

BURIAL AND CREMATION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Funeral Directors

252. **Part 5** deals with provisions relating to funeral directors.

Section 94 – Funeral directors’ businesses: licensing

253. **Section 94(1)** gives the Scottish Ministers the power to create a licensing scheme covering the operation of funeral directors’ businesses. Subsection (2) provides that a person may not carry on a business as a funeral director unless they hold a licence issued under the scheme in relation to the business. Subsection (3) provides that a person who carries on more than one business as a funeral director must hold a separate licence for each business.

Section 95 – Licensing scheme: regulations

254. **Section 95(1)** allows the Scottish Ministers to make regulations in respect of how a licensing scheme referred to in section 94(1) will operate. Subsection (2) sets out what the regulations may contain. This includes: the licence conditions which may apply under regulations; who will administer the scheme; the application procedure; the circumstances under which an application may be refused or granted; for what period the licence may be granted; provisions for suspension or revocation of licences; and any conditions that may be applied, such as the fees that may be payable and provision about appeals against certain decisions of the licensing authority.

Section 96 – Licence for funeral director’s business: offences

255. Subsection (1) provides that a person who knowingly carries on a business as a funeral director without a licence commits an offence. Subsection (2) sets out the circumstances in which a person will be considered not to hold a licence. These are that no licence has been issued and that a licence has been issued but has expired without being renewed, or has been suspended or revoked. Subsection (3) provides that a person will also commit an offence if they knowingly or recklessly provide materially false or misleading information in, or in connection with, an application for a licence. By virtue of subsection (4), a person who is convicted of committing an offence under this section will be liable to a fine not exceeding level 3 on the standard scale.

Section 97 – Funeral director: code of practice

256. Subsection (1) provides that a funeral director must comply with any new or revised codes of practice issued by Scottish Ministers in relation to the carrying out of a funeral director’s functions.

*These notes relate to the Burial and Cremation (Scotland) Act
2016 (asp 20) which received Royal Assent on 28 April 2016*

257. Under subsection (2), the Scottish Ministers will be required to consult with funeral directors and any other relevant parties before issuing a funeral director's code or revising an existing code.
258. Subsection (3) requires the Scottish Ministers to lay a draft of the funeral director's code before the Scottish Parliament, after taking account of any representations made by virtue of subsection (2). A funeral director's code may not be issued until it has been approved by a resolution of the Scottish Parliament. Subsection (5) requires the Scottish Ministers to publish such a code in such manner as they consider appropriate, and subsection (6) requires the Scottish Ministers to keep any code of practice under review. Subsection (7) provides that references to a funeral director's code also include references to a revised code.