



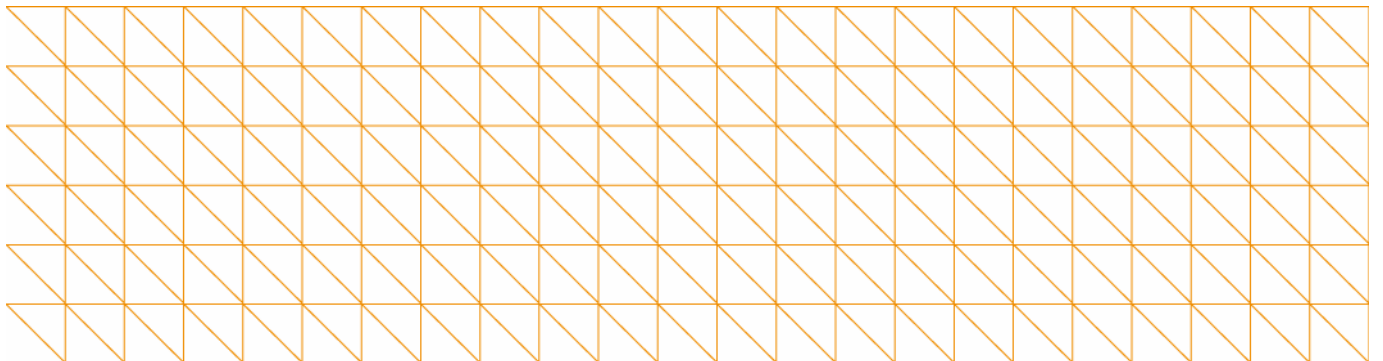
Ministry of  
**JUSTICE**

# **Cremation Regulations: Modernisation and Consolidation**

**Response to Consultation**

CP(R) 11/07

21 May 2008







Ministry of  
**JUSTICE**

## **Cremation Regulations: Modernisation and Consolidation**

**Response to consultation carried out by the Ministry of Justice.**

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## Introduction

This Report is the Government's response to the issues raised by the consultation paper, *Cremation Regulations: Modernisation and Consolidation*.

It includes:

- the background to the paper
- a summary of the responses to the paper
- responses to the specific questions raised in the paper
- a summary of other responses to the Regulations and Forms
- the next steps following this consultation.

Further copies of this Report and the consultation paper can be obtained by contacting **Brian Patterson** at the address below:

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**5<sup>th</sup> Floor, Steel House**  
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This report is also available on the Ministry's website: [www.justice.gov.uk](http://www.justice.gov.uk).

Alternative format versions of this publication can be requested from [brian.patterson@justice.gsi.gov.uk](mailto:brian.patterson@justice.gsi.gov.uk)

## Background

The consultation paper Cremation Regulations: Modernisation and Consolidation was published on 16 July 2007.

The draft Regulations modernise and consolidate the existing Regulations. These date from 1930 and have been amended on a number of occasions, but they are widely seen as old-fashioned and confusing.

As well as modernising the Regulations, two new policy changes were proposed.

- Firstly, it was proposed that bereaved families would have a right to inspect the medical forms before cremation. This will allow them to discuss any concerns they may have about the death with the medical referee. This was seen as a necessary reform following the conviction of Harold Shipman for the murder of a number of his patients and the confirmation, following a public inquiry, that he had killed very many more. Those relatives with concerns about the death of a loved one would be able to see the forms completed by the treating doctor, so that any concerns might be resolved. Many of the families of Shipman's victims have said that if they had seen what information Shipman had put on the forms they would have raised their concerns with the authorities.
- Secondly, the regulation on the handling of contagious disease cases would be replaced by a simpler procedure, to be brought in as and when required. The details of this remain under discussion with colleagues in other government departments.

There were also a number of more minor changes to the Regulations, for example, the countersignature to the application form has been removed.

The accompanying forms would also be replaced.

The consultation period closed on 22 October 2007 and this Report summarises the responses. In the longer term, the Cremation Regulations will be replaced by new death certification arrangements from the Department of Health, with the results of their parallel consultation being published today. Also published today, as part of the coroner reform programme and with a strong link to both of these matters, are our proposals for the specific types of deaths which should be statutorily referred to coroners by medical professionals. For the long term, the introduction of Medical Examiners will lead to a much enhanced system, under which the cause of death will be examined in greater detail. For those cases not already referred to the coroner, the Medical Examiner will have the power to examine the medical notes of the deceased and to make any other enquiries he or she thinks fit. Cases of doubt will be referred to the coroner for further consideration.

These changes to the Cremation Regulations, which we expect to implement before the end of 2008, are a positive step towards the new, unified death certification system coming into effect within the next few years.

A list of respondents is at **Annex A**.

## Summary of responses

1. A total of 73 responses to the consultation paper were received. Of these, 13 came from organisations representing medical and non-medical stakeholders, 40 from medical referees (including several joint responses), 10 from cremation authorities and 10 others. Once the responses were analysed and the main themes were identified, we arranged a meeting with a representative body of stakeholders to discuss these themes in more detail. This meeting duly took place on 14 January 2008 and the issues raised have been included in this summary.
2. In analysing the responses, we specifically looked at views on the main aims of the policy changes proposed and their practical application, views on the drafting of the Regulations and the forms, and concerns about the resource implications of the changes.
3. Overall, the responses to the consultation supported the main aims of the proposed changes. Some concerns have been expressed about the practical application of these changes. For example, some respondents felt that the right of inspection offered to families will be difficult for cremation authorities and others to fulfil without some delay to funerals. Some respondents questioned the Government's view that this right would only be exercised infrequently, by those families who have a genuine concern about the cause of death. However, many suggested ways in which such concerns could be mitigated, in particular by guidance to families, funeral directors and cremation authorities.
4. A number of respondents did not consider the changes to be resource-neutral, or felt there was likely to be an adverse effect on the timing of funerals. We take the view that delays to funerals should only affect the cases where inspection is sought, and in those cases the family should fully appreciate the reasons for delay. We note these concerns and believe they can be addressed by issuing guidance to those stakeholder organisations involved in the process. Almost all cases where the cause of death is doubtful should already have been referred to the coroner under the current system. There is no reason to suppose that many other cases are problematic.

5. Many respondents were aware that the Department of Health had issued its own consultation document entitled “Improving the Process of Death Certification”. This envisages the replacement of the present Regulations by a single system of death certification for both cremations and burials. This would require primary legislation and is therefore subject to the Parliamentary timetable for introducing new legislation. The current proposals for new Cremation Regulations should be seen as a short to medium term solution.
6. The Government’s response to the main issues raised in the consultation process is set out in more detail below. We are very grateful for all the comments and suggestions received from respondents.

## Responses to specific questions

### **Question 1 – Do you consider that giving families the right to see the forms prior to authorisation by the medical referee is practicable and useful?**

The overwhelming majority of respondents agreed in principle with the proposal to give families the right to view the cremation forms prior to the medical referee authorising the cremation. Although only one member of the public responded, she was very strongly in favour of the right of inspection because of a personal experience. Nearly all respondents considered that the proposal was useful and most considered that it was practicable. There was, however, concern from some about the risk of delay to the funeral. Some also doubted whether families would exercise their right to inspect the forms, perhaps due to diffidence about delaying the cremation or any perceived additional costs.

It was noted that if the numbers of people asking to inspect the forms remained low (i.e. at around the 2% figure estimated in the consultation paper's Partial Regulatory Impact Assessment), then crematoria should be able to cope with the extra workload. However, this estimate was not generally accepted by respondents.

Some thought that having to attend in person, physically to inspect forms, would act as a disincentive to exercising the right, particularly if the person wishing to inspect lived at some distance to the crematorium. Allowing an opportunity to access the forms via fax, email, or online via secure login was suggested as a solution to this concern.

Several respondents queried whether the deceased retained their right to privacy even in death. The deceased may, for example, have died of a medical condition (e.g. alcoholic liver disease, or AIDS), which they had not wished their family to know about.

There were also concerns that this right of inspection might be overtaken by the Department of Health proposals for a medical examiner system.

### **Government response**

***The Government's view is that those families with genuine concerns about the cause of death will not be deterred from exercising the right to view the forms. In most cases where there were concerns about a death it would have been referred to the coroner already for further investigation. As a result, it is our view that there are likely to be relatively few families exercising the right and therefore delays to funerals will be minimal and there will not be an unreasonable burden on crematoria. We have taken into account the concerns expressed by respondents and we believe that clear guidance for the bereaved and the service providers will ensure that this change can be implemented with***

***minimal disruption. We believe these changes will provide a better service to bereaved people.***

**Question 2 – Are there any amendments that might make the proposed process referred to in Question 1 more effective?**

Respondents made a range of suggestions to help improve the process referred to in question 1, including:

- Piloting within a restricted area, say one crematorium
- Warning the applicant of the risk to funeral arrangements, perhaps by the appropriate wording on the form – this would be likely to discourage the idle curious, but not those with genuine concerns
- Having statutory time limits of various kinds, so that the funeral could not be delayed indefinitely because the family member concerned was reluctant to make a final decision
- Amending contact arrangements so that the medical referee handled the entire process, or contact could be “remote” via fax/telephone or email
- Offering the right of inspection to more than one person so that delays are less likely
- Requiring fuller details of medical signatories, e.g. GMC number, choice of contact points (home and work telephone numbers, pager, email) – and excluding doctors from signing form if thereafter not contactable through summer vacation etc. In order to comply with Data Protection legislation this information should be given to the medical referee only
- Having additional forms to confirm the completion of the inspection process
- Making it mandatory for the doctor completing the medical certificate of the cause of death to consult the family before doing so – in other words, the earlier the family’s concerns are dealt with, the better, so that any concerns be passed on to the coroner for investigation
- Ensuring that whoever consults the family has adequate bereavement awareness and communication skills training. Bereavement management agencies will need to retrain their volunteers and staff at some cost.

***Government response***

***We have discussed a number of these points with key stakeholders and will be considering the suggestions as we work on plans for implementation. We acknowledge that it is essential that detailed guidance is promulgated to those involved in the process.***

**Question 3 – Bearing in mind that the regulation dealing with pandemics (Regulation 13) will only be brought into effect as and when required, does it seem a practical way forward?**

The majority of respondents agreed that Regulation 13 was practical, although detailed preparatory work in advance of implementation was necessary. It was thought that its scope should not be limited to pandemic flu, but should also encompass widespread chemical or radiological contamination.

Some respondents felt that the wording of the Regulations may not in itself be sufficient to cope with the potential scale of deaths during a pandemic unless additional resources were funded by central Government, and further emergency powers legislation were enacted.

**Government response**

***The Government is committed to taking forward work on the detail of this proposal as part of its planning on pandemic flu preparation and accepts the need to cover the full range of potentially serious outbreaks causing widespread fatalities. Detailed work is being taken forward with other government departments and stakeholders.***

**Question 4 – Are the definitions used within Regulation 2 of the draft regulations sufficiently clear?**

Although most consultees advised that they thought the definitions were clear, a number of new definitions (or amendments to existing definitions) were suggested:

- Applicant for cremation
- Ashes or cremated remains
- Body parts
- Civil partner
- Cremation: add at the end of the current definition: "in a crematorium licensed by the Secretary of State"
- Crematorium: add "as defined in Cremation Act 1902"
- Implant
- Inquest
- Interpretation Act
- Medical referee and deputy medical referee
- Minimum age (of applicant)
- Mode of death

- Near relative
- Registrar
- Remains (as in human remains)
- Second opinion
- Work colleague.

***Government response***

***The Regulations and Forms are being amended to take these suggestions into account.***

**Question 5 – Is it right that the power to appoint a medical referee is transferred to the cremation authority, with the Secretary of State giving consent to the appointment?**

Most respondents were uncomfortable with the idea of cremation authorities having the power to appoint medical referees, and preferred this power to remain with the Secretary of State. Medical referees in particular thought it was essential that they retained their independence.

***Government response***

***Given the strength of response to this question, we consider that the essential independence of medical referees should continue to be protected by the Secretary of State appointing nominated medical referees.***

**Question 6 – Is it right that the Secretary of State should have a power to remove a medical referee from post for the reasons as stated?**

Those who thought that the Secretary of State should have the power to remove a medical referee from post were in the majority. However, a minority considered that it was logical for the powers to appoint and remove medical referees to reside with the same authority, whichever that may be.

***Government response***

***Given we are going to retain the Secretary of State’s power of appointment; it makes sense for the power of revocation to be exercised similarly. We accept that the cremation authority should always be consulted before that power is exercised. The medical referee will have a right to make representations to the Secretary of State, as well as being able to seek a judicial review of any removal decision.***

**Question 7 – Should there be an explicit power to issue guidance to anyone other than medical referees?**

In addition to guidance to medical referees, it was suggested that the Secretary of State should be able to issue guidance to:

- Cremation authorities and Cremation Registrars on any matter relating to the operation of, and compliance with, the Cremations Act or Regulations.
- Medical practitioners
- Funeral directors
- Applicants for cremation.

There were concerns about how guidance should be promulgated. It was also suggested that guidance should be sent out to all medical referees directly, rather than merely being placed on a website. “Cascading” did not always work as intended.

***Government response***

***We intend to issue guidance to all those on the list above. We will also be consulting stakeholders, where relevant, on the detailed content of the guidance, as well as its distribution.***

**Question 8 – Do you have concerns about the wording of Regulations 10, 11, 12, 18 and 19?**

Very few consultees expressed concerns, but it was suggested that Regulation 11 should have a fourth paragraph, stating that funeral directors and staff are not permitted to countersign applications.

Some respondents considered it inappropriate for the medical referee to have the power to order a post-mortem. It was noted that if s/he has concerns about the death and/or the stated cause of death, these concerns should be referred to the coroner for investigation.

***Government response***

***We will take views received fully into account and consider if amendments need to be made.***

**Question 9 – Does the exclusion of work colleagues being able to sign the confirmatory medical form cause any practical problems which might prevent doctors from performing the functions required of them?**

Respondents considered that the term “work colleague” was not explicit enough, as it is difficult to define in a hospital situation, and suggested that a definition should be included in Regulation 2 to clarify this. It was recommended that the definition of “work colleague” be limited to “partner, practice colleague, or member of the same clinical team within a hospital”. There could also be complications with locum doctors working in multiple different practices.

It was noted that irrespective of the tightening up of the definition, the proposal may cause problems in remote and rural areas where there is a small and diminishing supply of doctors.

***Government response***

***We accept that it is important to define “work colleague” in a realistic way. The most important factor is that the countersigning doctor should have not been involved with the care of the deceased at any time.***

**Question 10 – Is draft Regulation 16 relating to the cremation of exhumed bodies adequate for all such cases?**

The majority of respondents agreed that Regulation 16 would be adequate.

***Government response***

***We note this view.***

**Question 11 – Do you consider that funeral directors should no longer be allowed to counter-sign the application form?**

There was a mixed response to this proposal, although the great majority of respondents agreed that the funeral directors should not be allowed to counter-sign the application form.

Funeral director respondents opposed the change, arguing that delays to the funeral would occur. They also made the point that the proposal assumes that there is someone else available and willing to counter-sign. If not, the requirement could cause elderly applicants additional distress at a time when they are already vulnerable. Several respondents suggested an alternative measure, whereby the applicant is instead required to show the funeral director satisfactory proof of identity, in the form of a driver's licence or passport.

Other respondents queried the robustness of requiring a counter-signature on the application form at all.

**Government response**

***As a result of the responses received and following detailed discussion with relevant stakeholders at a subsequent meeting, we agree that a countersignature is unnecessary, provided all signatories of the forms are made aware that it is an offence under section 8 of the Cremation Act 1902 to make a wilfully false statement on a form in order to procure the burning of human remains. All the forms will be amended accordingly.***

**Question 12 – Do you consider that the order of the draft regulations is logical and easy to follow?**

Most respondents to this question considered that the Regulations were logical and easy to follow. Some suggested reversing the position of Regulations 3 and 4.

It was also suggested that Part 3, “The Medical Referee”, should be placed between the currently proposed Regulation 17 (Right to inspect the certificates) and Regulation 18 (Authorisation by Medical Referee). This would mean that all regulations relating to the appointment and duties of a medical referee were together in one part of the regulations.

**Government response**

***We note the views of consultees.***

**Question 13 – Should any other words used in the regulations be defined and if so how?**

Suggestions have been incorporated in the summary for Question 2.

## Further issues raised by consultees

A large number of respondents made suggestions about the drafting of the Regulations and forms, which are being fully taken into account. Comments were also received about whether the medical referee should continue to deal with cases he has personally been involved with; whether the power of the medical referee to report to the Secretary of State was *ultra vires*; the power of the medical referee to order a post mortem examination; the disposal of ashes, the computerising of records; record keeping in respect of body part cremations; powers of inspection by officials; access to records; right of inspection of medical forms in relation to body parts cremations; arrangements between doctors when discussing cases; the format of the cause of death sequence; coroner involvement in cases; requirements for the confirmatory medical certificate; and dealing with implants in bodies dealt with by the coroner. **We have carefully considered all the points raised.**

### Partial Regulatory Impact Assessment

In response to the Partial Regulatory Impact Assessment, a number of respondents thought that the Government's estimate for the number of people who will wish to inspect the certificates was unrealistic. In addition to those with genuine concerns, it was considered that there will be quite a number of the 'idle curious' and those who will just want to 'exercise their rights'. However, we do not anticipate there will be large numbers of applicants willing to proceed on that basis. Instead, we expect the likely delay in the date of the funeral, as well as the need to make a special appointment to discuss the content of the forms with the medical referee, to limit numbers very significantly. We take the view that, with very few exceptions, only those with strong and genuine concerns about the cause of death will exercise this very important right.

More of a difficulty is the time-scale of those cases which families do wish to pursue. The medical referee will not always be available to discuss the cause of death, as he or she will often be a busy GP or hospital doctor or, if retired from practice, he or she is still likely to have other commitments. The other signatories will also have other commitments or periods of unavailability. So delays may on occasion be of significant length, even if the discussion itself is swiftly concluded.

It was of some concern as to who will explain the right to families. In our view this can only be the funeral director, as it will be in his office where the application form is explained and completed. The principal funeral organisations agree with this view.

**We stand by our estimate of the numbers, but accept that it will be highly desirable to monitor closely the numbers of persons exercising the right of inspection. The guidance that we intend to issue after discussion with stakeholders is intended to reduce any delay to an absolute minimum.**

There were also concerns about the cost of printing the new forms. We do not see why this should be significantly more than the reprinting of the existing forms, if the centralised template we are proposing is used by cremation authorities. It is undesirable, and should be unnecessary, to use a local template which departs from the standard format.

## Conclusion and next steps

1. We are grateful for the helpful and informed responses we have received about the draft Regulations. Following consideration of all the points raised above and further discussions with stakeholders, we will introduce modernised Cremation Regulations that will replace the existing, obsolete set dating from 1930. In the light of the Department of Health's own proposals for fundamental changes to death certification processes, we anticipate that the new Regulations are likely to be replaced in the medium term by a new single, system for cremation and burials. Medical examiners will provide independent scrutiny of all deaths not referred to a coroner, removing the need for medical referees at crematoria with Medical Examiners investigating **all** deaths. Any such changes will, however, require primary legislation.
2. Our intention is to lay the new Cremation Regulations before Parliament as soon as possible. There would be the maximum amount of notice so that cremation authorities could prepare for the changes required. In particular, there would need to be time to allow the new forms to be printed and disseminated locally. It is also essential to develop and agree guidance to all the central stakeholders and we will begin this process as soon as possible. We will consult widely with all those stakeholders requiring guidance, cremation authority representatives, funeral director organisations, as well as medical referees who responded to the consultation document and bereavement organisations.

## Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process**, rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326 or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Gabrielle Kann**  
**Consultation Co-ordinator**  
**Ministry of Justice**  
**5th Floor, Selborne House**  
**54-60 Victoria Street**  
**London**  
**SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

## The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **Annex A – List of respondents**

### **Organisations**

Association of Private Crematoria  
Bereavement Services Managers Association  
British Medical Association  
Churches Funerals Group  
Cremation Society of Great Britain  
Cruse Bereavement Care  
Faculty of Forensic and Legal Medicine, Royal College of Physicians  
Federation of Burial and Cremation Authorities  
Institute of Cemetery and Crematorium Management  
Local Government Association  
Medical Defence Union  
National Association of Funeral Directors  
National Society of Allied and Independent Funeral Directors

### **Medical Referees**

Dr R D Aggarwal  
Dr Sylvia Awbery  
Dr D S Basavaraj  
Dr Lauren Bloch  
Dr James Briggs  
Dr Margaret Chalkley  
Dr Thomas Cooksey  
Dr Paul Cottrell  
Rev Dr W Dolman  
Dr J V Dyer  
Dr Robert Forster  
Dr Brian Gill and colleagues  
Dr I J L Goldberg  
Dr Harvey Gordon  
Dr John Gough

Dr G Griffith  
Dr R G Hardman  
Dr Clare Hawley  
Dr Patricia Henshall  
Dr Kevin Hill  
Dr Ivor Hughes  
Dr Michael Kessel/Dr Tina Grimble  
Dr Sergio Malaree  
Dr Adrian Midgley  
Dr Donald Munro  
Dr Nicholas Page  
Dr S B Patel  
Dr Gordon Pledger  
Dr Timothy Rudman  
Dr John Sarginson  
Dr Paul Severs  
Dr P W Slayen  
Dr Christopher M Stretton and colleagues  
Dr Patricia Tallantyre  
Dr Nicholas Vincent  
Dr Eric Watton  
Dr Linda G F Willis/Dr David H Williams, Dr Nigel Brown  
Dr Charles P Woodford and colleagues  
Medical Referees at Wrexham Crematorium  
Mr John Riddington Young, FRCS

**Cremation Authorities**

Bath and North East Somerset Council  
Birmingham City Council  
Chilterns Crematorium  
Hyndburn Borough Council  
Borough Council of King's Lynn and West Norfolk  
Macclesfield Borough Council  
Manchester Crematorium Ltd

Oldham Metropolitan Borough Council  
Park Gwyn, Narberth/Arberth, Pembrokeshire/Sir Penfro  
City and County of Swansea

**Others**

Anonymous

Dr N Chapman, Coroner for Nottinghamshire and City of Nottingham

Dr Fiona Cooper, Springhill Hospice, Rochdale

Chris Eastaugh, Funeral Director

Iain Johnstone, Mortuary Manager, James Paget University Hospitals NHS  
Foundation trust

Mrs J Kelly

Department for the Environment, Northern Ireland

David Smale

Lady Justice Smith and Mrs Justice Swift (jointly)



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[brian.patterson@justice.gsi.gov.uk](mailto:brian.patterson@justice.gsi.gov.uk).