

STATES OF JERSEY



DRAFT CREMATION (SUSPENSION AND MODIFICATION OF REGULATIONS – COVID-19) (No. 2) (JERSEY) REGULATIONS 202- (P.65/2020): COMMENTS

**Presented to the States on 26th May 2020
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

The Draft Cremation (Suspension and Modification of Regulations – Covid-19) (No. 2) (Jersey) Regulations 202-” ([P.65/2020](#)) (the “draft Regulations”) were lodged by the Minister for Health and Social Services on 20th May 2020 in response to the current Covid-19 crisis.

The draft Regulations would amend the [Cremation \(Jersey\) Regulations 1961](#) (the “1961 Regulations”) and would have effect only for the purposes of dealing with the Covid-19 crisis. If approved, they will come into force immediately after they are made and expire on 30th September 2020.

The Panel received a briefing from Government Officials on 21st May 2020.

Background

The Panel was advised that the draft Regulations align statutory provision around medical certification with previous legislation passed by the States Assembly addressing the death registration process. The previous legislation relates to –

- The [Marriage and Civil Status \(Amendment of Law\) \(Covid-19 – Temporary Amendment\) \(Jersey\) Regulations 2020](#) (approved through [P.23/2020](#)); and the [Marriage and Civil Status \(Amendment of Law No. 2\) \(Covid-19 – Temporary Amendment\) \(Jersey\) Regulations 2020](#) (approved through [P.36/2020](#)), both lodged by the Minister for Home Affairs.
- The [Cremation \(Suspension and Modification of Regulations – Covid-19\) \(Jersey\) Regulations 2020](#) lodged by the Minister for Health and Social Services (approved through [P.21/2020](#)).

For the purposes of these Comments, the Panel has briefly summarised the changes previously approved by the States Assembly.

Cremation (Suspension and Modification of Regulations – Covid-19) (Jersey) Regulations

In March 2020, the States Assembly approved Regulations which removed the requirement for a Confirmatory Medical Certificate to be present when a cremation was authorised. Originally, no cremation was permitted unless the application to cremate was accompanied by a Certificate of Medical Attendant and a Confirmatory Medical Certificate.

The amendment also provided discretionary powers to the Medical Referee. Prior to the amendment being approved, a Medical Referee would not permit any cremation to take place unless they were satisfied that the application for cremation was completed and accompanied by both certificates. The amendment therefore provides the Medical Referee with the discretion to authorise an application to cremate without a Certificate of Medical Attendant being present during a period when the cause of death is due to or related to Covid-19.

Marriage and Civil Status (Amendment of Law) (Covid-19 – Temporary Amendment) (Jersey) Regulations 2020

When the particulars of a birth, stillbirth or death are being provided, an informant (usually a parent, family member or funeral director) is required to sign the appropriate register in the presence of the registrar. In March 2020, the States Assembly approved the first set of temporary amendments (*lodged as [P.23/2020](#) and became [R&O.25/2020](#)*) which allowed the Superintendent or Deputy Superintendent Registrar to sign the appropriate register as an informant, having been provided with the particulars by electronic communication.

The amendment also increased the time period for a medical practitioner (including the Viscount) to complete a Certificate of Fact and cause of death from 14 days to 28 days preceding the date of death.

Marriage and Civil Status (Amendment of Law No. 2) (Covid-19 – Temporary Amendment) (Jersey) Regulations 2020

In April 2020, the States Assembly approved the second set of temporary amendments (*lodged as [P.36/2020](#) and became [R&O.36/2020](#)*) which removed the previously amended 28-day time limit for completing the Certificate of Fact, and the requirement for the medical practitioner to have attended the deceased during their last illness. The purpose of the changes was to further reduce the burden on medical practitioners.

Purpose of the draft Regulations

The main purpose of the draft Regulations is to align statutory provision around medical certification with previous legislation passed by the States Assembly (as explained above).

Under the 1961 Regulations, no cremation is permitted unless the application to cremate is accompanied by a Certificate of Medical Attendant. This certificate certifies a definitive cause of death. If approved, the draft Regulations would bring forward 2 changes –

1. They will temporarily amend the 1961 Regulations to enable a medical practitioner to complete and sign a Certificate of Medical Attendant even though they have not attended the deceased during the deceased's last illness, which is the present requirement.
2. They will temporarily remove the requirement for the medical practitioner to declare that they have attended the deceased before death, which is needed to facilitate the change made to the 1961 Regulations in point 1 above. The medical practitioner will still be required to declare that he or she has seen and identified the body of the deceased after death, which is an existing part of the certificate.

Safeguarding

The Panel accepts that some legislative change has already been implemented through previous decisions of the States Assembly; however, it is concerned that the new processes could remove some of the safeguards around death and cremation certification processes.

The Panel asked whether the same doctor could sign both sets of certificates in relation to the death registration process and authorisation of cremation. The Government Officials confirmed that there was nothing in the existing legislation which provides that the same doctor cannot sign both certificates. Furthermore, the Panel was advised that, although the legislation could be amended to provide for such provision, the same doctor could do so before the new arrangements came into force.

Nevertheless, the Panel believes that an appropriate level of checks and balances should be implemented, particularly as the new provisions remove some parts of the formal certification processes. The Panel would urge the Minister to explore this matter with a view to amending the legislation, if deemed necessary.

Ministerial crossover

It was acknowledged during the briefing that the interface between the different parts of legislation has its challenges. Currently, legislation relating to death registration is the responsibility of the Minister for Home Affairs, and legislation relating to cremation is the responsibility of the Minister for Health and Social Services. Although there are two separate Laws with responsibility crossing over between two Ministers, both Laws relate to the same deceased body and the same doctor. In that regard, the Panel was advised that the Strategic Policy, Planning and Performance Department commissioned a review of all legislation relating to death in January 2020. The Panel hopes that, when more capacity and resources are available, the legislation will become aligned under one Ministerial remit.

Conclusion

The Panel would like to thank the Government Officials for the briefing on 21st May.

The Panel acknowledges that the primary purpose of the draft Regulations is to align the death registration process with existing legislation previously approved by the States Assembly. Given the rationale provided by the Minister and Officials, the Panel will support these draft Regulations, but reiterates its point about maintaining appropriate safeguards in relation to death and cremation certification processes.