

**THE LEGISLATIVE REFORM (OVERSEAS REGISTRATION OF BIRTHS AND DEATHS)
ORDER 2014**

EXPLANATORY DOCUMENT BY THE FOREIGN AND COMMONWEALTH OFFICE

SECTION 1: INTRODUCTION

1. This Explanatory Document has been prepared by the Foreign and Commonwealth Office (“the FCO”) in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Overseas Registration of Births and Deaths) Order 2014 (“the Order”) which we propose to make under sections 1 and 2 of the 2006 Act. The purpose of the Order is to amend section 41 of the British Nationality Act 1981 (“the BNA”) to enable regulations to be made relating to the registration of births and deaths of persons who were born or who died in a country or territory outside the United Kingdom.
2. The Government is satisfied that Ministerial duties have been met under the relevant sections of the 2006 Act. This includes that the Order serves a purpose under sections 1(2) and 2(2) of the 2006 Act, that the pre-conditions under section 3 of the 2006 Act have been met, and that the appropriate consultation has been carried out in accordance with section 13 of the 2006 Act.
3. This Explanatory Document has been prepared by the FCO in order to assist the reader of the Order and to help inform debate on it. It does not form part of the Order and has not been endorsed by Parliament.

SECTION 2: BACKGROUND TO THE ORDER

4. Currently, there are various procedures for registering a birth or death of a British National which takes place overseas. In addition to local registration, most births and deaths can be registered with the British Embassy or High Commission in the country where the event took place. The FCO does this in 130 countries. Alternatively, next of kin resident in the UK or in another country may apply directly to the FCO in London or to their nearest British Embassy or High Commission for such consular registration, who then forward the application to the Embassy or High Commission in the country where the event took place. Additionally, the FCO in London registers events that take place in 25 countries or territories where the UK either has no diplomatic representation or where there are no Consular Registration Officers (examples include East Timor, Liberia, Somalia, Taiwan).
5. Applications for birth or death registrations overseas cannot yet be made on-line and currently services provided overseas have to be paid for in the local currency.
6. Centralisation of this service in the UK would allow the FCO to provide a common on-line application procedure and credit card payment facility which the FCO considers would be more efficient and convenient for customers.

Existing legal provisions

7. This registration service is currently governed by section 41(1)(g) to (i) of the BNA and the Registration of Overseas Births and Deaths Regulations 1982 (S.I. 1982/1123) (“the 1982 Regulations”).
8. Regulation 5 of the 1982 Regulations provides that births of British Nationals which occur outside the United Kingdom may be registered in accordance with the 1982 Regulations. In order for a birth to be registered, the registration officer must be satisfied as to the facts by the production of a local birth certificate and evidence of the child’s nationality. Regulation 7 of the 1982 Regulations makes provision about entering such a birth in the register.
9. Regulation 8 of the 1982 Regulations provides that deaths of British Nationals which occur outside the United Kingdom may be registered in accordance with the 1982 Regulations. In order for a death to be registered, the registration officer must be satisfied as to the facts by the production of a local death certificate. Regulation 10 of the 1982 Regulations makes provision about entering such a death in the register.
10. In both cases, a “registration officer” is defined in regulation 2 of the 1982 Regulations as:
 - any consular officer or other officer in the service of Her Majesty’s government in the United Kingdom entrusted with the registration of births and deaths in a foreign country; or

- in any country mentioned in Schedule 3 to the British Nationality Act 1982, the High Commissioner for Her Majesty's government in the United Kingdom or members of his official staff; or
 - in or for any country in which Her Majesty's government has for the time being no diplomatic or consular representative:
 - i. any person serving in the diplomatic, consular or other foreign service of any country which, by arrangement with Her Majesty's government in the United Kingdom, has undertaken to represent that government's interests in that country; or
 - ii. any person authorised by the Secretary of State to be in charge of any registers of births or deaths kept at the Foreign and Commonwealth Office; or
 - iii. any other person authorised by the Secretary of State to register births and deaths occurring in a country overseas in any register kept for that country.
11. For the most part, the registration must occur in the country in which the birth or death occurred (the most common exception being where the birth or death occurs in a country in which there is no consular or diplomatic representation). This stems from section 41 of the BNA and the enabling powers contained therein which provide that regulations may be made (emphasis added):
- g. for the births and deaths of persons of any class or description born or dying in a country mentioned in Schedule 3 to be registered there by the High Commissioner for Her Majesty's government in the United Kingdom or by members of his official staff;
 - h. for the births and deaths of persons of any class or description born or dying in a foreign country to be registered there by consular officers or other officers in the service of Her Majesty's government in the United Kingdom;
 - i. for enabling the births and deaths of British Citizens, British Overseas Territories Citizens, British Overseas Citizens, British Nationals (Overseas), British Subjects and British Protected Persons born or dying in any country in which Her Majesty's government in the United Kingdom has for the time being no diplomatic or consular representatives to be registered:
 - i. by persons serving in the diplomatic, consular or other foreign service of any country which, by arrangement with Her Majesty's government in the United Kingdom, has undertaken to represent that government's interest in that country; or
 - ii. by a person authorised in that behalf by the Secretary of State;
12. Section 41 of the BNA therefore restricts the ability to centralise all birth and death registrations because of the general requirement for births and deaths to be registered in the country in which the event took place.

SECTION 3: THE ORDER

Power to make the Order: sections 1 and 2 of the 2006 Act

13. This Order is made under sections 1 and 2 of the 2006 Act.
14. Under section 1 of the 2006 Act, the Order will reduce a burden within the meaning of section 1(3)(b) and (c), namely an administrative inconvenience and an obstacle to efficiency.
15. The obstacles to efficiency and the administrative inconvenience which we consider will be reduced are as follows:
 - British Nationals who apply to the FCO for a consular birth or death registration will no longer have their application sent overseas to be dealt with;
 - British Nationals residing overseas will no longer have to seek out their nearest British Embassy or High Commission, rather everything will be sent to one central place;
 - payment could be made online by credit or debit card;
 - FCO consular staff overseas will not be required to undertake complex and important nationality decisions which is not their area of expertise; such decisions will be taken by specially trained staff, thereby reducing the risk of mistakes being made; and
 - rather than a variation between the service provided depending on the country, there will be a uniform and standardised service provided centrally.
16. Under section 2(2) of the 2006 Act, we are seeking to ensure that a regulatory function (as defined in section 32(2) of the 2006 Act) is exercised so as to comply with the principles in section 2(3) of the 2006 Act, namely that regulatory activities should be carried out in a way which is consistent. The regulatory function in question is the function under the BNA and its accompanying regulations which imposes requirements and conditions in relation to consular registration of births and deaths overseas.

Pre-conditions: section 3(2) of the 2006 Act

17. We are satisfied that the pre-conditions in section 3(2) of the Act are satisfied for the following reasons:
 - **Non Legislative Solutions: section 3(2)(a)**

18. Statutory provisions (the BNA and the 1982 Regulations) set out the way in which overseas births and deaths are registered. The 1982 Regulations can only be amended in line with the enabling powers in section 41(1)(g) to (i) of the BNA. At present this means that overseas births and deaths must be registered “there” (in the country overseas) under section 41(1)(g) and (h) if there is diplomatic or consular representation in that country. Only if there is no diplomatic or consular representation in a particular country can a birth or death be registered either in a third country (section 41(1)(i)) or by another person authorised by the Secretary of State (section 41(1)(ii)).

19. It is not possible to centralise the registration of births and deaths in countries where there is diplomatic or consular representation without amending the BNA. Amending the BNA will then enable the 1982 Regulations to be amended.

20. Therefore we consider that there is no non-legislative solution which would achieve the aim to centralise the registration of overseas births and deaths.

- **Proportionality: section 3(2)(b)**

21. The amendment we propose to make to the BNA is to remove the obligation for the registration of overseas births and deaths to take place in the country (“there”) where the birth or death took place. This would simplify the current provisions in the BNA by enabling regulations to be made for the registration of overseas births and deaths, without requiring registration in any particular location. We consider this to be the most proportionate way to achieve the policy objective to centralise the registration of overseas births and deaths.

- **Fair Balance: section 3(2)(c)**

22. The balance that is to be struck is between those people who will welcome the new centralised system and those people who will not. We consider that the new centralised system will provide a consistency across the registration system which will benefit all users. Moving to an online system is fully in line with the Government’s Digital by Default strategy, and we consider that the change to an online system will benefit the majority of people, particularly those who do not live within easy travelling distance of a British Embassy or High Commission. We anticipate that there will be a small percentage of customers who, because of their location overseas, may not have access to the internet. We will ensure that procedures are in place to handle these exceptional cases.

23. The amendment proposed is minor, with no increased funding consequences or burdens on Government. There are no additional costs related to the LRO process. Any costs in setting up a new centralised unit will be borne by the FCO using internal resources. There may be an additional increase in customer costs to cover postal/courier fees, but in some cases these will be offset as customers will no longer need to visit a consulate to make their application in person. Centralisation in the UK would allow the FCO to

investigate adjusting the cost of the service in future years, with the aim of reducing the cost to customers. It is thus proportionate to the problem to which it is addressed.

- **Necessary Protection: section 3(2)(d)**

24. We do not consider that we are removing any necessary protection since births and deaths will still be registered under the centralised system. Additionally, a consular birth or death registration is an entirely optional service, there being no requirement in law to obtain one.

- **Rights and Freedoms: section 3(2)(e)**

25. We do not consider that we are preventing any person from continuing to exercise any rights or freedoms that the person might reasonably expect to be able to continue to exercise, since births and deaths will still be registered under the centralised system.

- **Constitutional Significance: section 3(2)(f)**

26. We do not consider that these proposals have a constitutional significance as they are essentially administrative in nature.

Effect of the provisions and the removal of burdens on consular customers and staff

27. Birth and death registration overseas is a labour intensive process. Designated staff must make complicated nationality determinations, and make entries in manuscript in ledgers. Certified copies for customers are either handwritten or typed. Copies of all registrations are sent annually to the General Register Office in the UK. This administrative work detracts from FCO consular staff time whose primary function is to assist British Nationals in distress. A centralised, single-purpose unit in the UK would mean a more convenient and efficient system to provide an important service for British Nationals.

28. In order to determine whether to process a consular birth application, staff need to establish beyond doubt, by assessing the documentary evidence provided with the application, that the applicant does qualify for British nationality. This is a complex area, and only trained and qualified staff can make this decision. With the centralisation of the overseas passport issuing service from the consular network around the globe to the UK, FCO staff are losing experience in determining whether someone qualifies for British nationality, and there is an increasing risk that an incorrect decision may be made. An incorrect nationality determination could subsequently lead to a British passport being issued in error. Withdrawing a wrongly issued passport can be a very distressing experience.

29. A central unit with suitably trained staff, handling all applications from British Nationals overseas, would reduce this risk to customers. It would also ensure that a consistent service is provided in regards to: determining British nationality through a well-trained, properly managed and stable central unit; producing high-quality registration certificates, both for record purposes and for British Nationals; ensuring that annual statutory returns are sent to the GRO (General Register Office) England and Wales in time; maintaining a central record of consular birth and death registrations by secure storage in a single location.
30. A smaller, central unit with specialised staff in the UK, handling all applications from British Nationals overseas and in the UK, would take over from the current service provided by FCO overseas Posts. This would provide an efficient and coherent global service for British Nationals.
31. A centralised computer system would also make it simpler for searches to be made for overseas births and deaths. This search facility would provide a more convenient and efficient way for staff to conduct searches when requested, e.g. by families or solicitors.

Whom the proposals will affect and how

32. British Nationals resident in the UK who apply to the FCO for a consular birth or death registration. The FCO currently then sends the application to the relevant overseas Post (we consider this to be an obstacle to efficiency).
33. British Nationals residing overseas who wish to make a consular birth or death registration and visit the nearest British Embassy or High Commission (we consider this to be an obstacle to efficiency).
34. FCO consular staff overseas who administer the registration service including making nationality determinations (we consider this to be an administrative inconvenience and an obstacle to efficiency).

Related legal issues

- European Convention on Human Rights
35. We consider that the provisions of the Legislative Reform (Overseas Registration of Births and Deaths) Order 2014 are compatible with the Convention rights.
 - Issues arising from membership of the European Union
 36. We do not consider that there are any issues affecting this Order arising from the United Kingdom's membership of the European Union.

- **Parliamentary procedure**

37. The FCO recommends that the Order be subject to affirmative resolution procedure. The proposed changes are relatively minor, and the details in the 1982 Regulations themselves are subject to negative resolution procedure, however the changes cannot be said to be purely technical. Therefore the FCO considers that the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny.

SECTION 4: CONSULTATION

38. We commenced our 12 week consultation on 19 July 2013 (consultation document at Annex A). We consulted seven Government Departments who have an interest in our plans (UK Immigration and Visas; General Register Office for England and Wales; National Records of Scotland; General Register Office for Northern Ireland; Ministry of Justice; Home Office; Ministry of Defence). We published our consultation on www.gov.uk, and sent weekly tweets from the FCO's Travel Advice twitter account (with over 47,000 followers) to promote our consultation. We also contacted 18 expatriate organisations in the countries with the most demand for consular birth and death certificates. A number of these agreed to publish information about the consultation to their members, including on their websites or through their newsletters (Expat Forum; St. George's Society; British Community Committee, France; British Chamber of Commerce, Japan; Age Concern, Costa Blanca, Spain; British Residents Association of Switzerland; Pattaya City Expats Club, Thailand). In addition, our Embassy in Dubai gave a short radio interview on the consultation, and a short article was published in a local expat newspaper in the UAE.
39. On 11 October 2013, after the 12 week consultation period, we had received seven representations to the consultation from individual members of the public. Three of these included a completed online questionnaire which the FCO posted on the gov.uk website as part of its consultation document (summary of responses at Annex B).
40. Having held a detailed consultation and taken into account all views, we have decided to proceed with our option to centralise the FCO's consular birth and death registration service. Full consideration has been given to the results of the consultation and views on the Impact Assessment. The one change which has been made as a result of the consultation is to propose that the LRO be subject to the affirmative resolution procedure rather than the negative resolution procedure. The reason for this is that although the proposed changes are minor, they are not purely technical. We therefore consider the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny.

ANNEXES

Annex A: Consultation Document

Annex B: Summary of responses to the consultation