

EXPLANATORY MEMORANDUM TO
THE CREMATION (ENGLAND AND WALES) REGULATIONS 2008

2008 No. 2841

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.1 This instrument seeks to modernise and consolidate the existing Cremation Regulations. In addition it enables applicants for cremation to inspect the forms completed by medical practitioners before cremation is authorised. It provides new statutory forms relating to the cremation process (including for the first time in relation to stillbirths) and dispenses with the need for the application form to be countersigned. It also gives the Secretary of State power to remove a medical referee from his or her post on the grounds of incapacity or misbehaviour.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Under section 7 of the Coroners Act 1902, the Secretary of State has powers, subject to negative resolution, to make regulations for the prescribing of the conditions in which the burning of human remains may take place. Regulations were made in 1930 (SI 1930 No 1016) and amended in 1952 (SI 1952 No 1568), 1965 (SI 1965 No 1146), 1979 (SI 1979 No 1138), 1985 (SI 1985 No 153), 2000 (SI 2000 No 58) and 2006 (SI 2006 No 92). The Regulations deal with matters such as the duties of the medical referee at the crematorium, the disposal of cremated remains, the forms required to be completed by the applicant, the medical practitioners involved, or the coroner.

4.2 These Regulations revoke and replace the Regulations made by the Secretary of State under section 7 of the Cremation Act 1902 and section 10 of the Births and Deaths Registration Act 1926, dated 28th October 1930 (“the 1930 Regulations”) and subsequent amendment regulations a set out above. They reproduce many of the provisions made in the 1930 Regulations and introduce some new provisions.

4.3 Part 2 sets out the requirements for the maintenance and inspection of crematoria. Part 3 contains the provisions relating to a medical referee. Provision

is made so that more than one deputy medical referee may be appointed and for a deputy medical referee to perform the functions of the medical referee in a wide range of circumstances. A medical referee or a deputy may also perform the functions of the medical referee appointed for another cremation authority in exceptional circumstances.

4.4 Part 4 sets out the conditions under which cremations may take place, and in particular, the documentation that must be provided before a cremation may be authorised. The forms in Schedule 1 to the Regulations must be used in the cases to which they apply. Regulation 22 makes new provision so that where the applicant for the cremation, or someone nominated by the applicant has given a contact telephone number to the cremation authority, the cremation authority is required to notify that person when the medical certificates giving details of the deceased's cause of death are available for inspection. The applicant, or the person nominated by the applicant then has 48 hours to inspect the certificates and make any representations to the medical referee.

4.5 Regulation 23(2) enables a medical referee to authorise a cremation if he or she is satisfied that the cremation authority has made all reasonable efforts to make contact with the person who has given their contact telephone number to the cremation authority but has been unable to do so within 48 hours from the time it received the certificates.

4.6 Part 5 deals with the incineration of body parts and Part 6 deals with the disposition or interment of ashes, the registration of cremations carried out and the preservation of documents relating to the cremation. Part 7 contains revocations, savings and transitional provisions. Regulation 37 provides that medical referees, deputy medical referees and registrars appointed under these Regulations are treated as having been appointed under these Regulations. Regulation 38 provides that the 1930 Regulations continue to apply to an application for cremation made before these Regulations come into force.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 The Home Office was responsible for cremation law and policy until the

transfer of these responsibilities to the Department for Constitutional Affairs on 1 June 2005. The Department for Constitutional Affairs became the Ministry of Justice on 9 May 2007. From time to time it is necessary to consider issuing fresh regulations made under section 7 of the Cremation Act 1902. Since the last amendment regulations were issued in 2006 the need for modernising and consolidating them has been made apparent.

7.3 As well as modernising the language of the regulations and consolidating the various amendment regulations into a single set, a number of policy changes are proposed. In particular it is considered important that the applicant for cremation should have the right to inspect the forms completed by medical practitioners before the cremation is authorised by the medical referee at the crematorium. This is seen as an important reform arising out of the case of Harold Shipman, who exploited the fact that the relatives had no access to the medical forms and were not in a position to dispute the information which Shipman had provided on the forms he had completed.

7.3 The Ministry of Justice issued a consultation document on the introduction of new regulations on 16 July 2007. It is available at <http://www.justice.gov.uk/docs/cp1107.pdf>. This consultation ran until 22 October 2007. Copies were sent to cremation and funeral authorities and all medical referees at crematoria in England and Wales, as well as other government departments with an interest in cremation and faith groups. There were 73 responses of which the majority were from individual medical referees. Nearly all of the remainder were from stakeholder representative organisations. The summary of responses is available at <http://www.justice.gov.uk/docs/cp1107-response.pdf>. Almost all of the responders accepted that there was a need for change but were concerned about the proposed right to inspect forms because of practicalities and risk of delay to funerals. The Ministry of Justice acknowledged these concerns and held a meeting with stakeholders in order to resolve them. The Ministry believes that the number of applicants requiring inspection of the forms will be limited to those with genuine concerns and will be manageable. Delays to funerals are likely to be minimal. Amendments were made to the regulation in order to meet concerns, for example, there must be a period of 24 hours between the inspection and the cremation and the regulation reflects that the cremation authority must make all reasonable efforts to contact the applicant (or nominated person). This reflects that in some cases, despite best endeavours, it may not always be possible to make contact which means that cremation authorities will not be left in an impossible position. Furthermore, the Department received numerous suggestions for drafting changes the vast majority of which were accepted and the instrument was amended accordingly.

7.4 The countersignature of the application form was intended to be made by a person who knew the applicant and would have no reason to doubt the accuracy of the information provided. However, all the available evidence indicated that forms were routinely countersigned by funeral directors. Following the meeting

with stakeholders mentioned above it was thought on balance preferable to dispense with the requirement and replace it with a warning about making a false statement on the form. This warning is now included on all the forms.

7.5 The 13 forms contained in the schedule to the Regulations now include forms relating to the disposal of stillborn babies. This is because it was found that stillborn babies were cremated without the non-statutory form required under the existing Regulations. There is no longer a form for the cremation authority's register of cremation. Crematoria are now able to complete the information required in a register of their own design, provided it contains all the information required by the regulations. This includes information about the number of requests made by applicants to inspect the medical forms.

7.6 The Secretary of State has the power of appointing medical referees so it seemed sensible to provide equivalent explicit powers to remove a medical referee from his or her post and to issue guidance as to when the power of removal should be exercised.

8. Impact

8.1 A partial Regulatory Impact Assessment of the effect that this instrument will have on the cost of business can be found at <http://www.justice.gov.uk/publications/cp1107.htm>

9. Contact

9.1 Brian Patterson at the Ministry of Justice Tel: 020 3334 6404 or e-mail: brian.patterson@justice.gsi.gov.uk can answer any queries regarding the instrument.