General Meeting/Golden Charter
  - October 2018** - meeting with the Chief Executive of National SAIF Terry Tennens, along with colleagues from the Executive of Scottish SAIF
  - October 2018** - NAFD Scottish Executive meeting (open to SAIF members) inaugural UK meeting for new Chief Executive Officer for NAFD
  - November 2018** - meeting with the newly incumbent Chief Executive of NAFD, Jon Levett and team at NAFD offices
  - November 2018** - Scottish SAIF Executive meeting (open to NAFD members)
  - November 2018** - Westminster Roundtable: 'Opportunities to improve funeral director standards for consumers'
22. Lengthy and informal meetings were also held in November 2018 with senior managers with two of the largest company providers in Scotland to understand existing controls, views and potential consequences of different licensing models to be recommended to Ministers. A further meeting was held with a medium sized Co-operative in December 2018 to discuss opportunities and challenges of a licensing provision being introduced. A further meeting with a larger established urban independent was also held in December 2018 to discuss regulation and licensing impacts. As the Inspector is cognisant of operational consequences of any recommendations, and the need for any implementation to be accommodated by services providers, these have been valuable opportunities to gain insight and to test thinking. The Inspector acknowledges and thanks all those who have participated in these sessions.

23. As a result of these discussions, it is clear that many stakeholders in the sector accept and support an additional mechanism for compliance and application of standards. Many accept that it is understandable and necessary for the Scottish Government and the Inspector to seek to better understand who is operating in Scotland and in order to inform an appropriate and proportionate risk based model for inspection and enforcement, that greater visibility and information on business activity is required.
24. Further, a position paper from one of the main trade organisations Scottish SAIF has been presented and is provided as an annex to this report for information and reference (Annex B). The aforementioned NAFD member survey (Annex A) seeks to understand members views on the introduction of a regulatory framework and the results from this will likely be used to determine a formal position by the newly appointed Chief Executive and its Board.
25. Mapping of controls and risks and a SWOT (Strength, Weakness, Opportunities and Threats) analysis helpfully informed discussions with colleagues from Co-operative Funeralcare as the practical application of a model of licensing was considered. In addition, details of corporate internal personnel control requirements with regard to 'fit and proper checks' were shared to inform thinking and to allow understanding of cost implications. Similarly, descriptions of impacts, risks and opportunities were provided by senior colleagues within Dignity, and interesting case studies explored as to the practical application and consequences of any model of checks and balances being introduced.
26. As the introduction of any licensing provision, if determined to be necessary by Scottish Ministers, would be subject to a super affirmative Parliamentary process, it is understood that a series of formal dialogue and political and public scrutiny would take place. Cognisant of that, the Inspector was however keen to form initial recommendations to be presented to Ministers which were based on a detailed understanding of strategic and operational consequences.

## **Regulation Considerations**

27. The Burial and Cremation (Scotland) Act 2016 relating to Funeral Directors in summary provides for the appointment of an Inspector, an inspection and enforcement framework, a specific statutory Code of Practice and for the introduction of a scheme of licensing. The need for a base level of information of who is providing services for the deceased and bereaved is of paramount importance, not only to allow for effective inspection and enforcement, but also to protect the public from possible risk and to ensure the fundamental principles of public health are maintained.
28. In thinking about the regulation of funeral business, a parallel can be drawn with the need for crematoria to adhere to environmental notification and compliance processes in advance of providing operational services to the public. This is discharged through the statutory relationships with the Scottish Environmental Protection Agency and the Inspector of Crematoria. There are also a number of similar parallels in the wider context of regulations and public experience – for example requirements that a letting agent or food business will register with, and be subject to inspection by, a local authority or government agency.



29. It is considered a reasonable expectation therefore for **businesses** who provide funeral services to engage with a provision which requires, as a minimum:
- a description of the legal business entity/ies,
  - leadership arrangements and identification of controlling parties,
  - location of premises and **activities** provided,
  - a description of who is involved in providing those services, for example setting out the composition and numbers of the team, or a description of the formal and informal business relationships used to deliver the range of services or aspects of journey of care, and
  - numbers of funerals delivered to the bereaved.
30. Information gained from this requirement would allow for a risk based inspection programme to be developed, an enforcement policy to be pursued where necessary and a basis for better overall engagement with the sector to ensure compliance and adherence with quality standards and good practice.
31. In determining whether this requirement is necessary and proportionate however, it is important to consider what the Act allows for in relation to the definition of a Funeral Director in this capacity, and whether this allows for a mechanism for this information to be sought. The view of the Inspector is that to understand fully the detail of the work of the sector and the extent of relationships and service activity, particularly at a time of significant change, it is necessary to design a minimum licensing requirement which allows not only the physical premises of the business to be licenced, but also the activity of the business to be accommodated within the definition and model. Clarification as to this definition is being sought by colleagues in the relevant Scottish Government team.
32. It is also understood that a number of businesses who have physical locations out-with Scotland in terms of head office or branches will still carry out activities of support for the bereaved or care of the deceased within a Scottish geographical context such as collection, care and transport. In the view of the Inspector it is appropriate for levels of care and quality standards to be consistent, irrespective of the choice of the business headquarters as to where they are physically located, and any activity carried out within Scotland must meet the standards expected within Scotland. The Scottish public would no doubt have the same expectation, and this should be satisfied through the design of the licensing model.
33. This view has been formed as a number of business models, which are in some cases more linear, and less reliant on traditional premises-based services operate in Scotland. In exploring other models of licensing, there are similar aspects of business and activities which have been considered elsewhere for example the Civic Government (Scotland) Act 1982, and subsequent Order allows for the licensing of tattooist in Scotland by Local Authorities. This Order provides a useful basis for consideration in this case as it allows for a range of flexible service models to be licensed. (For reference, see [Royal Environmental Health Institute of Scotland and Health Protection Scotland guidance](#)).
34. It is acknowledged that the introduction of a licensing requirement and the subsequent design of the requisite model is a significant step, and whilst this could afford Ministers greater understanding and accountability from the sector, it may also have consequential impacts on businesses already located in the communities of Scotland, providing services at a time of great need. It is therefore the view of the Inspector that the concerted and committed programme of engagement is continued as this approach is developed further.

35. This on-going engagement should also afford Ministers reassurance that any decision with this regard is taken from a fully informed perspective as to the potential opportunities and challenges. It is also acknowledged that there is rightly an active debate in Scotland around the costs of funerals for those who access them both pre and at need, and any determination with respect to the introduction of a licensing requirement will have a consequential cost implication. It is therefore an imperative of any engagement to ensure that this is consciously part of the discussion, and the recommendations of the Inspector take account of this consequence.
36. In order to assess whether a licensing provision should be recommended and to understand the possible benefits, consequences and risks and also responding to information provided by colleagues in the sector, an assessment of licensing provision in Scotland and other countries has been undertaken with a summary table of information provided here for reference (Annex C).

## Regulation and Licensing

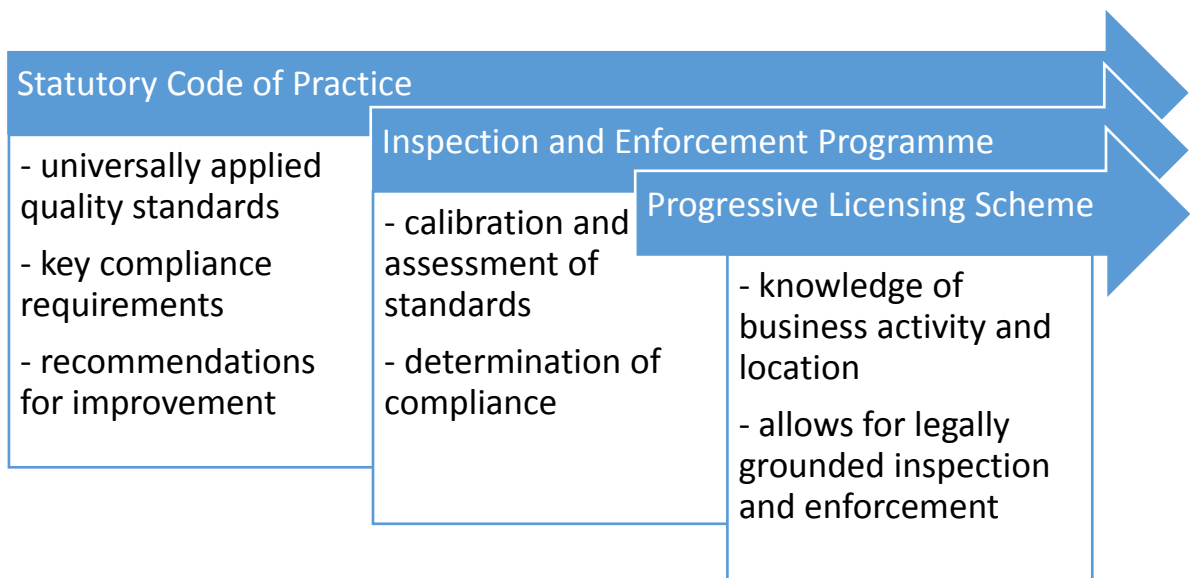
37. In order for the bereaved public to be reassured that those who provide funeral services are doing so to an agreed quality standard, that they have a channel to raise significant concerns and that there is appropriate oversight and accountability for these significant care and business responsibilities within communities throughout Scotland, it is the view of the Inspector that a national scheme of licensing for Funeral Directors should be introduced. As set out in paragraph 29 of this report, a baseline of information is required to fulfil these public expectations, coupled with other provisions contained within the primary Act such as a statutory Code of Practice and a programme of inspection and enforcement.
38. The relationship between the component parts of the legislation is critical to ensuring an appropriate and proportionate regulatory model is implemented. As such the remit for the Inspector to report on whether licensing provisions should be recommended by December 2018, being a significant lever for compliance, comes at the end of a period of exploration of the quality standards set out in the Code of Practice and dialogue on the Inspection interface.
39. In practice however, in order to design and implement an effective inspection and enforcement programme, it is the view of the Inspector that a legal provision of notification of business trading (including all locations) and activities being provided is required. As such, the Inspector has highlighted a programming and assimilation risk of the overall approach. In order to address this risk, it is proposed that the early introduction of a scheme of Progressive Licensing would allow for a minimum base level of information as described to be formally requested. A progressive licensing scheme allows for a phased regulatory intervention over a defined period, with the phasing allowing for sectoral support and business, individual and team understanding of expectations. As a consequence also therefore allowing the Inspectorate to design and implement a resource intelligent and cost effective risk based inspection model making the best use of all available resources within government, the sector and trade organisations. It would also allow any legally prescribed enforcement powers to be enacted as necessary, in the event of significantly poor practice being identified.

40. This business and activity Progressive Licensing scheme could be implemented alongside the introduction of a statutory Code of Practice for Funeral Directors and regulation to allow for inspection and enforcement under the principal Act. It is anticipated that these three compliance and legislative elements could be developed, consulted upon, designed and implemented in 2019-2020 thus establishing an equal and uniformly applied baseline of regulation.
41. It is therefore the view of the Inspector that this formal scheme of licensing as set out in the Burial and Cremation (Scotland) Act 2016 is required to ensure not only a detailed understanding of the business entities (including trading locations) and activities of funeral providers in Scotland, but also details of the individuals and companies who provide the service, particularly given the extent and significance of change in the sector.
42. It is recognised however that implementing a licensing scheme is a significant step and requires appropriate consideration of intended outcomes and impacts both in relation to service delivery but also cost. If this recommendation is accepted and approved by Ministers, that this would require a super affirmative Parliamentary process that also would provide an opportunity for further engagement and consultation. The formal scheme of Progressive Licensing would therefore build on and learn from existing models of licensing in Scotland, and would require formal knowledge of the business and activities of the Funeral Director as set out in section 94 of the Burial and Cremation (Scotland) Act 2016.
43. It is the view of the Inspector that Ministers may wish to consider a Licensing Authority set within the oversight, governance, controls and indemnity of the Scottish Government. Similar examples can be seen with that of the Fish Health Inspectorate and Marine Licensing whereby the Operations Teams within the relevant Scottish Government Directorate oversee the application, grant and management of all applicable licences within defined timescales. Consideration must also be given to Appeals and overall governance, with models elsewhere channelling appeals through the Sheriff Court system. Interestingly, a proposal to set up a Panel or Committee of peer experts to consider matters of professional competence or appeal has been provided by Scottish SAIF. Greater consideration of the benefits and risks of this model would be required, but this does demonstrate a continued desire from the sector to support successful outcomes for the bereaved in Scotland.
44. It is important to also consider the parameters and extent of any scheme of licensing, with respect to applicability and outcomes. As such an integral part of the formal scheme of licensing must be a provision for a business and activity based licence to be linked to a competent person who is the controlling and accountable party. For example in other models of licensing, a designated 'competent person' may be required to provide evidence of suitability of professional competence through proven experience or formally required qualifications, designated business management accountabilities, no criminal or corporate concerns e.g. disqualified Directors or convictions for dishonesty, fraud or crimes of a nature incompatible with these services.
45. It is further considered necessary that the competent person should ensure that all employees who work for them either through formal or flexible contractual arrangements are subject to a basic disclosure check, given their access to arguably vulnerable individuals in their homes, in relation to transaction of a monetary or very sensitive nature, such as taking a loved one into their care or being responsible for the personal effects of a deceased individual.

46. In order to inform the public and for the bereaved to make choices which are appropriate for them and their loved ones at a time often of significant distress, it is the view of the Inspector that consideration be given to setting up a publicly accessible register of licensed Funeral Directors. This would have a dual role in highlighting those legitimate businesses which were subject to formal and independent inspection and enforcement, but also could be a source to cross reference where services are being provided which are not licensed and are out-with regulatory parameters therefore allowing appropriate action to be taken.
47. As the work to calibrate operational practice for funeral services in Scotland is in its early stages, it is not considered appropriate at this time to recommend to Ministers to introduce a formal scheme of licensing for individual practitioners – in the first instance licensing should be of businesses and activities. It is rather felt that a period of implementation is required for the statutory Code of Practice, the inspection and enforcement programme and one cycle of the licensing scheme (for example a three year period). A subsequent evaluation of these three interventions should thereafter be made to inform further decisions to be made as to whether this further stage of individual licensing is necessary. In addition, this evaluation phase will allow for consideration of the impacts of the statutory Code of Practice and the outcomes from the inspection programme to be reviewed and whether any offences under section 96 of the Act have been proven.
48. This evaluation phase will also allow for detailed consideration as to whether aspects of the statutory Code of Practice need to be ‘harnessed’ to the scheme of licensing by way of a condition of licence. A clear example of where this might be helpful would be in relation to training, where currently it is intended that a threshold of competence is set out by way of a recommendation in the statutory Code of Practice to achieve a defined qualification.
49. As this is an area which would require significant investment from the sector to achieve and the development of a newly accredited supply chain, it is not considered appropriate to require this compliance at this stage through a licensing condition. However it is recognised that in the future, and in order to continue to reinforce the need for good operational practice, it may be appropriate and proportionate to create that licensing requirement. Similarly, an evaluation phase will allow a detailed review of inspection outcomes, enforcement requirements and where there is evidence of consistent or repeated poor practice, it may be possible to link these outcomes with the management of a licence through condition of grant.
50. It is recognised that the administration and management of a scheme of licensing is a quasi-judicial function with discretionary powers being afforded to the Licensing Authority, therefore it is imperative that as with other areas of regulatory compliance, a clear articulation of expectations and requirements is set out. This will necessitate internal service design processes being concluded, a clear line of accountability and governance being agreed, and robust, fair and transparent appeals mechanisms in place prior to the launch of any Progressive Licensing scheme.
51. As such it is helpful at this time to consider internal timescales and resources for implementation of a scheme of licensing. These considerations will then inform the ability to deliver a scheme which robustly meets the expectations of Ministers, if agreed through Parliament, but also for the public to be reassured that the impact on provision of funerals in Scotland will be minimised and for the sector to be comfortable that a fair and transparent process is available to them to ensure they fulfil their statutory obligations. The timescales and sequencing for the recommendations which are set out in this report are based on existing levels of internal and Inspectorate resources.

52. Summary models of the recommendations and scheme is set out below:

**PHASE 1 – Introduction of a Regulatory Model for Funeral Directors in Scotland  
Timeline for implementation of all three strands 2019-20**



**PHASE 2 – Integrated Regulatory Model including Progressive Licensing Scheme  
for Funeral Directors in Scotland  
Time line January 2021-onward**



53. As the initial phase of the model of regulation for Funeral Directors will take an anticipated two year period to implement up to 2020, this should allow for initiation, service design, governance and management structures to be developed and agreed for the internal governmental provision of a Licensing scheme. As this proposed model is based on a higher level of trust with those operating in the sector, this time will also concurrently allow a previously unregulated sector to orientate its activity to ensure on-going compliance and meeting the expectations of the Scottish Government and Inspector through compliance with the statutory Code, responses to the inspection programme and where appropriate trade body support.
54. Phasing the introduction of the licensing scheme under the Burial and Cremation (Scotland) Act 2016 will also allow for further intelligence gathering and lessons learned to be captured therefore informing and allowing for an intelligent and effective scheme to be introduced minimising the impacts on the bereaved of Scotland. It will also allow a period to determine appropriate levels of cost recovery, and further identification and analysis of the efficient use of collective resources.

## Recommendations

55. It is the view of the Inspector of Funeral Directors that Ministers should introduce and launch a scheme of Progressive Licensing for funeral directors in Scotland.
56. The licensing scheme should be introduced by legislative means set out in the Burial and Cremation (Scotland) Act 2016 by December 2020, to provide reassurance to the bereaved in Scotland and to ensure good standards of care for the deceased and support for the bereaved.
57. This scheme should be **business** (including all locations) and **activity** focussed initially, but Ministers may want to review the value of individual licenses, conditions of licence such as mandatory training requirements, in the future following an evaluation of the initial licensing scheme.
58. In taking forward work to implement a scheme of licensing, the Government and Inspector should continue to engage with the funeral sector to build on the good engagement that has occurred to date.

**Respectfully submitted by the Inspector of Funeral Directors, Natalie McKail,**

**December 2018**

## **Annexes**

**Annex A:** *'Shaping NAFD policy direction, for 2019 and beyond, in Scotland'* – a National Association of Funeral Directors internal survey of its members

**Annex B:** *'Position of Scottish SAIF on Registration/Licensing of the Funeral Sector in Scotland'*

**Annex C:** Summary table of licensing schemes

**Annex D:** Sections 94 and 95 of the Burial and Cremation (Scotland) Act 2016

## Annex A

Shaping NAFD policy direction, for 2019 and beyond, in Scotland: Question 1

<b>How far do you agree or disagree with the following statements?</b>	Strongly agree	Agree	No view or not applicable	Disagree	Strongly disagree
The NAFD should place more emphasis on its role as a standards body, with tougher penalties, more detailed standards and a higher bar for entry.	52.17%	26.09%	8.70%	4.35%	8.70%
I think all funeral directors should have to prove their fitness to practice, on a reasonably regular basis, through a recognised Continuous Professional Development method (qualification, training or verified experience).	56.52%	21.74%	4.35%	8.70%	8.70%
I would like to see all funeral directors individually licensed, subject to qualification and continuing professional development requirements.	52.17%	17.39%	4.35%	17.39%	8.70%
I think funeral firms should be licensed, but not individual funeral directors.	17.39%	26.09%	0.00%	21.74%	34.78%
The NAFD needs to become more of an advisory body, helping its members in Scotland meet the requirements of Government regulation.	30.43%	52.17%	8.70%	8.70%	0.00%



I think it is important that funeral firms are assessed by a combination of self-inspection, inspection by a trade body and inspection by a statutory body.	39.13%	39.13%	13.04%	8.70%	0.00%
Funeral firms should be required to be a member of a recognised trade body in future.	30.43%	39.13%	21.74%	0.00%	8.70%
I believe the funeral profession needs to evolve in order to keep pace with consumer and government expectations.	39.13%	52.17%	0.00%	8.70%	0.00%

Shaping NAFD policy direction, for 2019 and beyond, in Scotland: Question 2

<b>How far do you agree or disagree with the following statements?</b>	Strongly agree	Agree	No view or not applicable	Disagree	Strongly disagree
I believe that it is possible to break down all chargeable funeral services into a list of common descriptors that can be universally understood and can easily be priced and compared.	38.89%	33.33%	5.56%	11.11%	11.11%
I already offer easily accessible price lists on my website, via email and/or in branch windows that do not require someone to contact me first.	41.18%	5.88%	23.53%	29.41%	0.00%
I would be willing to move to easily accessible price lists on my website, via email and/or in branch windows	43.75%	18.75%	6.25%	18.75%	12.50%

that do not require someone to contact me first.					
A Simple (or other entry-level) Funeral package, as defined on the funeral-directory website, is universally understood and can be easily priced and compared.	27.78%	27.78%	0.00%	27.78%	16.67%
I am willing to provide additional services to a Simple (or other entry-level) funeral package for an incremental additional charge (i.e. viewing, dressing, church service prior etc) rather than moving to a full service funeral?	23.53%	23.53%	11.76%	11.76%	29.41%

Shaping NAFD policy direction, for 2019 and beyond, in Scotland: Question 3

<b>How many funerals does your business arrange each year?</b>	
Answer choices	Responses
Less than 250	52.94%
251-500	5.88%
500-1,000	23.53%
1,001-2,500	5.88%
2,501-5,000	5.88%
5,001-10,000	0.00%
10,001-20,000	0.00%
More than 20,000	5.88%

## Annex B

### Position of Scottish S A I F on Registration/ Licensing of the Funeral Sector in Scotland

The current work classification for a person engaged in providing a funeral service to the bereaved is an unskilled worker. This therefore allows any person with no knowledge or skills in caring for the emotional needs of the bereaved; caring for the deceased; H & S; and the laws concerning the legal disposal of a dead human body, to establish and describe themselves as a funeral director.

The public assume a person operating as a funeral director is trained and competent in the skills necessary to provide such a service and would be surprised and very concerned to know that this is not always the case.

This work classification, which allows for the current situation may have been acceptable many years ago where the services provided by an undertaker extended to no more than the supply of a coffin and transport to the local cemetery. The other requirements, laying out the deceased, opening the grave, the wake etc. were arranged and carried out by others.

Funeral director's additional services started to develop after the war and the last thirty years have seen an acceleration in the services and products provided. In addition, the individual has had to develop their skills and knowledge in many areas. Numeracy and literacy, knowledge of legal procedures, client care skills, presentation skills, H & S knowledge, management skills, complaints handling, interpersonal skills, administration and organisational skills are just some of those now attributed to the role of the funeral director. It is therefore clear that a competent funeral director is no longer an unskilled worker but a highly skilled and knowledgeable individual closer to the description of a professional. If such a work classification was attributed to the role the public would be assured their chosen funeral director was trained and competent to an established level.

Major milestones which may mark an occupation being identified as a profession include:

1. An occupation becomes a full-time occupation
2. The establishment of a training school
3. The establishment of a university school
4. the establishment of a local association
5. the establishment of a national association of professional ethics
6. the establishment of government licensing laws

A profession arises when any trade or occupation transforms itself through *"the development of formal qualifications based upon education, apprenticeship, and examinations, the emergence of regulatory bodies with powers to admit and discipline members, and some degree of monopoly rights."*

The funeral sector already meets the first five of the above milestones and all that may be required for the formation of the sector as a profession is the establishment of Government licensing laws.

It is therefore the position of Scottish SAIF that we support the introduction of a Government Registration and Licensing requirement for the funeral sector. We believe this will immediately stop the unregulated start-up by un-skilled, un-qualified and un-desirable entrants simply taking advantage of a vulnerable public. It will also ensure the people of Scotland have a properly regulated funeral sector providing a high level of professional service.

To achieve this, we would propose three types of Registration/License:

1. Company registration
2. Individual trainee/apprenticeship registration
3. Individual Professional Funeral Director Licence

It is not our intention to put punitive barriers or unachievable standards in the way of persons wishing to enter the funeral sector either as an employee or business owner. However, the current unregulated situation whereby just anyone can operate as a funeral director must be addressed.

The bereaved find themselves in a very vulnerable position following the death of a loved one. Whether through a lack of knowledge or understanding or simply through a need to do what they consider right by the deceased, wrong choices and decisions can be made which may have long term implications, not only financially but also emotionally. It is therefore important that they are guided by trained and qualified individuals who are also judged to be ethical and transparent in all their dealings. Only by efficient and effective Government regulation can the public be properly protected.

We have considered some of the conditions that may be applied to the above types of registration/licence and the management of any scheme and if required will be happy to explore these at our meeting.

## Annex C

### Summary Table of Licensing Schemes

Authority	Licence Types	Eligibility	Conditions	Renewal	Fees
Tattoo, Piercing and Electrolysis Licence (Scotland), Local Councils	Premises and individual	Application form and one-off registration fee	Individual licence required for every Local Authority operating in. Must comply with local byelaws. A premises may be inspected before licence issued	One year for first licence, thereafter, renewals are granted for one or three years (based on inspection outcomes)	Depends on Local Council and if the work is being carried out from the premises or at a one-off event
Marine Scotland Licensing	Marine Scotland Licensing Operations Team (MS-LOT) issues licences and consents for activities in Scottish inshore and offshore waters	No restrictions. MS-LOT ask applicants to read the explanatory notes and use the checklist provided in the application form	Licences issued within 14 weeks and Consents within 9 months. If made, objections can delay or prevent issue	Marine licences may be issued for a period to carry out the activity or project. This may be an annual licence, a defined period (e.g. 3 years) or the lifetime of a project	Costs of licence are based on activities and size and scale of the project
California Cemetery and Funeral Bureau	Premises and individual	18+, no relevant convictions (e.g. fraud), Associate Degree (equivalent to 1-2 years of a Scottish Bachelor's degree), licence	Each licenced business must have at least 1 licenced funeral director	Annually for individual licences	<ul style="list-style-type: none"> <li>Initial premises licence US\$400</li> <li>Individual application and examination US\$200</li> </ul>

		examination pass mark			<ul style="list-style-type: none"> <li>• Individual licence annual renewal US\$200</li> <li>• Late fee US\$100</li> </ul>
Kentucky Board of Embalmers and Funeral Directors	Establishment and individual. A Kentucky Courtesy Card or a Reciprocal Licence (a more comprehensive option) is available to any persons operating in Kentucky, but whose business is not based in Kentucky	18+, 'of good character', no relevant convictions, compliance with relevant statutes and regulations and meet qualifications requirements	Any persons embalming or funeral directing in Kentucky must be licenced by the Board.	Annually for both licences. Continuous Professional Development (CPD) required (12 hours over a 2 year period, 6 hours must be in classroom)	<ul style="list-style-type: none"> <li>• Apprenticeship registration US\$30/\$60 (separate licence for embalmers)</li> <li>• Individual licence US\$75/\$150</li> <li>• Establishment licence US\$150</li> <li>• Examination fee US\$75/\$150</li> <li>• Costs associated with CPD</li> <li>• Courtesy Card US\$100</li> <li>• Reciprocal Licence US\$125</li> </ul>
Bereavement Authority of Ontario	Business and personal licences (several classes of both)	18+, eligible to work in Canada, Funeral Service Education requirement: internship competencies, licensing examinations	Different classes allows different activities (e.g. embalming, sales on behalf of the establishment, etc.)	Annually for personal and business licences. 4+ hours of CPD required annually.	<ul style="list-style-type: none"> <li>• Internship registration CA\$75</li> <li>• Individual licence CA\$250 (CA\$200 to annually renew)</li> <li>• Business licence CA\$500+\$250 (+ HST) for</li> </ul>

					<p>Compensation Fund</p> <ul style="list-style-type: none"> <li>• CA\$200+\$16 x every death registered per annum to renew</li> <li>• Examination fee (up to CA\$500)</li> </ul>
Texas Funeral Service Commission	Establishment and individual	18+, GED pass, graduate of an accredited school/college of mortuary science, passed provisional licensing programme and National Board Exams, and Mortuary Law Exam, FBI Background check	Designated Funeral Director in Charge (FDIC) required by all establishments. The FDIC is responsible for compliance	Annually for both licences. 16 hours of CPD required	<ul style="list-style-type: none"> <li>• Establishment licence US\$462</li> <li>• Provisional individual licence US\$95-\$190</li> <li>• Full individual licence US\$95-\$190</li> <li>• Annual individual licence renewal fee US\$197-\$332</li> <li>• Costs associated with CPD</li> </ul>

## Annex D

### Burial and Cremation (Scotland) Act 2016: Sections 94 and 95

#### Section 94 Funeral directors' businesses: licensing

- (1) The Scottish Ministers may make a scheme for the licensing of funeral directors' businesses.
- (2) 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.
- (3) Where a person carries on more than one business as a funeral director, the person must hold a separate licence in respect of each such business.

Further, Minister in invoking a scheme to be introduced shall consider the following aspects of the scheme as set out in section 95 of the principal 2016 Act.

#### Section 95 Licensing scheme: regulations

(1) The Scottish Ministers may by regulations make provision for or in connection with a scheme mentioned in section 94(1).

(2) Regulations under subsection (1) may in particular—

- (a) specify who is to administer the scheme (in this section, the “licensing authority”),
  - (b) make provision about applications for licences under the scheme,
  - (c) specify the form and content of applications,
  - (d) make provision about the procedure to be followed in relation to applications,
  - (e) make provision about documents to be submitted with applications,
  - (f) require persons making applications to provide the licensing authority with any further information in connection with the application that the authority considers necessary,
  - (g) enable the licensing authority—
    - (i) to grant an application,
    - (ii) to refuse an application, or
    - (iii) to grant an application subject to any conditions the authority considers appropriate,
  - (h) specify the circumstances in which the licensing authority may or must—
    - (i) grant an application,
    - (ii) refuse an application, or
    - (iii) grant an application subject to such conditions as may be specified in the regulations,
  - (i) make provision for timescales applicable in relation to applications,
  - (j) make provision for the duration and expiry of licences under the scheme,
  - (k) make provision about applications to renew licences, including provision to the same effect as that which may be made under paragraphs (c) to (i) in respect of applications for licences,
- (l) make provision in relation to—
- (i) suspension and revocation of licences, and
  - (ii) the circumstances in which the licensing authority may suspend or revoke licences,



- (m) in relation to a person whose application for, or for renewal of, a licence has been refused, or whose licence has been suspended or revoked, make provision for the timescales applicable to any further such applications by the person,
- (n) make provision for appeals against—
  - (i) decisions of the licensing authority to grant an application for, or for renewal of, a licence,
  - (ii) decisions of the licensing authority to refuse such applications,
  - (iii) any conditions subject to which such applications are granted, or
- (iv) decisions to suspend or revoke licences,
- (o) make provision for the period within which such appeals are to be made, or
- (p) make provision in relation to fees for applications for, and for renewal of, licences.



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