

The Registration of Births (Parents Not Married And Not Acting Together) Regulations 2010

Consultation Response Form

The closing date for this consultation is: 2 February 2010

Your comments must reach us by that date.¹



department for
children, schools and families

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Children, Schools and Families e-consultation website (<http://www.dcsf.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name	Lorriann Robinson
Organisation (if applicable)	National Society for the Prevention of Cruelty to Children
Address:	42 Curtain Road London EC2A 3NH

If your enquiry is related to the policy content of the consultation you can contact Oona Hickie on:

Telephone: 020 7340 7018

e-mail: oonahickie@dcsf.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794 311

e-mail: consultation.unit@dcsf.gsi.gov.uk

Please select the category which best describes you as a respondent

Registrar

Parent

Local Authority
Employee

Stakeholder
Organisation

Other

Please Specify:

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively
- provide advice and support to ensure that every child is listened to and protected.
- provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child
- work with organisations which work with children to ensure they effectively protect children and challenge those who do not
- campaign for changes to legislation, policy and practice to ensure they best protect children
- persuade everyone to take personal responsibility for preventing cruelty to children
- inform and educate the public to change attitudes and behaviours towards children
- use our statutory powers as necessary to protect children.

The NSPCC welcomes the opportunity to comment on the Registration of Births (Parents Not Married And Not Acting Together) Regulations 2010, consultation. Our core interest in these issues are in relation to child protection and children's rights; ensuring that children's right to information about their birth heritage is satisfied wherever possible, without compromising children's right to protection from violence or abuse. Throughout the passage of the Welfare Reform Act 2009, the NSPCC campaigned for the Government to recognise these two important principles and to make changes to the Bill to introduce effective

safeguards to protect children from the risk of violence or abuse.

We welcome the commitment made by the Government to work with a range of partners including the NSPCC, so that in addition to this consultation on the regulations covering parents who are not acting together, the Government will also develop detailed guidance for parents, with the aim of ensuring that parents who fear domestic violence are given help to access the protection they need, and to working with the General Registry Office and stakeholders to determine the most appropriate way to cover issues concerning the risk of violence in guidance for registrars. The NSPCC has therefore restricted our comments to this specific consultation; however we welcome the ongoing dialogue and opportunity to comment on the development of guidance for parents and for registrars.

The NSPCC will restrict comments to questions that have implications for child protection and children's rights issues. Our comments will draw on our extensive experience providing services to support children and families affected by domestic violence, and our experience of working within a child-rights framework, and campaigning for government and others to respect and promote children's human rights

These questions relate to the mother's duty to provide information about her child's father (paragraph 3.4)

1 a) Do you agree with the information which the mother will need to provide about the alleged father, as set out in Regulation 3(1)?

Yes

No

Comments:

The information that the mother is required to provide about the alleged father as set out in Regulation 3(1) are reasonable. Regulation 3(1) includes an important sentence stating that *"the information that the mother is required to provide is as much of the following information as is known to her"*, and lists these details as the father's name; the father's usual address; the father's daytime, evening and mobile telephone numbers; the father's current employer and the father's email address. We consider that it is important that this sentence is reflected on Form B so that parents are aware of the extent of their responsibility in this regard.

1 b) If not, how do you think this should be changed?

Comments: Please refer to our answer to question 1 a.

2 How long do you think the registrar should keep this information for? (The information is for the registrar's use only.)

6 weeks

x longer

3 months

12 months

Comments:

The NSPCC considers that one positive and important consequence of the proposed changes to the regulations is that more children should have access to information about their birth heritage; Articles 7 and 9 of the United Nations Convention on the Rights of the Child (UNCRC) require that as far as possible, state parties must provide this. The NSPCC strongly recommends that the Department for Children, Schools and Families (DCSF) uses this opportunity to investigate the most effective mechanism by which more children can access information about their birth heritage, and develop a system which allows the forms that are completed by unmarried parents to be retained confidentially, but linked in some way to the child's birth certificate so that children can access this information when they become adults. This could be achieved by giving children whose births are sole registered a right to contact registrars and request to see any additional forms that were completed by their parents either at the time of their birth or subsequently. We therefore consider that registrars should keep this information in perpetuity.

The experiences of previously adopted children has led to a widespread acknowledgment, including by the courts, that many children and young people attach considerable importance to having knowledge about their birth heritageⁱⁱ. There is also legislation to enable children conceived through donated sperm, eggs or embryos, to apply for information about the identity of the donor when they become adultsⁱⁱⁱ. In July 2008 the NSPCC conducted a consultation workshop with children and young people to ascertain their views on this issue. The feedback from young people was that they felt children have a right to be able access information about their birth parents and they wanted to be able exercise a degree of control over this information, even when they recognised that it was inappropriate or unsafe for them to establish or maintain social relationship with both parents.

There are two groups of children who could especially benefit from this proposal:

1. children of mothers who complete Form B giving information about the alleged father, but the registrar is unable to contact the father, or he does not come forward to confirm or deny paternity; and
2. Children of fathers who complete Form E, making a declaration that they believe themselves to be the father, in circumstances where the birth has already been registered and re-registration is not possible or safe. Enabling children to request to see any additional forms would provide children whose mother's who are unable to provide them with information about their father (for example because of death, incapacity, or a refusal to do so) with an opportunity to access this information by requesting to see any additional forms that has been completed about their parentage.

It is important that the status of this information is clearly recorded, so that it is clear if full parentage has been confirmed. Adults who seek to access information about their birth heritage should be provided with appropriate support, advice and counselling, similar to the support provided to previously adopted children who decide to find information about their birth parents when they become adults.

The DCSF and DWP have maintained that fulfilling children's right to information about their parents is a key driver for introducing this legislation to make it a legal requirement for unmarried parents to be registered on children's birth certificate. It would be deeply disappointing and a missed opportunity if young adults were denied information about their birth heritage, when this information has been recorded and is available to registrars, because enabling steps were not taken in the development of these regulations and any revised guidance to registrars. We consider that it is essential that children and young people are properly consulted before such a system is developed; in particular, the views of young people who have accessed or are soon to access information about their birth heritage should be sought as part of this consultation.

These questions refer to the exemptions from the mother's duty to provide information about her child's father (paragraphs 3.5-3.7)

3 a) Do you think this list of exemptions is sufficient?

Yes

No


Comments:

The NSPCC considers that that the proposed exemptions are important and necessary for keeping children safe. We consider that the exemption on the grounds that the mother has reasons to fear for her safety or that of her child if the father were contacted in relation to the registration of the birth is important and must be maintained. During the passage of the Welfare Reform Bill, the NSPCC made representations to Ministers advising that this exemption should be expanded to cover circumstances where the mother has reasons to fear for her safety, the safety of the child that she has just given birth to **or other children**. The purpose of this change would be to cover circumstances where the mother is concerned about the safety of another child in the household, for example an older sibling who has been abused by the father. Kitty Usher, the then, Parliamentary Under Secretary of State (Commons) assured us (in March, 2009) that the intention behind the legislation was to cover such circumstances, however she considered the wording to be sufficient to capture this and felt this could be addressed in the accompanying guidance. We therefore urge the DCSF to use this opportunity to ensure that the regulations also make clear that concerns about the safety of siblings or other children

should also be considered as grounds for an exemption. We strongly recommend that the wording on the declaration form (Form C) should be amended to reflect the fact that it covers these circumstances.

The NSPCC is pleased to see the commitment in paragraph 3.7 of the consultation paper to working closely with a range of partners to develop detailed guidance to ensure that mothers who fear domestic violence are helped to access support. We recommend that such partners should have expertise in child protection as well as in domestic violence, and that all partners understand the impact of domestic violence on children. It is unclear from the regulations how mothers will be informed that the exemptions are available to them; particularly the exemption on the grounds that the mother has reasons to fear for her safety. Careful consideration must be given to how registrars will inform mothers that these exemptions are available, as many women who experience domestic violence or are concerned about child maltreatment will not feel comfortable volunteering this information without being prompted to do so. The consequences of revealing the identity of the father (that he will be contacted by the registrar, required to sign the register and will automatically acquire parent responsibility) should be fully explained to the mother. In addition we strongly recommend that when registrars are explaining to unmarried mothers what their duties are when acting alone, **they must also inform unmarried mothers that the duty to name the father does not apply if they meet certain grounds for exemption and these should be explained verbally, or information about the exemption should be provided.**

3 b) If not, what do you think is missing?



Comments:

Please refer to our answer to question 3a.

The NSPCC considers that a strategic and co-ordinated approach must be taken to ensure that potentially vulnerable parents are aware of the new birth registration rules, the implications of this in terms of the acquisition of parental responsibility for unmarried fathers and the protective measures that can be taken if they are concerned about the risk of violence or abuse. We suggest that a combination of targeted information at vulnerable parents, for example through the Bounty Pregnancy Information Packs and to parents receiving the Sure Start Maternity Grant^v, and clear duties on registrars to provide vulnerable parents with information about the exemptions, and to inform them of the steps that they can take if they consider that there is a risk of violence or abuse, must be employed. We look forward to continuing the dialogue with the DCSF about the detailed practical measures that must be in place before this policy becomes operational in January 2011.

4 Do you think that the mother should be able to record several reasons (if appropriate) or just one reason, where she is claiming an exemption from the duty to provide information about the child's father?

one reason

x more than one reason

Comments:

We consider that mothers should be able to record as many reasons as they consider relevant, in the interest of maintaining records which provide a full and accurate picture of the circumstances as possible, and to enable the registrar to provide information about relevant advice and support services that the mother and baby may require.

These questions relate to the process for registering the birth where the mother has provided information about her child's father (paragraphs 3.8-3.11)

5 a) Do you agree with the proposed ten working day time limit within which the father must respond once he has been contacted by the registrar?

Yes

No

Comments:

We consider that ten working days is a reasonable period of time for the father to respond. Delaying birth registration for any period of time significantly greater than this could have implications for families who need to send the birth certificate to different agencies, for example parents must submit the birth certificate to the Child Benefit Agency in order to make a claim for child benefit. Child benefit payments can be backdated for up to three months, however even a temporary delay can have a noticeable and negative impact on the household income of a family which may already be living on a low income, especially given the additional costs of having a newborn baby. In addition to the impact on family income, research evidence is clear that the early period in a child's life is an important time for forming secure attachments to their primary care-giver, and this could be affected by prolonged delay and uncertainty with the birth registration process by contributing to increased parental stress.

5 b) If not, how long do you think we should allow for a man to respond in these circumstances? It would be helpful to have your reasons for the time you suggest.

Comments:

6 a) Should a man who has been named as the father be required to attend the register office in order to 'deny' paternity?

Yes

No

Comments:

The NSPCC considers that a man who has been named as the father should be required to attend the register office in order to 'deny' paternity, as a reflection of the seriousness of his statement in terms of the information that is recorded about the child's birth heritage. We recognise that there will be circumstances where this will not be reasonably practicable.

6 b) If not, how should he respond?

Comments: Please refer to our answer to question 6a.

7 a) Do you think that the information provided by the mother about the father should remain valid indefinitely?

Yes

No

Comments:

Yes, we consider that the information provided by the mother should remain valid indefinitely; this will ensure that information about children's birth heritage is available for them to access when they become adults as we propose should be possible in our answer to question 2. The status of this information must be properly recorded, so that if children seek out this information when they become adults, it is clear if parentage has been confirmed or denied.

7 b) If not, for how long do you think the information provided by the mother should remain valid? It would be helpful to have your reasons for the time you suggest.

Comments:

8 a) If the father has not responded to the registrar within the time specified and the registrar registers the birth, but the father later contacts the register office to acknowledge paternity, should the mother be asked to agree to re-registration?

Yes

No

Comments:

The NSPCC considers that it is crucial that the mother is contacted and informed that the father has come forward and asked for his details to be entered on the register, and asked to agree re-registration. For practical reasons this is important in order to ensure that the birth certificate that the mother and child are using for official purposes is as up to date as possible. It is also important because by registering on the child's birth certificate the father would automatically acquire parental responsibility, giving specific rights in relation to the child that it is absolutely crucial that the mother is aware of. For example, parents with parental responsibility have the right to apply for a passport on behalf of a child; a right to be consulted about significant decisions in relation to the child including decisions about changing the child's surname and decisions about the child's medical treatment.

As a result of the new provisions in the Welfare Reform Act 2009, if the birth is re-registered, the unmarried father would automatically acquire parental responsibility and it is now the mother's responsibility to apply to the courts to try to restrict or remove his parental responsibility if she is concerned that he would misuse parental responsibility in order to be violent or abusive. We consider that it is crucial that the mother is contacted and informed about the request for re-registration so if necessary, she can take steps to protect the family; for example by applying to the Court for a Prohibitive Steps Order to restrict or remove his exercise of parental responsibility. It is therefore very important that **the mother positively confirms that she is aware of the request re-registration and understands the implications of this.**

We also consider that views of children and young people should be sought in line with Article 12 of the UNCRC which recognises a child's right to express their views and to have their views taken into account in relation to important decisions that affect them. The principle in the UNCRC of the child's evolving capacity – that as children mature they acquire increased competence to exercise their rights themselves and to take decisions that affect them – is relevant here^{vi}, and if mothers are asked to agree to re-registration, children with sufficient competence should also be asked for their views. We recognise that this may be difficult within the existing operational framework and skill-set of registrars, however, it is important that mechanisms should be identified for doing this.

It is also important to recognise that a father coming forward to confirm paternity after many years, (particularly in cases where he has had very little or no involvement in the child's life until this point), could be very disruptive and confusing for the child concerned. We consider that in such circumstances, **at a minimum there should be an expectation that registrars acknowledge this, and provide information to the family detailing how and where children can access support.**

8 b) If not, should the mother simply be notified that the birth is going to be re-registered to include the father's details?

Yes

No

Comments:

9 Do you think the father should be able to have the birth re-registered to record his name without the mother's knowledge (for example if the mother has changed address and cannot be contacted)?

Yes

No

Comments:

No, we refer you to our answer to question 8a above.

Safeguarding concerns

We consider that it is crucial that the mother positively confirms that she is aware that the birth will be re-registered and the father will automatically acquire parental responsibility as a result of this. If the birth is re-registered without the mother and child having knowledge of this, mothers who are concerned about the risk of violence or abuse would be denied an important opportunity to apply to the courts to protect the family from violence, by applying to restrict or remove his exercise of parental responsibility. It is important that the DCSF is aware that a small number of fathers who come forward may do so deliberately to acquire parental responsibility in this way, including unmarried fathers who may have already applied for parental responsibility through the courts, but have had their applications denied. This would be dangerous, and could put children at risk. During the House of Lords

Report stage of the Welfare Reform Bill, Baroness Butler-Sloss, a leading Judge told the House that:

“A small minority of fathers misuse parental responsibility to the risk of the mother and child. I understand that in Committee the Government said that there was no risk to mothers and children from parental responsibility. I have to say that I disagree, from my own experience as a judge trying these very cases^{vii} . “

Baroness Butler-Sloss went on to provide an example, stating that:

“I know of ...a case where the girl was living with a man who made her pregnant. He was extremely violent towards her. She ran away to a refuge, where she was anxious, for obvious reasons that he should not know where she was and he should not come near her or the child, who was born while she was in the refuge. Under the Government proposals, if that man went separately to the registrar and asked to have his name added [to the birth certificate], he would automatically acquire parental responsibility. He would search the mother out and he might well be violent toward her. But it is perhaps more worrying that parental responsibility gives the man rights as well as responsibilities. He would have a right to tell her where he wanted the child to go to school. The importance of that is that, if he knew where the child was at school, he could be in touch with the mother and could be violent towards her, because he had found her.”^{viii}

We consider that when making contact with the mother to inform them that the father has come forward to request that the birth is re-registered, **there should be a duty on registrars to:**

- a) inform mothers of the implications of this in terms of the father’s acquisition of parental responsibility,**
- b) inform mothers of the steps that they can take to apply to the courts to remove or restrict the father’s exercise of parental responsibility if they are concerned about a risk of violence or abuse, and**
- c) inform mothers who raise concerns about violence or abuse of services that they can contact for support, including Independent Domestic Violence Advocates.**

If the registrar contacts a mother in writing to inform them of the father’s request for re-registration, the information referred to above should be provided along with the letter informing mothers of this, which should also inform her that she must contact the registrar to positively confirm that she is aware of the request for re-registration and has received the appropriate information, and understands the implications of this.

Recording Information about children's birth heritage

The NSPCC considers that if a father contacts the registrar after the ten-day notice period to confirm that he is the child's father and to request that the birth is re-registered, in the interest of recording accurate information about children's birth heritage, this information should be recorded. We consider that this should apply even in those circumstances where it has not been possible to re-register the birth because it has not been possible to contact the mother and have her confirm that she is aware that the birth will be re-registered.

In these circumstances it would be possible to achieve this by adding a form similar to Form E (page 10 of the regulations), but including a requirement that the mother must confirm that she is aware of the request and understands the implications, before the birth is re-registered. We further refer you to our answer to question 2 in which we strongly recommend that these forms should be confidentially linked to the child's birth certificate, with provisions to enable children to access this information when they become adults.

These questions relate to special circumstances which enable registration without the father's details before the father has responded (paragraphs 3.12-3.13)

10 Do you agree with these conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Comments: The special circumstances covered are reasonable.

11 Do you think additional conditions should be included? If so, which ones?

Yes

No

Comments: The NSPCC has no comment to make about this question.

12 Do you think we should remove some of these conditions? If so, which ones?

Yes

No

Comments:

13 a) Do you think that the wording of Form G needs to be amended in order to avoid giving the impression that the form relates only to cases where the parents are not co-operating to register the birth together?

Yes

No

Comments: The NSPCC has no comment to make about this question.

13 b) If so, what wording do you suggest?

Comments:

These questions relate to the father's right to be registered (paragraphs 3.14-3.17)

14 a) Do you agree with the information which the father will need to provide about the mother, in Part 1 of Form C of these draft Regulations?

Yes

No

Comments:

Yes, in line with our answer to question 1, we consider that the information that the father is required to provide about the mother is reasonable.

14 b) If not, how do you think this should be changed?

Comments:

15 a) Do you agree with the proposed ten working day time limit within which the mother must respond once she has been contacted by the registrar?

Yes

No

Comments: Yes, in line with our answer to question 5a above, we consider ten working days to be a reasonable time frame.

15 b) If not, how long do you think we should allow for the mother to respond in these circumstances? It would be helpful to have your reasons for the time you suggest?

Comments:

These questions relate to the provision for mother to name her child's father after registration has taken place (paragraph 3.18)

16 a) Do you agree with the proposed ten working day time limit within which the father must respond once he has been contacted by the registrar?

Yes

No

Comments: Yes, in line with our answer to question 5a above, we consider ten working days to be a reasonable time frame.

16 b) If not, how long do you think we should allow for the father to respond in these circumstances? It would be helpful to have your reasons for the time you suggest.

Comments:

These questions relate to the amendments to the Registration of Births and Deaths Regulations 1987 (paragraphs 3.22- 3.24)

17 a) Do you think the same people should legally be able to witness the signature of the parent who makes the new alternative declaration as may currently countersign a passport application? The list of such people can be viewed at:

http://www.direct.gov.uk/en/TravelAndTransport/Passports/Applicationinformation/DG_174151

Yes

No

Comments: This would appear sensible, if the same requirement holds as for witnessing a passport application, namely that the witness must have known the parent for at least two years and the same legal consequences would ensure should a witness declaration prove false.

17 b) If not, who do you think should legally be able to witness the signature of the parent who makes the declaration?

Comments:

18 Do you have any comments on the declaration itself?

Yes

No

19 Do you have any comments on Form C in the Registration of Births and Deaths (Amendment) Regulations 2010, which sets out the circumstances in which a mother will be exempt from the duty to provide information about her child's father? (NB This form is not part of these draft Regulations but is attached separately)

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Comments: Please refer to our answer to question 3a above. We consider that the wording on form C should be amended and the words 'or other children' should be inserted into line eight. This is in order to reflect the fact the regulations should cover circumstances where the mother is concerned about the safety of another child in the family.

20 Do you have any other comments on these draft Regulations?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

No

All DCSF public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DCSF consultations are conducted, please contact Donna Harrison, DCSF Consultation Co-ordinator, tel: 01928 794304 / email: donna.harrison@dcsf.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 2 February 2010

Send by post to: Oona Hickie, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT

Send by e-mail to: oonahickie@dcsf.gsi.gov.uk

ⁱⁱ Fortin J, (November 2009) Children's Right to know their origins – too far, too fast? Children and Family Quarterly, vol 21, No 3, 2009

ⁱⁱⁱ The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 (S1 2004/51511)

^v Given the research evidence about the characteristics of mothers who sole register see: Graham J et al (2007) Sole and Joint Registration: Exploring the circumstances, choices and motivations of unmarried parents, DWP: London

^{vi} Lansdown G, (2005), The Evolving Capacities of the Child, UNICEF Innocenti Research Centre: Italy

^{vii} Full transcript available online: [Lords Hansard text for 27 Oct 2009 27 Oct 2009 \(pt 0005\)](#)

^{viii} Ibid