

EXPLANATORY MEMORANDUM TO
THE CREMATION (AMENDMENT) REGULATIONS 2006

2006 No. 92

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before the House of Commons by Command of Her Majesty.

2. **Description**

2.1 This instrument seeks to amend the existing Cremation Regulations to: make lawful the incineration of human body parts, to extend the definition of body parts to include material other than that taken during a post-mortem examination, to give coroners the power to issue cremation forms in respect of all persons whose death occurs outside the British Islands, to make changes to the provisions for still-born children, to make consequential changes to take account of the Civil Partnership Act, to remove obsolete references to the Births and Deaths Registration Act 1926, and to require medical referees at crematoria to give reasons for declining to authorise a cremation.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 Under section 7 of the Coroners Act 1902, the Secretary of State has powers, subject to negative resolution procedure, to make regulations for the prescribing of the conditions in which the burning of human remains may take place. Regulations were made in 1930 (SI 1930 No 1016) and amended in 1952 (SI 1952 No 1568), 1965 (SI 1965 No 1146), 1979 (SI 1979 No 1138), 1985 (SI 1985 No 153) and 2000 (SI 2000 No 58). The Regulations deal with such matters as the duties of the medical referee at the crematorium, the disposal of cremated remains, the statutory wording of the forms required to be completed by the applicant, the medical practitioners involved, and the involvement of the coroner. The amendments are as follows:

4.2 They permit the incineration of human remains as body parts taken during post-mortem examination or examination following a stillbirth, or when the body has been disrupted during a violent occurrence, as an alternative to cremation. Incineration of human remains has been carried out for many decades but it has only recently become clear that it is unlawful in the absence of regulatory authority. New definitions are required for “body parts”, “incinerated”, “List of Wastes Regulations” and “permit”. Incineration of human remains is

controlled by schedule 1 to the Pollution, Prevention and Control (England and Wales) Regulations 2000, List of Wastes (England) Regulations 2000 and the List of Wastes (Wales) Regulations. (regulations 3(a) to (c), 8, 9 and 14).

4.3 They update references to the Births and Deaths Registration Act 1953 by removing references to the Births and Deaths Registration Act 1926 (regulations 3(d), 4, 6(2) and 10 (b) and (c)).

4.4 They provide that in cases where the death occurred abroad the local coroner will issue a cremation form E, dispensing with the need for families to obtain an authority from the Secretary of State. (regulations 5, 7 and 15).

4.5 They provide that medical referees at crematoria must give reasons for any refusal to authorise cremation. (regulation 6(3)).

4.6 They provide that the cremation of stillbirths may now be authorised by medical referees on the basis of certification by a registered midwife or equivalent if the stillbirth occurred outside England and Wales. (regulations 10 and 11).

4.7 They make a number of amendments to the statutory cremation forms in consequence of the Civil Partnership Act which came into force on 5 December 2005. (regulations 12, 13 and 16.).

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Home Office was responsible for cremation law and policy until the transfer of these responsibilities to the Department for Constitutional Affairs on 1 June 2005. From time to time it is necessary to consider issuing fresh regulations made under section 7 of the Cremation Act 1902. Since the last amendment regulations were issued in 2000 the need for updating has been made apparent in a number of areas.

7.2 In particular, recent revised legal advice has been to the effect that the burning of human remains by incineration needs to be brought within the Cremation Regulations. The disposal of human tissue as clinical waste by incineration is normal practice. It will remain open to families to arrange for cremation of body parts if they so wish, instead of incineration.

7.3 The 2000 amendment regulations overlooked the disposal of stillbirth body parts and the new regulations make provision for incineration or cremation of such parts.

7.4 The need to obtain authority from the Secretary of State in cases where the death occurred outside the British Islands and the body is to be cremated in England and Wales dates from a time when ministers signed each case personally. With the growth of mass insured travel increasing numbers of bodies were returned to England and authorisation was delegated to officials. The need to obtain authority from a distant source was, however, seen as unnecessarily bureaucratic and time-consuming. Our policy has therefore been to transfer the responsibility to a local body. Initially the Government Offices for the Regions were considered as this would not need legislation but, this additional task was unwelcome. Our attention has thus turned to local coroners who already deal with such cases when there is a need to order a post-mortem examination or to hold an inquest. Senior coroners have been consulted and agree with the proposed change of policy. Coroners will issue a Certificate E, duly amended, in all cases where the death occurred outside the British Islands.

7.5 The Civil Partnership Act requires the updating of references to the next of kin in the statutory forms to take account of the status of civil partners.

7.6 The remaining changes update references to registration legislation and require the medical referee to give reasons for refusal to authorise cremation.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Brian Patterson at the Department for Constitutional Affairs can answer any queries regarding the instrument (Tel: 020 7340 6675; e-mail: brian.patterson@dca.gsi.gov.uk).