

The Cremation (England and Wales) Regulations 2008

Amended Cremation Guidance notes and new Application Forms from 6 April 2018

On 6 April 2018 changes to the 2008 Regulations will come into force introducing new application forms which will include a confirmation of the applicant's wishes regarding the return of ashes and a warning that in some rare cases ashes may not be recovered. The amended regulations will also provide that crematoria can return ashes other than as instructed by the applicant but only in very exceptional circumstances.

We will also be providing cremation forms in the Welsh language for the first time (as well as Welsh translations of the guidance notes). Cremation forms will be able to be completed and signed electronically.

We have also corrected the reference to the Environmental Permitting (England and Wales) Regulations 2016 in the definition of 'incineration' used at regulation 29.

As a result, we will be updating our guidance notes which will be published at www.gov.uk/government/collections/cremation-forms-and-guidance on midnight 5 April 2018. In order for you to familiarise yourselves with that guidance before 6 April we have shared with you draft versions of those documents.

Q. Can we use the new forms before 6th April if the cremations are scheduled to take place after 6th April?

A. No. The old forms should be used until 6 April. If the cremation takes place after the 6 April it will still be lawful to proceed on an 'old' application form that was completed, signed and submitted before the new forms came into force. However, from 6 April crematoria should not accept an application for a cremation using the old forms even where the form was completed and signed before 6 April.

Q. Can we amend the forms? For example, to provide more information or options to applicants?

A. You should not amend the wording of these forms in any way or add marginal notes or explanations. These forms have been made and approved by Parliament and cannot be amended or changed without amendment by a statutory instrument. Medical referees are instructed to reject forms which do not follow the statutory wording.

Q. Can we insert our logo on the new forms?

A. The form must contain all the information required by the regulations for that Form however you may format the form as you choose so long as the end Form does not differ in any material respects from the regulations. We are unable to offer a legal opinion on whether forms that include a logo deviate from the statutory form in more than an 'immaterial respect'. But we are aware that some authorities have used branded forms in the past with which we have not had concerns.

Q. Can we continue to use our own instructions to ashes forms?

A. The MoJ does not provide guidance on supplementary or additional internal forms used by a cremation authority. Where these additional forms duplicate questions/answers on the statutory forms and the information/instructions provided differs between the two forms crematoria managers will want to be clear which instructions are the current ones.

“instructions for ashes” - means the instructions given on the application form completed by the applicant, or any subsequent written instructions given by the applicant to the cremation authority.

If the additional form was completed and signed after Form Cremation 1, 2 or 3 then it would likely supersede the instructions given in the application.

Q. Why is there a warning on the forms that ashes may not be recovered? Ashes should be recovered in all instances. A. These regulatory changes have been informed by the Government commitments made in response to the *Consultation on cremation following infant cremation inquiries* (www.gov.uk/government/consultations/consultation-on-cremation-following-infant-cremation-inquiries).

We proposed to amend the cremation application form to add a section stating that while every effort will be made to recover ashes, on rare occasions there may be no recoverable ashes, and providing a tick box for the applicant to confirm that they understand this statement. This change delivers on that commitment.

Q. If a cremation authority has given 14 days’ notice to an applicant that they intend to dispose of ashes and then receives further written instructions from the applicant after this has expired, are they obliged to follow these new instructions?

A. If a cremation authority is still in a position to comply with instructions after having served 14 days of notice, instructions should be followed. This situation may arise where the ashes were not disposed of between the end of the notice and the time instructions, or new instructions, are received.

Q. Can forms be signed electronically?

A. Yes. A form can use an electronic signature that complies with the meaning given for ‘electronic signature’ in section 7(2) of the Electronic Communications Act 2000 see www.legislation.gov.uk/ukpga/2000/7/section/7 Further guidance on electronic signature is available at www.gov.uk/government/publications/electronic-signatures

From 6 April all forms on our website will be fillable electronically. You will also be able to print them off and fill them out as you do now.

Q. Why have you updated the list of potentially hazardous implants? Are there implants that are no longer considered hazardous?

A. Dental mercury amalgams were removed from the list as they are no longer seen as a threat to the operators and abatement procedures for managing the potential release of mercury now standard practice.

We have added references to all pressurised, battery-powered or radioactive implants. This is to cover the wide and increasing range of such implants, owing to ongoing technological developments. Radioactive therapies are also more varied so the specific reference to

brachytherapy in prostate treatments is now too narrow making a general mention of “radioactive implants” more appropriate.

Q. Why are you introducing bi-lingual forms?

A. In February 2015, as part of the St David’s Day Agreement, the UK Government committed “to seek to ensure that forms relating to important life events and civic duties can be completed in Welsh”. The introduction, for the first time, of bi-lingual English/Welsh cremation forms is part of this continued commitment.

Q. When will bi-lingual, English/Welsh forms, be introduced?

A. It is our intention to publish the bi-lingual forms and Welsh translations of the guidance notes on 6 April.

Q. If an application is received in Welsh, must all other cremation forms associated with that application be submitted in Welsh?

A. No, where an application is submitted in Welsh there is no requirement for any of the other forms, including the medical referee’s authorisation, to be completed in Welsh.