EXPLANATORY MEMORANDUM TO

THE REGISTRATION OF BIRTHS, DEATHS, MARRIAGES AND CIVIL PARTNERSHIPS (FEES) (AMENDMENT) REGULATIONS 2017

2017 No. 947

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument amends the Registration of Births, Deaths, Marriages and Civil Partnerships (Fees) Regulations 2016 (S.I. 2016/911) ("the Fees Regulations") to introduce fees for specified registration services currently provided free of charge. It also amends the person to whom certain fees are payable, and also consequentially amends the Registration of Marriages Regulations 2015 (S.I. 2015/207) and the Civil Partnership (Registration Provisions) Regulations 2005 (S.I. 2005/3176) to remove the requirement for the superintendent registrar/registration authority to immediately forward to the Registrar General the fees ceasing to be payable to the Registrar General. The instrument also raises the fee for consideration of a waiver to reduce the 28 day notice period to marry or form a civil partnership to cost recovery levels.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations also deal with the matters identified by the Joint Committee in its Twelfth Report of Session 2016–17 in connection with the Fees Regulations.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 89 of, and Schedule 15 to, the Immigration Act 2016 (c. 19) inserted provisions into the main legislation governing civil registration to allow for regulations to be made to charge fees for services relating to births, deaths, marriages and civil partnerships currently provided for free by both General Register Office (GRO) and the Local Registration Service (LRS).

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is instrument is England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Registrar General for England and Wales is responsible for the system of civil registration for England and Wales and through GRO maintains a central record of registration events. The registration of births, deaths, marriages and civil partnerships is delivered by 174 local authorities (under the responsibility of the Department for Communities and Local Government). Both GRO and the LRS also provide products and services relating to civil registration for a fee set out in secondary legislation and others provided for free. This has remained largely unchanged since primary legislation for registration services was introduced in the 19th Century.

7.2 The current legislative framework does not reflect how and why registration services are now accessed or the cost in providing those services. Increases in administrative costs and changes in demand for registration services over time have meant that both GRO and the LRS have retained a reliance on funding from central and local government respectively, over and above revenue received from certificate sales and paid-for services.

7.3 This instrument sets fees in respect of GRO and the LRS for a number of services that are currently provided free and increases the fee for one service to a level to recover costs.

7.4 The regulations also provide for a discretionary reduction, waiver or refund of a fee. The services that will now attract a fee are:

(a) a correction to an entry to a register book

A correction to a registration record can be requested for reasons such as a mistake by the informant or registrar, incorrect information provided inadvertently or as false information given deliberately. This service predominantly relates to birth entries although deaths, marriages and civil partnerships can also be corrected. GRO deals with more complex cases whilst more straightforward corrections can be dealt with by the LRS. Entries where the registrar has made an error would not be subject to a fee or those identified by a coroner.

(b) Consideration of documents provided from outside the British Isles as evidence of the ending of a previous marriage or civil partnership

Where a person has been previously married or formed a civil partnership which has ended in divorce, nullity or dissolution, the superintendent registrar (for marriage) or the authorised person (for civil partnerships) must be satisfied that any previous marriage or civil partnership has ended before any further marriage or civil partnership may proceed. Where the divorce/dissolution was obtained outside the British Isles, the superintendent registrar/authorised person gives an opinion on recognition in England and Wales. Due to the complexities of the applicable law in some countries, primarily outside the EU, the superintendent registrar may refer the documentation to the Registrar General for further consideration.

(c) a letter provided by the Registrar General confirming no record of a marriage entry in England and Wales has been found

This is a search of registers held by the Registrar General, within a given (stated) period, for the purposes of marriage or civil partnership overseas. A letter is provided by the Registrar General to evidence that there is no record (or otherwise) of a person previously marrying or forming a civil partnership in England or Wales in the details provided by the applicant. This service is mostly provided for couples wishing to marry or form a civil partnership outside of the UK. A number of countries request and accept the letter as evidence of freedom to marry or form a civil partnership.

(d) a first short birth certificate

The LRS currently provides informants of a birth with a free short birth certificate at the point of registration. This contains a subset of the information contained on full certificates. Their use is becoming increasingly obsolete, and there is no rationale as to why this should continue to be a free service. All additional certificates (full or short) provided at the time or after the registration are subject to a fee. There is no statutory requirement for the LRS to provide informants with a free short certificate, though on request registrars are required to provide a form of receipt that the birth has been registered. This will continue to be provided on request. Short certificates are not currently issued for deaths or marriage. The short certificate is increasingly not accepted by government departments and other organisations in the provision of their services due to the limited information it contains.

(e) registration of a name of a child or alteration of a name

Should informants change the forename of a child in the first 12 months following registration they can apply to amend the registration entry. If the child has been baptised they must ask the Minister of the Church to complete a form provided by the LRS. If the child has not been baptised the informants can still amend the forename in the period by completing the form themselves. The LRS will then enter the amended name into 'space 17' of the registration entry.

The service for which we are increasing the fee to levels to recover costs:

Reduction in the Marriage/Civil Partnership 28 day notice period.

In exceptional circumstances where couples cannot complete the statutory 28 day notice period, they may apply for it to be reduced. This service currently attracts a fee but is set below levels to recover full costs.

7.5 The Regulations increase the fee to a level which covers the cost of providing the service.

7.6 The fees have been set at a level to recover costs. The higher fee for referral to the Registrar General for some services reflects the cost of an initial assessment or 'triage' of the application by the LRS, to consider if it should be forwarded to the RG and where appropriate and on the authority of the RG, to update the register. New regulation 3A is inserted into the Fees Regulations to provide for the apportionment and payment to the Registrar General of part of the fee for these services, with the LRS retaining the remainder of the fee.

7.7 There will continue to be no charge for the initial registration of a birth or a death.

8. Consultation outcome

8.1 As required by section 31(5EE) of the Marriage Act 1949, in so far as these Regulations make provision under section 31(5ED) of that Act, before making these Regulations, the Secretary of State has consulted the Registrar General. The Registrar General, having undertaken extensive consultation with the National Panel for Registration (which provides representation for the LRS throughout England and Wales) and their regional groups, is content that the Regulations should be made. The GRO has continued to be consulted throughout the development of these regulations, contributing to the services and associated fees set out in this instrument.

9. Guidance

9.1 Guidance on the services and associated fees will be published on www.gov.uk website.

9.2 Guidance will also be provided on individual local authority web sites and through various literatures provided to the public.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 Where there is an impact on the general public accessing those services there are no expected on-going costs to individuals as the requests are unlikely to be repeated and relate to life events e.g. the correction of an entry to a registration of a birth.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The fees will be subject to review during the next financial year.

13. Contact

13.1 Dan Rogers at the General Register Office, part of Her Majesty's Passport Office, Smedley Hydro, Trafalgar Road, Southport. PR8 2HH; Tel: 0151 471 4327; dan.rogers@gro.gsi.gov.uk can answer any queries regarding the instrument.