

Title: The Cremation (England and Wales) (Amendment) Regulations 2022 IA No: MoJ020/2022 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies: Department of Health & Social Care (DHSC)	Impact Assessment (IA)			
	Date: 22 February 2022			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
	Contact for enquiries: Isabella.Watson@justice.gov.uk			
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status NQRP
£0	£0	£0	

What is the problem under consideration? Why is government action or intervention necessary?

In England and Wales, for a deceased individual to be cremated, if their death is not subject to investigation by a coroner, a medical certificate (form Cremation 4) and confirmatory medical certificate (form Cremation 5) are required, as set out in The Cremation (England and Wales) Regulations 2008. Section 19 of the Coronavirus Act 2020 temporarily suspended the requirement for a confirmatory medical certificate (form Cremation 5), and therefore, since 2020, cremations have not been accompanied by a confirmatory medical certificate. The Department of Health and Social Care (DHSC) has been developing enhanced death certification measures, including the implementation of a statutory medical examiner system. When made statutory (expected summer/autumn 2022), this new system will make forms Cremation 4 and 5 obsolete, and therefore there has always been an expectation that MoJ would amend the Cremation Regulations to remove these forms to coincide with the implementation of the statutory medical examiner system. Government intervention is therefore needed to remove the requirement to fill in form Cremation 5 when the current legislation expires.

What are the policy objectives of the action or intervention and the intended effects?

The introduction of the statutory medical examiner system will render form Cremation 5 obsolete. However, without government intervention at this point, there would be the temporary return of form Cremation 5 in the gap between the Coronavirus Act 2020 expiring and the expected introduction of statutory medical examiners (when the Cremation Regulations 2008 would have to be amended to reflect the introduction of statutory medical examiners). This would cause confusion and disruption for medical professionals, and costs to the estates of the deceased, to limited purpose.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options are considered:

- Option 0: Do Nothing – allow the return of form Cremation 5 on 25th March 2022
- Option 1: Remove the confirmatory medical certificate from the cremation certification requirements

Option 1 is the preferred option as it best achieves the policy objectives of avoiding unnecessary disruption and pressure on the medical profession. The measure is deregulatory insofar as the administrative burden of ensuring form Cremation 5 is completed falls on the funeral and crematoria sector although the associated burden is believed to be minimal.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro Yes	Small Yes	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 02.03.22

Summary: Analysis & Evidence

Policy Option 1

Description: Remove the confirmatory medical certificate from the cremation certification requirements

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Zero

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		19.6m	168.7

Description and scale of key monetised costs by 'main affected groups'

Medical practitioners will lose total fee income of £19.6m per annum using 2019 death volumes adjusted for the proportion of cremations for deaths not referred to the Coroner.

However, this is not a straightforward loss given that the activity currently being regulated by the Cremation Regulations 2008 will be replaced by activities regulated by legislation being introduced by DHSC. These activities will be appropriately remunerated through DHSC funding decisions.

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		19.6m	168.7

Description and scale of key monetised benefits by 'main affected groups'

The estates of deceased individuals would benefit by a total of £19.6m per annum using 2019 death volumes adjusted for the proportion of cremations not referred to the coroner.

Other key non-monetised benefits by 'main affected groups'

Medical practitioners will benefit from not incurring the costs associated with completing form Cremation 5. We have not been able to obtain reliable estimates of these costs but it should be noted that if the Cremation Regulations 2008 are not amended, when DHSC implement their statutory medical examiner scheme, then medical practitioners, in effect, will be regulated twice; there will be a requirement to adhere to the new medical examiner scheme requirements and still complete form Cremation 5.

Key assumptions/sensitivities/risks	Discount rate
<ul style="list-style-type: none"> - The annual volume of deaths in 2019 is used as this is the last year where the number of deaths is unaffected by the COVID-19 pandemic. To the extent that deaths vary from this number, the above impacts will change. - It is assumed that medical professionals are able to find activities of equal or next best economic value to offset the fee income lost as a result of the abolition of form Cremation 5. - As the form Cremation 5 will become obsolete under the new statutory medical examiner system, we assume that any future payments made are simply transfers between the estates of the deceased and medical practitioners. 	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: £0
Costs: £0	Benefits: £0	Net: £0	

Evidence Base

A. Background

1. In England and Wales, for a deceased individual to be cremated, and if their death has not been subject to investigation by a coroner, a medical certificate (form Cremation 4) and confirmatory medical certificate (form Cremation 5) are required. Form Cremation 5 is completed by a medical practitioner independent of the practitioner completing the primary medical certification, to provide additional assurance. A medical referee then inspects these forms at the crematoria, and if satisfied, authorises the cremation.
2. Both of these forms require a fee, levied on the bereaved, payable to the completing doctor. For NHS employees this fee income is outside of their contractual salary. In 2018 this fee was £82 (agreed by the British Medical Association with the National Association of Funeral Directors, the National Society of Allied and Independent Funeral Directors, and Co-operative funeral care though doctors working with funeral directors outside of these organisations are free to negotiate their own fee) and remains unchanged.
3. The Coronavirus Act 2020 provided emergency measures to facilitate management of the pandemic response and expires on 24th March 2022. Section 19 removed the requirement in the Cremation (England and Wales) Regulations 2008 for provision of a confirmatory medical certificate. This has contributed to Covid-19 management, and to national recovery, by reducing demand on the medical profession and increasing their capacity to focus on management of frontline duties and significant additional pressures arising from the pandemic. It has also supported timely cremations during periods of excess deaths, thereby reducing pressure on mortuary capacity and on the death management process.
4. The Department of Health and Social Care (DHSC) has been developing enhanced death certification measures, including the implementation of a statutory medical examiner system. This system has been rolled out on a non-statutory basis in parallel with the Coronavirus Act 2020 and, when made statutory, this system will render forms Cremation 4 and 5 obsolete.
5. As the statutory medical examiner system is expected to be implemented in 2022, the reintroduction of the requirement to complete form Cremation 5 from 25 March 2022 would only be for a short period and would serve no clear purpose.
6. Future changes to the Cremation Regulations will be required to remove form Cremation 4 when the statutory medical examiner scheme is introduced.

B. Policy Rationale and Objectives

6. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
7. The primary rationale in this case is efficiency: to minimise disruption to the medical and funeral sectors from the temporary return of the requirement to complete form Cremation 5. While the deregulation of cremation documentation associated with the removal of form

Cremation 5 will result in a loss of fee income to completing medical practitioners, it will also remove the work required to complete the form and any associated costs thereof.

8. Without intervention there would be the temporary return of form Cremation 5 in the gap between the Coronavirus Act 2020 expiring and the expected introduction of statutory medical examiners. Therefore, the associated policy objective is to avoid the confusion and disruption that this short-term reversion would cause to medical professionals and the families of the deceased. It should be noted that, during the current suspension of form Cremation 5, no concerns have been raised by involved sectors, and the non-statutory medical examiner rollout has continued to expand to provide scrutiny to more deaths.

C. Descriptions of options considered

9. To meet these policy objectives, the following two options are considered in this IA:

- **Option 0: Do Nothing – Allow form Cremation 5 to return on 25th March 2022**
- **Option 1: Remove the confirmatory medical certificate from the cremation certification requirements**

10. Option 1 is the Government's preferred option as it best meets the policy objectives of avoiding unnecessary disruption and pressure on the medical profession.

Option 0

11. Under the Do Nothing option form Cremation 5 would return on 25th March 2022. As this return would be of a temporary nature, completing form Cremation 5 would add no value to the process meaning that its return would simply create confusion, duplication and expense for all those involved.

Option 1

12. Under this option, form Cremation 5 would not be reintroduced on 25th March 2022 through deregulation, and the sector would continue to operate as it has done since the introduction of the Coronavirus Act 2020.

D. Affected Stakeholder Groups, Organisations and Sectors

13. A list of all the main groups that would be affected is shown below:

- The estates of bereaved individuals – those on whom the cost of completing form Cremation 5 fee is levied.
- Medical practitioners – who complete these forms.
- Funeral directors, crematoria and medical referees – who collate, scrutinise and authorise cremation using these forms.

14. In addition, while form Cremation 5 is the responsibility of the Ministry of Justice, the resource impacts on the department as a result of it are minimal. Likewise, while funeral directors and the operators of crematoria would save the costs of having to ensure that form Cremation 5 had been completed and paid for before cremations can take place, the resource impacts on them from ensuring this has occurred are also thought to be minimal. As such, Option 1 is de-regulatory in nature albeit in a relatively minor way and there would be small one-off familiarisation costs associated with adjusting to the revised arrangements (but given that these arrangements have been in place since March 2020 these adjustment costs have already been incurred).

E. Cost & Benefit Analysis

15. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
16. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
17. The costs and benefits of each option are compared to option 0, the counterfactual or “do nothing” scenario, where fees are maintained at their current levels. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

Volumes

18. For the purposes of this IA, we have chosen to use the last year for which statistics are available which have not been impacted by the covid-19 pandemic.
19. Thus in 2019 there were 530,841 deaths in England and Wales. Of these deaths, 40% were reported to the coroner where form Cremation 5 does not apply while, of the 318,505 remaining deaths, 75 per cent are estimated to have resulted in a cremation. This gives a figure of 238,878 form Cremation 5 forms being required in that year.
20. As the fee for completing form Cremation 5 is £82, removing the requirement for this to be done will reduce medical practitioner fee income by approximately £19.6m per annum.
21. The above should be regarded as an illustrative calculation as there is an inevitable degree of variation in the annual number of deaths in England and Wales although this occurs within limited and relatively predictable bounds. Thus, data from the Office for National Statistics suggests the number of deaths in England and Wales between 2016 and 2019 has varied from a low figure of 525,048 in 2016 to a high figure of 541,589 in 2018.
22. The volumes will also be affected by levels of population growth and aging and changing preferences concerning cremation as a means of disposing of the bodies of the deceased. In terms of the latter, there appears to be a long-term trend towards the use of cremation.

Net Present Value

23. It should also be noted that the removal of the need to complete form 5 Cremation is part of a wider process of reform in this area led by DHSC. As this wider reform will make the need to complete form 5 Cremation redundant, any fees associated with it would be over and above those needed for the new procedures to be effective and could therefore be seen as a transfer between the estates of deceased individuals and medical practitioners. If so, the lost fee income under Option 1 should not form part of the Net Present Value calculation.

Costs of Option 1

Medical Practitioners

24. Under option 1, and using the above figures, medical practitioners will lose total fee income of £19.6m per annum using 2019 volumes.

Benefits of Option 1

Estates of Deceased Individuals

25. The estates of deceased individuals would benefit by a total of £19.6m per annum using 2019 death volumes.

Medical Practitioners

26. Medical practitioners will benefit from not incurring the costs associated with completing form Cremation 5. We have not been able to obtain reliable estimates of these costs but it should be noted that if the Cremation Regulations are not amended, when DHSC implement their statutory medical examiner scheme, then medical practitioners, in effect, will be regulated twice; there will be a requirement to adhere to the new medical examiner scheme requirements and still complete form Cremation 5. This is a duplication of work and effort for an already stretched profession. Amending the Cremation Regulations will simply remove a requirement that will be made obsolete by the introduction of the statutory medical examiner scheme.

Funeral Directors, Crematoria and Medical Referees

27. As this regulatory change will continue the temporary provisions of the Coronavirus Act 2020, Funeral Directors, crematoria and medical referees will not need to familiarise themselves with changing requirements. There will be a minimal benefit from reduced resources to ensure the correct forms are in place and authorised as other forms are still required, such as the medical certificate, form Cremation 4.

F. Assumptions, Risks and Sensitivity Analysis

28. There are no significant assumptions or risks associated with this IA.

29. The main risk associated with option 1 is that the volume of deaths requiring a form Cremation 5 is likely to vary from year to year. Assuming that the number of deaths where this form would be required were to rise by 10 per cent compared to the 2019 level would increase the loss to medical practitioners by around £1.9m per annum. Conversely, were the number of deaths to decline by 10 per cent per annum, the loss to medical practitioners would fall by £1.9m.

G. Wider Impacts

Better Regulation

30. This measure is a non-qualifying regulatory provision under Section 22(3) of the Small Business Enterprise and Employment Act 2015. It is not in scope of the department's Business Impact Target (BIT) but will be recorded in the Government's annual BIT report.

Public Sector Equality Duty

31. These measures apply to all cremation certification in England and Wales. As per our obligations under s149 Equality Act 2010 our overall assessment is that the policy is not likely to result in any unlawful discrimination and is unlikely to affect equality of opportunity or the fostering of good relations.
32. We do not consider that there will be a disproportionate impact on any group of people with a protected characteristic. If there were a more significant impact on any protected group, we do not consider that there would be a particular disadvantage arising from this.

Small and Micro Business Assessment

33. This is a high-impact policy. This SaMBA has indicated the scope of small and micro businesses affected by the deregulation and explained impacts. Any funeral directors, crematoria or medical referees that would qualify as a small or micro business are subject to negligible burden and so no exemption or mitigation is necessary. For those indirectly affected by the loss of form income, there are not statistics available to quantify how many medical practitioners have received income from completion of form Cremation 5, however any registered medical practitioner of at least five years is eligible. For those on NHS contracts, this fee income is separate to their public sector salary and so, in effect, each practitioner is a micro business. This also applies to private doctors, or the fee income may go towards their practice which would likely class as a small or micro business. As the regulation only produces income for these businesses, it is not appropriate to provide exemption or mitigation as the intended benefits from the deregulation would not be achieved.
34. In practice, this deregulatory measure has been in place since March 25th 2020 and so all affected individuals have already transitioned to the amended requirements. Affected doctors are able to apply to become medical examiners, who provide equivalent scrutiny in DHSC's enhanced death certification system. Medical examiners are contracted for their death certification work, and though they are not expected to be made statutory until summer/autumn 2022, recruitment on a non-statutory basis began in late 2019. Though there is a direct loss of the form income, the sector's anecdotal opposition of the return of form Cremation 5 suggests indirect benefits from reallocating their time to activities of similar or greater economic value. The activity currently being regulated by the Cremation Regulations 2008 will be replaced by activities regulated by legislation being introduced by DHSC. These activities will be appropriately remunerated through DHSC funding decisions.
35. Whilst there is uncertainty on the volume of affected small and micro businesses, the impact assessment provides an appropriate and proportionate estimate of the costs and wider impacts of the policy.

Additional considerations

36. The Humans Rights Act, Data Protection Act, Freedom of Information Act, market competition, trade, environment, rural issues, family, health and safety, consumer focus, regional perspectives, design quality, and sustainable development have been considered and found no impact.

H. Monitoring & Evaluation

37. There are no plans to monitor the impact of option 1. The new system of medical examiners will be monitored by DHSC as part of the wider reforms of which this measure forms a part.