EXPLANATORY MEMORANDUM TO

THE REGISTRATION OF BIRTHS AND DEATHS (ENGLAND AND WALES) (AMENDMENT) (TRANSITIONAL PROVISIONS) ORDER 2024

2024 No. 904

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office 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 Seema Malhotra, Minister for Migration and Citizenship at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Thomas Greig, Senior Civil Servant, Passports, Citizenship and Civil Registration, Customer Services and Registrar General for the General Register Office, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jennifer Hunt at the Home Office Telephone: (07990 439395 or email: jennifer.hunt@gro.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 This instrument will ensure continuity for registrations of death certificates for deaths taking place immediately before planned reforms commence on 9 September 2024. Specifically, it provides for transitional provisions to cover the scenario when a death has been certified by a medical practitioner prior to the commencement of the death certification reforms (DCR) but where the death has not been registered by this date. This will avoid any delays in registration and potential emotional distress to affected families.

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

5. Policy Context

What is being done and why?

5.1 The Coroners and Justice Act 2009 (CJA) includes provisions for the introduction of a revised death certification process including a new position of National Medical Examiner (NME) and local Medical Examiner (ME) to scrutinise all non-coronial deaths. The CJA reforms followed the Shipman Inquiry 2003 which was the report produced by a government investigation into the activities of general practitioner and serial killer Harold Shipman.

5.2 From commencement of the DCR on 9 September 2024, registrars will register deaths either on the authority of the coroner, following discontinuance of an investigation or inquest, or the authority of the ME, following their scrutiny.

5.3 The previous policy placed a duty on registrars rather than MEs to scrutinise medical certificates of cause of death and refer cases to the coroner where the cause of death is insufficient, or the deceased has not been seen by a medical practitioner in the last 28 days of their life or after death.

5.4 The reforms remove the scrutiny requirement from registrars, placing the duty instead on MEs, who will have additional powers to scrutinise patient records, engage medical practitioners to confirm causes of death, speak with families and thus, if satisfied, reduce the need for coronial referrals.

5.5 Transitional provisions are required to cover those deaths which took place and were certified by a medical practitioner prior to the date of commencement of the DCR and the introduction of a statutory ME, but which have not been registered before this date, and for which there is no duty on a coroner to hold an inquest. Prior to commencement of DCR, the law requires all deaths to be registered within five calendar days of the date of death with the local registration service. (It should be noted that this service is currently available from Monday to Saturday, not on a Sunday). The provision made by this instrument will allow deaths which were certified by medical practitioners before commencement on 9 September 2024 to be registered under the law that was in place prior to the reforms.

5.6 It is estimated that there will be around 12,000 deaths that fall into this category. If the transitional arrangements are not included, this would result in such deaths not being able to be registered or being registered outside of the law.

What was the previous policy, how is this different?

5.7 Prior to the introduction of the ME/DCR, registrars were required to scrutinise the medical certificate of cause of death and refer to the coroner when required (see sub-section 5.3). Deaths were not scrutinised by an independent medical professional and referrals to the coroner were inconsistent.

6. Legislative and Legal Context

How has the law changed?

6.1 The Registration of Births and Deaths (England and Wales) (Amendment) Regulations 2024 ("the 2024 Regulations"), amended by this instrument in order to insert transitional provisions, amend the Registration of Births and Deaths Regulations 1987 ("the 1987 Regulations") to prescribe the manner of registration and the information required to be registered by the registrar on receipt of a confirmed attending practitioner's certificate, or a medical examiner's certificate given to the

registrar in accordance with regulations made under section 20 of the Coroners and Justice Act 2009.

6.2 The provisions of the 1987 Regulations amended include those concerning the manner of registration of a death where a coroner's investigation into the death is discontinued under section 4 of the 2009 Act, or suspended under Schedule 1 to the 2009 Act, and with regard to the death of a person who, at the time of death, had a relevant association with a visiting military force as defined in section 12 of the Visiting Forces Act 1952.

6.3 The 2024 Regulations also insert provisions into the 1987 Regulations concerning the manner of registration of a death pursuant to section 23(4) of the Births and Deaths Registration Act 1953, enabling the registrar to register a death on the basis of a certificate provided by the coroner on request by the registrar, where certain conditions are met.

6.4 Provisions are further inserted prescribing the form, manner of compilation and particulars to be recorded in a Short Certificate of Death to be issued under section 33A of the Births and Deaths Registration Act 1953, and amendments are made consequential to those described above and to the commencement of several provisions contained in Part 1 of Schedule 21 to the Coroners and Justice Act 2009, which amend the Births and Deaths Registration Act 1953.

6.5 This instrument provides only for transitional provisions to be inserted into the 2024 Regulations so that a particular group of deaths which occur before the commencement of the new registration regime, but which are not registered by that date and which fall outside of the new regime, can be registered in accordance with the previous regime.

Why was this approach taken to change the law?

6.6 This approach has been taken because the Registrar General, who made the 2024 Regulations, does not have the power to make transitional provisions in these circumstances. Consequently, the Secretary of State is required to make such provision by way of amendment to the 2024 Regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 There was no public consultation on the transitional provisions set out in this instrument as there is no significant impact on the public. Including transitional provisions ensures that deaths can be registered, funerals can be arranged, and the bereaved are not put under any additional stress. A full consultation was completed on the DCR policy led by the Department of Health and Social Care in 2016[1].

7.2 The Home Office engages regularly with the National Panel for Registration (NPR), a representative body for the local registration service (LRS) across England and Wales, Regional Registration Groups, the Department of Health and Social Care, National Medical Examiner, and the Ministry of Justice. There has been continuous engagement with these groups during the development of the DCR policy.

[1] https://www.gov.uk/government/consultations/death-certification-reforms

8. Applicable Guidance

8.1 The Home Office guidance to staff and to the local registration service will be updated to reflect these changes and will be available upon commencement of DCR, on 9 September 2024. Question and Answer sessions have also been arranged with the local registration service to ensure familiarity with the new policy. Guidance to general members of the public will also be published at the time of implementation on 9 September 2024.[2]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there are no new duties or charges placed upon business, charities, or voluntary bodies. This instrument simply enables transitional provisions to be put in place regarding how a particular tranche of deaths which took place prior to commencement of the DCR and where registration is taking place after commencement.

Impact on businesses, charities, and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because these changes only relate to death registration and the impact on individual families.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because they are transitional provisions which ensure the public are not disadvantaged by delays to registration and funerals.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through ongoing stakeholder engagement ensuring all deaths have been registered through direct contact with the LRS, i.e. ensuring there is no undue delay to death registration or funerals.

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 This instrument will not comply with the usual convention that instruments subject to the negative resolution procedure will come into force no earlier than 21 days after they have been laid in Parliament.

11.2 The transitional provisions made by this instrument, which are necessary for the full functioning of the Registration of Births and Deaths (England and Wales) (Amendment) Regulations 2024, will come into force on the same day (9 September 2024) and cannot be made under any of the powers available in relation to regulations made by the Registrar General.

[2] https://www.gov.uk/when-someone-dies

11.3 The lack of power for the Registrar General to make transitional provisions in the Registration of Births and Deaths (England and Wales) (Amendment) Regulations 2024 was only identified during the legal checking process at a late-stage relative to the date it will come into force. As soon as the issue was identified, the Home Office took immediate steps to lay this amending Order and the associated instrument for Welsh language provisions in accordance with the negative resolution procedure, ahead of them coming into force on 9 September 2024.

11.4 Without these transitional provisions inserted by this instrument, there would be a significant lack of clarity for registrars as to how to register a particular tranche of deaths, which we estimate at approximately 12,000. This would have clear potential for significant emotional and practical effects on bereaved families and loved ones, including planning funeral arrangements.

12. European Convention on Human Rights

12.1 The Minister for Migration and Citizenship has made the following statement regarding Human Rights:

"In my view the provisions of the Registration of Births and Deaths (England and Wales) (Amendment) (Transitional Provisions) Order 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").