

# Health, Social Care and Sport Committee

## 2<sup>nd</sup> Meeting, 2024 (Session 6), Tuesday, 23 January

### Document subject to parliamentary control

1. This paper invites the Committee to consider the following document subject to parliamentary control:

- Draft Funeral Director Code of Practice (SG 2023/300)

2. Section 97 of the Burial and Cremation (Scotland) Act 2016 sets out provisions for a Funeral director: code of practice. Subsection (3) requires the Scottish Ministers to lay a draft of the funeral director's code before the Scottish Parliament, after taking account of any representations made by virtue of subsection (2) which requires Ministers to consult with funeral directors and any other relevant parties before issuing a funeral director's code. A funeral director's code may not be issued until it has been approved by a resolution of the Scottish Parliament.

3. 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.

#### **Parliamentary process: the affirmative procedure**

4. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

5. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

6. It is usual practice for the lead committee to take evidence from the relevant Scottish minister in advance of considering the instrument. The committee can ask the minister and any officials questions about the SSI.

7. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.

8. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of

the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

**Clerks to the Committee**  
**18 January 2024**

<b>Title of Instrument:</b>	<b>Funeral Director Code of Practice</b>
<b>Laid Date:</b>	<b>15 December 2023</b>
<b>Reporting deadline:</b>	<b>8 February 2024</b>
<b>Type of instrument:</b>	<b>Document subject to parliamentary control</b>

### **Purpose**

9. 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. The Code and associated business and regulatory impact assessment (BRIA) can be accessed on the [Scottish Parliament website](#).
10. A formal Policy Note is not required as the Code is not a Statutory Instrument. The information note is included at **Annexe A**.
11. The Scottish Government information note states that the Scottish Government undertook a 12-week public consultation (required under subsection (2) of Section 97 of the Burial and Cremation (Scotland) Act 2016). This was launched in June 2019 and sought views on a draft Code. A [consultation analysis report](#) was published indicating that respondents generally supported the Code and its intentions.
12. The Committee undertook a targeted call for views and one submission was received from the National Society of Allied and Independent Funeral Directors (SAIF). The response indicates support for the Funeral Director Code of Practice and the consultative approach taken by the Scottish Government to develop the Code. This response is included at **Annexe B**.

### **Delegated Powers and Law Reform Committee consideration**

13. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [9 January 2024](#) and made no recommendations in relation to this instrument.

### **For decision**

14. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 8 February 2024.

## ANNEXE A

**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

**ANNEXE B**

**Comment from SAIF Scotland with respect to the Funeral Director Code of Practice 2024:**

The National Society of Allied and Independent Funeral Directors (SAIF) was established in 1989 and is now the largest trade association representing independent funeral companies in the U K. SAIF Scotland welcomes the news that Scotland's Funeral Director Code of Practice is moving towards Parliamentary approval and implementation in 2024.

As a trade association representing independent funeral businesses across Scotland, we believe that the Code is a positive step for the profession and we are content that it will meet its stated aims.

For many years, reputable funeral directors in Scotland have called for a set of regulated standards to which all businesses in the profession must adhere. The Funeral Director Code of Practice 2024 achieves that objective.

SAIF Scotland is grateful to the Scottish Government for the consultative approach it has taken in creating the Funeral Director Code of Practice. We are confident that it is a workable framework for what is an extremely complex sector comprising large corporates and micro businesses.

We look forward to continuing our work with the Scottish Government's Burials and Cremation team to ensure smooth adoption of the Code, once approved.

James Morris  
President SAIF Scotland

ENDS