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## Health, Social Care and Sport Committee

# Subordinate legislation considered by the Health, Social Care and Sport Committee on 10 December 2024



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# Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care.

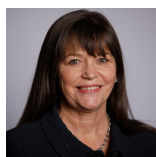


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**Joe FitzPatrick**  
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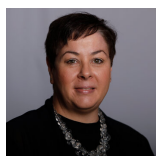
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# Introduction

1. This report sets out the Health, Social Care and Sport Committee's consideration of two Scottish Statutory Instruments (SSIs) at its meeting on 10 December 2024 - [The Burial \(Management\) \(Scotland\) Regulations 2025](#) [draft] and [The Burial and Cremation \(Inspection\) \(Scotland\) Regulations 2025](#) [draft].
2. The instruments, which were laid in draft, are subject to the affirmative procedure – which means they cannot be made unless they have been approved by a resolution of the Parliament.
3. The minutes of the meeting have been published on the Committee's webpages. The Official Report of the meeting will be published on the Committee's webpages in due course.

# The Burial (Management) (Scotland) Regulations 2025 [draft]

4. The instrument, laid under the [Burial and Cremation \(Scotland\) Act 2016](#) on 14 November 2024, makes provision for the management and maintenance of burial grounds in Scotland, applicable to all burial authorities (both local authority and non-local authority).
5. The instrument introduces the following:
  - **Burial management plans.** Each burial authority will be required to prepare and maintain a publicly accessible burial management plan. Burial authorities must review their management plan on an annual basis.
  - **Maintenance and repair.** Burial authorities will be required to maintain their burial grounds in good order and this regulation sets out what actions a burial authority can take for the proper management and maintenance of its burial grounds.
  - **Safety of headstones and other memorials.** Burial authorities will be required to carry out regular, scheduled inspections of headstones and memorials within their burial grounds to ensure they are in safe order. The frequency and procedures for carrying out scheduled inspections are to be set out in the burial management plan for the burial ground. Burial authorities have a requirement to notify the public of scheduled inspections.
  - **Removal of unauthorised headstones or other memorials.** Burial authorities will be able to remove any unauthorised headstone or other memorial and this instrument sets out who is liable for costs.
  - **Training.** Staff are required to be adequately trained in relation to their day-to-day duties and the burial authority will have a duty to keep a written record of all such training undertaken.
  - **Designation for use by faith, religious or belief groups.** Burial authorities will have the power to designate areas of a burial ground for use by particular faith, religious or belief groups.

## Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament's standing orders.
7. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on 26 November 2024. The DPLR Committee agreed that it did not need to draw the Parliament’s attention to the instrument on any grounds within its remit.

# The Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft]

8. The instrument, laid under the [Burial and Cremation \(Scotland\) Act 2016](#) on 14 November 2024, makes provision for inspection and enforcement in the funeral sector, and any subsequent appeals in relation to these.
9. The policy note states the purpose of the instrument is to introduce:
  - ” a framework for the implementation of a statutory inspection regime for burial authorities, cremation authorities and funeral directors (“relevant bodies”) in Scotland. The Regulations provide powers of inspection and enforcement. Relevant bodies will be held to account for compliance, through statutory inspection, with statutory requirements and standards which are set out in the legislation and Code of Practice specified in the instrument.
10. The policy note states that:
  - ” The Scottish Ministers will also have the power to prepare, maintain and publish a register of known burial authorities, cremation authorities and funeral directors (including a list of their premises) which are subject to inspection. The Scottish Ministers will have the power to make inspection reports and enforcement action publicly available to promote ongoing improvements in standards and to increase the confidence that the public can have in the sector.

## Delegated Powers and Law Reform Committee Consideration

11. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament's standing orders.
12. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on 26 November 2024. The DPLR Committee agreed that it did not need to draw the Parliament’s attention to the instrument on any grounds within its remit.



# Health, Social Care and Sport Committee consideration

13. The Health, Social Care and Sport Committee is required to consider and report on the instruments.
14. Jenni Minto MSP, the Minister for Public Health and Women's Health ("the Minister"), has by motion [S6M-15517](#), proposed that the Committee recommends approval of the Burial (Management) (Scotland) Regulations 2025 [draft] and by motion [S6M-15516](#), proposed that the Committee recommends approval of the Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft].
15. The Committee wrote to a number of stakeholders on 19 November 2024 to seek views on the instruments and received the following submissions:
  - [Aberdeen City Council](#)
  - [Argyll and Bute Council](#)
  - [East Ayrshire Council](#)
  - [East Lothian Council](#)
  - [Federation of Burial and Cremation Authorities](#)
  - [Highland Council](#)
  - [North Lanarkshire Council](#)
  - [Perth and Kinross Council](#)
  - [Shetland Islands Council](#)
  - [Stirling Council](#)
  - [West Lothian Council](#)

## The Burial (Management) (Scotland) Regulations 2025 [draft]

16. On the whole, respondents were generally supportive of the purpose of the instrument.
17. The Federation of Burial and Cremation Authorities stated in its response that the instrument will increase consistency between crematoria and burial grounds in terms of management plans and standards of maintenance. It further notes that the instrument will bring about better training of staff, and safety within burial grounds <sup>1</sup>.
18. Some local authorities raised concerns around increased workloads and administration, indicating that significant additional resource, time and investment would be required to implement the changes set out in the instrument. Both East Ayrshire Council and West Lothian Council state that it is unlikely they would be

able to comply with the regulations as of 1st March 2025. West Lothian Council states:

” The council has concerns regarding the level of new resources potentially required to both develop and then implement the new regulations across administration, training, and operations. The council consider the impact on these areas could be significant, not minor as suggested by Scottish Government <sup>2</sup> .

19. Some local authorities also call for additional guidance, and public campaigns to be introduced to manage expectations around maintenance and improvement work.
20. In its submission, North Lanarkshire Council set out its view that a review period of 12 months as detailed within the instrument is impractical and instead suggested “a review period of three years may be more practical and better received by those responsible for implementation <sup>3</sup> .”

### **The Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft]**

21. Again, respondents to the call for views were generally supportive of the purpose of the instrument .
22. The Federation of Burial and Cremation Authorities detail in its submission that, as the UK’s only inspector of crematoria & burial grounds, it supports the inspection of both crematoria and burial providers on a statutory basis. Within its submission, it states that the introduction of inspection on a statutory footing “will improve standards across the sector. It will also help to provide consumer confidence that the providers within the sector are regulated and tested against a given framework <sup>1</sup> .”
23. Shetland Islands Council raised a concern over enforcement in rural locations in its submission, stating:

” Considering our remote location and the fact that Shetland has only had one funeral director operating for many years, even a temporary suspension of their license could have catastrophic consequences. Could an improvement notice be issued instead?, allowing the service to continue while ensuring the necessary improvements are implemented. This would be particularly crucial in situations where there is only one funeral director available on each island <sup>4</sup> .
24. In its submission, West Lothian Council also raised questions about what provisions would be in place should burial grounds be closed:

” It is unclear how closure of a burial ground or all grounds under a single burial authority will be addressed by Scottish Government i.e. will there be an expectation that all interments are taking place in neighbouring areas, and these areas have capacity to accommodate? <sup>2</sup>

### **Evidence from the Scottish Government**

25. The Committee took evidence from the Minister, and supporting officials on both instruments at its meeting on [10 December 2024](#).

26. The Minister made an opening statement after which the Committee asked questions relating to the instrument. The Committee raised concerns from stakeholders around requirements to ensure the safety of headstones and other memorials, particularly in relation to backlogs in ensuring headstones are at the required safety level and if there would be further guidance on what is meant by the requirement to 'make safe' versus 'repair', given that some local authorities had expressed concern that a 'repair' requirement would mean that they would have to undertake actual repair work to the headstones. The Minister acknowledged stakeholder concerns but noted that the guidelines in the regulations reflect current best practice following additional guidance that was introduced in 2019. The Minister stated:
- ” Local authorities should have an established memorial safety inspection programme, and making safe should be part of their regular work anyway [...] It is very much the case that local authorities have to look at gravestones and do the appropriate, proportionate work to them [...] We do not expect the regulations to change the work that councils are currently doing with regard to graveyards and gravestones <sup>5</sup> .
27. The Committee further questioned the Minister around reported current practices in Glasgow City Council where the council has placed adhesive warning stickers on gravestones that are deemed to be unsafe and has toppled unsafe headstones rather than repairing them. The Minister responded that the Scottish Government intends these instruments will address this issue:
- ” The regulations and the inspection regime will ensure that we and the burial authorities have much better understanding and knowledge of what is appropriate <sup>5</sup> .
28. The Committee further raised issues related to heritage graveyards, where the responsibility lies for the management of historic lairs, and how information about where responsibility lies is communicated to the public.
29. Following the evidence session, the Cabinet Secretary moved motions S6M-15517 and S6M-15516:
- That the Health, Social Care and Sport Committee recommends that the Burial (Management) (Scotland) Regulations 2025 [draft] be approved.
  - That the Health, Social Care and Sport Committee recommends that the Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft] be approved.
30. Both motions were agreed to.
31. The Health, Social Care and Sport Committee recommends to the Scottish Parliament that the Burial (Management) (Scotland) Regulations 2025 [draft] and the Burial and Cremation (Inspection) (Scotland) Regulations 2025 [draft] be agreed.

- [1] Scottish Parliament. (2024, December 1). Letter from the Federation of Burial and Cremation Authorities concerning burial law in Scotland, 1 December 2024. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-health-social-care-and-sport-committee/correspondence/2024/federation-of-burial-and-cremation-authorities-response>
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- [3] Scottish Parliament. (2024, December 2). Letter from North Lanarkshire Council concerning burial law in Scotland, 2 December 2024. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-health-social-care-and-sport-committee/correspondence/2024/north-lanarkshire-council-response>
- [4] Scottish Parliament. (2024, November 28). Letter from Shetland Islands Council concerning burial law in Scotland, 28 November 2024. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-health-social-care-and-sport-committee/correspondence/2024/shetland-islands-council-response>
- [5] Health, Social Care and Sport Committee. (2024). Official Report 10 December 2024. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=16161>



