Draft Regulations laid before the Scottish Parliament under section 106(2) of the Burial and Cremation (Scotland) Act 2016, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2025 No.

BURIAL

CREMATION

The Burial and Cremation (Inspection) (Scotland) Regulations 2025

Made - - - -	*2025*
Coming into force - -	*1st March 2025*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 90(1) of the Burial and Cremation (Scotland) Act 2016(**a**) and all other powers enabling them to do so.

In accordance with section 104(5) of that Act they have consulted with burial authorities, cremation authorities, such persons which appear to them to be representative of the interests of funeral directors in Scotland, and with such other persons as they consider appropriate.

In accordance with section 106(2) of that Act, a draft of this instrument had been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Burial and Cremation (Inspection) (Scotland) Regulations 2025 and come into force on 1 March 2025.

Interpretation

2. In these Regulations—

"the Act" means the Burial and Cremation (Scotland) Act 2016,

"enforcement notice" has the meaning given by regulation 7,

"inspection report" has the meaning given by regulation 6,

"premises" means any premises associated with the carrying out of any function of a relevant body,

"relevant body" means a burial authority, a cremation authority or a funeral director,

"relevant provision" means any provision of relevant legislation and requirements,

(**a**) 2016 asp 20.

"relevant legislation and requirements" has the meaning given by regulation 3.

Meaning of relevant legislation and requirements

3. In these Regulations, "relevant legislation and requirements" means the Act, and—

(a) the Cremation (Scotland) Regulations 2019(**a**),

(b) the Funeral Director Code of Practice 2024(**b**),

(c) the Burial (Applications and Register) (Scotland) Regulations 2024(**c**), and

(d) the Burial (Management) (Scotland) Regulations 2025(**d**).

Inspection Register

4.—(1) The Scottish Ministers may establish and maintain a register of relevant bodies (the "inspection register") containing the information in paragraph (2).

(2) The information is—

(a) the name (including any trading name) of the relevant body,

(b) the address of the registered or principal office of the relevant body and of each premises of the relevant body, and

(c) information relating to inspection reports, enforcement notices and complaints made to inspectors about relevant bodies.

(3) The Scottish Ministers may publish the inspection register or any information contained in the inspection register that they consider appropriate.

Inspections

5.—(1) An inspector may inspect a relevant body and its premises where they consider it appropriate to do so.

(2) The Scottish Ministers may require the inspection of a relevant body and its premises.

(3) An inspector must carry out the inspection required under paragraph (2) in accordance with any instructions provided by the Scottish Ministers.

Inspection reports

6.—(1) Where an inspection under regulation 5(1) or (2) has been completed, an inspector must as soon as practicable following its completion—

(a) prepare a report on the matters inspected (an "inspection report"), and

(b) send a copy of the inspection report to—

(i) the relevant body, and

(ii) the Scottish Ministers.

(2) An inspection report must include—

(a) the date and time of the inspection,

(b) the address of any premises inspected, and

(c) the inspector's findings on the matters inspected, including any failure to comply with any relevant provision applicable to the relevant body.

(**a**) S.S.I. 2019/36.
(**b**) A draft of the Funeral Director Code of Practice was approved by the Scottish Parliament on 31 January 2024 and is due to be issued by the Scottish Government on 1 March 2025 in accordance with section 97 of the Act.
(**c**) S.S.I. 2024/334.
(**d**) S.S.I. 2025/XXX.

(3) Before finalising an inspection report the inspector must give the relevant body the opportunity to comment on a draft of the report.

(4) The Scottish Ministers may publish an inspection report or such information contained in an inspection report as they consider appropriate.

Enforcement notices

7.—(1) An inspector may serve a notice on a relevant body where an inspector is of the opinion that the relevant body is failing to comply with any relevant provision applicable to that relevant body (an "enforcement notice").

(2) An enforcement notice must include—

(a) the reasons that the inspector is of the opinion that a relevant body is failing to comply with the relevant provision,

(b) details of the action (which may be to stop an action) the inspector considers should be taken by the relevant body to remedy any failure to comply with the relevant provision,

(c) any period within which the non-compliance must be remedied (the "compliance period"),

(d) information on the right to appeal against the decision to serve an enforcement notice,

(e) information on the consequences of failing to comply with an enforcement notice.

(3) An enforcement notice may specify different compliance periods for remedying non-compliance with different relevant provisions.

(4) A copy of any enforcement notice served under paragraph (1) must be sent by an inspector to the Scottish Ministers as soon as reasonably practicable.

(5) The Scottish Ministers may publish an enforcement notice or such information relating to an enforcement notice as they consider appropriate.

Enforcement notices: variation

8.—(1) A relevant body may make a request to an inspector to vary an enforcement notice.

(2) An inspector, whether or not a request has been made under paragraph (1), may at any time vary an enforcement notice where an inspector considers it appropriate to do so.

(3) Where an inspector decides to vary an enforcement notice the inspector must as soon as reasonably practicable—

(a) serve a copy of the varied enforcement notice on the relevant body, and

(b) send a copy of the varied enforcement notice to the Scottish Ministers.

(4) Where an inspector has varied an enforcement notice regulation 7(2), (3) and (5) applies in respect of the varied enforcement notice as it applies to an enforcement notice.

(5) Where a request has been made under paragraph (1), and the inspector decides not to vary an enforcement notice, the inspector must as soon as practicable notify the relevant body of the reasons for that decision and of the right of the relevant body to appeal to the Scottish Ministers.

Enforcement notices: revocation

9.—(1) A relevant body may make a request to an inspector to revoke an enforcement notice.

(2) An inspector, whether or not a request has been made under paragraph (1), if satisfied that the non-compliance detailed in an enforcement notice has been remedied or is otherwise satisfied that an enforcement notice is no longer required, must revoke the enforcement notice and as soon as practicable—

(a) send notification to the relevant body of the revocation (a "revocation notice"), and

(b) send a copy of the revocation notice to the Scottish Ministers.

(3) A revocation notice must—

(a) identify the enforcement notice which has been revoked, and

(b) state the date of revocation.

(4) The Scottish Ministers may publish a revocation notice or such information relating to a revocation notice as they consider appropriate.

(5) Where a request has been made under paragraph (1) and the inspector decides not to issue a revocation notice the inspector must as soon as practicable notify the relevant body of the reasons for that decision and of the right of the relevant body to appeal to the Scottish Ministers.

Appeal to the Scottish Ministers

10.—(1) A relevant body on which an enforcement notice has been served may appeal to the Scottish Ministers against a decision of an inspector—

(a) to serve an enforcement notice under regulation 7(1),

(b) to vary, or refuse to vary, an enforcement notice under regulation 8, or

(c) to refuse to revoke an enforcement notice under regulation 9.

(2) An appeal must be made before the end of the period of 21 days beginning with the day after—

(a) the date of service of the enforcement notice,

(b) the date of service of the varied enforcement notice, or

(c) the date of notification under regulation 8(5) or 9(5) as applicable.

(3) The Scottish Ministers may, on the request of the relevant body, extend the period in paragraph (2).

(4) An appeal must include details of the decision and the enforcement notice to which the decision being appealed relates and may include such other information or representations which the relevant body wishes to provide or make.

(5) The Scottish Ministers must, as soon as reasonably practicable after receiving an appeal, send a copy of the appeal and any information or representations provided or made by the relevant body to the inspector who made the decision, or, where that is not practicable, such other inspector as the Scottish Ministers consider appropriate.

(6) The inspector must, as soon as practicable following a request from the Scottish Ministers, provide the Scottish Ministers with—

(a) a copy of the notification sent under regulation 8(5) or 9(5),

(b) any relevant inspection reports,

(c) any information or documentation which the Scottish Ministers consider may be relevant to the appeal,

(d) any additional information or representations which the inspector considers relevant to the appeal.

(7) The Scottish Ministers must provide the relevant body with the opportunity to comment on any information, documentation or representations provided or made by the inspector under paragraph (6)(c) or (d).

(8) The Scottish Ministers may appoint a person to consider the information, documentation, representations and comments referred in paragraphs (4), (6) and (7) and to provide a report to the Scottish Ministers.

(9) If the relevant body requests, the Scottish Ministers must provide a copy of the report provided under paragraph (8).

(10) The Scottish Ministers may, on deciding the appeal—

(a) uphold the decision, or

(b) quash the decision.

(11) In upholding a decision under paragraph (10), the Scottish Ministers may confirm or vary the enforcement notice to which the decision being appealed relates as the Scottish Ministers think fit.

(12) In quashing a decision under paragraph (10), the Scottish Ministers may—

(a) confirm or vary the enforcement notice to which the decision being appealed relates as the Scottish Ministers think fit,

(b) revoke the enforcement notice to which the decision being appealed relates with effect from the date of the decision.

(13) Where the Scottish Ministers decide under paragraph (10) to vary an enforcement notice regulation 7(2), (3) and (5) applies in respect of the varied enforcement notice issued by the Scottish Ministers as it applies to an enforcement notice issued by an inspector.

(14) Where a decision is made under paragraph (10), the Scottish Ministers must as soon as practicable—

(a) notify the relevant body of the decision and the reasons for that decision,

(b) provide information on the right of the relevant body to appeal against the decision,

(c) provide information on the consequences of the relevant body failing to comply with the decision,

(d) where relevant, serve any varied enforcement notice on the relevant body,

(e) where relevant, notify the relevant body of the revocation of the enforcement notice, and

(f) send to the inspector—

(i) a copy of the decision and the reasons sent under sub paragraph (a), and

(ii) a copy of any notice served under sub paragraph (d) or (e).

Appeal to the sheriff

11.—(1) A relevant body may appeal to the sheriff against a decision of the Scottish Ministers made under regulation 10(10).

(2) An appeal under this regulation—

(a) may be on a point of fact or law, and

(b) must be made by application to the sheriff before the end of the period of 21 days beginning with the day after the day on which the decision appealed against was notified to the relevant body.

(3) An enforcement notice is not suspended pending an appeal under this regulation unless the sheriff orders otherwise.

(4) On an appeal under this regulation, the sheriff may—

(a) uphold the decision,

(b) uphold the decision and require such other action be taken by the relevant body in relation to the non-compliance detailed in the enforcement notice as the sheriff thinks fit, or

(c) quash the decision.

(5) In upholding or quashing a decision under paragraph (4), the sheriff may—

(a) confirm or vary the enforcement notice to which the decision being appealed relates as the sheriff thinks fit,

(b) revoke the enforcement notice to which the decision being appealed relates with effect from the date of the decision.

Enforcement Notices: further action

12. An inspector may request that the Scottish Ministers consider making an application to the court for an order requiring a relevant body to comply with an enforcement notice where—

(a) the inspector is satisfied that any non-compliance detailed in an enforcement notice has not been remedied, and

(b) the relevant compliance period has lapsed.

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision regarding the carrying out of inspections of burial authorities, cremation authorities and funeral directors ("the relevant bodies") and their associated premises by inspectors appointed under Part 4 (inspection) of the Burial and Cremation (Scotland) Act 2016 ("the 2016 Act"). The Regulations also make provision in relation to the enforcement of the duties on the relevant bodies specified in regulation 3.

Regulation 4 makes provision for the Scottish Ministers to prepare and maintain a register of relevant bodies and information about inspections and any enforcement action with the power to publish information contained in the register.

Regulations 5 and 6 make provision about the carrying out of inspections and the reporting of inspection findings. Regulation 5 allows inspectors to carry out an inspection when they consider it appropriate and requires an inspection to be carried out at the request of the Scottish Ministers. Regulation 6 makes provision regarding the content of each inspection report and the process for its finalisation and allows the Scottish Ministers to publish the report or information contained in the report.

Regulations 7, 8 and 9 make provision for enforcement notices including the content, service and publication (regulation 7), the circumstances in which they may be varied (regulation 8) and revocation (regulation 9).

The Regulations make provision for appeals to the Scottish Ministers against decisions of inspectors relating to enforcement notices (regulation 10) and appeals to the sheriff against decisions made by the Scottish Ministers (regulation 11).

Regulation 12 makes provision for inspectors to make a request that the Scottish Ministers consider an application to the court for an order to enforce compliance with an enforcement notice.

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