

## POLICY NOTE

### THE POPULATION (STATISTICS) ACT 1938 MODIFICATIONS (SCOTLAND) ORDER 2012

SSI 2012/287

1. This Order is made under section 44 of the Family Law (Scotland) Act 2006 and section 259 of the Civil Partnership Act 2004, and amends the Population (Statistics) Act 1938 ("the 1938 Act"). The Order is subject to affirmative procedure.

#### Policy Objective

2. The Order amends the 1938 Act to change slightly the information collected when a birth or stillbirth is registered. At present, certain pieces of information are obtained only if the mother is married to the father of the child. The purposes of the Order are to extend the collection of (i) some of those items of information to include cases where the mother is in a civil partnership, and (ii) the remainder of those items of information to include every registration of a birth or stillbirth (i.e. whatever the parents' marital status).

3. The 1938 Act currently requires that the following details be provided "except where the birth is of an illegitimate child":

- the date of the parents' marriage;
- whether the mother had been married before her marriage to the father of the child; and
- the number of children of the mother by her present husband and any former husband, and how many of them were born alive or were still-born.

At the time of that Act, only about 5% of births were to unmarried parents, so the specified information was collected in respect of around 95% of all births and stillbirths, a level of coverage which would have been considered sufficient for the purposes for which the information was required. Since then, the number of births to unmarried parents has increased greatly, to just over half of all births registered in each of the last four years. As a result, the information that is collected when births to married parents are registered cannot be considered representative.

4. A mother's number of previous children (if any) is of value to inform projections of the population, research into fertility and other topics. The Office for National Statistics and National Records of Scotland (NRS) produce projections of the population for Scotland as a whole, and for areas within Scotland. The information about the number of children born to the mother collected under the 1938 Act (as amended by virtue of this Order, so that it will be obtained when all births are registered) could be used to establish whether an increase in the birth rate was more likely to be a consequence of women bearing children which they had previously postponed (which might only have a temporary effect) or due to people having larger families (which could have a longer-lasting effect). The information could also improve the understanding of some aspects of fertility, by analysing it along with other information which NRS obtains at the time of the registration of a birth. For example:

- are there changes in the ages at which women typically have their first, second, third ... children?

- do the numbers of children of married couples and co-habiting couples tend to differ?
- how does fertility vary across Scotland?

5. As marriage and civil partnership are treated equally at other stages of the registration of births and stillbirths, the question about whether the mother was previously married should also cover the possibility of her having previously been in a civil partnership. Information about whether the mother had been married (or in a civil partnership) before may also be used to answer research questions - for example, to what extent births to older women in co-habiting couples are, say, first births to women who had never married or later births to women who were previously married but are now living with another person?

6. Section 21 of the Family Law (Scotland) Act 2006 ("the 2006 Act") abolished the status of illegitimacy, so the registration process should not distinguish between births which occurred within marriage and those which occurred outwith marriage. Section 44 of the 2006 Act enables other legislation to be amended, by a statutory instrument, to give full effect to any provision of the 2006 Act. As a result, this Order amends the 1938 Act to require the number of the mother's children to be provided when any birth or stillbirth is registered, not just where the child is born to married parents. Similarly, the registration process should take account of the possibility that a mother may have been in a civil partnership. The Civil Partnership Act 2004 introduced civil partnerships for same sex couples. Section 259 of that Act enables other legislation to be amended, by statutory instrument, to make provision incidental to any provision of the 2004 Act.

7. The Order amends the 1938 Act to require the following information to be provided when any birth or stillbirth is registered, from the start of 2013:

- the number of previous children born to the mother, and how many of them were:
  - born alive; and
  - still-born.

8. The Order also amends the 1938 Act to require the following information to be provided if the parents are married to, or in a civil partnership with, each other:

- the date of their marriage or the formation of their civil partnership; and
- whether the mother had been married or in a civil partnership before that date.

It should be noted that there is no need to require this information when the parents are not married to, or in a civil partnership with, each other because, in such cases: (a) there is no date of marriage or civil partnership; and (b) the registrar will already know, from the answer to an earlier question about her present marital status, whether the mother had previously been married or in a civil partnership.

9. As is the case for the details which are collected at present for births which are registered by married couples, such information will be treated as confidential, and will not be shown in the entry in the register of births or stillbirths, nor in any extract from those registers (such as what is commonly known as a "birth certificate"): it will be used only by NRS staff to prepare statistics.

10. The 1938 Act has already been amended, in respect of England and Wales, by the Welfare Reform Act 2009. In 2009, it was hoped that in Scotland reliable data about a mother's number of previous children might be obtained from a National Health Service database (and, if so, need not be sought at the time of registering a birth) - but, unfortunately,

that was subsequently found not to be possible, so the information needs to be collected when a birth is registered.

## **Consultation**

11. On 21 February 2012, the Registrar General for Scotland wrote to various potentially-interested parties, seeking their views on his proposal to ask Ministers to make an Order on these matters. Those consulted included (but were not limited to): the Chief Executives of Local Authorities and NHS Boards; NHS Board Medical Directors and Directors of Public Health; the Royal Colleges of General Practitioners, Midwives, Nursing and Physicians; Birth Choice UK, the Mothers' Union, the National Childbirth Trust, One Parent Families Scotland, and the Scottish Women's Rural Institute; and some of the users of NRS's statistics on births, in Scottish Government, the Information Services Division of NHS National Services Scotland, and the universities of Edinburgh and St Andrews. The letter was also sent to Chief / Senior Registrars and some other people who are involved in the process of registering births.

12. 28 responses were received by the closing date (30 April 2012), or slightly later. Half were from local authorities (who are responsible for the registration services). There were no objections to the proposal: indeed, 25 respondents stated that they supported it, without expressing any reservations. Two respondents questioned the need for some of the information that is collected: one was concerned regarding asking about previous children who were stillborn, or who died after birth; both queried the need for information about whether the mother was previously married or in a civil partnership. When it becomes available in respect of all births, such information could be used (e.g.) by public health researchers to see whether having had a stillbirth increases the risk of later problems for mothers and subsequent babies, and by demographers to determine whether there is a difference in fertility between women who were previously married and those who were not. Respondents also asked a number of other questions, or made suggestions or points: in all cases, NRS provided answers in its report on the results of the consultation. Having considered all the comments that it received from respondents, NRS does not believe that the proposal should be changed in any way, particularly as only two out of the 28 respondents expressed any concerns.

## **Impact Assessments**

13. An Equality Impact Assessment has not been completed, because the Order will not affect differently (a) people in any of the equality groups (race, gender, disability, age, sexual orientation, gender identity and religion/belief) who register births and (b) other people who register births.

14. A Strategic Environmental Assessment has not been completed because the Order will not have any impact on the environment.

## **Financial Effects**

15. The Cabinet Secretary for Culture and External Affairs confirms that no Business and Regulatory Impact Assessment is necessary, as the Order has:

- no financial effect on the Scottish Government;

- very little effect on NRS, as it can very easily change its computer system and forms etc to collect the specified information for all births, including those registered by unmarried couples;
- very little effect on local government, as the collection of the specified information for all births will increase only very slightly the average amount of time which is required by Registration Office staff to register a birth; and
- no financial effect on business.

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