

Health, Social Care and Sport Committee
10 December 2024
35th Meeting, 2024 (Session 6)

Note by the Clerk on Subordinate legislation

Background

1. At this meeting the Committee will scrutinise a package of related Scottish Statutory Instruments (SSIs) in relation to burial law and a separate SSI in relation to sports grounds.
2. The Committee will consider the following in relation to burial law—

Instruments subject to affirmative procedure

- [The Burial \(Management\) \(Scotland\) Regulations 2025](#)
- [The Burial and Cremation \(Inspection\) \(Scotland\) Regulations 2025](#)

Instruments subject to negative procedure

- [The Burial \(Applications and Register\) \(Scotland\) Regulations 2024](#)
3. The Committee invited stakeholders to submit evidence in relation to the instruments listed above on burial law and received the following submissions:
 - [Argyll and Bute Council](#)
 - [East Ayrshire Council](#)
 - [East Lothian Council](#)
 - [Federation of Burial and Cremation Authorities](#)
 - [Highland Council](#)
 - [North Lanarkshire Council](#)
 - [Perth and Kinross Council](#)
 - [Shetland Islands Council](#)
 - [Stirling Council](#)
 - [West Lothian Council](#)

4. The Committee will consider the following in relation to sports grounds—

Instruments subject to negative procedure

- [Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment Order 2024](#)

Clerks to the Committee
December 2024

The Burial (Management) (Scotland) Regulations 2025 [draft]

Overview

5. At this meeting, the Committee will take evidence from the Minister for Public Health and Women's Health and officials on The Burial (Management) (Scotland) Regulations 2025 [draft] before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
6. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Burial \(Management\) \(Scotland\) Regulations 2025](#) [draft]

Laid under: section 6(1) of the [Burial and Cremation \(Scotland\) Act 2016](#)

Laid on: 14 November 2024

Procedure: Affirmative

Lead committee to report by: 8 January 2025

Commencement: If approved, the instrument comes into force on 1 March 2025

Procedure

7. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
8. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
9. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
10. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

11. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

12. The DPLR Committee considered the instrument on 26 November and reported on it in its [70th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

13. The instrument makes provision for the management and maintenance of burial grounds in Scotland, applicable to all burial authorities (both local authority and non-local authority).
14. The Policy Note accompanying the instrument is included in **Annexe A**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Evidence received

15. The Committee invited stakeholders to submit evidence in relation to the suite of instruments in relation to burial law and received submissions from the Federation of Burial and Cremation Authorities and nine local authorities in Scotland.
16. On the whole, respondents were generally supportive of the instrument.
17. The Federation of Burial and Cremation Authorities stated in its response that the instrument will increase consistency between crematoria and burial grounds in terms of management plans and standards of maintenance. It further notes that the instrument will bring about better training of staff, and safety within burial grounds.
18. Some local authorities raised concerns around increased workloads and administration, indicating that significant additional resource, time and investment would be required to implement the changes set out in the instrument. Both East Ayrshire Council and West Lothian Council state that it is unlikely they would be able to comply with the regulations as of 1st March 2025. West Lothian Council states:

“The council has concerns regarding the level of new resources potentially required to both develop and then implement the new regulations across administration, training, and operations. The council consider the impact on these areas could be significant, not minor as suggested by Scottish Government.”
19. Some local authorities also call for additional guidance, and public campaigns to be introduced to manage expectations around maintenance and improvement work.

20. In its submission, North Lanarkshire Council set out its view that a review period of 12 months as detailed within the instrument is impractical and instead suggested “a review period of three years may be more practical and better received by those responsible for implementation.”

Report

21. A draft report has been pre-prepared and is circulated separately, as a private paper, for consideration later in the meeting.

The Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft]

Overview

22. At this meeting, the Committee will take evidence from the Minister for Public Health and Women's Health and officials on the Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft] before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
23. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Burial and Cremation \(Inspection\) \(Scotland\) Regulations 2025](#) [draft]

Laid under: section 90(1) of the [Burial and Cremation \(Scotland\) Act 2016](#)

Laid on: 14 November 2024

Procedure: Affirmative

Lead committee to report by: 8 January 2025

Commencement: If approved, the instrument comes into force on 1 March 2025

Procedure

24. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
25. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
26. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
27. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

28. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

29. The DPLR Committee considered the instrument on 26 November and reported on it in its [70th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

30. The overall intention of this instrument is to provide for inspection and enforcement in the funeral sector, and any subsequent appeals in relation to these,
31. The instrument introduces a framework for the implementation of a statutory inspection regime for burial authorities, cremation authorities and funeral directors (“relevant bodies”) in Scotland. The Regulations provide powers of inspection and enforcement. Relevant bodies will be held to account for compliance, through statutory inspection, with statutory requirements and standards which are set out in the legislation and Code of Practice specified in the instrument. There will also be an appeals process for relevant bodies should they disagree with any enforcement action taken by an Inspector.
32. The Scottish Ministers will also have the power to prepare, maintain and publish a register of known burial authorities, cremation authorities and funeral directors (including a list of their premises) which are subject to inspection. The Scottish Ministers will have the power to make inspection reports and enforcement action publicly available to promote ongoing improvements in standards and to increase the confidence that the public can have in the sector.
33. The Policy Note accompanying the instrument is included in **Annexe B**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Evidence received

34. The Committee invited stakeholders to submit evidence in relation to the suite of instruments in relation to burial law and received submissions from the Federation of Burial and Cremation Authorities and nine local authorities in Scotland.
35. Respondents were generally supportive of the instrument overall.
36. The Federation of Burial and Cremation Authorities detail in its submission that, as the UK’s only inspector of crematoria & burial grounds, it supports the inspection of both crematoria and burial providers on a statutory basis. Within its submission, it states that the introduction of inspection on a statutory footing “will improve standards across the sector. It will also help to provide consumer confidence that the providers within the sector are regulated and tested against a given framework.”

37. Shetland Islands Council raised a concern over enforcement in rural locations in its submission, stating:

“Considering our remote location and the fact that Shetland has only had one funeral director operating for many years, even a temporary suspension of their license could have catastrophic consequences. Could an improvement notice be issued instead?, allowing the service to continue while ensuring the necessary improvements are implemented. This would be particularly crucial in situations where there is only one funeral director available on each island.”

38. In its submission, West Lothian Council also raised questions about what provisions would be in place should burial grounds be closed:

“It is unclear how closure of a burial ground or all grounds under a single burial authority will be addressed by Scottish Government i.e. will there be an expectation that all interments are taking place in neighbouring areas, and these areas have capacity to accommodate?”

Report

39. A draft report has been pre-prepared and is circulated separately, as a private paper, for consideration later in the meeting.

The Burial (Applications and Register) (Scotland) Regulations 2024 (SSI 2024/334)

Overview

40. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 8 January 2025. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

41. More information about the instrument is summarised below:

Title of instrument: [The Burial \(Applications and Register\) \(Scotland\) Regulations 2024](#) (SSI 2024/334)

Laid under: sections 8, 10 and 106(1) of the [Burial and Cremation \(Scotland\) Act 2016](#)

Laid on: 14 November 2024

Procedure: Negative

Deadline for committee consideration: 6 January 2024 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 8 January 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 1 March 2025

Procedure

42. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.

43. Once laid, the instrument is referred to:

- the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

44. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

45. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

46. The DPLR Committee considered the instrument on 3 December and reported on it in its [73rd Report, 2024](#). The DPLR Committee agreed to bring the instrument to the attention of the Parliament on the general reporting ground in respect of the wording of regulation 3(2)(a)(v). In its report, the Committee welcomed that the Scottish Government has undertaken to amend the instrument to improve the drafting of that provision at the next available opportunity.
47. An extract from the DPLR Committee's report is included in **Annexe C**

Purpose of the instrument

48. The instrument makes provision for standardised burial application forms and information to be included in burial registers, and sets out record retention requirements.
49. The Policy Note accompanying the instrument is included in **Annexe D**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Evidence received

50. The Committee invited stakeholders to submit evidence in relation to the suite of instruments in relation to burial law and received submissions from the Federation of Burial and Cremation Authorities and nine local authorities in Scotland.
51. North Lanarkshire raised concerns about the instrument in its submission to the Committee in relation to the transfer of Exclusive Right of Burial (EROB). The submission states:

“The transfer process has not been clarified or tied to a formalised strategy, which many burial authorities had hoped would be addressed. There was an expectation that the legislation would help standardise this process across all burial authorities.

“Currently, challenges to the transfer of EROB are increasing, and the existing indemnity forms do not adequately protect either the family or the council. This is a shared concern among burial authorities, as some continue to use outdated declaration forms or inconsistent practices. A more strategic and uniform approach would provide greater legal security and consistency.”

52. West Lothian Council also raised concerns that the implementation would require additional resource and time:

“The Burial (Applications and Register) (Scotland) Regulations 2024 forms (Form BF1-BF7) are statutory forms that the regulation implies have to be adopted by the council. Adoption of these forms includes capture of significant additional details by the council. These forms will represent a change to both the standard forms currently used both paper and electronic, changes to all associated procedures, and a change to the systems used to record the information they contain. This will require an additional administration and management resource beyond that currently available.

“The timeline for implementation is unrealistic. Three months is not a practical timeline for the administrative, training, and operational changes required. The council had historically advised 18 to 24 months as an appropriate timeline (2023 consultation) to implement changes provided additional investment could be identified.”

Committee consideration

53. So far, no motion recommending annulment has been lodged.
54. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.
55. It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.
56. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
57. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2024 (SSI 2024/352)

Overview

58. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until [date]. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

59. More information about the instrument is summarised below:

Title of instrument: [Sports Grounds and Sporting Events \(Designation\) \(Scotland\) Amendment Order 2024](#) (SSI 2024/352)

Laid under: section 18(1) of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#)

Laid on: 21 November 2024

Procedure: Negative

Deadline for committee consideration: 13 January 2024 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 15 January 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 16 January 2025

Procedure

60. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.

61. Once laid, the instrument is referred to:

- the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

62. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

63. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

64. The DPLR Committee considered the instrument on 3 December and reported on it in its [73rd Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

65. The instrument amends the list of designated sports grounds in schedule 1 of the Sports Grounds and Sporting Events (Designation) (Scotland) Order 2014 (SSI 2014/5) (“the 2014 Order”) to reflect a promotion to and a relegation from the relevant levels of the Scottish football pyramid.

66. The 2014 Order designates the sports grounds, the classes of sporting events played at those grounds and the classes of sporting events outside Great Britain for the purposes of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995 (sporting events: control of alcohol etc.).

67. The Policy Note accompanying the instrument is included in **Annexe E**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

68. So far, no motion recommending annulment has been lodged.

69. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

70. It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

71. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

72. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Annexe A: Scottish Government Policy Note

THE BURIAL (MANAGEMENT) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by section 6(1) of the Burial and Cremation (Scotland) Act 2016. The instrument is subject to the affirmative procedure.

Summary Box

This instrument makes provision for the management and maintenance of burial grounds in Scotland, applicable to all burial authorities (both local authority and non- local authority).

Policy Objectives

The Scottish Government is committed to modernising the law on burial in Scotland. Prior to the Burial and Cremation (Scotland) Act 2016, the legislation around burial had not been substantially revised or amended since the nineteenth century. This instrument requires all burial authorities to maintain their burial grounds in good order and clarifies the powers that burial authorities have to meet this requirement.

Burial management plans

Each burial authority will be required to prepare and maintain a publicly accessible burial management plan. Many burial authorities already have a management plan and this instrument sets out the minimum information that must be included in it. Management plans aim to increase transparency around how a burial authority operates, how it provides burial services, contingency planning and the maintenance of burial grounds. Burial authorities must review their management plan on an annual basis to ensure that it remains accurate and up to date.

Maintenance and repair

Burial authorities will be required to maintain their burial grounds in good order and this regulation sets out what actions a burial authority can take for the proper management and maintenance of its burial grounds.

Safety of headstones and other memorials

Burial authorities will be required to carry out regular, scheduled inspections of headstones and memorials within their burial grounds to ensure they are in safe order. The frequency of scheduled inspections is not specified in regulations as this decision will depend on the nature of each burial ground. However, the frequency and procedures for carrying out scheduled inspections are to be set out in the burial management plan for the burial ground.

Prior to carrying out scheduled inspections, the burial authority must take steps to notify the public of the dates on which the inspections will occur and what steps may be taken to make headstones safe. Burial authorities will have discretion on how best to raise awareness for their local communities. The requirement to notify the public of scheduled inspections does not prevent a burial authority from making direct contact with a right-holder about an individual headstone and any required remedial action.

The requirement to carry out scheduled inspections does not prevent burial authorities from carrying out inspections at other times as needed, nor from taking measures to keep headstones or other memorials safe in the interim.

Removal of unauthorised headstones or other memorials

Burial authorities will be able to remove any unauthorised headstone or other memorial and this instrument sets out who is liable for costs.

Training

Staff are required to be adequately trained in relation to their day-to-day duties and the burial authority will have a duty to keep a written record of all such training undertaken.

Designation for use by faith, religious or belief groups

Burial authorities will have the power to designate areas of a burial ground for use by particular faith, religious or belief groups.

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

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

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

EU Alignment Consideration

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

Consultation

The regulations were developed in collaboration with the Burial Regulations Working Group. A public consultation¹ was undertaken in relation to this SSI in Autumn 2023. The consultation analysis for the 2023 public consultation has been published.²

Impact Assessments

The Scottish Government has considered a series of impact assessments related to these regulations:

Equality Impact Assessment – the Scottish Government is satisfied that there is no clear indication that the proposed regulations are likely to have major impacts on groups with protected characteristics. An initial screening assessment concluded that there was no need to complete a full EQIA.

1 Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland -

<https://www.gov.scot/publications/management-burial-grounds-application-burial-exhumation-private-burial-restoration-lairs-regulation-scotland/pages/5/>

2 Executive Summary - Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs - regulation: consultation analysis - <https://www.gov.scot/publications/scottish-governments-consultation-management-burial-grounds-application-burial-exhumation-private-burial-restoration-lairs-regulation-scotland-consultation-analysis-report/pages/1/>

Fairer Scotland Duty – The Scottish Government is satisfied a full assessment is not required. An initial screening assessment concluded that these regulations do not introduce any differential socio-economic disadvantages or exacerbate negative outcomes for individuals and households already affected by issues of low income. The regulations in themselves are not a strategic decision but stem from the 2016 Act which precedes the commencement of the Fairer Scotland Duty which came into force on 1 April 2018.

Child Rights and Wellbeing – The Scottish Government have carried out a Child Rights and Wellbeing Impact Assessment (CRWIA) and this has been published alongside the laying of these Regulations on legislation.gov.uk. The CRWIA has concluded that there is no impact on the rights or wellbeing of children.

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

Strategic Environment Assessment – After an initial screening assessment, the Scottish Government is satisfied that there is no environmental impact arising from this instrument.

Financial Effects

A full Business and Regulatory Impact Assessment was undertaken. Minor training and administrative impacts may be experienced by burial authorities and funeral directors, however these are mitigated by positive impacts to the provision of burial services.

Scottish Government
Directorate for Population Health
November 2024

Annexe B: Scottish Government Policy Note

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

SSI 2025/XXX

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

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

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

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

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

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

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

Policy Objectives

Background

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

An inspection regime will be underpinned by a number of instruments that provide detail on the minimum standards expected of burial and cremation authorities, as well as funeral directors. The Cremation (Scotland) Regulations 2019 have been in force since 2019, and the Funeral Director Code of Practice (approved by Parliament in January 2024) is expected to come into effect in March 2025. In addition, the Burial (Applications and Register) (Scotland) Regulations 2024 and the Burial (Management)

(Scotland) Regulations 2025 will provide further detail on the policies and procedures for burial.

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

Rationale for an inspection regime

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

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

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

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

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

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

Inspection register

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

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

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

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

Inspectors and inspections

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

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

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

The Regulations provide for Inspectors to undertake these inspections and report findings on how relevant bodies are complying against relevant legislation and requirements set out in regulation 3 of the instrument.

The Scottish Government recognises the need to be respectful of bereaved people when undertaking inspections, and Inspectors will receive guidance and appropriate training.

Inspection reports

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

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

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

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

Enforcement Notices

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

An enforcement notice should specify the following:

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

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

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

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

Appeals

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

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

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

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

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

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

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

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

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

EU Alignment Consideration

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

Consultation

The content of this SSI has been subject to consultation and engagement with external stakeholders. Two public consultations have been undertaken in relation to the substantive content of these regulations. An initial consultation was held in 2017. In 2023, a consultation set out detailed proposals for the intended inspection regime. In-depth discussions with representatives across the funeral sector about the proposals have also taken place as part of the Inspection Regulations Working Group. The 32 responses received to the 2023 consultation have been published.ⁱ

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

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

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

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

Impact Assessments

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

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

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

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

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

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

Financial Effects

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

Scottish Government
Directorate for Population Health
November 2024

Annexe C: Extract from the DPLR Committee's 73rd Report, 2024

Burial (Applications and Register) (Scotland) Regulations 2024 (SSI 2024/334)

1. The purpose of the instrument is to make provision about who may make applications for burials and what information should be included in those applications. Standardised application forms are included in the schedules.
2. The instrument also provides that each burial authority must retain records of such application forms for a period of 50 years, which must be treated as confidential.
3. In [correspondence with the Scottish Government](#), the Committee queried whether the wording of [regulation 3\(2\)\(a\)\(v\)](#) is sufficiently clear to the reader of the instrument.
4. In its [response](#), the Scottish Government advised that, while it considered the provision to be sufficiently clear, it accepted that the drafting could be improved. The Scottish Government therefore undertook to amend the instrument at the next available opportunity.
5. The Committee considers that the wording of the provision is incorrect and requires rephrasing, but that it will be clear to the reader that there is an error in the wording, and that it is unlikely to lead to genuine misunderstanding by the reader of the instrument.
6. The lead committee for this instrument is the Health, Social Care and Sport Committee.

10. The Committee draws this instrument to the attention of the Parliament on the general reporting ground in respect of the wording of regulation 3(2)(a)(v).

11. The Committee welcomed that the Scottish Government has undertaken to amend the instrument to improve the drafting of that provision at the next available opportunity.

Annexe D: Scottish Government Policy Note

THE BURIAL (APPLICATIONS AND REGISTER) (SCOTLAND) REGULATIONS 2024

SSI 2024/334

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 8, 10 and 106(1) of the Burial and Cremation (Scotland) Act 2016 (“the 2016 Act”). The instrument is subject to negative procedure.

Summary Box

This instrument makes provision for standardised burial application forms and information to be included in burial registers, and sets out record retention requirements.

Policy Objectives

The Scottish Government is committed to modernising the law on burial in Scotland. Prior to the Burial and Cremation (Scotland) Act 2016, the legislation around burial had not been substantially revised or amended since the nineteenth century. This instrument aims to improve the burial application process and improve record keeping across all of Scotland’s burial authorities ensuring consistency of information held.

Records

Burial authorities will be required to retain burial application forms and accompanying documentation and certificates for a period of 50 years from the date of burial.

Application for burial

This instrument sets out who may submit a burial application form. It must be completed by the applicant and submitted to the burial authority. The application form requires information about the applicant and the person who is to be buried. The new forms contained in this SSI replace locally produced forms, which vary in content and structure. These regulations provide new forms for different types of application giving uniform statutory forms to be used by all burial authorities.

Burial register

Currently a burial register is kept by each burial authority to record burials of human remains at their burial grounds. Burial registers provide records of burials carried out in Scotland, although records for historic burial grounds can be limited and inaccurate. Under the 2016 Act, burial authorities are required to keep burial registers indefinitely. This SSI makes provision about the minimum information required to be contained in the registers, ensuring consistent and accurate records across all burial authorities.

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

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

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

EU Alignment Consideration

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

Consultation

The draft regulations were developed in collaboration with the Burial Regulations Working Group. A public consultation¹ was undertaken in relation to the subject matters dealt with in this SSI in Autumn 2023. The consultation analysis for the 2023 public consultation has been published.²

Impact Assessments

The Scottish Government has considered a series of impact assessments related to these regulations:

Equality Impact Assessment – the Scottish Government is satisfied that there is no clear indication that the proposed regulations are likely to have major impacts on groups with protected characteristics. An initial screening assessment concluded that there was no need to complete a full EQIA.

Fairer Scotland Duty – The Scottish Government is satisfied a full assessment is not required. An initial screening assessment concluded that these regulations do not introduce any differential socio-economic disadvantages or exacerbate negative outcomes for individuals and households already affected by issues of low income. The regulations in themselves are not a strategic decision but stem from the 2016 Act which precedes the commencement of the Fairer Scotland Duty which came into force on 1 April 2018.

Child Rights and Wellbeing - The Scottish Government have carried out a Child Rights and Wellbeing Impact Assessment (CRWIA) and this has been published alongside the laying of these Regulations. The CRWIA has concluded that there is no impact on the rights or wellbeing of children.

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

Strategic Environment Assessment – After an initial screening assessment, the Scottish Government is satisfied that there is no environmental impact arising from this instrument.

Financial Effects

A full Business and Regulatory Impact Assessment was undertaken. Minor training and administrative impacts may be experienced by burial authorities and funeral directors, however these are mitigated by positive impacts to the provision of burial services.

1 Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs: regulation in Scotland - gov.scot (www.gov.scot)

2 Executive Summary - Management of burial grounds, application for burial, exhumation, private burial and restoration of lairs - regulation: consultation analysis - gov.scot (www.gov.scot)

HSCS/S6/24/35/1

Scottish Government
Directorate for Population Health
31st October 2024

Annexe E: Scottish Government Policy Note

THE SPORTS GROUNDS AND SPORTING EVENTS (DESIGNATION) (SCOTLAND) AMENDMENT ORDER 2024

SSI 2024/352

The above instrument was made in exercise of the powers conferred by section 18 of the Criminal Law (Consolidation) (Scotland) Act 1995 and all other powers enabling the Scottish Ministers to do so. The instrument is subject to negative procedure.

Summary Box

The Sports Grounds and Sporting Events (Designation) (Scotland) Order 2014 (SSI 2014/5) (“the 2014 Order”) designates the sports grounds, the classes of sporting events played at those grounds and the classes of sporting events outside Great Britain for the purposes of Part II of the Criminal Law (Consolidation) (Scotland) Act 1995 (sporting events: control of alcohol etc.).

The above instrument amends the list of designated sports grounds in schedule 1 of the 2014 Order to reflect a promotion to and a relegation from the relevant levels of the Scottish football pyramid.

Policy Objectives

Alcohol-related and other controls at sporting events were introduced in Scotland in 1980 for reasons of public order and safety. Provision for such controls (with corresponding offences and police powers of enforcement) is currently set out in Part II (sporting events: control of alcohol etc.) of the Criminal Law (Consolidation) (Scotland) Act 1995 (“the 1995 Act”).

The principal purpose of the instrument is to update the list of designated sports grounds (home grounds of Scottish football clubs) in schedule 1 of the 2014 Order. These changes are required in light of a promotion to and a relegation from the relevant levels of the Scottish football pyramid and to ensure consistency of approach over the application of the alcohol and other controls and offences framework set out in Part II of the 1995 Act.

Part II of the 1995 Act establishes criminal offences, including offences concerning the possession of alcohol and “controlled containers”, and of being intoxicated by alcohol, in the “relevant area” of a designated sports ground during “the period of a designated sporting event”. The offences under Part II of the 1995 Act which are relevant to the above instrument are that it is an offence to:

- be in possession of alcohol or a controlled container in, or while attempting to enter, the “relevant area” of a designated sports ground¹ at any time during the “period of a designated sporting event”²;

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- ¹ “The relevant area” of a designated sports ground includes corporate areas overlooking the field of play unless the blinds are closed or curtains drawn (however, subject to a licence being granted, it would not be an offence to drink in hospitality areas in the grounds of the stadium and in stadium car parks as these areas would not fall within the definition of “the relevant area” of a

- designated sports ground)
- 2 “The period of a designated sporting event” means the period commencing two hours before the start and ending one hour after the end of a designated sporting event (with different definitions of this period applying in the circumstances where the start of an event is delayed or the event is postponed or cancelled)
 - be drunk in, or be drunk while attempting to enter, the “relevant area” of a designated sports ground at any time during the “period of a designated sporting event”; and
 - be in possession of alcohol or be drunk on a coach or train specifically hired for the carrying of supporters for all or part of the journey to or from a designated sporting event at a designated sports ground.

It is proposed that the football clubs directly affected and other interested parties are notified of the instrument when it is laid before the Scottish Parliament to alert them to the proposed changes and also when the instrument completes the Parliamentary process.

The Policy objective of the above instrument is to ensure the list of designated sports grounds in the 2014 Order reflects the home grounds of the current football teams within the relevant levels of the Scottish football pyramid, to ensure that the relevant offences under Part II of the 1995 Act, outlined above, and the corresponding enforcement powers of the police, will apply to those sports grounds.

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

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

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

No formal consultation process has taken place with the football clubs as the instrument merely seeks to update the list of home grounds of Scottish football clubs at the relevant levels of the Scottish football pyramid which are classed as “designated sports grounds” for the purposes of Part II of the 1995 Act. The clubs are subject to the provisions of Part II of the 1995 Act, the impact of which is widely known and understood within football.

Consultation has taken place with the Scottish Football Association (“SFA”) to ensure that the lists of designated sports grounds and designated sporting events in the 2014 Order reflect the current position. Consultation has also taken place with the SFA and SPFL since the end of the 2023/24 season on the scope and extent of the lists of designated sports grounds and designated sporting events, to ensure these remain fit for purpose. The Scottish Government has agreed with both the SFA and SPFL that the scope and extent of both lists should remain as is currently the case and that the lists should simply be updated as needed.

Impact Assessments

A Business and Regulatory Impact Assessment (“BRIA”) has been not been completed for this instrument due to the instrument being expected to have a minimal impact on the football sector and due to recognition that this is an annual process regarding a very widely known set of restrictions and which is required to reflect promotions and relegations in the Scottish football pyramid.

A Child Rights and Wellbeing Impact Assessment has been completed on the draft instrument and is attached. There are no children’s rights impact issues.

Financial Effects

The instrument has no financial effects on the Scottish Government or local government. The restrictions which apply under Part 2 of the 1995 Act and the 2014 Order (as amended) are long-standing and widely known to clubs within the football pyramid and so any clubs impacted would be aware of what, if any, operational changes are required to comply with the legislation due to being promoted to a higher level of the football pyramid.

Scottish Government
Directorate for Population Health
November 2024