EXPLANATORY MEMORANDUM TO

THE CREMATION (ENGLAND AND WALES) (AMENDMENT) (NO. 2) REGULATIONS

2022 No. 611

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 The instrument amends regulation 18 of the Cremation (England and Wales) Regulations 2008 ("the 2008 Regulations") to align it with section 4 of the Coroners and Justice Act 2009 ("the 2009 Act") as amended by section 39 of the Judicial Review and Courts Act 2022 ("the 2022 Act") with effect from 28 June 2022.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

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 requires the Secretary of State to make regulations (currently the 2008 Regulations, as amended) setting out the conditions under which cremations may be carried out, in particular the documentation to be provided and the certification to be given or obtained before any cremation may take place.

6.2 Section 4 of the 2009 Act as originally enacted allows a coroner to discontinue an investigation before an inquest where cause of death is natural, does not occur in custody or other state detention and is revealed by a post-mortem examination requested under Section 14 of the 2009 Act.

6.3 Regulation 18 of the 2008 Regulations requires an application for cremation in specified circumstances to be supported by a certificate from a coroner, including where the coroner's investigation has been discontinued following a post-mortem pursuant to section 14 of the 2009 Act. Statutory form Cremation 6 (contained in

Schedule 1 to the Regulations) allows the coroner to certify that a post-mortem has been carried out and the coroner is satisfied that an inquest is unnecessary.

6.4 Following its commencement on 28 June 2022, section 39 of the 2022 Act amends section 4 of the 2009 Act to allow a coroner to discontinue an investigation before an inquest where the cause of death is natural, does not occur in custody or other state detention and the cause of death has become clear. The clarity about cause of death will be able to come from a post-mortem examination or from other information.

6.5 This instrument will amend regulation 18 of the 2008 Regulations to align it with section 4 (1) of the 2009 Act as amended, so that the coroner will be able to issue form Cremation 6 where the cause of death has become clear before an inquest, whether from a post-mortem examination or from other information. Form Cremation 6 itself will be amended to include an option for the coroner to indicate whether an investigation has been discontinued because cause of death has become clear by means other than a post-mortem examination. Some minor textual amendments are also being made to Part 2 of the form.

7. Policy background

7.1 Prior to amendment by section 39 of the 2022 Act, section 4 of the 2009 Act allowed coroners to discontinue an investigation only where, in a natural cause of death which had not occurred in custody or other state detention, cause of death was revealed by post-mortem examination. In practice this meant that, if the cause of death became clear during the coroner's investigation from other sources of evidence, the investigation could only be concluded by opening a formal inquest, or by arranging an otherwise unnecessary post-mortem examination. Regulation 18 and form Cremation 6 of the 2008 Regulations reflect this position by requiring that, where the coroner provides certification to support an application for cremation following the discontinuation of an investigation, a post-mortem examination must have taken place.

7.2 Section 4 of the 2009 Act has been amended by section 39 of the 2022 Act so that coroners may now also discontinue an investigation where cause of death is natural, has not occurred in custody or other state detention and the cause of death has become clear by means other than a post-mortem examination. The intention of widening the circumstances in which an investigation can be discontinued is to streamline coroners' courts processes and reduce delays to the coronial process.

7.3 If regulation 18 and form Cremation 6 were not amended accordingly, coroners would nevertheless remain obliged to undertake a post-mortem examination before the certification required to accompany an application for cremation could be provided. This would undermine the policy intention of amended section 4 and would prevent the consequential benefits of streamlining and reducing delay in the cremation process from being realised, thereby causing distress for bereaved families. It could also result in unnecessary post-mortems being undertaken simply to comply with the regulatory requirement, resulting in additional costs for local authorities.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or 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 Consultation was not undertaken on the change to section 4 of the 2009 Act. The measure has long been proposed by successive Chief Coroners and has been cited in Chief Coroner's Annual Report to the Lord Chancellor since 2015.

11. Guidance

11.1 It is anticipated that the Chief Coroner will update his guidance for coroners to reflect the revised statutory and regulatory provision set out in this Memorandum.

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 has not been prepared for this instrument because it has no or minimal impact on business, the voluntary sector and the public sector.

12.4 An Impact Assessment for the 2022 Act has been published at Impact Assessment template (parliament.uk). This includes an assessment of the impact of section 4 of the 2009 Act as amended by section 39 of the 2022 Act.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This legislation will not be monitored as the change is technical and minimal.

15. Contact

15.1 Molly Watson-Phillips at the Ministry of Justice. Telephone: 07890 028529 or email: molly.watson-phillips@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alison Samedi, Deputy Director for Death Management, Miscarriages of Justice Compensation, Inquiries and Coroners, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for Justice, Tom Pursglove MP can confirm that this Explanatory Memorandum meets the required standard.