

# STATES OF JERSEY



## **DRAFT CREMATION (AMENDMENT No. 15) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 11th April 2011  
by the Minister for Health and Social Services**

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**STATES GREFFE**





Jersey

## **DRAFT CREMATION (AMENDMENT No. 15) (JERSEY) REGULATIONS 201-**

### **REPORT**

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#### **Purpose**

Under the provisions of the Cremation (Jersey) Regulations 1961, only the Medical Officer of Health (MOH) has the power to grant or refuse an application for cremation, acting as a 'medical referee'. This involves agreeing 'authority to cremate' when satisfied that the application is in order. It is the final check that there is no reason why a body may not be disposed of by cremation, after which time no post mortem examination of the remains would be possible. It is an important safeguard enabling further enquiries to be made, such as if there was any doubt as to the cause of death, any suspicious circumstances/any reason why the death should be referred to the Deputy Viscount (in his role as Coroner) or his advice sought. The vast majority of cremation authorisations are straightforward and simple to process and authorise.

Approximately 15 such applications are received each week, although numbers vary week to week and day to day. The need to process the applications is often urgent, for example with funeral arrangements in place for the following day.

This situation creates practical difficulties in the absence of the MOH, and even when available, servicing this commitment can, and has, created inconvenience and inefficiency in organising and prioritising work. The pressure has increased since Dr. Rosemary Geller has been absent.

The proposed amendment to the Cremation Regulations (attached) would enable the power of the MOH in regard to cremation to be vested by the Minister for Health and Social Services in one or more Medical Referees, creating a more resilient and efficient team approach.

It is anticipated that Medical Referees would include the MOH, Deputy MOH and other medical practitioners appointed by the Minister of Health and Social Services, on the recommendation of the MOH, as Medical Referees. Without additional resources, and without any increase in funeral expenses, only doctors employed by Health and Social Services can perform this duty, incorporating it as part of their daily duties as required.

### **Medical Referees – appointment process**

The Medical Officer of Health would make recommendations to the Minister to approve a number of Medical Referees, having satisfied her/himself that each doctor so recommended is –

- A registered medical practitioner of at least 5 years' standing.
- A colleague of good professional standing with the character, experience and qualifications required of a Medical Referee.
- A colleague with no record of any complaints, hearings or warnings to/by the General Medical Council.

The Medical Officer of Health would have regard to UK Ministry of Justice guidance on appointment of Medical Referees. The criteria above are consistent with this.

### **Desired outcome**

Once the amended Regulations were in force, a new team of Medical Referees would be approved and a rota system set up. In anticipation of this change, the role has been incorporated in the job descriptions of the new Jersey General Hospital Joint Medical Directors. It is also envisaged that a small number of HSS employed doctors who work outside the acute hospital (Jersey General Hospital) setting would become approved Medical Referees also (examples – Consultant Psychiatrists, colleagues working in Sexual Health or Substance Misuse Services).

To minimise any perceived conflicts of interest, Jersey General Hospital (JGH) Medical Directors would not act as medical referee for deaths in JGH. For such deaths, the intention would be that the cremation would be authorised by the MOH or one of the other non-JGH approved medical referees. Similarly, Consultant Psychiatrists would not act as medical referee for deaths of patients at St. Saviour's Hospital.

### **Financial and manpower implications**

There are no additional financial implications for the States arising from the adoption of these Draft Regulations as the changes would be managed within existing resources.

This amendment to the Cremation (Jersey) Regulations 1961, if approved, will enable the workload of authorising cremation to be spread amongst a number of approved Medical Referees. This will avoid the current critical dependency on the availability of the (acting) MOH. It offers a more resilient solution.

## Explanatory Note

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The Cremation (Jersey) Regulations 1961 (“principal Regulations”) provide for applications to cremate a person to be made to the Medical Officer of Health. Presently the Medical Officer of Health alone has the power to grant or refuse an application for cremation under those Regulations.

These Regulations amend the principal Regulations so that the powers and duties vested in the Medical Officer of Health will be vested in one or more “medical referees”. Medical referees are defined as the Medical Officer of Health or a person appointed by the Minister for Health and Social Services as a medical referee. A person so appointed must be a registered medical practitioner of at least 5 years’ standing; in the opinion of the Medical Officer of Health, must have the character, experience and qualifications to discharge the duties required of a medical referee under the principal Regulations; and must be a person who has been recommended to the Minister by the Medical Officer of Health as a person suitable to be a medical referee.

The power in Regulation 14 of the principal Regulations to destroy the cremation documents referred to in that Regulation after 10 years remains vested in the Medical Officer of Health alone.

Under Regulation 8 of the principal Regulations, as substituted by these Regulations, a medical referee considering an application for cremation must now give reasons for declining to allow cremation in any case, whereas previously no reason had to be given.

These Regulations also amend Regulation 11 of the principal Regulations so that the Viscount (instead of the Bailiff) may impose conditions on the grant of a certificate authorizing the exhumation of a body, since it is the Viscount who is vested with powers and duties in relation to the exhumation of bodies.





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### **Arrangement**

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#### **Regulation**

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## **DRAFT CREMATION (AMENDMENT No. 15) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 3 of the Cremation (Jersey) Law 1953<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations “principal Regulations” means the Cremation (Jersey) Regulations 1961<sup>2</sup>.

### **2 Regulation 1 amended**

In Regulation 1 of the principal Regulations, immediately before the definition “registered medical practitioner” there shall be inserted the following definitions –

“ ‘Medical Officer of Health’ means the ‘Inspecteur Médical’ appointed under Article 10 of the Loi (1934) sur la Santé Publique<sup>3</sup>;

‘medical referee’ means –

- (a) the Medical Officer of Health; or
- (b) a person appointed a medical referee by the Minister under Regulation 2A;

‘Minister’ means the Minister for Health and Social Services;”.

### **3 Regulation 2A inserted**

After Regulation 2 there shall be inserted the following Regulation –

**“2A Power of Minister to appoint medical referees**

- (1) The Minister may appoint as a medical referee any person recommended by the Medical Officer of Health to the Minister for such appointment.
- (2) The Medical Officer of Health shall not recommend a person for appointment as a medical referee unless satisfied that such person –
  - (a) is a registered medical practitioner of at least 5 years' standing; and
  - (b) in the opinion of the Medical Officer of Health, has the character, experience and qualifications to discharge the duties required of a medical referee under these Regulations.”.

**4 Regulation 5 amended**

In Regulation 5 of the principal Regulations –

- (a) in paragraph (1) for the words “the Medical Officer of Health” there shall be substituted the words “a medical referee”;
- (b) in paragraph (2) for the words “the Medical Officer of Health” there shall be substituted the words “the medical referee considering the application”.

**5 Regulation 7 amended**

- (1) In the heading of Regulation 7 of the principal Regulations for the words “Medical Officer of Health” there shall be substituted the words “medical referee”.
- (2) In Regulation 7(1) of the principal Regulations for the words “The Medical Officer of Health” there shall be substituted the words “A medical referee”.
- (3) For Regulation 7(2) of the principal Regulations there shall be substituted the following paragraph –

“(2) The medical referee considering the application made under Regulation 5, if satisfied that all the formalities required by these Regulations have been carried out, and if having no grounds for refusing cremation under Regulation 8, shall issue the necessary authorization in the form set out in Schedule 6.”.

**6 Regulation 8 substituted**

For Regulation 8 of the principal Regulations there shall be substituted the following Regulation –

“Where –

- (a) it appears to the medical referee considering an application under Regulation 5, from the cause of death assigned in the medical certificates accompanying the application, that the death has, or

might have, resulted from poison, violence, any illegal operation or from privation or neglect; or

- (b) the circumstances give rise to any suspicion whatsoever on the part of the medical referee considering the application,

the medical referee shall refuse to allow the cremation, and shall forthwith refer the matter to the Viscount.”.

**7 Regulation 9 amended**

In Regulation 9 of the principal Regulations –

- (a) for the words “the Medical Officer of Health” in both places where they appear there shall be substituted the words “a medical referee”;
- (b) in paragraph (b) for the words “the Medical Officer of Health’s satisfaction” there shall be substituted the words “a medical referee’s satisfaction”.

**8 Regulation 10 amended**

In Regulation 10 of the principal Regulations for the words “the Medical Officer of Health” there shall be substituted the words “a medical referee”.

**9 Regulation 11 amended**

In Regulation 11(2) of the principal Regulations for the word “Bailiff” there shall be substituted the word “Viscount”.

**10 Schedule 6 amended**

In Schedule 6 to the principal Regulations for the words “Medical Officer of Health” there shall be substituted the words “Medical referee”.

**11 Citation and commencement**

These Regulations may be cited as the Cremation (Amendment No. 15) (Jersey) Regulations 201- and come into force 7 days after they are made.

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- <sup>1</sup> *chapter 20.075*
  - <sup>2</sup> *chapter 20.075.60*
  - <sup>3</sup> *chapter 20.875*