POLICY NOTE

THE BURIAL AND CREMATION (INSPECTION) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 90(1) of the Burial and Cremation (Scotland) Act 2016 (the "2016 Act") and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

This instrument introduces a framework for the implementation of a statutory inspection regime for burial authorities, cremation authorities and funeral directors ("relevant bodies") in Scotland. The Regulations provide powers of inspection and enforcement. Relevant bodies will be held to account for compliance, through statutory inspection, with statutory requirements and standards which are set out in the legislation and Code of Practice specified in the instrument.

The regime will provide for Inspectors to undertake inspections to ensure compliance with the relevant legislation and requirements and will incorporate a range of functions:

- providing a report of the inspection findings,
- identifying action required to remedy compliance failings and setting reasonable timescales for doing so,
- initiating enforcement action when necessary.

In addition, there will be an appeals process for relevant bodies should they disagree with any enforcement action taken by an Inspector.

The Scottish Ministers will also have the power to prepare, maintain and publish a register of known burial authorities, cremation authorities and funeral directors (including a list of their premises) which are subject to inspection. The Scottish Ministers will have the power to make inspection reports and enforcement action publicly available to promote ongoing improvements in standards and to increase the confidence that the public can have in the sector.

The overall intention, therefore, is for this instrument to provide for inspection, enforcement and appeals in the funeral sector.

Policy Objectives

Background

The 2016 Act provides a comprehensive legislative framework for burial, cremation, and funeral arrangements in Scotland, and provides Scottish Ministers with the power to establish an inspection regime. Many of the 2016 Act's provisions are rooted in recommendations made by the Burial and Cremation Review Group (2007), the Infant Cremation Commission (2014) and the National Cremation Investigation (2016).

An inspection regime will be underpinned by a number of instruments that provide detail on the minimum standards expected of burial and cremation authorities, as well as funeral

directors. The Cremation (Scotland) Regulations 2019 have been in force since 2019, and the Funeral Director Code of Practice (approved by Parliament in January 2024) is expected to come into effect in March 2025. In addition, the Burial (Applications and Register) (Scotland) Regulations 2024 and the Burial (Management) (Scotland) Regulations 2025 will provide further detail on the policies and procedures for burial.

Finally, the 2016 Act also provides powers for Scottish Ministers to develop and issue statutory codes of practice for burial authorities and funeral directors.

Rationale for an inspection regime

The laying of these draft inspection regulations progresses the phased introduction of the regulation of the funeral sector under the 2016 Act.

An inspection regime which holds relevant bodies to account for compliance, through statutory inspection, seeks to improve standards within the funeral sector in Scotland. Doing so will provide clarity for relevant bodies and allow enforcement by Inspectors where non-compliance occurs.

An additional consequence of the implementation of an inspection regime is to provide information to the public in Scotland about the standards of care of the deceased which is intended to increase the credibility of, and confidence in, Scotland's funeral sector.

This instrument sets out various powers and duties of Inspectors when carrying out their functions, as well as setting out the wider framework for the inspection of burial authorities, cremation authorities and funeral directors operating in Scotland. The instrument includes the requirements against which these relevant bodies will be inspected as well as the rights and responsibilities of relevant bodies in relation to inspections.

The Regulations will allow formal, independent inspections to take place of burial grounds and burial authorities; crematoriums and cremation authorities; and funeral directors in Scotland.

It is the Scottish Ministers' intention to bring the inspection regulations into force at the same time as the approved Funeral Director Code of Practice in March 2025, in order to provide a statutory inspection regime which empowers Inspectors to undertake the inspection of relevant bodies.

<u>Inspection register</u>

Regulation 4 makes provision for the Scottish Ministers to prepare and maintain a register of relevant bodies, along with providing a power to publish information contained in the register. At present there is no universal list of burial authorities, cremation authorities and funeral directors operating in Scotland. Developing a comprehensive system of inspections for the whole sector will therefore be aided by the creation of an inspection register so.

If the Scottish Ministers decide to publish make information from the register, this would , as information is collected over time, develop to provide a single platform for the public to access information about the location and compliance of relevant bodies in Scotland, and whether they have been found to be non-compliant with relevant regulations or Codes of Practice. It will also help Inspectors to plan their inspections.

The information which the Scottish Ministers may include in the register is:

- the name (including any trading name) of each relevant body,
- the address of the registered or principal office including each premise relating to that relevant body, and
- information relating to inspection reports, enforcement notices and complaints made to Inspectors about relevant bodies.

Inspectors and inspections

The Scottish Government recognises that burial authorities, cremation authorities and funeral director businesses in Scotland provide important, high-quality services to the bereaved. We are aware, however, that poor practices are sometimes carried out by a small minority. The purpose of an inspection is to ensure that a relevant body is delivering services in line with the law, and/or an agreed set of standards. The Scottish Government, through these Regulations, aims to introduce a proportionate, risk-based, inspection regime.

Section 89 of the 2016 Act contains a power for the Scottish Ministers to appoint Inspectors to:

- Carry out inspections of burial grounds and burial authorities
- Carry out inspections of crematoriums and cremation authorities
- Carry out inspections of funeral directors

The Regulations provide for Inspectors to undertake these inspections and report findings on how relevant bodies are complying against relevant legislation and requirements set out in regulation 3 of the instrument.
The Scottish Government recognises the need to be respectful of bereaved people when undertaking inspections, and Inspectors will receive guidance and appropriate training.

Inspection reports

Inspectors will have a duty to produce a written report after each inspection. Each report should set out the Inspector's findings from the visit, including identification of any failures by the relevant body to comply with the statutory requirements set out in regulation 3.

The report will set out the action required to remedy such failings and, where necessary, will set reasonable timescales for doing so.

Each draft inspection report will be sent to the relevant body, which will have an opportunity to respond on the content of the report before it is finalised by the Inspector.

Regulation 6 provides the Scottish Ministers with powers to publish any detail contained in an inspection report as they consider appropriate. Where Scottish Ministers choose to make detail public, it is considered that this will increase transparency and support members of the public to make informed choices around service provision.

Enforcement Notices

Enforcement Notices may be issued where an Inspector has undertaken an inspection, has found failings with the statutory requirements, and has issued an Inspection Report.

An enforcement notice should specify the following:

- the reasons the Inspector is of the opinion that a relevant body is failing to comply with the statutory requirements
- the actions (which may be to stop an action) that the relevant body must take to remedy the failure
- the period in which relevant bodies are to attaining compliance, as set by the Inspectors
- the consequences of not complying with the enforcement notice

When issuing an Enforcement Notice the Inspector will also send a copy of the notice to the Scottish Ministers for their information. It is anticipated that the Scottish Ministers will exercise their powers to attach a copy of the notice to the Inspection Register, which may include making the enforcement notice available to the public in order to maintain transparency.

Inspectors will also have powers to vary or revoke enforcement notices depending on the circumstances. This flexibility allows for Inspectors to recognise where compliance has been subsequently achieved against the issues detailed in the Enforcement Notice.

When serving an Enforcement Notice, Inspectors will also provide the relevant body with information on the consequences of failing to comply with its terms. Should an Inspector consider that an enforcement notice has not been complied with, and the relevant compliance period has lapsed, then regulation 12 allows for an Inspector to request that the Scottish Ministers consider making an application to the court for an order requiring the relevant body to comply.

Appeals

Setting out a robust appeals process for relevant bodies to follow if they disagree with any enforcement action taken by an Inspector is crucial to the integrity of the whole inspection process and to the enforcement decisions of Inspectors. These Regulations therefore provide that there is a right of appeal against a decision made by an Inspector in relation to an enforcement notice.

Introducing the right of appeal strikes a balance in the process between ensuring that relevant bodies have a mechanism for challenging enforcement decisions that impact their service or business, while not undermining the ability of Inspectors to carry out their functions. Where a relevant body considers that it is appropriate to challenge an Inspector's decision in relation to an enforcement notice, they are able to appeal to the Scottish Ministers and make representations about the decision. An appeal must be made within 21 days from the date the enforcement notice is served, varied, or a decision is made not to vary or revoke it. In addition, Scottish Ministers have the ability to extend the 21 day limit for receipt of an appeal at the request of the relevant body.

It will then be for the Scottish Ministers to consider the matter which will include obtaining the views of both the relevant body and the Inspector before taking a decision. The Scottish Ministers may decide the appeal by confirming, amending, or revoking the enforcement notice.

Scottish Ministers have the ability to appoint a person to consider the information, documents, representations and comments provided in the course of an appeal and to provide the Scottish Ministers with a report with that person's views. The relevant body is entitled to request a copy of that report.

Relevant bodies will also have the right to appeal any appeal decision made by the Scottish Ministers to the sheriff court on an issue of either fact or law. This right of appeal must be exercised by a relevant body within 21 days of the decision made by the Scottish Ministers.

A sheriff may decide to uphold the decision of the Scottish Ministers, to request that further action is taken by the relevant body regarding the compliance detailed in the enforcement notice as the sheriff thinks fit, or to quash the decision made by the Scottish Ministers.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Burial and Cremation (Inspection) (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The content of this SSI has been subject to consultation and engagement with external stakeholders. Two public consultations have been undertaken in relation to the substantive content of these regulations. An initial consultation was held in 2017. In 2023, a consultation set out detailed proposals for the intended inspection regime. In-depth discussions with representatives across the funeral sector about the proposals have also taken place as part of the Inspection Regulations Working Group.

The 32 responses received to the 2023 consultation have been published.[i]

Overall, there was support for the proposals which have been included in these Regulations for the inspection regime.

In addition to the public consultations, officials have had a number of meetings of the Inspection Regulations Working Group to discuss the policy proposals underpinning the content of this instrument. Doing so allowed the Group to contribute to the development of the Regulations and to raise any concerns with officials before responding to public consultations. The input from the Group has been invaluable and this was demonstrated by the positive responses received to the consultations.

It should be noted that not all policies which were consulted on are being implemented at this time under these Regulations. The Scottish Government is taking a stepped approach to implementation of the 2016 Act and are seeking to allow the changes being implemented

within the funeral sector to bed in gradually. Work is continuing to progress towards full implementation of the 2016 Act.

Impact Assessments
The Scottish Government has considered a series of impact assessments related to these regulations and concluded that the only sector which required a full assessment was a BRIA.

Equality Impact Assessment – the Scottish Government is satisfied that there is no clear indication that the proposed regulations are likely to have major impacts on groups with protected characteristics. No changes to the regulations have therefore been required as a result of the equality impact assessment.

Fairer Scotland Duty- The Scottish Government is satisfied a full assessment is not required. An initial screening assessment concluded that these inspection regulations do not introduce any differential socio-economic disadvantages or exacerbate negative outcomes in relation to this duty.

Child Rights and Wellbeing - A **CRWIA** has been carried out and is provided with this instrument. The Scottish Government has concluded the Regulations do not make specific provision with regard to children; they do not impact directly on children, nor do they have any differential impact on children, direct or indirect. It is considered therefore that the overall impact of the Regulations on children's rights is neutral.

Islands Communities – After an initial screening assessment, the Scottish Government is satisfied that the effect of the inspection regulations is not anticipated to result in a disadvantage for an island community compared to the mainland or compared to another island group(s). A full assessment has therefore not been required.

Strategic Environment Assessment – After an initial screening impact, the Scottish Government is satisfied that no direct effects are anticipated. There may be minimal indirect effects relating to travel undertaken by Inspections, but it is intended that this can be mitigated with planning and use of public transport where possible.

Financial Effects
A Business and Regulatory Impact Assessment has been completed and is provided with this instrument. The Scottish Government believes that the impact of this policy on business will be moderate and that impacts may be experienced by a minority of funeral directors, however these are mitigated by positive impacts to public health and wellbeing.

Scottish Government
Directorate for Population Health
November 2024

[i] https://www.gov.scot/publications/scottish-governments-consultation-burial-authorities-cremation-authorities-funeral