

# **Final Business and Regulatory Impact Assessment**

# **Guidance on Funeral Costs**

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**Scottish Government**  
Riaghaltas na h-Alba  
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# Final Business and Regulatory Impact Assessment

**Title of Proposal:** Guidance on Funeral Costs

## **Purpose and intended effect**

1. The guidance focuses on improving the availability and transparency of information about the costs associated with arranging a funeral.
2. Section 98 of the Burial and Cremation (Scotland) Act 2016 (the 2016 Act)<sup>1</sup> makes provision for Scottish Ministers to publish “guidance on the costs associated with making arrangements for a funeral” and that “the guidance may in particular cover the desirability of such costs being affordable”.
3. Publication of the Guidance on Funeral Costs is Action 2 of the Scottish Government’s Funeral Costs Plan<sup>2</sup>, which sets out 10 actions that the Scottish Government will take this parliamentary term to help tackle funeral poverty.

## **Objective**

4. While the setting of individual funeral charges is for local authorities and private businesses to determine, the Scottish Government wants to help consumers understand, compare and choose the services that are right for them. The guidance sets out steps that funeral directors and burial or cremation authorities can take to help improve the availability and transparency of funeral charges information, to help consumers make informed decisions.
5. While recognising that local authorities are responsible for setting their burial and cremation charges, and will take into account local circumstances when doing so, the guidance also includes a section specifically for local authorities on charge setting and tackling funeral poverty.
6. The guidance complements other actions the Scottish Government has already taken to help encourage people to talk about and plan for their own funeral.

## **Rationale for Government intervention**

7. The guidance on funeral costs aligns with the Scottish Government’s National Performance framework (NPF)<sup>3</sup>, which aims to reduce inequalities and includes among its values that we “treat all our people with kindness, dignity and compassion”. The NPF sets out (against the ‘Poverty’ outcome) that “we will work together across political parties and sectors to identify and address the root causes of disadvantage and set in place the actions to eradicate poverty for good”.
8. The guidance has four sections: for burial authorities, for cremation authorities, for funeral directors, and a section for local authorities in relation to charge setting and tackling funeral poverty.

<sup>1</sup> <http://www.legislation.gov.uk/asp/2016/20/contents/enacted>

<sup>2</sup> <https://www.gov.scot/Publications/2017/08/6243>

<sup>3</sup> <http://nationalperformance.gov.scot/>

9. The guidance includes a range of measures to:

- Encourage burial and cremation authorities and funeral directors to use clear and consistent language and terminology.
- Encourage burial and cremation authorities and funeral directors to make pricing information available in a number of formats.
- Encourage crematoriums to display their prices in a way that helps people to understand which services are included in their attended cremation charge (and so are not optional) and which services can be added at an extra cost.
- Encourage improved transparency of pricing by funeral directors at the point of sale, such as clearly setting out the range and price of available funeral services (including lower-cost options), providing an itemised quote and a final bill.
- Improve the ability of consumers to compare lower-cost options across different funeral directors by setting out a clear definition of a simple funeral.
- Encourage burial and cremation authorities to accommodate the wishes of people who do not want to use the full services of a funeral director.
- Encourage local authorities to take steps to improve public understanding of burial and cremation charges such as consulting on charge setting and providing information about expenditure and income for these services. It also suggests local authorities consider sharing and learning from best practice, where appropriate.
- Encourage local authorities to take steps to reduce funeral poverty, such as recognising funeral costs as a potential cause of poverty when developing local authority poverty reduction strategies, and supporting people who are struggling with the costs of a funeral.

10. The guidance on funeral costs is advisory and will not impose new requirements or conditions on funeral directors, burial authorities or cremation authorities. We have worked closely with the funeral industry and local authorities in developing the guidance in order to increase the likelihood that it will be widely adopted.

### **Outwith scope**

11. The Scottish Government also has a range of other policies which address aspects of delivering a funeral, including funeral industry regulation and the Funeral Support Payment. These policies are not considered in this BRIA.

12. Neither does this BRIA consider the duty local authorities have under section 87 of the 2016 Act to bury or cremate a person who has died within its area where it appears to the authority that no arrangements are being made.

### **Principles of better regulation**

13. In relation to the five principles of better regulation:

- **Proportionate** – The Guidance on Funeral Costs is advisory. While it is targeted at funeral directors, burial authorities, cremation authorities and local authorities, it will not impose any new requirements or conditions on these businesses. Nevertheless, the Scottish

Government has sought to identify positive impacts and minimise any potential negative business impacts that might result from the adoption of the guidance. These are illustrated in the Scottish Firms Impact Test of this BRIA. We will also look to identify both positive and negative impacts on the sector that arise during the implementation of the guidance.

- **Consistent** – This guidance sets out measures encouraging businesses and authorities to use clear, easily understood language to describe the funeral related services being offered and to display their prices in appropriate formats and locations. The measures aim to bring consistency in the way that pricing information is displayed and explained in order to make it easier for people arranging a funeral to understand, compare and choose the services that are right for them. While there are separate sections of guidance for burial authorities, cremation authorities and funeral directors, a number of measures in the guidance appear in all three sections. This aims to ensure consistency of treatment of each part of the sector. There is already wider work being undertaken to implement other parts of the 2016 Act, including the development of a draft Code of Practice for Funeral Directors and proposals for the regulation of funeral directors. We have worked across Scottish Government portfolios to ensure that the guidance on funeral costs and the draft Code of Practice are consistent where they touch on similar issues.
- **Accountable** – We have committed to reviewing the guidance in the future, to ensure that it remains fit for purpose. We will continue to work with local authorities, funeral directors and burial and cremation authorities to collect information about the implementation of the guidance, so that its impact can be considered and that the guidance can be updated, if necessary, to address any issues identified.
- **Transparent** – We have involved public and private burial and cremation authorities, and funeral directors in the development of this guidance and have undertaken a public consultation. We are developing communications activity for the launch of the guidance and we will work with stakeholder organisations to encourage its adoption and implementation.
- **Targeted only where needed** – The guidance is aimed at burial authorities, cremation authorities, funeral directors and local authorities because these are the businesses and organisations that are responsible for the majority of funeral-related services to consumers. The measures in the guidance have been developed in consultation with the industry and are carefully targeted to encourage greater transparency of pricing and other steps to help people understand, compare and choose the services that are right for them. We have not included other businesses which may be involved in provision of services for a funeral, such as florists, hospitality and printing services, as these are considered to be more discretionary in nature.

## Consultation

14. The Scottish Government established three working groups in early 2018 to explore issues associated with funeral costs and to provide expert knowledge to the guidance drafting process. Membership included local authorities, the Convention of Scottish Local Authorities (COSLA), private cremation authorities, the Institute of Cemetery and Crematorium Management (ICCM), the Federation of Burial and Cremation Authorities (FBCA), the National Association of Funeral Directors (NAFD) and the National Society of Allied and Independent Funeral Directors (SAIF).
15. Drawing on the expert knowledge of the working groups, draft guidance was prepared in the first half of 2018. A 12-week public consultation on the draft guidance ran from 16 August to 8 November 2018.<sup>4</sup> The consultation included a question asking respondents to outline any potential business or regulatory impacts, either positive or negative, costs and burdens that they considered might arise as a result of the draft guidance.
16. A total of 49 separate responses were received to the consultation as whole<sup>5</sup> from a broad range of stakeholders, including independent and large funeral directors, funeral director trade associations, COSLA, individual local authorities, and third sector organisations. There were also 15 responses from members of the public. In relation to the business or regulatory impacts question nearly two thirds of respondents either did not answer or indicated that the proposals would have no significant business impacts. However, answers to other questions highlighted potential impacts for businesses and local authorities, these are considered later in this BRIA. An independent consultation analysis report<sup>6</sup> was published in February 2019.
17. The Scottish Government has also undertaken further direct engagement with businesses and local authorities to develop, refine and consider the guidance's potential effects. This has been done in various ways, including through the three working groups, face-to-face meetings, telephone calls and correspondence. Individuals and organisations involved include, but are not limited to:
- **Burial costs working group members (meeting dates 13/03/2018 and 19/04/2018):** COSLA, City of Edinburgh Council, Glasgow City Council, Fife Council, Dumfries and Galloway Council, South Lanarkshire Council, East Ayrshire Council and Shetland Islands Council.
  - **Cremation costs working group members (meeting dates 29/03/2018 and 25/04/2018):** COSLA, Glasgow City Council, City of Edinburgh Council, South Lanarkshire Council, Roucan Loch Crematorium, Edinburgh Crematorium Ltd, Dignity and ICCM.
  - **Funeral director costs working group members (meeting date 30/04/2018):** Membership of this group was drawn from NAFD and SAIF, including a number of independent funeral directors.
  - **Meetings / telephone discussions with businesses:** Golden Charter (21/02/2019); Golden Charter also worked in partnership with the Scottish Government to deliver a focus

<sup>4</sup> [Consultation on draft guidance on funeral costs](#)

<sup>5</sup> [Published responses to the consultation on draft guidance on funeral costs](#)

<sup>6</sup> [Draft guidance on funeral costs consultation: analysis of responses](#)

group with 13 small independent funeral director firms (15/11/2018); National Association of Funeral Directors (NAFD) (31/01/2018, 27/08/2018, 21/12/2018, 05/03/2019, 01/04/2019); the National Society of Allied and Independent Funeral Directors (SAIF) (27/08/2018, 20/12/2018); Caledonia Cremation (19/11/2018); Roucan Loch Crematorium (22/11/2018); Jardine Funeral Directors, Dumfries (22/11/2018); Fosters Funeral Directors, Glasgow (12/04/2018); Archibald Macrae Funeral Directors, Stornoway (05/02/2019); Co-operative Funeralcare (16/03/2018); Dignity (21/05/2018, 16/11/2018); and Dean Cemetery Trust, Edinburgh (08/11/2018).

- **Meetings / telephone discussions with local authorities:** COSLA (01/11/2017, 30/01/2018, 24/04/2018, 14/12/2018, 11/02/2019, 20/02/2019), Aberdeen City Council (23/04/2018); Dundee Council (21/01/2019); Dumfries and Galloway Council (22/11/2018); North Ayrshire Council (20/12/2018); Shetland Islands Council (23/08/2018); Angus Council (13/12/2018); Clackmannanshire Council (14/12/2018); Comhairle nan Eilean Siar (21/12/2018, 05/02/2019); Orkney Islands Council (14/02/2019); City of Edinburgh Council hosted a focus group including local funeral directors and crematorium staff (05/11/2018); the Scottish Bereavement Benchmarking Group (including representatives of many Scottish local authorities) (16/08/2018, 13/02/2019); and
- **Meetings with other individuals & organisations:** Dundee Funeral Poverty Action Group (08/11/2018); Ecumenical Roundtable with assorted denominations of Scottish churches (31/10/2018); Rizi Mohammed, Muslim community representative, Glasgow (29/01/2019); Funeral Poverty Reference Group (which includes representatives of COSLA, funeral directors, and third sector organisations such as Citizens Advice Scotland, Child Poverty Action Group, Marie Curie) (09/02/2018, 27/09/2018, 31/01/2019); Scottish Working Group on Funeral Poverty (01/04/2018, 04/09/2018).

18. Scottish Government officials from various directorates have been consulted while developing the guidance, primarily Public Health Division, Community Analysis Division, Consumer and Competition Policy Unit, and Local Government and Analytical Services Division. We have also engaged with the Inspector of Funeral Directors and Inspector of Cremation. Finally, we have discussed the guidance with the Competition and Market's Authority on several occasions, given its market study was being undertaken during the development process (its subsequent market investigation is ongoing at the time of publication).

### **Sectors and groups affected**

19. There are around 58,000 deaths in Scotland each year<sup>7</sup>.

20. All 32 Local authorities in Scotland provide burial services in their area, along with private cemetery providers. In addition, 14 local authorities run crematoriums (some have more than one). Private businesses run 15 crematoriums and one is run by a charity. There are also a number of private burial providers in Scotland, such as the Roman Catholic Church and organisations providing green / natural burials.

21. There are approximately 450 funeral director businesses in Scotland. This figure does not include the sometimes tens of branches of bigger businesses like the Co-operative or Dignity. These are counted in this BRIA as one business.

<sup>7</sup> <https://www.nrscotland.gov.uk/news/2018/5000-more-deaths-than-births-in-2017>

22. Around 80% of funerals in Scotland are carried out by funeral directors who are members of the National Association of Funeral Directors (NAFD) or the National Society of Allied and Independent Funeral Directors (SAIF). It should be noted that some funeral directors are members of both organisations, while others are members of neither.
23. The Scottish Government appointed an Inspector of Funeral Directors who took up her post in July 2017. An Inspector of Cremation has been in post since April 2015 and an Inspector of Burials will be appointed in due course. The Scottish Government consider that the guidance will have minimal direct impact on the work of these inspectors but we have liaised with the current inspectors in its development to seek their views and to understand any potential indirect impacts.

## **Options**

### **Option 1 - Do nothing**

24. During the passage of the 2016 Act, third sector stakeholders and MSPs repeatedly raised concerns about the cost of funerals, charge setting by local authorities for burial and cremation, and transparency of pricing. Section 98 of the Act sought to address these issues by making provision for Scottish Ministers to publish “guidance on the costs associated with making arrangements for a funeral” and that “the guidance may in particular cover the desirability of such costs being affordable”.
25. Given the views expressed by stakeholders and the Scottish Parliament and the provision included in the 2016 Act, not publishing the guidance is not considered to be a viable option.

## **Benefits, Disadvantages and Costs**

26. We do not consider this option has any specific benefits for burial authorities, cremation authorities or funeral directors. It maintains the status quo. We also consider this option to have no benefits for consumers.
27. This option is not considered to have any direct costs for funeral directors, private burial authorities or private crematoriums. Without the guidance funeral directors would run a continued risk that some individuals will choose unaffordable services and be more likely, therefore, to default on their bill. This is because people would be less able to compare funeral services to find an option that is suitable and affordable for their circumstances (compared to options 2 and 3), meaning that more individuals, especially those on lower incomes, would be expected to struggle to meet funeral costs and would be more likely to default on their bill.
28. This option is not considered to have any direct costs for local authorities. However, if they are unable to access information about affordable funeral options, some people might decide that they could not afford to arrange a funeral. In these circumstances, it is expected that responsibility for ensuring burial or cremation takes place could fall to the local authority in the area where the person had died. Local authorities would need to find additional resources to meet these additional funeral costs – either from existing funding or through increases in burial and /or cremation fees or through increases in Council Tax rates.

29. This option could result in costs to consumers who would be less likely to be able to compare prices or find out about affordable funeral options (compared to options 2 and 3). This is likely to have the greatest impact on those on lower incomes since, according to the CMA's research, organising a funeral would cost such families 39% of their annual outgoings, more than they spend on food, clothing and energy combined (26%).<sup>8</sup> It also found that people could save over £1,000 by comparing a range of choices in their local area. The CMA's research suggests that when people do want to compare prices across different funeral directors, this can be difficult as prices are often not available online. The guidance aims to make comparisons easier.

### **Option 2 – Introduce guidance on funeral costs for the public rather than for service providers**

30. Under this option, the Scottish Government would produce guidance for the public on funeral costs, encouraging them to compare cost information before making a decision about purchasing a funeral. This could also encourage people to consider funeral costs before their death and to make suitable provision.

### **Benefits, Disadvantages and Costs**

31. This option could result in benefits to consumers from comparing prices to find a funeral that meets their need and is affordable. However, this option would not encourage burial authorities, cremation authorities or funeral directors to make funeral cost information more easily available to the public. Neither would it encourage the consistent and accessible presentation of cost information, nor encourage the provision of information on lower cost options. This could mean that despite becoming more informed about the benefits of considering funeral costs and wanting to access information about them, the public would be unable to do so.

32. In addition, Section 98 of the 2016 Act states that the guidance "...may in particular cover the desirability of such costs being affordable". By its very nature guidance on affordability must apply to the providers rather than the consumers of services.

33. There would be minimal direct cost impacts on businesses or local authorities under this option. The main direct costs of this option would be for the Scottish Government in producing, promoting and distributing the guidance for the public. Issuing guidance for the public would duplicate some of the work that the Scottish Government has already undertaken to encourage people to think ahead and plan their own funeral through the Planning Your Own Funeral<sup>9</sup> leaflet which was published in August 2017. This is not considered to be an efficient use of government resources.

34. This option may have indirect costs and indirect benefits for some businesses and local authorities, who may gain market share at the expense of their competitors if consumers shop around more. If consumers became more likely to negotiate on price, or to pursue lower-cost options, this could result in a reduction in income for businesses and local authorities as a whole. However, this could be at least partially offset by a reduction in bad debt for funeral directors if people become less likely to purchase funerals they cannot afford. There could also

<sup>8</sup> [ONS Family spending in the UK, 2017](#): Detailed household expenditure as a percentage of total expenditure by disposable income decile UK, 2017

<sup>9</sup> <https://www.gov.scot/publications/planning-funeral/>

be indirect benefits to providers of funeral plans, life insurance or savings products if the guidance resulted in members of the public being more likely to make financial provision for their own funeral.

### **Option 3: Introduce guidance for industry (recommended option)**

35. Under this option the Scottish Government has produced guidance setting out steps that funeral directors and burial or cremation authorities can take to help improve the availability and transparency of funeral charges information, to help consumers make informed decisions. While recognising that local authorities are responsible for setting their burial and cremation charges and will take into account local circumstances, the guidance also includes a section specifically for local authorities on charge setting and tackling funeral poverty.

#### **Benefits, Disadvantages and Costs**

36. This option is expected to result in benefits to consumers by improving their ability to compare prices and options to find a funeral that meets their needs and is affordable. Further details on the expected impacts on consumers of the Guidance on Funeral Costs are set out in the Fairer Scotland Duty Assessment, Island Communities Impact Assessment and Equality Impact Assessment.

37. Increased transparency as a result of the guidance may encourage greater competition between funeral directors, and between crematoriums and cemeteries, resulting in a more efficient market which should also benefit consumers. There are potentially indirect benefits for some businesses through the additional custom generated from this. However, some businesses may lose market share. Provision of online pricing may reduce the opportunity to engage more directly with clients disadvantaging some businesses.

38. There is the potential for some additional administrative overheads (for burial and cremation authorities, funeral directors and local authorities) caused by some of the measures in the guidance such as creating a new website or providing paper copies of price lists, though many of the organisations that will be affected already do this. Given that the guidance is advisory, businesses can choose to adopt such measures over time in order to minimise the impact of any additional costs.

39. Broader public awareness of funeral costs as a result of the guidance and improved availability of pricing information may result in more people taking steps to plan and save for their funeral. This would have indirect benefits to providers of funeral plans, life insurance or savings products. It may also reduce pressure some people feel to spend more than they can afford on a funeral. Overall this could reduce levels of bad debt for funeral directors.

40. Increased awareness of funeral poverty across local authorities as a result of the guidance may result in additional measures being put in place by local authorities to help people who are struggling with funeral costs. Where local authorities implement measures to support and advise bereaved people who are struggling with costs, this may benefit funeral directors by reducing the exposure to bad debt.

41. On the other hand, additional support to assist bereaved people who are struggling with costs could lead to local authorities deciding to offer some services traditionally offered by funeral

directors, or putting defined services out to tender in a way that increases pressure on funeral directors to reduce fees.

42. Measures encouraging burial and cremation authorities to accommodate people who do not wish to use the services of a funeral director may result in increased costs for authorities in providing advice and guidance and in loss of business to funeral directors. However, the guidance does not seek to drive this behaviour and so we consider that any impact is likely to be minimal.
43. Overall the Scottish Government considers that the benefits to consumers that will result from improved information on funeral charges outweighs any additional burden on businesses and local authorities that may arise. However, we have sought to ensure that the draft guidance is proportionate, in particular recognising that many funeral directors are small businesses. As the guidance is advisory, the measures can be phased in over time allowing the impacts of any additional costs to be minimised. Further details about issues raised during stakeholder engagement on this option and about actions we have taken to address these are set out under the Scottish Firms Impact Test below.

### **Scottish Firms Impact Test**

44. As set out in the consultation section of this final BRIA, engagement with the funeral industry, local authorities, and other stakeholders about the guidance has taken place over the course of a year. The Scottish Government has held a number of discussions with various businesses which will be affected by the guidance in order to: sense-check the measures proposed; inform policy development; and consider the potential impacts of the guidance.
45. As the guidance is advisory, we anticipate that its impact on businesses overall will not be excessive and can be phased in over time to minimise any adverse impact. Most of the proposed measures are expected to improve existing processes, to make pricing information more visible and transparent.
46. During our engagement we have heard about some potential benefits of the proposals. These included the view that providing transparency to the public was commendable, and that the provision of clearer information on costs from the outset may assist in reducing the prevalence of bad debt. The proposals may also reduce the number of local authority arranged funerals.

### **Title of the guidance**

47. Some funeral directors raised concerns about the use of the word 'statutory' in the title of the consultation. The Scottish Government has been clear that the word 'statutory' was included simply to reflect the fact that the guidance has its roots in legislation, namely the 2016 Act. In order to address these concerns we have, however, removed the word statutory from the title of the guidance.

### **Implementation of other parts of the 2016 Act**

48. During our engagement it was suggested by some businesses that it would be better to delay further development and publication of the guidance until after the recommendations of the Inspector of Funeral Directors (on regulation of the activities of the industry) were known and the Scottish Government Code of Practice for Funeral Directors has been prepared.

49. We have worked with officials implementing other parts of the 2016 Act, including the draft Code of Practice for Funeral Directors, to ensure that our approaches are consistent where they relate to similar issues. We therefore do not think that it is necessary to delay finalising the guidance on funeral costs until this other work is complete. We have also committed to review the guidance in the future.

### **Burial authorities**

50. The majority of burial authorities we have engaged with are content with the broad approach being taken in the guidance. Their general view was that such measures will be helpful, but will not necessarily require burial authorities to carry out significant new activity. The overall implications are therefore expected to be relatively minimal for the majority of burial authorities.

### **Cremation authorities**

51. The majority of cremation authorities we have engaged with are content with the approach being taken in the guidance. The consensus has been that such measures will be helpful, but will not necessarily require cremation authorities to carry out significant new activity. The overall implications are therefore expected to be relatively minimal for the majority of cremation authorities.

### **Definition of a standard cremation service**

52. The draft guidance defined a standard cremation service to help consumers compare like with like across providers. Views on whether or not this definition was useful and how it could be improved were mixed. The main areas where greater clarification was sought were around the interment of ashes, the provision of music services at cremations, time allowed for the service as part of a standard package and extra charges for selected day services. Concerns were also raised that some businesses may begin to charge for services currently included in their standard fee but which were not in the Scottish Government's definition. Others suggested that rather than defining a standard cremation service, the Government should be encouraging a full itemised price list of the cost of all services provided by a crematorium.

53. The range of views has been difficult to reconcile and consensus is unlikely to be achieved. In light of this we have removed this definition from the guidance and instead recommended that cremation authorities make clear which costs are mandatory for a cremation service to take place and which are optional services which can be purchased for an additional charge. The Scottish Government thinks that this achieves the original intention of making it easier for consumers to be able to compare charges and make informed choices.

### **Self-Arranged Funerals**

54. The draft guidance included provisions encouraging burial and cremation authorities to make reasonable efforts to accommodate the wishes of individuals who do not want to use a funeral director.

55. During discussions, private cremation authorities in particular had concerns about whether this would make it more difficult to monitor compliance with health and safety standards. For example, whether the construction of coffins met the standards required for safe cremation or

whether unintentional hazards were caused through placing items (such as bottles of spirits) in coffins or failing to remove items (such as pacemakers), either of which may explode during cremation. While the Scottish Government recognises these concerns, the guidance is clear that accepting funerals that do not make use of the services of a funeral director is at the discretion of each burial or cremation authority. Individual authorities can make their own assessment of the risks involved before making a decision.

56. Local authorities were largely supportive of the inclusion of these provisions in the guidance. However, some sought greater clarity on the level of support and advice burial or cremation authorities would be expected to provide a family arranging a burial or cremation. Some local authorities had concerns about additional resource implications for their services in instances where funeral directors are not used, given that families are likely to have very little experience of the practicalities. We will consider this matter further during the implementation of the guidance.

### **Provision of online pricing**

57. During our engagement some concerns were raised by funeral directors about the provision of pricing information online. This included increasing the ability for competitors to undercut one another, the loss of personal contact which allows providers to properly explain services to consumers, and the additional expense of creating and maintaining a website.

58. Overall, provision of pricing information was overwhelmingly supported in consultation responses and so we have decided to retain this in the guidance for burial authorities, cremation authorities and funeral directors. We have, however, made clearer that the provision of this information does not necessarily require the creation of a bespoke website, and could be achieved through use of social media.

### **Definition of a simple funeral service**

59. The draft guidance contained a definition of a simple funeral as an example of a lower cost option which could be compared between providers. Some funeral directors suggested that the ability to add items at a proportionate additional cost, as suggested by the draft guidance, would undermine the business model for a simple funeral by encouraging some to increase the basic cost to compensate for the exclusion of these “additional” services. However, others viewed it as important for clients to be able to make changes to the package. Local authorities suggested that there was a greater need for transparency in the guidance for funeral directors about any additional costs for bereaved families arising from transportation arrangements above that included in the simple funeral. Concerns about flexibility of the simple funeral were raised about collection of the deceased outside office hours, the option to have a service at a church or other religious or faith venue, and the inclusion of a family car.

60. Concerns were also expressed about the potential for service descriptions being differently interpreted by service providers, meaning that not all funeral directors would interpret or apply the definition of a simple funeral consistently. It was also pointed out that many funeral directors already offer a product along the lines of a simple funeral and that these firms would need to change their existing product if they were to adopt the simple funeral definition set out in the guidance.

61. While amending the definition of the simple funeral to accommodate all the views that have been expressed has not been possible, we have made changes to the definition to respond to a number of these points. For example, we have clarified that viewing of the deceased person should be by appointment, the transport included has been increased from 10 miles to 15 miles, and it has been clarified that the simple funeral should be able to be amended to allow a service at a church or other faith venue. Where amendments are permitted to the simple funeral, we have made clear that any additional charges associated with this should be clearly set out.

### **Consulting the public**

62. The consultation on the draft guidance asked if local authorities should consult the public when developing charging proposals and explain the reasons for any proposed changes. It also asked whether such measures would help improve the transparency of, and public engagement with, the local authority charge setting process.

63. While there is general support from local authorities for the principle of consultation, a number have argued that they already consult broadly on how they charge for all services, often as part of the annual budget setting process. There were concerns that holding a stand-alone consultation on burial and cremation charges carries practical and resourcing challenges, including how to achieve meaningful engagement for a service that is not frequently used by individuals. Other respondents from the third sector, the wider industry and the public were strongly supportive of the need for local authorities to specifically consult on funeral charges.

64. In order to respond to this point the Scottish Government has amended the guidance to clarify that consultation on burial and cremation charges could form part of a broader consultation as well as taking place through a stand-alone consultation. It sets out that the specific mechanisms for engagement are for local authorities to consider.

### **Local authority publication of information about income and expenditure on burial and cremation**

65. This measure is designed to improve public understanding of the cost drivers for local authorities in running burial and cremation services and how these relate to the income received from charges for these services. The draft guidance suggested ‘... [that] local authorities should publish information from their Local Financial Returns (LFRs) annually on their websites, showing income generated and expenditure incurred through the provision of burial and cremation services.’

66. There was strong in-principle support for this measure but some local authorities questioned whether LFRs were the right vehicle to increase public understanding. They were concerned that although there is guidance on what should be included in LFR data, it is not straightforwardly comparable across authorities and could be inconsistent across financial years, due to one-off expenditure. However, no alternatives to LFRs were suggested.

67. In order to help to address this concern the Scottish Government has amended the guidance to suggest that in explaining the reasons for any proposed changes to burial and cremation charges local authorities may wish to refer to financial data, such as data contained in the LFRs, to illustrate how fees contribute to the running of the service. The guidance no longer

suggests that this data should be published separately by local authorities on an annual basis. The LFR data will continue to be published on the Scottish Government website as at present.

### **Support for people who struggle to pay for a funeral**

68. The majority of local authorities have been supportive of this measure. Some local authorities provided examples of actions they are adopting or planning to adopt, while others argued that detailed guidance is required on what measures local authorities might take. Some responses expressed concern about potential resourcing implications for local authorities of adopting any further actions. Some funeral directors have raised concerns that any extension of the scope of local authority responsibility beyond support with costs (for example to provide funeral services directly to the public) could have a significant detrimental effect on the viability of local funeral directors and their suppliers.

69. This part of the guidance has been deliberately drafted in a way which allows local discretion and the adoption of solutions based on local circumstances. Given the overall level of support for this proposal the Scottish Government has decided that it should remain in the guidance. It will continue to be a matter for local authorities to consider what support it is appropriate for them to provide in their area and what level of resource is needed to enable them to do so.

### **Competition assessment**

70. The four Competition and Markets Authority (CMA) Competition Assessment Questions are:

- Will the measure directly or indirectly limit the number or range of suppliers?

As the guidance is advisory and focuses on improving the availability and transparency of cost information, the Scottish Government does not consider that it will directly or indirectly limit the number or range of suppliers.

- Will the measure limit the ability of suppliers to compete?

The Scottish Government does not consider that introduction of the guidance will limit the ability of suppliers to compete. Increased transparency through the guidance may encourage greater competition between funeral directors, and between crematoriums and cemeteries, resulting in a more efficient market which should also benefit consumers.

- Will the measure limit suppliers' incentives to compete vigorously?

The Scottish Government does not consider that introduction of the guidance will limit suppliers' incentives to compete vigorously. In fact it has the potential to do the opposite. The guidance is intended to improve availability, consistency and transparency of pricing information. If implemented, the guidance has the potential to drive greater competition.

- Will the measure limit the choices and information available to consumers?

Most of the proposed measures are expected to increase the availability and transparency of pricing information for consumers. By encouraging funeral directors, burial authorities and cremation authorities to make information available in a range of formats using clear and consistent language, the guidance should drive better visibility of pricing information which will

allow better decisions to be made by people following a bereavement. It may also mean that the public as a whole becomes better aware of funeral options, increasing individuals' ability to plan ahead and save for their funeral.

71. Overall, our assessment is that the measures set out in the guidance will not have a limiting impact on competition. Indeed, we expect the guidance to have a positive impact by promoting more consistency in the display of pricing information and greater visibility of choices (including lower-cost options). This is likely to improve the ability of consumers to compare and choose the funeral services that are right for them.

## **Consumer Assessment**

### **Does the policy affect the quality, availability or price of any goods or services in a market?**

72. Although the guidance includes measures to improve the availability of information on the costs of goods and services (particularly lower-cost options), the guidance does not include any measures to address the quality, availability or individual price of these goods or services, as these fall outside the scope of the guidance. It may, however, help to aid public awareness and scrutiny of the price of these services.

73. The guidance for local authorities includes a measure suggesting that local authorities should consider putting in place measures to support and assist bereaved people who are unable to or struggling to meet the costs of arranging a funeral. A number of Scottish local authorities have already introduced (or are in the process of developing) lower-cost funeral packages in conjunction with local funeral directors. It is possible that additional local authorities will seek to develop initiatives of this type or other measures to help people struggling with funeral costs, giving rise to greater availability of lower-cost funeral options. However, given that some local authorities have already developed such initiatives we do not feel that they can be considered directly attributable to the guidance.

### **Does the policy affect the essential services market, such as energy or water?**

74. No. The guidance relates to funeral costs.

### **Does the policy involve storage or increased use of consumer data?**

75. Among funeral directors, private burial authorities and private cremation authorities, we anticipate no need for storage or increased use of consumer data as a result of the measures set out in the guidance.

76. Some local authorities may, as a result of the guidance, choose to introduce measures to support and assist bereaved people who are unable to or struggling to meet the costs of arranging a funeral. These measures may result in these local authorities needing to record and store consumer data. However, the nature of any measures adopted, if any, is for each individual local authority to determine and we would expect the number to be low. In this event, local authorities would need to satisfy themselves that their handling of this data is compliant with data protection law.

**Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

77. The guidance is advisory. In the absence of enforcement, it is possible that unscrupulous suppliers might claim to have adopted the guidance and use this claim as a means of enhancing their reputation to target consumers. However, this would be as a result of the non-adoption of the guidance rather than the adoption of the guidance and we consider the risk of this occurring to be low. We also expect that other suppliers and members of the public may challenge these suppliers indicating that they had not adopted the guidance. Overall, we consider the benefits of the guidance outweigh this risk.

**Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?**

78. We consider that the guidance will have a positive impact on the information available to consumers on goods and services provided by suppliers. We do not consider the guidance to have any impact on availability of information relating to consumer rights, as the guidance makes no reference to, and has no influence on, consumer rights.

**Does the policy affect routes for consumers to see advice or raise complaints on consumer issues?**

79. The guidance makes no reference to, and has no influence on, consumer rights. Consumers seeking to arrange a funeral using services provided by a business that has adopted the guidance will have the same rights to seek advice or raise a complaint as they do at present.

**Test run of business forms**

80. No new forms for business will be introduced by the guidance.

**Digital Impact Test**

**Does the measure take account of changing digital technologies and markets?**

81. We have taken changing digital technologies and markets into account during the development of the guidance. The guidance includes measures to encourage funeral directors, burial authorities and cremation authorities with a website or other internet presence, such as social media, to make all pricing information available online. The guidance also encourages businesses with a website to make this information available in a format that will allow it to be downloaded by a member of the public, such as in pdf format, and suggests that businesses should also be able to send pricing information by email on request.

**Will the measure be applicable in a digital / online context?**

82. The guidance will be available online. We will also ensure information is available in other formats on request for businesses who may find it difficult to access information online.

**Is there a possibility the measure could be circumvented by digital / online transactions?**

83.No. The guidance is not a measure that could be entirely circumvented by digital / online transactions. As noted above, the guidance encourages this information to be made available in a number of formats, including digital. However, the guidance also includes measures relating to face-to-face engagement, in particular between funeral directors and consumers. We still expect people to engage with service providers directly to arrange a funeral, and while some of these interactions may take place online, many will still occur over the phone or in person as they presently do.

**Alternatively will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?**

84.No. As noted above, the guidance encourages this information to be made available in a number of formats, including digital. We still expect people to engage with service providers directly to arrange a funeral, and while some of these interactions may take place online, many will still occur over the phone or in person as they presently do.

**If the measure can be applied in an offline and online environment will this have any adverse impact on incumbent operators?**

85.No. Overall the guidance will build on current best practice and further encourage provision of transparent and consistent information on funeral costs.

**Legal Aid Impact Test**

86.The guidance will not create any new rights or responsibilities for businesses or consumers and, as it is advisory, it will not impose new requirements or conditions. Therefore, we do not anticipate that the introduction of the guidance will give rise to any increased use of legal aid.

**Enforcement, sanctions and monitoring**

87. There will be no enforcement of, or sanctions relating to, the guidance. As such, there will be no new burdens for businesses, local government or the third sector generated by this guidance.

**Implementation and delivery plan**

88. We will publicise the guidance through appropriate channels in order to raise awareness and we will work with local authorities, funeral directors and burial and cremation authorities to encourage its adoption and implementation.

89. The guidance is part of the Scottish Government's work to tackle funeral poverty and increase awareness of funeral costs. We will continue to work across government portfolios to ensure that where appropriate, the guidance is linked into the Scottish Government's wider work on funerals, bereavement policy, and social security policy.

## Post-implementation review

90. We have committed to reviewing the guidance in the future, to ensure that it remains fit for purpose. We will work with local authorities, funeral directors and burial and cremation authorities to collect information about the implementation of the guidance, so that its impact can be considered and that the guidance can be updated, if necessary, to address any issues identified.

### • Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	<p><b>Do Nothing</b></p> <p>None</p>	<p>No additional costs for businesses or local authorities, though funeral directors may incur more bad debt than under other options.</p> <p>This option could result in costs to consumers who would be less likely to be able to compare prices or find out about affordable funeral options (compared to options 2 and 3). This is likely to have the greatest impact on those on lower incomes.</p>
2	<p><b>Introduce guidance for the public</b></p> <p>Potential benefits of increased societal awareness of funeral costs increasing the likelihood of people comparing funeral prices and reducing levels of unsustainable funeral debt. This, in turn, could benefit providers of these services through a reduction in bad debt.</p>	<p>No direct costs for businesses and local authorities. Some direct costs for the Scottish Government for production, promotion and distribution.</p> <p>Risk that the greater public demand for information on funeral costs is unmet because it is not provided in an accessible way, or is not available at all.</p>

<p>3</p>	<p><b>Introduce guidance for industry</b></p> <p>This option is expected to result in benefits to consumers by improving their ability to compare funeral prices and options to find a funeral that meets their needs and is affordable. This could mean people are less likely to incur debt with funeral directors, benefitting these providers. There could also be indirect benefits to providers of funeral plans, life insurance or savings products, if the guidance resulted in members of the public being more likely to make financial provision for their own death.</p> <p>Increased transparency through the guidance may encourage more competition between funeral directors, and between crematoriums and cemeteries, resulting in a more efficient market which should also benefit consumers. There are potentially indirect benefits for certain businesses through the additional business generated from this. However, some businesses may lose market share.</p>	<p>Actual costs (additional and savings) are not possible to define at this point.</p> <p>There is the potential for some additional administrative overheads (for burial and cremation authorities, funeral directors and local authorities) caused by some of the measures in the guidance, such as creating a new website or providing paper copies of price lists.</p> <p>We have looked to minimise additional costs for businesses and local authorities. Given that the guidance is advisory, businesses can choose to phase this in over time which should help them to manage any associated costs.</p>
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91. The Scottish Government has decided to proceed with implementation of option 3. Overall, the Scottish Government considers that the benefits to consumers that will result from improving the availability and transparency of funeral charges information, to help make informed decisions, outweigh any potential additional costs to businesses and local authorities arising from this option. We have sought to ensure that the guidance is proportionate and not overly burdensome, in particular recognising that many funeral directors are small businesses. As the guidance is advisory, the measures can be phased in over time allowing the impacts of any additional costs to be managed.

92. A wide range of stakeholder organisations and individuals have worked with the Scottish Government to develop this guidance. We have been encouraged by this willingness and will continue to work with the industry during its implementation.

## **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

A handwritten signature in black ink that reads "Aileen Campbell". The signature is written in a cursive style.

**Date:** 15 May 2019

**Minister's name:** Aileen Campbell MSP

**Minister's title:** Cabinet Secretary for Communities and Local Government

**Scottish Government Contact point:** [funeralpoverty@gov.scot](mailto:funeralpoverty@gov.scot) | Funeral Poverty | Social Security Policy Division | Social Security Directorate | Area 2C South | Victoria Quay | Edinburgh | EH6 6QQ



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