

REGISTERS OF BIRTHS AND DEATHS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Registers of Births and Deaths Bill as introduced in the House of Commons on 5 February 2020 (Bill 25).

- These Explanatory Notes have been prepared by the Home Office with the consent of Andrew Mitchell MP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the Bill is to reform the way in which births¹ and deaths are registered in England and Wales, moving from a paper based system to registration in an electronic register. Since 2009 all birth and death registrations have been captured electronically in parallel with the paper registers. The Bill will remove this duplication of processes by removing the requirement for paper registers and introduce an electronic register for the registration of births and deaths creating a more secure system for the maintenance of birth, still-birth and death registers

Policy background

- 2 The birth of every child in England and Wales is required to be registered by the registrar of births and deaths for the sub-district in which the child was born. The birth must be registered within 42 days, through personal attendance at the register office, by a person qualified to provide that information, e.g. the child's mother, and the register is signed in the presence of the registrar. There are currently 173 registration districts in England and Wales.
- 3 Similarly the death of every person dying in England or Wales is required to be registered by the registrar of births and deaths for the sub-district in which the death occurred. The death must be registered within 5 days, through personal attendance at the register office, by a person qualified to provide that information, e.g. a relative present at the death.
- 4 The particulars to be entered into the birth and death registers are prescribed in regulations. The birth and death registers are currently paper based and this has been the case since 1837. Since 2009, the registrar also records all the birth and death registrations on an electronic system in parallel with the paper registers. Once a registration is complete, the computer system generates the paper register page which is signed by the informant(s) and the registrar and is the formal record of the event. The registrar puts the signed register page into a loose leaf register and is required, initially, to keep the register safe in a box provided by the Registrar General.
- 5 The registrar issues a birth or death certificate at the time the birth or death is registered, at the request of the informant on payment of the statutory fee. A registrar also issues any subsequent requests for certificates for as long as the register is still open and in their custody.
- 6 When a paper register is filled (other than a still-birth register) the registrar deposits the filled register with the superintendent registrar to be kept securely with the records of the office. These registers are kept indefinitely, and securely, and the superintendent registrar issues certificates of birth or death entries on request on payment of the statutory fee. Once filled, still-birth registers are deposited with the Registrar General and all requests for still-birth certificates are issued centrally at the General Register Office (GRO) for England and Wales. Certified copies of all birth and death entries are transmitted electronic form by the registrars to their superintendent registrar via a system of 'quarterly returns'. The superintendent registrar certifies them as being a true copies of entries in the registers and forwards them to the Registrar General electronically. The Registrar General then holds a central repository of certified copies of all births and deaths which have been registered in England and Wales, from which certificates can be issued.

¹ Including still-births

- 7 The Bill removes the requirement for paper registers to be held and stored securely in each registration district and enables all births and deaths to be registered electronically. This will remove the current duplication whereby births and deaths are registered both electronically and in paper registers.
- 8 Births and deaths will continue to be registered through personal attendance at the register office, by a person qualified to provide the information, in the sub-district in which the birth or death occurred.
- 9 The registrar will enter the information into the electronic register. The Bill includes a regulation-making power for the Minister to make regulations, which would have to be approved by both Houses of Parliament, to provide that if a person complies with specified requirements at the time of registering a birth or death they are to be treated as having signed the register in the presence of the registrar. This may include requiring a person to sign something other than the register or requiring a person to provide specified evidence of identity.
- 10 With the introduction of an electronic register there will no longer be a requirement for the system of quarterly returns, as all birth and death entries will be held on the single electronic register maintained by the Registrar General.

Legal background

- 11 The provision for registering births and deaths is principally governed by the Births and Deaths Registration Act 1953, the Registration Service Act 1953 and the Registration of Births and Deaths Regulations 1987 which are based on legislation that has been in place since 1836.

Territorial extent and application

- 12 Clause 7(1) to (3) sets out the territorial extent of the Bill, which is the jurisdictions of which the Bill forms a part. The extent of a Bill can be different to its application. Application is where a Bill produces a practical effect.
- 13 Legislative competence for births and deaths (and civil registration) has been devolved to Scotland and Northern Ireland and separate legislation exists to govern the registration of births and deaths in those jurisdictions. Legislative competence in these areas has not been devolved to Wales.
- 14 Clauses 1 to 4 of the Bill extend and apply to England and Wales only. These clauses amend the Births and Deaths Registration Act 1953 and the Registration Service Act 1953, relating to the registration of births and deaths in England and Wales.
- 15 The remaining provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland. Clause 5 brings into effect the Schedule, which contains minor and consequential amendments. Clause 6 enables regulations to make amendments to primary and secondary legislation in consequence of the changes made to birth and death registration in England and Wales.
- 16 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. In the view of the UK Government, the matters to which the provisions of the Bill relate are not within the legislative competence of any of these legislatures. The Bill does not contain any provision which gives rise to the need for a legislative consent motion in the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly. If there are amendments relating to such matters that fall within the

convention, the consent of these legislatures (as appropriate) will be sought for them.

- 17 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Form in which registers are to be kept

- 18 Clause 1 amends the Births and Deaths Registration Act 1953 (the BDRA). Subsection (2) of clause 1 substitutes section 25 of the BDRA (provision of registers, etc, by Registrar General) with a new section 25 (Form in which registers are to be kept, etc). Subsections (1) to (5) of new section 25 provide as follows:
- a. Subsection (1) allows the Registrar General to determine how registers of live-births, still-births and deaths are to be kept. This will allow the duplication of processes to be removed, i.e. the requirement for paper registers to be held and stored securely in each registration district whilst at the same time being registered in an electronic register. Instead, all births, still-births and deaths will be registered in an electronic register and stored electronically without the need for paper registers to be kept securely in a safe.
 - b. Subsection (2) allows the Registrar General to require that registrars keep information in a form that allows the Registrar General and the superintendent registrar to have immediate access to all birth and death entries as soon as the details have been entered in the electronic register by the registrar. Subsection (2)(b) allows only the Registrar General to have immediate access to entries of still-births which have been registered, by the registrar, in the electronic register.
 - c. Subsection (3) provides that where a register is kept in such form as mentioned in subsection (2), e.g. electronic form, any information held in that register which has been made available to the Registrar General and the superintendent registrar is deemed to be 'held' by that person, as well as the registrar, when carrying out that person's functions.
 - d. Subsection (4) places responsibility on the Registrar General to provide and maintain anything that is required for the purpose of creating or maintaining the registers referred to in subsection (1), for example, providing registrars with the system needed to register births and deaths.
 - e. Subsection (5) places a responsibility on the Registrar General to provide the forms that are required in order to produce certified copies of entries in the registers – for example, a birth or death certificate.
- 19 Clauses 1(3)(a) and (b) omit sections 26 and 27 of the BDRA which set out the requirements for quarterly returns made by a registrar and superintendent registrar. With the introduction of an electronic register there will no longer be a requirement for the system of quarterly returns as all birth and death entries will be held in a single electronic register and the Registrar General and superintendent registrar will have immediate access to all birth and death entries. Clause 1(3)(c) omits section 28 (custody of registers, etc) which sets out how paper birth and death registers need to be stored by registrars, superintendent registrars and the Registrar General. With the introduction of an electronic register this provision will no longer be required. The requirements for the retention and storage of existing paper registers are covered in clause 4.

Clause 2: Provision of equipment and facilities by local authorities

- 20 Clause 2 inserts a new section 11A (Provision of equipment and facilities by local authorities) in the Registration Service Act 1953. Subsections (1) and (2) set out how the council of every non-metropolitan county and metropolitan district (subject to the provisions of their local scheme arrangements)² must provide and maintain equipment or facilities that the Registrar General considers necessary for a superintendent registrar or registrar to carry out their functions. This requirement applies across each register office or sub-district of a registrar.

Clause 3: Requirements to sign register

- 21 Clause 3 makes further amendments to the BDRA.
- 22 Subsection (2) of clause 3 inserts a new section 38B (Requirements to sign register) which empowers the Minister to make regulations that provide for the following, in relation to registers of births or deaths that are not kept in paper form:
- a. That a duty to sign a birth or death register at the time of registration is to have effect as a duty to comply with specified requirements.
 - b. That a person who complies with specified requirements is to be treated as having signed the register at that time and to have done so in the presence of a registrar, and the entry in the register will be treated as having been signed by the person.
- 23 Under new section 38B(2) the provision that may be made by the regulations includes:
- a. Provision requiring a person to sign something other than the register.
 - b. Provision requiring the person to provide evidence of identity, specified in regulations, when registering a birth or death.
- 24 New section 38B(3) clarifies that in this section “specified” means specified in regulations under this section.
- 25 Subsection (3) of clause 3 inserts a new subsection (6) in section 39A of the BDRA (regulations made by the Minister: further provisions) that states regulations made by the Minister under section 38B may not be made unless they are laid before and approved by both Houses of Parliament (affirmative procedure).

Clause 4: Treatment of existing registers and records

- 26 Clause 4(1) specifies that the repeal of section 28 of the BDRA by clause 1(3)(c) does not affect the following:
- a. The requirement under section 28(2) of the BDRA for every superintendent registrar to continue to keep any records in their office of any registers of live-births or deaths which are in their custody immediately before the repeal comes into force.
 - b. The requirement under section 28(4) of the BDRA for the Registrar General to continue to keep any certified copies (quarterly returns) which are in the possession of the Registrar General and that such records need to be retained as per existing procedures. The Registrar

² Local scheme arrangements are arrangements for each registration district made under section 14 of the Registration Service Act 1953.

General is also required to keep any registers of still-births that were forwarded to the Registrar General before the coming into force of the repeal and such records need to be kept as per existing procedures.

- 27 Subsection (2) of clause 4 places a requirement on registrars to send any unfilled paper register of births or deaths, which are in their possession before this clause comes into force, to the superintendent registrar for them to be kept by the superintendent registrar.
- 28 Subsection (3) of clause 4 places a requirement on registrars to send any unfilled paper register of still-births, which are in their possession before this clause comes into force, to the Registrar General for them to be kept by the Registrar General at the General Register Office.
- 29 Subsection (4) of clause 4 allows the Registrar General to dispose of certified copies (quarterly returns) of still-birth entries in any register of still-births received under section 28(3) of the BDRA or under subsection (3) of clause 4 above. The Registrar General may also dispose of any information contained in those entries and held by the Registrar General in electronic form by virtue of section 27 of the BDRA.
- 30 Subsection (5) of clause 4 specifies how copies of registers of births and deaths which have been held in any form other than hardcopy form (such as electronically) during the period outlined in subsection (6) are to be treated:
 - a. Subsection (5)(a) provides that those copies of birth and death registers are to be treated as the register for the sub-district on and after the day clause 1 comes into force.
 - b. Subsection (5)(b) provides that the register is to be treated for the purposes of section 25(3) of the BDRA as having been kept in the form in which the copy was kept.
 - c. Subsection (5)(c) provides that any entry in the register signed by a person before clause 1 comes into force is to be treated as having been signed by the person for the purposes of the BDRA.
 - d. Subsection (5)(d) allows the Registrar General to dispose of any certified copies received under section 27 of the BDRA and any information contained in those entries where they are also kept in electronic form.
- 31 Subsection (6) of clause 4 outlines the period referred to in subsection (5) as (a) beginning on 1 July 2009, and (b) ending immediately before the day clause 1 comes into force.

Supplementary and final provisions

Clause 5: Minor and consequential amendments

- 32 Clause 5 brings the Schedule into effect.

Clause 6: Power to make further consequential provisions

- 33 Clauses 6(1) and (2) enable the Secretary of State to make regulations to make provision in consequence of the Bill, including consequential amendments to primary legislation (which includes Scottish and Northern Irish primary legislation).
- 34 This clause also sets out the Parliamentary procedure for regulations made under clauses 6(1) and (2). Subsection (3) provides that where regulations amend, repeal or revoke any provision of primary legislation, they will be subject to the affirmative resolution procedure. Otherwise, regulations will be subject to the negative resolution procedure.

Clause 7: Extent, commencement and short title

35 This clause is self-explanatory.

SCHEDULE

Minor and consequential amendments

- 36 Part 1 makes a number of amendments to the BDRA including: amending sections of the BDRA which referred to “the registrar or superintendent registrar as having custody of the register” and replacing such references with “appropriate registration officer for the register”. Other amendments specify how indexes need to be created and retained by both the Registrar General and the superintendent registrar.
- 37 Part 2 makes minor and consequential amendments to other primary legislation as a result of the changes to the registration system brought about by this Bill.

Commencement

- 38 Clause 7 provides for commencement and this clause comes into force on the day the Bill is passed. Clause 6, which provides for consequential provision, will also come into force on the day the Bill is passed, as well as any power to make regulations under or by virtue of the Bill once passed. The remaining clauses will come into force on such day as the Secretary of State may by regulations appoint.

Financial implications of the Bill

- 39 It is estimated that the set up costs for the General Register Office and the local registration service of moving from paper based birth and death registers to an electronic register will be £0.1m. The reforms of the birth and death registration system are expected to lead to net savings of £20m over 10 years.

Parliamentary approval for financial costs or for charges imposed

- 40 The Bill does not require either a Money Resolution or a Ways and Means Resolution.

Compatibility with the European Convention on Human Rights

- 41 The Government considers that the provisions of the Registers of Births and Deaths Bill are compatible with the European Convention on Human Rights.

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	No	Yes	Yes	No
Clause 2	Yes	Yes	No	No	No	Yes	Yes	No
Clause 3	Yes	Yes	No	No	No	Yes	Yes	No
Clause 4	Yes	Yes	No	No	No	Yes	Yes	No
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 7	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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