



**Statutory inspection of burial authorities,
cremation authorities and funeral directors**

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.

Initial concerns

We note that these proposed regulations are intended to apply to “burial authorities, cremation authorities, and funeral directors. However, 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.

We have been advised that "all cemeteries will be in scope" of the regulations. In some areas, the Jewish community uses specially designated areas of council-run cemeteries, and is not, therefore, itself the burial authority. However, there are also a number of cemeteries operated by Jewish community charities. The smallest of these conducts fewer than one burial each year, and the largest only around 40 burials each year. The trustees and the many helpers necessary for running these cemeteries are all volunteers. Paid staff are limited to administrators and gardeners most of whom work fewer than ten hours each week.

In some cases, the Jewish community burial society and burial authority comprise a single organisation that both cares for the deceased, preparing them for burial according to Jewish religious law, and managing the cemetery.

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

We agree with the proposal that inspectors should carry out both routine and ad-hoc inspections, the latter in general following any complaint. However, we emphasise that the inspection regime must be proportionate. In particular, when arranging inspections of small volunteer burial societies, and volunteer-run burial authorities, the regulations must allow a longer period between initial contact and inspection in recognition of the fact that, as volunteers, the majority of those concerned have full-time jobs elsewhere, and may not, therefore, be immediately available to provide access to and accompany the inspector. Since Jewish community burial authority and burial society premises are unoccupied for the vast majority of each week, it is not realistic to require that these submit to unannounced ad-hoc inspections.

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

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

The Jewish community does not operate any cremation facilities, and we do not, therefore, wish to comment on this 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

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

We agree with the proposed criteria, in particular the number of burials annually, type of premises, number and nature of complaints, and evidence of compliance with relevant standards.

However, we strongly disagree with the proposal that “*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 ... until we are able to gather evidence and revise their level of risk as necessary.*” The largest Jewish burial authority in Scotland conducts only around 40 burials each year. Most conduct fewer than 10, and several fewer than 1 per year. It is entirely inappropriate for such small volunteer-run burial authorities to be placed, even temporarily, in the same category as large commercial businesses that arrange as many or more burials each week.

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

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

As we have already stated, we regret that the Scottish Government has been unable to tell us whether small volunteer burial societies such as those in the Jewish community will be considered funeral directors, and so included in these regulations.

However, we agree with the proposed criteria, in particular the number and type of premises, number of funerals arranged annually, number and nature of complaints, and evidence of compliance with relevant standards.

However, we strongly disagree with the proposal that *“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 ... until we are able to gather evidence and revise their level of risk as necessary.”* It is entirely inappropriate for small volunteer burial societies which are not “persons” or “businesses”, and care for at most for fewer than 40 deceased people each year to be placed, even temporarily, in the same category as large commercial businesses that care for as many or more of the deceased each week.

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

As we have already stated, we regret that the Scottish Government has been unable to tell us whether the small volunteer burial societies such as those in the Jewish community will be considered funeral directors, and so included in these regulations. However, we agree that, where required, licence renewals should be synchronised with routine inspections, so that *“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.”*

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

We do not wish to make any additional comments.

10. Which option presented above do you prefer? (please refer to paragraph 87 to 100)

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

We do not wish to comment on this 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

We do not wish to comment on this question.

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

The Jewish community does not have any experience of large funeral director businesses that operate multiple premises.

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

The proposals largely overlap with existing Health and Safety regulations, which are already a complex area with overlaps between many regulations. For example, in the case of burials it would seem that both public health and manual handling regulations already apply. Adding another layer of complexity would serve no meaningful purpose and, in some cases, could indeed be a hindrance. Similarly, the proposal to provide inspectors to prohibit the use of faulty equipment is redundant as already provided for in other regulations.

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.

As we have already stated, Jewish community burial societies operate on an entirely volunteer basis, and Jewish community burial authorities are also volunteer-led and volunteer-run with at most only part-time administrative and gardening staff; they are not "businesses" in the normal sense. We recognise that it may sometimes be appropriate for the inspector to interview these, but timescales included in regulations must recognise that the majority of those concerned have full-time jobs elsewhere, and that they may not, therefore, be immediately available for interview.

We do not object to sensitively-arranged and conducted interviews with bereaved people who have used Jewish community burial societies or burial authorities.

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.

We agree with the relevant proposals.

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

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**

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

As we have already stated, these proposals largely overlap with existing Health and Safety regulations. However, we agree that inspectors should be able to issue enforcement notices in respect of faulty equipment.

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**

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

As we have already stated, Jewish community burial societies operate on an entirely volunteer basis, and Jewish community burial authorities are also volunteer-led and volunteer-run with at most only part-time administrative and gardening staff; they are not “businesses” in the normal sense. All timescales included in regulations must recognise that the majority of those concerned have full-time jobs elsewhere. Responding to inspection reports will therefore be an additional task to be carried out in their already limited free time.

We are concerned that this significant extra commitment may discourage people from volunteering in Jewish burial authorities and, if the regulations are to apply to them, which we regret that the Scottish Government has been unable to tell us, in Jewish burial societies, to the extent that they may be forced to cease operations. This would result in 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.

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

We do not wish to comment on this question.

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

We agree with the relevant proposals.

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

We agree with the relevant proposals.

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

We do not wish to comment on this question.

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

Suspensions would be extremely disruptive and distressing to the bereaved, and they should, therefore, only be used as a last resort. In general, any improvements required should be negotiated and implemented in co-operation between the inspector and the burial authority or funeral director.

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.

We support the view that a burial authority or funeral director should have an opportunity to make oral representations before any decision is taken about the issuing of a suspension notice, and that the burial authority or funeral director should be able to initiate this. Firstly, it may be less formidable, onerous, and time-consuming for a volunteer to make an oral rather than written case, and secondly, particularly in the case of a specialist burial authority or funeral director, such as those providing services compliant with Jewish religious law, an oral representation, during which Scottish Ministers or their representative can ask questions and receive explanations about less-known procedures and practices, may be more effective in providing sufficient relevant information for an appropriate decision to be reached.

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

We agree with the relevant proposals.

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

We do not wish to make any additional comments.

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

It is very important that there should be a robust and accessible appeals procedure. We are, however, concerned that this could be an additional call on the time of volunteers in a small Jewish community burial society or burial authority, and as such, may further discourage people from volunteering to the extent that the burial societies and burial authorities may be forced to cease operations. As we have already stated, this would result in 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.

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

It is very important that there should be a robust and accessible appeals procedure. We are, however, concerned that submitting an appeal could be an additional call on the time of volunteers in a small Jewish community burial society or burial authority, and as such, may further discourage people from volunteering to the extent that the burial societies and burial authorities may be forced to cease operations. As we have already stated, this would result in 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.

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

We are content with the proposals.

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

We do not wish to make any additional comments.

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

and

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?

The inability of the Scottish Government to advise whether or not the funeral director regulations will apply to very small volunteer burial societies which are not “businesses” in any meaningful sense such as those in the Jewish community, 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 regulations could impact disproportionately on small volunteer burial authorities and, if they are to be included in the regulations, which we regret the Scottish Government has declined to clarify, small volunteer burial societies, such as those in the Jewish community. It is all too likely that many current and potential volunteers will decide that the new regime will take up too much of their time and will impose additional responsibilities that they are unwilling to accept, and, in consequence, will decide not to volunteer. That would have a very negative impact on the human rights of Jewish people in Scotland, who would no longer be able to be buried, or to bury their loved ones in accordance with Jewish religious law. In turn, that would impact the wider – aging and already shrinking – Jewish community, as Jewish people may probably choose to move away from Scotland in order to retain their access to Jewish burial. In addition, Scotland would become a less attractive proposition for Jewish people seeking to relocate.

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?

We do not wish to comment on this question.

36. 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.

37. 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.

38. 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.

39. 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 the funeral director 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 and burial authorities in the Jewish community are, as we have already stated, all very small third sector, volunteer-run and -operated organisations and are not “businesses” in any meaningful sense. 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.

40. 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.