

EXPLANATORY MEMORANDUM TO
THE CREMATION (ENGLAND AND WALES) (AMENDMENT) REGULATIONS
2022

2022 No. 218

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Cremation (England and Wales) Regulations 2008 (the “2008 Regulations”) (S.I 2008/2841) to remove the confirmatory medical certificate as a required form for a cremation application.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 7 of the Cremation Act 1902 (the “1902 Act”) provides for the Secretary of State to make regulations as to what conditions must be met before the burning of any human remains may take place. The 2008 Regulations, made under section 7 of the 1902 Act, cover the cremation of deceased persons, body parts and stillborn children.
- 6.2 Section 19 of the Coronavirus Act 2020 (the “2020 Act”) temporarily suspended the requirement for a confirmatory medical certificate in addition to a medical certificate given by a registered medical practitioner giving the cause of death of the deceased person. This was in order to support the death management and health sectors during a period of anticipated greater deaths. The 2020 Act is due to expire on 24th March 2022, meaning that unless this instrument comes into effect, from 25th March 2022 the 2008 Regulations would revert to their original wording and a confirmatory medical certificate would be required as part of the cremation application process. This instrument replicates the changes that section 19 of the 2020 Act made to the 2008 Regulations.
- 6.3 Pending the successful passage of the Health and Care Bill, the statutory medical examiner system will be implemented which will render the confirmatory medical certificate obsolete (as the role of the medical examiner includes scrutiny at the

beginning of the death certification process). The non-statutory medical examiner system is already in place in acute settings, and is currently being rolled out to non-acute settings.

7. Policy background

What is being done and why?

- 7.1 The confirmatory medical certificate, form Cremation 5, and references to it are being removed from the 2008 Regulations to avoid the confusion in the funeral sector that the temporary reintroduction of the form could cause in the interim between the sunseting of the 2020 Act and the introduction of the statutory medical examiners system.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 Before the 2020 Act, in the majority of cases for a deceased person to be cremated both a medical certificate and a confirmatory medical certificate were required before the cremation could take place. The confirmatory certificate had to be completed by a medical practitioner, registered for at least five years, who was independent from the medical practitioner who completed the medical certificate. On provision of these documents with the application for cremation, a medical referee would then be able to authorise the cremation.

Why is it being changed?

- 7.3 The 2020 Act temporarily removed the requirement for the confirmatory medical certificate, form Cremation 5, for cremations and is due to expire on 24 March 2022. Pending the successful passage of the Health and Care Bill, the statutory medical examiner system will be implemented which will render the confirmatory medical certificate obsolete. The statutory medical examiner system is expected to be implemented later this year. There will be a short period of time between the expiry of the 2020 Act and expected implementation of the statutory medical examiner system. Government has noted the concern that temporary reintroduction of form Cremation 5 could cause disruption and confusion during this interim period. During the temporary removal under the 2020 Act, no stakeholders or interested parties have raised concerns on the scrutiny of cremation applications. Should there be disruption or delay to the implementation of the statutory medical examiner system, the Ministry of Justice will review if this change continues to be appropriate.

What will it now do?

- 7.4 The confirmatory medical certificate will no longer be required as part of the cremation application process, continuing the regulatory changes that have been in place since 25th March 2020.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument is not being consolidated.

10. Consultation outcome

- 10.1 No separate consultation exercise was conducted. This instrument is a partial implementation of the government response to the 2016 consultation “Introduction of Medical Examiners and Reforms to Death Certification in England and Wales: Policy and Draft Regulations”. The link to the consultation response is: [Introduction of medical examiners and reforms to death certification in England and Wales: government response to consultation \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/introduction-of-medical-examiners-and-reforms-to-death-certification-in-england-and-wales).
- 10.2 This consultation approached NHS and social care organisations, local government, central government, the public, bereavement services, the funeral industry, professional and regulatory bodies, religious or faith groups, coroner services, healthcare professionals and registration services. It invited response through either online form or email questionnaire, with some respondents opting for a general letter addressing the broad topics of the consultation.
- 10.3 The response was broadly favourable to the proposed reforms, including introduction of statutory medical examiners which make the confirmatory medical certificate redundant.

11. Guidance

- 11.1 Guidance for applicants, crematorium managers, funeral directors, medical practitioners and medical referees is available online, and revised guidance will be published before this regulation comes into force. Link to online guidance is [Cremation forms and guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/cremation-forms-and-guidance). The revised guidance will be available on 25 March 2022 to avoid confusion.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. We have been provided with informal secretariat advice from the Regulatory Policy Committee on our approach to this Impact Assessment.
- 12.4 This instrument is a necessary step in implementation of the introduction of statutory medical examiners, which was part of a wider Impact Assessment “Introduction of medical examiners and Death certification Reform in England”. The link to this earlier Impact Assessment is [Introduction of medical examiners and death certification reform in England: impact assessment \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/introduction-of-medical-examiners-and-death-certification-reform-in-england-impact-assessment).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The affected small businesses are independent funeral directors and crematoria, who ensure the required medical certificates are completed and provided to a medical referee to authorise cremation.
- 13.3 Individual medical practitioners and private medical practices are indirectly affected by the loss of fee income from completing the confirmatory medical certificate. It is not clear how many are affected as any medical practitioner who has been registered for 5 years is eligible to complete the confirmatory medical certificate.

- 13.4 No full, partial or temporary exemption can be provided for small and micro businesses as that would undermine the benefits of the regulatory changes.
- 13.5 We have discussed with industry representatives and they were supportive of our proposed approach.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that DHSC will be monitoring the wider death certification reforms along with the statutory medical examiner system. Should there be delay in the expected statutory medical examiner system, the Ministry of Justice will review this provision.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Isabella Watson at the Ministry of Justice. Telephone: 07890306637, or email: Isabella.watson@justice.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Kate Gregory-Smith, acting Deputy Director for Death Management, Miscarriages of Justice, Inquiries & Coroners at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Tom Pursglove MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.