

EXPLANATORY MEMORANDUM TO
THE FOREIGN MARRIAGE (AMENDMENT) ORDER 2013

2013 No. 2875

1. This explanatory memorandum has been prepared by Foreign and Commonwealth Office (FCO) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 To amend the Foreign Marriage Order 1970 (“the 1970 Order”) to remove the test of domicile in respect of the parties to a consular marriage with the result that the parties will elect under which jurisdiction (England and Wales, Scotland or Northern Ireland) they wish to be married, rather than this being determined by where they are domiciled.

 - 2.2 To remove the requirement for British consular officers to transmit certificates of foreign marriages to the Registrar General in England and Wales, Scotland or Northern Ireland. Consular officers remain under an obligation to transmit certificates of consular marriages to the Registrar General.

 - 2.3 To ensure that any person whose certificate was transmitted before this service is removed may still obtain a certified copy of that certificate from the Registrar General upon payment of a fee.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Context**
 - 4.1 The 1970 Order, made under the Foreign Marriage Act 1892, makes provision for British Nationals to have a consular marriage. It also contains certain provisions in relation to British Nationals marrying overseas under local law.

5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**
 - 6.1 As the instrument is not subject any parliamentary procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- ***What is being done and why***

7.1 The 1970 Order obliges the FCO to transmit original foreign marriage certificates of British Nationals to the Registrars General in England and Wales, Scotland and Northern Ireland, when requested to do so by British Nationals overseas in non-Commonwealth countries. The 1970 Order establishes the FCO's role in this transmission as verifying the authenticity of the foreign marriage certificate and checking the accuracy of any translation. Since FCO are not specially trained in document verification, there is a risk that a foreign marriage certificate could be certified as genuine when it is not, or a faulty translation as a true one.

7.2 Some British Nationals overseas like the service as, having deposited the certificate, they can obtain a copy from the relevant General Registrar's Office (GRO) in the UK at any stage in the future. Some British Nationals also erroneously believe that the deposit is a legal requirement or confers legal recognition of a foreign marriage, neither of which are the case. However this service is increasingly anachronistic and has a low customer take-up. Customers are able to send important documents such as marriage certificates, financial documents, wills etc. by secure courier to the UK for safe storage, for example, with banks and solicitors, or use local commercial safe storage companies.

7.3 At the same time, the FCO is seeking to amend the Civil Partnership (Registration Abroad and Certificates) Order 2005 in similar terms to discontinue the service of transmitting certificates of overseas relationships to the GRO when requested to do so by a British National overseas.

7.4 In addition, the FCO intends to bring legislation for consular marriages in line with legislation for consular civil partnerships, and amend the domicile requirement so that parties to a consular marriage will elect under which jurisdiction (England and Wales, Scotland or Northern Ireland) they wish to be married, in the same way as couples elect the jurisdiction under which they wish to enter a consular civil partnership.

- ***Consolidation***

7.5 This is only the second Order which amends the 1970 Order and therefore it is not considered necessary to consolidate legislation at this time.

8. Consultation outcome

8.1 The FCO has consulted with General Registrar Offices of England and Wales, Scotland and Northern Ireland, who have no objection to the FCO discontinuing this service.

9. Guidance

9.1 The FCO will issue guidance to customers through the Gov.UK website.

10. Impact

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

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There is no requirement for a monitoring or review process. Once the Order comes into effect, the current service offered by the FCO will stop.

13. Contact

Margaret Purdasy at the Foreign and Commonwealth Office Tel: 0207 008 3124 or email: Margaret.Purdasy@fco.gov.uk can answer any queries regarding the instrument.