



**Funeral director licensing scheme for Scotland**  
**Response from the Scottish Council of Jewish Communities**

**Background information**

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

In preparing this response we have consulted widely among members of the Scottish Jewish community and with all of the Jewish burial societies, and this response reflects the views of all branches of Judaism that have communities in Scotland.

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**Initial concerns**

The consultation paper does not provide a clear and unequivocal definition of a “funeral director”. The 2016 Act relies for its definition on the 2011 Act, which defines a funeral director as “a person whose business consists of or includes the arrangement and conduct of funerals”. It is, however, unclear whether small, voluntary, not-for-profit burial societies, such as those in the Jewish and some other faith communities, that prepare the deceased for burial according to religious law and ensure that the various religious requirements are met, will be considered as “persons” or as a “business”, and therefore as funeral directors, and therefore whether the regulations proposed in this consultation paper will apply to them.

Jewish community burial societies use commercial undertakers to carry out some tasks, and these will clearly be regulated. However, *taharah*, the preparation of the deceased according to Jewish religious law **must** be carried out by a Jewish person. Traditionally this is undertaken by the community’s own voluntary burial societies (the relevant procedures must be carried out by a Jewish person, and, given the small size of the community, it would not be commercially viable for this to be carried out in any other way). However, despite having repeatedly asked for information over a period of

several months, the Scottish Government has been unable to tell us whether or not this procedure, carried out entirely by volunteers, will be classified by these regulations as "operating a business as a funeral director.

The Scottish Council of Jewish Communities attended pre-consultation advisory meetings with the Scottish Government and was advised that once the final version of the regulations has been published, these burial societies, which are not "businesses" but run on an entirely not-for-profit basis, "would need to take their own independent legal advice to ascertain whether they would be regarded as operating a business as a funeral director". This is totally unacceptable. On the one hand, small voluntary burial societies do not have sufficient funds to employ legal advisors, and on the other, doubt as to whether or not the regulations will apply to them, will preclude them from having meaningful input to the development of the regulations.

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

We are content with this proposal.

**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

**3. Please provide any additional comments.**

This would seem a sensible proposal to enable members of the public to have confidence that they are employing a reputable funeral director. It is, however, vital that the definition of a funeral director is established before other decisions are made, and that the regulations are proportionate. Treating very small volunteer organisations that provide a specific and very limited service to a faith community in the same way as large commercial organisations would not be proportionate.

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

This is a sensible proposal for commercial funeral directors, particularly those specified in the consultation paper where "the business owner may not be involved in the day-to-day operations, or they may be based outwith Scotland" and for "large companies without individual owners". For small burial societies staffed entirely by volunteers, this may not be a realistic proposition, since, while willing to give their time for *chesed shel emet* – "the truest kindness", which is the way in which Jewish tradition regards caring for the deceased – volunteers may not be willing to give up additional time, and take on the substantial legal responsibility of acting as a compliance officer.

We have been advised in writing by the Scottish Government that "Funeral regulation is primarily concerned with care of the deceased and ensuring the wishes of the bereaved are followed." If, however, this regulation were to apply to small, volunteer-

run Jewish burial societies which are not “businesses” in the normal sense (which, as noted above, has, regrettably, not been made clear), the failure to identify anyone to act as a compliance officer may force them to cease operations with the result that the care of the deceased according to Jewish religious law would no longer be possible in Scotland, and the wishes of the bereaved could not be complied with. This would cause severe difficulty for the Scottish Jewish community, and, in particular, very great distress for elderly and sick people who might fear they would not be buried according to Jewish religious law, and for the bereaved who may be distraught at their inability to bury their loved ones according to Jewish religious law.

**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

**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

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

As we have already stated, we do not believe that it is appropriate to include small voluntary burial societies which are not “persons that conduct a business”, in the proposed regulations.

In respect of commercial organisations, a one-off licence is not meaningful since practices in an organisation may change over time. Three years is a reasonable time-period to ensure continued probity.

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

The proposals are acceptable for commercial but not small voluntary organisations.

**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?**

There may be occasions when, although a funeral director has not been convicted of a serious offence, the Police Scotland may provide the licensing authority with confidential information that should be given similar weight to a conviction.

**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 do not wish to comment on this 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

**12. Please provide any further comments.**

This should be dependent on the reason for revocation. In the case of a conviction, it would be reasonable to wait until the conviction is 'spent'. In the case of non-compliance with the inspection regime, a wait of two to three years may be sufficient in combination with an obligatory more stringent inspection regime for the first few years of the new licence.

**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.**

As we have already stated, we do not believe that it is appropriate to include small voluntary burial societies in the proposed regulations. However, any applicable fee structure must recognise that small, voluntary burial societies that carry out only a few burials are non-commercial organisations, and any fee required of them should be minimal or waived, and certainly must not be prohibitive.

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

*and*

**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? (please refer to page 25 of the consultation document)**

The inability of the Scottish Government to advise whether or not these regulations will apply to very small volunteer burial societies such as those in the Jewish community, which are not "businesses" in any meaningful sense demonstrates that they have not fully considered the impact of their proposals on human rights, equalities, and protected characteristics. This is unacceptable.

We are very concerned that these proposals – and also the lack of clarity surrounding the applicability of these proposals – could have a disproportionate impact on small voluntary burial societies in the Jewish community and other faith communities, with the result that they may be forced to cease activities. The impact of that on the Jewish community would be overwhelming. The Scottish Jewish community is an aging and shrinking community. There have been various initiatives to promote Scotland as "a

good place to be Jewish”, and we have been heartened that, in the last few years, the number of young people remaining in or coming to Scotland to study has been increasing. This has also been welcomed by the First Minister<sup>1</sup>. It is not, however, stating the matter too strongly to say that the forced closure of the voluntary Jewish burial societies would result not only in a reversal of this trend, but also in substantial numbers of people moving away from Scotland in order to assure themselves that their and their loved ones’ burials can be carried out in accordance with their Jewish faith.

**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 do not wish to comment on this question.

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

We do not wish to comment on this question.

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

We do not wish to comment on this question.

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

We do not wish to comment on this question.

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

The inability of the Scottish Government to advise whether or not these regulations will apply to very small volunteer burial societies such as those in the Jewish community, demonstrates that they have not fully considered the impact of their proposals on the third sector. This is unacceptable.

Burial societies in the Jewish community are not, as we have already stated, “persons that conduct a business”, but are all very small third sector, volunteer-run and -operated organisations. As we have already described, the impact of these regulations is likely to discourage people from volunteering or continuing to volunteer, with the result that they may be forced to cease operations. As we have already stated, this would have a disastrous impact on the Scottish Jewish community.

We do not wish to comment in relation to businesses.

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

We do not wish to comment on this question.

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<sup>1</sup> Meeting with the First Minister, Humza Yousaf MSP  
[https://www.scojec.org/news/2023/23v\\_fm/fm.html](https://www.scojec.org/news/2023/23v_fm/fm.html)