

Title: Amending the Cremation (England and Wales) Regulations 2008 in light of the Emstrey Inquiry and Lord Bonomy's Infant Cremation Commission recommendations IA No: MoJ014/2016 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 10/06/2016			
	Stage: Validation			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: coroners@justice.gsi.gov.uk				

Summary: Intervention and Options	RPC Opinion: EANDCB Validated
--	--------------------------------------

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
£71,000	£0	£0.0	In scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Government has consulted on amending the Cremation (England and Wales) Regulation 2008 in light of the Emstrey Inquiry and Lord Bonomy's Infant Cremation Commission (ICC) recommendations. The Emstrey Inquiry and ICC were in response to cases of ashes not being recovered, or not being returned to parents, after infant cremations. In the context of the consultation 'infant cremation' refers to the cremation of live birth babies of up to one year old (after any length of gestation) and stillborn babies (of 24 weeks' gestation or more). Government intervention is required to make sure that parents' wishes regarding their babies' ashes are taken into account, and documented.

What are the policy objectives and the intended effects?

The consultation response document proposes both legislative and non-legislative action by Government in order to encourage the cremation and funeral industries to improve practices around infant cremations. The objectives of the changes are to bring greater consistency to the advice and discussion had with bereaved parents before the cremation, how the cremation itself is conducted and how the remains are handled afterwards. The intended effect is to eliminate the poor practices that led to the events investigated by the Emstrey Inquiry and ICC.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – "Do Nothing" – Do not amend the Cremation (England and Wales) Regulations.
Option 1 – Amend legislation to introduce a statutory definition of ashes, change record storage requirements and update statutory cremation forms.

Option 1 is preferred as it best meets the Government's policy objectives.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year				
Does implementation go beyond minimum EU requirements?			No	
Are any of these organisations in scope?			Micro Yes	Small Yes
			Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	
			Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Caroline Dinéage Date: 10 June 2016

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce changes to the Cremation (England and Wales) Regulation.

FULL ECONOMIC ASSESSMENT

Price Base Year 15	PV Base Year 16	Time Period Years 10	Net Benefit (Present Value (PV)) (£)		
			Low: Optional	High: Optional	Best Estimate: -£71,000

COSTS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£71,000	0	0

Description and scale of key monetised costs by 'main affected groups'

The estimated one-off cost of training to cremation authorities is £71k, £22.7k is incurred by private cremation authorities and the rest, £48.3k, is incurred by public cremation authorities. If, as assumed, cremation authorities pass this cost onto individuals the estimated cost is £0.18 per cremation.

Other key non-monetised costs by 'main affected groups'

The Ministry of Justice (MoJ) amending statutory forms may lead to some organisations incurring waste costs if they have stockpiled current forms. There may potentially be a very small additional administrative resource cost in filling out the new form although there is a question of how additional this cost will be as many organisations are likely to already record some or all of the information that the new form is asking to be recorded. MoJ will see a small administrative cost of updating the form and making it available online.

BENEFITS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

None identified.

Other key non-monetised benefits by 'main affected groups'

A statutory definition of ashes will create a nationally accepted definition of ashes which will standardise the approach to remains and eliminate any issues that caused previous poor practice. Those organisations that maintain electronic record storage in addition to the current requirement for two years' physical storage may experience a benefit from being able to dispense with the two years' physical storage requirement. There will also potentially be benefits of a standardised audit trail.

Key assumptions/sensitivities/risks

Discount rate

3.5%

A key assumption is that each crematorium needs two members of staff and every other crematorium needs one manager to undergo training to be able to optimise ashes recovery under the new statutory definition. This is likely to overestimate the amount of staff and managers that need training.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	

Introduction

1. On 1 June 2015 David Jenkins published his report into the way that infant¹ cremations were carried out at Emstrey Crematorium in Shropshire between 1996 and 2012. The report established that there had been multiple failures to obtain ashes to return to families after the cremation of an infant and detailed the processes and techniques which had resulted in there being no ashes. It made clear that with appropriate equipment and techniques infant ashes are usually recoverable.
2. Prior to the Emstrey report, Lord Bonyon in Scotland led the Infant Cremation Commission (ICC) which had been set up after concerns had emerged in Scotland where parents, whose babies/foetuses had been cremated, had in some cases incorrectly been told that there had been/would be no ashes. In June 2014 the ICC produced a report containing 64 recommendations.
3. The Emstrey report contained 12 recommendations for addressing the issues that were identified, of which seven were specifically for Government including one which was to review the 64 recommendations from the ICC. As part of reviewing these recommendations the Government decided to publically consult on proposed policy changes aimed at addressing these recommendations. This document accompanies the Government responses to the consultation.
4. The consultation, 'Consultation on cremation following recent inquiries into infant cremations', ran between 16 December 2015 and 9 March 2016. It invited comments on proposals for a number of changes to the Cremation (England and Wales) Regulations 2008, as well as proposals intended to improve practice surrounding cremation, particularly the cremation of infants, in England and Wales.
5. In terms of legislative changes the consultation document invited comments on:
 - A proposed new statutory definition of ashes;
 - Whether cremation authorities should be required to retain records for longer;
 - Whether regulations should require cremation applicants to make pre-cremation decisions on the collection or scattering of ashes, and what should be done where ashes are not collected;
 - Consultees were also asked their views on whether the cremation of foetuses of less than 24 weeks' gestation should be brought under the 2008 regulations.
6. There were 83 responses to the consultation, from a range of organisations and individuals, including local authorities, cremation authorities, bereaved parents, hospitals, voluntary organisations, funeral directors, faith groups and a number of trade associations for crematoria and funeral directors. The accompanying response document summarises the responses received and how these have influenced the decisions on which measures to take forward.

Policy Objectives

7. The Government understands that the loss of a baby presents a particularly difficult time for parents in which to make important decisions and wants parents and those that provide cremation services to have access to information and resources that will support them at this sensitive time.
8. The Government's policy objectives are therefore to ensure that all practicable measures are taken to maximise the recovery of ashes in infant cremations. It also recognises that, in a very limited number of cases where a cremation takes place, no ashes are recovered.
9. It is the Government's policy that parents should be aware of this possibility in order to inform a decision on cremation following the loss of their baby. We recognise that many cremation authorities, funeral directors and medical professionals already provide this information and it is our policy that this should occur consistently across the country.
10. In order to meet these policy objectives, the Government believes that:
 - There should be no ambiguity or confusion as to what constitutes 'ashes' following a cremation. It is the Government's policy that there should be a single, consistent definition across the country.
 - Requirements for record-keeping should be effective and proportionate.

¹ Infants include stillborn babies (of at least 24 weeks' gestation) and live birth babies who died before the age of one year.

- Statutory forms should include information on what can happen to ashes after cremation and record any decisions (if any) taken by parents on the basis of this.
11. It is our intention that, after developing proposals with a national cremation expert working group, cremation regulations should extend to include cremations of fetuses of less than 24 weeks' gestation and we plan to produce a further IA when the proposals are finalised.
 12. The reforms centre on amending the 2008 regulations and improving cremation practice to address the recommendations of the Emstrey and ICC reports. The reforms aim to bring greater consistency and standardisation to how cremations are handled by ensuring the appropriate safeguards are in place, or are introduced if needed, to prevent the same issues that lead to the Emstrey and Bonomy investigations.

Policy Proposals

13. Following analysis of the consultation responses the Government has made a number of recommendations and policy decisions to meet the policy objectives which can be found in the accompanying consultation response. This document, however, only considers those recommendations that require legislation and may impact on businesses:
 - *Definition of ashes* – The creation of a statutory definition as to what constitutes 'ashes' to help standardise the approach to the recovery and handling of ashes following a cremation.
 - *Cremation authority record keeping* – Amending the regulation to put emphasis on electronic storage by removing the requirement also to have physical storage capabilities regardless of electronic capabilities.
 - *Amending statutory forms* – Amending existing statutory forms to:
 - a. provide options and record decisions on the disposal of ashes, including where no decision is made prior to the cremation.
 - b. record that advice has been given that ashes may not be recoverable.

Affected Groups

14. The groups affected by these reforms are as follows:
 - The Ministry of Justice (MoJ) – who have responsibility for the statutory forms used for cremations.
 - Cremation authorities - both local authority run and private organisations.
 - Health Authorities - as private organisations and public services that may organise pre-24 week gestation cremations.
 - Funeral Directors - as businesses that facilitate cremations.
 - Bereaved individuals who choose a cremation

Analysis of Options

Option 0: Base case (do nothing)

15. Under the do nothing option there would continue to be no statutory definition of ashes, a mandatory physical storage requirement of cremation documents would remain and cremation forms would not be updated to record discussion with and decisions made by individuals who choose a cremation. As the 'do nothing' option is compared against itself, the costs and benefits are necessarily zero. The costs and benefits of Option 1 are measured relative to those of the 'do nothing' option.

Option 1: Introduce legislative changes

16. Introduce the legislative reforms for a definition of ashes, amending record keeping requirements and amending statutory forms.

1a. Definition of Ashes

17. There is no statutory definition of 'ashes' that applies in England and Wales meaning that, from one crematorium to another, different remains may be considered as ashes. This has led to misunderstanding, confusion and distress, for instance where the casket and/or clothing has not been considered as ashes and consequently parents have been advised that no ashes were recovered.
18. Based on the consultation responses the Government has decided to introduce a statutory definition of ashes that will apply in England & Wales. It will include all that is left in the cremator after a cremation minus metal including all organic matter such as the coffin itself and clothing as well as the body.

Benefits of Option 1a

Bereaved Individuals

19. This new definition will give clarity that ashes to be recovered refers to not only the baby, but also the coffin and personal items in the coffin such as clothing or soft toys. The Government believes that by defining ashes in such way it will help standardise the approach to the recoverability of ashes thus eliminate any issues that caused previous poor practice and distress for bereaved parents

Costs of Option 1a

Bereaved Individuals

20. The Government believes that a statutory definition of ashes will necessitate some cremation authorities having to invest to ensure they are able to optimise the recovery of ashes under the proposed definition. However, it is believed that where this cost is additional it can be mitigated through charging increased fees to individuals who use cremation authority services. Therefore the cost of a statutory definition of ashes is assumed to fall to bereaved individuals.
21. The following section outlines why the Government believes investment from cremation authorities will be necessary and how an estimated cost to individuals has been calculated.
22. Consultation responses underlines the Government's belief that some cremation authorities will need to invest to optimise the recovery of ashes under the proposed definition. Responses suggested that crematoria would be more likely to be able to recover ashes from cremations of infants and fetuses of less than 24 weeks if they have:
 - (a) specialised equipment such as baby trays;
 - (b) software that has settings for baby and infant cremation; or
 - (c) technicians who have the knowledge to make manual adjustments for baby and infant cremation.
23. We anticipate that cremation authorities that have none of these in place will have to upgrade equipment and/or software or training to optimise recovery of ashes. Having talked to the cremation industry we understand that an upgrade to technician training, where needed, should be sufficient to optimise recovery of ashes under the proposed definition.
24. The consultation responses indicated that the majority of respondents, who answered the question, believed that a statutory definition of ashes would not necessitate a change in practices. A number of respondents who did feel the definition would lead to change felt training and better cleaning of equipment would be required to optimise recovery of ashes under the proposed definition.
25. Following the ICC and the Emstrey reports, the Institute of Cemetery and Crematorium Management (ICCM) has already changed the training for their qualifications to include units specifically on infant and baby cremation. Those individuals who have received qualifications through the ICCM since late 2014 will already have received updated training in infant and baby cremation. The updated training is consistent with the Government's intended definition of ashes as both the training and the definition

are based on the recommendations of the ICC and Emstrey reports. As such those staff who have yet to receive the new training offered by the ICCM may now undertake the training.

26. In addition to training, the cremation industry trade organisations² have issued a joint policy statement for cremation authorities, and best practice guidance stipulating the use of the intended definition as a matter of good practice. The Government therefore believes that the statutory definition of ashes will in effect codify in legislation the definition of ashes to which cremation authority staff are largely already working.
27. The impact of a statutory definition of ashes has been assessed based on the following assumptions:
- *Number of cremation authorities:* There are 247 crematoria in England and Wales. Of these, 78 are private businesses and 169 are run by local authorities
 - *Number of staff yet to undergo new training:* It is not known how many technicians will require an updated or upgraded qualification. However, given the current industry endorsement and use of the intended definition as good practice, it is believed that a large number of crematorium staff will already be operating in accordance with the proposed definition. This assumption is underlined by consultation responses suggesting that a statutory definition of ashes would not necessitate a change in practice. For the purposes of this IA, it has been assumed that in each crematorium there will be a need **for 2 technicians in each crematorium and 1 manager in half of all crematoria** to receive additional training.
 - *Cost of training:* The cost of the qualification upgrade is approximately **£90** for technicians³ and **£222** for managers⁴. Combining the cost of the training with the estimate for the number of staff yet to receive the training yields a one-off cost to cremation authorities which has been estimated at up to £22,700k for private organisations and £48,300 for public organisations. The maximum total cost across all 247 cremation authorities is therefore around £71k.
 - *Cost recovery:* Cremation authorities, both private and public, operate a profit making and cost recovery system respectively. It has therefore been assumed that the cost of training will be recovered from charging increased fees to individual who use cremation authority services.
28. The one-off cost to individuals of a statutory definition is estimated to be £71k, arising from cremation authorities passing training budget pressure through a one-off fee increase. Using a broad assumption of there being 400,000 cremations a year (based on 75%⁵ of 530,000 registered deaths⁶ a year being followed by a cremation) there would be a one-off increase of £0.18 per cremation to cover the additional cost for one year, after which there would be no additional costs.
29. The net additional impact to cremation authorities of this proposal is assumed to be zero as the training will be recovered from increased fees. It is not anticipated that the intended definition will create any costs for funeral directors or health authorities, and this is backed up by the consultation responses.

1b. Cremation Authority Record Keeping

30. The current statutory requirement is for cremation authorities to keep records for 15 years, either electronically or on paper, and for two years as a paper record in any event. The Government's recommendation was to remove the latter requirement meaning that cremation authorities have the option to store records electronically or physically (or both) for 15 years.

Benefits of Option 1b

Cremation Authorities

² The Federation of Burial and Cremation Authorities (FBCA), ICCM, the Cremation Society of Great Britain, and the Association of Private Crematoria and Cemeteries -

³ <http://www.iccm-uk.com/iccm/index.php?pagename=training>. Cost inclusive of VAT.

⁴ <http://www.iccm-uk.com/iccm/index.php?pagename=diploma>. Cost inclusive of VAT.

⁵ The Cremation Society of Great Britain statistics estimated 75% of deaths were followed by a cremation in 2014 The Cremation Society of Great Britain <http://www.srgw.info/CremSoc4/Stats/National/2014/StatsNat.html>

⁶ Coroners Statistics 2015

31. Some cremation authorities may benefit from the removal of the requirement to store physical records for two years regardless of electronic storage capabilities. Those authorities that currently store electronically for 15 years and only 2 years physically can remove their physical record keeping capabilities if they so wish. The benefits may arise from: reduced resource costs to deal with physical storage; the sale of physical storage equipment; or reusing space once allotted to physical storage for profit making activity. It is not clear however, how many cremation authorities operate a record keeping system like this and how many are likely to downscale or remove their physical storage capabilities. The level of resources dedicated to physical storage as well as the value and saleability of physical storage equipment is also unknown.

Costs of Option 1b

Cremation Authorities

32. There will be no costs imposed on cremation authorities from this change to the regulation as all will already be storing their records for 15 years either electronically or physically, and the change will not expand or increase this requirement. Some crematoria may see it as encouragement or an appropriate time to switch from physical to electronic records. As stated the regulation change will not impose this and any costs incurred by a cremation authority switching to electronic storage will be internalised.

1c. Amending Statutory Forms

33. In order for a cremation to take place (other than for the cremation of a pre-24 week foetus) an individual acting on behalf of the deceased must fill out a statutory application form. This application can be made through either funeral directors, cremation authorities or hospitals depending on the circumstances.
34. The Government has decided to amend this statutory application form to:
- Provide options on what can happen to ashes after cremation and record decisions, or no decision, as appropriate.
 - Include a section to record advice that ashes may not be recoverable.

Costs of Option 1c

Ministry of Justice

35. As it is a statutory form it is the responsibility of MoJ to make the form available online for organisations to make copies of. These organisations – cremation authorities, funeral directors and health authorities - are then responsible for printing out and filling in the forms.
36. The MoJ, therefore, will incur the administrative cost of updating the 'master copy' of the form and making it available online. Whilst cremation authorities, funeral directors and health authorities will not incur these initial costs they may experience some of the costs outlined below.

Cremation Authorities, Funeral Directors or Health Authorities

37. If any cremation authority, funeral director or health authority stockpiles pre-printed forms there may be costs in the form of waste as the current forms would be redundant. These changes and the implementation date of the new form will be highlighted to stakeholders so any organisations that do pre-print forms should be able to reduce stockpiles of old forms as the new forms come into force. Any costs incurred from the disposal of redundant forms are likely to be minimal.
38. Extra sections on the form may increase the printing budget for these organisations though this again, if it occurs, is likely to be minimal. There may potentially be the need for a small increase in the resources required to fill out the cremation form if two extra sections are included.
39. For the new section on the form recording the decision of what will happen to the ashes post-cremation, the additional resource required is likely to be minimal as many cremation authorities, funeral directors and hospitals are likely to already record these decisions, in some way, either as a

matter of good practice, operational records or through a contract. This addition to the form will standardise recording of this information. A couple of respondents to the consultation felt that requiring a decision to be made about what will happen to the ashes could create delays, but the form will enable the organisation to record that no decision has been made.

40. With regard to recording advice on the recoverability of ashes the intended policy is to include advice on the recoverability of ashes and provide a tick box to show it has been read and understood. It is anticipated this will not require extra resources.

Benefits of Option 1c

Cremation Authorities, Funeral Directors or Health Authorities

41. Both of the additional sections are designed to make sure that funeral directors, cremation authorities and hospitals (as appropriate) discuss ashes with bereaved people; and to create a standardised audit trail. This should have benefits to those organisations that don't currently record this information or have it readily accessible, if they are asked about what decisions were taken about the handling of ashes post cremation or what discussion took place around the recoverability of ashes.

Monitoring and Evaluation

42. The MoJ will monitor the implementation of these reforms through normal activities and discussions with stakeholders.

Specific Impact Tests

Competition Assessment

43. The proposals are unlikely to affect competition in affected industries as location and service offered are more like to determine the choice of cremation authority, funeral director or health trust. The legislation is aimed at standardising good practice and will not affect businesses ability to compete.

Justice Impact Test

44. There will be no costs to the justice system from the reforms. In the long term higher standards and better practice may lead to less inquiries and investigations involving judicial time.

Equalities Statement

45. No changes to the proposed actions set out in this document appear to be necessary in light of responses regarding protected characteristics. Alternative options will remain available to parents who do not wish for a cremation, for instance for reasons of faith.

Family Impact Test

46. No changes to the proposed actions set out in this document appear to be necessary in light of responses regarding family life. The focus was mainly on the ability of mothers to remove themselves from the process and maintain anonymity if they desired. Guidance on this issue, and others that may affect families, could be included in the proposed code of practice.

Small and Micro Business Assessment

47. It is not clear how many affected organisations are small or micro businesses. It is likely that a number of cremation authorities and local funeral directors are considered small businesses (employ less than 50 people). The aims of the legislation is to standardise the approach to treatment of remains, record keeping and documentation of decisions. As such no full, partial or temporary exemption can be provided for small and micro businesses as it will significantly undermine the benefits of the reforms

and be criticised for not tackling the incoherent approach which caused confusion and distress for bereaved parents.

Business Impact Target and EANDCB Calculation

48. This measure is a qualifying regulatory provision under section 22(2) of the Small Business, Enterprise and Employment Act 2015 and was assessed by internal departmental procedures as suitable for the low cost fast track process on the 23 October 2015. It has been assessed as an 'IN' under the One-in, Three-out (OI3O) rule

One In, Three Out (OI3O) Assessment

49. In the main body of the IA it is assumed that staff training costs will be recovered from charging higher cremation fees to individuals who choose a cremation and as such there is a net neutral impact on business.
50. For the purpose of the OI3O assessment, however, it has been assumed that this £22,700 is a direct cost to business. This decision has been made following a previous ruling by RPC on the obligations of energy companies (RPC14-DECC-2015) where it was ruled that because there was no legislative mechanism or regulatory force behind passing impacts on to consumers then the impacts were considered to be direct on business. Applying the same argument here it has been assumed that cremation authorities passing on the cost to the bereaved is indirect and is therefore a direct cost to business for the purpose of the OI3O assessment. The EANDCB (2014 prices) is zero (rounded to the nearest £100k).