

The Scottish Government’s “Funeral director licensing scheme for Scotland”

Consultation Analysis Report

April 2024

Contents

Executive Summary	3
Main Findings.....	3
Next Steps.....	4
1. Introduction	6
Background.....	6
Proposed Licensing Scheme	6
Broader Funeral Sector Regulation	7
The Consultation.....	8
Profile of Respondents.....	8
Analysis Methodology and Reporting	9
Data Entry	10
Data Analysis and Reporting	10
2. Findings	11
2.1 The Licensing Authority.....	11
2.2 Directory of Funeral Directors Operating in Scotland	13
2.3 Compliance Officer.....	17
2.4 Duration, Expiry and Renewal of licences	19
2.5 Suspension and Revocation of Licences.....	23
2.6 Licence Fees	28
2.7 Additional Comments	30
3. Next Steps and Considerations	31

Executive Summary

Between 25 August and 17 November 2023 the Scottish Government undertook an online consultation on its proposals for a licensing scheme under sections 94 and 95 of the Burial and Cremation (Scotland) Act 2016 ('the 2016 Act'). The consultation was comprised of 14 questions, and collected information in both survey and open-ended comment format. The analysis of responses was conducted in late 2023/early 2024.

The purpose of this consultation was to seek views on proposals for regulations for funeral director licensing, which, if implemented, would create a licensing regime for funeral directors¹. The proposals contained within the consultation are an essential step in ensuring that a modern and comprehensive regulatory framework for the funeral sector in Scotland is realised.

The consultation received 32 responses (26 from organisations and 6 from individuals).

The consultation was published as part of a collection of four consultations relating to the content of various sets of regulations that are intended to be made under sections of the 2016 Act which have not yet been implemented. They related to:

- [Inspection regulations](#)
- [Burial regulations](#)
- [Alkaline hydrolysis \(an alternative to burial or cremation\)](#)

Main Findings

Overall, there was strong support for the proposals for the intended licensing scheme. Responses often focussed on the role licensing would play in ensuring the public receive high standards of care and have confidence in the sector.

Key points from the consultation responses are as follows:

- The majority of respondents indicated support for the proposal that Scottish Ministers would be designated as the 'licensing authority'. Reasons for this provided in comments included a sense of consistency that would be brought by this proposal, and the contribution it could make to maintaining high standards and public confidence in the sector.
- The majority of respondents agreed or strongly agreed with the proposal for the Scottish Government to maintain a directory of licensed funeral director businesses in Scotland which would be searchable on the Scottish Government website. Respondent comments noted how a public directory could help ensure the public had confidence in the sector.

¹ Other areas of the funeral sector such as burial authorities and cremation authorities would not be subject to licensing

- The majority of respondents were supportive of the proposal to require each funeral director business to name a “compliance officer”. Additional comments included that this role may be helpful for businesses operationally, providing a clear link for communication and ensuring standards are met.
- The majority of respondents agreed or strongly agreed that a licence should be valid for a time-limited period. The majority of respondents selected that three years (the Scottish Government’s proposal) was an appropriate time for a licence to last. Some respondents offered additional reasons for this support, which mainly expressed that 3 years would strike an appropriate balance between supporting ongoing good practice and not overburdening businesses with more frequent renewal processes.
- It is proposed that the regulations to be developed will provide for the suspension and revocation of funeral director business licences. A majority of respondents were supportive of the proposals. Several respondents did comment, however, that they would like further detail on the proposed approach in order to better understand the implications, including timings of suspensions as well as what mitigations would be put in place to ensure there was not abuse of the suspension or revocation process. Further, several respondents expressed concern about the impact that suspension or revocation of licences would have on bereaved families, those providing and holding pre-paid funeral plans, and on rural communities with fewer alternative service providers.
- One question asked, if a person has had their licence revoked, how long they should be required to wait before being allowed to apply for a new licence. In response, the majority of respondents selected ‘Other’, as opposed to selecting a specific time period. In additional comments, respondents explained that the period required to wait between licence revocation and application for a new licence should vary depending on the circumstances and reasons for the revocation.
- The majority of respondents broadly agreed with the Scottish Government’s proposals to charge a fee at the time of a licence application and licence renewal for funeral director businesses. Comments received about the fee included ensuring that this was kept as low as possible and, that the fee should be charged only to account for the cost of the administration of the licensing scheme itself.

Next Steps

Following this analysis of the consultation responses, the Scottish Government will further consider the proposals for the intended licensing scheme in its development of licensing regulations. The results of this analysis will also be considered in conjunction with the responses received to the other three public consultations which were published in Autumn 2023.

Before laying a draft of the licensing regulations before the Scottish Parliament, section 105 of the 2016 Act requires the Scottish Ministers to prepare, and then consult on, a draft of the licensing regulations. Following this consultation, which Scottish Ministers intend to prepare in due course, section 105 also requires any draft licensing regulations laid before the Scottish Parliament to be accompanied by a document summarising the consultation responses and describing any changes made to the draft regulations following the consultation.

1. Introduction

This report presents the analysis of the Scottish Government’s public consultation on the “[Funeral director licensing scheme for Scotland](#)”, which was open for responses between 25 August and 17 November 2023. It received 32 responses.

The purpose of this consultation was to seek views on proposals for regulations for funeral director licensing, which, if implemented, would create a licensing regime for funeral directors. The proposals contained within the consultation are an essential step in ensuring that a modern and comprehensive regulatory framework for the funeral sector is realised.

The current consultation was published as part of a collection of consultations relating to the content of various sets of regulations that will be made under the 2016 Act which have not yet been implemented. They related to:

- [Inspection regulations](#)
- [Burial regulations](#)
- [Alkaline hydrolysis \(an alternative to burial or cremation\)](#)

Background

The 2016 Act received Royal Assent in April 2016. It provides much-needed modernisation and improvement of processes for burial, cremation, and funeral services. It replaced legislation which was well over 100 years old, and provides the framework for a regulation system which meets the needs of modern Scotland.

Sections 94 and 95 of the 2016 Act give Scottish Ministers the power to decide whether to establish a licensing scheme for funeral director businesses.

Funeral director businesses operating in Scotland are not currently subject to industry specific statutory regulation besides that which has been commenced under the 2016 Act. They do not have to be registered with a regulatory body or hold a licence by law in order to operate as a funeral director.

On a non-statutory basis, representative bodies for funeral directors do support their members to meet professional standards that those bodies set and provide information to the bereaved. These include the [National Association of Funeral Directors](#) (NAFD) and the [National Society of Allied and Independent Funeral Directors](#) (SAIF). Standards are set by each organisation and are set out in their own non-statutory Codes of Practice.

Proposed Licensing Scheme

The aim of the Scottish Government’s proposed licensing scheme is set out in the 2023 [consultation paper](#). Overall, the regulatory framework to which the licensing regulations will contribute are intended to regulate the industry in its care and handling of the deceased.

The content of the proposed licensing scheme was also set out in detail in the [consultation paper](#), for the purposes of seeking public responses to the proposals. To enable operation of any licensing scheme, the regulations to be developed following this consultation analysis will set out details about how the licensing scheme is intended to operate.

The proposals to introduce a funeral director business licensing scheme follow engagement with the funeral industry. The first Inspector of Funeral Directors was appointed by Scottish Ministers in 2017 (by virtue of section 89(1) of the 2016 Act) to review the funeral sector in Scotland. This progressed recommendations by the [National Cremation Investigation](#) and helped to fulfil the recommendations of the [Infant Cremation Commission](#). Following engagement with the industry, including voluntary inspections of funeral director businesses, the Inspector published a [report](#) in August 2019. The report made recommendations to Scottish Ministers about how funeral directors should be regulated, including that a licensing scheme should be introduced. Scottish Ministers agreed with the findings and recommendations of the report, and in August 2019 the previous Minister for Public Health, Sport and Wellbeing announced the Scottish Government's intention to develop a licensing scheme for funeral director businesses.

In preparation for developing a licensing scheme, officials convened a Funeral Director Licensing Working Group with members from the industry, public sector and third sector. The Working Group met three times throughout 2022 and 2023, bringing a range of stakeholders in to discuss and shape views on the proposals contained within this consultation.

Broader Funeral Sector Regulation

Funeral director businesses in Scotland arrange and conduct approximately 62,000 funerals per year.² Existing evidence from the Competition and Markets Authority (CMA)³ and the industry itself⁴ suggests that the UK public assumes funeral directors are already regulated or, at least, have to meet minimum standards. At present there is little current Scottish regulation specifically applicable to funeral directors other than the provisions of the 2016 Act which have been commenced to date.

It is recognised that any licensing scheme for funeral directors would require to be complementary to the intended inspection regime for funeral directors, burial authorities and cremation authorities (see 2023 [inspection regulations consultation](#)), providing greater oversight for, and transparency about, the industry. It is intended that, under the proposed inspection regulations, inspectors will inspect funeral director businesses to assess their compliance with the 2016 Act, regulations, conditions of any licence and the [Funeral Director Code of Practice](#)⁵.

² See NRS website for 2022 Vital Events. Fourth quarter 2022 available [online](#).

³ [Final report \(publishing.service.gov.uk\)](#)

⁴ Dignity Funerals. [Time to Talk About Quality and Standards: What people assume, want and expect from funeral directors.](#)

⁵ The Funeral Director Code of Practice was approved by the Scottish Parliament in January 2024, and it is intended that it will be formally issued by Scottish Ministers and come into force in March 2024.

The Consultation

The current consultation was split into sections with specific questions on proposals relating to:

- The Licensing Authority
- A Directory of Funeral Directors Operating in Scotland
- Compliance Officer
- Duration, Expiry and Renewal of Licences
- Suspension and Revocation of Licences
- Licence Fees

The consultation consisted of 14 consultation questions. Four of these consultation questions were closed survey-style questions requiring a fixed response to be selected from a list of options. The remainder were open questions either inviting further explanation of preceding choices in fixed response questions or inviting broader comments on the proposals.

The [consultation document](#) remains available on the Scottish Government website.

This consultation on the funeral director licensing scheme will be the first of two consultations on this topic. Before laying a draft of the licensing regulations before the Scottish Parliament, section 105 of the 2016 Act requires the Scottish Ministers to prepare, and then consult on, a draft of the licensing regulations. Following this consultation, which Scottish Ministers intend to prepare in due course, section 105 also requires any draft licensing regulations laid before the Scottish Parliament to be accompanied by a document summarising the consultation responses and describing any changes made to the draft regulations following the consultation.

Profile of Respondents

The Scottish Government was keen for the consultation to gather a broad range of the views of funeral directors, local authorities, private burial or cremation authorities, funeral industry trade body representatives and any other groups or individuals with a working knowledge of, or interest in, funeral directing, burial, cremation or the wider funeral industry. The Scottish Government also wanted to hear from members of the public.

The consultation received 32 responses, and responses were received from all groups. Most responses (n=25) were received through the Scottish Government's online consultation hub, '[Citizen Space](#)', and a further seven were received by email.

Of the total respondents, 81% (n=26) were submitted on behalf of an organisation, and 19% (n=6) were from individuals. Of those who identified as 'individuals', when asked if they worked in a sector related to the funeral sector, 50% (n=3) said they worked in related professions. Organisation respondents were asked to identify which organisation they were responding on behalf of and categorise the sector areas to which the organisation belongs.⁶ Table 1 provides further detail on the

⁶ Those who responded by email did not have these questions available so were contacted directly (where permission for further contact was given) to ask this question.

number of respondents in each subcategory. Responses were received from those representing funeral directing organisations, burial and cremation authorities, local government, relevant trade bodies, faith organisations, health bodies, third sector organisations and those working in other areas related to the funeral sector e.g. sales. Responses from individuals included both those working within, and outside, the funeral sector.

Table 1: Distribution of responses by category and subcategory of respondents

Responding as an Individual or on behalf of Organisation	Subcategory of employment/organisation	Number of responses	Percentage of all respondents (n=32)
Individual	Funeral Directing	2	6%
	Burial Authority	0	0%
	Cremation Authority	0	0%
	Other area of the funeral sector	1	3%
	I don't work in the funeral sector	3	9%
	Total individuals	6	19%
Organisation	Funeral director business/organisation	6	19%
	Trade body for funeral directors	1	3%
	Burial authority only	5	16%
	Cremation authority only	0	0%
	Burial authority and cremation authority	2	6%
	Trade body for burial authorities or cremation authorities	1	3%
	Health body	1	3%
	Local government	4	13%
	Fath/religion based organisation	2	6%
	Third sector	1	3%
	Other organisation (e.g. guidance, sales)	3	9%
	Total organisational responses	26	81%
Total Responses	32	100%	

Analysis Methodology and Reporting

This report presents both quantitative and qualitative findings. Quantitative data were obtained from closed survey-style questions where respondents could select from

predetermined choices (e.g. 'yes/no', 'agree/disagree'). These data are presented in tables and charts to show the number of respondents selecting each possible answer.

Qualitative data were gathered from comments that respondents gave in response to open questions (where respondents were given free text boxes in which to respond). Unlike quantitative data, qualitative data allows for insights and understanding to be gained by looking at the detail of respondents' answers, and is presented in this report as descriptive text and verbatim quotes from respondents.

Data Entry

Data from responses received by email were entered manually into Citizen Space and, as per best practice, the accuracy of a sample of the data entry checked by a second analyst. One response was received which did not follow the consultation question format and instead provided a single, long-form answer. Where possible, relevant sections of this response were analysed alongside the consultation questions to which they appeared best related. All remaining data from this non-standard response was analysed within Question 14 ('Any other comments').

All responses were downloaded from Citizen Space into a Microsoft Excel document. Data were analysed on a question by question basis except where questions linked to each other, for example when respondents were asked to give reasons for a selection in a previous question.

Data Analysis and Reporting

An analysis of responses to the consultation's closed questions was conducted. The number of respondents answering each question is reported. The frequency of responses, and distribution of these responses based on respondent employment/organisation type, are reported in tables and stacked bar charts. Where percentages are given these are rounded to the nearest whole number, and represent a percentage of the total respondents answering the specific question, rather than the total number of respondents taking part in the consultation.

A thematic analysis of responses to the consultation's open questions was conducted. This involved the qualitative data from these responses being read in detail by an analyst, patterns identified, text being 'coded' and themes constructed from these codes. The themes were used to summarise the key points made by respondents and the range of views expressed, both within each question and across the consultation.

Data from the consultation responses are reported descriptively, and supported by direct, anonymised quotations from respondents (where permission was given for responses to be published). Qualitative analysis does not normally quantify results, since useful insights might come from a minority of respondents. However, to assist the reader in interpreting the report, where appropriate some quantitative figures are given or descriptions like 'majority' or 'minority' used. For example, where a clear majority or minority of respondents have answered in a similar way, some references are made to this in the description of the response data to give a sense of the weight

of response. However precise frequencies or percentages are mostly avoided when reporting the qualitative data due to the subjective nature of analysing these responses.

Findings are reported in the same order and groupings in which they were presented within the consultation. They are discussed in this report in the following sections:

- 2.1 **The Licensing Authority:** Question 1
- 2.2 **Directory of Funeral Directors Operating in Scotland:** Questions 2 and 3
- 2.3 **Compliance Officer:** Question 4
- 2.4 **Duration, Expiry and Renewal of licences:** Questions 5, 6 and 7
- 2.5 **Suspension and Revocation of licences:** Questions 8, 9, 10, 11 and 12
- 2.6 **Licence Fees:** Question 13
- 2.7 **Additional Comments:** Question 14

2. Findings

2.1 The Licensing Authority

Summary of Consultation Information Provided with Question 1

Section 95(2)(a) of the 2016 Act provides that licensing regulations may “specify who is to administer the scheme”, and names this body the ‘licensing authority’. The 2016 Act further sets out that, where the relevant powers under section 95 are utilised, the licensing authority is responsible for key decisions such as whether to grant or refuse a licence (or grant a licence with conditions).

The Scottish Government currently intends to utilise the powers in section 95 to name the Scottish Ministers as the licensing authority. In practice, if implemented, this will mean that when determining a licence application Scottish Ministers would be making decisions as the licensing authority. Greater detail about the Scottish Government’s proposals can be found in the consultation paper.

Results

Question 1: Please provide any comments on the proposal to designate Scottish Ministers as the ‘licensing authority’.

Twenty-six (26) of the 32 respondents submitted comments on the proposal to designate Scottish Ministers as the ‘licensing authority’.

The majority of responses were in clear support of this proposal with several respondents simply stating their support. A few supportive comments offered more substantial reasons for their agreement and these focussed on the respondents’ views that a sense of consistency would be brought by this proposal, with responses suggesting that this would contribute to maintaining high standards and public confidence in the sector.

“This would provide a consistency across the sector and in line with other similar roles where Scottish Ministers are names [sic] as the licensing authority. This would provide a stable consistent regulatory function which would be able to govern and have oversight throughout the sector.”

[Organisation, Burial Authority]

A minority of respondents disagreed with the proposal, for example one expressed they were not supportive of licensing overall, and another disagreed that Scottish Ministers were the appropriate body to take on this role.

Other respondents who were still generally supportive of the proposal, but somewhat more reserved in their support, often provided comments and suggestions for consideration. These comments have been summarised into 2 themes:

Theme 1: Concerns around choice of Scottish Ministers as the Licensing Authority

Some respondents acknowledged that they understood the reasons for the proposal to designate Scottish Ministers as the licensing authority but in their responses raised concerns they had with this proposal or with issues they thought were pertinent to consider in developing this proposal further. Some respondents had concerns that Scottish Ministers' capacity for additional workload might limit timely decisions or impact on their duties as the licensing authority.

Similarly, some respondents suggested that a lack of sector-specific knowledge and experience might impede the licensing authority, and that Scottish Ministers taking on this role would benefit from drawing on additional support (see 'Possible Role of Trade Bodies' below).

Lastly some respondents commented on any licensing authority having independence (from the industry and government) as an important consideration to them. This was countered in some cases with acknowledgement that this might not be feasible in this particular case.

“Given the cost and logistical complications associated with setting up an entirely new Government agency, the proposal to designate Scottish Ministers as the licencing [sic] authority is sensible. However, it will be important to ensure that, alongside their other ministerial responsibilities the Minister(s) who will act as the licencing [sic] authority need to ensure they have sufficient capacity to exercise this function.”

[Organisation, Funeral Director Organisation]

Theme 2: Possible Role of Trade Bodies

Several respondents pointed specifically to existing trade associations in the industry as being able to potentially play an important role in supporting delivery of these proposals, with existing operations and sector-specific knowledge which Ministers could draw upon.

“I understand the need for a 'licencing [sic] authority' but would ask that further thought be given to existing trade associations supporting the Scottish Ministers in providing the vehicle.”
[Individual, Employed in Funeral Directing]

2.2 Directory of Funeral Directors Operating in Scotland

Summary of Consultation Information Provided with Questions 2 and 3

There is currently no centralised, public list of funeral director businesses in Scotland. To help achieve the intention of making Scotland’s funeral sector more transparent to the wider public, the Scottish Government proposes to maintain a directory of licensed funeral director businesses in Scotland which will be searchable on the Scottish Government website. More details can be found in the consultation paper.

Results

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

All thirty-two (32) respondents answered this closed question.⁷ The majority of respondents (94%, n=30) strongly agreed, or agreed, with this proposal. This majority agreement was seen across each organisational subcategory with all funeral director organisations and trade bodies responding in agreement.

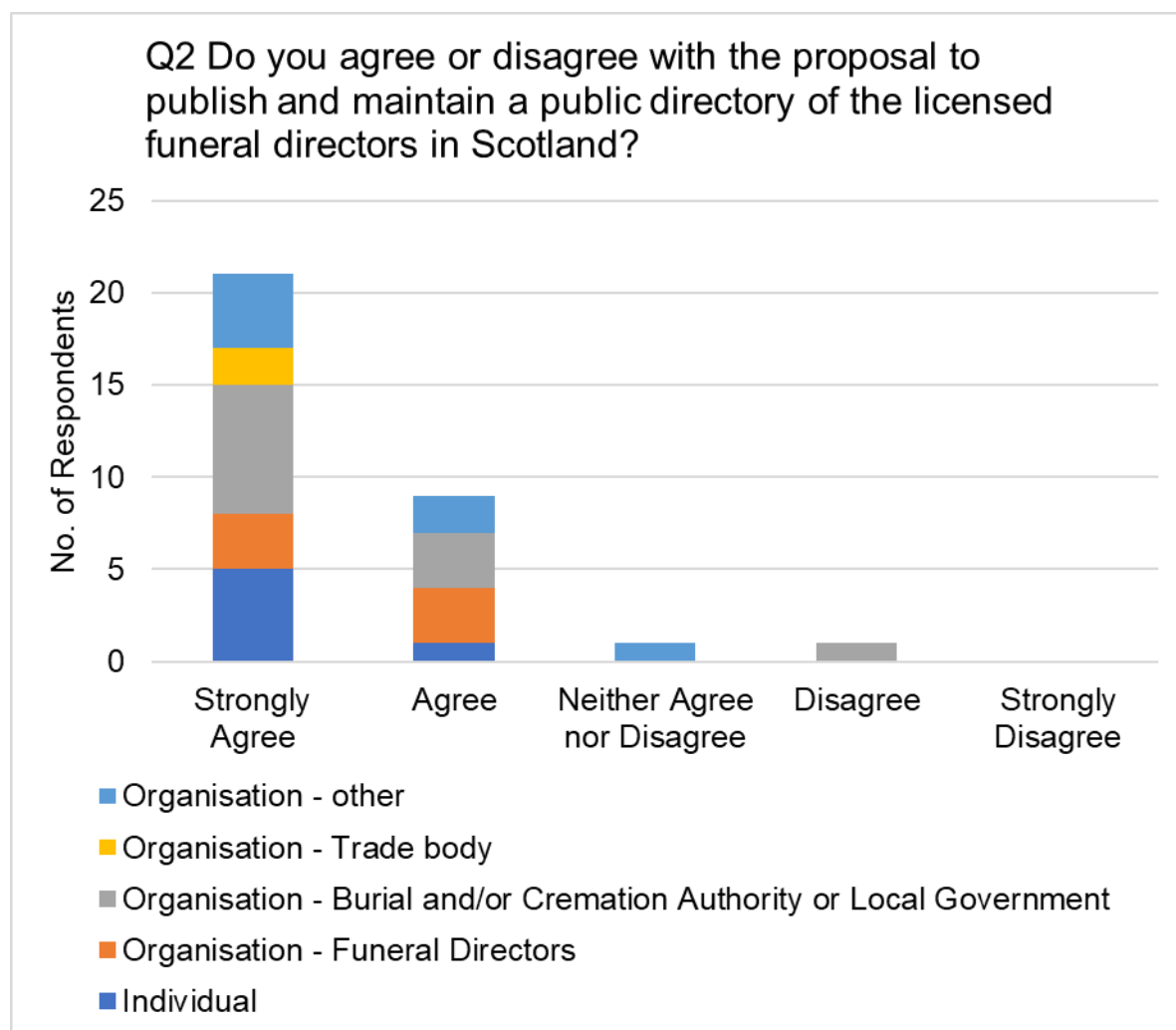
Table 2 and Figure 1 (below) show the responses broken down by respondent type (individual or organisational response, and type of organisation).

Table 2. Responses to Question 1 by respondent type

⁷ The one non-standard response received (which did not follow the consultation question format) was categorised as ‘agree’ based on explicit comments within their submission.

Respondent Type	Number of Responses (Q2)				
	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
Individual	5	1	0	0	0
Organisation - Funeral directors	3	3	0	0	0
Organisation - Burial and/or cremation authority or local government	7	3	0	1	0
Organisation - Trade body	2	0	0	0	0
Organisation - Other	4	2	1	0	0
All respondents	21	9	1	1	0

Figure 1. Responses to Question 1 by respondent type



Question 3 – Please provide any additional comments

Twenty-four (24) respondents provided additional comments on the issue set out in Question 2 of whether the Scottish Government should publish and maintain a public directory of licensed funeral directors in Scotland.

The organisation respondent who disagreed with the proposal in Question 2 stated:

“It is important not to squeeze out the smallest, local funeral director businesses or to discourage families who wish to undertake funerals themselves.”
 [Organisation, Burial Authority]

The organisation respondent who neither agreed nor disagreed with the proposal in Question 2 expressed that they thought a directory was unnecessary when members of the public could find funeral directors in other ways.

As stated above, the majority of respondents (n=30) agreed with the proposal in Question 2. Of these respondents, 21 elaborated in Question 3 as to why they

agreed and gave further comments or suggestions about the proposal. These have been summarised into two themes:

Theme 1: Protecting the Public

The majority of comments centred on the part a public directory could play in ensuring the public, in particular bereaved families, had confidence in the sector and were protected from poor practice and low standards.

“A register [sic] provides reassurance to the public that funeral directors on that list operate to a high standard while also giving confidence to funeral directors that they are seen to be running their businesses to a high standard. A published register [sic] also helps to crack down on any operators in the market who are not abiding to the required standard.”

[Organisation, Trade body for funeral directors]

“Due to the nature of this sector, having a full published list of funeral directors across Scotland would help and support members of our community at a time when they need to use funeral services.”

[Organisation, Burial Authority]

Theme 2: Functionality of a Public Directory

Some respondents listed what they consider should be included in a proposed directory and their views on how such a directory should function. These priorities and comments were often linked to the theme of protecting the public (above), improving standards and ensuring public confidence in the sector.

Suggestions on how a proposed directory should function included ensuring the directory is accurate, user-friendly, appropriately detailed, regularly maintained, well-publicised, and fair to those included in it (in particular around the timings of listings being added and with regards to licences being granted in the early days of the new licensing regime).

The following specific suggestions were made by respondents as to the information that should be included in the directory:

- location/area serviced,
- size of business,
- ownership/organisation,
- individual branch details if applicable,
- services available,
- details of fees/costs,
- details of suspensions/revocations of licences.

2.3 Compliance Officer

Summary of Consultation Information Provided with Question 4

The Scottish Government has been made aware through engagement with funeral director stakeholders that in some funeral director businesses the business owner may not be involved in the day-to-day operations, or they may be based outwith Scotland. Additionally, certain large companies may be a limited company without individual owners. In these instances, the Scottish Government's position is that the accountability for compliance may be too diffused among employees. The Scottish Government is therefore intending that regulations will require each funeral director business to name a "compliance officer". More details can be found in the consultation paper.

Results

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

Twenty-four (24) respondents provided comments about this proposal. The majority were supportive of this proposal with some of these making suggestions or agreeing broadly but with some caveats. Comments across all responses, including the small minority of responses that were not supportive have been summarised in the following three themes:

Theme 1: Operationally Helpful

Several of those respondents who were in agreement with the proposal suggested that the role of compliance officer would be helpful for them operationally, providing a clear link for communication and ensuring standards are met.

"For larger businesses such as ours, having a designated 'compliance officer' for the business makes sense and is helpful from an operational point of view."
[Organisation, Funeral Director organisation]

"Speaking from the view of a small family run Funeral Directors this would work for us"
[Organisation, Funeral Director organisation]

Theme 2: Precedents

Some of those respondents who were in agreement suggested that precedents for a similar type of position to the proposed role of a compliance officer already exist in other sectors and that this supports the case for introducing a compliance officer position for funeral director businesses.

“We support this proposal and the rationale for it. We are also aware that precedents exist in other sectors, such as the requirement to appoint a Money Laundering Reporting Officer in relevant financial and legal organisations.”
[Organisation response, Third sector organisation]

“I support the proposal, it ensures that each business (regardless of size and type) has this key position for the Inspector to communicate with and to take on the responsibility for compliance. It is similar to the FCA [Financial Conduct Authority] requirements around funeral plans.”
[Individual response, Employed in Funeral Directing]

Theme 3: Personnel

Several respondents suggested that consideration is needed for how businesses manage the practicalities of this proposal in terms of business size and who takes on responsibility.

- Number of compliance officers and responsibility – Some respondents commented that this role should be taken on by existing, experienced staff (not new staff). Others raised concerns about how this proposal would work differently in small businesses versus larger ones, and suggested that there would be a need for more than one compliance officer in larger businesses while, in some small businesses or non-commercial organisations, even one compliance officer might be challenging to accommodate.

“Regards compliance officer, the starting point should be one compliance officer per business to be able to be upscaled proportionately depending on the size of the business. For example, it would be very difficult to have the same rule for a business with one or two offices as a business with 50 or 100.”
[Organisation, Trade body]

“The reasoning behind this seems sound and the most practical and workable solution. My only question is whether there is some point at which the size of a business determines that there becomes the necessity for more than one compliance officer?”
[Organisation response, Funeral Director organisation]

“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”
[Organisation response, Faith/Religion-based organisation]

“It is just more red tape for a micro business to have to worry about. Perhaps there should be a threshold for the size of business that requires such compliance.”
[Organisation, Burial authority]

Some respondents linked the business size and number of compliance officers needed with concerns over who would then take overall responsibility for compliance, and how this would relate to funeral director licensing. Similar issues were raised in Questions 8, 9 and 10 around responsibility.

- Need for support – Some respondents highlighted that opportunities for training and support might be valuable, and that deputising of the role of compliance officer might be necessary for continuity in the absence of the named compliance officer.

“This is an essential move for the reasons you detail. It will be important to support this role with training and advisory services, defining the role and its responsibilities and maintaining effective communication with the cohort. An online hub would be helpful as well as online training/familiarisation materials. Even potentially a method for certification of the individual through online and in person learning which the Inspectorate could develop as time progresses.”
[Individual, Other area of the funeral sector]

2.4 Duration, Expiry and Renewal of licences

Summary of Consultation Information Provided with Questions 5-7

The Scottish Government is considering specifying in the licensing regulations that a licence will be valid for a time-limited period. The consultation set out that the Scottish Government is considering making this licence period three (3) years. A licence would therefore be valid for three years from the date of issue unless it is suspended, revoked or otherwise given up by the licence holder. More details can be found in the consultation paper.

Results

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

All 32 respondents answered this closed question.⁸ The majority of respondents (81%, n=26) strongly agreed or agreed with this proposal. This majority agreement was seen across each organisational subcategory, with all funeral director organisations and trade bodies responding in agreement.

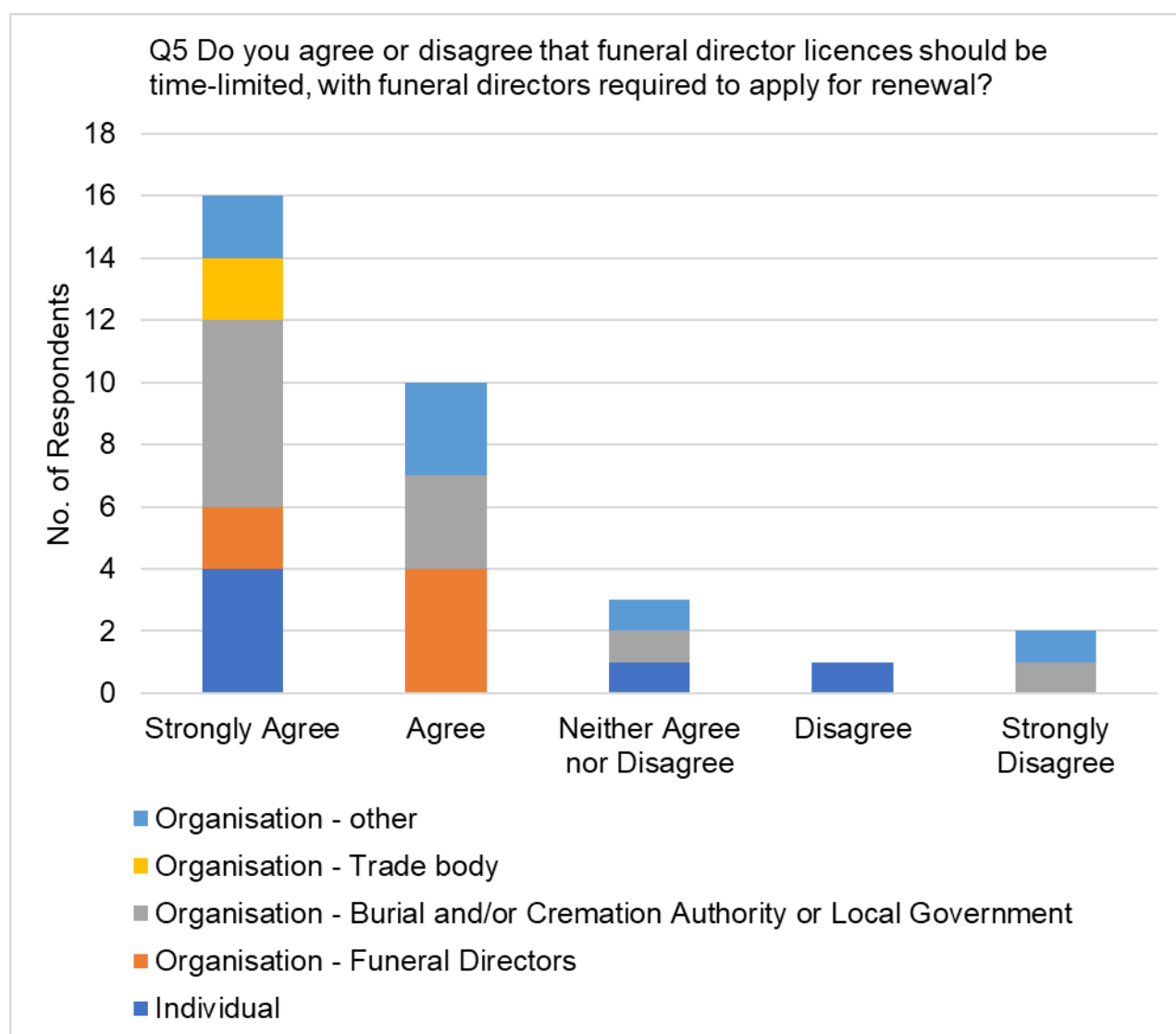
Table 3 and Figure 2 (below) show the responses broken down by respondent type (individual or organisational response, and type of organisation).

⁸ The one non-standard response (which did not follow the consultation question format) was categorised as ‘neither agree nor disagree’ based on clear comments within their response

Table 3. Responses to Question 5 by respondent type

Respondent Type	Number of Responses (Q5)				
	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
Individual	4	0	1	1	0
Organisation - Funeral directors	2	4	0	0	0
Organisation - Burial and/or cremation authority or local government	6	3	1	0	1
Organisation - Trade body	2	0	0	0	0
Organisation - Other	2	3	1	0	1
All respondents	16	10	3	1	2

Figure 2. Responses to Question 5 by respondent type



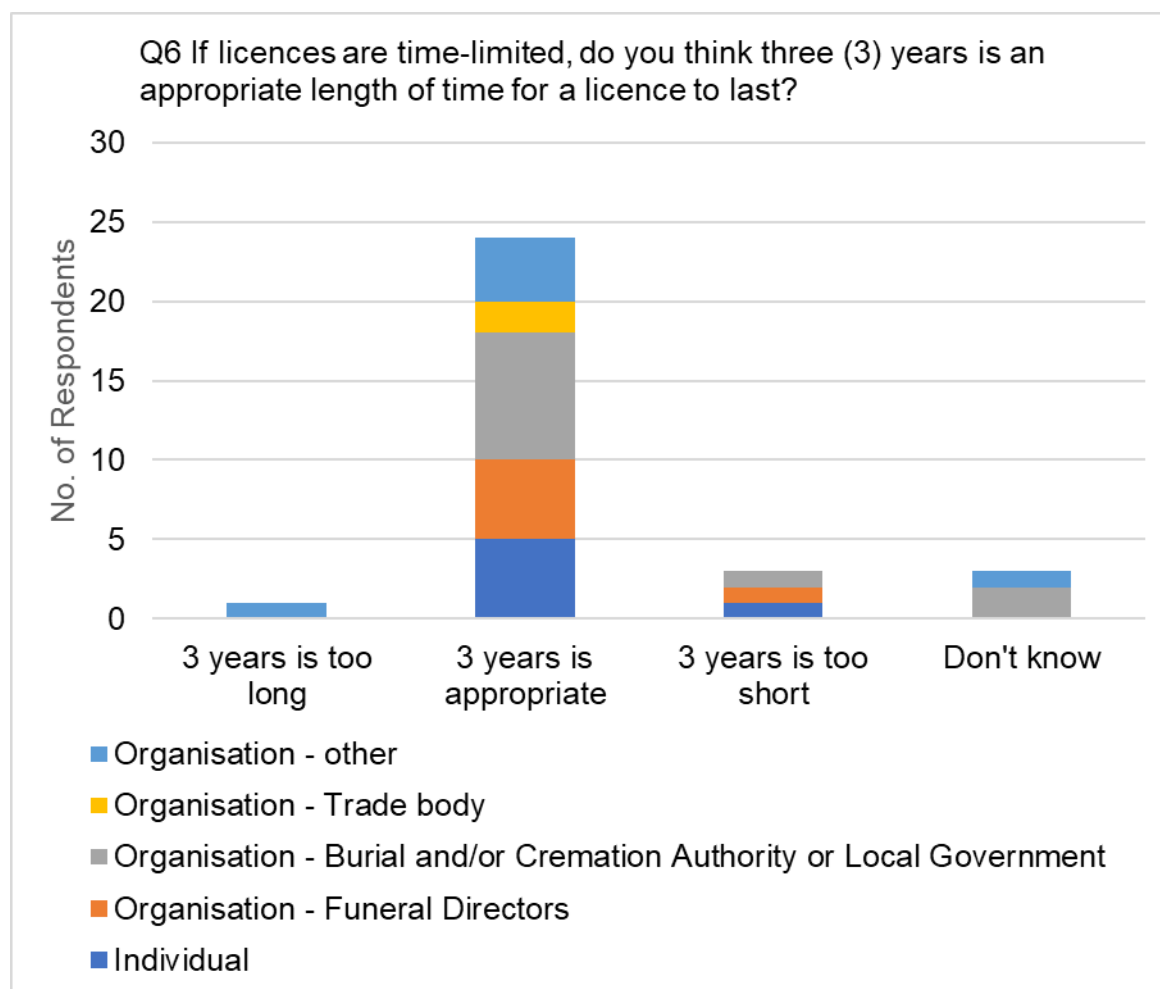
Question 6 - If licences are time-limited, do you think three (3) years is an appropriate length of time for a licence to last?

Thirty-one (31) out of 32 respondents answered this closed question. The majority of respondents to this question (n=24, 77%) responded that three years was an appropriate time for a licence to last. This majority agreement was seen across each organisational subcategory, with all but one of the funeral director organisations and trade bodies responding in the same way.

Table 4. Responses to Question 6 by respondent type

Respondent Type	Number of Responses (Q6)			
	3 years is too long	3 years is appropriate	3 years is too short	Don't know
Individual	0	5	1	0
Organisation - Funeral directors	0	5	1	0
Organisation - Burial and/or cremation authority or local government	0	8	1	2
Organisation - Trade body	0	2	0	0
Organisation - Other	1	4	0	1
All respondents	1	24	3	3

Figure 3. Responses to Question 6 by respondent type



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

Seventeen (17) respondents offered further comments in Question 7 to the closed question posed in Question 6.

As can be seen from Question 6, the majority of respondents supported three years as the appropriate length of time for a licence to last. Some of the comments provided for Question 7 simply reiterated this support. Others offered reasons for this support, mainly centred around their view that 3 years would strike an appropriate balance between supporting ongoing good practice and not overburdening businesses with more frequent renewal processes. Some respondents to Question 7 commented that they thought that a licence renewal process should be a simpler one than an initial licence application.

“On one level three years seems a long time in which standards can slip, but alternatively annual renewals would seem over burdensome for both funeral directors and the government. However with an inspection regimen, and transparent and easily accessible complaints procedure, I believe that is an

appropriate level of controls and measures. The renewal should be much simpler than an initial allocation of license.”

[Organisation, Funeral Directing Organisation]

Two respondents to Question 7 emphasised they not only thought three years was appropriate but that they strongly opposed a licence period longer than three years. Only one of these respondents gave specific reasons for this opposition:

“Three years appears a reasonable balance between protecting the public and the needs of businesses. We strongly believe that more than three years would be too long. We note the precedent set in The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 which allows, in fact, for licences to be issued for as little as one year, depending on the circumstances, but up to a maximum of three years. We appreciate that less than three years would likely be unmanageable for the licensing authority and potentially overly onerous for businesses, in the same way that routinely inspecting funeral directors annually would be, due to the numbers involved, but we urge that three years is not exceeded. It would also make it difficult, impossible in some cases, to align the routine and licence renewal inspections unless the lower risk routine inspections were also less frequent than three-yearly, and we are strongly opposed to that.”

[Organisation, Third sector]

Of those respondents to Question 7 who thought that three years was too long or too short, one wrote that a yearly cycle would best support ongoing business improvement and two wrote that there should not be time-limited licensing at all. Further, one wrote that a different system would function better whereby separate licensing would be required for the funeral director business owners⁹ themselves as well as licensing for each funeral director business.

2.5 Suspension and Revocation of Licences

Summary of Consultation Information Provided with Questions 8-12

An intended function of the proposed licensing scheme is to ensure funeral director businesses are held accountable for complying with all relevant legislation, the [Funeral Director Code of Practice](#) and any conditions of licence. Inspectors will work with funeral director businesses to ensure they are maintaining compliance with these requirements.

It is proposed that regulations to be developed will provide for the suspension and revocation of funeral director business licences. It is proposed that suspension would mean a licence is made inoperative for a temporary period, until the concerns raised by an inspector are appropriately addressed. Revocation would mean that the

⁹ Scottish Ministers may make a scheme for the licensing of funeral directors' businesses by virtue of section 94(1) of the 2016 Act. The 2016 Act does not contain powers for Scottish Ministers to make a separate licensing scheme for funeral directors business owners personally.

licence is removed, with no option for reinstatement. More details can be found in the consultation paper.

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

Twenty-five (25) respondents offered comments in response to Question 8, with the majority of these being supportive of the proposals. Around half of the supportive respondents commented simply in support of the proposed approach. Other comments offered suggestions or other feedback. Responses in support of the proposals were particularly positive about the intention to have an approach that supported businesses to improve before suspension or revocation actions would be considered by inspectors.

Note: Some data included in answers to Question 8 related to points covered in Questions 9 and 10. Therefore, where applicable, these comments have not been included in Question 8 response data but instead been considered alongside the responses to Questions 9 and 10, and presented under Question 10 (below).

Across all applicable responses to Question 8, respondents raised issues or questions that are summarised here into two themes:

Theme 1: Clarity of Suspension and Revocation Process

Several respondents commented they would like further detail on the proposed approach in order to better understand the implications, including timings of suspensions as well as what mitigations would be put in place to ensure there was not abuse of the suspension or revocation process.

“We support the principle of Suspension & Revocation. More clarity is required around suspension, determining: a) length of suspension period in specific circumstances, and b) what specific limitation there would be in terms of continued trading while a suspension is in place.”

[Organisation, Funeral director business/organisation]

“Greater clarity is required around the framework and steps taken from initial concern to reach the position of suspension/revocation. While we understand and appreciate that revocation would only take place in the most serious of circumstances and following several opportunities to put things right, are there any, and if so what are they, safeguards in place post-revocation to ensure, for example, that a funeral director who has had a licence revoked cannot shut down the business and reopen under another name?”

[Organisation, Trade body]

Theme 2: Mitigation of impact on others

Several respondents voiced concerns about the impact that suspension or revocation of licences would have on bereaved families, those providing and holding pre-paid funeral plans, and on rural communities with fewer alternative service providers. Respondents commented that consideration would need to be given to

how to mitigate the impact on members of the community in the event of licence suspension or revocation.

“There is no point in a licensing scheme without teeth, so the eventual possible consequence of poor standards must retain a power to suspend or revoke the licence. However to be overly zealous with particularly suspensions could have dramatic and unforeseen consequences for the bereaved families if during the death to funeral journey things are thrown into disarray. Where would the deceased be taken? Who would remedy any issues? Could existing plans, dates etc be retained? Therefore I would place a massive caveat that the proposed 'improvement approach' is absolutely essential. Unless there is a gross misconduct or refusal to remedy, an opportunity to remedy within a very defined time-scale must form part of this.”

[Organisation, Funeral director business/organisation]

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

There appeared to be a level of confusion amongst respondents answering Questions 9 and 10, about the questions' intent. This was especially the case regarding what type of behaviour would result in a criminal conviction or not, and whether that is already provided for under the 2016 Act or under the proposed regulations currently being developed by the Scottish Government. Several respondents made comments that related to both questions, or named circumstances that would already be covered under the current proposals. Therefore, where appropriate, some data from Question 9 answers have been reported below alongside Question 10.

Fifteen (15) respondents provided comments to Question 9. Several of these responses described circumstances that would already be covered by the proposed licensing and inspection regulations in terms of misconduct. However, respondents mentioned the following as additional circumstances that the licensing authority may wish to consider when deciding to suspend or revoke a licence:

- Past disqualification as a company director or bankruptcy
- Breaches/investigations related to other bodies e.g. Financial Conduct Authority, Health and Safety Executive, Competition and Markets Authority, trade organisations, and Police investigations (not only convictions)
- Reports/Complaints (from public or partners e.g. burial and cremation authorities)

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.

Eighteen (18) respondents provided comments to Question 10.

As above in Question 9, several respondents reiterated the suggestions already under consideration and given in the consultation paper (fraud, violent crime). In addition, respondents raised crimes related to sexual offences, theft, abuse and illegal business practice as specific convictions to consider including in the proposed regulations. Several respondents made broader suggestions that, given the vulnerability of the bereaved and deceased, working with these groups might be considered in the same way as working with other vulnerable groups, e.g. children and vulnerable adults, and should therefore be subject to the same constraints. Some respondents suggested that it might be appropriate for the licensing authority to consider all criminal convictions, or at least those resulting in prison sentences.

The following theme was generated from the responses to Questions 8, 9 and 10:

Individual or Organisational responsibility

Across Questions 8, 9 and 10 respondents asked for clarity on the circumstances which would be considered when suspending/revoking licences. This clarity appeared to be sought given: a) the proposal to have an individual (business owner) hold the licence on behalf of the business, but who may not themselves be conducting work directly with the deceased or bereaved; and b) that those working directly with bereaved people or deceased people would not be subject to the same criminal checks or standards as the licence holder. The respondents' need for clarity as to who is responsible (individual or organisation) is similar to the consultation results reported in section 2.3 regarding the compliance officer.

“Does this rule apply to all levels of staff or just the company directors/owners”
[Organisation, Funeral director business/organisation]

“It is difficult to comment until the list mentioned in paragraph 71 [of the consultation] is issued. Paragraph 70 [of the consultation] mentions 'licence holder (owner)' but this is not applicable to limited companies or co-operatives where is no single owner. If the Compliance Officer is convicted would that result in potential revocation or suspension? Would a new Compliance Officer be allowed to be appointed instead of censures being put into place?”
[Individual response, Employed in Funeral directing]

“We would question the use of the word “owner” to attach responsibility to these crimes as it could be “one bad apple” syndrome involving a single employee who, once removed, presents no further problems or risks for the business.”
[Organisation, Trade body]

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?

Twenty-nine (29) out of 32 respondents answered this closed question.

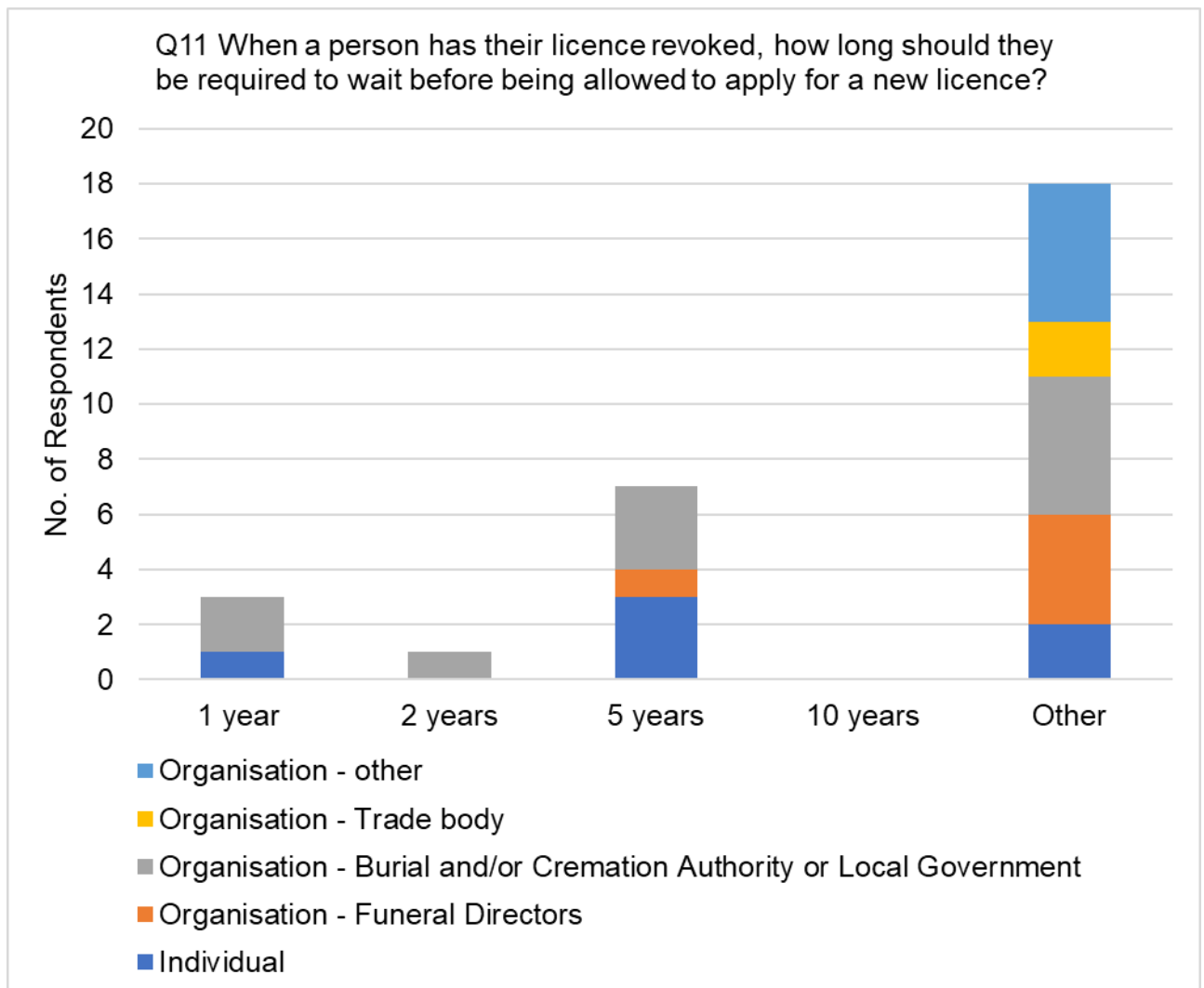
The majority of respondents (62%, n=18) selected 'Other' in response to this question. Reasons given for this will be discussed below in relation to the responses given to Question 12.

Table 5 and Figure 4 (below) show the responses to Question 11 broken down by respondent type (individual or organisational response, and type of organisation).

Table 5. Responses to Question 11 by respondent type

Respondent Type	Number of Responses (Q 11)				
	1 year	2 years	5 years	10 years	Other
Individual	1	0	3	0	2
Organisation - Funeral directors	0	0	1	0	4
Organisation - Burial and/or cremation authority or local government	2	1	3	0	5
Organisation - Trade body	0	0	0	0	2
Organisation - Other	0	0	0	0	5
All respondents	3	1	7	0	18

Figure 4. Responses to Question 11 by respondent type



Question 12 - Please provide any further comments.

Twenty-one (21) respondents provided comments in Question 12.

As can be seen in above, the majority of the respondents answered 'other' to Question 11. All those respondents who answered 'other' to Question 11 gave reasons for this choice in Question 12.

The majority of respondents providing views in Question 12 were of the opinion that the period a person should be required to wait between licence revocation and applying for a new licence should vary depending on the circumstances and reasons for the revocation.

Additionally, some respondents commented that new licence applications from those who have previously had a licence revoked should also be required to provide evidence of having resolved the issues that led to the revocation. A number of respondents also considered that there should be awareness of the potential for organisations to abuse the licensing scheme by seeking to apply for a new licence under a different individual's name.

"We ask the Scottish Government to consider incorporating greater flexibility, rather than having a fixed amount of time for all situations. For example, it may be appropriate that someone convicted of a sexual offence towards the body of a deceased person is never allowed to apply for a licence again, in the same way that some people are barred from working with children or vulnerable adults. Whereas a situation where someone committed common assault and only received a six-month sentence should arguably be dealt with very differently. The paper also seeks views on whether the waiting period should be the same for those whose licence has been suspended by either 'route'. Again, we do not think there can be a yes/no answer to this, rather that decisions need to be taken on a case-by-case basis. We do not believe suspensions or revocations via this other route should necessarily be seen as more serious. Partly, it again depends on the conviction but also, infractions committed under the 'inspection route' could also be very serious, especially coupled with a prior period of repeated non-compliance and a refusal to address non-compliance issues."
[Organisation, Third Sector Organisation]

2.6 Licence Fees

Summary of Consultation Information Provided with Question 13

Section 95(2)(p) of the 2016 Act provides that licensing regulations may provide for fees to be charged for funeral director licence applications and licence renewal applications. Should the proposed licensing scheme be implemented, there will be costs associated with processing licence applications or renewal applications by the licensing authority. These will include the costs of carrying out inspections of funeral directors by inspectors, which will be 'triggered' each time a licence application or renewal application is submitted.

The Scottish Government therefore intends to use the powers provided in section 95(2)(p) to charge a proportionate fee for these licence applications, in order to recover these costs. It is intended these fees will contribute to the cost of administering the scheme. More details can be found in the consultation paper.

Results

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 for to funeral director businesses.

Twenty-five (25) respondents provided responses to Question 13.

The majority of respondents agreed broadly with the proposals to charge a fee. Around half of those responding provided comments. These have been summarised into two main themes:

Theme 1: Fee Structure

Comments from respondents as to the fee itself centred mainly on ensuring that this was kept as low as possible and, that the fee should be charged only to account for the cost of the administration of the licensing scheme itself. Respondents also commented that there should be transparency as to how fees are spent. In addition, there were suggestions from respondents that fees could be 'banded' to accommodate different business sizes and minimise impact of these on smaller businesses.

"As long as the fees cover the cost of administering and operating the licensing scheme only then this is acceptable. Should an application be turned down a funeral director should be able to reapply, having put in place the recommendations of the Inspector to meet the requirements of a license, on a zero fee or heavily reduced fee basis. Sections 82 and 83 of the consultation should be noted that while a fee is chargeable, it must be set to meet the differing needs of small, medium and large businesses, where a large company may have many branches, but actually financially it is the small business with three branches that is penalised greater."

[Organisation response, Funeral Sector trade organisation]

Theme 2: Repercussions

Respondents raised concerns about the impact on businesses in terms of meeting both the costs of fees themselves but also the cost of accommodating inspector visits and the associated administrative costs to the business. In particular, these kinds of concerns centred on the repercussions that any increased business overheads would have if businesses chose to pass these costs on to consumers. The following quotation highlights a number of issues related to the theme of repercussions:

"As a small Funeral Director business, we are very concerned about the impact of the cost of the initial license fee and the renewal fees that will be imposed on us

every 3 years. In addition, we will need to make our staff available to show the Inspectors around our branch and to answer any questions the Inspectors may have. As an authorised funeral plan provider, we have recently incurred an annual FCA [Financial Conduct Authority] fee and also had to employ additional members of staff to deal with the increased paperwork and compliance reports and monitoring that is required by the FCA to maintain our authorisation. Ultimately, some, or all of proposed Licensing fee and FCA costs will be passed onto our clients during a time of a cost-of-living crisis that has no foreseeable end date. We feel that any additional burden on small businesses should be kept to an absolute minimum to ensure their survival and to ensure consumers have appropriate choices available to them. License fees should be fair, proportionate and in line with the size of the company. The license fee monies should be ringfenced for the benefit of the licensing and Inspection regime only and an annual report produced to allow all license fee payers to see how the license fee money has been spent.”
[Organisation response, Funeral Director organisation]

2.7 Additional Comments

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

Respondents to the consultation provided various comments in response to Question 14. These included the following points:

- One respondent noted that, contrary to indications from the Scottish Government, a funeral director would not be able to use their licensed status to their ‘advantage’ because all funeral directors are supposed to be licensed under the scheme.
- One respondent suggested that funeral directors should be invited to give feedback on costs to them of the scheme and any impact of this, including whether the scheme may make their business partially or wholly economically unviable.
- One respondent noted it would be helpful to ensure other related public bodies such as the police, NHS, or local authorities are fully aware of the regulations and requirements on funeral directors. This was specifically mentioned to avoid situations where a funeral director might be requested to take an action by one of those public bodies that is not permitted under the regulations, and to ensure public bodies are only engaging funeral directors who are licensed.
- One respondent noted the importance of the regulations being understood across the UK, including by funeral directors in England who may operate across the Scottish border.
- One respondent noted a need for clarity about whether direct cremations would be captured by the regulations.
- One respondent noted the importance of smooth implementation of the licensing regime, to ensure no disruption to the industry and the bereaved.

- One respondent set out the view that requiring a small, local business to review their contingency plans annually would be too onerous.
- One respondent provided comments regarding the possible impact of the proposed licensing regime on 'non-standard' funeral directors, such as faith-based volunteer groups.
- Two respondents reiterated support for the implementation of a licensing scheme.

Where comments received have duplicated those provided elsewhere in the consultation, or where they refer specifically to the proposed inspection regime (see separate [consultation](#)), they have not been repeated or set out here.

3. Next Steps and Considerations

Following this analysis of the consultation responses, the Scottish Government will consider the proposals for the intended licensing scheme in its development of licensing regulations. The results of this analysis will also be considered in conjunction with the responses received to the other three public consultations which were published in parallel to the licensing consultation in Autumn 2023. In addition to this and the other consultation analysis reports, the Scottish Government will also continue to draw on other sources – such as Inspectors and experts from the funeral sector - to inform its further development of the policy proposals for the intended funeral director licensing scheme.

Before laying a draft of the licensing regulations before the Scottish Parliament, section 105 of the 2016 Act requires the Scottish Ministers to prepare, and then consult on, a draft of the licensing regulations. Following this consultation, which Scottish Ministers intend to prepare in due course, section 105 also requires any draft licensing regulations laid before the Scottish Parliament to be accompanied by a document summarising the consultation responses and describing any changes made to the draft regulations following the consultation

The Scottish Government recognises that a licensing scheme would introduce authorisation requirements for funeral director businesses to operate in Scotland, and that there remain important considerations for what implications this may have on funeral director businesses and the public. A full set of impact assessment screenings will be undertaken – and where appropriate full impact assessments will be completed - in parallel with the development of the draft licensing regulations, and these will include considerations of the costs and benefits to businesses and the public as well as cross-UK legislation such as the Internal Markets Act 2020.



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Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83601-206-1 (web only)

Published by The Scottish Government, April 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1450718 (04/24)

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