HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

3rd Report of Session 2004–05

Proposal for the draft Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004

Report with Evidence

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The Select Committee on Delegated Powers and Regulatory Reform

The Delegated Powers and Regulatory Reform Committee is appointed by the House of Lords in each session with the orders of reference "to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate level of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under the Regulatory Reform Act 2001; and to perform, in respect of such documents and orders and subordinate provisions orders laid under that Act, the functions performed in respect of other instruments by the Joint Committee on Statutory Instruments".

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Historical Note

In February 1992, the Select Committee on the Work of the House, under the chairmanship of Lord Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35–I, para 133). The Jellicoe Committee recommended the establishment of a delegated powers scrutiny committee in the House of Lords which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed in the following session, initially as an experiment for a limited period. It was established as a sessional committee from the beginning of Session 1994–95. Also in Session 1994–95, following the passage of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act. As a result, the name of the committee was changed to the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 was passed which expanded the application of the deregulation order-making power under the 1994 Act, and the Committee was took on the scrutiny of regulatory reform proposals under the Act. With the passage of the 2001 Act, the committee's name was further amended to its present form, the Select Committee on Delegated Powers and Regulatory Reform.

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PROPOSAL FOR THE DRAFT REGULATORY REFORM (REGISTRATION OF BIRTHS AND DEATHS) (ENGLAND AND WALES) ORDER 2004

INTRODUCTION

1. This is a "first-stage" proposal laid before Parliament on 22 July 2004. A Statement ("the Statement") by the General Register Office ("the GRO")(part of the Office for National Statistics ("the ONS")) was laid with the proposal under section 6(1) of the Regulatory Reform Act 2001 ("the 2001 Act").

2. At the request of the Committee, the GRO provided further evidence. The correspondence is set out in Annex 1 to this Report. On 10 November, the Committee took oral evidence from Mr Stephen Timms MP, Financial Secretary to the Treasury, the Minister responsible for the proposal.[1] The transcript of the session is set out at the end of this Report. On 1 December, we also took oral evidence from Ms Ruth Kelly MP, Minister for the Cabinet Office. Our purpose in meeting Ms Kelly was to discuss the operation of the 2001 Act generally. Given Ms Kelly's previous involvement in the present proposal in her former capacity as Financial Secretary, she was able to answer questions about the proposal specifically. The transcript of the session will be published in due course as an annex to the Committee's end of session report for Session 2003-04.

3. We also received submissions from the British Humanist Association, the Federation of Family History Societies, Finders Genealogists Ltd, Fraser and Fraser, the Saga Group Ltd and Lord Teviot, which are set out in Annex 2 to this Report.

4. In addition, the Commons Regulatory Reform Committee, on 2 November, took oral evidence from the Financial Secretary and also received further written evidence from the GRO and others. We are grateful to the Commons Committee for communicating that evidence to us. The Commons Committee evidence, to which we refer, is published with that Committee's report on this proposal.[2]

Overview of the proposal

5. In evidence to the Committee, the Financial Secretary described this proposal as "the most far-reaching reform of the civil registration service in England and Wales since it was introduced in 1837" (Q1). The proposal is intended to "reform and modernise the registration service" so as to "provide a customer focused service and take advantage of the opportunities provided by technology".[3] The "heart of the new system" will be a central database of

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1 The Financial Secretary was accompanied by Mr Dennis Roberts, Director of Registration Services, and Mr Kieron Mahony, Head of Policy for Civil Registration Reform, both of the ONS, and Mr Ron Powell, Assistant Director of Legal Services in the Department for Work and Pensions' Office of the Solicitor.

2 Second Report, HC 118, Session 2004-05.

3 Paragraph 2.1.6 of the Statement.

all records of births and deaths in England and Wales.[4] Registration itself will become easier, as remote registration (by telephone and online) is enabled. Links through the database will provide a "through life" record for those whose registrable life events occur in England and Wales, allowing changes and updates to be made more easily and obviating the need for paper documents for a range of services and benefits.[5]

6. The proposal provides for the discontinuation of the current paper-based system and creates an obligation on the Registrar General for England and Wales "to create and maintain a central register in such a form as he may determine" (article 9 of the draft order). Although not a requirement of the proposed order, it is intended that all existing records, modern and historic, will be placed on an electronic database, making access easier and cheaper than at present (although access to information on modern records is to be restricted to preserve privacy). Local authorities are to become wholly responsible for face-to-face local services, and the Registrar General's role will be focused on the national aspects of the service, such as maintaining the database and advising registration authorities.

7. A full account of the proposal is set out in Chapter 6 of the Statement and summarised in Annex 3 to this Report. The Statement, in setting out the provisions of the proposal, does not specify which elements of the planned reform are contained in the draft order and which are not. (For example, whereas the creation of the central database is in the draft order (article 9), computerisation of the database is not.) For this reason we requested a table setting out this information. The table provided by the GRO in response to this request is set out in Annex 1 to this Report (Table 1).

Background

8. The background to the proposal is set out in paragraphs 2.1.1-2.1.11 and in greater detail in Chapter 5 of the Statement. The proposal is part of the Government's wider reform agenda and takes into account the Four Principles of Reform:

- setting national standards within a framework of clear accountability, designed to ensure that citizens have the right to high quality services wherever they live;
- devolution and delegation to the front line, giving local leaders responsibility and accountability for delivery, and the opportunity to design services around the needs of local people;
- more flexibility so that public service organisations and their staff are better able to provide modern pubic services; and
- more choice for the pupil, patient or customer and ability, if provision is poor, to have an alternative provider.

9. In addition to the present proposal, reform of the law relating to civil registration is furthered by the Civil Partnership Act 2004 ("the 2004 Act") and a proposal for a second regulatory reform order concerning marriage law, proposed to be laid before Parliament later this session. Originally both regulatory reform orders were to have been a single proposal, but marriage

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4 Paragraph 2.2.1 of the Statement.

5 Paragraphs 6.5.1–6.5.4 of the Statement.

law reform has been separated out to take account of Parliament's views on the 2004 Act.[6]

10. The Statement sets out the history of these proposals.[7] In September 1999, the Registrar General published a consultation document, "*Registration: Modernising a Vital Service*". Over 1,000 responses were received and are described as generally supportive of a proposal for more choice in ways to register, with increased use and availability of electronic information. The responses were used to develop a new policy framework for the civil registration service and, in January 2002, a White Paper, "*Civil Registration: Vital Change*", was published. At this stage, the Government announced that the regulatory reform order procedure would be used to implement reform of the civil registration service. Between July and October 2003, the Government sought responses to its consultation document "*Civil Registration: Delivering Vital Change*". Nearly 3,400 responses were received. In the light of representations made, the proposal was amended and laid before Parliament in July 2004.

Extent

11. The draft order extends only to England and Wales. Civil registration is a devolved matter within the jurisdictions of Scotland and Northern Ireland. Reform of the civil registration service is being taken forward in both Scotland and Northern Ireland. In Scotland, this will be by means a draft Registration Services (Scotland) Bill. It is anticipated that the draft bill will include provision to allow registration of a birth or death occurring anywhere in Scotland at any registration office in Scotland and, when sufficient protection against fraud can be given, to enable registration online of births and deaths as an additional option to face-to-face registration.[8] Civil registration is also being reviewed in Northern Ireland in a way which is, according to the GRO, "broadly in line with proposals for England and Wales, except that there are no current plans to change the arrangement with local authorities for the delivery of the service".[9]

12. Given the intention that the proposed central database should be developed to enable the creation of "through life" records, we invited the GRO to state whether arrangements were being made to make provision for the central database to include, or have links to, information about births and deaths in Scotland and Northern Ireland. The GRO stated, at A6 (see Annex 1 to this Report), that "there is regular contact at official level about developments in civil registration and, in general, the three jurisdictions work towards common goals and objectives within the constraints of their own legislation".

REGULATORY REFORM ACT 2001 TESTS

13. It has been our practice when scrutinising regulatory reform proposals to consider the tests stipulated in the 2001 Act (for example, whether the proposal removes or reduces burdens[10] and whether it maintains necessary

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6 This decision was announced by the Minister on 29 March 2004.

7 Paragraphs 2.1.7-2.1.11 of the Statement.

8 Answer to Commons Committee Q66.

9 Answer to Commons Committee Q66.

10 Section 1(1)(a) of the 2001 Act.

protection[11]). It has rarely been necessary for the Committee to consider the test of appropriateness, a test which does not appear on the face of the 2001 Act but which is described in the Explanatory Notes to the 2001 Act as "a key policy test" which is applied by the Minister and forms part of the consideration by the Parliamentary regulatory reform scrutiny committees.[12] In the present case, however, given the nature and scope of the proposal and the level of interest that it has attracted, we have found it necessary to consider this test particularly carefully. Accordingly, we first consider whether the regulatory reform order procedure is appropriate for this proposal.

14. During our consideration of the proposal, we have been made aware by the Ministers from whom we received evidence of the following matters: that, in the Government's view, reform of the civil registration service has been regarded as an appropriate subject for a regulatory reform order from the outset; that sensitive and politically controversial proposals relating to marriage law had been removed for separate legislation; that many years of work had taken place in preparation for the proposal and had, amongst other things, involved unusually extensive consultation; and that amendments to the original text had resulted in a proposal without, as far as the Government was concerned, any known controversial elements.

15. The Committee was also aware that our conclusion in respect of appropriateness could not, under the procedures of the 2001 Act, be put to the House as a whole for debate with a view to detailed amendment of the proposal.[13] Our judgment would therefore lead to a possibly time-consuming reconsideration of the proper legislative instruments for achieving some or all of the purposes of the present proposal.[14]

16. **After due deliberation, the Committee has nevertheless concluded that the proposal is not appropriate for the regulatory reform order procedure.** Our reasons are set out below. We also identify some aspects of the proposal which appear to us to raise some doubt as to whether the proposal would, in any event, meet the explicit 2001 Act tests. Given our finding on appropriateness, we have not considered the remaining 2001 Act tests to the extent that is our usual practice.

Appropriateness

17. We do not dispute that modernisation of civil registration is important and desirable. In considering appropriateness, we are not questioning this policy. Our concern is procedural. It is to decide whether the legislation implementing the policy is appropriately dealt with by way of the regulatory reform order procedure.

18. In applying the appropriateness test, we took into account:

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11 Section 3(1)(a) of the 2001 Act.

12 Explanatory Notes to the Regulatory Reform Act 2001, para 44.

13 It is, of course, the case that the final word rests with the House and not the Committee, and the House has the option of debating a Committee report following "first-stage" scrutiny of a proposal (see 2nd Report of the House of Lords Procedure Committee, HL Paper 58, Session 1993-94, p 6, para (x), concerning the Deregulation and Contracting Out Act 1994, predecessor to the 2001 Act).

14 We are aware that the Commons Regulatory Reform Committee has concluded that the order-making power under the 2001 Act should not be used in respect of the present proposal. House of Commons, Votes and Proceedings, 7 December 2004, p 47.

- the main differences between the Parliamentary scrutiny of a bill and of a regulatory reform order; and
- the features which, in general, make a proposal either appropriate or inappropriate for the type of scrutiny applied to regulatory reform orders;

and we asked the question

- whether the present proposal, in particular, is appropriate for the regulatory reform order procedure or whether it should it be subject to the type of scrutiny given to bills.

Main differences between the Parliamentary scrutiny of a bill and a regulatory reform order

19. The regulatory reform order procedure provides a mechanism, subject to certain restrictions, for amending primary legislation as an alternative to amendment by primary legislation. The two procedures are significantly different. Bills give individual members of the two Houses opportunities to consider and debate the detail of legislation. Secondary legislation does not provide an equivalent opportunity. Although the super-affirmative procedure provided for regulatory reform orders is more far-reaching than procedures for other subordinate legislation, the final order is not amendable by either House and there is no procedure to allow the two Houses to reconcile any differences of view.

20. Because bills undergo a procedure which affords the opportunity for a greater level of Parliamentary scrutiny than regulatory reform orders, the regulatory reform order procedure is applied in limited circumstances only, namely, where the proposal is considered to be an appropriate subject for the procedure and meets the 2001 Act tests.

Definition of appropriateness

21. The 2001 Act provides no definition of appropriateness. On a number of occasions, however, during the passage of the Regulatory Reform Bill through Parliament, Ministers indicated that the regulatory reform procedure would not be appropriate for "large and controversial" measures.[15]

22. The scrutiny committees in Parliament have developed the interpretation of appropriateness. The Commons Committee has suggested that "the procedure should not be used for implementing policy changes so substantial as to require the much higher-profile attention paid by Parliament to primary legislation", and "in determining … whether a proposal appears to make an inappropriate use of delegated legislation, the question we will have to ask is: are we in the Committee competent to come to the necessary judgements in respect of this proposal on behalf of the House; or are these matters the detail of which it must be for the whole House to debate and, if necessary, vote upon?"[16]

23. The Lords Delegated Powers Scrutiny Committee, when finding a particular deregulation proposal (namely, the proposal for the draft Deregulation (Sunday Dancing) Order 1995) to be inappropriate, concluded that, in that

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15 For example, Lord Falconer of Thoroton, HL Hansard, 23 January 2001, col 209.

16 First Special Report, HC 389, Session 2001-02, para 16 (referring to the 4th Report from the Commons Deregulation Committee, HC 450, Session 2000–01, para 8).

instance, the controversy was such "that we believe Parliament would expect to find the proposal in a bill, with the freedom of debate which that would allow".[17]

24. We have reflected at length on how "controversial" should be interpreted. In evidence to the Committee, the Financial Secretary stated that, in his view, the proposal was "not politically controversial" (Q2). Lord Falconer of Thoroton, during the passage of the Regulatory Reform Bill, also referred to controversial as meaning "politically controversial". He said: "We have made it clear at all stages that we are dealing with orders that are not politically controversial, although there may be controversy about the detail. If they were politically controversial to a serious extent, that would not be appropriate for a regulatory reform order".[18]

25. **We agree that, where the subject of a proposal is politically controversial in the sense that it raises issues which are contentious between the political parties, then it is not an appropriate subject for the regulatory reform order procedure. We also agree that, in this instance, the proposal appears not to be politically controversial in this sense.**

26. However, the controversy which makes a subject inappropriate for the regulatory reform order procedure need not be party political controversy but may be more general. **In our view, a proposal may be inappropriate for the regulatory reform order procedure if there is reason to believe that some of those directly affected by it, including members of the general public, have such significant concerns about some important element of it that there is a clear need for the greater level of Parliamentary scrutiny and debate to which bills are subject.**

Whether the present proposal is appropriate for the regulatory reform order procedure

27. It is not contested that the present proposal is large. Indeed, in evidence the Financial Secretary described the proposal as "substantial" and "complex" (Q2). It is one of the two largest regulatory reform orders to come before the Committee. It comprises 68 articles and 15 Schedules, and it amends 20 Acts. This may be compared to the proposal for a draft Regulatory Reform (Fire Safety) Order 2004 which we recently considered and which, in terms of appropriateness, we described as being just within the margins of acceptability. That proposal comprised 51 articles and 4 Schedules, and it amended 21 general Acts and 33 local Acts.

28. In the present case, the principal question is whether the proposal is controversial in the general sense set out in paragraph 26 above. There are two main sources of evidence which give us reason to believe that it is. The first is the results of the consultation exercise and the second is the evidence received by the Parliamentary scrutiny committees during this "first-stage" period of Parliamentary consideration of the proposal. Furthermore, we believe that the nature and extent of our own deliberations and the number of questions raised by the Commons Committee, reflect continuing concern about this proposal. We also take the view that the Financial Secretary's suggestions, made in evidence to the Commons Committee, about

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17 15th Report, HL Paper 102, Session 1994-95, para 22.

18 Lord Falconer of Thoroton, HL Hansard, 23 January 2001, col 209.

opportunities to debate the proposal and, subsequently, about implementation of the order, indicate the Government's awareness of the particular sensitivity of the proposal.

Results of the consultation

29. During the passage of the Regulatory Reform Bill through the Lords, Lord Falconer suggested that evidence of controversy would be provided by the consultation results. He said: "A highly contentious issue would come up against serious problems during the consultation period and the Minister, obliged to set this out in the document he placed before Parliament, would have to reflect that explicitly".[19]

30. There were 3,383 submissions in response to the consultation paper,[20] compared with 276 responses to the consultation on the proposal for a draft Regulatory Reform (Fire Safety) Order 2004. The views expressed in the consultation are described in Chapter 20 of the Statement. The range of issues about which views were sought and the large number of respondents made it difficult for us to gain an overall impression of the outcome of the consultation, and for this reason the Committee requested the GRO to provide a summary of responses to key proposals ("the summary"). The summary is printed at Annex 1 to this Report (Table 2).

31. Both Chapter 20 and the summary indicate that the proposal, at the consultation stage, contained a number of contentious elements. Chapter 21 of the Statement sets out changes made to the proposal in the light of the consultation. Despite these changes, it is clear that there are a number of issues about which there is a continuing controversy.[21]

32. We note, for example, that the Statement records that "The proposal that drew by far the greatest response was that in respect of remote registration via the internet or by telephone", a central element of the proposed order. "Views were relatively evenly balanced, with 48% in favour and 52% against".[22]

33. Another example is the issue of access to registration records, where the Statement records: "There was some general support for the proposals on access and some recognition of the need to protect privacy and confidentiality and to reduce fraud. However, there was widespread opposition to the manner proposed to achieve that. Opposition came from all groups, but the reasons given differed depending on the group and were often contradictory".[23] One specific issue which was raised concerned the restriction of access to information relating to occupation, address and cause of death, information which had previously been in the public domain. The Statement explains that it was originally intended to restrict general access to all this information but that, given the representations received, the

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19 HL Hansard, 23 January 2001, col 209.

20 This figure was given in answer to a Commons Committee question (Q94). The Statement, at paragraph 19.1.1, gives the figure 3,370.

21 We note that at several points in Chapter 21 there is a section headed "Proposals where changes have not been made despite opposition". See paragraphs 21.6.6, 21.7.5, 21.8.36, 21.9.7, 21.10.8, 21.11.15 and 21.13.2 of the Statement.

22 Paragraph 20.1.2 of the Statement.

23 Paragraph 20.8.5 of the Statement.

restriction would be limited to address and cause of death.[24] We have received evidence from genealogists during the "first-stage" scrutiny period, which continues to put the case that the provision relating to restricted access to information will, in some circumstances, hinder probate research.

34. On the phasing out of certificates and other documents, the Statement records that "generally … there was significant opposition to the proposal to phase out certificates", with opposition coming principally from religious groups, members of the public (including genealogists and members of religious congregations) and local authorities and registration staff.[25] Whilst noting the "widespread opposition", the Statement later states: "It is obvious that the public has a sentimental and cultural attachment to certificates. However, certificates can and have been used for fraudulent purposes. Overall, the Government remains of the view that the phasing out of certificates is necessary, justifiable and proportionate to the benefits that would arise …".[26]

35. Whereas it appears that some issues raised during the consultation exercise demonstrate an irreconcilable difference of view between some of those affected by the proposal and the Government, others remain unresolved because elements of the proposal are not fully developed. For example, on computerisation, the Statement records that "the majority of respondents … were concerned about computerisation and some were totally opposed to moving to an electronic system and particularly to online registration by the public", mainly because of fears about the security and reliability of the computerised system.[27] In answer to those concerns, the Statement says: "As with any computerised system, there would be back-up processes in place to ensure that valuable information was not lost and to act as a further security measure. It is not possible to say in detail what the back-up arrangements would be as the system has not yet been designed"[28] and, later in the chapter, "unfortunately, it is not possible to be specific at this stage about many of these issues as the national database has not yet been designed nor have decisions about digitisation been taken".[29]

36. Another example of where the technology is still in the process of development concerns the Authentication Framework. The Statement explains that "individuals who choose to register events remotely will need to provide evidence of their identity in accordance with the proposed Government Authentication Framework or similar mechanism".[30] In answer to a question by the Commons Committee (Q8), the GRO indicated that the Authentication Framework was still being developed and "should this prove inappropriate for one-off transactions such as registering a birth it may be necessary to provide an alternative".[31]

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24 Paragraphs 6.9.6-6.9.7 of the Statement.

25 Paragraph 20.8.35 of the Statement.

26 Paragraph 21.8.55 of the Statement.

27 Paragraph 20.7.12 of the Statement.

28 Paragraph 21.7.10 of the Statement.

29 Paragraph 21.7.15 of the Statement.

30 Paragraph 2.2.4 of the Statement.

31 This issue was taken up by the Commons Committee when taking evidence from the Financial Secretary on 2 November (Q116). Mr Dennis Roberts said that they did not expect the framework to be feasible but it was possible. Alternative mechanisms had not been devised at present.

Submissions received by the Parliamentary scrutiny committees

37. The Commons Committee received 42 submissions directly. We received six, most of which were also received by the Commons Committee.

38. The submissions reflect aspects of the continuing controversy about some important elements of the proposal. A firm of genealogists and international probate researchers, Fraser and Fraser, for example, stated that: "Whilst we welcome many of the improvements suggested by the order we have two principal areas of concern: firstly the proposal to abolish paper records, and secondly, information only available with consent". The second point was also made by another genealogy company, Finders Genealogists Ltd, which argued that the proposal to restrict access to certain types of information "will have a serious adverse effect" on their business and that the public interest would not be served by reducing the ability of such companies to identify the beneficiaries of unclaimed estates with certainty. The Federation of Family History Societies raised a number of points including concerns about restricted access and about the digitisation programme. The Saga Group Ltd referred to the implications of the proposals for their initiative to ensure that mailing lists do not include anyone who has died.[32] Lord Teviot suggested that his "main concern" is that the draft order "does not combat fraud … which is surely one of its main objectives", and The British Humanist Association, in their submission, complained about the conduct of the consultation exercise and raised issues about the market for non-statutory ceremonies (for example, baby-namings, marriages and funerals) where the local authorities will have a "near-total monopoly".

39. We are aware that other issues were raised in the submissions received by the Commons Committee.

Scrutiny by the Parliamentary scrutiny committees

40. We have considered this proposal at unusual length and points raised in our deliberations have reinforced our view that the proposal requires the scrutiny and debate afforded to primary legislation. It is clear to us that the sensitivity of the subject matter, particularly in the context of the Government's proposals in relation to identity cards, is such that, were it to be drawn to the attention of members of the public, questions would be prompted by concerns relating, for example, to the safety and security of the computerised central register and to the risks inherent in a telephone registration system where errors might arise because of unusual names and difficult spellings.

41. We are also aware of the extent of the Commons Committee's deliberations on this proposal, and the significant amount of further evidence which they have requested from the GRO.

Proposed parliamentary debate

42. When the Minister gave evidence to the Commons Committee, there was some discussion about whether, if the proposal were to go ahead, Parliament should be provided with an opportunity to debate the proposal after "first-stage" scrutiny. We asked the Minister what the benefit would be of such a

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[32] This matter was raised during the Commons Committee's evidence session with the Financial Secretary on 2 November (QQ 120-127). Questions were asked about the effect of the proposal on private companies that offer a list cleaning service.

debate. He said: "It would give the opportunity for Members of Parliament to air any concerns that they … have, and the point has been made around this Committee that there might be things that could arise that Members of Parliament would be able to draw to the attention of Ministers. I think that would be a useful step to ensure that we had taken the fullest account of any public concerns that there might be" (Q25). Mr Roberts said that the period between first- and second-stage scrutiny "would be an opportunity for people to make their views known" (Q26).

43. The Minister also suggested that, once Parliament had agreed the order, there should be debates on two further occasions, namely, just before the introduction of the telephone registration service and just before the introduction of the online registration service. He said: "I think there are a separate set of issues likely to arise at each of those two points which, again, a Parliamentary debate would help to inform Ministers and to reassure the public" (Q 25).

44. In suggesting that the proposal and subsequent implementation of the order should be debated, two main points arise. First, we question whether a debate after "first-stage" scrutiny would, as the Minister suggests, "ensure that [the Government] had taken the fullest account of any public concerns that there might be". Secondly, whilst we appreciate the Government's concern that it should be informed about issues which Members of Parliament may wish to draw to their attention and about which the public needs to be reassured, there is an implication in the Government's suggestion that they are aware that there are outstanding concerns about which they are not fully informed and which continue to worry the public. If this is the case, and we believe it is, we are confirmed in our view that the present proposal is not an appropriate subject for the regulatory reform order procedure.

Conclusion

45. **We do not dispute that modernisation of civil registration is important and desirable. In our view, however, for some of those directly affected by the present proposal, there remain such significant concerns about some important elements of it that there is a clear need for the greater level of Parliamentary scrutiny and debate to which bills are subject.** The areas which, in our view, particularly warrant full Parliamentary scrutiny include: safeguards in relation to the integrity, availability, security and accuracy of the central database; the implications of enabling registration by telephone and via the internet, along with the creation of a national call centre; safeguards in relation to the use to which the Registrar General may put the information collected through registration of births and deaths; restrictions on access to information; the phasing out of routine paper certificates; and co-ordination of reform of the civil registration services in England and Wales, Scotland and Northern Ireland.

46. We note that in our discussion with the Financial Secretary on the issue of appropriateness, he drew attention to the fact that reform of the civil registration service has long been regarded as an example of an appropriate subject for a regulatory reform order. He said: "Since about 1990 there have been proposals which it has not been possible to take forward because of a lack of Parliamentary time. I think that this particular example was very much in mind when the regulatory reform order-making powers were taken

through Parliament. Both in debate and in the explanatory notes this specific example was cited as an appropriate use of these powers" (Q2).

47. As far as we are aware, reform of the civil registration service was not included in the illustrative list of examples provided when the draft Regulatory Reform Bill was published as a Command Paper in April 2000;[33] nor did it appear in the list of 22 "proposals under preparation that could be implemented under the Regulatory Reform Bill" announced by the Government in a written answer in November 2000.[34] We are aware, however, that the illustrative list of measures which the Government wished to achieve by way of regulatory reform order, which was annexed to the Explanatory Notes to the Regulatory Reform Bill and is annexed to the Explanatory Notes to the 2001 Act, included reform of the civil registration service. We are also aware that a Government memorandum to the Commons Committee of October 2001, in referring to the list of illustrative examples and, in particular, to the "thorough-going review of the civil registration service", states that "given the prominence attached to the illustrative examples of the scope of the order-making power during the bill's passage, the Government firmly believes that they should be treated as an expected use of the order-making power".[35]

48. We note this account of the Government's anticipated use of the 2001 Act. We do not believe however that it advances the case in favour of the appropriateness of the present proposal. This is because, first, review of the civil registration service is included in the illustrative list without reference to the scope of the review. Secondly, although it is for the Minister to decide initially whether a proposal is appropriate for the regulatory reform order procedure, the appropriateness test "will also form part of the consideration by the scrutiny committees".[36] Thirdly, given that the "controversy" element of the appropriateness test is informed by the outcome of the consultation, it must be the case that an initial expectation that a proposal would be an appropriate subject for the regulatory reform order procedure may be brought into doubt by the results of the consultation.

Other 2001 Act tests

49. In view of our conclusion on the appropriateness test, we do not set out in detail a complete account of our conclusions on the remaining 2001 Act tests. We draw to the attention of the Government however two important examples arising from our consideration of those tests which reinforce our conclusion on appropriateness.

Necessary protection

50. Section 3(1)(a) of the 2001 Act states that an order under section 1 of the Act can be made only if the Minister is of the opinion that the order does not remove any necessary protection.

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33 Publication of the draft Regulatory Reform Bill, 18 April 2000, Cm 4713.

34 HC Hansard, 27 November 2000, col 369W. We note that the list included "making it easier to correct errors on birth and death certificates, a measure since implemented as the Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2001 but did not include the wider reform of the civil registration service.

35 First Special Report, HC 389, Session 2001-02, para 32.

36 Explanatory Notes to the 2001 Act, para 44.

51. The provisions of the Births and Deaths Registration Act 1953 which require that particulars of a birth or a death are given personally to the registrar and that the informant sign the register afford a level of protection against the information being recorded inaccurately. Though this proposal provides a procedure for rectifying errors, doubts exist as to whether an equivalent level of protection is maintained.

52. Under the proposal, the register may be kept in any form (article 9). But the intention is that the computerised record will be the official register. (Currently, computerised records are created from the paper records, but it is the paper record that is the official register.) Whilst we note the Financial Secretary's comments that it is not possible to prescribe precisely how registered information will be recorded and maintained because of developing technology,[37] in our view, there is inadequate statutory provision to reduce to a minimum the chances of the systems being corrupted or the subject of fraud.

Reasonable expectation

53. Section 3(1)(b) of the 2001 Act states that an order under section 1 of the Act can be made only if the Minister is of the opinion that the order does not prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise.

54. As we have noted in paragraph 33 above, one effect of the proposal would be to deny some people unrestricted access to certain information which is currently available to them. Those affected are genealogists and those wishing to trace relatives. In our view, it is arguable that, for such people, the effect of the order would be to prevent them exercising a right which they might reasonably expect to continue to exercise.

Conclusion

55. The cumulative effect of our doubts about whether the proposal satisfies the explicit tests in the 2001 Act serve to confirm the Committee's view that, taken as a whole, the proposal is not an appropriate use of the 2001 Act.

DRAFTING

56. Under section 6(1) of the 2001 Act, the Minister lays before Parliament a document containing his proposals "in the form of a draft of the order". The draft in this case seemed to the Committee to contain a significant number of errors, some of which hindered understanding of the proposal.[38] The GRO may have been under the misapprehension that a working draft would be acceptable for the purposes of section 6(1).

57. The super-affirmative procedure enables the Parliamentary Committees' reports at first stage to be taken into account before the draft order is laid at the second stage. But the Committee expects the draft at the first stage to be

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37 Commons Committee evidence session with the Financial Secretary on 2 November (Q104). We note that the Financial Secretary agrees that the security and integrity of the computerised register are issues about which Members of Parliament would want reassurance (Q107).

38 We referred some of these drafting errors to the GRO in our request for further evidence (see Annex 1 to this Report).

in the form which (subject to changes, as contemplated by section 6(5) of the 2001 Act) the Minister could adopt, if it were laid and approved at second stage.

CONCLUSION

58. **The Committee reports that the proposal for the Regulatory Reform (Registration of Births and Deaths)(England and Wales) Order 2004 is not an appropriate subject for a regulatory reform order. The proposed order should not be proceeded with.**

ANNEX 1: CORRESPONDENCE

Letter from the Clerk to the General Register Office

Last Wednesday, you and your colleagues gave a presentation to the Committee about the above proposal which the Committee found very helpful.

During the course of the discussion following the presentation, you undertook to provide two pieces of additional analysis. These were as follows.

First, please could you, in tabular form, (a) set out each element of the planned reform as described in the Explanatory Statement, and (b) state whether or not there is provision in the draft order which matches that element and, if so, (c) where exactly it can be found in the draft order.

Secondly, in view of the significant number of responses received, please could you provide a summarised analysis of responses, preferably in tabular form, showing the balance of views in respect of each key proposal, with a breakdown of those in favour and those against by respondent class. The Committee is aware that Chapter 19 of the Explanatory Statement provides in part a breakdown of responses by class of respondent and that Chapter 20 provides, in narrative form, a description of the balance of views with some indication of respondent class but would welcome a single, clear and concise document combining the two types of information.

I would be grateful if you could provide this information as soon as you are able and, in any event, no later than Friday 29 October.

I am copying this letter to Stuart Deacon, Committee Specialist to the House of Commons Committee on Regulatory Reform. I would be grateful if you would copy your response to Stuart.

If you would like any further information or clarification concerning the Committee's request please do not hesitate to contact me.

27 October 2004

Response from the General Register Office to the Clerk

Table 1: Proposed reforms cross-referenced to the explanatory document and draft order

From Explanatory Document **Birth, still-birth and death registration**		Is it in draft RRO – Yes/No	Corresponding Article
2.2.1	Creation of a central database for the recording of births, still-births and deaths	Yes	Article 9(3)
6.15.2	The Registrar General to be able to register births, still-births and deaths	Yes	Article 11
6.1.1 6.2.2 6.3.1	Removal of geographic restrictions on where a birth, still-birth or death may be registered	Yes	Article 10 Article 16(3)(a)(i) Article 19(2)(a)
6.1.1 6.2.1 6.3.1	Provide alternative means for giving the information for the registration such as via the Internet or by telephone	Yes	Article 10
6.1.6	Standardise the procedure for the registration of a birth up to twelve months from the date of birth	Yes	Article 16(2)
6.1.11	Ability for unmarried parents to give information separately as well as jointly (as now) where the father's details are to be recorded in a birth entry	Yes	Article 11(a)
6.2.5	Extend the time limit for registration of a still-birth from three to twelve months	Yes	Article 16(2)
6.2.5	Provide for the unmarried father of a still-born child to act as informant for the registration	Yes	Article 16(3)
6.3.11	Minor changes to the information that may be collected at registration	No	To be introduced through existing regulation making powers under the Births and Deaths Registration Act 1953
6.3.12	Introduction of shortened form of death certificate	Yes	Article 55 and Schedule 14
6.4.1	Extend the facility for registration in both the Welsh and English languages to events that take place in England	No	To be introduced through existing regulation making powers under the Welsh Language Act 1993
Records management			
6.5.1-6.5.2, 6.5.4-6.5.7, 6.6.7	To have a system where records relating to the same person can be linked – 'a through life record'.	Yes	Article 11(2)

6.5.3, 6.5.12	To be able to add other records to the central database and to link these records to birth, marriage and death records.(DN Marriage records will only be able to be added to the register when provision made in RRO2 so I think we should leave reference to marriage out)	Yes	Articles 11(1)(a) and Schedule 2
6.7.1-6.7.8, 6.11.4	The categorisation of records into 'historic' and 'modern'. The age of the record will determine into what category a record will fall. For births a record will become historic after 75 years and for deaths after 25 years.	Yes	Article 34 and Schedule 9 Part 1
6.8.1-6.8.6, 6.7.3, 6.11.2	The computerisation of the existing archive of registration records.	Yes	Article 11
6.9.1-6.9.11, 6.11.1-6.11.2, 6.11.5, 6.13.7, 6.13.20	The introduction of a new framework for accessing records. Historic records would be publicly available and open. Modern records would continue to be publicly available but access to some information would be restricted namely address and cause of death.	Yes	Articles 31, 32, 33, 34 and Schedules 8 and 9
6.9.15-6.9.31	Access to restricted information would be available to the person named in the record, their family, those given access by the individual/family and those organisations for whom there was a statutory gateway.	Yes	Article 35 and Schedule 10
6.12.1, 6.12.3-6.12.11	Local authorities to have responsibility for the maintenance and preservation of original registers to ensure their long-term future.	Yes	Article 5(1) and Schedule 4
6.9.5, 6.9.12-6.9.14, 6.9.32-6.9.40, 6.13.8, 6.13.21	Certificates to be phased out over time by making records available electronically with a statutory framework introduced for controlling access.	Yes	Articles 31, 32, 33, 34 and Schedules 8 and 9 (Articles 57 and 59 also refer)
6.10.1-6.10.3	Introduce provision for sharing information with other Government Departments and Agencies within a framework that will protect the individual	Yes	Article 45 and Schedule 12
Organisation and structure	*Registrar General and General Register Office*		
6.15.1	There would need to be changes to the RG's regulation making power in s20 of RSA	Yes	Article 9 (5)
6.15.1	Provision of Remote Facilities	Yes	Article 10(c)
6.15.1	Face to face delivery becomes the responsibility of the local authorities	Yes	Article 9 (4)
6.15.1	…within the framework of national minimum standards	Yes	Article14
6.15.2	The central database would relieve the need for most accounting and statistical returns	Yes	Article 3

6.15.3	LACORS would assume the role of disseminating information promoting good practice…	No.	
6.15.4	Extend definition of registers	Yes	Article 9 (3)
6.15.4	Changes to Regulation making powers.	Yes	Article 9 (5)
	Local Authority Responsibilities		
6.16.1	Face to face delivery becomes the responsibility of the local authorities	Yes	Article 9((4)
6.16.1	It would not be compulsory to have a designated register office or specified districts or sub-districts	Yes	Article 9 (2)
6.16.1	Each local authority would decide in consultation with interested parties would decide, within national standards how the service is delivered and the number and location of access points	Yes	Schedule 4
6.16.2	Local authorities would not have to provide the service directly	No.	
6.16.2	The duty of Best Value would apply	No.	
6.16.3	It is proposed to repeal the provisions within the Registration Act 1953 that relate to local registration schemes	Yes	Article 9 (2)
	Sanctions, National Standards, Compliance and Inspections		
6.17.2-5	Current national standards would be strengthened by a statutory code of practice.	Yes	Article 14 and Schedule 4
6.17.6	Section 15 of the Local Government Act 1999 would apply.	No	
6.17.7	The Inspectorate to be part of the Audit Commission.	No	
	Inspection processes to reflect the provision of the Best Value and performance assessment frameworks.	No	
6.17.8	Statutory post holders no longer required to account…	Yes	Article 3
6.17.9	Section 12 – provision of fireproof boxes would be repealed	Yes	Article 9
6.17.10	Section 15 Fine for failure to give up records etc.would be repealed	Yes	Article 9
6.17.10	Power for RG to procure accommodation and recover costs would be repealed	Yes	Article 9
6.17.10	Section 16 Power to refuse to carry out a chargeable registration service would be repealed	Yes	Article 9
6.17.11	Section 18 Non salaried officers provisions would be repealed	Yes	Article 3
	Status of Registration Officers		
6.18.1	There would no longer be statutory officer performing designated tasks. Registration officers would become local authority employees.	Yes	Article 4
6.18.2	The proposed Order will treat statutory post-holders as if TUPE did apply.	Yes	Article 4 (4)

6.18.5	The Registrar General would no longer be required to approve the appointment of deputies or have the power to dismiss individual registrars	Yes	Article 3
6.18.7	The Registrar General would no longer retain his power to prescribe classes of people who cannot be employed in registration services	Yes	Article 3
	Finance		
6.19.9	New arrangements will require the Registrar General to set the fees at a level that aims to recover costs.	Yes	Article 15 & Schedule 5
Statistics			
6.14.4	Enable the specification of statistical information collected at birth and death registration to be more easily amended	Yes	Article 48, 49 & Schedule 13
6.14.5	To include information currently collected voluntarily under the new legal framework	Yes	Schedule 13
6.14.7	To allow the Registrar General to pilot and test questions for the collection of new statistical information	Yes	Article 52

Table 2: Commentary by the GRO on key proposals

From explanatory document		Article in draft RRO	Commentary on responses received
Birth, still-birth and death registration			
2.2.1	Creation of a central database for the recording of births, still-births and deaths	Article 9(3)	Respondents were evenly divided on this proposal. They covered the full spectrum from preference for the retention of the current paper based system as advocated by the English Clergy Association to support for the choice of service delivery that a central database system would bring expressed by UNISON, LACORS and the Archbishops Council. Many respondents including the Society of Registration Officers and some local authorities questioned whether the potential benefits of better access to the service and better protection of records would be realised given the track record of the public sector in delivering such systems. Much of the criticism stemmed from the proposed use of a central database to provide for remote registration – see comments on Article 10 below.
6.15.2	The Registrar General to be able to provide services for the remote registration of births, still-births and deaths	Article 11	See comments in regard to Article 10 below.
6.1.1 6.2.2 6.3.1	Removal of geographic restrictions on where a birth, still-birth or death may be registered	Article 10 Article 16(3)(a)(i) Article 19(2)(a)	The responses that specifically mentioned this proposal were in favour due to the choice it would offer the public.

6.1.1 6.2.1 6.3.1	Provide alternative means for giving the information for the registration such as via the Internet or by telephone	Article 10 Schedule 1	Respondents were divided on this issue with a small majority against. Those opposed were particularly concerned about registration via the Internet. The Society of Registration Officers felt that a menu driven Internet based system would be too complex for use by the public, a view echoed by many registration officers. On registration by telephone these respondents also argued that the creation of a central contact centre was either unnecessary or that local contact centres should also provide this service. Almost as many registration officers were in favour of alternative means of registering subject to proper safeguards/security being in place. Responses from UNISON, LACORS, the Archbishops Council, Faculty of Public Health and Association of Public Health Authorities were also supportive as were the majority of local authorities.
6.1.11	Ability for unmarried parents to give information separately as well as jointly (as now) where the father's details are to be recorded in a birth entry	Article 11(a)	Of the respondents who specifically mentioned this proposal the majority were in favour. Responses were primarily from registration officers and local authorities. Those against were mainly concerned that, without proper authentication, such a system would be abused e.g. mother could log-on twice, the second time as the purported father in order to have his name recorded without his consent.The response from LACORS supported the proposal as did responses from the Court Service and Institute of Population Registration with the proviso that the necessary means of authentication was in place.
Records management			
6.5.1-6.5.2, 6.5.4-6.5.7, 6.6.7	To have a system where records relating to the same person can be linked – 'a through life record'.	Article 11(2)	Almost 25% of respondents commented and were generally supportive. Of these responses 66% were from registration officers and 25% from members of public, many of whom were family historians/ genealogists. Responses were also received from medical and public health groups, members of religious groups, archivist groups, adoption groups and groups supporting families, government departments (e.g. the Home Office) and other specific groups such as the Foundation for Information Policy Research and the Society of IT Managers. Positive comments were that records would be more accurate; fraud and identity theft could be reduced and a more joined up service delivered. People both for and against were concerned with the accuracy, robustness and security of the system. The majority of respondents were also concerned with people's rights and freedoms, comments varied according to type of respondent and covered issues such as rights to privacy and accurately linked records.Registration officers and local authorities recognised that the long term gains and savings outweighed the burdens and costs that would be imposed on the public and people administering the system and resulting from implementation.

6.5.3, 6.5.12	To be able to add other records to the central database and to link these to registration records.	Articles 11(1)(a) and 2	Of the respondents many felt that they did not go far enough, that through life records would not be complete and would be of limited use if all events were not recorded. Suggestions included that links should be made to records of everyone domiciled in the UK, records of events abroad, the Adopted Children Register and other events affecting identity or status of a person. Registration officers, including the Society of Registration Officers were amongst those who supported the recording of all such events and making inclusion compulsory. Adoption groups felt the proposals were discriminatory against adopted people as they would not have through life records.
6.7.1-6.7.8, 6.11.4	The categorisation of records into 'historic' and 'modern'. The age of the record will determine into what category a record will fall. For births a record will become historic after 75 years and for deaths after 25 years.	Article 34 and Schedule 9 Part 1	72% of respondents commented on the proposals for access. 74% of these respondents were members of the public but responses were received from a wide range of interested groups. A large proportion of members of the public were on closer scrutiny family historians or genealogists who supported the views put forward by leading genealogical groups. The latter made the point that their view represented the views of thousands of their members. Other respondents included adopted people, government departments, Members of Parliament, representatives of religious bodies, archivists and archivist groups, NHS trusts and health authorities and representatives of the medical profession. Most respondents were against the original proposal (to categorise by the age of the person in the record rather than the age of the record itself and for the cut-off to be 100 years from the birth of the subject of the record for both birth and death records) on the categorisation of records, particularly genealogists. In the light of representations received the proposal has been amended. This revision represents a reasonable balance between openness and privacy and is justifiable in respect of the representations.
6.8.1-6.8.6, 6.7.3 and 6.11.2	The computerisation of the existing archive of registration records.	Article 11	About 33% of all respondents commented on computerisation. Over 50% of these responses were from members of the public (the majority actually being genealogists – both amateur and professional), approximately 28% from registration officers and local authorities and approximately 14% from representatives of religious communities. Other respondents included NHS and public health bodies, the Association of British Insurers, the Direct Marketing Association and various bodies of archivists. A large proportion of respondents supported computerisation - it would bring benefits to the public with easier access. Some respondents were totally opposed to computerisation. The majority of respondents voiced concern as to the security and reliability of a computerised system and proper provision should be made in case of a system crash. A significant number of registration officers and local authorities thought that digitisation would place a huge burden on the public purse with only family historians benefiting from it.

6.9.1-6.9.11, 6.11.1-6.11.2, 6.11.5, 6.13.7, 6.13.20	The introduction of a new framework for accessing records. Historic records would be publicly available and open. Modern records would continue to be publicly available but access to some information would be restricted namely address and cause of death.	Articles 31, 32, 33, 34, Schedule 8 and Schedule 9	See the commentary above about access for details of respondents. There was widespread opposition to the originally proposed access framework from all groups. Most people were against restricting access to certain information in modern records (mainly occupation); genealogists and a former Registrar General were amongst these. It was also a recurring argument that restricting access to the cause of death would prevent people from investigating the occurrences of hereditary diseases in their extended families. Local authorities and the registration service felt those who lived to be 100 years old would not be sufficiently protected; they also had concerns over the burdens placed on record holders to apply the access framework. Significant proportions were against the 100 year categorisation of historic records, many suggesting a staggered system based on the type of record. A significant proportion were also against the removal of the indexes. As a result of the representations a number of changes have been made to the proposal; occupation will no longer be restricted and a move made from a person-based access model to a record-based one. Cause of death and address will remain restricted.
6.9.15-6.9.31	Access to restricted information would be available to the person named in the record, their family, those given access by the individual/family and those organisations for whom there was a statutory gateway.	Article 35 and Schedule 10	See also the commentary above about access for details of respondents. Specific views were sought on the definition of family and the proposed list of authorised users. Over 40% of the total respondents replied on the former and over 11% of total respondents on the latter. The vast majority of respondents did not agree with the Government's proposed definition of family. The majority thought it should be widened and should include relatives by blood and adoption. The responses on authorised users were often contradictory saying that the list was both too wide and too restrictive. Significant numbers expressed concern that any system of authorised users should be secure and tightly controlled. The most common response was that the list needed to be expanded; suggestions on who should be included were diverse and contradictory. About 33% of respondents thought that adoption agencies should be included. A substantial number of genealogists (including groups and probate researchers) commented that both professional and amateur genealogists should be authorised users. There was significant concern about proving entitlement to access the restricted information. As a consequence of representation some changes have been made to the definition of family and to the list of authorised users.

6.12.1 and 6.12.3–6.12.11	Local authorities to have responsibility for the maintenance and preservation of original registers to ensure their long-term future.	Article 5(1) and Schedule 4	Approximately 18% of all respondents commented. Approximately 55% were local authorities and registration officers and 35% genealogists (amateur and professional). Other respondents included archivists and archivist groups, members of religious groups/communities, members of the public and NHS and public health bodies. Some local authorities welcomed the proposal but many were concerned about the additional burdens that would be imposed. There was a concern, supported by the archival community, about consistency in terms of care and access to the registers and for their accommodation. Genealogists had concerns over access being more restricted, namely that it would take away a right to see original records and signatures. Some respondents put forward benefits of this proposal: the reduction of costs in the long term, more flexibility to local authorities, inclusion of records within a recognised framework of archival provision, retention of records locally recognising their value to local heritage.
6.9.5, 6.9.12-6.9.14, 6.9.32-6.9.40, 6.13.8, 6.13.21	Certificates to be phased out over time by making records available electronically with a statutory framework introduced for controlling access.	Articles 31, 32, 33, 34, Schedule 8 and 9, (Articles 57 and 59)	As mentioned above in relation to access, 72% of respondents commented on the general proposals regarding access and about a fifth of these mentioned certificates. Respondents included members of the public (amateur and professional genealogists and members of religious congregations), religious groups, local authorities and registration staff. There was some recognition for the reasons behind the proposal and resulting benefits, but there was significant opposition on the basis of the legal, evidential and symbolic value of certificates. Religious groups and members of religious congregations thought the removal of certificates would undermine the gravity of vital events. Local authorities were concerned about the loss of certificate sale revenue. Local authorities and registration staff felt that the on-going need for certificates had been underestimated. Some respondents were concerned that adopted people could be stigmatised by having to continue to produce a certificate.
6.10.1–6.10.3,	Introduce provision for sharing information with other Government Departments and Agencies within a framework that will protect the individual.	Article 45 and Schedule 12	About 10% of all respondents commented. Over 50% were registration officers and local authorities, including representative groups such as SRO and LACORS. Another large portion of respondents were genealogists (professional, amateur and umbrella bodies). Other respondents included government departments (e.g. DH and DfES); the Shipman Inquiry; bodies supporting families such as Time for Families, Association of Community Family Trusts and Prepare/Enrich UK; financial organisations; representatives from religious groups; members of the public. A number of responses appeared to actually be about other proposals or that the proposal had been misunderstood. There was a shared concern regarding the security and robustness of the system and its ability to prevent unauthorised access. Many benefits of the proposal on data sharing were mentioned by respondents, including: combating fraud (in particular identity fraud), being able to remove deceased people from mailing lists, more efficient exchange of information and savings to the public purse. Concerns raised by some respondents included: that the system could be open to fraud and abuse, that wider use of data could be made (particularly if it was sold on for commercial gain), that the proposal was linked to policies on identity cards and that it went against civil liberties. Some respondents, including genealogists, were unhappy that Government Departments and other organisations would have access to the restricted information whilst other groups, like genealogists, would not.

Organisation and structure			
6.16.1	Responsibility for the face-to-face service to be transferred to local authorities	Article 9(4)	Generally registration authorities and registration officers supported the transfer of responsibility to local authorities. There were concerns expressed that the service could suffer if it had a low political priority. A few respondents – mostly registration officers thought the service should remain the responsibility of the Registrar General. A few registrars commented they felt that the General Register Office was 'washing its hands' of the local service. However there were many advantages mentioned including freedom of the local authority to manage and better services to the public.
6.17.7	Responsibility for Inspection to be transferred to the Audit Commission		There was support for the proposal from registration authorities and registration post holders. Respondents were in favour of an independent inspection regime but some wanted experienced registration staff to undertake the reviews.
6.17.2 – 6.17.5	Local Registration Authorities to be required to meet National Minimum Standards in the provision of face-to-face registration services	Article 14 and Schedule 4	There was a large measure of support for National Minimum Standards. There were anxieties about 'league tables' but many more respondents felt that NMS could drive standards up and would protect the service from low political priority. Generally registration authorities support the proposal as do registration officers, but the registrars expressed the reservations about too much or too little standardisation and not knowing how the standards would be set.
6.18.2	Statutory post-holders to be transferred to "full" local authority employment status	Article 4(4)	The proposal was supported by a large number of authorities that responded and by a large majority of registration officers. There were concerns about consultation, the application of TUPE, and redundancy. Staff representative bodies also had concerns on these issues. Only a small number of registration officers were opposed to the transfer.

Letter from the Clerk to the General Register Office

The Committee has today given further consideration to this proposal and requests that the General Register Office provide written information in relation to the matters set out below. In asking these questions the Committee has taken account of the answers that you have provided to the House of Commons Regulatory Reform Committee (QQ.1 to 68).

"Activity"

Q1. Some of the burdens to be removed or imposed by the order are imposed only on informants, parents or relatives and are said to relate to the activity of registration of births and deaths. Is it being suggested

(a) that members of the public carry on this activity; or

(b) that these burdens imposed on members of the public also affect registration officers in the carrying on of this activity?

If the answer to (b) is yes, how are registration officers adversely affected?

Burdens

Q2. Does the Department consider that the burdens imposed by section 12 of the Registration Service Act 1953 and sections 25 and 28(4) of the Births and Deaths Registration Act 1953 affect anyone other than the Registrar General and the ONS?

Q3. In practice, does the burden fall on the Registrar General personally or on his staff in the ONS?

Subordinate provisions orders

Q4. Please explain the choice of the negative, rather than the affirmative, procedure for subordinate provisions orders modifying the following:

Schedule 1 (means of giving information);

Schedule 8 (information not available);

Schedule 9 (information not immediately available for public inspection);

Schedule 10 (persons with access to restricted information);

Schedule 12 (information to certain persons or bodies).

Pilot schemes

Q5. What is the legal basis for Article 52, which appears to seek to enlarge the powers conferred by the 2001 Act? So far as it is thought to be section 1(6)(c) of the 2001 Act, on what basis is that provision thought to cover extending the powers in the 2001 Act itself?

Extent

Q6. Have any steps been taken to develop arrangements between England and Wales, Scotland and Northern Ireland to make provision for the central database in England and Wales to include, or have links to, information about life events in Scotland and Northern Ireland?

Q7. Have any steps been taken to develop arrangements between England and Wales and countries outside the UK to make provision for the central database in England and Wales to include, or have links to, information about life events in countries outside the UK?

Q8. Are there likely to be any adverse consequences for those individuals whose through life records contain gaps because of life events occurring outside of England and Wales, whether in Scotland or Northern Ireland or elsewhere in the world?

Drafting issues

A number of questions concerning drafting issues are set out in the Annex to this letter.

I am copying this letter to Stuart Deacon, Committee Specialist to the House of Commons Committee on Regulatory Reform. I would be grateful if you would copy your response to Stuart.

If you would like any further information or clarification concerning the Committee's request please do not hesitate to contact me. It would be of great assistance to the Committee if you could reply by Tuesday 2 November.

Annex to the Clerk's letter

Article 4(5)

i. Are there any words, such as "a period of", missing before "employment by an employer"?

Article 9

ii. Why is the new requirement on the Registrar General to maintain a register relating to births and deaths (but not marriages), inserted in the Registration Services Act 1953 rather than the Births and Deaths Registration Act 1953? If "the register" in new section 4A(2) of the Registration Service Act is the register kept under section 1A (i.e. relating to births and deaths only) why is this too not in the Births and Deaths Registration Act 1953?

iii. Are there any regulations under section 20(a) or (b) of the Registration Services Act 1953 that relate to marriages? If so, please explain the purpose of Article 9(5) in relation to those Regulations.

iv. The purpose of Article 9(2) appears to be that section 14 of the Registration Service Act 1953 remains in force so far as it does not relate to the registration of births and deaths. Why is Article 9(6)(a)(i) and (6)(b) not similarly limited?

Article 10(1) and (2) and Schedule 1

v. Are the two paragraphs in Schedule 1 intended to relate only to Article 10(1)(c) and (2)(c)? If so, why is the order drafted in such a way as to rely for the (presumed) legal effect primarily on the heading to Schedule 1?

Article 30

vi. Why does the order include both Article 8(2) (which omits section 26(2) of the Births and Deaths Registration Act 1953) and Article 30 so far as it relates to section 26(2) of that Act (which appears to achieve the same result)?

Article 37

vii. The heading contains the words "at time of registration". Is there intended to be a limitation in the text of Article 37 itself?

Article 39

viii. Please explain the purpose and effect of Article 39(4).

Article 48

ix. In view of Article 1(2), what is the intended effect of Article 48(2) as respects Scotland (compare Article 48(3))?

Article 53

x. This provision appears to anticipate an amendment to the 2001 Act made by the Criminal Justice Act 2003 – indeed the validity of Article 53(2)(a) depends on it. When will the amendment come into force? Why is it not footnoted?

Schedule 3, paragraph 13

xi. What words are missing after "as follows –"?

Schedule 4

xii. Under the heading "evidence of results" is there a word missing before "evidence"? If so, what is it?

Generally

xiii. The draft order contains a significant number of errors of the following types–

incorrect cross-referencing (e.g. "(2)" in Article 1(5));

incorrect punctuation (e.g. missing quotation marks in Article 9(6)(a)(ii));

inconsistencies (e.g. "the Registration Service Act 1953 section 4A" in Article 14(1), rather than the expected "section 4A of the Registration Service Act 1953");

incorrect spelling or typesetting (e.g. "fess" in Article 15(2));

missing words (e.g. "the" before "Registrar General" in Article 21(3)(b));

incorrect grammar (e.g. "is inserted" in Article 21(6));

incorrect layout (e.g. Schedule 9, Part 2).

Please confirm that, should this proposal proceed to its second stage, the draft order will be thoroughly proof-read and checked for errors before it is laid.

27 October 2004

Response from the General Register Office to the Clerk

Q1. Some of the burdens to be removed or imposed by the order are imposed only on informants, parents or relatives and are said to relate to the activity of registration of births and deaths. Is it being suggested

(a) that members of the public carry on this activity; or

(b) that these burdens imposed on members of the public also affect registration officers in the carrying on of this activity?

If the answer to (b) is yes, how are registration officers adversely affected?

The Department considers that both members of the public and registration officers are involved in the carrying on of the activity. In the Department's view, the reference to activity in section 1 of the Regulatory Reform Act 2001, denotes any series of actions which forms a coherent, ongoing activity, which in this case is the activity of registering births and deaths and the supply of information and statistics from the information gathered on registration.

This activity involves, in varying degrees, members of the public, health-care professionals and public and commercial organisations, both in the giving and recording of information (currently 1.13m registrations a year) and the retrieval of it (currently 4.5m certificates issued per year). This activity requires the employment of a substantial number of people, both locally and centrally.

It is irrelevant that, in the Department's view, the activity is made up of a series of acts carried out by different persons, or that individual acts forming part of the series, viewed in isolation, are performed on a one-off basis.

Q2. Does the Department consider that the burdens imposed by section 12 of the Registration Service Act 1953 and sections 25 and 28(4) of the Births and Deaths Registration Act 1953 affect anyone other than the Registrar General and the ONS?

Q3. In practice, does the burden fall on the Registrar General personally or on his staff in the ONS?

It is convenient to deal with these two questions together.

The Department considers that the three burdens referred to do not affect anyone other than the Registrar General.

The Registrar General is a statutory office holder, appointed by Letters Patent. He is not part of the Crown and his powers cannot be affected by an Order under the Ministers of Crown Act 1975 or by exercise of the Royal Prerogative. He is not in the list issued under the Crown Proceedings Act 1947.

In all these respects he is very similar to the Information Commissioner (see the Data Protection Act 1998 and the Freedom of Information Act 2000). The powers that the Registrar General has in sections 3 and 4 of the Registration Service Act 1953 include appointing staff himself, though in practice the staff that work in the General Register Office are currently civil servants (which, in the Department's, view does not of itself make the General Register Office a government department).

Given the particular status of the Registrar General it is the Department's view that removing the burdens referred to above does not conflict with the concluding words of section 2(1) of the Regulatory Reform Act 2001.

The burdens created by the Order are expressed to be imposed on the Registrar General himself though some of the provisions in Schedule 3 will affect his staff. In practice the Registrar General does delegate to his staff and cannot perform every function personally.

Q4. Please explain the choice of the negative, rather than the affirmative, procedure for subordinate provisions orders modifying the following:

Schedule 1 (means of giving information);

Schedule 8 (information not available);

Schedule 9 (information not immediately available for public inspection);

Schedule 10 (persons with access to restricted information);

Schedule 12 (information to certain persons or bodies).

The existing powers in the Births and Deaths Registration Act 1953 and the Registration Service Act 1953 that provide for subordinate legislation require the Registrar General to make regulations and for them to be approved by the Chancellor of the Exchequer. In the draft Order, these arrangements have been perpetuated as they align with present powers.

However, in his evidence to the Commons Committee on 2 November, ONS's Minister, Stephen Timms, indicated that he would be prepared to consider the appropriateness of these arrangements in respect of Schedule 1. He acknowledged that the advent of telephone and on-line registration might better be preceded by a debate in Parliament.

Q5. What is the legal basis for Article 52, which appears to seek to enlarge the powers conferred by the 2001 Act? So far as it is thought to be section 1(6)(c) of the 2001 Act, on what basis is that provision thought to cover extending the powers in the 2001 Act itself?

In the light of a similar question (Q23) asked by the Commons Committee, the Registrar General has agreed to give immediate attention to whether he has the powers to do what he wants to be able to do in this area by an amended provision.

Q6. Have any steps been taken to develop arrangements between England and Wales, Scotland and Northern Ireland to make provision for the central database in England and Wales to include, or have links to, information about life events in Scotland and Northern Ireland?

Civil registration is a devolved matter with each of the three jurisdictions in the United Kingdom having their own arrangements. There is regular contact at official level about developments in civil registration and, in general, the three jurisdictions work towards common goals and objectives within the constraints of their own legislation.

Given that each jurisdiction was developing its own plans for civil registration reform and that there is no umbrella legislation, it would not have been appropriate for data-sharing provisions to be included in the draft Order.

Q7. Have any steps been taken to develop arrangements between England and Wales and countries outside the UK to make provision for the central database in England and Wales to include, or have links to, information about life events in countries outside the UK?

Paragraph 8 of Schedule 2 of the draft Order provides for the Register to include information about the birth or death of any British citizen that is not otherwise required to be recorded. It is visualised that this provision will enable a citizen, of their own choosing, to provide the Registrar General with information about a birth or death that occurred outside England and Wales. Provided that the Registrar General is satisfied as to the occurrence of the event, he may enter that information in the Register.

Q8. Are there likely to be any adverse consequences for those individuals whose through life records contain gaps because of life events occurring outside of England and Wales, whether in Scotland or Northern Ireland or elsewhere in the world?

There will be no adverse consequences of the kind described. The main Government users of birth and death information understand that the Register will not contain, in respect of every person born in England and Wales, a through life record for that person.

Article 4(5)

i. Are there any words, such as "a period of", missing before "employment by an employer"?

The Department did not consider these words were necessary but the matter will be looked at.

Article 9

ii. Why is the new requirement on the Registrar General to maintain a register relating to births and deaths (but not marriages), inserted in the Registration Services Act 1953 rather than the Births and Deaths Registration Act 1953? If "the register" in new section 4A(2) of the Registration Service Act is the register kept under section 1A (i.e. relating to births and deaths only) why is this too not in the Births and Deaths Registration Act 1953?

The Registration Service Act 1953 seemed an obvious place to put the fundamental obligations such as these and the equivalent obligations as regards marriages (in the Order being prepared).

iii. Are there any regulations under section 20(a) or (b) of the Registration Services Act 1953 that relate to marriages? If so, please explain the purpose of Article 9(5) in relation to those Regulations.

Yes, for example the Registration of Marriages Regulations 1986/1442. It is intended that the commencement provisions only repeal these provisions as regards births and deaths.

iv. The purpose of Article 9(2) appears to be that section 14 of the Registration Service Act 1953 remains in force so far as it does not relate to the registration of births and deaths. Why is Article 9(6)(a)(i) and (6)(b) not similarly limited?

It is important to keep local schemes in force for the purposes of marriages, pending the implementation of the equivalent Marriages Order. It is thought this may now be best achieved by amending article 6(2) to make it clear that the repeal referred to there relates only to births and deaths. Similar provisions will then be required in the paragraphs referred to.

Article 10(1) and (2) and Schedule 1

v. Are the two paragraphs in Schedule 1 intended to relate only to Article 10(1)(c) and (2)(c)? If so, why is the order drafted in such a way as to rely for the (presumed) legal effect primarily on the heading to Schedule 1?

The two paragraphs in Schedule 1 are intended to relate only to article 10(1)(c) and (2)(c) and this can be made plain in those two paragraphs.

Article 30

vi. Why does the order include both Article 8(2) (which omits section 26(2) of the Births and Deaths Registration Act 1953) and Article 30 so far as it relates to section 26(2) of that Act (which appears to achieve the same result)?

The policy intention is that section 26(2) should be repealed as soon as the first provisions of the Order come into affect. The remaining parts of section 26 will be repealed when article 30 is brought into effect and article 30 will be amended to take account of the fact that by then sub-section 2 will have been repealed.

Article 37

vii. The heading contains the words "at time of registration". Is there intended to be a limitation in the text of Article 37 itself?

The limitation is in the phrase "gives information". Article 37 is intended only to apply at that time.

Article 39

viii. Please explain the purpose and effect of Article 39(4).

The intended purpose of article 39(4) was to enable the Registrar General and a registration authority to be dealt with separately. But we consider now that this purpose can be achieved without this paragraph.

Article 48

ix. In view of Article 1(2), what is the intended effect of Article 48(2) as respects Scotland (compare Article 48(3))?

The law of Scotland is not amended by this provision, but we will reconsider the wording.

Article 53

x. This provision appears to anticipate an amendment to the 2001 Act made by the Criminal Justice Act 2003 – indeed the validity of Article 53(2)(a) depends on it. When will the amendment come into force? Why is it not footnoted?

The Department is alert to the need to keep the coming into force of this amendment under review and to foot-note it.

Schedule 3, paragraph 13

xi. What words are missing after "as follows –"?

There is a numbering error - "14.-(1)" is redundant.

Schedule 4

xii. Under the heading "evidence of results" is there a word missing before "evidence"? If so, what is it?

No word has been omitted.

Generally

xiii. The draft order contains a significant number of errors of the following types–

incorrect cross-referencing (e.g. "(2)" in Article 1(5));

incorrect punctuation (e.g. missing quotation marks in Article 9(6)(a)(ii));

inconsistencies (e.g. "the Registration Service Act 1953 section 4A" in Article 14(1), rather than the expected "section 4A of the Registration Service Act 1953");

incorrect spelling or typesetting (e.g. "fess" in Article 15(2));

missing words (e.g. "the" before "Registrar General" in Article 21(3)(b));

incorrect grammar (e.g. "is inserted" in Article 21(6));

incorrect layout (e.g. Schedule 9, Part 2).

Please confirm that, should this proposal proceed to its second stage, the draft order will be thoroughly proof-read and checked for errors before it is laid.

It is confirmed that if the proposal proceeds to a second stage, the draft Order will be thoroughly checked for errors and proof read before it is laid.

November 2004

ANNEX 2: WRITTEN EVIDENCE

Submission by the British Humanist Association

Introduction

1. The British Humanist Association (BHA) wishes

(a) to criticise vigorously the conduct of the consultation process and

(b) to raise serious issues of competition to which we consider the Office of National Statistics has given plainly inadequate consideration.

We propose a rider to the new freedom of registration services to offer new services such as secular funerals and baby naming ceremonies.

The British Humanist Association

2. The British Humanist Association (BHA), which is a registered charity, is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to promote Humanism and support and represent people who seek to live good lives without religious or superstitious beliefs. The census in 2001 showed that those with no religion were (at 14.8%) the second largest 'belief group', being two-and-a-half times as numerous as all the non-Christian religions put together. Other surveys consistently report much higher proportions of people without belief in God - especially among the young[1]. By no means all these people are humanists and even fewer so label themselves, but our long experience is that the majority of people without religious beliefs, when they hear Humanism explained, say that they have unknowingly long been humanists themselves.

3. The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. These include a Humanist Philosophers' Group, a body composed of academic philosophers whose purpose is to promote a critical, rational and humanist approach to public and ethical issues.

4. The BHA is deeply committed to human rights and democracy. We advocate an open and inclusive society in which individual freedom of belief and speech is supported by a policy of disinterested impartiality towards contending groups within society so long as they conform to the minimum conventions and laws of the society. While we seek to promote the humanist life-stance as an alternative to (among others) religious beliefs, we do not seek any privilege in doing so. Correspondingly, while we recognise and respect the deep commitment of other people to religious and other non-humanist views, we reject any claims they may make to privileged positions by virtue of their beliefs.

British Humanist Association Ceremonies

5. One of the Association's principal activities is to support the people we represent at key moments in their lives by providing appropriate, individual humanist ceremonies - principally but not exclusively baby-namings, marriages and funerals.

6. The BHA has trained and accredited officiants and celebrants in every part of England and Wales. They are self-employed but pay the BHA fees for their training, annual accreditation fees, and a levy on each ceremony conducted. The Humanist Society of Scotland and our two affiliated groups in Northern Ireland provide similar services.

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[1] In a survey of 13,000 13-15 year olds, 61% declared themselves atheist or agnostic (Rev Professor Leslie Francis and Rev Dr William Kay, Trinity College Carmarthen, Teenage Religion and Values, Gracewing, 1995).

7. Although the total market for humanist ceremonies across the UK is still small, under the influence of publicity secured by the BHA and the high reputation of our ceremonies, the demand for these has grown rapidly: in 2003 we conducted over 8,000 ceremonies, compared with just under 7,000 ceremonies in 2002 and 5,500 in 2001, and figures to date indicate that there will be a further increase in 2004.

8. Officiants are recruited very carefully and receive extensive training, followed by observation and mentoring, before being assessed and (if successful) accredited. In service, they must observe a professional code of conduct, backed up by complaints and disciplinary procedures. They receive support at a regional level from ceremonies coordinators, attend local meetings and provide each other with mutual support. At a national level, the BHA employs a full-time officer to manage and develop the ceremonies network. Among other tasks, this member of staff organises the training programme, provides advice and guidance to officiants, organises conferences, edits an officiants' newsletter (*Rite Lines*), and monitors an e-group. The BHA is in the process of developing further improved quality assurance procedures and intends to explore the possibility of a vocational qualification.

9. Every humanist ceremony is prepared individually to meet the wishes and needs of the families, couples and individuals concerned. For a funeral, the officiant meets with the bereaved family to plan the ceremony, write the funeral script, including personal tributes from family and friends as appropriate, and choose music, poetry and readings. For weddings, affirmations and baby namings, the celebrant may meet with the couple or family several times to agree the words to be used and choreograph the whole ceremony. This planning process goes much further than just offering clients a 'menu' of choices – each ceremony is genuinely unique.

10. The ceremonies we provide maintain a high standard of excellence that has been widely commented on. We know from other funeral providers and training organisations that the quality of our ceremonies has led to the demand for better quality elsewhere, and it has often been suggested that the increasing tendency for religious funerals to be more personalised is a direct result of observation by the clergy and others of humanist practice. We have also been imitated by some funeral directors who now offer their own secular funerals, and by other commercial providers of non-religious ceremonies, including Civil Ceremonies Ltd with which the registration service has formed an alliance. Such providers make extensive use of our books, principally *Funerals Without God*, *Sharing the Future* and *New Arrivals*, and we believe that officiants who had been trained and accredited by the BHA also contributed to the development of the training programme used by Civil Ceremonies Ltd, and that some have delivered these training programmes.

Comments on the Proposed Order

11. The BHA broadly supports the proposals in the draft Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order. However, we have serious comments to make about the consultation process and about competition issues.

Consultation

12. We have found the consultation process from the start three years ago to be unsatisfactory and discriminatory. We confine our remarks here to the proposals relevant to the present Order but the process has involved also the now postponed proposals on marriage law. The treatment by the Office of National Statistics of our comments on the present proposals has to be seen against the background of their consistently ignoring our serious, considered and detailed comments, mainly on the marriage proposals, at each stage of the consultation over a period of years. We shall comment on this in detail to the Committee when the relevant Order on marriage law is brought forward next year.

13. As early as August 2002, in a letter to Mr Len Cook that was principally concerned with the proposals on marriage, we made clear that the BHA conducted weddings, funerals, baby namings and affirmations, mentioning that at that time we handled about 5,500 ceremonies a year.

14. In our detailed submission (October 2003) in response to *Civil Registration - Delivering Vital Change* (published on our website at http://www.humanism.org.uk/site/cms/contentViewArticle.asp?article=1560) we "welcome[d] in principle the proposals for registration officers to be given powers and a duty to provide new services, such as baby-namings and funerals", noting that although we already provided "well established and much praised services of this nature" we were "far from seeking a monopoly on their provision."

15. However, we drew attention on the basis of our extensive experience to some serious points which the ONS seemed not have sufficiently considered (we reproduce our comments on these points in the Annex to this memorandum since there is still no evidence that any notice has been taken of them) and we made "some highly important reservations on issues of competition" which we repeat in the next section of this memorandum since they have been totally ignored by the ONS.

16. Already in our comments of October 2003 we had stated that the competition assessment (in Appendix E1 to the White Paper) was sadly inadequate. All it said (paragraph 1) was that "[local] authorities will have to be aware of the impact that they have on competition". The references in chapter 4 were (we said) scarcely better: we quoted paragraph 4.1.15:

> In the Department's view, these proposals do not prevent those who already offer such ceremonies from continuing to do so. For example, the British Humanist Association (BHA) already offers secular naming ceremonies and funerals. Thus, whilst local authorities will be required to either offer a similar service or signpost to another local authority, this will not prevent the BHA from providing an analogous service. . .

17. As we said: "It is difficult to think of any change in any market - other than a legal ban - that would 'prevent' an established competitor 'from providing an analogous service'. The observation is nugatory."

18. We continued:

> By contrast with the markets for certificate paper and secure boxes, which the ONS has investigated and reports on in some detail, it made no approach to the BHA for information about the market for secular funerals or naming ceremonies. They do not note that our officiants include some whose income is wholly derived from conducting ceremonies, nor that the fees and levies derived from the activity are of growing significance to this Association.

19. These comments made in October 2003 have elicited no response whatever. We repeated them at a meeting (principally concerned with the proposals on marriage) with Mr Len Cook and ONS officials on 22 January 2004. This similarly received no response. The ONS has not contacted us for details of our service, or the number of BHA officiants and the level of their earnings, or the importance of income from ceremonies to the BHA, or any other information. The latest Competition Assessment (Appendix I to the Regulatory Impact Assessment) still deals in detail with the potential reduced demand for registers and other paper forms and for certificate paper, the demand for different computer equipment from that currently used and the potential opportunity to improve List Cleaning services for the deceased but continues to ignore totally the proposal that local authorities should set up in competition with the BHA's ceremonies service, threatening the livelihoods of our self-employed officiants and the return the BHA is hoping to make from providing a service in which it has made a substantial financial investment.

20. It seems to us plainly untrue (in the words of the recital to the draft Order) that "the Chancellor of the Exchequer has consulted such organisations as appear to the Chancellor of the Exchequer to be representative of interests substantially affected by the Chancellor of the Exchequer's proposals". We suggest that the ONS has failed to take the consultation process seriously, influenced (we speculate) by a decision to ignore our troublesome representations on their marriage proposals in the hope that we would not continue to press them - representations

sufficiently well grounded to require in the end, two-and-a-half years after we first made them, the belated statement to the House of Lords on July 8 by Lord Filkin.[2]

21. The Code of Practice on Consultation of November 2000, since made more demanding, said, "Every effort should be made to ensure effective communication with all those who are, or potentially are, interested." The ONS made no effort whatever to communicate with us in any way on the question of competition, persistently disregarding our repeated representations. The fact that they acknowledge (paragraph 20.8.2) some relatively unimportant comments we made on access to registration records makes their neglect of our major points the more blatant.

Competition

22. The proposals include a provision that

> Local authorities would have a general duty imposed on them to ensure the provision of a local face-to-face registration service. This would allow them more discretion to develop the service to meet the needs of their community . . . In respect of discretionary services, local authorities would have the new burden of either providing those services directly or having to signpost customers to other authorities who do so. (Explanatory document, 13.15.1, 13.15.5)

23. The discretionary services referred to explicitly include secular funerals, naming ceremonies and reaffirmation of marriage vows. Through commercial arrangements with Civil Ceremonies Ltd, a subsidiary of CD Marketing Services Group Ltd, involving (as the explanatory document says) "a complex set of arrangements to overcome the absence of a legal power for local authorities to charge", local authorities have already entered this market. Under the Local Government Act 2003 they would now be free to charge for the discretionary services it is now proposed they should provide.

24. As we stated in our representations on *Civil Registration - Delivering Vital Change* (October 2003):

> There are . . . competition issues, which will become far more significant if the proposed changes go ahead. Local authorities will be in an extremely powerful market position, since their potential clients will be legally obliged to contact them whenever a baby is born or a person dies. They will be in a position to establish a near-total monopoly, shutting out all competition. Before they are given these new roles, it is important that controls be put in place.

25. We noted that we were already aware of cases of inappropriate contracting by local authorities for partnerships and other arrangements for the delivery of non-statutory ceremonies, where contracts have been awarded to LifeCycle Marketing Ltd (now Civil Ceremonies Ltd), without any opportunity for any other provider, including the BHA, to tender for the contract, despite our national coverage and considerably greater experience of providing these ceremonies. We cited the Minutes of the Bath and North East Somerset Council Resources Co-ordination Committee for Tuesday 25th September 2001:

> "The Committee considered a report which recommended that the Registration Service be enabled to offer civil ceremonies for naming and for the renewal of marriage vows. On a motion from Councillor Stiddard it was RESOLVED that the Committee: —

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2 As follows: The Parliamentary Under-Secretary of State, Department for Constitutional Affairs (Lord Filkin): On 10 July 2003 the Government published the consultation paper, Civil Registration: Delivering Vital Change. This set out our proposals to reform civil registration in England and Wales using powers in the Regulatory Reform Act 2001. It remains our intention, as the Financial Secretary to the Treasury announced on 29 March this year, to bring forward two orders under the Regulatory Reform Act 2001. One, planned for this session of Parliament, will amend the current legislation on birth and death registration. The second, on marriage law, has been deferred to enable us to take into account Parliament's wishes on civil partnership legislation. Preliminary consideration of the responses to Civil Registration: Delivering Vital Change suggests that there is an issue regarding the proposals for marriage on which there should be further consultation. The issue concerns the absence of any proposal to change the legal requirement for marriage ceremonies to be either civil or religious. Policy in this area of marriage law is the responsibility of the Department for Constitutional Affairs. In the coming months and in consultation with others, we will be working with Treasury Ministers and the General Register Office for England and Wales to determine the scope of any revised proposals. (HoL 8 Jul 2004: Column WS43).

(1) Approves the extension of the service to provide these non-statutory ceremonies through a partnership with Lifecycle Marketing Ltd, along with the proposed charging arrangements; and

(2) Agrees that there is no advantage to going out to open competition for this partnership arrangement in view of the unique, specialised national experience of this company in developing this aspect of service delivery and accordingly agrees to adopt the provisions within Standing Orders Relating to Contracts (5.2) for an exemption from tendering procedures."

26. Such examples, we observed, made the need for regulation very clear.

27. The situation has not changed since we made these comments. The current explanatory document states:

> Local authorities would have the option to provide new services such as naming ceremonies, marriage reaffirmation and secular funerals or to signpost customers to the nearest access point. (6.16.7)

where "signpost customers to nearest access point" is slightly wider than the White Paper's "signpost to another local authority" but it places no obligation whatever on those authorities which choose to provide such services themselves.

28. If the current proposals go ahead and free the registration service to compete in the limited market for secular baby-namings and funerals it will *at best* disrupt the market in a serious way. It will be open to local authorities, under pressure (as is all too evident from the explanatory document to the draft Order) to minimise the net cost of the registration service, to market their own services vigorously to potential clients who are required by law to present themselves to the registrars whenever a baby is born or a person dies. Moreover, even without this privileged access to potential clients, local authorities may well be tempted to compete on unfair terms. As the explanatory document says (6.19.17)

> services such as the new celebratory services would also be charged at a level set by the local authority. The element of competition from surrounding authorities should encourage the development of services that offer value for money or added value to the customer.

29. There is no requirement that charges should reflect costs, and under budgetary pressure local authorities may well set charges that make a contribution to the cost of the service without reflecting fairly the overheads incurred. Such problems are, after all, not uncommon when public bodies compete with the private sector.

30. The result of this privileged access and potentially unfair pricing may well be to put some BHA officiants out of business and to make it impossible for the BHA any longer to run a much admired and valued service.

31. We cannot prove it, but there does seem to be evidence that competition from registrars working with Civil Ceremonies Ltd is already affecting the BHA and its officiants. Although the number of ceremonies we provided increased overall in 2003, the number of baby namings fell by 18.5%: the first time it has fallen since we introduced the service. We do not have the capacity to conduct a full survey, but there are indications from officiants that this fall in the number of ceremonies is focused on the areas where Registrars began to offer naming ceremonies. The BHA is, of course, very vulnerable to competition from Registrars on baby namings, because non-religious parents will normally register the birth of their child before they make any arrangements for a ceremony, so they may be offered a ceremony at a time when they are unaware of any alternatives. As regards funerals, it seems that the rate of increase in BHA funerals is slowing down, and this at a time when the number of people choosing to have a non-religious ceremony is rising very rapidly, but it is difficult for us to assess how great the impact of competition from registrars has been so far.

32. We do not wish to prevent local authority registration services from entering the market for secular ceremonies, but we do wish them to do so on fair terms. If (as the explanatory document states) "people want new services that are currently unavailable from the registration service", there can be little doubt that this largely results from the BHA's efforts over the last few decades. It therefore seems right that as public authorities the registration services should not be able to misuse their statutory access to all potential clients and the free availability of staff whose salaries have to be paid for anyway.

33. We propose accordingly that local authorities should be legally obliged both to cover all relevant costs and to draw all potential clients' attention to any local competing service of which they have been informed and which is of good repute. The BHA would be willing to provide leaflets to registration services describing our services and how local officiants can be contacted. We do not see anything short of a legal obligation as adequate in view of the bad faith of the ONS in their conduct of the consultation process so far.

34. The need for such a provision is reinforced by the likelihood that registration services will offer only a standardised off-the-peg service, in contrast to the superior, highly personalised service offered through the BHA (see the Annex to this memorandum). The wording of paragraph 4.1.15 of the White Paper ("local authorities will be required to either offer a similar service or signpost to *another local authority*" - emphasis added) seems, if anything, to rule this out, and we find this gravely disturbing.

September 2004

Submission by the Federation of Family History Societies

The Federation of Family History Societies (FFHS) made a written submission regarding the above Order to the House of Commons Regulatory Reform Committee on 15 September of this year.

Consequently, representatives of the FFHS were called to give oral evidence to that Committee on 26 October, and an uncorrected transcript of that evidence can be viewed at http://www.publications.parliament.uk/pa/cm200304/cmselect/cmdereg/uc1201-i/uc120102.htm.

That was followed by a subsequent written submission by the FFHS (as invited by the Chairman of the Committee, at the end of our oral evidence) on 19 November.

Mr Stuart Deacons, Committee Specialist at the House of Commons who liaised with us over the arrangements for us to give our oral evidence, has confirmed to me that it would be in order to copy you with our original written submission and our subsequent submission. I therefore attach copies of these and would be grateful if you would bring them, together with the transcript of our oral evidence, to the attention of the Delegated Powers and Regulatory Reform Committee within the House of Lords.

The FFHS appreciates that your Committee's deliberations are probably well advanced, but wishes them to have the benefit of the same statements of fact, and of belief based on the FFHS's considerable knowledge of and experience in the genealogical world, that have been made to the House of Commons Committee.

The FFHS is naturally more than willing to answer any questions or concerns that the Delegated Powers and Regulatory Reform Committee may have arising from these statements.

29 November 2004

This response comes from the Federation of Family History Societies, an Educational Charity that represents over 200 Family History Societies worldwide with a membership of more than 300,000 genealogists and family historians.

The FFHS response is based on the Regulatory Reform Review Committee's Order of Reference and specifically refers to criteria [b], [e], [j] and [m].

The FFHS welcomes many of the proposals to reform the Registration Service that are contained in the White Paper, but wishes to express its concerns over a number of proposals that it believes require further examination.

1 The FFHS welcomes the proposal to retain the occupation on Birth and Death Certificates [21.8.5], but cannot understand why it is still considered necessary to exclude the address on copies of Birth and Death Certificates since addresses are often given in newspaper birth announcements, death announcements, and in obituaries and reports on inquests.

2 The FFHS welcomes the decision to amend the restrictions of information on copy Birth Certificates to less that 75 years and on copy Death Certificates to less than 25 years similar to the Scottish system but still queries whether these restrictions are necessary as the Scottish system gives all the information that is on the certificates.

3 One of our Associate members – Association of Genealogists and Researchers in Archives [AGRA] – is concerned about the limitations on Authorised Users [21.8.19] and as a group of professional researchers would wish to be included in the list of Authorised Users. AGRA is concerned that its researchers would be severely limited by the exclusion of addresses on copy certificates if they were not permitted to become Authorised Users. This view is endorsed by members of the Guild of One Name Studies [GOONS] who in their specialised research need access to information about addresses on copy certificates.

4 The FFHS welcomes the proposed reductions in charges to access the central database [21.8.32], but would request a clear statement on how long the charges will remain at this level. The RRO does not give sufficient detail about the creation of the database, or about quality control and accuracy and these are matters of major concern.

5 The FFHS is very concerned that there will be sufficient funding to implement the RRO. While the digitisation of the registers from 1993-2005 will be mandatory, digitisation of earlier registers from 1935-1992 will depend on what funds are left. The FFHS urges the Review Committee to obtain a firm commitment from the Government that there will be sufficient funding to digitise these registers as well.

6 At the Suppliers Day about DOVE –Digitisation of Vital Events – held in Liverpool on August 3rd, 2004, some of the answers in the handout need further consideration.

> 6.1 The FFHS is extremely concerned that it is far from clear which registers are to be digitised. The registers held by local Registrars are far more accurate and complete than the copies held by the GRO. The FFHS strongly urges the Review Committee to insist that the local registers are digitised rather than the GRO registers. Although cost is a factor, digitising the GRO registers would be a duplication of effort and would incur increased costs.
>
> 6.2 The FFHS is also extremely concerned that there is a distinct possibility, on cost grounds, that data keying will be done "off-shore." This must be done within the UK given the experience with Qinetiq and the 1901 Census, despite their quality control system, and the transcription of this and other Censuses by commercial firms.[The FFHS can quote many examples of such errors].
>
> 6.3 The FFHS is also very concerned with the response at the Suppliers Day to Q&A 7 that the level of accuracy will only be that which is affordable by the company winning the tender. The FFHS urges the Review Committee to insist that the accuracy of the indexes is the highest possible as this is a vital element in historical research. If errors are not corrected at the time of digitisation and transcription they will never be located later.

7 The FFHS is concerned that the RRO is vague about the preservation of the historic registers, i.e. those prior to 1935. The Archives Services do not have sufficient storage facilities or staffing to take in the registers. The FFHS wishes to see consistency of access across England and Wales, and urges the Review Committee to obtain a commitment from the Government to ensure that sufficient funding is provided to make this possible.

8 The FFHS is concerned that the RRO gives no indication that The National Archives [TNA] has been consulted about digitisation and the creation of a national database [21.7.16]. The expertise of the TNA in digitisation, databases and records management should be fully exploited.

9 The FFHS is also concerned that the RRO's access framework ignores the Freedom of Information Act [21.8.60] and queries whether the Information Commissioner has been consulted in drafting the RRO. The FFHS urges the Review Committee to revisit this area of concern.

The FFHS agrees with 21.10.26 that the RRO offers exciting opportunities for the digitisation of historic records. This is a once in a lifetime opportunity for the Government to provide an accurate index of Birth and Death records, high quality digitisation and a consistent and high level of accessibility. The FFHS urges the Review Committee to ensure that this is the end result.

The FFHS is more than willing to appear before the Review Committee, if invited, to discuss more fully concerns made in this submission.
15 September 2004

The FFHS is very grateful to have been able to give oral evidence to the Regulatory Reform Committee session on 26 October and to hear the Committee raising concerns voiced during that session with the Financial Secretary to HM Treasury at the subsequent session on 2 November.

The FFHS reiterates its general support for the RRO since most of the changes now under discussion were included in the 1990 White Paper which Parliament at that time chose to ignore. Instead, whilst it allowed marriages to be celebrated outside churches and register offices, Parliament only agreed to widen access to details of Births, Marriages and Deaths by allowing the indexes being published on microfiche and subsequently on the internet. An opportunity to differentiate "Historic Records" was lost, as was the opportunity to make the historic records held by the Registrar General and local registrars more accessible to the general public and to genealogists.

The FFHS welcomes the detailed scrutiny and consultation that the RRO Committee is currently undertaking and would ask the Committee to consider still retaining place of birth on a copy Birth Certificate and the place and cause of death on a copy Death Certificate.

The FFHS welcomes the concession in the Statement of the General Register Office, published in book form on July 22, that Birth Records should become Historic Records when they become 75 years old and Death Records when they become 25 years old, instead of 100 years from the birth date of the person as originally proposed. However, it notes that the statement to that effect only appears in the Explanatory Note at the end of the RRO and is not part of the Order itself.

The FFHS notes with grave concern the statement on the General Register Office website (http://www.gro.gov.uk/Images/QnA_6aug_tcm69-9318.pdf) in response to a question from potential suppliers as to how much data is expected to be captured from the documents as opposed to the image capture. This refers to "Should a supplier decide to capture an image…", "If an image isn't captured…" and "For the Historic records (pre 1935) where an image is held…". The FFHS urges the Committee to insist that images **must** be captured because the risk of keying errors in data captured from the document could invalidate the resulting entry being relied on as a legal record as is proposed.

The FFHS urges the Committee to do all in its power to get sufficient funding for the complete digitisation of the Birth and Death registers back to 1837, including images, and to strongly recommend that all data entry is done within England and Wales. We referred in our oral evidence to examples of incorrect index records, as a result of census indexing being outsourced overseas. Such errors are often significant enough to prevent records being found from searches of the index, and this again could jeopardise the use of the resultant database being relied on to provide legal records.

We repeat our belief that this is a once in a lifetime opportunity to produce a first class National Index of Birth and Death Registrations that could surpass the 1901 Census Project. However, such an Index must be done well and be as accurate as possible. Already in several counties Registrars and Family History Societies working in co-operation are producing indexes and checking local registers - Cheshire is the lead county with at least 16 other authorities involved (please see the website at http://www.ukbmd.org.uk/index.php for details). This exercise has already revealed a considerable number of errors in indexing and the copying of early Birth, Marriage and Death registers for submission to the central records, particularly in the years 1837-1875: one indexer working on local registers in Staffordshire puts the error rate at one entry in every six ! The FFHS therefore urges the Committee to recommend that **both** the local registers and the copy registers kept by the Registrar General should be digitised and the entries checked and merged to produce the highest possible quality index as the end product.

The FFHS is also very concerned as is the National Council on Archives on the question of accessibility to the Historic Records and the need for consistency of access across the whole of England and Wales.

Since the Financial Secretary was rather vague in his oral submission on both digitisation and accessibility, the FFHS trusts that the Committee will establish what funding the Government will make available to carry out a complete and accurate programme of digitisation and ensure consistency of access.

The FFHS is confident that the Committee will pursue these points vigorously because we believe they are key to ensuring that the changes to the legislation, that will be made by the RRO, will produce an effective framework from which all can benefit. The FFHS representatives are more than happy to attend further meetings of the Committee or to brief individual members of the Committee if required.

19 November 2004

Submission by Finders Genealogists Ltd

1. Our business

1.1 Finders Genealogists Limited ("Finders"), a private limited company incorporated in January 1998, is a professional probate genealogy business. We take instructions mainly from solicitors wishing to trace beneficiaries identified in wills or upon intestacy. The professional probate genealogy industry is small: there are approximately five established businesses operating in the marketplace.

1.2 We are engaged only to trace missing or unknown beneficiaries to a deceased's estate. We do not conduct genealogical investigations for reasons of family or social interest, and we do not provide services to assist debt recovery.

1.3 There is no professional body specifically regulating the work of probate genealogists. However, our activities are subject to scrutiny from a variety of professional and regulatory bodies:

1.3.1 we are members of the Association of Professional Genealogists, which requires members to observe a mandatory code of conduct;

1.3.2 our insurance indemnity activities are regulated by the General Insurance Standards Council;

1.3.3 we are also subject to regulation by the Financial Services Authority and a formal letter of authority is expected in November 2004;

1.3.4 we are entered on the Data Protection Register under registration number Z6654345; and

1.3.5 Daniel Curran, a director of Finders, is an expert witness listed in the Law Society Directory of Expert Witnesses 2004.

1.4 The government is proposing to restrict access to certain types of information currently publicly available in civil registration records, by way of a Regulatory Reform Order ("RRO") - the

Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004 ("the Civil Registration RRO"). This proposal, currently being considered by the House of Commons Regulatory Reform Committee and the House of Lords Select Committee on Delegated Powers and Regulatory Reform (the "Parliamentary Committees"), will have a serious adverse effect on our business. The information that the RRO proposes to restrict is necessary for us to carry out our core business of tracing and identifying missing beneficiaries and heirs to unclaimed estates correctly and with certainty.

2. Policy reasons for not introducing the access restrictions contained in the Civil Registration RRO

2.1 As currently drafted, the Civil Registration RRO contemplates that modern registration records (those relating to persons less than 100 years old) will no longer be fully open. Information that is currently widely accessible - for example, individuals' addresses - will be treated as confidential and subject to access restrictions.

2.2 We use this publicly available information to assist in probate genealogical research. Information such as the name and address of the person informing the authorities of a death and the deceased's usual address can be crucial in helping us to identify beneficiaries correctly from the huge volume of data on the public register. Without continued access to such information, we may be unable to evidence the genealogical links which enable us to confirm the identities of beneficiaries.

2.3 The proposed access restrictions contained in the Civil Registration RRO therefore have severe implications for our business. The restrictions would compromise our ability to identify legally entitled beneficiaries with certainty and would impose upon us additional investigatory costs.

2.4 There are further implications. At present, the genealogical reports we prepare are used by insurance companies to assess the risks in providing indemnity insurance where the distribution of the proceeds of an estate may be contentious. We are an approved agent of Norwich Union Insurance Limited, which currently accepts our genealogical reports as proof that appropriate enquiries have been made to identify beneficiaries correctly. If, as a result of inadequate access to information, we are unable to provide a conclusive report, the estate in question may experience difficulty in obtaining indemnity insurance.

2.5 There are, therefore, strong reasons of public policy why we should be permitted continued access to publicly available civil registration information. The proposed access changes would make tracing beneficiaries more difficult, and the results of genealogical investigations less certain. They could also compromise the ability of estates to obtain adequate indemnity insurance.

2.6 The Civil Registration RRO envisages a procedure whereby certain persons can obtain access to restricted information provided they have the consent of a person specified in Schedule 10 (the "Consent Mechanism"). As currently drafted, the Consent Mechanism operates too narrowly to be of use to us, as it envisages obtaining the consent of each individual in order to access the restricted information relating to that person. However, in many cases we are hoping that information on the register will help us to trace a person who is a beneficiary under a will but whose whereabouts are unknown; it is clearly impossible to obtain the consent of such a person. In other cases even the identity of the beneficiary may be unknown (for example, where a testator has bequeathed legacies to "all my surviving grandchildren", or where the deceased has died intestate). The Consent Mechanism will therefore only be effective to authorise access to records relating to the deceased, his or her immediate next of kin or an underage child of the next of kin. This will greatly reduce our chances of tracing missing beneficiaries.

2.7 The Consent Mechanism has further specific limitations. Occasionally, we work at our own risk to trace potential beneficiaries where the deceased does not have any known kin and has no representative to authorise genealogical research. For example, where the deceased has no known next of kin and a solicitor has not received the necessary instructions to make arrangements

in respect of the estate, it would not be possible to obtain the consent of either a family member or a properly appointed representative to access the necessary but restricted information. In these circumstances, it would therefore not be possible to obtain access even to restricted information relating to the deceased.

2.8 There are a number of ways in which the Civil Registration RRO could be adapted to permit us continued access to registration records. We propose two possible solutions in this paper. Firstly, professional probate genealogists could be added to the list of persons entitled to access otherwise restricted information, as specified in Schedule 12 of the Civil Registration RRO. A draft regulation is set out in the Appendix.

2.9 A second solution would be for the Civil Registration RRO to incorporate a simple licensing system, under which the Registrar-General for England and Wales could license professional probate genealogists for the purposes of accessing restricted information on the register. A licence could be made dependent upon the licensee being a limited company incorporated in England and Wales which:

2.9.1 carries on the exclusive business of probate genealogy;

2.9.2 has at least three full time PAYE-registered employees;

2.9.3 operates from established business premises;

2.9.4 is a Professional Member of the Association of Professional Genealogists;

2.9.5 has at least one employee who is listed in the Law Society Directory of Expert Witnesses; and

2.9.6 is entered as a data controller on the public register of data controllers maintained by the United Kingdom Information Commissioner.

3. Procedural and legislative objections to the implementation of the proposed changes by RRO.

3.1 We have taken legal advice on the legislative basis of the Civil Registration RRO. Based on this advice, we believe that there may be grounds on which the RRO could be subject to challenge in the courts.

3.2 For the reasons given in paragraphs 2.1 to 2.5 above, the Civil Registration RRO presents significant business risks for professional probate genealogists. The use of the RRO procedure under the Regulatory Reform Act 2001 (the "Act") has meant that the proposed changes to the civil registration system have not been as widely publicised as they would have been had primary legislation been enacted. In a public meeting of the Regulatory Reform Committee to consider the Civil Registration RRO on 26 October 2004, one Committee member commented that the proposals were unfamiliar to many MPs as well as to the public.

3.3 One of the criteria that the Parliamentary Committees must consider when assessing an RRO is whether "it appears to make an inappropriate use of delegated legislation". It is submitted that the changes proposed in the Civil Registration RRO are of significant public interest and represent a marked change to established practice, and so would better have been the subject of primary legislation.

3.4 RROs must conform to the requirements set out in the Act. Section 5(1) of the Act requires that a Minister shall "consult such organisations as appear to him to be representative of interests substantially affected by his proposals" before he makes an RRO. The Parliamentary Committees must also consider whether an RRO "has been the subject of, and takes appropriate account of, adequate consultation". Concerns about the adequacy of the public consultation process for the Civil Registration RRO were expressed by two of the three bodies giving evidence to the Regulatory Reform Committee on 26 October 2004. Amongst other concerns, the explanatory document produced by the government ran to 339 pages. This made it difficult for interested members of the public to digest and understand the effect of the proposed changes.

3.5 Section 3(1)(b) of the Act provides that an RRO may be made only if the Minister making the order is of the opinion that the RRO does not, inter alia, "prevent any person from continuing

to exercise any right or freedom which he might reasonably expect to continue to exercise." For the reasons given in section 2 above, the access restrictions contemplated by the Civil Registration RRO would prevent us from continuing to enjoy full access to registration information - which is needed to fulfil our professional duties to our clients.

3.6 Section 3(2) of the Act further provides that an RRO may create a burden affecting any person in the carrying on of an activity only if the relevant Minister is of the opinion "that the provisions of the order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden being created". As paragraph 2.5 above explains, it is clearly in the public interest that all intended beneficiaries under either a will or the intestacy rules are correctly identified. There is no public interest in restricting the current access rights of professional probate genealogists. For the reasons outlined in paragraphs 2.2 to 2.4 above, there could be significant public detriment.

3.7 Moreover, section 1(3) of the Act requires an RRO to include provision made under section 1(1)(a) - the removal or reduction of a burden affecting persons in the carrying on of any activity. Restricting access to civil registration records creates rather than removes a burden and is not a necessary adjunct to the other provisions of the Civil Registration RRO.

3.8 In summary, the Civil Registration RRO does not appear to comply fully with the requirements laid down in the Act. The Civil Registration RRO may therefore be liable to judicial review on the grounds that the government is acting *ultra vires* its powers under the Act.

3.9 Section 6 of the Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with a right upheld by the European Convention on Human Rights (the "Convention"), and incompatible secondary legislation can be struck down accordingly. Article 1 of Part II of the First Protocol of the Convention provides that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

3.10 There is a serious risk that we may be deprived of the means to continue satisfactorily our core business of tracing and identifying missing beneficiaries of unclaimed estates should the access restriction provisions of the Civil Registration RRO be introduced. As explained in paragraph 3.6 above, there is no public interest in depriving professional probate genealogists of their rights to full access to civil registration records. In fact, the reverse is the case.

3.11 The Freedom of Information Act 2000, which comes fully into effect on 1 January 2005, is intended to create a "culture of openness" across government. The Civil Registration RRO, if enacted in its present form, will mean reduced public access to civil registration records. Whilst it is recognised that there are public interest considerations in safeguarding the confidentiality of personal information under the civil registration system, it is submitted that the public interest in ensuring that the rightful beneficiaries of unclaimed estates are identified outweighs the possibility that personal data could be misused. The information that the Civil Registration RRO now proposes to restrict has been publicly available for many years and it is unclear why restrictions are now considered necessary.

4. Conclusion

4.1 There are strong policy reasons why Parliament should reconsider the proposed restrictions to certain types of information currently publicly available in civil registration records. The proposed changes would have a serious detrimental effect on our business. Moreover, the public interest would not be served by reducing our ability to identify the beneficiaries of unclaimed estates with certainty. There are also strong procedural and legislative objections to the introduction of the Civil Registration RRO in its present form.

4.2 We have suggested in this paper two ways in which the Civil Registration RRO could be amended to permit us the continued access we need to carry on our business effectively: the

inclusion of professional probate genealogists in Schedule 12; or the introduction of a simple licensing system.

Appendix to evidence from Finders Genealogists Ltd

Schedule 12

Part 1

Information which the Registrar General may provide to certain persons or bodies

Information	*Recipient*
12. Any information in the register.	Any limited company incorporated in England and Wales which: (a) carries on the exclusive business of probate genealogy; (c) has at least three full time PAYE registered employees; (d) operates from established business premises; (e) is a Professional Member of the Association of Professional Genealogists; (e) has at least one employee who is listed in the Law Society Directory of Expert Witnesses; and (f) is entered as a data controller on the public register of data controllers maintained by the United Kingdom Information Commissioner, for the exclusive purpose of probate genealogy.

Submission by Fraser and Fraser

I am responding on behalf of my firm Fraser and Fraser, a firm of genealogists and international probate researchers, which specialises in tracing beneficiaries principally on cases where a person has died intestate with no known next of kin. The firm has been established as Fraser & Fraser since 1969 although it can trace its roots back to 1923. It currently employs over 40 members of staff both in England and Wales as well as overseas. The firm handles approximately 200 to 300 intestate cases a year and identifies between 2,000 and 3,000 beneficiaries a year. The cases we work on involve estates, which originate with the deceased domiciled in England and Wales as well as those overseas. The partners in the firm have given testimony in court on numerous occasions and are regarded as experts in their field both here and in several states in the United States of America.

Each year we apply for between 5,000 and 7,000 copies of birth, death and marriage certificates from the General Registry Office both locally and through the Family Records Centre with an annual spend of over £100,000. More recently we have been applying for copies of the certificates electronically through the Remote Ordering Service instead of applying for certificates at the Family Records Centre.

Whilst we welcome many of the improvements suggested by the Order we have two principal areas of concern; firstly the proposal to abolish paper records, and secondly, information only available with consent.

Paper records

We do not consider that the RRO has adequately considered the consequences of abolishing paper records. Whilst electronic versions may well satisfy Government departments, banks and executors or administrators of estates bound by the laws of England and Wales, when presenting evidence to substantiate a beneficiary's claim to an estate situated overseas, e.g. in the state of New York in the United States of America, all documentary evidence needs to be legalised with the apostille. There, the court is responsible for approving and determining which heirs are entitled on an intestacy. Without the availability of paper records beneficiaries who rely on records in England and Wales would be prevented form obtaining their entitlement.

The records required to prove their entitlement may form all or part of a successive chain of documents of birth, death and marriages, which prove the blood relationship between the deceased and the beneficiary.

Section 39 of the RRO only provides that the Registrar General or registration authority "may" issue a certified copy of an entry. There is no obligation on him to do so. There may also be instances where documents are needed which do not come within the purposes mentioned in Schedule 11.

The provisions in Section 40 whereby there is an obligation on the Registrar General or registration authority to provide a printed copy of an entry in the register are helpful, however the document would not have any legal significance unless it can be certified. Accordingly, beneficiaries will no longer be able to exercise a right to which they would reasonably expect to continue to be able to enjoy.

Information available only with consent

Our understanding of the RRO is that all information, which is currently available publicly, will continue to remain available apart from that information contained in Schedule 9 subject to the date limitations imposed by Schedule 8. We would respectfully submit that if that is not the case then the RRO would prevent beneficiaries from continuing to exercise a right/freedom which they would reasonably expect to exercise as they may become unable to prove their entitlement to an estate to which they are entitled under either the Administration of Estates Act 1925 as amended, or under laws applicable abroad if the estate is situated abroad.

Insofar as information contained in Parts 2 to 9 of Schedule 9 require consent, we accept that it is only in a small minority of cases that such information is necessary in order to prove a beneficiary's entitlement to an estate.

A large proportion of the cases we undertake are undertaken as a result of advertisements mainly placed by the Treasury Solicitor or the solicitors acting for the Duchy of Cornwall or the Duchy of Lancaster, where the deceased appears to have died intestate with no known next of kin and which, failing any next of kin being entitled would fall bona vacantia under the Administration of Estates Act 1925 as amended. The Treasury Solicitor, or the Duchy of Cornwall or Lancaster as appropriate fulfils its obligations by advertising for next of kin to come forward to claim an estate in priority. When undertaking research on such cases we are not instructed to carry out research until such time as a beneficiary is found.

In a small minority of cases it is impossible to identify a beneficiary without the information contained in Parts 2 to 9 of Schedule 9. Under the current proposals it would therefore be impossible to identify a beneficiary, as consent would be needed to access that part of the register, yet the consent could not be obtained, as the beneficiary would not be found.

Many examples could be cited, however, the classic scenario is that John Smith (Senior) has a son by his wife Mary Smith née Jones, John Smith (Junior) as well as a daughter Jane Smith, and both children are born at home. The linking detail may be the home address which may also be the address at which the mother dies, and the usual address of both children when they in turn marry, which proves that parents and children are all related to each other and therefore, correct.

We do not believe that adequate consideration has been given to the difficulty this will place on probate researchers identifying the correct beneficiaries and therefore, hinder beneficiaries who are entitled to an estate from being found. As such they will not be able to exercise a right which they would reasonably expect to be able to exercise; the Order therefore introduces additional burdens. We would suggest that there should be specific provision, which would enable entries to be identified on a case-by-case basis without the need for consent to be obtained. It is, of course, in the interests of justice that the beneficiaries are found!

Turning to the burdens imposed evidentially in proving that a person either has a right under Part 1 of Schedule 10, or a right under Part 2, 3 or 4 of Schedule 10, these have not been adequately

considered. There is also an inconsistency between Section 35(1) which states that an explicit consent of any person specified in Part 2 or 4 of Schedule 10 needs to be given for information which would not be available publicly, yet Parts 2 and 4 of Schedule 10 do not state that the consent needs to be explicit. A further difficulty will be in what is meant by the term explicit. Whilst this is maybe left to subordinate legislation the precise definition may introduce additional burdens or prevent beneficiaries from continuing to exercise their rights, which has not been considered fully.

What is not clear is procedurally how a beneficiary (next of kin) of someone who has died is to give consent for the restricted information to be accessed, and what proof will be necessary to show that firstly they have given consent, and secondly that the subject of an entry is dead. A number of deaths occur overseas and would not be registered in England and Wales, and so would not be linked to existing records registered in England and Wales, which will add additional burdens that have not been considered.

One assumes that 'next of kin' will mean anyone who would be entitled to inherit under the Administration of Estates Act 1925 as amended. Perhaps this could be made clear in the RRO.

The RRO gives no detail as to how entitlement to restricted information is to be accessed, and that determination of entitlement will naturally affect rights which are currently being enjoyed, and which would reasonably be expected to continue to be enjoyed.

Lastly, we are occasionally instructed to trace deaths of people who are a relative, of the same area, or of a similar occupation of someone who has died, and have similar causes of death. Recently we advised a firm of solicitors who were representing a lady accused of murdering her child who wanted to prove there was a family history of cot deaths, as she claimed her child had died in a similar way. Under the RRO, since the lady concerned may not have been classed as next of kin of some of the deceased children, she would not have been able to give consent to the cause of death being accessed. Asking the parents for consent would have caused them unnecessary distress. Under the current system there would not have been any such difficulties. We suggest that the Register General should be either given a power to dispense with the need of consent in such cases, or be given a power to dispense with the need for consent on a case by case basis.

Submission by Saga Group Ltd

I understand that the Delegated Powers and Regulatory Reform Committee is due to review the Regulatory Reform (Registration of Births and Deaths) England and Wales) Order 2004.

Saga has created an initiative to aid the Direct Marketing Industry called "Stop Dead". The idea is that we do not want to send marketing literature to anyone who is deceased and we would like to have access to the death registration data in order to suppress those deceased from our mailing activity.

Currently "Stop Dead" (which is a non-profit making initiative) has ten of the leading mailers in the UK as members and between us we mail upwards of a million people a day. Initial information suggests that the use of the death registration data for list suppression is included in the order but my understanding is that it is suggested that the General Register Office should undertake the task.

Given the huge volumes of mailings undertaken just by Stop Dead members we would suggest that it is not sensible or viable for the GRO to undertake this important and specialist task and that although the details of how the list suppression be done do not need to be within the order itself, it is crucial that consideration be given to it being done by a third party in order to fulfil the requirements of the industry. Some 660,000 deaths are registered each year and we already utilise matching routines and software to aim to remove as many names as we have available to us.

I would also therefore suggest that "Stop Dead" would be ideally positioned to undertake the accurate and timely suppression of all mailing lists against the full, accurate and up-to-date register and maintain the not-for-profit status to encourage the use of this death suppression process.

Currently commercially available lists cost Saga £80,000 per annum in order to remove dead people and even then they are incomplete and woefully out-of-date.

We as a body are most keen to receive this central file of data and use it to deliver best practice in this direct marketing field and to prevent the ordeal of the bereaved continuing to receive marketing literature in the name of their loved one.

I also enclose a leaflet describing "Stop Dead", our aims and objectives and founding members.

8 November 2004

Submission by Lord Teviot

It was a pleasure for me to come back to the House of Lords yesterday to listen to the deliberations of the Delegated Powers and Regulatory Reform Committee.

The Births and Deaths Registration Act 1836, coming into effect in July? 1837 has certainly withstood the test of time. Its replacement surely deserves primary legislation and what goes with it, i.e. a bill being vigorously debated and scrutinised in each and all of the Parliamentary stages in both Houses, which I am glad to say seemed to be the opinion of the Committee.

Regarding Lady Carnegy's point about amalgamating legislation with Scotland, I think it would be difficult if not impossible as the Scottish Act was not passed until 1855. In many ways it was superior as the information given in the register was much greater. The Irish Act was not passed until 1864 and was divided between Northern and Southern Ireland until 1922.

However my main concern as a former politician is that this orde does not combat fraud as outlined in my letter to the Commons which is surely one of its main objectives.

In one way or another I have been involved with the Registration Service since 1970. It did not appear clear yesterday but the "ONS" was only formed about four or five years ago. Traditionally Registration came under the Office of Population, Census and Surveys, which in turn was part of the Ministry of Health. Anyway, all good luck in whatever the Committee decides.

November 11 2004

ANNEX 3: SUMMARY OF THE PROPOSAL

Introduction

1. The purpose of the proposal is to enable the modernisation of the civil registration service in relation to the registration of births, still-births and deaths by moving from a system based on paper entries in a register book to one based on a central database with a facility for remote registration (by telephone or internet).

The current arrangement

2. The current arrangement for the registration of births, still-births and deaths is described in detail in Chapter 5 of the Statement. Registration is governed by the Births and Deaths Registration Act 1953 ("BDRA 1953") (which consolidated legislation dating back to 1836), the form of registers and other issues of format are governed by the Registration of Births and Deaths Regulations 1987 ("the 1987 Regulations") and the administration of civil registration by the Registration Service Act 1953 ("RSA 1953").

3. At present, registration of births, still-births and deaths has to be in person, either by giving the information required to the registrar for the area in which the event took place or making a declaration to the registrar of another area who then forwards the information to the relevant registrar. In all cases the person giving the information has to check a draft of the registration details which, when finalised, are sent quarterly to the Registrar General for compilation in the central records.

4. Records of civil registrations are, generally, on paper, the legal record being that made by hand in the paper registers held by registrars locally. The local register offices and the General Register Office (GRO) hold versions of these records, and for the purposes of access to records, no differentiation is made between recent and older records. Anyone may search the indexes of records required to be maintained by the Registrar General and superintendent registrars under the BDRA 1953, and purchase a certificate of any entry (except in the case of still-birth registers, where the Registrar General exercises his discretion as to access).

5. Responsibility for the provision and administration of the registration service in England and Wales is divided between the Registrar General, local authorities[1] and registration officers.[2] Essentially, the Registrar General advises on, and regulates, the registration system and approves local registration service schemes under the RSA 1953, while local authorities have responsibility for financing and delivering the registration service for their area (including preparing the local scheme for approval). Where a local authority is not meeting the standards required by the registration and other Acts that govern the service, the Registrar General may intervene, using limited and rarely used powers. Registration officers are appointed and paid by local authorities subject to the approval of the Registrar General, and carry out their activities on his instructions.

The proposed reform

6. The proposed reform is described in detail in Chapter 6 of the Statement.

Central database

7. A principal element of the proposal is the establishment of a central database. Article 9 of the draft order requires the Registrar General to "create and maintain a register in such a form as he may determine" for births and deaths. Although not specified in the draft order, it is intended that the central database should be an electronic database. The proposal acknowledges the need for safeguards to ensure the integrity, availability, security and accuracy of the database.

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1 At the end of February 2003, there were 172 registration authorities divided in 349 districts (paragraph 5.15.1 of the Statement).

2 Sections 1 to 4 of the RSA 1953.

Methods of registration

8. The establishment of a central electronic register enables wider choice as to method of registration. It is proposed that, in addition to registration in person at the registration office for the area in which the event occurred, individuals should be able to register a birth or death at any registration office in England and Wales, or by telephone or internet (article 10, Schedule 1). With regard to still-births, because the doctor, coroner, registrar and person in charge of the burial or cremation are involved in the processes set in train by a still-birth, the GRO acknowledges that full computerisation, and therefore choice as to method of registration, is not yet practicable.

9. The GRO has indicated that mechanisms would be put in place to ensure against fraudulent registrations.

Through life records

10. The present system of civil registration is described in the Statement as holding "snapshots" of life events.[3] Article 11(2) would allow the Registrar General or a registration authority to annotate any entry in a register to record that the individual concerned is the subject of another entry in the register. By this means it is proposed that through life records would be maintained. The through life record is envisaged as a series of links connecting various life events of an individual registered in England or Wales. This information would not be publicly available, but open only to the subject of the record, his or her family and representatives, those who are granted access, and certain public authorities specified in Schedule 12 to the draft order (article 45).

Access to registration records

11. The draft order makes new provision about access to registration records. Although most of the information available to the public at present will remain so, certain information, such as addresses and, in relation to death, cause of death would only be available after a specified period of time (for birth records, this would be after 75 years, and for death records, after 25 years). The restricted information would be available to the persons set out in Schedule 10 (article 35) to the draft order (family, partners, persons to whom the data-subject has given consent or properly appointed representatives).

12. A category of "Authorised Users" would be established. These would be, principally, organisations (such as Government Departments and Agencies, financial institutions and the police) which access large numbers of registration records as part of their business and which may require access to the restricted information. Authorised Users would be able only to have access to restricted information where the person named in the record or a representative has given permission for them to do so. Once accredited as an Authorised User, the organisation would be given the technical facility to access the central database.

Certificates

13. It is anticipated that the need to produce paper certificates to Government Departments and other bodies, public and private, would lessen considerably as registration records are digitised. Article 57 provides for certificates containing the information permitted by Part VII of the draft order to be made available locally or by the Registrar General on a transitional basis, and where certified copies of entries in register continue to be required (in the circumstances set out in Schedule 11 (article 39)), the Registrar General or registration authority would be able to provide such copies. Commemorative certificates or screen prints would be available under articles 38 and 40.

Existing registers

14. Section 6.12 of the Statement deals with existing registers, which are items of great interest as sources of historical and legal information. One effect of the ending of the paper-based system of

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[3] Paragraph 6.5.1 of the Statement.

registration would be to reduce greatly the risk of deterioration of these documents by handling, or damage in transport. The new registration service structure set out in Part II of the draft order provides for the transfer of register books to local authorities (as registration authorities). Section 224 of the Local Government Act 1972 imposes a duty of care on local authorities with regard to records, and the Office of the Deputy Prime Minister issues guidance (drawn from guidelines by the National Archives) on proper arrangements, including storage standards, for records. Local authorities would be responsible for enabling access to registers.

Statistics

15. A new framework for the collection and use of statistical data is proposed. Article 41 and Part VIII of the draft order set out this new framework, which would permit the Registrar General to use any information in pursuance of his functions as head of the Office for National Statistics and provides, by amendment to the Population Statistics Act 1938, that specification of information may in future be changed by subordinate provisions order rather than by primary legislation (article 49, Schedule 13).

Restructuring of the Registration Service

16. The draft order would change the structure of the registration service and the legal status of some of those working for it. It is proposed that each local authority should be responsible for the delivery of face-to-face registration services in their area. In order to ensure that a minimum standard is maintained locally, it is intended that current national standards should be backed by a statutory Code of Practice. To ensure that the standards are met, there would continue to be an Inspectorate responsible for monitoring adherence to the Code. In light of the Government's policy to reduce the number of inspection regimes, it is proposed that the Inspectorate would transfer from the Registrar General to the Audit Commission and the Audit Commission in Wales.

17. Article 4 of the order would transfer superintendent registrars and registrars to local authority employment (currently they are statutory post holders under the RSA 1953, appointed by the local authority). Other staff, such as support staff, are already local authority employees, and so would be unaffected by this change. Demarcations between those officers as to authority to officiate at weddings, or register births and deaths, would be removed. The form of each authority's registration service, staffing levels, training and other personnel matters would be entirely for the authority. It is intended that statutory post holders affected by this proposal would be treated as if the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) apply.[4]

18. Although the Registrar General will no longer be required to approve the appointment of any officers of a registration authority, or have any powers of dismissal, it is proposed that he should negotiate procedures with local authorities to deal with situations where abuse of procedures or misuse of information has occurred.

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4 TUPE cannot formally apply to statutory post holders because they are not employees.