

Statutory inspection of burial authorities, cremation authorities and funeral directors

A Scottish Government Consultation

August 2023

Table of Contents

Ministerial Foreword	3
Responding to this Consultation.....	5
Introduction	7
Overview of Proposed Inspection Regime	12
Section 1 - Types of inspections	16
Section 2 - Frequency of Routine Inspections of Burial Authorities, Cremation Authorities and Funeral Director Businesses	17
Section 3 - Routine Inspections of Funeral Directors: Number of premises inspected	22
Section 4 - Equipment and Items Which May be Inspected	25
Section 5 - Interviews of staff members and clients	26
Section 6 - Seizure, Detention or Removal of Equipment	28
Section 7 - Inspection Reports	30
Section 8 - Enforcement Notices	32
Section 9 - Suspension Notices for burial authorities and cremation authorities	34
Section 10 - Reviews and Appeals.....	38
Section 11 - Complaints	44
Any other comments	46
Impact Assessments	47

Ministerial Foreword

Bereavement can be emotionally overwhelming and being able to engage with the practical issues and funeral arrangements can be very difficult. However, it is something everyone is likely to experience at some stage in their life, whether it's the death of a family member, a loved one, or a friend. Having confidence in the care and dignity given to our loved ones, along with the compassionate and professional treatment of those bereaved, can go some way to alleviating that distress. The rare instances where this does not happen satisfactorily can have long-standing impacts on people.

This is why we need to ensure we get the right policy and legal frameworks in place.

Therefore, as Minister for Public Health and Women's Health, I am pleased to launch the Scottish Government's collection of consultations on burial, inspection, funeral director licensing, and alkaline hydrolysis (an alternative to burial and cremation). These consultations seek views on the Scottish Government's proposals for regulations for all four of these topics, which are to be made under the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act').

The 2016 Act fulfils our commitment to implement recommendations made by the Burial and Cremation Review Group (2007), the [Infant Cremation Commission](#) (2014) and the [National Cremation Investigation](#) (2016). The regulation proposals set out in the consultations on burial, inspection and funeral director licensing are key to realising the necessary detail, protection and processes envisaged by the 2016 Act. With your help, we can ensure the right policy and legal frameworks are in place. We can ensure that regulation is fair and proportionate and achieves the aim of protecting the deceased, setting minimum standards of care in the sector, supporting consistency of service and establishing a statutory regulatory function to monitor compliance with the 2016 Act and its codes of practice. In this way, we can provide everyone with greater confidence in the funeral sector in Scotland and promote continual improvement.

We are also taking this opportunity to attain public views on alkaline hydrolysis. When consulting on the 2016 Act we were aware that alternative methods of body disposal, which could sit alongside burial and cremation, were in development. Responses to the Bill consultation showed there was public support for the introduction of new, environmentally friendly alternatives in Scotland. This included alkaline hydrolysis which is already in use in some countries including Ireland, Canada and the USA.

The [Cremation \(Scotland\) Regulations 2019](#) updated how cremation is regulated and introduced revised and updated application forms and registers. It also set out the procedure for the handling of ashes. It is proposed that similar statutory requirements will apply to alkaline hydrolysis.

It is important that we ensure that regulations for any new methods are fit for purpose. So this consultation sets out the ways in which we propose alkaline hydrolysis should be governed and the safeguards which we consider should be put in place to help ensure the high standards that the public can expect with burial and cremation will apply to alkaline hydrolysis. We have also set out areas where the

wider legislative framework is well established in order to set out a fuller picture of what providers will be required to comply with in order to offer alkaline hydrolysis.

Our proposal is that alkaline hydrolysis would be an additional choice for people interested in exploring possible alternatives. We are not suggesting it replaces or displaces traditional methods in any way. It is a matter of choice for the individual and we absolutely recognise that many people will not consider it suitable for them or aligned with their beliefs.

Whilst many parts of the 2016 Act and associated regulations are already in place, I recognise that delays caused by the COVID-19 pandemic have impacted progress on the implementation of the remainder of the 2016 Act. I hope that the publication of these consultations demonstrates the progress made since then, working closely with the sector and other stakeholders, and the Scottish Government's continued commitment to developing these important regulations.

I am proud that Scotland is leading the way when it comes to funeral sector regulation. Scotland is the first UK nation to pursue a statutory regulatory regime for the funeral sector. In the Competition and Markets Authority's (CMA) [final report](#) on their funerals market investigation, they recognised Scotland's leadership in this area, and made recommendations to England, Northern Ireland and Wales to establish an inspection and registration regime, as a first step to the establishment of a broader regulatory regime for funeral services, "mirroring the approach taken in Scotland".

I appreciate we are seeking a wide variety of views from the public and from those working in the funeral sector in these consultations. I therefore invite you to respond to any or all of the consultations in this collection and thank you for taking the time to consider our proposals.

Your responses will help shape our next steps.

Jenni Minto MSP
Minister for Public Health and Women's Health

Responding to this Consultation

We are inviting responses to this consultation by 17 November 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online [here](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 17 November 2023.

If you are unable to respond using our consultation hub, please complete and return the [Respondent Information Form](#) to:

Burial, Cremation, Death Certification & Anatomy Team
Scottish Government
3 East
St Andrew's House
Edinburgh, EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at burialandcremation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Introduction

1. The [Burial and Cremation \(Scotland\) Act 2016](#) ('the 2016 Act') received Royal Assent in April 2016. It provides a modern, comprehensive legislative framework for burial and cremation in Scotland. Many of the 2016 Act's provisions are rooted in recommendations made by [the Infant Cremation Commission](#), the [National Cremation Investigation](#) and the [Burial and Cremation Review Group](#).
2. The 2016 Act gives Scottish Ministers the power to, amongst other things, establish an inspection regime for burial authorities, cremation authorities and funeral directors and to set up a licensing scheme for funeral director businesses. Key to this is the development of regulations and codes of practice which will be fundamental in ensuring minimum standards of care of the deceased. To promote compliance with the legal requirements within these regulations and codes, Scottish Ministers can appoint inspectors under section 89 of the 2016 Act as Inspectors of Burial, Cremation and Funeral Directors ('Inspectors').
3. Scottish Ministers first appointed the Inspector of Crematoria in March 2015.¹ The Inspector was appointed under the Cremation (Scotland) Regulations 1935, which at that time was the most up-to-date legislation relating to cremation. In April 2019, following the implementation of the 2016 Act, the Inspector of Crematoria's remit was widened to encompass the whole cremation process and was renamed 'Inspector of Cremation'.
4. An Inspector of Funeral Directors was appointed in 2017 by Scottish Ministers (by virtue of section 89(1) of the 2016 Act) to review the funeral sector in Scotland, progressing recommendations by the [National Cremation Investigation](#) and fulfilling the recommendations of the [Infant Cremation Commission](#).
5. In October 2020, the Inspector of Crematoria's remit was widened to encompass the entire funeral sector (subsuming the remit of the Inspector of Funeral Directors), and an additional Inspector was appointed. From that time, there has been appointed a Senior Inspector of Burial, Cremation and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors.
6. Some parts of the 2016 Act have already been implemented. Notably, in 2019, Part 2 on cremation was commenced, following which the [Cremation \(Scotland\) Regulations 2019](#) were made. These regulations took forward recommendations from the [Infant Cremation Commission](#) and [National Cremation Investigation](#) to implement improvements to the cremation process and the handling of ashes in Scotland.
7. The purpose of this consultation is to seek views on the implementation of regulations for inspection of burial authorities, cremation authorities, and funeral

¹ This appointment occurred in January 2015, and thus preceded the 2016 Act. Regulation 2 of the 1935 Regulations (made under the 1902 Act) required every crematoria to be "open to inspection at any reasonable time by any person appointed for that purpose by the Secretary of State or by the Department". The 1902 Act was repealed by the 2016 Act.

directors. As detailed below, a previous consultation on the proposed inspection regulations was held in 2017, and the funeral sector has been consulted as part of an Inspection Regulations Working Group which was convened in 2018.

8. This consultation is being published as part of a collection of consultations relating to the content of various sets of regulations that will be made under sections of the 2016 Act which have not yet been implemented. They are:
 - [Licensing regulations](#)
 - [Burial regulations](#)
 - [Alkaline hydrolysis \(an alternative to burial or cremation\)](#)
9. All consultations in this collection will be available at this [link](#) on the Scottish Government Citizen Space website.
10. You are welcome to comment on all parts of this consultation or select only the parts and questions most relevant to you.

Inspection Regime for Burial Authorities, Cremation Authorities and Funeral Directors in Scotland

11. Section 90 of the 2016 Act provides Scottish Ministers with the power to develop regulations for the carrying out of inspections of burial grounds and burial authorities, crematoriums and cremation authorities, and funeral directors. These inspections would be conducted by inspectors appointed under section 89(1) of the 2016 Act.
12. In this consultation, burial authorities and burial grounds, cremation authorities and crematoriums, and funeral director businesses are referred to as 'relevant bodies'.
13. The Scottish Government intends to use the powers provided in Section 90 of the 2016 Act to develop and implement inspection regulations. In this consultation we are seeking views on these proposed inspection regulations.

Rationale for the proposed inspection regulations

14. Inspection is an essential and core part of the regulatory responsibilities under Part 4 of the 2016 Act, under which we seek to improve standards and quality of funeral services in order to protect the deceased and the public in Scotland. It is central to our overall aim of increasing the credibility of, and confidence in, Scotland's funeral sector.
15. The importance of inspection in the funeral sector has its roots in the [Infant Cremation Commission](#). The Commission published their report in 2014, which examined the practice at that time regarding infant cremation and made recommendations for improvement (see recommendation 2.63), including the monitoring of work practices and standards at crematoriums. This led to the appointment of Scotland's first Inspector of Crematoria in 2015.

16. The 2016 Act built on this and enables Scottish Ministers to appoint Inspectors under section 89 of the 2016 Act as Inspectors of Burial, Cremation and Funeral Directors ('Inspectors'). As noted in the introduction, there is currently a Senior Inspector of Burial, Cremation and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors appointed by Scottish Ministers. The Inspectors are currently limited in their ability to conduct inspections or investigate complaints, and do not yet have any enforcement-related powers. The proposed inspection regulations will provide statutory powers for current and future Inspectors to carry out the functions required of them to contribute to the protection of the deceased and ensure minimum standards are being met in Scotland's funeral sector.

Previous Public and Stakeholder Engagement

2017 Consultation on Inspection Regulations Proposals

17. A consultation on policy proposals for inspection regulations was first held in 2017, making this current consultation the second time the Scottish Government has publicly consulted on the proposed inspection regulations. The first consultation is available [here](#).

18. The proposals at the time had been informed by the Parliamentary Bill process for the 2016 Act, stakeholder engagement and views of the then-Inspector of Crematoria. The 2017 inspection consultation asked for views on the following topics:

- frequency of routine inspections for burial authorities, cremation authorities and funeral director businesses
- types of inspection, including ad-hoc inspection, enquiry or investigation; specifically whether inspectors should be given powers to enter premises for this purpose,
- search and examination of premises including: contents, policies and procedures, training qualifications, documents and records, etc.
- seizure of equipment
- interviews with individual(s) involved in the delivery of services,
- approach to compliance and enforcement, including inspection reports, enforcement notices and suspension notices
- reviews and appeals against decisions of inspectors and decisions of Scottish Ministers

19. There were 36 responses to the 2017 consultation (31 of which permitted publication). The vast majority of responses to the 2017 consultation were received from the funeral sector (funeral directors, funeral director representatives and burial and cremation authorities). These responses were broadly supportive of the proposals set out in the 2017 consultation. Where comments raised issues or concerns these have been carefully considered and taken into account in the continuing development of proposals. More detailed results of the 2017 consultation are provided in individual sections in this consultation.

Inspection Regulations Working Group (2018-2019)

20. An Inspection Regulations Working Group was established in 2018 to help inform the development of the proposed inspection regime.
21. The Working Group met three times: December 2018, September 2019 and October 2019. The Group included representatives from:
- local authority burial and cremation authorities
 - private burial and cremation authorities
 - funeral director businesses
 - funeral trade associations
 - Inspector of Cremation (now Senior Inspector of Burial, Cremation and Funeral Directors)
 - Scottish Government
22. We have taken time to work closely with stakeholders represented on the Working Group to understand how the funeral sector operates as a whole. This was with a view to creating a system of regulation that is proportionate, fit for purpose, holds industry to minimum standards, and ensures the utmost respect for the deceased.
23. While the Inspection Regulations Working Group is the most relevant Working Group for the proposed inspection regulations, in developing its current policy proposals for inspection the Scottish Government has also drawn learning from the [Burial Regulations Working Group](#) and [Funeral Director Licensing Regulations Working Group](#). Please see the [other consultations in this collection](#) which are focused on the Scottish Government's proposals for burial regulations and funeral director licensing regulations.

Rationale for Second Consultation on Inspection Regime

24. Views and feedback from respondents to the 2017 inspection consultation have been vital in shaping the proposals for the inspection regime. This consultation builds on the first one and is now seeking views on the detail of the proposed regulations.
25. We recognise that the questions in this consultation relate to specific issues on which we are seeking your views. We therefore invite respondents to provide any additional comments they wish in the box provided at the end of this consultation.

Development of a Funeral Director: Code of Practice as a key basis for inspection

26. A key outcome of the responses to the 2017 consultation highlighted that a clear, definitive inspection procedure was required so that those being inspected understood what they were being inspected against. Further, the Inspection Regulations Working Group emphasised there was a need for significantly greater detail about how inspectors would assess minimum standards for the sector, for example by using a Code of Practice.

27. The development and issuing of codes of practice are provided for in the 2016 Act:

- Section 21: Burial Authority: Code of Practice
- Section 64: Cremation Authority: Code of Practice
- Section 97: Funeral Director: Code of Practice

28. The Scottish Government has focused firstly on the development of a Funeral Director: Code of Practice under Section 97 of the 2016 Act. This focus reflected the fact that the Cremation (Scotland) Regulations were already in development (and came into force in April 2019), providing cremation-related standards with which the sector would need to comply. Further, the risks associated with funeral director businesses, in which the deceased are taken into their care and prepared for burial or cremation, combined with the lack of provision in the 2016 Act to ensure minimum standards of care, necessitated that the Scottish Government prioritise developing these minimum standards in a Code of Practice. A short life working group was established in 2017 to help inform the development of the draft Funeral Director Code of Practice.

29. The Scottish Government developed an initial draft of the Code, and undertook a public consultation on the draft between June and September 2019. The [analysis report](#) of the consultation was published in 2021. A set of small focus groups were also held in early 2021 with small, independent, rural, and non-traditional funeral director businesses to discuss the potential impact of the Code on their businesses. Additionally, in 2021 the Scottish Government undertook a series of discussions with islands-based funeral directors, to attain their views on the potential impact of the Code.

30. Following the consultation exercises, the [draft Code](#) was revised, discussed again with industry stakeholders, and published on the Scottish Government website. We intend to lay the draft Code in the Scottish Parliament, in accordance with section 97 of the 2016 Act, as soon as practically possible. If approved by Parliament, the Code will come into force and funeral directors will be required to comply with it.

31. Once the Code is issued it will be key to underpinning the statutory inspection of funeral directors in Scotland. If the intended inspection regulations (the subject of this consultation) are brought into force, funeral directors will be inspected to determine their compliance with the minimum standards set by the Code (as well as provisions of the 2016 Act, regulations made under the 2016 Act, and any conditions of licence).

Development of Codes of Practice for Burial Authorities and Cremation Authorities

32. In future, the Scottish Government will also develop and issue Codes of Practice for burial authorities and cremation authorities. Until these Codes are developed, any statutory inspections of burial authorities and cremation authorities will be against the standards set in the 2016 Act, the 2019 Regulations, and the forthcoming burial regulations (currently under development, see [collection of consultations](#) on Scottish Government website).

Overview of Proposed Inspection Regime

33. It is intended that the inspection regulations will be developed as provided for in Part 4 of the 2016 Act, and will supplement the basic structure for inspection which is provided in the 2016 Act. The overall intention, therefore, is for the inspection regulations to provide a detailed framework for inspection, investigations, enforcement and appeals.

34. The following is a high-level description of the proposed inspection regime to be developed. Please note that many of the topics below are the subject of questions within this consultation.

A) Inspections

35. We intend that the inspection regime will provide for the carrying out of inspections of relevant bodies by Inspectors. Inspectors will be Ministerial Appointees, who will be recruited through open competition. Given that the proposed inspection regime will be the first statutory regime in the UK, specific professional experience in the funeral sector by Inspectors will not be mandatory. People appointed to be Inspectors will receive training in order to carry out their functions.

36. It is expected that all funeral director businesses and all cremation authorities/crematoriums operating in Scotland will be routinely inspected. For the burial sector, it is intended that routine inspection will focus on inspecting burial authorities, and not burial grounds.² This is because the cost and feasibility of inspecting the very high estimated number of burial grounds would be prohibitive.³ Our view is that routine inspection of burial authorities responsible for burial grounds is a practical and cost-efficient approach.

37. When the proposed inspection regulations come into force, Inspectors will inspect relevant bodies against the following requirements:

- Provisions of the Burial and Cremation (Scotland) 2016 Act
- Cremation (Scotland) Regulations 2019
- Funeral Director: Code of Practice (discussed above)
- Relevant funeral director licence conditions⁴
- Burial regulations (see [burial consultation](#))

² See section 1 of the 2016 Act for meaning of 'burial ground'. Section 2 of the 2016 Act states a 'burial authority' refers to the person having responsibility for the management of the burial ground.

³ Information collated for the Scottish Government, with co-operation from local authority representatives, indicates that there are at least 2,240 burial grounds which are the responsibility of local authorities. The exact number of non-local authority burial authorities is still to be established.

⁴ The Scottish Government intends to establish a funeral director licensing scheme using powers provided in section 95 of the 2016 Act (see [licensing consultation](#)), in which funeral director businesses must obtain a licence in order to operate. It is intended that the licensing authority may grant licences subject to conditions, and that inspectors will be empowered to inspect businesses' compliance with these conditions.

38. In future, and as set out earlier, the Scottish Government intends to develop a Burial Authority: Code of Practice (section 21 of 2016 Act), and a Cremation Authority: Code of Practice (section 64 of 2016 Act), against which Inspectors will also be able to conduct inspections.
39. When carrying out an inspection (or investigation, see below), Inspectors will, if authorised by the Scottish Ministers, have powers to enter the premises they will be inspecting for the purposes of carrying out their Inspector functions.⁵ Inspectors will only be permitted to exercise this power of entry for the purposes of carrying out any of their Inspector functions, or ascertaining whether an offence under the 2016 Act has been or is being committed. It is anticipated that the powers of entry will only need to be used if a relevant authority refuses entry to an Inspector voluntarily. The Inspector must only use their powers of entry at a reasonable hour, and it is our intention that they will do this with respect to any bereaved present.
40. During inspections, Inspectors may access, examine, or observe documents, equipment or other items which are relevant to their assessment of the relevant body's compliance. They may also engage in discussions with staff, third party contractors or clients of the relevant body in order to enquire about processes/procedures, or to gather further information to assist their inspection.
41. We intend that the regime will set out that Inspectors may carry out both routine and ad-hoc inspections. Routine inspections would happen at a frequency based on assessments of risk by Inspectors. This proposed approach is meant to provide necessary flexibility; firstly for Inspectors to be able to target finite resources appropriately; and secondly, to allow relevant bodies that consistently demonstrate good practice and compliance with set standards to benefit from reduced inspections, whilst ensuring the public can be confident that higher risk bodies are being inspected more frequently. Ad-hoc inspections could occur on an as-needed basis (e.g. following a complaint or other new evidence emerging).
42. Inspectors will be required to develop an 'inspection report' after inspecting a relevant body (after both routine and ad-hoc inspections). This report is intended to be used to identify areas where relevant bodies can improve compliance with relevant legislation, codes of practice, or conditions of licence.
43. Once a report is written, we intend to allow the relevant body to check it for factual accuracy. It is the Scottish Government's intention to then publish inspection reports. Where recommendations have been made for improving compliance, it will be expected that relevant bodies will seek to make those improvements. If necessary, where there has been a refusal or persistent failure to improve compliance, or a serious instance of non-compliance, the evidence in these reports will be used to inform possible enforcement action (detailed below).

⁵ We note this power is provided for in section 91 of the 2016 Act, thus will not be covered by inspection regulations made under section 90 of the 2016 Act. Instead, when section 91 of the 2016 Act is commenced, these powers will come into force. Similarly, section 92 of the 2016 Act sets out offences in respect to section 91, thus offences provisions will not be covered by the proposed inspection regulations.

B) Complaint Investigations

44. We intend that inspectors will be able to conduct investigations into complaints. It is envisaged that such an investigation would likely involve an ad-hoc inspection (and a corresponding inspection report) and discussion(s) with staff of the relevant body. We intend that inspectors would write a brief 'complaint report' after any investigation, detailing their findings, conclusions, and any actions taken or recommended. It is also intended that Inspectors would be empowered, following an investigation, to impose sanctions on the relevant body, similar to how sanctions could be imposed following an inspection. Potential sanctions would be the same enforcement measures as those which could be imposed following discovery of non-compliance through routine inspections, and are described below in 'enforcement'. It is not currently proposed the inspectors will have any additional powers in relation to responding to complaints.

C) Enforcement

45. The Scottish Government recognises that burial authorities, cremation authorities and funeral director businesses in Scotland provide important, high-quality services to the bereaved. We are aware, however, that poor practices are sometimes carried out by a small minority.

46. Where evidence of poor practice exists and non-compliance is demonstrated (and captured in inspection reports), the Scottish Government is presently seeking an approach where Inspectors first take an 'improvement approach' with the relevant body. This would precede any formal enforcement actions being taken. Such an improvement approach may include, for example, the following:

- Discussion(s) between representatives of the relevant body and the Inspector, so areas for improvement may be identified and remedies proposed. This would also provide an opportunity for the relevant body to ask questions of the Inspector,
- Signposting by the Inspector of further resource the relevant body may find useful to support their improvement and remedying of any issues,
- Linking relevant bodies to share best practice, and
- Any other support to the relevant body, to facilitate progress on key improvements within agreed timescales.

47. If an improvement approach is unsuccessful in getting the relevant body to improve compliance, it is intended that the inspection regulations will provide for enforcement actions that Inspectors and Scottish Ministers can take.

48. In terms of this enforcement action, the following is envisaged:

- Inspector issues an 'enforcement notice': This would be a legal notice which must be complied with. An enforcement notice can be issued where, for example, an Inspector has undertaken an inspection, has found failings and has issued an inspection report but deems that no, or insufficient, progress is being made towards remedying such failings

within set timescales (with timescales to be determined on a case-by-case basis). It is intended that enforcement notices will be made public, for example by posting a physical notice at the relevant premises of a burial authority, cremation authority or funeral director business. This is so the public are aware of the presence of non-compliance with set standards.

- For **burial authorities** or **cremation authorities**: Inspector recommends to Scottish Ministers that they suspend the operation of activities in these relevant bodies. The 2016 Act specifies that it must be Scottish Ministers who make this decision. This may follow where the Inspector finds serious non-compliance⁶ or where there has been little or no action to address concerns, for example, by failing to comply with an enforcement notice. Scottish Ministers may then decide whether to suspend the operation of some or all activities of the relevant body. Similar to enforcement notices, it is intended that suspension notices will be made public, so the public are aware of the presence of non-compliance with set standards.
- For **funeral director businesses**: Inspector recommends the suspension or revocation of a funeral director business licence to Scottish Ministers. The 2016 Act specifies that it must be Scottish Ministers who make this decision, when the decision is recommended by Inspectors. This may follow where the Inspector finds serious non-compliance or where there has been little or no action to address concerns, for example, by failing to comply with an enforcement notice. Scottish Ministers will then decide whether to suspend a licence, or in even more extreme circumstances, revoke a licence. Please see the [licensing consultation](#) for more detail. It is intended that any suspension and revocation of licence will be made public.

49. Processes for how an enforcement notice, suspension of activities, or suspension of licence⁷ can be lifted will be implemented.

D) Appeals

50. It is intended that relevant bodies will have a right to request a review of, or seek an appeal against, decisions by Inspectors or Scottish Ministers which impact their operations. The Scottish Government intends for the inspection regime to allow for relevant bodies to challenge these decisions through an appeals process.

⁶ Examples might in particular include issues which pose continuous risks of damage to the deceased

⁷ It is intended that a funeral director licence which has been revoked cannot be reinstated. Please see [licensing consultation](#) for more details.

Section 1 - Types of inspections

51. Section 90 of the 2016 Act provide powers for Scottish Ministers to make regulations about the circumstances in which inspections are to be carried out. The 2017 inspection consultation asked whether Inspectors should have powers to carry out both routine and ad-hoc inspections.
52. A routine inspection would be one which is regularly scheduled and for which an authority or business is given advance notice. The frequency of routine inspections is asked about in the next section of this consultation.
53. Ad-hoc inspections would be those which fall outwith the regular routine inspection schedule. They may be useful, for example, to follow up on a complaint, or gather more information after an issue has been raised with Inspectors (e.g. by a whistle-blower, other authority such as Police Scotland, interested member of the public, etc.). It may also be useful to observe progress on any compliance improvements by a relevant body. As such, ad-hoc inspections may be more targeted than routine inspections.
54. With regards to ad-hoc inspections, the 2017 consultation also asked whether inspectors should have powers to undertake these as either announced ad-hoc inspections or unannounced ad-hoc inspections, depending on the individual circumstances. For example, inspectors may wish to do an announced ad-hoc inspection in circumstances where they are investigating a complaint and want to ensure that staff and information are prepared before their arrival. However, inspectors may wish to do an unannounced ad-hoc inspection if they do not want to give the business warning of their arrival. For example, where they want to observe whether recommended improvements have been incorporated into day-to-day practice.

Previous consultation responses

55. Responses to the 2017 consultation recognised the need for both routine and ad-hoc inspections. Additionally, the majority of responses were supportive of having ad-hoc inspections which could be either announced or unannounced.
56. However, respondents provided additional information to consider about unannounced inspections. For example, that inspectors would need to be mindful of pressures on authorities or businesses who may be in the process of arranging or providing a funeral when Inspectors arrive unannounced and that their visit should not impact upon any bereaved people present.
57. The Inspection Regulations Working Group also discussed this issue in December 2018, and agreed that Inspectors should be empowered to carry out both announced and unannounced inspections of relevant bodies. Members noted that trade associations already conduct announced and unannounced inspections, and agreed that unannounced inspections do not need to be restricted to specific circumstances. Again, the importance of not negatively impacting bereaved people during unannounced inspections was emphasised.

Scottish Government position

58. Taking these views into account, the Scottish Government's intention remains that, in addition to routine inspections, both announced ad-hoc and unannounced ad-hoc inspections are to be provided for in the proposed inspection regulations.
59. It is further intended that guidance and training on unannounced ad-hoc inspections will be provided to inspectors which will cover the need to be respectful of any bereaved persons present, as well as any operational or business needs of the authority or funeral director business.
60. In addition the Scottish Government intends to implement a complaints procedure which will be available to relevant bodies. This procedure can be utilised if they are concerned about how an inspection has been conducted, or about being inspected too frequently.

Question 1 - Please provide any comments on the Scottish Government's proposals related to types of inspections by inspectors.

Section 2 - Frequency of Routine Inspections of Burial Authorities, Cremation Authorities and Funeral Director Businesses

61. Section 90 of the 2016 Act provides Scottish Ministers with powers to make provision about the frequency of inspections. The Scottish Government intends to use these powers and is seeking views on the approach to determining frequency of routine inspections of relevant bodies.

Previous Consultation

62. This issue has been discussed with the Inspection Regulations Working Group and was included in the 2017 consultation on proposed inspection regulations.
63. The 2017 inspection consultation asked whether cremation authorities should be inspected annually. This proposal was put forward in part because of the small number of cremation authorities in Scotland (there are currently 33 crematoriums across 22 cremation authorities). Respondents to the 2017 consultation unanimously agreed with this proposal and crematoriums in Scotland are currently inspected annually. This inspection frequency is not currently set in regulations.
64. Respondents to the 2017 consultation suggested routine inspections of burial authorities could occur either annually or every 2-3 years. Where respondents suggested annual inspections, this appeared to be on the basis that it would align with (current) annual inspection of crematoriums. However, inspection every 2-3 years was perceived by other respondents to be more feasible given the high estimated number of burial authorities and the resource commitment required, as well as being appropriate given the low risk that burial authorities present. The position subsequently supported by the Inspection Regulations Working Group was that a three yearly interval for routine inspection of burial authorities would be proportionate and take into account the relatively low number of issues raised about practices at burial authorities/grounds.

65. Regarding funeral director businesses, the 2017 consultation responses generally fell into two categories, suggesting either annual inspections or inspections every 2-3 years. However, these responses additionally noted the difficulties of inspecting funeral directors annually. In particular, the feasibility of annual inspections was questioned given the large number of funeral director businesses in Scotland, their geographical dispersal and the significant resources it would require to administer. Further, respondents noted the expected disruption annual inspection would cause to businesses. Open-ended responses to the 2017 consultation suggested that flexibility to inspect funeral directors based on any concerns about them would be advantageous.

Scottish Government Position

Burial Authorities and Cremation Authorities

66. We are proposing to provide in regulations that a risk-based approach be used to determine the frequency of routine inspections of burial authorities and cremation authorities.

67. This proposed approach is meant to provide necessary flexibility. Firstly, this allows Inspectors to be able to prioritise and target finite resources effectively for the greatest impact. In practice, this would mean Inspectors have more time to spend working with authorities where problems have been identified to improve their standards. Secondly, it allows burial or cremation authorities that consistently demonstrate good practice and compliance with set standards to benefit from reduced inspections.

68. If a set frequency were provided for in regulations, there would be a risk that a significant and/or unplanned disruption to Inspector capacity would lead to an inability of Inspectors and the funeral sector to fulfil the requirements of the regulations. The proposed risk-based and more flexible approach would allow the public to take confidence that burial or cremation authorities deemed to be higher risk will be inspected more frequently (and ad-hoc inspections can be used at any time to supplement this).

69. To implement this approach, we intend to develop a 'risk framework' tool to provide Inspectors with an objective method of assessing risk and determining appropriate routine inspection frequencies. We note that this tool is intended to only be for **determining frequency of routine inspection**. It will not be an indicator of whether enforcement action will be taken against a given relevant body, and will be entirely separate from their inspection reports. The risk framework for each of burial authorities and cremation authorities is likely to be tailored to each sector, and set out at a high level in the proposed regulations.

70. We are considering the following criteria for including in the risk frameworks for burial authorities and cremation authorities:

- number and nature of complaints against the burial authority or cremation authority

- evidence of compliance or non-compliance with statutory standards, including where standards have been exceeded
- membership of a trade body
- number and type of premises operated by that business (for example body storage and handling facility or administrative offices only)
- for burial authorities, the number of burial grounds and the nature of those burial grounds i.e. whether they are active (accepting new burials), inactive (not accepting new burials) or historic (where the last coffin burial took place more than 100 years ago and no new burials are anticipated)
- number of burials or cremations conducted annually
- referrals made by Inspectors to other bodies regarding the burial authority or cremation authority (e.g. HSE, Police Scotland) or referrals by those other bodies to the inspectors
- where accredited training exists, qualifications of owners, managers and staff

71. The proposed risk framework may need to be revised as more information is collected about burial authorities and cremation authorities, and if there are changes to the funeral sector (for example if authorities begin providing alternative methods of body disposal such as alkaline hydrolysis [see [consultation](#)]).

72. Regarding inspection frequencies that might be associated with lower or higher risk, it will be for Inspectors to decide how frequently a burial or cremation authority should be inspected, based on their assessment of risk. This allows inspectors to deploy their resources and prioritise inspections on a more risk-assessed and proportionate basis, using the latest evidence and intelligence. Broadly, with reference to the above risk framework criteria, risk would be judged by Inspectors based upon compliance history and authorities with a strong history of meeting high standards would be considered low risk.

73. However, we are considering what typical frequencies Inspectors may associate with low, medium, and high risk burial or cremation authorities. Routine inspection cycles of approximately three years for low risk bodies and annual inspections for higher risk bodies are under consideration given responses to the 2017 consultation (noted above) and the existing precedent for these frequencies in existing regulatory regimes.⁸

74. Importantly, the 2016 Act does not allow for a licensing scheme to be developed for burial authorities and cremation authorities – this is only permitted for funeral directors (see below). Therefore, any risk-based inspection frequencies of burial authorities and cremation authorities will not be impacted by any implementation of a licensing regime in future.

⁸ For example, please see [Fish Health Inspectorate Surveillance](#) and [Animal Welfare \(Licensing of Activities Involving Animals\) \(Scotland\) Regulations 2021](#)

Funeral Directors

75. Similarly to burial authorities and cremation authorities above, we are proposing that a risk-based approach will be used to determine the frequency of routine inspections of funeral directors. However, the proposed licensing scheme for funeral directors (see [licensing consultation](#)) will, if implemented, have an impact on funeral director inspections. More detail is provided below.

76. We consider that taking a risk-based approach to the routine inspection of funeral directors is supported by the same reasons as are noted above in the subsection on burial and cremation authorities: it is meant to provide flexibility for Inspectors to prioritise and target finite resources effectively, and ensure funeral directors at high risk are being inspected more frequently than those who are at low or medium risk.

77. Again similar to the approach for burial and cremation authorities, we intend to develop a 'risk framework' for funeral directors, to provide Inspectors with an objective method of assessing risk. As above, this will only be used for determining frequency of routine inspection, not enforcement action.

78. We are considering the following criteria for including in the risk framework for funeral directors:

- number and nature of complaints against a funeral director
- evidence of compliance or non-compliance with statutory standards, including where standards have been exceeded
- membership of a trade body
- number and type of premises operated by that business (for example body storage and handling facility or administrative offices only)
- type of activities carried out and the risk associated with those activities (e.g. body storage, embalming or administration only)
- number of funerals arranged and conducted annually
- referrals made by Inspectors to other bodies regarding the funeral director (e.g. HSE, Police Scotland) or referrals by those other bodies to the inspectors

79. The proposed risk framework may need to be revised as more information is collected about funeral directors and if the professional landscape changes (for example, if/when accredited professional qualifications for funeral directors become available, or if funeral directors begin providing alternative methods of body disposal such as alkaline hydrolysis [see [consultation](#)]).

80. Similar to the above subsection on burial and cremation authorities, we are considering what typical frequencies Inspectors may associate with low, medium, and high risk funeral directors. Routine inspection cycles of approximately three years for low risk funeral directors, and annual inspections for higher risk funeral directors, was supported by stakeholders on the Inspection Regulations Working Group and certain respondents from the 2017 consultation. Again, there is precedent for these frequencies in existing regulatory regimes.

81. The proposed licensing scheme for funeral directors is proposing that licences should be renewed every three years and that each renewal application should require an inspection. We consider that to inform the licensing renewal decision, a three year application cycle will allow a wide range of intelligence to be taken into account, including evidence from inspection reports, recent complaints or other information submitted by the public or interested parties, and any changes to a business's staffing, ownership, management or general circumstances that could potentially affect the quality of service (see [licensing consultation](#)).
82. Should the licensing scheme be implemented, it is intended that the licence renewal inspections of funeral directors will be synchronised with their routine inspections, as determined by the risk-based approach. A full range of information will be used to consider how best to synchronise these inspections, so as not to overburden funeral directors with unnecessary, duplicate inspections.
83. For example, if a low-risk funeral director is being inspected as part of their licence renewal application every three years, that inspection could also serve as their three-yearly routine inspection. Additionally, if a funeral director is due for a routine inspection, but has a licence renewal coming up soon, then the proposed approach would allow Inspectors to time that funeral director's inspection to serve as both their renewal inspection and their routine inspection.

Additional Information on Proposed Risk Based Approach

84. When the proposed inspection regime is first implemented, it is likely that all relevant bodies will be deemed to be at the same level of risk as others in their sector (e.g. all the cremation authorities would initially be deemed to be the same level of risk), until we are able to gather evidence and revise their level of risk as necessary.
85. If the risk-based approach is taken we do not intend that the risk assessment of individual bodies will be published. This is meant to be an internal tool for Inspectors to help them determine the frequency of routine inspection for individual relevant bodies with sensitivity to the latest context and evidence. It is not intended to form part of the individual body's inspection reports or any related enforcement action.
86. It is intended that Inspectors can revise a relevant body's risk framework, based on evidence provided to them by that body, as observed through inspections, or from an alternative source. A relevant body will be free to request a review of their risk level by Inspectors, however this would need to be accompanied by relevant evidence to support why a revision to the risk level might be warranted. Revisions which would lead to a change in routine inspection frequency (e.g. from every three years to annually) would be communicated to the body.

Question 2 - Do you agree or disagree with taking a 'risk-based approach' to determining the frequency of routine inspections for cremation authorities?

Strongly agree

Agree

Neither agree or disagree

Disagree
Strongly disagree

Question 3 - Please provide any suggested revisions or additions to the criteria proposed for determining the level of risk of cremation authorities.

Question 4 - Do you agree or disagree with taking a 'risk-based approach' to determining the frequency of routine inspections for burial authorities?

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Question 5 - Please provide any suggested revisions or additions to the criteria proposed for determining the level of risk of burial authorities.

Question 6 - Do you agree or disagree with taking a 'risk-based approach' to determining the frequency of routine inspections for funeral director businesses?

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Question 7 - Please provide any suggested revisions or additions to the criteria proposed for determining the level of risk of funeral directors.

Question 8 - Please provide any comments on the proposal to link inspections and funeral director licence renewals.

Question 9 - Please provide any other comments regarding the proposals for determining the frequency of routine inspections.

Section 3 - Routine Inspections of Funeral Directors: Number of premises inspected

87. The Scottish Government is seeking views on the approach to handling routine inspections for funeral director businesses with a large number of premises.⁹

⁹ It is intended that all cremation authorities (and each of the individual crematoriums that they manage) will be inspected, given their small number. However, in contrast, some burial authorities in Scotland are responsible for managing hundreds of burial grounds. Therefore due to the practicalities, resource implications and the low-risk nature of many burial grounds, it is proposed that each burial authority, rather than burial ground, will be subject to inspection.

88. Some funeral director businesses in Scotland have many premises (more than 10), and a small minority have an even higher number of premises (more than 100). The Scottish Government's current Inspectors estimate that it presently takes approximately one working day for an Inspector to complete an inspection of a single-premises funeral director business. For a large business with over 100 premises, it is anticipated that it would take a single Inspector a number of months to complete their inspection of all premises in the business.
89. This issue was not discussed in the 2017 inspection regulations consultation. It was discussed with funeral director stakeholders at the Licensing Regulations Working Group in April 2023. Their preference is noted below.
90. Please see below for the two options currently under consideration.

Option A – All premises of large businesses inspected

91. In this approach, where a funeral director business has more than one premises, each of these premises would be subject to inspection when a routine inspection is occurring.
92. The key reason to require the inspection of each premises is this would apply equal inspection requirements to both large and small businesses. If large businesses are only subject to inspection of some of their premises, while small businesses are required to have all premises inspected, this may be perceived by some as inconsistent or unfair. Additionally, this approach would ensure that every premises in a business is assessed for whether they are meeting the required standards, which is only possible if each one is inspected. Furthermore, it would allow inspectors and the licensing authority (see [licensing consultation](#)) to have a comprehensive understanding of the operations of the whole business in making any decisions or recommendations.
93. A consequence of this approach is that where a routine inspection of a business with a very high number of premises is occurring, inspections will likely occur over a period of weeks or months (depending on the number of premises involved). This will take a significant amount of inspector time, in an environment in which there will be a finite number of inspectors with capacity that will need to be divided across the funeral sector. Additionally, this will create a large burden on those businesses to support the inspection process across a number of weeks/months.
94. Further, it is intended that determination of initial licence applications and renewal applications will be informed by an inspection (see [licensing consultation](#)). Requiring inspection of all premises would require a longer period of time between the time of the application being submitted to the licensing authority and the time a decision on the application can be made. This approach might lead to situations where the number of inspectors is insufficient to carry out all inspections without any delay, and applications which are relying on these inspections might wait longer for a decision.

95. Finally, this approach has an implication for possible licence application and licence renewal fees. It is being proposed (see [licensing consultation](#)) that these fees will help to recover costs associated with processing applications and renewal applications (including the costs of the inspections which would be triggered by these applications). If a greater number of premises are being inspected for the purposes of informing the licence or renewal application, the fees associated with the relevant application will be higher than if fewer premises were inspected.

96. We note that Option A is the expressed preference of the Licensing Regulations Working Group.

Option B – Multi-premises businesses subject to inspections of randomly selected premises

97. Under this approach, when a routine inspection is being undertaken for funeral director businesses, those with a low number of premises (e.g. 10 or less) would still have all their premises inspected. However, where a licence covers a high number of premises (e.g. more than 10), it is proposed that only a certain percentage of the business's premises would be inspected (although a minimum number to be inspected, e.g. 10, would be set). We would welcome your views as to what percentage you would consider appropriate to apply in these circumstances.

98. If Option B is pursued the possible percentage of premises to be inspected is still to be determined, however examples include 25%, 50%, and 75% of premises. The locations of the premises to be inspected would be randomly selected by Inspectors. Further, the business would only be informed which premises were to be inspected a short time in advance (e.g. a few days), with the intention that this would mean they need to keep all premises up to standards in case any of them were selected for inspection. However, it is noted that these businesses may still be able to avoid having their non-compliance brought to light (if there is any), if it occurs at premises that are not selected for inspection.

99. Advantages of this approach may be the lower Inspector capacity required to undertake routine inspections (and thus lower overall cost of running the inspection regime). Additionally, this may lower the burden on multi-premised funeral director businesses in terms of 'hosting' inspectors through the entire inspection process of their randomly-selected premises. Further, if routine inspections are linked to licence applications and renewal applications, as intended, the following advantages may result: (a) lower licence application fees for funeral director businesses, since a lower number of licence application-related inspections could mean less cost recovery through these inspections, and (b) possible avoidance of delays to determining licence applications or renewal applications, given less Inspector time would be required.

100. Disadvantages of this approach may include: (a) it may not be perceived as fair to businesses with a lower number of premises, who would be subject to scrutiny of all their premises, and (b) it may be perceived as less protective of the deceased and the public since it may provide less confidence that all

funeral director premises, at the time of routine inspections, are compliant with required standards.

Question 10 - Which option presented above do you prefer?

- Option A
- Option B
- Neither
- Don't know

Question 11 - If Option B is pursued by the Scottish Government, please select the percentage of premises you think should be randomly selected for inspection.

- 25% of premises
- 50% of premises
- 75% of premises
- Other % of premises (please state a %):
- Don't know

Question 12 - Please provide reasons for your selection above, and any other comments you wish to make.

Section 4 - Equipment and Items Which May be Inspected

101. In order to check compliance of relevant bodies with minimum standards, inspectors will need to examine equipment and items which provide evidence of compliance or non-compliance.
102. Section 91 of the 2016 Act gives Inspectors powers to require production of documents, records or registers required to be kept under the 2016 Act as part of the inspection process and to be able to take copies of them.

Previous consultation

103. The 2017 consultation provided a list of equipment and items that may be included in an inspection or investigation. Consultation responses helped us to generally maintain this list as most of the respondents supported the list's content, however they also helped us to make certain additions. These additions include inspection of the deceased held on the premises, vehicles, and proof of upkeep of equipment.

Scottish Government position

104. The Scottish Government proposes that the following updated list may be included in an inspection or investigation:
 - all areas of premises (both main premises and satellite premises) including: indoor and outdoor areas; and rooms or areas with restricted access

- all items and equipment on or connected with the premises such as vehicles, cremators, refrigeration units etc. and documentation relating to maintenance of equipment
- the deceased held on the premises
- policies, plans, practices and procedures
- training qualifications associated with the running of the authority or business
- documentation, records or registers required to be kept under the 2016 Act, relevant regulations or codes of practice
- documentation, records or registers where it is relevant to the inspection or investigation

105. We note that inspection of any of the above items would be to ensure compliance with any relevant requirements of legislation, codes of practice, or conditions of licence. This would not include the testing of equipment to identify faults (akin to a MOT annual vehicle safety test), but may include examining the equipment and maintenance documentation to ensure it is compliant with set standards (i.e. relating to cleanliness).

Question 13 - Please provide any comments on the Scottish Government's proposals related to inspection of equipment and other items by inspectors.

Section 5 - Interviews of staff members and clients

Previous consultation

106. The 2017 consultation on the proposed inspection regulations noted that it may be appropriate in certain circumstances for an inspector to interview individuals involved in the delivery of services, or a service user. The 2017 consultation asked whether respondents agreed that Inspectors should be able to 'conduct interviews' during an inspection, enquiry or investigation of a burial authority, cremation authority or funeral director, where appropriate. This was intended to cover discussions with staff (and third-party contractors such as embalmers), as well as clients/service users.
107. The majority of respondents agreed with this proposal and provided additional helpful comments. For example, large funeral director businesses and local councils noted that a formal protocol regarding interviews should be developed and published, particularly for when interviews might be investigating specific concerns.
108. The Inspection Regulations Working Group discussed this topic and noted their preference for an approach which allows an inspector to request to speak to any member of staff to gather information during inspections. The Group suggested that staff members be able to request to be accompanied by a third party (such as a union representative) if they wish or refuse to be interviewed. During an investigation of a complaint the Working Group suggested that interviews with staff may also be requested.

Scottish Government position

109. The Scottish Government has considered these views, and considers it important to the completeness and effectiveness of inspections or investigations that an Inspector is empowered to request or otherwise engage in discussions with members of staff (including third-party contractors) or clients of relevant bodies.
110. We are therefore currently retaining the proposal to provide in regulation powers for Inspectors to routinely, in the course of an inspection or investigation, have these discussions. We are referring to these as 'interviews', and we intend that they may take place during an inspection or at a time convenient for the person – this may be, for example, by telephone or video call at later time.
111. We are including this topic in the current consultation to provide further detail and explanation for this position and ensure respondents have an opportunity to provide up-to-date responses.
112. It will be important to speak with staff, for example, to ascertain or clarify policies, procedures or other operational aspects in the course of assessing the authority or business's compliance with standards set by the Scottish Government. Further, in the event a whistle-blower or other staff member wishes to report non-compliance with standards it is important that Inspectors are able to engage in that discussion. It may also in some cases be useful and appropriate to elicit feedback from clients on services received.
113. It is additionally important that Inspectors are empowered to speak with clients or service users of relevant bodies. For example, if a complaint is lodged by a client, it is important that Inspectors can formally discuss their concerns. As another example, sometimes issues may be pre-emptively brought to the attention of Inspectors by a body themselves. This might be, for example, if there has been an issue with the release or identification of ashes. Issues may also be brought to Inspectors' attention by whistle-blowers or other interested parties. In these types of instances Inspectors may request to speak with the bereaved persons who may have been impacted by this issue in order to gather more information.
114. Staff/third-party contractors or clients who do agree to be interviewed by an Inspector would not be identifiable in the inspection report.
115. If/when asked for an interview by an Inspector any staff member will be free to refuse. The refusal would be anonymously noted in the subsequent inspection report for the purposes of recording that an interview was requested but refused. We do not intend to specify the types of questions an Inspector can or cannot ask. However, anyone an inspector is speaking with will be free to refuse to answer any question. It will not be an offence to refuse to speak with an inspector or refuse to answer any particular question.

116. It is intended that persons being interviewed by Inspectors for any reason can be accompanied by a third party if they wish. This may be, for example, a union representative or legal representative.
117. Where a complaint is being investigated the Inspector may request an interview with the explicit purpose of aiding the investigation.
118. Any issue or complaint that falls outwith the Inspectors' remit, such as one that should be dealt with by the Scottish Environment Protection Agency (SEPA) or Scottish Water, would be referred to that authority. It is also intended that any issue or complaint which is deemed serious enough for Police Scotland or Health and Safety Executive involvement would be referred to the appropriate authority. Therefore, any subsequent interviews held would be for that authority to undertake.

Question 14 - Please provide any comments on the Scottish Government's proposal to provide in regulations powers for Inspectors to interview staff (or third-party contractors) or clients of burial authorities, cremation authorities, or funeral directors.

Section 6 - Seizure, Detention or Removal of Equipment

Previous consultation

119. The 2017 inspection consultation asked, "Do you agree that inspectors should have powers to seize, detain or remove equipment in certain circumstances?" While respondents to the consultation were generally in agreement, they noted key concerns with the proposal. These included:
- it may not always be possible for equipment to be removed due to reasons related to safety, location, size, cost or other
 - logistically, this may also be impractical and may adversely impact the bereaved where funerals are already arranged
 - whether costs of removing and relocating the deceased would be borne by the business
120. The Inspection Regulations Working Group also discussed this issue. Concerns raised particularly related to:
- the potential impact on a person's livelihood of removing equipment essential for running a business
 - how training and expertise of inspectors may be limited, but the seizure of equipment may require specialist background knowledge (such as health and safety)
121. The Working Group ultimately agreed that while inspectors should have powers to instruct businesses or authorities not to use equipment, they should not have the power to physically remove any equipment.

122. The Scottish Government has noted these valuable contributions, and has made additional considerations. These include:

- where equipment which has been seized might be securely and safely stored, and
- how equipment which has been seized can be returned to the owner safely, securely, and in a timely manner.

Scottish Government position

123. Having considered the above, the Scottish Government's view is that the range of concerns presented about this proposal are valid and outweigh risks of allowing authorities or businesses to keep equipment on their premises. The Scottish Government now proposes that Inspectors will **not** have the power to seize, detain or remove equipment.

124. Instead, we propose that Inspectors may recommend improvements or, in serious cases, issue an enforcement notice which, to be lifted, requires that faulty equipment be repaired or replaced within an appropriate timeframe.

125. The Scottish Government is seeking views about whether Inspectors should have powers to **prohibit** use of faulty equipment through the use of an enforcement notice. This would be a stronger measure than the one described above, requiring that the relevant body **does not use** the equipment until it is repaired or replaced. The Scottish Government is aware this type of sanction could have a significant impact on the operations of relevant bodies. We therefore welcome views on whether this approach might be proportionate and appropriate for inclusion in the proposed inspection regime, in addition to the proposal that an enforcement notice can be issued which only requires equipment to be repaired or replaced.

126. We are exploring this because there may be instances where equipment does not pose a risk to living persons but poses an ongoing risk to the dignity of the deceased. For example, where equipment to lift and move bodies may risk them being dropped. We seek views on whether it may be necessary for Inspectors to have powers to mandate this equipment is not used until repaired/replaced, or whether in practice relevant bodies do not use any equipment with serious faults. We note that where equipment which poses work-related risks of death, injury or ill health this would require referral to the Health and Safety Executive.

127. To enforce such a prohibition on using faulty equipment, it would be likely that Inspectors would need to make ad-hoc inspections of the relevant body, or contact them remotely (requiring the relevant body to self-report on their compliance). This would require more time and resources from Inspectors and from the relevant body who would need to accommodate these Inspector checks. The time and resource required would be greater than for enforcement notices only requiring equipment be repaired or replaced, because evidence of those improvements can be provided electronically through documentation and/or photo or video means.

128. If the intended inspection regulations were to provide for Inspectors to issue enforcement notices prohibiting use of equipment, the Scottish Government would ensure that decisions by Inspectors to issue such an enforcement notice would be eligible for appeal by the relevant body. We intend this would follow the same appeal process as for any other enforcement notice (see section on Enforcement Notices below).

Question 15 - Please provide any views about the Scottish Government's revised proposal to not include in regulation powers for Inspectors to seize, detain, or remove equipment from relevant bodies.

Question 16 - Do you agree or disagree that Inspectors should be able to issue an enforcement notice which requires equipment to be repaired or replaced?

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Question 17 - Do you agree or disagree that Inspectors should be able to issue an enforcement notice which prohibits a relevant body from using equipment until it is repaired or replaced?

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Question 18 - Please provide any other comments about the use of enforcement notices to require equipment repairs/replacements or prohibit use of equipment.

Section 7 - Inspection Reports

Previous Consultation

129. The 2017 consultation noted the Scottish Government's proposal that inspectors will have a duty to produce a written report after each inspection, which sets out the inspector's findings and any areas of non-compliance with the 2016 Act, regulations, Code of Practice or conditions of licence. However, a corresponding question about this topic was not asked in the 2017 consultation.
130. The Inspection Regulations Working Group discussed the topic of inspection reports in their first meeting. In the course of their discussion, the group suggested that reports should be pro-actively published. Further, the group

discussed that authorities and businesses should be given time for a 'right of reply' to allow them to respond to the report before it is published.

131. Since the 2017 consultation and Working Group meeting the Scottish Government has further developed this proposal, in particular proposing that authorities or businesses be given the opportunity to correct factual inaccuracies of their inspection report.

Scottish Government Position

132. During an inspection of a cremation authority, burial authority or funeral director business Inspectors will assess performance against (where relevant) the standards set out in the 2016 Act, regulations, Codes of Practice, and conditions of licence. It is intended that Inspectors will have a duty to produce a written report after each inspection (under powers provided in Section 90(3)(d) of the 2016 Act).
133. It is intended that the inspection reports will follow a predetermined template. It is not intended that inspection reports will have a grading or marking system (e.g. pass/fail). Instead, the report will set out the Inspector's findings from the visit, in particular where there are any compliance issues.

Factual Accuracy of Inspection Reports

134. Once drafted, the Scottish Government proposes that draft inspection reports will be sent to the inspected business or authority who will have an opportunity to respond on the factual content of the report. We currently propose that responses would be required within 14 calendar days from date of issue of the report.
135. The rationale for this is because it is recognised that there may be some inaccuracies in a draft inspection report. These may be due to, for example, an error by the Inspector or a mistake or omission in the information given by the authority or business which impacts the factual accuracy of the draft report. Any inaccuracies are important to identify before an inspection report is finalised, due to the importance of the report in terms of: the assessment of an authority or business's compliance with set standards (and therefore risk of enforcement action); for funeral director businesses, the use of the inspection report as evidence for or against the granting or refusal of licence applications; and reputational risk to the authority, business, or Scottish Government.
136. Once the factual accuracy of a report has been agreed, it is intended the report would then be published on the relevant webpage of the Scottish Government website.

Recommendations Within Inspection Reports

137. Where recommendations have been made for improving compliance, it will be expected that relevant bodies will seek to make those improvements (and may be supported by Inspectors through the 'improvement approach' described

earlier in this consultation). If necessary, where there has been a refusal to improve compliance, or a flagrant instance of non-compliance, the evidence in these reports of the observed non-compliance will be used to inform possible enforcement action.

Question 19 - Please provide your views about whether 14 days is an appropriate timescale to require a response to the inspection report.

14 days is too long
14 days is appropriate
14 days is too short
Don't know

Question 20 - Please provide any other views about the proposed approach to inspection reports.

Section 8 - Enforcement Notices

138. Section 90 the 2016 Act provides powers for Scottish Ministers to make regulations which set out the steps that may be taken by inspectors for the purpose of ensuring compliance with set standards (as contained in the 2016 Act, regulations, Codes of Practice and conditions of licence), and steps they may take to enforce such requirements or conditions. Section 90(3)(g) provides powers for the procedure to be followed, and timescales applicable, in relation to such steps. Finally, section 90(3)(k) provides for regulations to include sanctions inspectors may impose in relation to [their] investigations of complaints.
139. These powers recognise that in certain circumstances Inspectors may observe non-compliance with the set standards and may be required to take steps to enforce compliance with statutory requirements.

Previous consultation

140. It was proposed in the 2017 consultation that Inspectors would have powers to issue 'enforcement notices' on burial authorities, cremation authorities and funeral director businesses. This is a legal notice that must be complied with. The 2017 consultation noted that an enforcement notice could be issued where:
- an Inspector has undertaken an inspection, has found non-compliance with conditions or requirements set out in the relevant Code of Practice, legislation or licence and has issued an inspection report but deems that no, or insufficient progress is being made towards remedying the non-compliance, or
 - an Inspector has entered premises for the purpose of an inspection or investigation and has found non-compliance with such requirements or conditions that are causing harm or posing risk and require immediate action

141. The below text and consultation questions focus on the proposed use of 'enforcement notices'. We asked for public views about enforcement notices in the 2017 consultation, although views were requested as part of a broader question about inspection reports and enforcement. While responses indicated general agreement with the Scottish Government's proposals, comments asked for more information about the inspection regime and any associated enforcement action, including timescales for compliance, and that compliance must be measured against clear, achievable requirements.
142. The Inspection Regulations Working Group in October 2019 discussed the issue of enforcement notices. The Group noted that an approach which uses enforcement notices when significant non-compliance has been identified, and where enforcement notices would be published once agreed as being factually correct, would be appropriate. The Group did ask for greater clarity on: whether an enforcement notice would be withdrawn or suspended if it were appealed; whether there would be a requirement to display enforcement notices in every branch of an authority or business (if multi-premised); and who an enforcement notice would be 'served on'.

Scottish Government position

143. We intend that the proposed inspection regulations should provide powers for Inspectors to issue enforcement notices on relevant bodies.
144. It is intended that enforcement notices will be made public to ensure that bereaved people planning to engage a relevant body are aware of their non-compliance with set standards. It is intended that the enforcement notice will be physically posted at the relevant premises and a notice will be posted on the relevant webpage of the Scottish Government website.
145. It is also proposed that an enforcement notice should specify the following:
- the provisions of the Act/regulations/codes of practice which are being contravened
 - the reasons why the inspector is of the opinion that contravention is occurring
 - the requirement that the authority/business must remedy the contravention, and the actions it should take
 - the period allowed for compliance, set by the inspectors, depending on circumstances
 - the date on which the notice will take effect
 - the sanction for not complying with the notice (e.g. possible suspension notices for burial authorities or cremation authorities, or licence suspension or revocation for funeral director businesses)
146. We would welcome views on any additional information that may be needed by authorities, businesses, or the public.

Issuing of an enforcement notice

147. For a burial authority or cremation authority it is intended that an enforcement notice would be issued to the manager of the premises (via registered post). For a funeral director business an enforcement notice would be issued (via registered post) simultaneously to the licence holder (owner) and the proposed 'compliance officer' (see [licensing consultation](#)) using contact details provided on the licence application or renewal application (it will be the responsibility of the business to keep these details up to date with the licensing authority). It is intended that the notice would be valid even if only one party receives it. In any of these circumstances, when issuing an enforcement notice the Inspector would notify Scottish Ministers for their awareness.
148. Enforcement notices would be subject to appeal (see section on appeals below). If an appeal is brought the requirement in the enforcement notice need not be complied with pending the decision on the appeal.

Removal of an enforcement notice

149. The regulations will set out a mechanism for removing the enforcement notice. It is intended that it would require the submitting of evidence by the relevant body to Inspectors of how compliance concerns have been addressed and an inspection to verify the changes have indeed taken place. If an Inspector is satisfied that the changes are sufficient and the relevant body is now compliant with set standards they can formally lift the enforcement notice. This would likely involve alerting Scottish Ministers of the decision, formally communicating (electronically) to the relevant person that the enforcement notice has been lifted and can be immediately removed from the physical premises and removing any notice from the Scottish Government website. We welcome views on this proposal.

Question 21 - Please provide comments on the proposed content of enforcement notices.

Question 22 - Please provide comments on the proposed approach to lifting enforcement notices.

Question 23 - Please provide any other comments on the Scottish Government's maintained proposal to provide in regulations power for Inspectors to issue enforcement notices

Section 9 - Suspension Notices for burial authorities and cremation authorities

150. Where an inspector identifies serious non-compliance, or where actions are not being progressed in line with an enforcement notice, the 2016 Act provides for regulation-making powers for inspectors to make recommendations to Scottish Ministers to suspend all or part of the operation of activities of the burial authority or cremation authority. The Scottish Government intends to use this power within the proposed inspection regulations, as a 'last resort' enforcement

measure where there is evidence of serious or repeated non-compliance and a refusal to address non-compliance issues.

151. Please note this section applies only to burial authorities and cremation authorities; not funeral director businesses. This is because, while enforcement notices could be issued against funeral director businesses (see previous consultation question), if the proposed licensing regime is implemented under section 95 of the 2016 Act, enforcement escalation could lead to the suspension or revocation of funeral director businesses' licences. The suspension or revocation of funeral director licences is therefore dealt with in our [consultation on licensing](#)).

Previous consultation

152. We asked for public views about suspension notices in the 2017 consultation, although views were gathered as part of a broader question about inspection reports and enforcement. Responses indicated general agreement with the Scottish Government's proposals, including of suspension notices only being used as a last resort for enforcement of burial or cremation authorities. However comments asked for more information about the inspection regime and any associated enforcement action, including timescales for compliance, and that compliance must be measured against clear, achievable requirements.
153. The Inspection Regulations Working Group in October 2019 discussed the issue of suspension notices. The Group agreed that suspension should only be used as a last resort, and that suspension notices shouldn't have a defined timescale attached – rather that an authority could apply for the suspension to be lifted once they had taken corrective actions. Further, the Group discussed whether there were any circumstances which would justify an immediate suspension and it was agreed that this is likely to be very rare. The Group asked for further clarity on: whether staff identified as carrying out poor practice could be suspended rather than the authority, and who would be liable for additional costs on families should there be a suspension.

Scottish Government position

154. The Scottish Government's position is that the proposed inspection regulations should provide powers for Inspectors to recommend that Scottish Ministers issue a suspension notice on burial authorities or cremation authorities. The decision must be made by Scottish Ministers, as per the provisions of the 2016 Act. The proposed process for this is as follows:
- Inspector considers it appropriate to recommend to Scottish Ministers a suspension of all or part of the operation of activities of a burial authority or cremation authority.
 - Inspector notifies the authority they are making this recommendation. Notification will be made via electronic communication to the premises manager.
 - The authority will have 21 days from the date of notification to make potential representations to challenge the recommendation. This is to

provide the authority with the opportunity to challenge the facts and basis of the recommendation.

- If representations are received, for example if the authority has since remedied the issue, or has provided additional evidence to oppose the recommendation, the Inspector must consider these. The Inspector would then decide to either maintain (i.e. proceed with recommendation) or reverse their decision (i.e. not submit recommendation).
- If no representations are received, or the Inspector has considered the representations and maintained their decision, the Inspector will proceed to making a recommendation to Scottish Ministers to issue a suspension notice on the authority. This recommendation must be accompanied by evidence used to support the recommendation and any representations from the authority.
- Scottish Ministers proceed with deciding whether to issue a suspension notice. To support this decision, they may request additional written evidence from the authority. On the basis of this evidence, Scottish Ministers will make their decision.
- The decision of Ministers will be communicated by the Scottish Government to the burial or cremation authority manager by registered post. If a suspension notice is being issued, it is intended that this will take effect 21 days from the date the notice is communicated to the authority. This is to allow for contingency measures to be put in place, to mitigate the potential impact on the public (more detail is provided below).

155. The above proposed process relies on written evidence. We are now seeking views regarding whether an opportunity for oral representation by the authority to a representative of the Scottish Ministers should be included in this process. If so, it is likely that this representation could be triggered by either the authority or Scottish Ministers.

156. When making a recommendation to Scottish Ministers, the inspector would be expected to provide supporting information including: inspection reports, enforcement notices, follow-up reports and any other relevant information. Further, we recognise that suspending all or part of the operations could potentially negatively impact bereaved people who are planning to use that authority. It is expected that inspectors must take account of this potential impact before making a recommendation to Ministers that a suspension notice should be issued, and to work with the authority to minimise this impact.

157. Similar to enforcement notices, it is intended that suspension notices will be made public once the notice has been issued to the authority, to ensure that members of the public planning to use a burial authority or cremation authority can be made aware of their non-compliance with set standards. It is currently proposed that suspension notices will be physically posted at the relevant premises, and a notice will be posted on the relevant Scottish Government website page.

158. It is proposed that a suspension notice should specify the following:

- the provisions of the Act, regulations, or relevant code of practice which are being contravened

- the reasons why the Scottish Ministers have decided to issue the notice
 - the requirement that the burial authority or cremation authority must remedy the contravention, and the actions it should take
 - the date on which the notice will take effect
159. We note that, unlike an enforcement notice, we do not intend for a suspension notice to have a defined timescale for addressing the identified non-compliance. This is because we intend that the suspension notice will stay in effect until the burial authority or cremation authority takes corrective measures and seeks for the suspension to be lifted.
160. The procedure for how a relevant body can apply for the suspension to be lifted will require the submitting of evidence by the authority to Inspectors of how compliance concerns have been addressed, and an inspection to verify the changes have indeed taken place. If an Inspector is satisfied that the changes are sufficient and the authority is now compliant with set standards, the Inspector can recommend to Scottish Ministers (with reference to the evidence submitted and new inspection results) to lift the suspension notice. If an Inspector is not satisfied with the changes they may decline to recommend to Ministers that the suspension is lifted. The authority would be able to appeal this decision, using the same appeals procedure as will be in place regarding the issuing of suspension notices.
161. If Scottish Ministers decide to remove the suspension, this would likely trigger a series of actions:
- Scottish Ministers inform Inspectors of the decisions
 - Inspectors formally communicate (electronically) with the relevant person notifying that the suspension has been lifted and can be immediately removed from the physical premises
 - Removal of any notice from the Scottish Government website
162. If Scottish Ministers decline to lift the suspension, the authority would be able to appeal this decision, using the same appeals procedure as will be in place regarding the issuing of suspension notices.
163. We note that a suspension notice would be the most serious enforcement action that can be taken against burial authorities or cremation authorities.
164. As noted above, the Scottish Government is also mindful of the potential impact on the bereaved of suspending the operations of a burial or cremation authority. In terms of costs for families, the Scottish Government does not intend to specify in regulations any financial liability should there be additional costs on the bereaved resulting from a suspension notice being issued.
165. It is intended that the publicising of enforcement notices and suspension notices, with warning of their commencement date (21 days after notification), will provide transparency to the public about the operations of the particular burial authority or cremation authority. This will allow bereaved people to make their own choices about if they wish to engage that burial authority or cremation authority.

166. Certain clients of the burial authority or cremation authority will not yet have had the burial or cremation they are engaging the authority for. It is our intention that the authority will be required to inform these clients that a suspension notice has been issued against them and is coming into force on X date. They would be required to do so by telephone or electronically (if electronic, they must request confirmation of receipt of the communication). They would also be required to keep a written record of having informed each client.
167. Finally, it is our intention that the burial authority or cremation authority would be required to notify any member of the public who contacts them to enquire about their services after the suspension notice has been issued (even if it has not yet commenced), during their first interaction with that member of the public.

Question 24 - Please provide any views on the proposed content of suspension notices.

Question 25 - Please provide any views on the proposed process of issuing suspension notices.

Question 26 - Please provide any views on whether there should be an opportunity for the authority to make an oral representation to Scottish Ministers or a representative of Scottish Ministers before Ministers make their decision whether to issue a suspension notice.

Question 27 - Please provide any views on the proposed process for lifting a suspension notice.

Question 28 - Please provide any other views on the Scottish Government's proposals for suspension notices for burial authorities and cremation authorities.

Section 10 - Reviews and Appeals

168. The Scottish Government is mindful that a robust appeals process is an important component of the proposed inspection regime. Ensuring there are opportunities for authorities or businesses to appeal decisions by Inspectors or Ministers is crucial for ensuring there are checks-and-balances to the regime, and these bodies have access to due justice. This is particularly important given the potential impact that certain decisions may have on an authority or business's ability to operate successfully – both in terms of serving their clients, and to providing a livelihood for themselves.
169. The 2016 Act provides for Scottish Ministers to set out the process for reviews of, or appeals against, decisions that inspectors have made under the proposed inspection regulations (i.e. appeals against enforcement notices). The 2016 Act also enables Scottish Ministers to include in the proposed regulations a process for appeals against the decision of Scottish Ministers to suspend the operation of activities (i.e. suspension notices) or to suspend or revoke licences.

Previous consultation

170. This issue was discussed in the 2017 consultation. At that time, the Scottish Government proposed that a review of or an appeal against a decision made by inspectors applies specifically where an inspector has taken a decision to issue an enforcement notice. At that time, we suggested that where a relevant body wished to challenge an inspector's decision to serve an enforcement notice, that relevant body could request to Scottish Ministers that the decision is reviewed by an independent person. It would have been for Scottish Ministers to appoint that independent person, and the relevant body would have had the opportunity to put their case to the reviewer in writing and in person. They could also request that the review was made public. Once the review was completed, we suggested that Scottish Ministers would make a decision to either confirm, amend, or withdraw the enforcement notice, and that their decision would be final. The 2017 consultation did not request comments on this proposed process at that time, however we ask for views on the current Scottish Government proposal below.
171. This process was also discussed with the Inspection Regulations Working Group in October 2019. The Group suggested an appeal process that would be more administrative than judicial – that the authority or business could challenge the content of an enforcement notice, and these representations would be considered first by the issuing Inspector, and then by a Senior Inspector. The Group requested further consideration of this matter by Scottish Government.

Scottish Government position

172. The Scottish Government's current proposal has been revised following further consideration of the practicalities of appeal processes, due to the provisions in the 2016 Act, and in recognition of how the appeals process for decisions about funeral director businesses will interact with the proposed licensing regime.
173. Overall, we still intend that a relevant body be empowered in the regulations to appeal a decision by an Inspector or Scottish Ministers. This includes a decision by an Inspector to issue an enforcement notice on any of those bodies. It would also include, for example, a decision by Scottish Ministers to (a) issue a suspension notice on to a burial authority or cremation authority, (b) suspend or revoke the licence of a funeral director business.

Appeals of Inspector Decisions

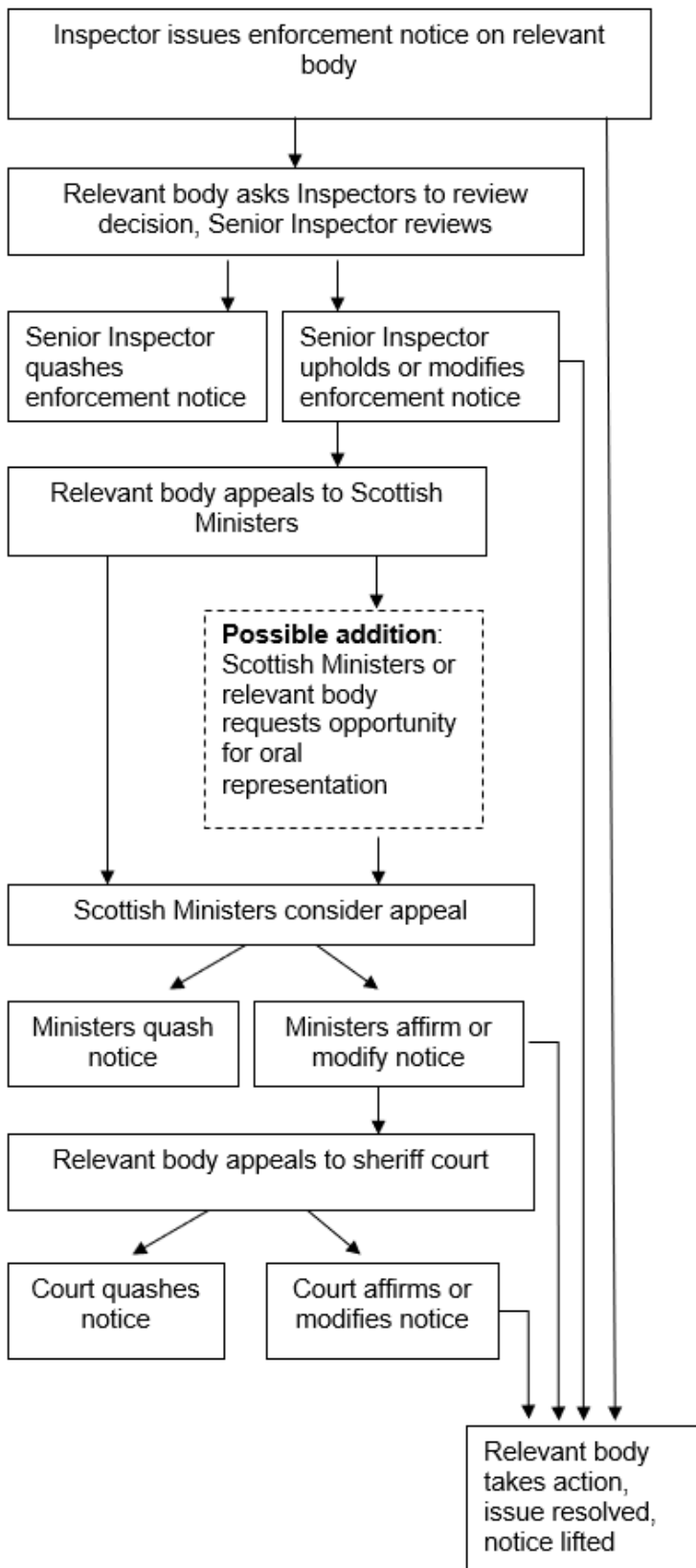
174. The detail of our current proposal for appeals of inspector decisions is as follows.
175. A relevant body who has received an enforcement notice can request that the decision is reviewed. This request would need to be made within a set number of days of receipt of the notice. The Scottish Government now proposes that 21 days would be appropriate, because this provides a reasonable time given the likely needs of bodies to prepare an appeal. Additionally, this aligns with timings used by the Sheriff Court when considering appeals. We are not currently proposing to allow this deadline to be extended, as this would create delays to the process, which, if the enforcement notice is upheld, is meant to improve

compliance with minimum standards for the protection of the deceased and the public.

176. It is now envisaged that the decision will, in the first instance, be internally reviewed by a more Senior Inspector. This would involve examining the evidence used to make the original decision (e.g. inspection reports), and possibly seeking clarification on any details from the relevant body or the relevant Inspector. If clarification of details is received from the Inspector, that clarification would be circulated to the relevant body (and vice versa) so that all parties have an opportunity to see and respond (within a set timeframe, e.g. 7 days).
177. We do not intend that, during this process, the Inspector or Senior Inspector will seek new, additional information in order to justify the Inspector's original decision. It may however involve receiving new information from the body to support their challenge of the decision, which would then be taken into account in the review of the decision.
178. The Senior Inspector would then, on the basis of evidence, decide to uphold, modify, or quash the decision. If the decision was made by the Senior Inspector, then the decision would go to Ministers for review.
179. If the body does not agree with the outcome of the review, the decision may be further appealed to Scottish Ministers. Again, this would involve examining the evidence used to make the original decision (e.g. inspection reports), and possibly seeking clarification on details from the relevant body or Inspectors.
180. Similar to the consultation section on suspension notices, the above proposed process relies on written evidence. Below we have asked for views regarding whether an opportunity for oral representation by the relevant body to a representative of the Scottish Ministers should be included in this process. If so, it is likely that this representation could be triggered by either the body or Scottish Ministers.
181. In reference to the evidence provided, Scottish Ministers will decide the appeal, and either quash the enforcement notice, modify the notice, or affirm the notice in its current form.
182. If the body further disagrees with the decision of Scottish Ministers, we now propose that the decision can be further appealed to the Sheriff Court. This must be done within a set number of days of the initial review decision (21 days). As Court policy dictates, while an appeal is being considered the relevant body may decide to withdraw their appeal.
183. It is intended that an appeal to the Sheriff Court will be a full appeal, allowing a full rehearing, with the Court deciding to either confirm, amend, or quash the enforcement notice. Any onward appeals would be determined by Court procedures.
184. It is proposed that whilst an appeal is ongoing, an enforcement notice need not be complied with pending the decision or withdrawal of the appeal.

185. Figure 1 below depicts this proposed process.

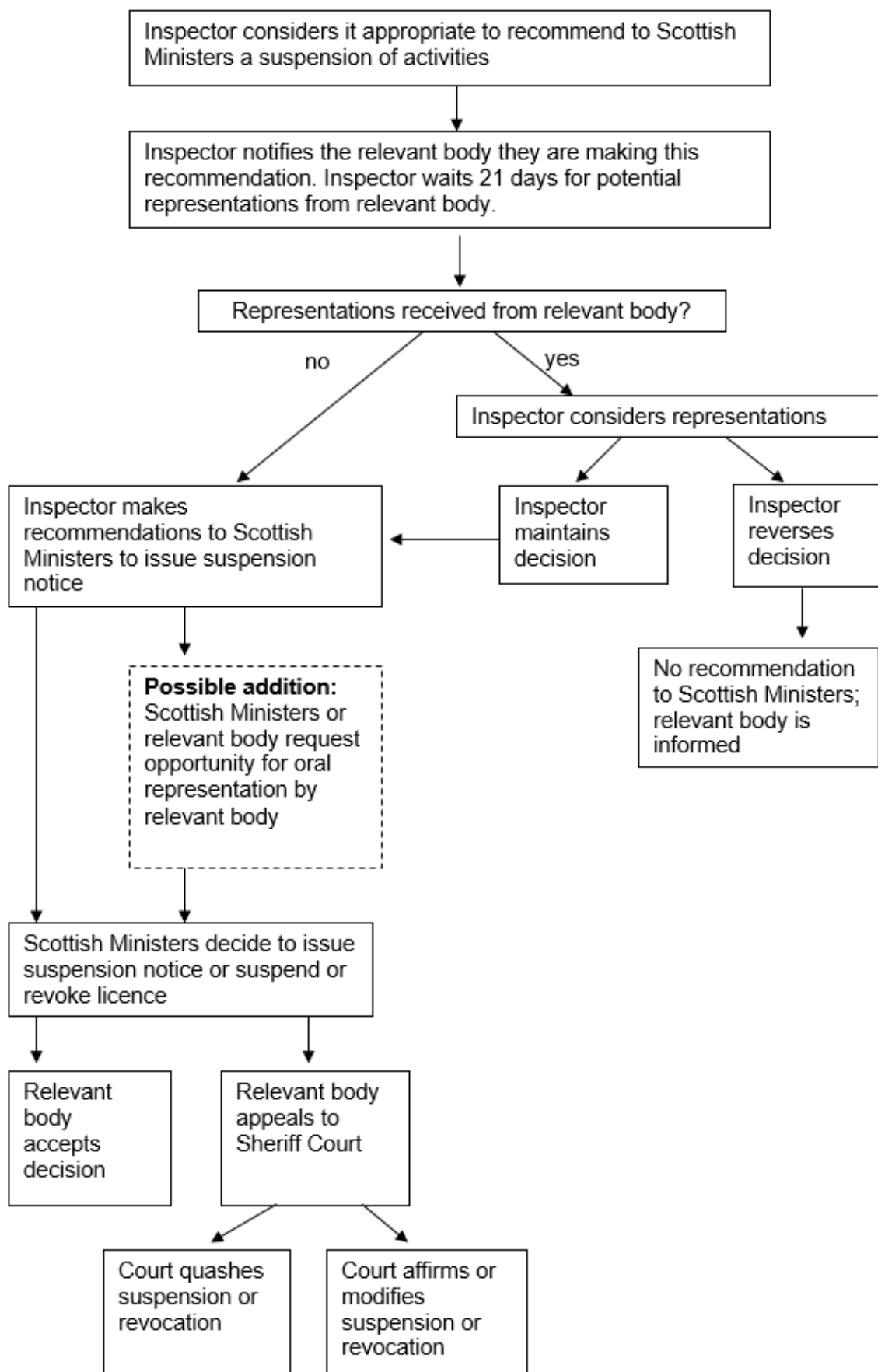
Figure 1: Proposed procedure for appeals of Inspector decision to issue an enforcement notice



Appeals of Scottish Minister Decisions

186. The details of our current proposal for appeals of Scottish Minister decisions to suspend the operation of activities, or a funeral director licence, are as follows.
187. Decisions by Scottish Ministers would not initially be subject to a review by Inspectors, since Inspectors are appointed by Ministers. Instead, where Scottish Ministers make a decision to suspend part or all operations of a burial or cremation authority, if the relevant body disagrees with the decision of Scottish Ministers this decision could be appealed to the Sheriff Court. This must be done within a set number of days of the initial review decision (21 days). The relevant body is permitted to withdraw their appeal while an appeal is being considered.
188. It is intended that an appeal to the Sheriff Court will be a full appeal, allowing a full hearing, with the Court deciding to either confirm, amend, or quash the suspension decision. Any onward appeals would be determined by Court rules.
189. Figure 2 below depicts the proposed process, including the initial process of an Inspector recommending suspension to Scottish Ministers:

Figure 2 Proposed appeals process for suspension or revocation decisions made by Scottish Ministers



190. We note that appeals of decisions by Scottish Ministers to suspend or revoke funeral director licences may also occur, and that appeals of those decisions would follow the same process as set out in Figure 2.

Question 29 - Please provide any views on the appeal process for decisions made by Inspectors.

Question 30 - Please provide any views on the appeal process for decisions made by Scottish Ministers.

Section 11 - Complaints

191. Complaints from the public or clients may be lodged about a relevant body. For example, existing Inspectors receive complaints about a range of issues including equipment, staffing, storage capacity, family disputes, allegations regarding poor practices and other issues.¹⁰
192. The 2017 consultation did not ask for views about complaints procedures for the inspection regime. The Inspection Regulations Working Group discussed the issue of complaints, and raised a concern that a formal complaint may lead to disciplinary action against staff or legal action against a relevant body.
193. Subsequent to the Working Group discussions, the draft Funeral Director: Code of Practice was developed and contains a specific section on [complaints](#). When the Code comes into force, funeral directors will be required to comply with the standards it sets. This includes that a funeral director must have a written complaints procedure, which must be available on their website (where this exists) or must be made available as soon as reasonably practicable in paper or electronic form on request. In the event of a complaint, the complaint procedure must be followed.
194. The Code also notes that clients who wish to make a complaint against a funeral director may raise the complaint with the funeral director directly, with their trade association, if they belong to one or with the Inspectors. Further, where a complaint is made to a funeral director which relates to a breach of the Code of Practice, it is required that the funeral director must inform Inspectors of the complaint within 48 hours of it being made.
195. It is intended that similar standards related to complaints will be included in forthcoming Codes of Practice for burial authorities¹¹ and cremation authorities.¹²

¹⁰ See Scottish Government website for Inspectors' annual reports

¹¹ Provided for in section 21 of the 2016 Act

¹² Provided for in section 64 of the 2016 Act

Scottish Government Position

196. As noted earlier in this consultation, it is intended that in the proposed inspection regulations, Inspectors will have the power to investigate complaints and may impose sanctions in relation to such investigations. It is intended that complainants will be able to submit their complaints electronically (i.e. via an online form or email), or by post. Complaints would then be distributed to an Inspector for assessment and investigation.
197. It is proposed that the procedure for investigating complaints include:
- When a complaint is first received:
 - A decision must be taken by Inspectors whether it is appropriate for them to investigate in terms of scope and severity, and
 - Checks undertaken to ensure the complaint has been ‘properly made’ (i.e. made in writing/electronically) and whether the complaint is new (i.e. has not already been investigated)
 - Having decided to open an investigation, Inspectors will likely be required to:
 - Gather evidence. This may include an inspection, talking to the complainant, and talking to the relevant staff/managers/owners of the relevant body. Steps will be taken to ensure that the accuracy of any evidence is agreed by the Inspector and parties involved.
 - Take appropriate enforcement action within Inspector powers
 - Develop a report of the complaint investigation (including recommendations for any further action) and the outcomes of the complaint and actions taken
 - Ensure final complaint report is shared with the complainant and relevant body, and securely and accurately filed in the corporate record (note, complaint reports are not intended to be proactively published)
 - Include summary of complaints in annual reporting
 - Undertake all the above in a manner that is sensitive to and appropriate for the context, given that complainants will often be bereaved. Ensure that all steps are undertaken promptly, while ensuring investigations are thorough and fair (including acting with fairness towards both complainants and staff/businesses/authorities who have been complained about).
198. Should a complainant be dissatisfied with the conclusions of the complaint report or subsequent actions taken, we do not intend that they will be able to challenge this. We do intend that Inspectors can, if appropriate, refer the complainant to other resources (for example trade bodies if appropriate).
199. If an Inspector initiates enforcement action against a body as a result of a complaint investigation, that body would be able to challenge this through the appeals process described earlier in this consultation.
200. We note that it is not intended that Inspectors will have any additional enforcement powers related to complaints beyond what they would be provided in relation to enforcing non-compliance with minimum standards as set in the

2016 Act, regulations, Codes of Practice, and (for funeral directors) conditions of licence.

201. The Scottish Government also intends to implement a procedure by which relevant bodies or the public may submit complaints about Inspectors.

Question 31 - Please provide any comments on the proposed approach to complaints.

Any other comments

Question 32 - Please provide any additional views or comments you may have on the proposed statutory inspection regime.

Impact Assessments

As we develop the regulatory scheme proposed in this consultation we will carry out impact assessments. The aim of these assessments is to identify issues that may affect some groups more than others and to consider how we will address these issues. The assessments also explore what impacts the proposed regulations will have on matters such as privacy, equality, child rights and wellbeing and business.

The questions on the potential impacts of the proposals are broken down in line with the formal assessments carried out by the Scottish Government, which are:

- Compliance with ECHR
- Equality Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Fairer Scotland Duty Assessment
- Islands Community Impact Assessment
- Data Protection Impact Assessment
- Business and Regulatory Impact Assessment
- Strategic Environmental Assessment

We recognise that the proposed reforms will have a much greater impact in some areas than in others and that the proposals may have a minimal or no impact in some areas.

When answering the questions, if your comments relate to a specific proposal, it would be helpful if you could set this out when describing any impacts which you think should be considered.

Human Rights

The [Human Rights Act 1998](#) incorporated the [European Convention on Human Rights \(ECHR\)](#) into UK law. It means that public authorities, such as the Scottish Government, must not act in a way that is incompatible with the rights set out on the ECHR. It is therefore vital that we consider how the proposals will impact on human rights.

Question 33 - Do you have any views on the potential impacts of the proposals in this consultation on human rights?

Equalities

The [Public Sector Equality Duty](#) requires the Scottish Government and other public bodies when they are exercising their functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the [Equality Act 2010](#)
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not

- foster good relations between people who share a relevant protected characteristic and people who do not share it.

For the purposes of the Public Sector Equality Duty, a 'relevant protected characteristic' means age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 sets out nine protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Public Sector Equality Duty includes a requirement for the Scottish Government and other public bodies to have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010.

Question 34 - Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above?

Children's rights

The [UN Convention on the Rights of the Child \(UNCRC\)](#) is an international treaty which sets out the fundamental human rights of all children. [Part 1 of the Children and Young People \(Scotland\) Act](#) places a duty on the Scottish Ministers to (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements and (b) If they consider it is appropriate to do so, take any of the steps identified by that consideration.

All new legislation and policy that is developed by the Scottish Government must consider the impacts on the rights and wellbeing of children up to the age of 18.

Question 35 - Do you have any views on the potential impacts of the proposals in this consultation on children and young people as set out in the UN Convention on the Rights of the Child?

Fairer Scotland Duty

The [Fairer Scotland Duty](#) came into force on 1 April 2018 and places a legal responsibility on named public bodies, including the Scottish Government, to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

This means that as well as considering the impact on people with protected characteristics, the Scottish Government must consider how any proposals will impact on people depending on their economic background. For example, if proposals would have a specific impact on people with low incomes or who live in a deprived area.

Question 36 - Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

Island Communities

[Section 7 of the Islands \(Scotland\) Act 2018](#) states that a relevant authority – which includes the Scottish Ministers – must have regard to island communities when carrying out its functions.

Scotland's islands face particular challenges around distance, geography, connectivity and demography, so it is important that this is considered when developing legislative proposals. It is also important that we ensure the islands receive fair and equitable treatment and that policy outcomes are tailored to their unique circumstances.

Question 37 - Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?

Data protection and privacy

Data protection and privacy impact assessments help the Scottish Government to assess the risks of proposed legislative changes that are likely to affect the way in which personal data is used.

Question 38 - Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

Business

A Business and Regulatory Impact Assessment (BRIA) is used to analyse the costs and benefits to businesses and the third sector of any proposed legislation or regulation, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.

Question 39 - Do you have any views on the potential impacts of the proposals in this consultation on businesses and the third sector?

Environment

In Scotland, public bodies, including the Scottish Government, are required to assess, consult on and monitor the likely impacts that their plans, programmes and strategies will have on the environment. This helps to better protect the environment, aims to ensure that any development is sustainable, and increases opportunities for public participation in decision-making.

Question 40 - Do you have any views on the potential impacts of the proposals in this consultation on the environment?



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