EXPLANATORY MEMORANDUM TO

THE CREMATION, CORONERS AND NOTIFICATION OF DEATHS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2024

2024 No. 668

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Mike Freer, Parliamentary Under-Secretary of State for Courts and Legal Services at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Terence Davies, Deputy Director for Death Management, Inquiries and Coroners at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Laura Pankhurst at the Ministry of Justice Telephone: 07745 744942 or email: FuneralSectorBurialsandCremation@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to amend three sets of regulations as part of a cross-government programme to implement a statutory medical examiner (ME) system and wider death certification reform. The implementation of this scheme introduces a level of independent scrutiny of the cause of death in all non-coronial cases and will improve the quality and accuracy of the Medical Certificate of Cause of Death (MCCD) – the form completed by a medical practitioner which enables the death to be registered. The purpose of this instrument is also to remove unnecessary provisions and ensure updated and consistent terminology across death certification forms. Changes are being made to the Cremation (England and Wales) Regulations 2008 (the "2008 Regulations"), the Coroners (Investigations) Regulations 2013 (the "2013 Regulations"), and the Notification of Deaths Regulations 2019 (the "2019 Regulations").

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Regulations which make provision about cremations, procedures of coroners and certain circumstances in which a medical practitioner must refer a death to a coroner are being amended in consequence of, and in order to facilitate, the introduction of the statutory ME system and wider death certification reform in England and Wales.

5.2 A consultation on MEs and death certification reforms was carried out in 2016, to which a range of NHS/social care organisations, healthcare professionals, professional and regulatory bodies, faith communities, local and central Government, the funeral industry, cremation and burial authorities, coroners and coroner service managers responded.

5.3 Currently for non-coronial cases in England and Wales, only those involving cremation receive independent scrutiny. The statutory ME system and wider death certification reforms, which this instrument feeds into, will mean that all non-coronial deaths will be scrutinised by an ME (a senior medical practitioner).

5.4 This instrument facilitates a number of aspects of the reforms, in particular by: first, updating statutory forms required for cremation and amending the requirements for a cremation to take place; secondly, amending the roles of those involved in scrutiny of death before a cremation; thirdly, amending the duty for a consultant medical practitioner to notify a senior coroner of a death in certain circumstances, as well as the form and content of the notification; and lastly, ensuring that information about the presence of medical devices/implants in the deceased person's body is passed on to the relevant authority when the coroner's Order for Burial form (Form 3) or form Cremation 6 is used, enabling them to make informed decisions about whether it is safe to proceed with disposing of the body.

5.5 This instrument also amends the 2008, 2013 and 2019 Regulations to remove defunct and unnecessary provisions and to ensure that language and processes are consistent with the death certification reforms, the Medical Certificate Cause of Death Regulations 2024 and Part 1 of the Coroners and Justice Act 2009 ("the 2009 Act"), including as amended by the Judicial Review and Courts Act 2022 ("the 2022 Act").

What was the previous policy, how is this different?

5.6 The 2008 Regulations supported the policy objective of the Cremation Act 1902 (the "1902 Act") by modernising and consolidating existing regulations about cremation, and provided statutory forms relating to the cremation process. It is necessary to amend these Regulations to reflect the statutory ME system and wider death certification reform.

5.7 In order for a cremation to proceed under the existing system, a number of steps are required. A medical practitioner must be able to state the deceased person's cause of death to the best of their knowledge and belief and must include this in form Cremation 4. Completion of the form by the practitioner is paid for by the individual bearing the cost of the cremation/funeral, and, upon completion, the form is sent to the crematorium for review.

5.8 This instrument facilitates changes to the process of scrutinising deaths and allowing a cremation to proceed. These changes are necessary in order to facilitate the introduction of the ME system, including the removal of form Cremation 4 and the modified role of medical referees (who authorise cremations under the 2008 Regulations) in England and Wales. Other cremation forms are being amended or

removed to reflect the ME system, the updated terminology and simplified processes; to remove defunct references to the previous system and role of the medical referee; and to make provision for the recording of information about the presence of medical devices in the body, thereby mitigating the health and safety risk of unidentified medical devices left in the body of the deceased.

5.9 Additionally, the 2008 Regulations are being amended to ensure that they are consistent with Part 1 of the 2009 Act, including as amended by the 2022 Act. In particular, these changes update references relating to coroner processes; simplify language; and reflect the circumstances in which a coroner is required to provide a certificate for the purpose of a cremation being authorised.

5.10 The notice of discontinuance (Form 2) in the 2013 Regulations will now record the cause of death in a way which is consistent with domestic and international standards and will assist data collection. It is also being amended to use language more appropriate to the bereaved family receiving the form. The Coroner's Order for Burial (Form 3 in the 2013 Regulations, which coroners complete to authorise the burial of a deceased person), and form Cremation 6 (which they complete to certificate cremation) will now contain information on medical devices in the body of the deceased, which will be passed to burial or cremation authorities in coronial cases. This will allow burial and cremation authorities to make informed decisions as to the possible risks associated with burial or cremation.

5.11 The 2019 Regulations impose a statutory duty on registered medical practitioners to notify a senior coroner of a person's death under certain circumstances. These Regulations now require amendment to reflect a change to Department of Health and Social Care policy regarding the MCCD and the circumstances in which a registered medical practitioner must notify a coroner of a death, as well as the form and content of the notification. This instrument removes the requirement for a doctor signing an MCCD to have seen the patient during the deceased's last illness; instead, the doctor will have to have seen the patient during their lifetime. This will mean that a greater number of doctors will be able to certify a death, resulting in fewer referrals to a coroner.

6. Legislative and Legal Context

How has the law changed?

6.1 Amendments to three other instruments are being made by this instrument in light of a cross-governmental programme to implement a statutory ME system in respect of deaths in England and Wales and wider death certification reform.

6.2 Section 7 of the 1902 Act provides for the Secretary of State to make regulations as to the conditions under which the burning of any human remains may take place. The 2008 Regulations made under this section make provision for the cremation of deceased persons, body parts of deceased persons and stillborn children and the appointment of medical referees who authorise cremations, set out the conditions under which cremation may take place and contain the forms which are used.

6.3 Amendments are being made to the processes, requirements and forms that apply in respect of deaths in England and Wales to reflect the ME and death certification reforms. This instrument removes the requirement for medical referees to complete a medical certificate (previously form Cremation 4) where there is no coroner's certificate or certificate of anatomical examination, as the role of scrutinising the cause of death in those cases is now carried out by an ME at an earlier stage.

6.4 This instrument also omits form Cremation 11 ('certificate after post-mortem examination'). Under the new system, MRs will no longer be scrutinising the cause of death, making this form redundant. The requirement for the MR to be satisfied as to the cause of death in non-coronial cases is also being removed. This is because the MR will no longer need to see the cause of death in these cases, as they will receive the certificate of cremation or burial ('the green form'), issued by the registrar, which will provide evidence that scrutiny of the cause of death by the ME has already taken place.

6.5 This instrument also replaces a number of forms in the 2008 Regulations. Specifically, it replaces form Cremation 1 (application for cremation of the body of a person who had died) with a new application form, in order to remove references to defunct forms and clarify questions that were causing confusion to those completing the form. It also replaces form Cremation 6 (certificate of coroner) to enable information about the presence of medical devices and implants in the body of the deceased person to be recorded, where available. This will enable information about the existence of medical devices and implants in the body of the deceased person, where available, to be transferred to the crematorium in coronial cases, allowing the medical referee to decide whether they wish to proceed with a cremation. Form Cremation 6 has also been amended to reflect regulatory changes to streamline the process for the coroner's certification that a cremation can take place. This instrument also introduces a new version of form Cremation 10 (authorisation of cremation of deceased person by medical referee).

6.6 The 2013 Regulations are being amended to include a new version of Form 2 ('Notice of discontinuance') and Form 3 ('Order for Burial'). Form 2, which coroners use to inform the next of kin or personal representative of the deceased that they have discontinued an investigation, will now contain clearer language, and amended formatting to aid in data collection purposes. Form 3, which coroners use to authorise burials, may now contain information, where available, about medical devices/impacts identified in the body of a deceased person. This is in line with other changes being made to the 2008 Regulations (in this instrument) and with the wider death certification reforms.

6.7 The 2019 Regulations set out certain circumstances in which a registered medical practitioner must notify a coroner of a death, as well as the form and content of the notification. This instrument amends these circumstances and the content of the notification to reflect the wider changes to the death certification system. In particular, this instrument makes amendments to the duty and the content of the notification to reflect that the doctor signing an MCCD is no longer required to have seen the deceased person during their last illness, but rather at any time during their lifetime.

6.8 It is intended that other secondary legislation relating to the new statutory ME system will come into force on the same day – 9 September 2024. This legislation is: The Medical Examiners (England) Regulations 2024, The Medical Certificate of Cause of Death Regulations 2024, The National Medical Examiner (Additional Functions) Regulations 2024, The Medical Examiners (Wales) Regulations 2024, and The Registration of Births and Deaths Regulations 1987.

6.9 The new statutory ME system and most of the death certification reforms apply in respect of deaths in England and Wales only. This instrument therefore ensures that most of the amendments made to the 2008 Regulations in connection with these changes do not apply in respect of deaths occurring in Scotland, Northern Ireland, the Isle of Man or the Channel Islands. It does this by inserting new regulation 2A into the 2008 Regulations, which makes provision for the listed regulations to continue to

have effect as in force immediately before the coming into force date of this instrument. A copy of the regulations as they have effect in relation to Scotland, Northern Ireland, the Isle of Man and the Channel Islands will be available for reference at ***Cremation forms and guidance - GOV.UK (www.gov.uk)***.

Why was this approach taken to change the law?

6.10 It is appropriate to amend, rather than re-make, the existing legislation because the changes are not so substantial that re-making the legislation would be necessary or appropriate.

7. Consultation

Summary of consultation outcome and methodology

7.1 A 2016 consultation was undertaken by DHSC to identify gaps in the death certification process and to seek views on specific proposals. At this time, MoJ considered that a future consultation on proposed amendments to the Cremation Regulations would be helpful. However, it was later decided that a consultation was not necessary. This is because:

- The commitment to consult was made at a time when the statutory ME system was going to be introduced wholesale. Since this time, acute trusts in England and local health boards in Wales were asked to set up ME offices to focus on the certification of deaths that occurred in their own organisations on a non-statutory basis. As such, a partial, non-statutory ME system was introduced rather than the full statutory roll-out initially planned. This has allowed government departments to learn from the incremental implementation of the non-statutory ME system and implement changes where necessary.
- Since 2019, the MoJ has engaged widely with professionals from crematoria, burial authorities, funeral directors, medical referees and other interested stakeholders. The department continues to engage regularly with stakeholders, including through surveying them to inform policy development and the department intends to continue this engagement after the implementation of the statutory ME system.

8. Applicable Guidance

8.1 The department has produced updated versions of several pieces of guidance. These will be available on 9 September 2024 at:

- Cremation forms and guidance - GOV.UK (www.gov.uk)

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. A previous Impact Assessment undertaken by DHSC considered the principal changes set out in this instrument.[1] The impacts of the statutory ME system as a regulatory provision are set out in previous Impact Assessments for England[2] and Wales[3]. As these Impact

[1] https://www.gov.uk/government/publications/health-and-care-act-2022-combined-impact-assessments
[2] https://www.gov.uk/government/consultations/death-certification-reforms
[3] https://www.gov.wales/introduction-medical-examiner-role-and-reforms-death-certification

Assessments set out, it is anticipated that any new net cost to business from implementing the statutory system would be minimal or zero. The 2022 Impact Assessment estimated that the cost of the statutory ME system would be £54m for 2022/23 (in 2022 prices) and DHSC consider that their previous assessment of the costs and benefits published in the 2018 English impact assessment, and Welsh impact assessment, remain sufficiently accurate for the purposes of estimating the costs and benefits of establishing a statutory scheme.

9.2 A separate impact assessment has not been produced in respect of the changes which were not previously considered because no, or no significant, additional impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because central funding for the statutory ME system removes the risk of increased costs to funeral directors. Potential familiarisation costs for doctors employed in both the NHS and private sector have also been mitigated to a large extent as DHSC is not proposing significant changes to the MCCD itself.

9.4 The legislation does impact small or micro businesses.

9.5 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), MoJ has carried out sustained stakeholder engagement over the course of this past year, consulting with crematorium managers and others in the sector to understand the impact of legislative changes on operational practices. The basis for the final decision on what action to take to assist small businesses was based on extensive stakeholder engagement consisting of open forums and email communications. We engaged with a wide range of crematorium managers over the past year and they have fed back their reflections at different stages of policy development. Furthermore, the June 2018 Impact Assessment for England outlines that the set up and running costs of the statutory system will not fall on private businesses. Individual medical practitioners and private medical practices are directly affected by the loss of fee income from completing form Cremation 4 and these changes were considered as part of the June 2018 Impact Assessment.

9.6 There is no, or no significant, impact on the public sector because these Regulations are being amended to update existing forms and practice. Therefore, it is anticipated that those working in the public sector will avoid any additional costs of stocking new forms or retraining to adapt to new practices. Those changes that were not considered as part of previous Impact Assessments are not considered to have any further significant impact on the public sector as they have no, or no significant, economic impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 DHSC will be monitoring the impact of death certification reforms, as well as the statutory ME system, through regular and sustained engagement with the sector. MoJ will retain MRs for a transitional period and will implement a programme of regular stakeholder engagement sessions and surveys during a period of at least two years which will enable MoJ to monitor this legislation.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 It is intended that other legislation relating to the new statutory ME system will come into force on the same day, 9 September 2024, in order for the ME system to be implemented on a statutory basis across government departments. Before this instrument is amended, the following regulations will be made or amended: The Medical Examiners (England) Regulations 2024, The Medical Certificate of Cause of Death Regulations 2024, The National Medical Examiner (Additional Functions) Regulations 2024, The Medical Examiners (Wales) Regulations 2024 and The Registration of Births and Deaths Regulations 1987. Relevant provisions in section 169 of the Health and Care Act 2022 and schedule 21 to the Coroners and Justice Act 2009 have been commenced to make amendments to: the Births and Deaths Registration Act 1953, Human Tissue Act 2004, Access to Health Records Act 1990 and Health and Care Act 2022.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Courts and Legal Services has made the following statement regarding Human Rights:

"In my view the provisions of the Cremation, Coroners and Notification of Deaths (England and Wales) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").