



Law Society
of Scotland

Consultation Response

Funeral director licensing scheme for Scotland

November 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Consumer Law and Licensing Law sub-committee's welcomes the opportunity to consider and respond to the Scottish Government consultation: Funeral director licensing scheme for Scotland¹.

We have the following comments to put forward for consideration.

General Comments

We note also that we do not consider that granting a licence to a business title as opposed to a named individual would be advisable as any disbarred individual could simply acquire the licensed business.

Consultation Questions

Question 1 - Please provide any comments on the proposal to designate Scottish Ministers as the 'licensing authority'.

We agree with this proposal.

¹ [Funeral director licensing scheme for Scotland: A Scottish Government Consultation \(www.gov.scot\)](https://www.gov.scot/consultations/funeral-director-licensing-scheme-for-scotland)

Question 2 - Do you agree or disagree with the proposal to publish and maintain a public directory of the licensed funeral directors in Scotland?

- **Strongly agree**
- **Agree**
- **Neither agree or disagree**
- **Disagree**
- **Strongly disagree**

We strongly agree with this proposal.

Question 3 - Please provide any additional comments

We agree that there is a need to have a public directory so that who is licensed is transparent to consumers.

Question 4 - Please provide any comments you have about the proposal to require funeral director businesses to identify a compliance officer for their licence.

No comments. We agree with the rationale you have set out.

Question 5 - Do you agree or disagree that funeral director licences should be time-limited, with funeral directors required to apply for renewal?

- **Strongly agree**
- **Agree**
- **Neither agree or disagree**
- **Disagree**

- **Strongly disagree**

We strongly agree with this proposal. A non-time-limited licence would undermine the objectives of licensing.

Question 6 - If licences are time-limited, do you think three (3) years is an appropriate length of time for a licence to last?

- **3 years is too long**
- **3 years is appropriate**
- **3 years is too short**
- **Don't know**

We are of the view that 3 years is too long. Such a long period can lead to complacency by the funeral director. A shorter period will ensure that they keep the practice standards at the front of their mind and that they continually review their practices, as the business evolves, and new staff join. In our view the licence renewal process should be a tool that benefits the business in their monitoring of practices and continuing improvement.

We note the provision you propose for ad-hoc inspections triggered by for example complaints (Clause 53). We are concerned that this is too much a reactive approach for such a sensitive business area (and hence we are suggesting more frequent licence renewals). We also question whether next-of-kin who have concerns about a funeral director will have the mental bandwidth to raise a complaint given the distressing situation and grieving they are experiencing. This may mean that few concerns reach inspectors.

Question 7 - Please provide any further comments about the appropriate length of time for a licence to last

Given the very sensitive nature of the business/practices and the opportunity to use the renewal as a tool for ongoing business improvement, we would suggest a yearly renewal.

Question 8 - Please provide any comments you have on the proposed approach to licence suspensions or revocations, as provided for in the 2016 Act.

It seems to us that the practice standards for operation of a funeral business should be subdivided into a number of priority categories (e.g. priority 1 is critical and relates to ethical issues) and that if a business does not comply with the highest priority criteria, their licence should be revoked permanently, rather than suspended temporarily pending improvement. If certain unethical practices are dealt with too leniently, the public is likely to have little trust in the the inspection and licensing schemes– which defeats the purpose.

With regard to Clause 70, how will the case be dealt with whereby a person which had their licence revoked (e.g. because of fraud) is still involved in a funeral director business but the licence is in another person's name (e.g. family member, spouse)?

Question 9 - In addition to the circumstance noted in paragraph 70, are there any other circumstances in which the licensing authority may decide to suspend or revoke a funeral director business licence?

We have no comments.

Question 10 - Please provide any comments on the possible types of convictions which might warrant the licensing authority deciding to suspend or revoke a funeral director business licence.

We have no comments.

Question 11 - When a person has their licence revoked, how long should they be required to wait before being allowed to apply for a new licence?

- 1 Year
- 2 Years
- 5 Years
- 10 Years
- Other

Since it is proposed that revoking will be used only for “the most serious circumstances” whereby a funeral director is “repeatedly or seriously non-compliant with set standards”, we are of the view that revoking should be permanent given the sensitive/ethical nature of the business.

Question 12 - Please provide any further comments.

We would suggest that the approach to suspending/revoking is linked to priority categories of the practice standards – assuming three priority categories as an example:

- If one or more of the highest priority standards (e.g. critical and relating to ethical issues) are not adhered to, permanent revoking of the licence seems appropriate.
- If one or more of the priority 2 standards (to be determined) are not adhered to, suspension of the licence seems appropriate to allow for improvement. However, if improvement fails to materialise, then permanent revoking seems warranted.
- If one or more of the priority 3 standards (to be determined) are not adhered to, suspension of the licence seems appropriate to allow for improvement. However, if improvement fails to materialise, then temporary revoking (e.g. for 2 years) may be appropriate.

Question 13 - Please provide any comments about the Scottish Government’s proposals to charging a fee at the time of a licence application and licence renewal to funeral director businesses. Any other comments

We agree with the proposal.

Question 14 - Please provide any additional views or comments you may have on the proposed licensing regime.

What measures will be in place to deal with any funeral director business which trades although their licence has been suspended, revoked or expired? Will automated, pro-active checking of the register against the web site of the business happen? Even with a publicly available directory, people dealing with a bereavement may not check whether the funeral director business is on the directory. This is similar to companies struck off from Companies House who can still list their (defunct) company registration number of their web site. While in general consumers could be expected to do due diligence on a company, people dealing with a bereavement are in a much more vulnerable position.

Will the directory also include funeral director businesses which have had their licence revoked/suspended, with the reasons why so their status is transparent to consumers?

Question 15 - Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above?

We have no comments.

Question 16 - 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?

We have no comments.

Question 17 - Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

We have no comments.

Question 18 - Do you have any views on potential impacts of the proposals in this consultation on communities on the Scottish islands?

We have no comments.

Question 19 - Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

We have no comments.

Question 20 - Do you have any views on the potential impacts of the proposals in this consultation on businesses and the third sector?

We have no comments.

Question 21 - Do you have any views on the potential impacts of the proposals in this consultation on the environment?

We have no comments.

For further information, please contact:

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