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## **THE NATIONAL COUNCIL ON ARCHIVES (NCA) RESPONSE TO THE CIVIL REGISTRATION: DELIVERING VITAL CHANGE CONSULTATION DOCUMENT**

The NCA welcome this opportunity to comment on the consultation document. We have decided to structure our response differently from the response form suggested. We hope you will forgive us for that.

### **General Comments**

#### **Status of the registers**

The status of the registers themselves needs to be clearly resolved. We regret but understand the decision not to designate registration records as public records but we do not want the issue of status of the record to now be lost simply because public record designation will not be occurring. At 7.3.41, the consultation document implies that the current custodianship role that local authorities play in relation to the records will be extended to a transfer of ownership. We believe this needs to be made explicit. We feel this underlies several of the major foreseeable weaknesses in the implementation of the proposals as they stand. We are also not clear as to what will be the fate of the central registers now that Public Record status has been discounted.

#### **Funding**

We are most concerned that the financial implications of the proposals are either conspicuous by their absence or, we believe, wrongly stated. We fundamentally disagree with the un-evidenced assertion in the consultation document that proposal to transfer local registers into local record offices would create a “minimal” burden (7.3.41). We understand that ONS has no funds for the strategy for implementation as it affects records beyond those of the Central Registrar. This does not mean that no funds are needed to implement the proposals. Applying s 224 of the Local Government Act, 1972, would require a higher standard of care (assuming space is available) than the records enjoy at the moment, as well the duty to provide high standards of access, while the record offices would not gain the current income generation gained from certificate sales as recompense. We understand that the National Archives assessed the cost of providing storage and access to the Central Registers with Public Record status at c. £3m per annum. The costs of providing similar storage and access to the local records are likely to be higher given the essentially distributed nature of the system, affording fewer benefits from economies of scale.

We note that chapter 11 does not appear to make any reference to the increased costs local authorities face in providing storage and access to s.224 of the Local Government Act, 1972.

We note that, under Annex E – Draft Partial Regulatory Impact Assessment, ONS has requested quantitative information on the impact of the proposed measures. We hope that the figures provided, as Appendix A to this consultation response, will help highlight those additional financial burdens.

### **Consistency of provision**

We remained deeply concerned that the proposals as they stand will not provide consistency in terms of either the care of the records nor access to them. In particular making custody of the original records a local authority responsibility fractures responsibility for these matters between 172 local authorities. This will make it much more difficult to arrange national digitization programmes of the local registers and nigh on impossible to ensure consistency in the arrangements for storage of, and access to, the original historic records. We fear the reality will be piecemeal digitization; the transfer of no, historic, or all registers to archive service custody in different places; different charging arrangements; and different arrangements for access to original documents in different places. We feel Parliament needs to place clear requirements on local authorities e.g. by 31<sup>st</sup> December 2011 all “historic” records to be in archive service custody; a standard charging regime for all historic archives to be agreed. In practice we would expect to mean free access.

Our fears over consistency of provision are exacerbated by some of the proposals put forward in support of the main changes. We would cite 7.3.14-22 as an example of this. Although this section aims to provide consistency and improvements of access, it defines choices and alterations that would result in the opposite of consistency; on where records are stored; on charging; on the physical form of access.

It is our belief that ONS will need to consider much more thoroughly the issues of implementing change via the distributed system proposed. The issues here are complex and we would argue that achieving clear, consistent and well communicated public access provision should be at the forefront of considerations, whatever the status of “back room” operations.

### **Local Registers**

We welcome the recognition afforded to the primary of the local records.

### **Access**

The NCA welcomes the principle of making the historic records more widely accessible for non-government (primarily genealogical) purposes.

On the question of limiting access to “modern” records because of:

- a. the right to privacy under EU Human Rights Legislation and Human Rights Act
- b. concern about fraud arising from impersonation.

We feel that:

- i. a distinction can and probably should be made between records of births and deaths and records of marriages;
- ii. a shorter period of protection could be applied to information about deaths than about births.

On the question of record linkage, we feel further consideration should be given by Government to preserving and ultimately making accessible record linkages.

### **Records of Marriages**

We welcome the increase in information to be recorded at marriage.

Our main concern centers on the retrospective closure of the church marriage registers, many copies of which are in circulation, including a great many outside UK jurisdictions. Full information from these sources will continue to be available, especially on the Internet, and we are concerned about the law being unenforceable and dragged into disrepute.

We, therefore, believe that full details of marriage register entries should continue to be open to all. We believe that this will be of no concern in relation to fraud.

We note that marriage notice books are included in the scope of the changes without any accompanying justification. We would like to see some evidence to make clear the value of these records to family historians and their predicted use.

We agree with the decision to use the age of the elder of the couple to determine when restricted information on historic marriage records is released.

### **Records of Births and Deaths**

We accept that the weight of arguments in favour of privacy and against fraud is in favour of restriction of access to some information.

However, we believe that the benefits can be derived while reducing the period of protection from 100 years to 75 years for births (as few cases of impersonation of people over 75 are likely) and to 50 years or even 25 for deaths. Such a reduction in the restriction period, together with a wide interpretation of the definition of “family members” allowed to access the full details, could eliminate the worst effects for genealogy. A reduction in the “modern records” period would reduce the cost of digitising to Government.

We cannot understand the arguments for closing certain fields of information on death certificates where that information is freely available through access to wills. This would not apply to the cause of death.

### **Timetabling**

Given the possible complexities of transfer and access for both the “modern” and “historic” records it will be essential that there is a realistic and achievable timetable for the implementation strategy agreed with the archive community. Such a timetable should take account not just of the needs of local record offices themselves but also the needs and expectations of users of the records.

### **Retrospective Closure and Local Record Offices**

There is a handling issue here. Local record offices do not want to be associated with the retrospective closure of elements of information contained within the registers. We hope that ONS will publicise and defend its argument for applying some elements of retrospective closure on the grounds of privacy. The implementation process needs to make a clear distinction between ONS policy in this regard and any change in status or transfer arrangements for the records.

### **Digitisation of the “historic” records**

We remain unconvinced that a viable and reputable bidder from the not-for-profit sector could be found to implement the digitisation of the historic central records, even assuming that the principle of cost recovery could be established. We would suggest that ONS explores this issue further and we would be happy to be involved in the discussion of other possible models for delivery. One possibility might be for

the Registrar General and local authorities to be given, for example, 31<sup>st</sup> December 2011 to digitize all the historic register records, with the Registrar General running the project and local authorities and/or central Government providing funding, and for revenue to accrue to local authorities thereafter to offset extra cost of storage and access under s.224 of the Local Government Act, 1972.

In determining whether to digitise the local or central “historic” registers we would suggest that this decision needs to be seen in the context of meeting the current and future demands and expectations of users, which would suggest a strong preference for the original local registers, where these survive. We hope that, given the acknowledgement of the local registers as the primary source, ONS will take a lead, in partnership with the archive community, in exploring options for creating a national framework for digitising those records with a level of return on fees to the local authorities concerned. The NCA would like to be involved further in exploring those options with ONS.

Based on our understanding of genealogical use, we should highlight that digitisation of the historic records, will not remove the demand from some users to see the physical record.

#### **Digitisation of the modern records**

We are not clear from the consultation document whether the intention is for ONS to create a database of the modern records or to provide access to actual digitized images of the records. There are clearly issues of timetabling, compatibility and data transfer to be considered as, over time, records will change from in status from modern to historic. Providing electronic access to the records for events from 1093 to c 1935 will further complicate these issues.

We understand that, over time, ONS will be making updates solely to the electronic databases rather than manual copies. We have some concerns here about the legal status of the digital record, where the issue of format as well as the information contained within the record can constitute part of the legal status. This is one of the drivers behind the proposed National Records and Archives Legislation consultation document. We would refer ONS to that consultation at [http://www.nationalarchives.gov.uk/news/consultation\\_intro.htm](http://www.nationalarchives.gov.uk/news/consultation_intro.htm)

#### **Protecting the rights of Genealogists**

As the proposals stand, we do not believe that the rights of genealogists have been protected as far as they might be.

The proposals at 6.4.15-8 go some way to alleviating the concerns of the genealogical community. However, a family historian may need to order the birth certificates of four John Smiths born in Walsall in the last quarter of 1924 to discover which was his grandfather. It is likely to be the closed information (occupation, address) that enables the right linkage to be made. Shorter restrictions would alleviate this problem further.

At 6.4.86 it is stated that genealogists will be able to access the restricted information with permission. We would be interested to understand the proposed mechanisms by which this will be achieved. We also believe, in contrast to the assertion made at 6.4.86, it may be difficult or impossible to use other sources to determine which of several registration entries is “the right one”.

### **Harmonisation with other legislation**

We hope that ONS will engage in discussion with the National Archives over the need to marry any Civil Registration Reform legislation with the proposed national archival legislation. It would be useful to see the ONS's assessment of how the proposals are broadly compatible with the Data Protection Act (1998) and the Freedom of Information Act (2000).

### **Certificates**

Certificates for legal purposes should be issued from the original registers, where these exist, not from the Registrar General's copies (1.2.7). We suggest the Registrar General should only issue such certificates in respect of events from the date of implementation of electronic data capture onwards, and that local authorities should be responsible for issuing certificates from earlier records. We note that the College of Arms is likely to acquire legal certificates to support pedigrees. We recognize that this issue would disappear if certificates were issued as electronic copies from the local registers.

### **Error rates in the central records**

We believe that the figures from any analysis of error rates in the copy data should be presented to Parliament before a decision is made on this matter (6.3.5). As a matter of principle, we believe the original registers (where available) should be the basis for digitization, especially of the historic records where the error rates in the central copies are probably higher.

### **Transfer of custody**

We are minded to agree that (subject to wider changes not being made in the proposed regime by Parliament), the most logical basis for transfer of custody would be records over 100 years old. This would essentially be birth and death records; civil marriage registers and a few church marriage books completed prior to 1903. We should be aiming for this as a consistent basis of transfer across the country, although transferring more would not be as problematic as transferring less. A date should be set by which transfer should be completed (2011 or sooner) to give time for archive services to equip themselves with the accommodation and surrogate copies where necessary. Registration service staff should transfer, where necessary, to undertake certificate work. We believe the NCA working group should assess this matter thoroughly in conjunction with ONS.

### **Marriage registers held by religious bodies**

We welcome the acknowledgement of this problem at 7.3.23. We would add that the investment in surrogate copies by record offices that will now have to be withdrawn is a major problem. No compensation is proposed to local authorities for this as we wonder if a proportion of central certificate revenue should not be passed to local authorities until 2011 to alleviate the transitional costs.

### **Applying the access framework – religious bodies**

We believe that religious bodies should remain limited to standard national fee levels for access, in the interests of consistency rather than being allowed to set fees locally as proposed at 7.3.43

We would be happy to discuss further any of the comments made in this consultation response and would ask that you contact Katie Norgrove, our Policy and Development Officer in the first instance on 0208 392 5376.

Yours sincerely,

Nick Kingsley,  
Chairman, The National Council on Archives

Enc: Appendix A – Draft Regulatory Impact Assessment - Quantitative Information relevant to the impact of proposed measures

## **Appendix A – Draft Partial Regulatory Impact Assessment - Quantitative Information relevant to the impact of proposed measures from the National Council on Archives**

We note that the draft partial Regulatory Impact Assessment does not contain any analysis of the financial impact of the proposed measures upon local archives services. The data provided below is intended to inform ONS's own analysis. We understand that ONS is obliged to consider and evaluate this information as part of the Regulatory Reform Order process.

### **1. Survey data**

The statistics quoted in this response are based on **a survey of 35 archives** including County, Unitary and Metropolitan authorities in England and Wales carried out by **The Association of Chief Archivists in Local Government (ACALG)**. A list of respondents can be found in at 6. The ONS helpfully provided quantitative data from their survey of 1997 that proved to be a valuable check on the “new” data.

The survey covered the following questions:

- numbers of registers held locally, divided into pre and post 1900;
- quality of present storage;
- existence of copies or indexes;
- availability of storage in record offices;
- invited any other comments.

### **2. Basis for statistics**

#### **2.1 Number of registers**

The ONS 1997 survey recorded a total of 644,731 registers for England and Wales; these figures were classified by event (birth, marriage or death) but not by date. A comparison of some of the detailed responses to the new survey with the 1997 figures indicates that the 1997 figures need to be increased by c5% to reflect the present situation, i.e. **c677, 000** registers.

The proportion of the overall total of registers that are pre-1900 is difficult to assess because demographic conditions have varied so much between registration services. Figures from the returns received vary between c10% and c40%, with the majority around 30%. This would mean that local archive services may have to make provision for c203, 000 registers.

#### **2.2 Storage requirements**

Assuming an average register to be 0.004 m<sup>3</sup>, **c800-850 m<sup>3</sup>** of storage requirement, in the short term with the prospect of substantially more in the

longer term. The final figure would be in the order of **2,600-2,900 m3**.

The document also adds a new element to the calculation by recommending that marriage notice books – hitherto largely overlooked – be treated in the same way as other registers. Their survival is patchy - pulping for salvage was authorised by the then Registrar General during the Second World War – but they add by estimation c10% to the overall storage requirement, bringing the totals to **880-935 m3** in the short term and **2,860–3,190 m3**

The document proposes that the records be treated as other records held by a local authority, and subject to s224 of the Local Government Act 1972. The DETR guidance requires storage to meet the standards of BS5454.

### **3. Results:**

**3.2 Current storage conditions.** Storage conditions are generally reported to be adequate, in fire-proof safes or strongrooms, although a number reported cramped conditions and lack of space for expansion. None reported any form of environmental controls or monitoring. In 3 instances, some non-current registers are stored in the record office. Individual registers are generally in good condition: the most common problem is damage to bindings.

**3.3 Copies and indexes** Only one instance of copying of registers was reported, which was a pilot study to microfiche registers. Most services reported in-house indexes, mainly now in computerised form, for use of registration staff. In 6 instances projects are underway to provide public access to indexes via the internet in conjunction with local family history societies.

### **3.4 Current capacity of archive services**

**3.5** In response to the questions on capacity to provide storage 19 services could not provide for pre 1900 registers, 7 could do so, 1 could partially do so, while a further 5 expected to be able to do so within the next few years. Only 4 felt able to accommodate all registers, while 21 could not, with 2 being able to make partial provision; again the same 5 felt that they would be able to do so in the future.

### **3.6 The results: further comments**

Comments on respondents focused on a number of areas

- Storage space and the possible impact on the ability to accept other deposits of records
- Duplication of storage of church and civil marriage registers
- Conservation issues
- Resource implications of provision of surrogate media for access
- Pressure on staff in handling increased demand leading to increased staffing levels.
- Management of restrictions on access to certain fields of information in marriage registers
- Pressure on public facilities
- Loss of income (to the Local Authority) from loss of certificate income
- Possible problems relating to Unitary Authorities exercising their archival responsibilities through an SLA with another authority; the particular issue of the London Metropolitan area, and the relationship between LMA and London Boroughs

## **4. Costs Breakdown**

**4.1 Storage: capital.** Most respondents to the ACALG survey indicate that they would not be able to offer storage to meet the requirements of BS 5454 in their present building. Only 4 authorities stated positively that they could accommodate both pre and post 1900 registers. The implications for capital projects are enormous. The current estimate of cost of building new storage to meet the requirements of BS 5454 is **c£1,200 per m<sup>2</sup>**.

**Estimate of capital cost of storage: £1,200 x 3,190m<sup>2</sup> = £3,828,000**

**4.2 Storage: revenue.** There is clearly a major problem of physical capacity that needs to be addressed. In some cases it may be possible to use existing storage in Register Offices, but only if they are readily accessible from the Record Office. The CIPFA Archive Service estimates 2002-3 show that local authority archive services hold approx 64,200 m<sup>3</sup> of archives, and total premises costs of approx £6,000,000. The approximate annual cost of storage of archives is thus **c£93 per m<sup>3</sup>**. Storage of "historic" registers would add **c£82,000-£87,000** to annual revenue costs; and a final total **£266,000-£297,000**, or 4.4%-5% of the current revenue expenditure.

**Estimate of additional immediate annual revenue cost = c£82,000**

**Estimate of additional annual revenue cost = £297,000**

**4.3 Conservation and preservation.** Comments focused on damage to bindings, although there were several reports of more serious damage through mould or damp. If we discount the latter and assume that 10% of the registers require some attention, averaged out at 2 hours conservator's or bookbinder's time @ £18 per hour and £4 for materials, the total cost would be **£682,500**. The cost of materials alone, at £65,000 is approximately 2.5 times the current annual expenditure on conservation materials and equipment in England and Wales. There will also be substantial costs for storage materials: archive-quality boxes to protect and support registers. Storage of the "historic" registers, @ 5 registers per box and £4 per box would cost **c£130,000**.

**Estimate of conservation and preservation costs = £812,500**

**Access.** Demand for access to the local registers will be enormous. Even if the information from the RG's series is available online, many readers will wish to see the original record both to check for accuracy and to see original entries including signatures. The lessons of the 1901 census must not be forgotten. Access can only be provided in a surrogate medium, either digitised or on microfilm; only in exceptional circumstances will it be practical to allow access to the originals. The pre-1900 registers may amount to c20, 310,000 pages (@100 pages per volume). Scanning @ 4p per image would cost **£812,400** and microfilm @1.6p per image would cost **£324,960**. These figures are simply for scanning/filming and make no allowance for indexing, provision of additional copies, logistics, provision of readers, hard and software, including copying facilities or project management costs. To give an indication of the potential scale of overall costs, the budget for the Newsplan newspaper-microfilming project, prepared in 1998 proposed filming c50, 000,000 frames (83,816 reels of film @ 600 frames per reel) at a total cost of c£11,300,000.

**Estimate of access costs: = (£11,300,000/50,000,000) x 40,000,000 = £9,040,000**

It should be noted that these access costs represent only a *small proportion* of the actual costs of any digitization programme which might typically cover: selection; determination of size of collection; preparation; determination of image requirements; determination of metadata requirements and their creation; imaging costs; text conversion costs; SGML encoding costs; post-processing of the digital files; project management; systems support; transportation and insurance; and purchasing storage devices, media and software.

## 5. Total Costs

### **Capital**

|   |                    |
|---|--------------------|
| <b>Estimate of capital cost of storage £1,200 x 3,190m2 =</b> | <b>£3,828,000</b>  |
| <b>Estimate of conservation and preservation costs =</b>      | <b>£812,500</b>    |
| <b>Estimate of access costs</b>                               |                    |
| <b>= (£11,300,000/50,000,000) x 40,000,000 =</b>              | <b>£9,040,000</b>  |
| <b>Total</b>  | <b>£13,680,500</b> |

### **Revenue**

|   |                 |
|---|-----------------|
| <b>Estimate of additional immediate annual revenue cost =</b> | <b>c£82,000</b> |
| <b>Estimate of additional annual revenue cost =</b>           | <b>£297,000</b> |

## 6. List of respondents to the survey

Anglesey County Record Office  
 Bedfordshire and Luton Archives and Records Services  
 Bury Archive Service  
 Cheshire and Chester Archives and Local Studies  
 Coventry City Archives  
 Derbyshire Record Office  
 Dudley Archives and Local Studies Service  
 Durham County Record Office  
 East Riding of Yorkshire Archive service  
 East Sussex Record Office  
 Essex Record Office  
 Glamorgan Record Office  
 Hackney Archives  
 Hampshire Record Office  
 Hertfordshire Archives and Local Studies  
 Isle of Wight Record Office  
 Lancashire Record Office  
 Lincolnshire Record Office  
 Liverpool Record Office  
 London Metropolitan Archives  
 Manchester Archives and Local Studies  
 North East Lincolnshire Archives  
 Northumberland Record Office  
 Portsmouth Museum and Records Office  
 Rotherham Archives and Local Studies Service  
 Sheffield Archives  
 Southampton Archives Services  
 Staffordshire and Stoke on Trent Archive Service  
 Suffolk Record Office  
 Surrey History Service  
 Tyne and Wear Archives Service  
 Warwickshire County Record Office

West Glamorgan Archive Service  
West Sussex Record Office  
Wrexham Archives Service