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STATUTORY INSTRUMENTS

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**2008 No. 2841**

**The Cremation (England and Wales) Regulations 2008**

**PART 4**

**Conditions for cremation**

**Place where cremation may take place**

**13.** No cremation may take place except in a crematorium the opening of which has been notified to the Secretary of State.

**Forms**

**14.**—(1) Subject to regulation 37(3) and this regulation, the forms set out in Schedule 1 must be used in the cases to which they apply.

(2) In the case of an application for cremation of the remains of a deceased person—

(a) if the death of the deceased person occurred in any place outside the British Islands an application for cremation which contains all the particulars required by the application for cremation set out in Schedule 1 may be used instead of the application set out in Schedule 1; and

(b) if the death of the deceased person occurred in Scotland, Northern Ireland, the Isle of Man or the Channel Islands, an application for cremation and certificates—

(i) which contain all the particulars required by the application for cremation and, as the case may be, by the medical certificate, the confirmatory medical certificate, the certificate of coroner or the certificate following anatomical examination set out in Schedule 1; and

(ii) which are used in accordance with the law relating to cremation for the time being in force in Scotland, Northern Ireland, the Isle of Man, the Bailiwick of Jersey or the Bailiwick of Guernsey,

may be used instead of the application or certificates set out in Schedule 1.

(3) In the case of an application for cremation of body parts, if the death of the deceased person, the stillbirth or the post-mortem examination occurred in any place outside England and Wales, certificates which contain all the particulars given in the certificate or certified copy referred to in regulation 19(b) or in the certificate releasing body parts for cremation set out in Schedule 1 may be given instead of those certificates or that certified copy.

(4) In the case of an application for cremation of a stillborn child, if the stillbirth occurred outside England and Wales, a certificate which contains all the particulars given in the certificate of stillbirth set out in Schedule 1 may be given by a person entitled to practise as a medical practitioner or midwife in the place where the stillbirth occurred instead of the certificate set out in Schedule 1.

**Application for cremation**

15.—(1) Subject to paragraph (2), an application for cremation must be made to the cremation authority by—

- (a) an executor of the deceased person; or
- (b) a near relative who has attained the age of 16.

(2) An application for cremation may be made by any other person if the medical referee is satisfied—

- (a) that the person is a proper person to make the application; and
- (b) as to the reason why the application is not made by an executor or a near relative who has attained the age of 16.

(3) In this regulation, “near relative” means the widow, widower or surviving civil partner of the deceased person, or a parent or child of the deceased person, or any other relative usually residing with the deceased person, or a parent of a stillborn child.

**Cremation of the remains of a deceased person**

16.—(1) No cremation of the remains of a deceased person may take place unless—

- (a) an application for cremation is made in accordance with regulation 15;
- (b) except where regulation 18 applies,—
  - (i) a certificate is given under section 24(1), (2) or (4) of the 1953 Act (certificates as to registration of death) in relation to the death of the deceased person; or
  - (ii) a certified copy of the entry in the relevant register is issued under sections 30 to 32 of the 1953 Act in relation to the death of the deceased person;
- (c) (i) a medical certificate and, subject to regulation 17(3), a confirmatory medical certificate are given in accordance with regulation 17(1) and (2) respectively;
- (ii) where regulation 18 applies, a certificate is given by a coroner; or
- (iii) a certificate is given that the body of the deceased person has undergone an anatomical examination under the authority of a licence granted under the 2004 Act for that purpose; and
- (d) written authority is given by a medical referee in accordance with regulation 23.

(2) This regulation does not apply to the cremation of the exhumed remains of a deceased person who has already been buried for a period of one year or more.

**Medical certificate and confirmatory medical certificate**

17.—(1) A medical certificate giving the cause of death of the deceased person may be given by a registered medical practitioner.

(2) A confirmatory medical certificate giving the cause of death of the deceased person may be given by a registered medical practitioner of at least five years’ standing who is not—

- (a) a relative of the deceased person;
- (b) the medical practitioner who issued the medical certificate; or
- (c) a relative, or partner or colleague in the same practice or clinical team, of the medical practitioner who issued the medical certificate.

(3) A confirmatory medical certificate is not required where—

- (a) the death of the deceased person occurred in a hospital in which the deceased person was an in-patient; and

- (b) a medical practitioner mentioned in paragraph (2) has made or supervised a post-mortem examination of the body of the deceased person and the medical practitioner giving the medical certificate (in accordance with paragraph (1)) knows the result of that examination before giving that certificate.

(4) In this regulation, “hospital” means any institution for the reception and treatment of persons suffering from illness or mental disorder, any maternity home, and any institution for the reception and treatment of persons during convalescence.

### **Certificate of coroner**

**18.** This regulation applies if—

- (a) a post-mortem examination has been made under section 19(1) of the 1988 Act and the cause of death of the deceased person has been certified by the coroner under section 19(3) of that Act;
- (b) an inquest has been opened; or
- (c) the death of the deceased person occurred outside the British Islands and no post-mortem examination or inquest is necessary.

### **Cremation of body parts**

**19.** No cremation of body parts may take place unless—

- (a) an application for cremation is made in accordance with regulation 15;
- (b)
  - (i) a certificate is given under section 24(1), (2) or (4) of the 1953 Act (certificates as to registration of death) or under section 11(2) or (3) of the 1953 Act (certificates as to registration of stillbirth) in relation to the death of the deceased person or to the stillborn child to whom the body parts belonged; or
  - (ii) a certified copy of the entry in the relevant register is issued under sections 30 to 32 of the 1953 Act in relation to the death of the deceased person or to the stillborn child to whom the body parts belonged;
- (c)
  - (i) a certificate is given on behalf of the hospital trust or other authority holding the body parts that there is no reason for further inquiry or examination of the body parts and that they are released for cremation; or
  - (ii) evidence is produced that the body parts were removed in the course of a post-mortem examination made of the body of the deceased person; and
- (d) written authority is given by a medical referee in accordance with regulation 25.

### **Cremation of a stillborn child**

**20.—(1)** No cremation of a stillborn child may take place unless—

- (a) an application for cremation is made in accordance with regulation 15;
  - (b) a certificate is given under section 11(2) or (3) of the 1953 Act (certificates as to registration of stillbirth);
  - (c)
    - (i) a certificate is given by a registered medical practitioner or a registered midwife who has examined the body and who can certify that the child was stillborn; or
    - (ii) where paragraph (2) applies, a declaration is given by a person who is qualified to give information concerning the birth; and
  - (d) written authority is given by a medical referee in accordance with regulation 26.
- (2) This paragraph applies where the child was stillborn and either—

- (a) no registered medical practitioner or registered midwife was present at the birth or has examined the body; or
- (b) a certificate under paragraph (1)(c)(i) cannot be obtained from a registered medical practitioner or a registered midwife who was present at the birth.

### **Cremation of exhumed remains of deceased person who has already been buried for one year or more**

**21.** The cremation of the exhumed remains of a deceased person who has already been buried for a period of one year or more may take place subject to such conditions as may be imposed by—

- (a) the Secretary of State in an exhumation licence granted under section 25 of the Burial Act 1857(1); or
- (b) a faculty granted by the ordinary.

### **Right to inspect medical certificate and confirmatory medical certificate and to make representations to medical referee**

**22.—**(1) Paragraph (2) applies where the applicant for cremation of the remains of a deceased person—

- (a) (i) has informed the cremation authority to which the application for cremation was made that they would like to inspect the medical certificate and confirmatory medical certificate; or  
(ii) has nominated another person to inspect those certificates; and
- (b) has given one or more telephone numbers to the cremation authority at which the applicant, or the person nominated by the applicant, may be contacted.

(2) As soon as the cremation authority receives the medical certificate and confirmatory medical certificate it must make all reasonable efforts to notify the applicant for cremation or any person nominated by that person, by telephone on the number (or one of the numbers) provided, of the receipt of those certificates.

(3) Within 48 hours, beginning with the time at which the cremation authority notifies the person under paragraph (2), that person may—

- (a) at a time and place agreed with the cremation authority, inspect the medical certificate and confirmatory medical certificate; and
- (b) make representations to the medical referee about any matter contained in such a certificate or the inquiry made by the person who gave the certificate.

### **Authorisation of cremation of the remains of a deceased person by medical referee**

**23.—**(1) A medical referee may not authorise a cremation under regulation 16(1)(d) unless the medical referee is satisfied—

- (a) that the requirements of regulation 16(1)(a), (b) and (c) have been complied with;
- (b) that the inquiry made by a person giving a certificate under regulation 16(1)(c) has been adequate;
- (c) that the fact and cause of death of the deceased person have been definitely ascertained; and
- (d) subject to paragraph (2), in any case where notification has been given under regulation 22(2),—

- (i) at least 48 hours have passed since that notification was given; and
- (ii) where certificates have been inspected under regulation 22(3)(a), at least 24 hours have passed since the time of the inspection.

(2) Where the medical referee is satisfied that a cremation authority has made all reasonable efforts to comply with regulation 22(2) but has been unable to do so within 48 hours, beginning with the time at which the cremation authority received the medical certificate and confirmatory medical certificate, the medical referee may authorise cremation of the remains of a deceased person.

(3) If a coroner has decided to hold an inquest, a medical referee may not authorise cremation of the remains of the deceased person until the inquest has been opened.

### **Medical referee not satisfied about the cause of death of the deceased person**

24.—(1) Paragraph (2) applies if—

- (a) the medical referee is not satisfied that the fact and cause of death of the deceased person have been definitely ascertained; or
- (b) the death of the deceased person may have been violent or unnatural.

(2) The medical referee may make a post-mortem examination of the body of the deceased person or request any person to do so if—

- (a) the medical referee, or the person so requested by the medical referee, is entitled to make a post-mortem examination under the authority of a licence granted under section 16 of the 2004 Act (licence requirement) for that purpose; and
- (b) the medical referee has obtained the appropriate consent for a post-mortem examination in accordance with the provisions of that Act.

(3) If a certificate is given by the person who has made the post-mortem examination stating the cause of death to the satisfaction of the medical referee, the medical referee may authorise cremation of the remains of the deceased person.

(4) Paragraph (5) applies if—

- (a) a post-mortem examination fails to satisfy the medical referee that the fact and cause of death have been definitely ascertained; or
- (b) it appears to the medical referee that the cause of death is violent or unnatural, or there are other suspicious circumstances connected with the death of the deceased person, whether revealed in the medical certificate or confirmatory medical certificate or otherwise.

(5) The medical referee may not authorise cremation of the remains of the deceased person unless an inquest is opened and a certificate is given under regulation 16(1)(c)(ii).

### **Authorisation of cremation of body parts by medical referee**

25. A medical referee may not authorise a cremation under regulation 19(d) unless the medical referee is satisfied that the requirements of regulation 19(a), (b) and (c) have been complied with.

### **Authorisation of cremation of a stillborn child by medical referee**

26. A medical referee may not authorise a cremation under regulation 20(1)(d) unless the medical referee is satisfied—

- (a) that the requirements of regulation 20(1)(a), (b) and (c) have been complied with;
- (b) that the examination made by the person giving the certificate under regulation 20(1)(c) (i) has been adequate; and
- (c) that there is no reason for further examination.

### **Authorisation of cremation by medical referee – inquiries by medical referee**

**27.**—(1) Before authorising a cremation, a medical referee may make such inquiry as the medical referee thinks appropriate with regard to—

- (a) an application for cremation;
- (b) a certificate referred to in regulation 16(1)(c), 19(c)(i) or 20(1)(c)(i); or
- (c) a declaration given under regulation 20(1)(c)(ii).

(2) Inquiries under paragraph (1) may be made on the medical referee’s own initiative or, in relation to a certificate given in accordance with regulation 17(1) and (2), as a result of representations made under regulation 22(3)(b).

(3) If inquiries are made as a result of representations made under regulation 22(3)(b), the medical referee must inform the person who made the representations of the result of the inquiries made.

### **Refusal to authorise cremation**

**28.** A medical referee who refuses to authorise a cremation must give written reasons to the applicant.