

**EXPLANATORY MEMORANDUM TO**  
**THE CREMATION (ENGLAND AND WALES) (AMENDMENT) REGULATIONS**  
**2016**

**2016 No. 883**

**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 Cremation (England and Wales) (Amendment) Regulations 2016 amend the Cremation (England and Wales) Regulations 2008 (the “2008 Regulations”) by providing a statutory definition of ashes and by removing the requirement for cremation authorities to keep paper copies of documents relating to cremations for two years where the documents are also kept electronically.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Section 7 of the Cremation Act 1902 (the “1902 Act”) allows the Secretary of State to make regulations as to burning of human remains, directing the disposition or interment of the ashes, the maintenance and inspection of crematoria and the content of any notices or applications which must be made before a cremation is allowed to take place.
- 4.2 The 2008 Regulations, made under section 7, make provision for the cremation of human remains and for the disposal of the ashes. They require that, after a cremation, the ashes are given to the person who applied for the cremation to take place (or their nominee). Failing that, the ashes are retained by the cremation authority and must be decently disposed of. The term “ashes” is not defined in the 2008 Regulations. For the reasons explained in the ‘Policy’ section of this document, this Instrument inserts a provision into Regulation 2(1) of the 2008 Regulations to clarify what is meant by “ashes”, i.e. that the ashes are everything that is left in the cremator after a cremation (but after the removal of any metal).
- 4.3 The 2008 Regulations require cremation authorities to retain documents relating to cremations for 15 years. This Instrument revokes Regulation 34(2) of the 2008 Regulations, which provides that where a cremation authority makes an electronic

copy of documents relating to cremation, it must also keep a copy of the original document for two years.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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**

### *What is being done and why*

- 7.1 These regulations are part of a series of measures being implemented to provide clarity and improve cremation practice following two independent reports into infant cremation practices in England and Scotland.
- 7.2 In June 2014, Lord Bonyon's Infant Cremation Commission (ICC) reported on historic failings that had occurred at some crematoria in Scotland. It found that in some Scottish cases parents had been incorrectly told that there had been, or would be, no ashes from their babies' cremations. The report made 64 recommendations to the Scottish Government to improve infant cremation practice.
- 7.3 In June 2015 David Jenkins published his report into infant cremations at Emstrey crematorium in Shropshire between 1996 and 2012. The report established that during this period, Emstrey Crematorium failed to obtain ashes to return to parents following infant cremations. It made 12 recommendations to improve infant cremation practice, seven of which were for the government in Westminster. One of the recommendations was that the government consider the recommendations made by the ICC report.
- 7.4 On 8 July 2015, during a debate on infant cremations in England and Wales, the then Justice Minister Caroline Dinenage MP confirmed the government's commitment to improve infant cremation practice and to consult on improvements to the 2008 Regulations and cremation practice, following consideration of the recommendations of the ICC and Emstrey reports.
- 7.5 The consultation began on 16 December 2015. It included consideration of the Emstrey and ICC recommendations for a new statutory definition of ashes, and ICC recommendations on record keeping by cremation authorities. More details on consultation responses are in the 'Consultation outcome' section of this document. The consultation ended on 9 March 2016.
- 7.6 Following analysis of the consultation responses, our view is that having a clear statutory definition of ashes will create consistent good practice by cremation authorities across England and Wales. Defining 'ashes' as anything (other than metal) left in the cremator following a cremation will provide clarity that cremation authorities should deal with all that is in the cremator in accordance with cremation applicants' wishes. The statutory definition will apply to all regulated cremations, not just infant cremations.

- 7.7 Removing the requirement to keep paper copies of documents relating to cremation in addition to electronic copies will remove the burden of paper storage on cremation authorities which keep documents electronically.

### *Consolidation*

- 7.8 These regulations are not being consolidated.

## **8. Consultation outcome**

- 8.1 As noted above, the consultation ran from 16 December 2015 to 9 March 2016. The consultation document sought views on a number of proposals for amendments to the 2008 Regulations, as well as proposals to improve cremation practice more generally. It was published online as well as being sent to stakeholders in the cremation and funeral industries, local authorities, healthcare professions, voluntary organisations and parents affected by the loss of their babies' ashes who had contacted the Department.
- 8.2 A total of 84 responses were received, from a range of organisations and individuals including local authorities, cremation authorities, bereaved parents, hospitals, voluntary organisations, faith groups and cremation and funeral industry representative organisations. All those who responded were supportive of the aims of the consultation.
- 8.3 Almost all of those who responded to the consultation supported the proposed statutory definition of ashes. Most felt that it would provide clarity for cremation authorities when recovering ashes. It would also address the problem that some bereaved parents had experienced whereby they were told that no ashes from their baby would be recovered from the cremation, only ashes from the coffin or personal items, and they would not receive those ashes. In many cases parents found out many years later that ashes from their babies had been recovered and disposed of without their knowledge, which caused them great distress.
- 8.4 Those who responded to consultation questions about record keeping suggested that electronic storage was widespread and efficient. There was some variation regarding the amount of time that respondents felt that documents should be stored, and it is for this reason that this Statutory Instrument does not change the current regulatory requirement for documents to be retained (whether electronically or in hard copy) for 15 years.

## **9. Guidance**

- 9.1 Guidance for those completing statutory cremation forms is available online. In addition, we have set up a national cremation working group of experts, which we will ask to consider the content of a national code of practice for infant cremation, as well as the need for guidance in other specific areas regarding infant cremations.
- 9.2 Stakeholders are aware from our consultation response document and accompanying impact assessment that the regulatory changes in this Statutory Instrument will be made. We will notify them of the laying of this Statutory Instrument, which will be at least 21 days before it comes into force.

## **10. Impact**

- 10.1 The impact of these changes on business, charities or voluntary bodies is expected to be minimal. The introduction of a statutory definition of ashes is expected to lead to an estimated one-off cost of training to cremation authority businesses, in total across all businesses, of £35,500. If, as the impact assessment assumes, cremation authorities passed this cost on to individuals the estimated cost would be £0.09 per cremation for one year, after which there would be no additional costs to individuals seeking cremation, or cremation authorities. The changes to requirements surrounding record keeping are not expected to lead to any costs for cremation authorities, which already store records either electronically or physically. It is anticipated that some cremation authorities may benefit from the removal of the requirement to store physical records as well as electronic ones.
- 10.2 The impact on the public sector is expected to be minimal.
- 10.3 An impact assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 This legislation applies to activities that are undertaken by small businesses.
- 11.2 The affected small businesses are cremation authorities. It is not clear how many cremation authorities are small or micro businesses, but it is likely that a number of them are (i.e. employ fewer than 50 people).
- 11.3 The aim of the legislation is to standardise the approach to the treatment of ashes, and make record keeping more efficient. As such no full, partial or temporary exemption can be provided for small and micro businesses as that would undermine the benefits of the regulations and would not tackle the inconsistent approach which caused confusion and distress for bereaved parents. No specific action is proposed to minimise regulatory burdens on small businesses due to the very small costs, as set out in the 'Impact' section above.
- 11.4 We consulted small businesses and their industry representative organisations as part of our consultation and they did not report concerns about new burdens, being supportive of our proposed approach.

## **12. Monitoring & review**

- 12.1 The changes set out in this instrument aim to bring about greater consistency of practice among cremation authorities in England and Wales, and to ensure that ashes are recovered in the majority of infant (and other) cremations, and dealt with in accordance with applicants' wishes.
- 12.2 As explained in the 'Impact' section of this document, it is expected that the cost impact of these provisions will be minimal, extending to a small one off cost to cremation authorities, and thereafter no additional costs. It is understood that many cremation authorities already conform to the proposed provisions in this Instrument, following publication of the ICC and Emstrey reports. As such, for many cremation authorities this Instrument will simply codify current practice.
- 12.3 In addition, the cost associated with carrying out a review of these provisions is likely to be greater than any potential benefit. Almost all those who responded to the consultation, including cremation authorities, agreed that the changes would be

beneficial, and reported no major concerns about the future impact of the proposed changes.

- 12.4 As a result, a review provision has not been included in this Instrument, as it is considered that to include such a provision would be disproportionate.

**13. Contact**

- 13.1 Elizabeth Knapp, with the Coroners, Burials, Cremations and Inquiries Policy Team at the Ministry of Justice, Telephone: 020 3334 6399 or email [Elizabeth.Kanpp@Justice.gsi.gov.uk](mailto:Elizabeth.Kanpp@Justice.gsi.gov.uk) can answer any queries regarding the instrument.