

Draft Funeral Director Code of Practice

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Introduction

1. The Funeral Director Code of Practice ('the Code') applies to all funeral directors carrying out the functions of a funeral director in Scotland regardless of where their business is based.
2. The Code has been informed by the knowledge and expertise of members of the funeral profession and is guided by principles of responsible practice. The desired outcome from implementing the Code is that every person in Scotland will have a dignified and respectful funeral and bereaved families can be reassured that good standards of care will be provided.
3. The Code requires funeral directors to adhere to minimum standards in their care of the deceased which will assist in providing transparency in the goods and services offered to the bereaved.

Definition of a funeral director

4. For the purposes of the Code, a funeral director is defined as:
'A person whose business consists of or includes the arrangement and conduct of funerals.'
5. This is the definition given to 'funeral director' in the Burial and Cremation (Scotland) Act 2016 (['2016 Act'](#)) (see section 107 of that Act).

Legal basis and issuing of the Code

6. The 2016 Act was passed by the Scottish Parliament in March 2016 and provides the statutory framework to issue the Code and to appoint Inspectors of Burial, Cremation and Funeral Directors.
7. Section 97 of the 2016 Act states:

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| <ol style="list-style-type: none">(1) A funeral director must comply with any code of practice issued by the Scottish Ministers about the carrying out of a funeral director's functions (a "funeral director's code").(2) Before issuing any funeral director's code, the Scottish Ministers must consult –<ol style="list-style-type: none">(a) persons appearing to the Scottish Ministers to be representative of the interests of funeral directors in Scotland, and(b) other persons appearing to the Scottish Ministers to have an interest.(3) After taking account of any representations received by them by virtue of subsection (2), the Scottish Ministers must lay a draft of the funeral director's code before the Scottish Parliament.(4) The Scottish Ministers may not issue a funeral director's code unless a draft of the code is approved by resolution of the Scottish Parliament.(5) The Scottish Ministers must publish a funeral director's code in such a manner as they consider appropriate.(6) The Scottish Ministers must keep under review a funeral director's code.(7) In this section, references to a funeral director's code include references to a funeral director's code as revised from time to time by the Scottish Ministers. |
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Outcomes

8. The Code aims to achieve the following outcomes:
 - Ensure minimum standards of care of the deceased.
 - Establish and promote a common understanding of good practice in relation to care of the deceased.
 - By doing so it will also help increase transparency of choice of goods and services to help people in Scotland to make informed decisions.

Accountability and compliance

9. The Code applies to all funeral directors carrying out the functions of a funeral director in Scotland regardless of where their business is based.
10. The Code does not negate the responsibility of the funeral director to adhere to and take account of other legislation and guidance. It is the responsibility of each funeral director to ensure that they are operating in accordance with all relevant legislation.
11. Inspectors will carry out inspections against the requirements set out in the Code. They will also investigate and address serious or significant complaints. Inspectors must not be obstructed or prevented from speaking to any staff member(s) during an inspection. Inspectors' enforcement and compliance functions and powers will be set out in regulations made by the Scottish Ministers under section 90 of the 2016 Act.
12. The Scottish Government and inspectors will work collaboratively with funeral directors in the administration of the Code. The Scottish Government will periodically review the Code in consultation with inspectors and funeral directors as well as the representative trade associations and make any necessary changes in line with the changing needs of the profession.

Existing codes and trade associations

13. For many years trade associations have played an important role in promoting best practice and in improving operational practice amongst their members. The Code has been developed in collaboration with trade associations and other members of the profession. It recognises there are existing trade association codes of practice and best practice guidance.

Engagement of the funeral director and transfer of the deceased

14. It is expected that all funeral directors are transparent about the goods and services they offer. If the funeral director does not offer the goods or services about which a person has enquired or requested, it is expected that the funeral director makes that clear and makes the person aware that those services can be accessed elsewhere. All written and verbal communication must be clear and in plain language, avoiding jargon. The funeral director must act in accordance with the instructions of the client, as far as reasonably practicable. The funeral director must act in accordance with the requirements of this Code.

First contact

15. When the funeral director is contacted in relation to the death of a person initial details must be gathered from the client (or other person who makes contact with the funeral director on behalf of the client or while the person who will be the client is not yet determined). The funeral director at first contact must, whenever practicable, obtain and record the following minimum information:
 - The full name, address and telephone number of the person making contact with the funeral director.
 - The full name and address of the deceased.
 - The date of birth and age of the deceased, if known.
 - The current location and address of the deceased, if different to the above address.
 - Confirmation that a suitably trained registered healthcare professional has confirmed or verified the death or pronounced life extinct (PLE).

Transfer of the deceased into the funeral director's care

16. In the event that the funeral director has been contacted by someone other than the client, the funeral director must make all reasonable enquiries to establish the identity and contact details of the client at this stage and to establish contact with the client as soon as possible.
17. The funeral director must inform the client that they adhere to the Code and provide the client with a copy or web link if requested.
18. Once the funeral director has been instructed they must take the deceased into their care at the earliest possible opportunity.
19. Before transferring the deceased into their care the funeral director must ensure that:
 - The equipment to be used is suitable for the transfer of the deceased; taking into account the deceased's body type – and is clean, in good condition and well-maintained.
 - The staff involved in the transfer of the deceased are trained to do so.

- The vehicle used to transfer the deceased must be specifically equipped and used for that purpose; and is clean and well-maintained.
- The deceased are treated with care and dignity.
- Consideration is given to any bereaved persons present.

20. At the location from where the deceased is to be collected, the funeral director must:

- Confirm the identity of the deceased.
- Obtain signed authorisation from the client or the person the client has nominated to represent them for the transfer of the deceased into their care; or, where the client has yet to be identified, signed authorisation from the person requesting the transfer (e.g. hospital or care home staff).
- Advise that person in writing (or by e-mail) of the location where the deceased is being transferred to including an address and contact number for the location.
- At the earliest opportunity inform the client of all locations where the deceased will be cared for (and all addresses of the premises where the deceased will be kept).
- Make or obtain a record of the deceased's personal effects the funeral director will take into their care and a record of any personal effects which have been returned to the person signing the record at the time of transfer. The funeral director must ensure that this record is checked and signed (on paper or electronically) by the client or the person the client has nominated to represent them, before leaving with the deceased. If the client has yet to be identified or is unavailable at the time of the transfer the personal effects record must be counter-signed by another person such as a member of staff of the hospital mortuary or care home before the funeral director departs with the deceased.
- Securely attach to the deceased a completed identity tag (e.g. to the wrist).

Care of the deceased and premises used by the funeral director

21. The funeral director should familiarise themselves with the Health and Safety Executive's [guidance](#) on managing infection risks when handling the deceased. It covers the safe handling, storage and examination of bodies and pathological specimens in hospitals, mortuaries and post-mortem rooms. It also provides guidance for those involved in funeral services (including embalmers).
22. It is expected that funeral directors clearly and sensitively describe their services for care of the deceased to the client and must keep a record of having done so.
23. It is important that no client is pressured or exploited, and advice should be given to them by experienced and/or trained staff in a clear manner using plain language. The funeral director should always be mindful of the difficult circumstances the client is likely to be experiencing.
24. The client must be told the location(s) where the deceased will be cared for/kept.
25. Where the funeral director is using the services of another provider for any part of the care of the deceased a written Service Level Agreement (SLA) must be in place with that provider. Each SLA must be reviewed regularly and at least once per year. A SLA is not required for singular ad hoc arrangements (e.g. repatriation); in such a case a written agreement is sufficient.
26. Where aspects of care of the deceased are being carried out by a third party the funeral director must clearly and sensitively inform the client which aspects of the care of the deceased these are and keep a record of having done so.
27. All care of the deceased must take place in a location(s) specifically chosen for that purpose and the funeral director must ensure that their care facility or mortuary is fit for purpose. This requires that:
 - the premises are lockable and accessible by authorised persons only.
 - the premises are clean, well-maintained and regularly inspected to ensure high standards of cleanliness.
 - the location of, and access to and from, the care facility or mortuary is suitable for the designated purpose.
 - the funeral director has access to equipment that can accommodate all body types and care services offered by the funeral director and the equipment must be well maintained.
28. The funeral director must carry out regular visual checks of the condition of the deceased and a further check immediately before the coffin is closed or immediately prior to the funeral service if no coffin is being used.
29. The funeral director must retain a comprehensive record of all deceased persons who have been in their care. The record must be sufficiently detailed to record what actions have been carried out in relation to the deceased (e.g. first offices, washing, dressing – where, when and by whom, time of deceased's arrival and departure at funeral director's premises). The record must be stored in an accessible form, in

secure conditions and is to be retained for a minimum of 5 years. Where a record contains data about any person who is still living, funeral directors are required to comply with all relevant legislation (e.g. UK General Data Protection Regulation, the Data Protection Act 2018 etc.).

Care practices

30. The funeral director must be able to demonstrate that they have assessed the activities undertaken by every staff member whose role includes duties relating to the care of the deceased. A record of each assessment, the outcome of the assessment and training requirements/training undertaken must be kept by the funeral director and made available to inspectors on request.
31. At all times during their care the dignity of the deceased must be maintained and appropriate shrouds, clothes and/or modesty covers used.

First offices

32. First offices is a process of caring for the deceased to assist with preservation and to make them presentable for viewing.
33. When requested the funeral director must describe their services for first offices in a way that is sensitive to the client to ensure that the client has an understanding of how the deceased will be cared for by the funeral director.
34. Where it is possible to do so first offices must take place in every case unless the client has specifically requested that first offices are not to take place. First offices must be carried out in a manner that maintains the dignity of the deceased, treats them with care (including moving the deceased in ways which avoid damage) and, at a minimum, includes cleaning and washing the body, dressing them, closing the eyes and mouth and arranging the hands.
35. Where first offices have not taken place the funeral director must keep a record of the reason/s for this.

Embalming

36. Embalming is defined as the preservation of a body from decay through injection of a chemical embalming fluid. The preservative solution (the embalming fluid) replaces the blood as well as treating the body cavity and organs.¹
37. Embalming is not a requirement for burial or cremation.
38. There is no requirement for the funeral director to offer embalming as a service.

¹ P.41 Managing infection risks when handling the deceased, Health and Safety Executive, TSO (The Stationary Office), 2018

39. The funeral director must provide clear information to the client about embalming in order that the client can make an informed decision about whether or not to instruct embalming.
40. The funeral director must obtain the client's informed and written permission before embalming can take place.
41. It is the responsibility of the funeral director to ensure that those performing embalming on behalf of their business are adequately trained/qualified to do so and are meeting the necessary health and safety requirements.

Emergency invasive procedures

42. An invasive procedure is any procedure that involves the breaking of skin or the opening of bodily cavities.
43. In some circumstances it may be necessary for the funeral director to perform an emergency invasive procedure with the intent of preserving the deceased to a good standard.
44. In the event of these circumstances occurring the funeral director must make reasonable attempts to contact the client and explain the circumstances in advance of performing the procedure.
45. It is the responsibility of the funeral director to ensure that those performing emergency invasive procedures are adequately trained/qualified to do so and are meeting the necessary health and safety requirements.
46. In every case the funeral director must keep an accurate record of the circumstances and the procedure carried out. This record must be made available to inspectors on request.

Refrigeration

47. Refrigeration is a critical element of caring for a deceased person in a dignified, appropriate and respectful manner.
48. The funeral director must have on their premises, or have access to, clean and appropriate refrigeration facilities to store the deceased in their care. Where refrigeration is provided by a third party a SLA must be in place. Each SLA must be reviewed regularly and at least once per year. Where refrigeration is being carried out by a third party the funeral director must clearly and sensitively inform the client of that fact.
49. Refrigeration can be a purpose-built refrigeration unit or temperature controlled cold room. Refrigeration units and cold rooms must be kept between 4 – 7 degrees Celsius.

50. The required refrigeration capacity that a funeral director must have on their premises, or have access to through a SLA, should be sufficient to accommodate persons received into the funeral director's care. A funeral director must review their refrigeration capacity at least once per year.
51. Each deceased person must be stored individually in separate compartments (e.g. a separate rack shelf or drawer) within the unit or cold room.
52. Refrigeration units must be in a locked and secure location. Cold rooms must be locked and in a secure location.

Viewing of the deceased

53. The funeral director must provide clear information to the client about whether they provide viewing of the deceased as standard. This will enable the client to make an informed decision about whether or not they would wish to view the deceased.
54. If viewing is not normally offered as part of a service, for example where the funeral director only offers direct cremation, the funeral director must make it clear to the client, before the client engages their services, that viewing is not included as standard. If the client subsequently requests to view the deceased the funeral director is to take steps to facilitate a viewing where possible, for example by agreement with another funeral director to use their viewing facilities. Any additional costs for facilitating viewing should be made clear to the client before that service is provided, in accordance with the Competition and Markets Authority (CMA) [Funeral Markets Investigation Order 2021](#).
55. Viewing areas must be fit for purpose, private, clean, regularly inspected and well-maintained.
56. Prior to any viewing the funeral director must ensure that the identity of the deceased is checked to ensure that the correct deceased person is shown to the visitor and that regard is given to requests made by the client such as: make-up application, if the coffin is closed or left open, who can be permitted to view the deceased, etc.
57. The funeral director must ensure that bereaved persons are afforded privacy when viewing the deceased. The funeral director or another trained and competent member of their staff must remain near and 'on hand' to answer any questions or requests.
58. In some circumstances viewing the deceased may not be recommended by the funeral director or some restrictions may have to be put in place such as viewing behind glass.
59. In circumstances where the funeral director advises against viewing entirely the funeral director must provide the client with sensitively worded advice setting out

their reasons and make every effort to support the wishes of the client in relation to that advice. The funeral director must keep a record of this advice.

60. Where the funeral director has advised against viewing but the client does not accept that advice the funeral director must keep a record of this.

Planning the funeral service according to the wishes of the deceased and the bereaved

Deceased and client identification and who can be involved in making arrangements

61. Where the deceased has not set out before dying who should arrange their funeral the funeral director must make the client aware of the next of kin hierarchy set out in the 2016 Act (section 65 for adults, section 66 for children). It is then for the client (or any other individual who wishes to organise the burial or cremation) to determine whether they have the legal right to apply for the burial or cremation.
62. The funeral director must ensure that they and their staff are sufficiently knowledgeable and experienced to explain to the client the goods and services they offer and how the deceased is cared for. This must include an ability to describe, both orally and in writing, the range and location of options for burial and cremation if requested.
63. The funeral director must provide the client with clear and comprehensive descriptions of their goods and services, and how the deceased is cared for by them in the provision of those goods and services.

Estimates and confirmations

64. To enable the client to make an informed decision about the goods and services they would like, funeral directors are already required to comply with the requirements set out in the CMA [Funerals Market Investigation Order 2021](#) and any other relevant legislation.
65. Once the client has made a decision about the goods and services they would like, the funeral director should:
 - Provide written or electronic confirmation of the funeral arrangements and a written or electronic itemised estimate of all funeral charges including third party fees (disbursements) where known.
 - Provide the client with a written or electronic itemised final account that is comparable with the estimate provided.
66. All changes from estimate to final bill should be clearly described, prior notified and agreed to by the client. The funeral director should be able to account for any changes via an audit trail.

Delivery of the funeral

67. The funeral director is responsible for managing the delivery of the funeral according to the wishes of the client, including:
- When instructed to do so by the client making bookings, for example of the requested venues, church, celebrant and catering.
 - Ensuring that the client has completed the required statutory forms and that these forms are sent to the appropriate statutory authorities in good time.
 - Keeping and updating records and documentation and ensuring that the client's requests for goods and services are recorded accurately including any changes made to the client's requests or instructions.
 - Ensuring that the deceased is presented in accordance with the wishes and instructions of the client as far as reasonably practicable.
 - Managing donations appropriately, transparently and as requested by the client.
 - All funeral directors must have a written policy in place for managing donations which is understood/known by staff and is readily accessible to the client.
68. The funeral director must keep the following records which are accessible by authorised personnel only:
- A record of all the funerals provided including requested services, estimates and invoice.
 - A record of the advice given to clients in relation to viewing the deceased and the outcome of the advice.
 - A record of the management and handling of any ashes.

Ashes

69. The funeral director must have a written ashes management policy in place setting out how they will arrange for return or disposal of ashes.
70. The funeral director must ensure the careful and appropriate storage, handling, recording and dignified management of ashes. They must act in accordance with section 54 of the 2016 Act and any regulations made by the Scottish Ministers under section 56 of the 2016 Act.
71. All records relating to ashes must be kept by the funeral director. Where a record contains data about a client who is still living these must be kept in accordance with the UK General Data Protection Regulation and the Data Protection Act 2018.
72. At a minimum an ashes management policy must cover:
- Procedures for:
 - ashes storage in a designated, locked, clean, dry and well maintained location,
 - ashes and the cremation certificate to be stored together,
 - recording each individual set of ashes,
 - splitting of ashes including the transfer of ashes from one container to another,

- transfer or release of ashes including procedures for contacting the client and obtaining identification prior to the release of ashes to the client,
 - reporting lost or damaged ashes to appropriate management,
 - reporting lost or damaged ashes to inspectors within 48 hours of discovery,
 - keeping a record of the scattering or interment of ashes if undertaken by the funeral director, and
 - keeping a written audit trail of all actions taken with the ashes.
- The following matters:
 - a clear description of the options available to the client e.g. scattering, interment, retention in an urn.
 - adequate safeguards to ensure ashes cannot be combined with other(s) i.e. only preparing one set of ashes at a time.
 - provision for a change of instruction by the client in respect of ashes.

Complaints

73. The funeral director must have a written complaints procedure. The complaints procedure must be available on the funeral director's website where this exists or must be made available as soon as reasonably practicable in paper or electronic form on request.
74. In the event of a complaint the complaints procedure must be followed and must include:
 - Advice for the client on how to make a formal complaint.
 - The funeral director's procedures for dealing with a complaint and timescales for response.
 - A requirement that any complaint resolution or answer will be provided in writing to the client.
75. In the event of a complaint made against the funeral director the client may:
 - Raise a complaint with the funeral director directly. The funeral director must genuinely attempt to seek a resolution in a reasonable amount of time.
 - Raise a complaint with a trade association to which the funeral director belongs if applicable.
 - Raise a complaint with the inspectors.
76. Where a complaint made to a funeral director relates to a breach of this Code or the care of the deceased the funeral director must inform inspectors of the complaint within 48 hours of it being made.

Business continuity and managing risks

77. The funeral director must prepare and maintain a written contingency plan which contains provisions about:
 - Dealing with any unexpected increase in the number of deaths.
 - Contingency arrangements for any unexpected disruption to or loss of services.
78. When drafting and reviewing this plan, where possible, the funeral director must engage with third parties such as: local crematoriums and burial grounds, other funeral directors and their relevant NHS Board.
79. The plan must be made available to inspectors on request and should be reviewed annually.
80. The funeral director must notify inspectors of any serious business or service failures as soon as practicable e.g. in the event of a fire, bankruptcy, etc.

INFORMATION NOTE

FUNERAL DIRECTOR CODE OF PRACTICE

The Funeral Director Code of Practice (“the Code”) was developed in exercise of the powers conferred by section 97 of the Burial and Cremation (Scotland) Act 2016. While the Code is not an SSI, it is subject to affirmative procedure by virtue of section 10.10 of the Scottish Parliament’s Standing Orders.

A formal Policy Note is not required as the Code is not a Statutory Instrument. This information note instead serves to introduce the Code and related impact assessments.

Purpose: The purpose of the Code is to set minimum standards for funeral director businesses in their care of the deceased and related procedures and behaviours.

Policy Objectives

The Code is guided by principles of responsible practice. The desired outcomes from the Code are to ensure minimum standards of care of the deceased and establish and promote a common understanding of good practice in relation to care of the deceased. In doing so, it will help increase transparency of choice of goods and services to help people in Scotland make informed decisions.

Should the draft Code be approved by Parliament, it is intended that a 12-month grace period would be provided between the Code being approved by Parliament, and it being formally issued (when it is effectively brought into force, and become mandatory for funeral director businesses to comply with the Code). This would give funeral directors time to ‘get up to Code’, if they are not already fully compliant.

Consultation

The draft Code was developed in collaboration with an industry Short Life Working Group. A 12-week public consultation was launched in June 2019 seeking views on a draft Code and a [consultation analysis report](#) was published. Additionally, a series of

focus groups with small, independent, rural or non-traditional funeral directors were held in early 2021, and a series of phone and email conversations were held with island-based funeral directors.

Impact Assessments

The following impact assessments were considered, and were either assessed as not required or were completed.

- *Equality*: no full assessment required, no impact issues arising.
- *Fairer Scotland Duty*: no full assessment required, no impact issues arising.
- *Child Rights and Wellbeing*: no full assessment required, no impact issues arising.
- *Data Protection*: no full assessment required, no impact issues arising.
- *Islands Communities*: no full assessment required, no impact issues arising.
- *Strategic Environment*: no full assessment required, no impact issues arising.
- *Business and Regulatory*: moderate impacts may be experienced by a minority of funeral directors, however these are mitigated by positive impacts to public health and wellbeing. The completed BRIA is attached.

Scottish Government

Population Health Directorate

December 2023

Business and Regulatory Impact Assessment

December 2023

Funeral Director: Code of Practice

1 Purpose and Intended Effect

This Business and Regulatory Impact Assessment (BRIA) is concerned with the proposed implementation of a Funeral Director: Code of Practice.

1.1 Background

The Burial and Cremation (Scotland) Act 2016 ('the 2016 Act') received Royal Assent in April 2016. It provides a comprehensive legislative framework for burial and cremation in Scotland, and modernises the legislative framework for burial, cremation and funeral arrangements in Scotland, repealing various pieces of antiquated legislation. The BRIA for the Burial and Cremation Bill was published in October 2015.

The development of the 2016 Act is grounded in the findings and recommendations of a number of important reports, including the Burial and Cremation Review Group (2007), the Report of the Infant Cremation Commission (2014) chaired by Lord Bonomy, and Dame Eilish Angiolini's findings of the National Cremation Investigation (2016). The 2014 and 2016 reports followed investigations into the retrieval of ashes from the remains of infants cremated in Scotland.

The Scottish Government accepted the recommendations¹, and many of the 2016 Act's provisions are rooted in their recommendations. For example, recommendation 9 of the Review Group stated that all extant legislation should be repealed and consolidated into a single Act with powers to make subordinate legislation as and when necessary. Additionally, recommendation 13.13 of the Infant Cremation Commission stated that Scottish Ministers should keep the cremation and funeral industries under review and should consider whether further regulation of either is required.

The 2016 Act provides for codes of practice for funeral directors (section 97), burial authorities (section 21) and cremation authorities (section 64), the appointment of inspectors (section 89), an inspection regime for burial authorities, cremation authorities and funeral directors (section 90), and a licensing scheme for funeral directors' businesses (section 95), as well as the development of regulations as appropriate.

As an example of the latter, the Scottish Government made The Cremation (Scotland) Regulations 2019, which came into force on 4th April 2019. These regulations provide a statutory framework for the management and operation of crematoriums, cremation applications, handling of ashes, etc. The cremation regulations also take account of the recommendations in the Report of the Infant Cremation Commission and the National Cremation Investigation.

1.2 Scope and Context

¹ For example, see Scottish Government Response to Infant Cremation Commission, which accepts all recommendations without reservation.

The Scottish Government estimates there are 500 funeral director businesses in Scotland, with an approximate total of 930 premises.² Large businesses such as Co-operative Funeralcare and Dignity Plc operate the majority of the branches across Scotland.

1.2.1 Funeral Director: Code of Practice

Section 97 of the 2016 Act provides that a funeral director must comply with any code of practice issued by Scottish Ministers about the carrying out of a funeral director's functions (a "funeral director's code").

The Scottish Government has now developed a draft Code, which aims to

- Ensure minimum standards of care of the deceased.
- Establish and promote a common understanding of good practice in relation to care of the deceased.
- By doing so it will also help increase transparency of choice of goods and services to help people in Scotland to make informed decisions.

As per section 97 of the 2016 Act, the Code applies to all funeral directors carrying out the functions of a funeral director in Scotland regardless of where their business is based.

The Code is focused on the procedures for caring for the deceased when in the funeral director's care and sets out the requirements in that regard. In addition the Code references other existing relevant statutory requirements related to consumer protection³, which will help increase transparency of services and the associated costs, estimates, and agreed final bills for goods and services. The Code will be statutory and funeral directors must comply with it where it sets requirements.

The Code has been developed with due regard to the Scottish Regulator's Strategic Code of Practice. Relatedly, in the context of broader funeral sector regulation, the Code helps fulfil the principles of better regulation, namely that regulation should be transparent, consistent, proportionate, targeted and accountable. The Code makes transparent the minimum standards to which funeral directors will be expected to comply, and the Scottish Government's work with the funeral director industry has ensured that it is proportionate. The Code will be consistently applied to all funeral directors operating in Scotland, and is targeted only at this sector. Finally, the Code provides a clear basis for holding funeral directors accountable to these standards where requirements are set out as mandatory requirements in the Code; enforcement of compliance with the Code will be implemented in the forthcoming inspection regulations.

The recently published Scottish Government guidance on funeral costs sets out good practice for funeral directors and others in relation to transparency of pricing, helping

² More detail provided in Section 6.2 regarding the methodology for estimating the size of the sector

³ In particular the Competition and Markets Authority Funeral Market Investigation Order 2021

clients understand costs, the provision of estimates and final bills, and making lower-cost funeral options available. It is distinct from the Funeral Director: Code of Practice.

1.2.2 Forthcoming related regulations

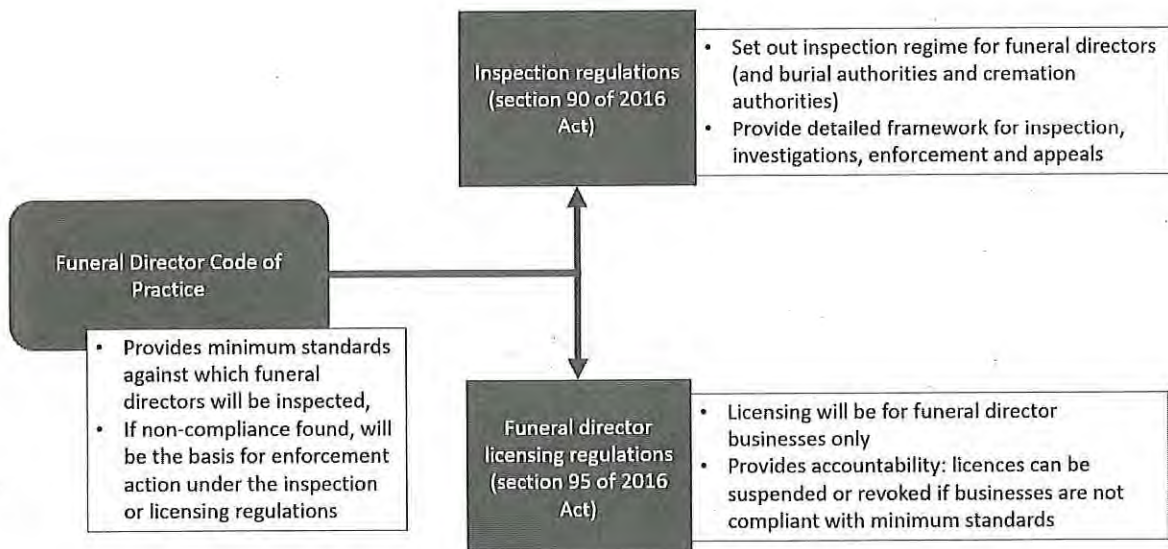
In parallel to the implementation of the Funeral Director Code, Scottish Government is now progressing on the development of the following regulations:

- A statutory inspection regime for the funeral sector, including funeral directors, under section 90 of the 2016 Act,
- A funeral director licensing scheme under section 95 of the 2016 Act,
- Burial regulations, covering private burial, exhumation, restoration of lairs, and management of burial grounds, under Part 1 of the 2016 Act, and
- Regulations for alkaline hydrolysis ('water cremation') as an optional alternative to traditional burial or cremation, under section 99 of the 2016 Act

A collection of four public consultations were published on the Scottish Government Citizen Space website between August – November 2023, which sought views on the proposals for the above regulations.

The key connections between the Code and the forthcoming regulations are depicted in Figure 1 below. These focus on the inspection and licensing regimes, which have specific relevance to funeral directors in Scotland. If alkaline hydrolysis regulations are implemented in future, and a funeral director in Scotland establishes themselves as a provider of alkaline hydrolysis, revisions to the Code may be required to reflect the new services funeral directors may be providing.

Figure 1 Key connections between Code and forthcoming regulations



1.2.3 Inspection of funeral directors

In 2017, the Scottish Government appointed Scotland's first ever Inspector of Funeral Directors⁴, fulfilling important recommendations by the National Cremation Investigation and Infant Cremation Commission (recommendations 13.10 and 13.11). The Inspector undertook a review of the funeral sector in Scotland, and in 2019 published a report discussing a regulatory model for funeral directors. This report included a recommendation for Ministers to introduce and launch a licensing scheme for funeral directors in Scotland. This recommendation was accepted by the then-Minister for Public Health, Sport and Wellbeing.

Further progress was made in December 2020, when the Scottish Government appointed a Senior Inspector of Burial, Cremation, and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors (replacing the previously separate appointments of Inspector of Cremation and Inspector of Funeral Directors).

1.3 Why is the Code being laid now?

The draft Code has been available on the Scottish Government website since June 2019. Following public consultation and analysis, a revised version was published on January 2023. Funeral directors have been given sufficient time to familiarise themselves with the Code's content and to start working towards meeting its requirements. However the Scottish Government accepts that some funeral directors may not yet have had the opportunity to make necessary changes in order to prepare, or decided not to implement preparations until the Code becomes statutory. If the Code is approved by Parliament, we will therefore provide a period of time (12 months) from the date of approval to enable funeral directors to take steps to ensure their compliance, before formally bringing the Code into force.

The implementation of the Code commences the phased introduction of statutory regulation of the funeral sector under the 2016 Act. The Code is being laid (and if approved, brought into force) in advance of the implementation of the intended funeral sector inspection regime and the funeral director licensing scheme. It is important the Code is in force when the inspection and licensing regulations are laid in Parliament, to provide the minimum, statutory standards against which funeral directors will be inspected (and assessed for suitability for being granted a licence). These interconnections have been described above in Section 1.3.

1.4 Objective

The objective of the Code is to set mandatory minimum standards of quality of care for the deceased. This is intended to have the consequence of ensuring that every person in Scotland will have a dignified and respectful funeral and the public can have higher confidence that good standards of care will be provided.

⁴ An Inspector of Crematoria had already been appointed in 2015, initially under the Cremation (Scotland) Regulations 1935 following a recommendation made in the Report of the Infant Cremation Commission 2014. On 4 April 2019, the Inspector was re-appointed under newly commenced sections of the 2016 Act (sections 65-85 and 89(1)(b)), as Inspector of Cremation, with a broader remit extending to the whole cremation process (replacing the Inspector of Crematoria position).

When grieving the loss of a loved one, arranging a funeral is difficult. When doing so, the vast majority of people in Scotland will engage a funeral director. The role of a funeral director goes beyond arranging and delivering a funeral service. They are expected to advise on a wide variety of statutory requirements and to take care of the deceased in a respectful and dignified manner. Further, they are expected to handle the logistics and administration that arranging a funeral requires, and orchestrate the service that the deceased or bereaved has planned.

The Code will be a key document in the eventual statutory inspection of funeral directors, who will be legally required to meet the standards the Code prescribes. The Code requires funeral directors to adhere to minimum standards in their care of the deceased and, in doing so, it will help to provide transparency in the goods and services offered the bereaved.

The objectives of the Code are aligned with Scotland's National Performance Framework, which is underpinned by values describing a society characterised by openness and transparency, in which people and organisations treat each other with kindness, dignity, compassion and respect the rule of law. The Code will bring more openness and transparency to the funeral director industry, and help ensure that the dignified treatment of people continues after death.

With respect to Scotland's National Strategy for Economic Transformation, the Code will contribute in particular to the aim of establishing a culture of delivery and accountability in which objectives are shared and responsibilities are clearly allocated and accepted across the public and private sectors. The Scottish Government is leading the way in establishing a statutory regulatory framework for the funeral director industry, but has done so in collaboration with that industry to ensure any statutory requirements are appropriate, well-evidenced, and fit for purpose. This collaboration has also helped ensure the industry has developed a sense of ownership over, and have accepted accountability for, ensuring their compliance with these minimum standards. As is set out in the below section on consultation, we note the industry's stated support for the implementation of this Code, and the forthcoming inspection and licensing regulations.

1.5 Rationale for Government Intervention

1.5.1 Legislative responsibility

The Scottish Government continues the work to implement the 2016 Act and we have an opportunity to do so using statutory codes of practice to set clear, transparent minimum standards for the funeral sector.

In implementing the 2016 Act, the Scottish Government intends to, by regulation, establish an inspection regime, which will include the inspection of funeral director businesses. These regulations are being developed under the powers provided in section 90 of the 2016 Act. The Scottish Government's position is that it is necessary to have clear, transparent standards against which inspections of funeral directors will take place. The Funeral Director Code of Practice is crucial to setting these objective

and consistent standards. The importance of clear standards has been reiterated in officials' discussions with the Inspection Regulations Working Group.

1.5.2 Recommendation by Inspector of Funeral Directors (2019)

In her first annual report, published in August 2019, the Inspector of Funeral Directors reported that there were many areas of common practices prevalent across Scotland. Importantly, the report also highlighted departures from good practice in relation to care of the deceased, record keeping, training and experience of staff, identity checks, authorisation and permissions. Historically there has been no central oversight of funeral directors in Scotland, which may well have contributed to the variation of practices and standards. By setting out standards in the Code that all funeral directors must adhere to, consistent levels of good practice will be created across Scotland.⁵

1.5.3 Recent trends within the funeral sector

Increased times between the date of death and funeral service have risen steadily over the past 20 years in the UK, from under 10 days to over 3 weeks on average⁶ according to an industry commissioned publication. Greater variety of funeral options now offer a large amount of consumer choice. Styles of funeral have changed, with the demand and levels of personalisation in a funeral growing rapidly. It is also the case that as society continues to change, 'traditional' family units and connections may no longer be the norm and funeral directors report that they increasingly witness confusion or disputes amongst families concerning who is authorised to arrange a funeral or apply for the burial or cremation.

These reasons appear to contribute to a deceased person now remaining in the funeral director's care for a longer period of time than in the past, meaning there is greater opportunity for risks to the care of the deceased to materialise. This reality underscores the importance of making provision for a national code of practice that requires set standards of good practice and procedures from all funeral directors operating in Scotland.

1.5.4 Response to industry feedback

The Scottish Government has considered fully the responses from the 2017 consultation on the proposed inspection regulations and the views expressed, which highlighted the close interaction between the inspection regulations and the Code. Respondents made clear the need for a draft Funeral Director Code of Practice to underpin the wider regulatory framework for funeral directors. The Scottish Government therefore has prioritised the drafting of the Code, ahead of a second consultation on the inspection regulations (published in August 2023), to enable fully informed responses.

⁵ Supporting documents - Regulatory model including Progressive Licensing scheme for Funeral Directors: report to Scottish Ministers - gov.scot (www.gov.scot)

⁶ Time to Talk About Quality and Standards (dignityfunerals.co.uk)

We note that while the Code will underpin the inspection regime of funeral director businesses, these businesses will also be inspected against (and required to comply with) any provisions of the 2016 Act, as well as any future regulations or conditions of licence.

1.5.5 Competition and Markets Authority (CMA) Funerals Market Investigation

The CMA's Funerals Market Investigation sought to investigate prices and quality of funeral services. The investigation was carried out under section 131 of the Enterprise Act 2002, under which the CMA has power to make a market investigation reference. The purpose of the investigation was to ensure that those who purchase funeral services can be confident that prices are reasonable and quality is appropriate. The investigation focused on assessing how people approach the purchase of a funeral, and on competition between funeral directors and crematorium operators. The CMA further considered the geographical concentration of funeral director and crematorium services, price levels over time, and profits. The investigation commenced on 28 March 2019, and was extended for six months in March 2020.

The CMA published its Provisional Decision Report on 13 August 2020, and its final report on 18 December 2020. The coronavirus (COVID-19) pandemic necessarily impacted the funeral sector, and the CMA investigation itself, during the development of its report. Within its interim and final reports, the CMA report expresses serious concerns about the sector. Overall, it observes that most people "find it extremely difficult to engage with the process of purchasing a funeral" (p. 6). Consequently, people will often follow a personal recommendation when choosing a funeral director, or use one that they (or the family) have used in the past. Furthermore, most people incorrectly believe that funeral directors are regulated. The CMA report concluded that the funeral market is not working well, with a number of features that restrict or distort competition. The Scottish Government accepted the overall findings of this report, and supports the measures to improve consumer protection, promote more competition, increase transparency and reduce consumer detriment.

The CMA considered a number of "remedies" to address the issues it identified. The powers to implement the majority of these recommendations, including those related to pricing, are reserved to the UK Government. However, the CMA made a recommendation to establish an independent inspection and registration regime – this is within the devolved powers of the Scottish Government, and is an area where the Scottish Government has already made important strides. The implementation of the Code makes a key contribution to this work.

1.5.6 Public Expectations

Given the importance the funeral director holds in this process, there is a generally held belief and expectation from the public that there is some form of regulation or statutory oversight with which funeral directors must comply. This is reflected in both industry publications and in recent reports on the industry such as by the CMA.

For example, the CMA report on their Funerals Market Investigation (2020) notes that most people incorrectly believe that funeral directors are regulated (paragraph 7.73).

As another example, UK-wide research published by funeral provider Dignity, has called for stronger regulation of the funeral sector. In 2017, they commissioned and published a research report, which included a survey of more than 2,000 people who had organised a funeral; the following findings are relevant here:

- Nine in ten (92%) did not know that funeral directors were unregulated
- Eight in ten (80%) supported regulation to ensure minimum standards
- Seven in ten (73%) said care of the deceased was "very important"

Additionally, in the consultation for the Burial and Cremation Bill, Question 83 asked for views on whether regulation of the funeral industry would be beneficial. Seventy-three percent of respondents to this question answered 'yes', with comments identifying the possibility of improved standards and consistency, which would lead to increased public confidence. Concerns were raised, however, in relation to whether resultant costs to the industry would be passed on to consumers.

2 Consultation

2.1 Within Government

The Burial and Cremation Team had direct contact and discussion with the following divisions, teams, and agencies during the development and revision of the Code.

- Inspectors of Burial, Cremation and Funeral Directors
- Scottish Government Early Years and Funeral Support Policy Team
- Scottish Government Better Regulation Team
- UK Internal Market Team

Additionally, professional expertise was sought from the HM Inspector of Anatomy, Professor Gordon Findlater, and Ishbel Gall, Mortuary Manager at NHS Grampian, who were consulted regarding the requirement within the draft Code for funeral directors to regularly check on the deceased in their care. Dr Padmini Mishra, Senior Medical Officer, was consulted regarding wording about verification of death.

Since revising the Code, the Team have also had discussions with officials in Business Support Transformation, Directorate for Economic Development. This was to discuss how funeral sector regulation will align with the Scottish Government's work on impacts of regulation on businesses under the New Deal for Business.

2.2 Public Consultation

2.2.1 Public Consultation on Draft Code

The Scottish Government undertook an online consultation on its proposed Code between June and September 2019. The consultation was comprised of 18 questions, and collected information in both survey and open-ended comment format. The initial analysis of responses was conducted in late 2019, however the onset of the Covid-19 pandemic resulted in a delay to publishing the analysis report until 2021, and a delay in finalising the draft Code until 2023.

The consultation focused on the sections of the draft Code that would potentially have the greatest impact on funeral directors (assessed from understanding of the sector and stakeholder discussions during the development of the Code).

The consultation received 86 responses (52 from organisations and 34 from individuals). Respondents generally supported the Code and its intentions. A majority of respondents who were funeral directors expressed that they were mostly or fully compliant with the Code in its draft form.

Key points also included that most respondents indicated they were supportive of funeral directors providing viewing of the deceased as a service, and did not think that offering viewing would have an impact on a funeral director's business. Some respondents stated this requirements was already standard practice. The majority of respondents noted the Code would not be a barrier to funeral businesses' plans for expansion, or innovation in the industry.

Respondents appeared divided, however about whether the standards set out in the Code will raise barriers for people considering entering work in the funeral director industry for the first time. Most open-ended comments seemed to support the introduction of standards set out in the Code, regardless of potential barriers. Many expressed that these would be beneficial to the industry, increasing the overall competency of all Scotland's funeral directors and building public trust. To illustrate:

"If your stated purpose is to "ensure good standards" there must be some minimum standards. The current situation where anyone with a vehicle and a spare room, no facilities, no training or knowledge or accountability can set up as a funeral director overnight cannot be right. This is overdue in an industry where operators can operate outside any code of practice." (Individual funeral director respondent)

Of those who expressed that the Code would be a negative barrier to new entries, these focused on the possible barrier that educational qualifications may present (NB the current Code has no such requirements), and the increased financial implications of starting a new business after the Code is introduced. These include issues discussed elsewhere in this BRIA, such as refrigeration.

The consultation also provided valuable feedback on, and critiques of, the Code by respondents. For example, respondents noted that significant investment by funeral directors might be required to meet the Code's requirements. Estimates of potential costs are provided in this BRIA.

Feedback also included that the Code may impact small- and medium-sized enterprises (SMEs) in unique ways. In response, the Scottish Government undertook specific consultation activities to obtain views from SMEs and other funeral director businesses. These are described in section 2.3 below.

Further detail on these results can be found in the [consultation analysis report](#) which is available on the Scottish Government website.

Following the consultation exercises, the [draft Code](#) was revised, discussed again with industry stakeholders, and published on the Scottish Government website. The results of the public consultation and further internal consultation led to the following amendments:

Table 1: Amendments to the Funeral Director: Code of Practice following consultation

Topic	Amendment
Terminology	Revisions to descriptions or terminology in order to provide greater detail and clarity, for example regarding 'client' (paragraph 14), verification of death by registered healthcare professional (paragraph 15), record-keeping (paragraph 20), 'first offices' (paragraphs 32 and 34), and 'emergency invasive procedures' (paragraph 42)
Visual checks	Mandate for 'regular' visual checks of the condition of the deceased (see paragraph 28), an amendment from requiring checks at least once every 24 hours
Refrigeration	Amended wording requiring refrigeration that is "sufficient to accommodate persons received into the funeral director's care" (see paragraph 50), an amendment from requiring a set ratio of one space for every 50 deceased persons received in the funeral director's care per year. Amended wording to clarify that each deceased person must be stored individually on a separate rack, shelf or drawer within the storage unit (see paragraph 51).
Viewing of the deceased	Amended wording to require the funeral director to provide clear information to the client about whether they provide viewing of the deceased as standard (see paragraph 53), an amendment from mandating that the funeral director must offer, or facilitate, viewing of the deceased. Amendment to wording to clarify identity of deceased is checked 'to ensure that the correct deceased person is shown to the visitor' (see paragraph 56)
Complaints	Amendment to wording to clarify that a funeral director's complaints procedure must be available on their website, where this exists, or must be made available as soon as reasonably practicable, on request (see paragraph 73) Amendment to wording to clarify that where a complaint made to a funeral director relates to a breach of the Code, the funeral director must inform inspectors of the complaint within 48 hours of it being made (see paragraph 76)

Transparency and Pricing	Amendments to paragraphs setting out requirements related to transparency of pricing, to refer to the CMA Funeral Markets Investigation Order 2021, and to highlight additional best practices related to estimates and final bills.
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2.3 Business

2.3.1 Short Life Working Group on Care of the Deceased

The Short Life Working Group on Care of the Deceased (SLWG) included representatives of the National Association of Funeral Directors (NAFD), Society of Allied and Independent Funeral Directors (SAIF), the British Institute of Embalmers, the British Institute of Funeral Directors, and other key stakeholders. Outputs from the group informed the development of the draft Funeral Director Code.

The annual report of the Inspector of Funeral Directors, published in August 2018, details the work of the SLWG in developing the draft Funeral Director Code. In particular, the Group concluded work on an initial mapping exercise of the journey of care for the deceased.

Four full day workshops were facilitated in early 2018. The final meeting in May 2018 reviewed the draft Funeral Director Code. The Inspector reports:

“As a result of these sessions, a draft Code of Practice for Funeral Directors has been circulated to the group members, and detailed explorations of key elements have been facilitated.... Legitimately, members are keen to ensure that this Code will reflect contemporary practice, and sets the standard for ‘what good looks like’ on a consistent and fair basis...”

“On implementing this aspect of the legislation, alongside upcoming Inspection Regulations, it is expected that bereaved families will have comfort that good and consistent standards of care are being provided for their loved ones, irrespective of their choice of provider or the cost of the chosen funeral.” (page 12)

The Short Life Working Group was again consulted in April 2022 following the public consultation on the Code and resultant revisions to Code. Any revisions to the original draft Code were highlighted to the Group, and responses were sought.

2.3.2 Funeral Director Businesses – Public Consultation on draft Code

As noted above, the public consultation received 86 responses; 52 (60%) were received from organisations and 34 (40%) from individuals. Among these, numerous respondents reported representing or being involved in funeral director businesses, including:

- 4 funeral industry trade bodies

- 31 funeral director organisations
- 8 individuals indicating they were, or had experience as, a funeral director.

A significant number of comments made by respondents to the public consultation indicated that SMEs or rural funeral directors could be disproportionately negatively affected by the Code. These focused on how SMEs may find it challenging to implement the requirements of the Code, such as if they plan to establish their own care facilities or mortuaries. We note that the Code allows for businesses to either obtain their own refrigeration for storage of the deceased or gain access to refrigeration facilities through a Service Level Agreement (SLA) with another organisation (see section 2.3.3. below for further detail regarding SMEs, and section 4.1 for more detail on refrigeration).

Further, there was concern from a small minority of respondents the Code did not sufficiently account for non-traditional approaches to funeral services. For example, one comment suggested the Code might reinforce the traditional funeral approach in Scotland's funeral industry. We note, however, another response which stated the Code would not have any negative impact on recent changes being made in the funeral industry away from the traditional funeral to more personalised tributes to loved ones.

In response, the Scottish Government sought views from small, independent, and rural funeral directors. This was to investigate the potential impact the Code may have on these businesses, as reported by consultation respondents, and the relatively few responses received to the consultation from small or rural funeral directors. These views were sought through (a) three focus groups moderated by officials (with a total of nine participants), and (b) three direct conversations via phone call between officials and islands-based funeral directors. These are detailed below.

2.3.3 Funeral Director Businesses – Focus Groups

Three focus groups were held in early 2021 with funeral directors who identified as running small, rural, independent, or non-traditional businesses. In total, nine funeral directors and one person identifying as a humanist celebrant participated in the focus groups. Discussions focused on similar questions and topics as had been included in the public consultation. These included, for example, the potential impact of the requirements to have access to refrigeration for storing the deceased and offer viewing, and whether the Code might raise barriers to people entering the funeral sector or their plans for expansion or innovation.

Regarding the requirement to have a fit-for-purpose care facility or refrigeration storage space, focus group participants notes that having proper facilities to care for the deceased was important, and that businesses should have all the facilities and equipment to do the work of a funeral director. However, it was noted that some smaller businesses may not currently have much storage capacity and would need to invest in bigger facilities (or enter into SLAs). Issues with older or smaller buildings being able to accommodate refrigeration were raised, however participants reiterated that refrigeration was a necessity.

Participants also noted that a ratio of 1 storage slot per 50 deceased in their care each year should be a minimum, and the fluctuation of timing when deceased persons are received means a strict ratio isn't always appropriate. The option to engage in an SLA was welcome (particularly for rural businesses), however participants emphasised that a business having its own refrigeration should be the priority (particularly given the cost to families of funerals and the trust families put in funeral director businesses to care for the deceased). Additional points included that there should not be an overreliance by funeral directors on NHS hospital mortuaries.

Regarding the requirement to regularly check on the condition of the deceased in their care, participants noted that this happens regularly, and that a requirement of this nature was not unreasonable. However, they noted that a strict 24-hour timescale for this may not be practical, for example over weekends if staff are not on the premises, and in these situations leeway may be needed.

Participants did not indicate that the Code would create unreasonable barriers to entry into the industry – there was strong support for ensuring that new businesses were adequately equipped to care for the deceased and that minimum standards were required for this. They also did not believe the Code would impact on businesses' plans for expansion or possible innovations.

When the focus groups were conducted in 2021, a timeline of 18 months for implementation of the Code was deemed appropriate by participants (although a small number of participants thought this was too long).

2.3.4 Funeral Director Businesses – Phone Calls

Three phone calls were held with island-based funeral directors to seek their additional and specific views on the draft Code. Only one person raised an issue related to the geography of the islands, and this was about how quickly they can refrigerate the deceased when they go to collect them. However, no significant impacts to island communities, compared with other rural areas of Scotland or small businesses on the mainland, were anticipated from the implementation of the Code. One island-based funeral director provided responses to the set of questions over email in a Word document. The conversations were guided by the questions in the public consultation. The funeral directors were located in Shetland, Orkney, Lewis and Skye.

Officials also contacted a number of trade associations and large businesses to obtain information about the availability of refrigeration or cold room storage for storing the deceased. Findings from this engagement are reported in section 4.1 on refrigeration.

3 Options

Option 1 – Do nothing

An option of 'doing nothing' or 'no action' was not feasible or appropriate in this instance given the requirements of the 2016 Act, the obligations on Ministers to implement and

bring into force the provisions of the Act, and section 97 of the 2016 Act which requires funeral directors to comply with the requirements of a Code of Practice.

We also considered whether there should be exemptions or flexibilities for smaller funeral director businesses. However, we concluded it would be inappropriate and contradictory to our objectives to require lesser standards from small funeral director businesses, because all members of the public seeking their services should be able to expect the same dignified treatment of their deceased loved ones.

Option 2 – Statutory Funeral Director: Code of Practice

The issuing of a statutory Code aligns with the requirements set out in the 2016 Act. This approach proceeds on the expectation that if funeral directors comply with the rules set out in the Code, the regulatory objectives of achieving minimum standards in the funeral sector (and thus contributing to better protection of the bereaved, dignity of the deceased, and public confidence in the sector) will be achieved in a way which is clear and consistent. The requirements which will be set out in the Code align with what was discussed and agreed with the industry Short Life Working Group.

Option 2 - Costs:

- Moderate costs to funeral director businesses that do not yet comply with the requirements which will be set out in the Code
- Where specific requirements are set out as 'rules' with which businesses must comply, this may disincentivise innovation, as businesses are less able to experiment with methods or means to satisfy a regulatory goal.⁷ This may further lead to a 'tick-box' mindset amongst businesses, and may incentivise businesses to seek loopholes to compliance.⁸

Option 2 – Benefits:

- A statutory Code ensures compliance with best practice for care of the deceased in the sector, and thus achieve the aims of the Code, including contributing to enhanced public confidence about the sector
- Providing prescriptive requirements to be followed provides transparency and certainty to funeral director businesses. It ensures they know how their compliance with the Code will be objectively and consistently assessed by inspectors. Any non-compliance found can be clearly identified against the prescriptive rules set out in the Code, and the measures needed to attain compliance will be clear for a funeral director. This could increase the sector's confidence in the inspection regime and contribute to greater buy-in and compliance from the sector.
- In future, a statutory Code with clear requirements means Inspectors will have clear rules against which to inspect funeral directors, allowing them to retain objectivity and be confident in their assessments of compliance/non-

⁷ [Goals-based and rules-based approaches to regulation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁸ Institute of Chartered Accountants of Scotland (2006). [Principles-Based or Rules-Based Accounting Standards? A question of judgment. A review of the professional, academic, and regulatory literature.](#)

compliance.⁹ Further, any non-compliance will have clear remedies required, allowing (once intended inspection regulations are implemented) inspectors to make clear, evidenced, and objective recommendations for improvement and enforcement if required.

Recommendation:

Option 2 is recommended.

Under this option, the inclusion of clear, prescriptive requirements allows funeral directors to know in advance what conduct is required in their businesses, and to have clear understanding of what behaviours, processes, or procedures they will need to have to be compliant. Inspectors can operate with clarity and consistency against the proportionate and evidence-based requirements of the Code. The public can have confidence that the statutory Code must be complied with and that their loved ones are receiving care that is both dignified and safe.

The approach described in Option 2 will be proportionate and measured. In the development of the Code, where a statutory requirement has been considered to possibly go too far in specifying detail, this has been revised. Please see section 4.1.1 below regarding refrigeration for an example.

4 Financial impacts of Funeral Director: Code of Practice

According to research published by the UK Government in 2020, the most frequently cited negative impacts of regulation are financial cost and time.¹⁰ The research notes these impacts tend to be felt most acutely during the first year of compliance due to the need to amend systems and processes and purchase additional equipment. We expect the impact of the Funeral Director: Code of Practice to follow a similar journey.

In phone calls with islands-based funeral directors, no significant impacts to island communities, compared with other rural areas of Scotland or small businesses on the mainland, were anticipated from the implementation of the Code.

4.1 Refrigeration/Cold Room Storage

The Scottish Government's position that refrigeration is a critical element of caring for a deceased person in a dignified, appropriate and respectful manner (paragraph 47). We anticipate that the most significant potential financial impact will relate to the requirement regarding refrigeration (see paragraphs 47-52 of the draft Code).

4.1.1 Initial proposal of set ratio and decision to require sufficient refrigeration

⁹ In a rules-based approach, "enforcers of the rules make largely mechanical decisions and collect facts for the purposes of determining whether or not the regulated party has complied with the rules" (Goals-based and rules-based approaches to regulation (publishing.service.gov.uk, page 16)

¹⁰ Challenges businesses face when complying with regulation (publishing.service.gov.uk)

The Scottish Government explored the option to require a set ratio of refrigeration capacity to number of deceased a funeral director business has in their care (1:50) (and initially proposed this in the public consultation and the focus groups).

We rejected the option of having a set ratio of refrigeration capacity because it became clear from the public consultation and further discussions with the sector that a ratio approach would not adequately account for peaks or troughs of the number of deceased a funeral director has in their care. Thus it risked funeral directors not having enough (or having access to enough) refrigeration facilities to store any deceased in their care. Further, it did not encourage funeral directors in the same way to be reviewing on an ongoing basis their refrigeration capacity compared with the number of deceased they have.

Consequently (and as set out in Table 1 above) the draft Funeral Director Code now requires that a:

“funeral director must have on their premises, or have access to, clean and appropriate refrigeration facilities to store the deceased in their care. Where refrigeration is provided by a third party a SLA [Service Level Agreement] must be in place.” (paragraph 48)

“The required refrigeration capacity that a funeral director must have on their premises, or have access to through a SLA, should be sufficient to accommodate persons received in to the funeral director's care. A funeral director must review their refrigeration capacity at least once per year.” (paragraph 50)

4.1.2 Scottish Government Refrigeration Survey – April 2023

In April 2023 officials published a brief survey on their public Funeral Industry News blog,¹¹ asking for responses from Scottish funeral directors about their access to refrigeration. Ninety-one funeral directors responded. Of these, 79 (86.8%) confirmed that their business had refrigeration or cold room storage for storing the deceased. However, this survey is limited because respondents were self-selected, and because responses were anonymous, we are unable to determine whether any of them are also members of NAFD, SAIF or are operated by Co-op or Dignity (and thus whether they overlap with the counts provided below).

Of greater use were the additional comments provided at the end of the survey. Additional comments overwhelmingly expressed support for bringing in a refrigeration requirement. Indeed, strong language was used such as refrigeration needing to be a ‘red line’ or ‘imperative’ for forthcoming legislation, that refrigeration should be a ‘requirement’ and ‘compulsory’ for funeral directors to provide quality care for the deceased, and that it is ‘immoral’ and there is ‘no excuse’ for not having this equipment. Further, it was noted that any costs of investment in refrigeration were worthwhile and necessary (for both small and large businesses), and that some companies who do not have refrigeration still charge the same prices as those who do.

¹¹ The Funeral Industry News Blog has approximately 600 subscribers (as of September 2023)

No comments were received to the survey which were explicitly against a refrigeration requirement. However, one comment seemed to indicate they did not think this was required, noting they had been in the profession for many years and had never perceived a need for refrigeration, citing that they immediately prepare and coffin the deceased upon collection.

4.1.3 Trade associations' refrigeration requirements and coverage

SAIF Scotland requires all members to have their own refrigeration within their premises or premises they have sole use of and control over. They have a minimum requirement of one refrigeration space for every 50 funerals per annum. Applications for SAIF membership will be rejected if they do not comply with this requirement, and members face expulsion from SAIF if they become unable or unwilling to continue to meet this requirement. At time of the communication between SAIF Scotland the Scottish Government in March 2023, all of SAIF Scotland's members meet this requirement.

The NAFD's Funeral Director Code (inspected against by the Independent Funeral Standards Organisation (IFSO)) includes outcome 2.3: 'You either have suitable refrigerated mortuary facilities or have access to suitable refrigerated mortuary facilities by virtue of an enforceable service level agreement with a third party. IFSO Head of Quality Risk & Compliance, Nigel Cooper, reported on 14 April 2023 that, at time of writing, all NAFD members in Scotland were compliant with outcome 2.3.

4.1.4 Code of Practice Consultations and Engagement – results relevant to refrigeration

The majority of respondents to the public consultation on the Code indicated that the requirement to refrigerate the deceased would not have an impact on a funeral director's business.

A majority also expressed agreement with the initial proposed ratio of the number of refrigeration spaces to number of deceased per year at 1 to 50. However, the open-ended comments demonstrated that this issue is complex and potentially needs greater clarity and flexibility. Most respondents also expressed agreement that there should be flexibility for funeral directors to provide refrigeration either as part of their business model, or to be able to access refrigeration by means of a formal Service Level Agreement (SLA) with a refrigeration provider or another funeral director.

Participants in the SME focus groups agreed that having refrigeration (or access to it through a SLA) was a reasonable requirement and necessary investment cost. They noted, however, that this may be more difficult to install in older or smaller buildings.

Islands-based funeral directors also agreed this was a reasonable standard to have in the Code, noting they had, or had access to, refrigeration or cold storage.

4.2 Possible financial impact of refrigeration requirements

4.2.1 Estimated costs of purchasing and installing refrigeration

If a business decides to invest in mortuary refrigeration the following estimated costs would apply. Officials note that these costs would only be borne by those funeral director businesses who (a) do not already have adequate refrigeration/cold room storage or an SLA, or (b) who choose to purchase refrigeration/cold room storage instead of engaging in a SLA with another organisation.

In April 2023, a representative of SAIF noted to officials that the cost of a 3-berth refrigeration unit to store the deceased would cost approximately £7,000 and last for approximately 15 years. This cost would be borne by the business.

Officials have directly contacted UK-based mortuary equipment providers and have been provided with the following costings and additional information:

Mortuary Equipment Provider	Information	Cost
Provider #1	Refrigeration	£7000+VAT
Provider #2	Package which includes fridge, racking, lifting device, cooling system, sink and fans for storage of three (3) deceased persons.	£8000+VAT Installation fee (£600) would be additional.
Provider #3	Cost of refrigeration, 2-tier racks, and trolleys	£8300+VAT

We also acknowledge there will be ongoing costs related to energy consumption of running a refrigerated unit, as well as possible maintenance costs. We are aware that many suppliers offer maintenance packages, however these costs would be variable depending on decisions made by the funeral director business in terms of accepting this offer and the coverage they purchased.

It is estimated that a maximum of 100 funeral directors in Scotland (and thus a minority overall) may need to obtain or otherwise obtain access to refrigeration or cold room storage. This is based on the estimate that NAFD and SAIF cover approximately 80% of Scotland's 500 funeral director businesses (and their reporting that all their members fulfil their refrigeration requirements in their own codes), and a very cautious assumption that no other funeral directors have refrigeration (which is unlikely).

The suppliers listed above provided an estimate of average delivery times from 2-3 days to 2-3 weeks. We are also aware that one provider offers an option to take a 'lease to purchase' approach.

Estimates of costs to businesses who still require refrigeration are limited due to remaining unknowns:

- how many businesses have multiple premises which would require the purchasing of refrigeration or cold room storage, therefore increasing costs.
- whether, and how many, businesses could pool their resources to jointly purchase or otherwise obtain access to refrigeration or cold room storage to be shared. This type of resource sharing is not prevented by the Code.
- How many businesses would require refrigeration or cold room storage with a larger capacity than is costed above.
- Costs related to possibly modifying premises prior to installing refrigeration (e.g. room ventilation, ensuring floor is wipeable, etc.)
- Costs related to modifying premises.

5 Relevant results of consultation and stakeholder engagement

Results of consultation and stakeholder engagement have been reported in the sections above.

6 Sectors and Groups Affected

6.1 Scope of the funeral industry

The proposal will have an impact on all funeral director businesses operating in Scotland. The funeral industry in Scotland is an area where, as detailed above, there has been no statutory control or regulation until the 2016 Act. Trade associations have published and maintained their own codes of practice and inspect their members.

The March 2019 publication by the CMA on their decision to launch a Phase 2 market investigation revealed significant issues with both trade association codes of practice¹² and the trade association inspections.¹³

It should be noted that all businesses and local authorities are subject to other legislative obligations, such as relevant health and safety regulations. Burial and cremation authorities are subject to environmental health regulations as overseen by SEPA.

One outcome of a lack of direct, modern legislative intervention in the funeral industry is there exists a degree of uncertainty over the exact numbers of funeral directors currently operating in Scotland.¹⁴

¹² Paragraphs 2.53, 2.54, Funerals market study (Final report and decision on a market investigation reference), Competition & Markets Authority, March 2019.

¹³ Paragraphs 4.21, 7.9 (a), 8.29 (f), Funerals market study (Final report and decision on a market investigation reference), Competition & Markets Authority, March 2019.

¹⁴ This also applies, to some extent, to the numbers of both historic and in use burial grounds. Accurate figures for the number of crematoriums, however, are readily available due to their small numbers and a

6.2 Funeral Directors

Funeral director businesses act as an important intermediary throughout the process and procedures around a death. Funeral directors liaise with a variety of public bodies such as registrars, police, local authorities and the NHS to make arrangements for the registration of death, followed by burial or cremation arrangements, on behalf of clients.

A funeral director business can be:

- Corporately owned and operated; or
- Independently owned and operated

Approximate numbers of funeral directors currently operating in Scotland:

- 500 businesses
- 930 branches in total

These figures are an estimate based on the most up to date information collated by the Scottish Government during the development of this BRIA. Information was obtained through the purchasing of a marketing list, and the two funeral director trade associations (NAFD and SAIF) provided their Scotland membership lists. Additional information was obtained through online searching. To fully inform future regulation the Scottish Government will continue to refine and examine these approximate numbers of businesses operating in Scotland.

6.3 Funeral Director Trade Associations

The National Association of Funeral Directors (NAFD) and National Society of Allied & Independent Funeral Directors (SAIF) are the two funeral director-specific trade associations operating in Scotland. Membership of trade associations is voluntary, however the NAFD estimates that 80% of funeral directors in Scotland are a member of one or both organisations.

Each trade association has developed and published their own Codes of Practice (available here: NAFD and SAIF). Each trade association undertakes inspections of their members against their respective Codes, and have communicated to officials that the Scottish Government's Code served as inspiration.

Both the NAFD and SAIF have for many years played an important role in promoting best practice and in improving operational practice amongst their members. The Code recognises the trade associations' own existing codes of practice, best practice guidance and codes of conduct, and has liaised closely with these organisations in the development of the Scottish Government's Code. Communications by SAIF in particular

regulatory history by other government agencies e.g. by SEPA and by the Inspector of Cremation (and latterly, the Inspectors for Burial, Cremation and Funeral Directors), who have been in post since 2015, completing numerous inspections of each crematorium.

have noted that the SAIF Code of Practice follows very closely the Scottish Government Code, given that the latter will be statutory in future, and in order to ensure alignment.¹⁵

Members of NAFD or SAIF are subject to inspections by those associations as a condition of membership. However, these are not statutory inspections, and the trade associations' codes are not statutory, therefore the strongest enforcement measure available if non-compliance is found is removal from their membership. Additionally, membership of a trade association is voluntary and not a requirement to someone operating as a funeral director. There's an opportunity for good practices to be shared through trade association membership and other business networks, however there remains variation between individual business practices and good overall standards.

From August 2017 – June 2018, the Inspector of Funeral Directors inspected 55 funeral director premises on a voluntary basis. Whilst the general observations include general good practice and "areas of excellence", the inspector also identified "departures from common or good practice in relation to care of the deceased, record keeping, training and experience of staff, identity checks, authorisation and permissions."¹⁶

The above options appraisal was undertaken with due regard to the sectors and groups possibly affected by implementation of the Code. Please see Table 2 below for this assessment.

6.4 Other Sectors and Groups Affected

Table 2: Other Sectors and Groups Affected

Group	Assessment of Possible Impact
Local Authorities or Health Boards	Possible positive impact - we note that there is an ongoing issue with mortuary capacity in Scotland, which is caused by a variety of factors. This may in part, however, be due to some funeral directors delaying collecting deceased from hospital mortuaries until the time of the funeral. While reasons for this may be varied, a contributing factor may be the lack of refrigeration or cold room storage the funeral director businesses have available to them, either on their premises or through an SLA. The requirement for funeral directors to have, or have access to, refrigeration or cold room storage, alongside the requirement for the funeral director to take the deceased into their care at the earliest possible opportunity (see paragraph 18 of the Code), may help improve the issue of mortuary capacity in Scotland.
Consumers	The Code is intended to contribute to increased confidence among the public that funeral directors are

¹⁵ Personal communication, 18 May 2023

¹⁶ Inspector of Funeral Directors: Annual Report 2017-18 (page 8).

	providing high quality services and consistent, dignified care to the deceased.
Regulators	None.
Third sector organisations	Possible positive impact, for example for third sector organisations supporting the bereaved, who will have a transparent set of minimum standards to which funeral directors must be complying with. No other (including financial) impacts to third sector organisations have been identified.

7 Regulatory and EU Alignment Impacts

The regulatory context within which Scottish Government policy is developed changed on 31 December 2020 when the UK left the EU single market. This section requires you to consider what, if any, impacts the proposed measure will have on the following regulatory features related to leaving the EU: intra-UK trade, international trade and the Scottish Government's EU alignment policy.

7.1 Intra-UK Trade

Is this measure likely to impact on intra-UK trade? No

- *Whether, and in what way, the provisions (particularly Parts 1-3) of the United Kingdom Internal Market Act 2020 are relevant to the measure*

The proposed Funeral Director Code sets minimum standards of care for the deceased and for the practices of funeral directors in Scotland. It therefore focuses on the provision of services and is a key step in the regulation of funeral directors in Scotland. It does not create regulatory requirements or authorisation requirements in respect of services in terms of the Internal Market Act 2020 ('the IMA'). Part 1 (goods) and Part 3 (qualifications) of the IMA are not relevant here as funeral directors are primarily providing services instead of goods, and the Code does not introduce any qualification requirements for funeral directors.

In future, it is intended that inspection regulations for the funeral sector and licensing regulations for funeral directors will be implemented. These regulations were the subject of public consultations in August-November 2023. If these are implemented, at that time the Funeral Director Code will form part of a broader authorisation scheme for Scottish funeral directors and any interactions with the IMA will require further consideration.

- *The nature and impact of policy divergence across UK nations likely to result from the introduction of the measure*

The Funeral Director Code will introduce a statutory set of minimum standards of care for the deceased and for the practices of funeral directors in Scotland. This will be the first time in the UK that a sector-specific Code is introduced – no other UK nation has a statutory Funeral Director Code. It is not anticipated, but is possible, that members of

the public in other UK nations may wish to engage Scottish funeral directors given the minimum standards set out in the Code.

- *Whether the measure falls within the scope of an existing Common Framework agreement.*

This measure does not fall within the scope of an existing Common Framework agreement.

8 International Trade

Is this measure likely to impact on international trade and investment? No

- This measure does not have the potential to affect imports or exports of funeral director services.
- This measure does not have the potential to affect trade flows with one or more countries.
- This measure does not include different requirements for domestic and foreign businesses.

9 EU Alignment

Is this measure likely to impact on the Scottish Government's policy to maintain alignment with the EU? No

- This measure does not impact the Scottish Government's commitment to maintain and advance the high standards that Scotland shares with the EU;
- This measure does not impact access to EU markets for people, goods, and services;
- This measure does not have any implications for EU alignment associated with the UK Internal Market Act 2020 or Common Framework agreements. We have noted above the impact this measure will have on intra-UK trade.

10 Scottish Firms Impact Test

A description of the discussions with business has been provided above in the section on consultation. This includes a working group, public consultation, direct conversations in focus groups and individual telephone calls described above.

A draft of this BRIA was shared with key stakeholders with a request for input or comments. None were received.

11 Competition Assessment

- *Will the measure directly or indirectly limit the number or range of suppliers?*

It is possible that that introduction of the Funeral Director Code may reduce the number of suppliers in Scotland, if certain funeral directors elect to close their business instead of making necessary adjustments in order to comply with the Code. The Scottish

Government's position is that the minimum standards set out in the Code are necessary to achieve the legitimate aim of protecting dignity and welfare of the deceased, and protecting the public (including raising their confidence in the funeral sector). Any reduction in the number of suppliers may be temporary, until new suppliers enter the market who are willing to comply with the Funeral Director Code.

- *Will the measure limit the ability of suppliers to compete?*

No. The Funeral Director Code will apply to all funeral directors carrying out the functions of a funeral director in Scotland.

- *Will the measure limit suppliers' incentives to compete vigorously?*

No. The Funeral Director Code does not change or impact suppliers' incentives to compete.

- *Will the measure limit the choices and information available to consumers?*

No. The Funeral Director Code improves transparency of funeral services in Scotland.

12 Consumer Assessment

- *Does the policy affect the quality, availability or price of any goods or services in a market?*

The Funeral Director Code will set minimum standards for the quality of funeral director services in Scotland. It is not anticipated that the Funeral Director Code will have long-term impacts on the availability of funeral director services, however we acknowledge that some funeral director businesses may, in the immediate term, decide to close rather than make adjustments to comply with the Code. It is also not anticipated that the Funeral Director Code will have long-term impacts on the price of funeral director services, however it may be that a funeral director business will pass on costs to consumers (in the short and medium term) of having to make investments in order to comply with the Code. These investments may be, for example, security for spaces which store the deceased or refrigeration/cold-room storage.

- *Does the policy affect the essential services market, such as energy or water?*

No

- *Does the policy involve storage or increased use of consumer data?*

No

- *Does the policy increase opportunities for unscrupulous suppliers to target consumers?*

No

- *Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?*

Yes. The Funeral Director Code provides transparent information about the minimum standards of funeral director services they can expect, and the

approaches they can take to making complaints about a funeral director. However, this information is not specifically targeted at consumers but the broader public.

- *Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?*

Yes, it improves these routes. The Funeral Director Code requires all funeral directors in Scotland to have an accessible written complaints procedure. It also sets out the different ways that consumers can raise complaints about a funeral director or the services they have received from a funeral director.

13 Test Run of Business Forms

No new forms are being introduced.

14 Digital Impact Test

- *Does the measure take account of changing digital technologies and markets?*

Yes. The measure will apply to funeral directors in Scotland, no matter if they provide some of their services via digital/online contexts. The nature of funeral director businesses, however, is that the key services (i.e. care of the deceased and the carrying out of the funeral) are provided in person. Where digital means are used, for example where a funeral director may use video calls to plan and arrange a funeral with a family, these communications would still be covered by the Funeral Director Code. In these instances, the funeral director would still be required to plan the funeral service according to the wishes of the deceased and the bereaved.

- *Will the measure be applicable in a digital/online context?*

Yes, as above, where the funeral director is providing services, such as planning a funeral service, in an online context, the minimum standards as set by the Funeral Director Code will still apply.

- *Is there a possibility the measures could be circumvented by digital / online transactions? Alternatively will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?*

No, once intended inspection regulations are made and brought into force, Inspectors of Burial, Cremation and Funeral Directors will inspect funeral directors based in Scotland against the minimum standards set by the Funeral Director Code, irrespective of whether the any part of the service provided has occurred online.

- *If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?*

No, the Code sets minimum standards for care of the deceased and practices of funeral director businesses, irrespective of whether any part of the service provided has occurred online.

14.1 Legal Aid Impact Test

The Funeral Director Code is not anticipated to have any impact on availability of legal aid or possible expenditure from the legal aid fund. This measure does not create new procedures or rights of appeal to a court or tribunal, nor does it change such a procedure or right of appeal.

The Funeral Director Code will create statutory minimum standards with which Scottish funeral directors must comply. In doing so, it is possible that a person may consult a solicitor if they are considering seeking damages in court for alleged breaches of that Code in relation to a funeral director they have hired. However, it is more likely that complaints about any breaches will be submitted to the funeral director, trade associations, and/or Inspectors of Burial, Cremation or Funeral Directors.

15 Enforcement, Sanctions and Monitoring

It is intended that this measure will be monitored and enforced by Inspectors of Burial, Cremation and Funeral Directors, appointed by Scottish Ministers using powers provided in the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act'). It is intended that powers of Inspectors to enforce compliance with the Code will be provided in forthcoming inspection regulations, the content of which were subject to public consultation between August-November 2023.

A BRIA (and any other applicable impact assessments) will be provided for the inspection regulations once the detail of those regulations has been settled on.

16 Implementation and Delivery Plan

The Code requires approval by Parliament prior to being issued and coming into force.

If passed by Parliament, the Funeral Director Code will be issued immediately, and will come into force 12 months after it is issued. The time between issuing and coming into force is required to allow funeral director businesses time to ensure they are compliant with the Code. During that time the Scottish Government will continue to work with stakeholders to create targeted communications to alert funeral directors and other relevant groups of the implementation of the Code.

17 Post-implementation Review

The Scottish Government will keep the Code under review, with a formal review being undertaken within 10 years of the Code coming into force.

18 Summary and Recommendation

Option 2 is recommended as this would align with the legislative requirements of the 2016 Act, and provides the best way to ensure there are clear, transparent, measurable minimum standards which funeral directors in Scotland must adhere to. In future, this

option would provide a robust basis for implementing the intended inspection and licensing regimes which funeral directors in Scotland will be subject to.

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
A	Do Nothing	N/A
B	Statutory Funeral Director: Code of Practice	For businesses without refrigeration or access to refrigeration through an SLA, there may be a one-off cost to invest in refrigeration or cold-room storage along with ongoing energy consumption and maintenance costs. These costs are outlined at section 4.1. We envisage additional costs for implementing the Code prior to the intended inspection regime coming into force will be minimal.

19 Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name:

Minister's title:

Scottish Government Contact point: Alexandra Wright - Burial, Cremation, Death Certification and Anatomy Team