27 February 2008

Dear Secretary,

**'30 year rule': consultation**

Although some may be interested in amending the '30 year rule' I believe that, considering the shortage of funds available to The National Archives and the interests of the majority of its readers, a larger proportion of the general public would be better served by making available there the following three classes of record, presently only available on payment of fees even after (in two cases) 150 and (in the third) 240 years.

**Register Copy Wills at the Principal Registry of the Family Division**

Microfilms of the Register Copy wills proved throughout England and Wales, 1858-1925, and now at the Principal Registry of the Family Division, have been available in the Family History Library in Salt Lake City for many years. The wills are not, however, available to public search anywhere in this country, copies being available only on payment of fees on personal application at the Principal Registry or by post (with considerable delay) from the York Registry.

A plan to digitise the Wills and make them available for fees on the Internet has run into problems. Meanwhile there does not seem to be any reason why copies of the microfilms should not immediately be made freely available at The National Archives. Microfilms of the Probate and Administration Act Books should also be made available there.

**Indexes to Decrees Absolute at the Principal Registry of the Family Division**

Unique indexes to divorce decrees nisi and absolute are held at the Principal Registry of the Family Division from 1858 to the present day. They are not accessible to the public, but officials carry out paid searches (presently £20 for a ten year period). The indexes are in several different formats: manuscript lists by year 1858-1946, on microfiche 1947-1969, on cassettes 1970-80, and on computer from 1981 to date.

In view of the uncertainties surrounding the coverage of the incomplete divorce indexes held by The National Archives, copies of these unique indexes should be freely available at The National Archives.

**General Register Office 'historic' records**

The records of the civil registration of births, marriages and deaths in England and Wales, in local Register Offices from 1837, their centralised copies at the General Register Office also from 1837, together with a great number of original and copy records of similar events overseas and in the forces (some of which date back to 1761) also at the General Register Office, were unfortunately exempted from the 1958 Public Records Act.

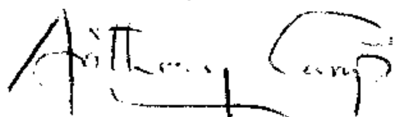
The 1836 Registration Act that brought the main series of these records into existence and the 1949 Marriage Act both speak of the registers being kept 'so that they may be most readily seen and examined'. The 1953 Births and Deaths Registration Act says that the local registrar must 'allow searches to be made in any register of births or register of deaths in his keeping'. Consequently, the registers were open to public search centrally until 1898 and locally until 1974, when the Registrar General, concerned at the inconvenience caused by the growing number of searchers, closed them. No information is now available except in the form of a certified copy for fees.

The position about public access to these records has long been argued and the main points about what might be done without legislation were set out in a talk that I gave to the officers of the Registration Service at their conference at Chester in 1993 and printed in the *Genealogists' Magazine* for December 1993. A copy is enclosed.

For the last 50 years the Registrar General has dodged every attempt to make these records more easily accessible and has recently embarked on a project to digitise the centralised copies at considerable public expense, ignoring suggestions that the Genealogical Society of Utah film, index and make available the more accurate local originals without cost. The Registrar General's project has run into difficulties, but whatever its outcome, he clearly has no intention that any of the records, *even after 240 years*, should be made freely available to the public. Large sections of the older Miscellaneous Records remain un-indexed and so-called 'official searches' are known to produce different results depending on who makes them.

The Registrar General himself long ago suggested that the local registers might be microfilmed. If this were done in the manner suggested and all the material over a hundred years old released to county record offices and The National Archives an enormous and immediately valuable service would be done to many thousands of interested persons.

Yours faithfully,



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# Facing the Future
## The Challenge of the Citizen's Charter for the Registration Service

By ANTHONY J. CAMP

*(The above was chosen as the title and theme of a conference held at Chester on 11th February 1993 for officers of the Registration Service. What the genealogist wants from the Service was the general theme of our Director's address and, in particular, whether more open access to the records is possible without new legislation).*

'We are all omnibuses in which our ancestors ride, and every now and then one of them sticks his head out and embarrasses us'. The words are those of Oliver Wendell Holmes. You probably see or correspond with many genealogists. You may not have much sympathy with their 'fast growing army'[1]. If they do not come in omnibuses, they hunt in packs. These 'jolly family historians' are clearly enjoying themselves. It is all so very annoying!

It was the Wilson Report on Modern Public Records twelve years ago which noted that 'increasing numbers of people are pursuing history simply for the love of it'. It said that the older genealogical or antiquarian uses of records which I grew up with had been 'absorbed into a far richer and wider study of family history, local history and military history', and it concluded, 'We consider that these widespread interests in the history of the nation, the family, localities and other groups . . . are an important and wholly desirable development in national culture'[2]. To me they go a long way to satisfy that 'deep but instinctive need for continuity' which I heard the Prime Minister recently mention in a speech.

The staple diet of any person tracing his ancestors in the last 150 years is the records of births, marriages and deaths which you and your predecessors have created, both locally and centrally, since 1837. But the trouble is, and I put it very baldly, genealogists have a good deal of time, not much money, and a desire to see the records themselves. Like most other historians they do not trust anyone else to read what the record says, and they certainly do not want to pay fees for certificates which they do not require and which, because of the inadequacy of the indexes, may not relate to their ancestors in any case.

Because they cannot see the records, family historians spend happy hours at county record offices wading through unindexed church registers, often on microfilm, for the same period. They are not altogether selfish people and many spend equally happy hours transcribing and indexing those registers for the easier use of others. In old age they will develop computer skills, as many have, for instance, to transcribe and index all twenty-seven million entries in the 1881 Census Returns. That they are doing partly because of the cost and difficulty of getting at the other basic sources in this period.

Genealogists have been called 'fools with long memories'. Well, I have a long memory and when I first went to work at the Society of Genealogists in 1957 the man who had founded it in 1911, George Sherwood, was still fairly active. In 1910 George Sherwood had searched the indexes at the General Register Office on behalf of a client, Henry Boddington of Pownall Hall in this county of Cheshire, for entries of the name Boddington. He found 3,774. The search cost £5 in fees payable to the Registrar

General and £7. 10s. 0d. for five days work.

Three years later, when as Secretary of the newly founded Society of Genealogists, George Sherwood gave evidence to the Royal Commission on Public Records, he said that the primary object of that search had been to localise persons of the name Boddington, but that it had failed. 'First by reason of the inadequate indexes. Second, because inspection of the records themselves is not now allowed, though it was formerly. Third, because the fee . . . for certified copies of the records required would have approached £500'. He added, 'The Indexes are entirely inadequate and insufficient to identify the persons named therein'. He wanted 'the material extension of facilities to the Public for the examination of their own Registers and Indexes; the provision of more detailed indexes; [and] the placing of other copies of the printed Indexes elsewhere than at the Registrar-General's Office, and providing ready access to them'.

Evidence given to the Royal Commission in 1914 revealed that prior to the year 1898 or thereabouts, it was usual to permit searchers, who were chiefly solicitors engaged in pedigree cases in Chancery, or professional record agents, to inspect the original registers then at Somerset House. In evidence to that Commission, Master Ridsdale showed by examples the inadequacies of the indexes and the need for inspection of the certificates themselves. A meeting of the chancery masters had resolved 'that solicitors should be allowed the fullest facilities for inspecting the registers in the custody of the Registrar General'. They did not believe that they could properly carry out their work in pedigree cases — that is, in cases where somebody dies intestate or where somebody leaves legacies to a class of relatives such as first cousins. Ridsdale said: 'What one feels is that very often great injustice might be caused simply from parties not being able to get information which is in the registers and could be found if the solicitor could see them. As he cannot, either the parties cannot prove their title, or (it may be) expense (enormous relatively to the amount of the fund) is incurred; expensive advertisements have to be inserted which might be avoided'.

Access to the registers had been stopped, Ridsdale had been told, because the life insurance companies merely checked the cause of death and did not buy certificates, and also because it was thought that the attendants might be bribed to alter a register. He added: 'My own opinion is that people ought to be allowed to see the registers, because they are public registers, and are of enormous importance'[3]. Sir Frederic Kenyon, the Director and Principal Librarian of the British Museum, was clearly of the same opinion for he remarked that 'the closing of the registers is calculated to defeat the cause of justice'[4].

Indeed to some extent it did just that, and these pedigree cases are now almost entirely in the hands of a small group of professional genealogists who pay large sums of money to the G.R.O. for certificates that nobody wants, undertaking these searches as speculative ventures, and making considerable sums at the expense of the legal heirs. They bring much revenue to the Office but I have to say that their needs and interests are not those of the vast majority of ordinary genealogists.

The joint view of the Royal Commission was 'that it was the evident intention of the [1836] Act that the public should be able to obtain certain information from the registers, and that the cost of these facilities should not be prohibitive'[5]. It pointed out that the public were allowed to inspect the original records in other registries, citing the Probate Registry and the Registry of Joint Stock Companies, and it recommended that the same kind of arrangement should be made for inspection of the original certificates 'in a public search room only and under proper official supervision'.

I am not a lawyer, but the Royal Commission was perfectly aware of the situation. Five of its nine members were distinguished legal brains of the day. Its Chairman was the great legal historian Sir Frederick Pollock (who, with F. W.

Maitland, wrote the *History of English Law*). When the Commissioners visited the General Register Office in February 1913 they gathered, as they wrote, 'that the objection to producing the original registers is merely a precaution to prevent the evasion of fees'. In its final Report the Commission said[6]: 'It is true that the Act of 1836 provides that the indexes may be searched on payment of a fee, and that this provision would seem to imply (as the Registrar General contends) that the actual registers shall not be searched. Nevertheless, the Act permits the local registers to be searched by the public on payment of a fee, and in practice this was permitted at the General Register Office itself prior to the year 1898'. The Report added: 'We see no good reason in principle for forbidding searchers to take copies at their own risk. The existing restriction rests merely on financial grounds and we think that it should be removed'.

All that was a long time ago. Let me come down to more recent times. General searches in the original registers held locally continued down to the early 1970s and were mostly used by historians trying to reconstruct the demographic history of the nineteenth century. They were interested in things like local variations in age at marriage, the cause of death in relation to age and occupation, the rise and fall of illegitimacy, and so on, none of these things being capable of being researched through the indexes alone. Up to that time 'the General Register Office agreed that there was no reason why local superintendent registrars should not permit access by historians to birth and burial registers held locally in registrars' offices, and also to their copies of marriage registers (including non-conformist ceremonies) and notices of marriage'[7].

In 1973, however, the G.R.O. said that such searches could only be allowed 'when the local Registrar has the time to undertake the necessary supervision'[8], and in August 1974 such research was stopped altogether, not by any Act of Parliament, but because, as the G.R.O. claimed, 'the volume of requests for facilities in local offices is beginning to reach quite unmanageable proportions . . . the concessions that some superintendent registrars have felt able to make are being regarded as precedents by other research workers in this field'. It had decided, therefore, that in future 'we shall have to advise any superintendent registrar who is approached for access to the registers for purposes of historical demography that he should not accede to the request'. The demographers believed that the pressure for access had come from fifty or sixty students from the Open University course 'Historical Data and Social Science'. They condemned the closure as 'deeply regrettable', saying 'it will make a great deal of research (especially by university post-graduate students and adult education classes) impossible'.

In the Autumn 1974 issue of their journal *Local Population Studies*, these historians, perhaps unwisely in such a public place, recommended that the registrars should put their registers in the local county record office, saying that it 'would lift any burden from local registrars and transfer it to the county archivists who see such things not as burdens but as a welcome extension of their useful activities. The Berkshire County Record Office', they added, 'long ago accepted the local registrars' records into their collection to the benefit of everyone concerned. We think it is time for all local registrars to make similar deposits'.

This was unwise, for the G.R.O. undoubtedly read their journal and swiftly acted to stop anything so eminently sensible, issuing a statement in May 1975 to the effect that 'whilst it is true that in one or two cases these records have been transferred to county archivists, this was purely an emergency procedure, and most of the records in question have since been returned to the custody of the respective superintendent registrars and the rest are expected to follow'.

Again, the historians said: 'Against a background of increasing liberality and freedom on questions of access to records of all kinds, without proper consultation or

consideration of the implications of the decision, an area of study of growing interest to demographers, social historians and social scientists has been cut off. These records are held locally and for obvious reasons of cost and convenience they should be available locally . . . We do not know of any good reason why local students should be denied research access to the older civil registers. This is not a matter we shall be easily persuaded to drop'[9].

Rather naturally, the historians now began to look at the legal situation in greater detail. They were able to point out[10] that both the original Act of 1836 and later Registration Acts grant the public explicit right of access to the registers in two rather different ways. The position may be arguable but the intention is clear.

Firstly, the Births and Deaths Registration Act (1953), section 32, states that 'Every registrar shall at any time when his office is required to be open for the transaction of public business allow searches to be made in any register of births or register of deaths in his keeping'. The section goes on to distinguish between searches covering a period of not more than a year and those covering longer periods, setting different search fees in each case. These fees were abolished by Statutory Instrument in 1968.

Secondly, the 1836 Act and the 1949 Marriage Act also appear to envisage access to the register copies in the G.R.O., saying 'The certified copies sent to the Registrar General . . . shall be kept in the General Register Office in such order and manner as the Registrar General, under the Direction of the Minister of Health may think fit, *so that they may be most readily seen and examined*'[11].

Perhaps more importantly, none of the Registration Acts anywhere *prohibits* any registrar, superintendent registrar, or official of the G.R.O. from granting the public access to any registration document. As the historian Roger Schofield has written: 'The only practical step required is for the Registrar General to revoke his instruction to superintendent registrars and county archivists prohibiting them from allowing access to the registers'[12]. The local authorities are already under a statutory duty to provide accommodation for the superintendent registrars, and it is only logical that their records be deposited in local authority record offices. Indeed, I was delighted last year to see a report (though I fear to mention it so openly here) that a certain county record office had borrowed the marriage registrars of two local churches from the local Superintendent Registrar for use in the record office[13].

It has been claimed that the 1958 Public Records Act will need to be amended before the centralised records can be put in the Public Record Office, but again that Act does not in any way *prohibit* public *access* to the register copies. It is true that the Registration Acts of 1949 and 1953 require the register copies to be kept 'in the General Register Office', but it is equally true that the Registration Service Act 1953, section 2, provides that 'any place in which any registers or records in the custody of the Registrar General . . . are deposited by direction of the Registrar General with the approval of the Treasury, shall, so long as those registers or records are there deposited, be deemed to be part of the General Register Office'. The General Register Office is therefore empowered to deposit the centralised copies with the Public Record Office, or, for that matter, where else it pleases — perhaps even with the Society of Genealogists!

A stumbling block might be the First Schedule of the 1958 Public Records Act which specifically exempts the registers in the G.R.O. from being classified as 'public records'. However, there is a very clear authorisation given to the Keeper of the Public Records to accept any records if they are offered to her — in section 2(4) (e) of the Act. There she is given authority 'to accept responsibility for the safe keeping of records other than public records'. There are, of course, many records in the Public Record Office which are not public records as such,

and yet the costs of their preservation, repair, photocopying, and of giving access to them have fallen on the Record Office. It was said in a debate in the House of Lords in 1978 that the Lord Chancellor's Department and the Public Record Office had both agreed 'that the records could be accepted' under this section of the Act, but that the O.P.C.S had 'always argued very strongly that it is not so'[14]. It seems clear that it is the G.R.O. which is dragging its feet but that the powers are there if it wishes to take advantage of them.

The situation in Scotland is of some interest in this context. There, 'so far as the post-1855 statutory registers are concerned, the fees charged confer an entitlement to search the indexes only but it is the practice to allow searchers to consult particular entries in the registers also, under supervision and without being required to purchase extracts of the entries'[15]. In any case, all the registers prior to 1875 have been microfilmed and are available through the branch libraries of the Genealogical Society of Utah.

There has always been some hesitation about making the register copies available to the public in view of the risk of theft or damage to records of great personal interest to searchers. It is perhaps worth emphasising that unlike most of the records which the Public Record Office allows the public to handle, the records at the General Register Office are copies, containing no signatures of famous people to tempt the unscrupulous collector. However, the point does not arise for one would receive not the original registers but microfilms of them instead. Many record offices have found that one can put films on open access for searchers to take down and use themselves. We do it at the Society of Genealogists. At the Public Record Office the whole of the Census Returns between 1841 and 1891 are available in this way.

At the Family History Library in Salt Lake City genealogists have access to 1,600,000 microfilms directly from the shelves. They are quick to produce and preserve the manuscript copies from wear and tear. Such films could be made available immediately. The Association of County Archivists has already said (1987) that the 'majority [of its members] had registered an interest in obtaining microfilms of their [local authority] records'. If they microfilmed those records themselves — say down to 1912 — they could probably make up in revenue from the sale of microfilm and photocopies the 7% of income which the local registrars have estimated they would lose from the sale of certificates prior to that date.

Another thing which has bedevilled discussions and complicated the situation where the ordinary genealogist is concerned is the belief is some quarters that only records more than 75 or even 100 years old ought to be made available to the public, whether in manuscript or microfilm form. It is a view which has been strongly opposed by the demographic historians but which 'appears to spring from an unjustifiable analogy with practice in regard to the census enumerators' books, the closing date for which has gradually crept up to 100 years. There is no comparison: the census information is obtained subject to undertakings of confidentiality, while the registration system is, and always has been avowedly open, for one thing every registration act does guarantee is the right of public access to the current register, precisely the one which contains the most sensitive information. The registration acts also guarantee a member of the public unrestricted access to the indexes and the right to purchase a certified copy of any entry he chooses, not necessarily one relating to himself. Furthermore the information contained in the marriage register is required by law to be publicly displayed for three weeks prior to the ceremony[16]'.

The availability of some alternative sources greatly weakens any further argument. There are virtual duplicates of the registers of births from 1871 onwards, already open to public inspection in some

county record offices. These are the extracts made under the Vaccination Act[17] which required registrars to make a monthly return of births and infant deaths to the Vaccination Officer. At Cambridgeshire Record Office they are available down to 1948.

Most local authority record offices also hold great numbers of church registers. Over 90% are now in their care, many down to the present day. 'The public thus already enjoy direct access to one copy of the register of an ecclesiastical marriage, although they are denied direct access to the other copies and to all registers of civil marriages. [As I have said the] baptism and burial registers ... are used by researchers seeking a cheaper alternative to official birth and death records'[18]. For various reasons these searches are frequently lengthy and also frequently fruitless. The availability of the official birth and death records would, in such cases, considerably reduce the need for this type of search.

However, long and frustrating years continue to pass. In 1966 the Non-parochial Registers were transferred from the General Register Office to the Public Record Office, I understand without legislation. They are now indexed and available on microfilm at practically every county record office in the country. In 1982 the statutory records of burial ground removals were transferred from the G.R.O. to the P.R.O., again without legislation. Between 1956 and 1970 the records of many Probate Courts prior to 1858 were transferred from the Principal Probate Registry to the P.R.O., again without legislation.

The difficulties of access to these older wills seem to me in moments of frustration to have something of a parallel in this case. In 1853 the Camden Society said about the Probate Registry that it was the only depository of historical documents in which there was not only no feeling whatever in favour of literature and historical enquiry but also 'an anxiety to retain extravagant fees'. That comment sprang to mind when I heard in 1982 that the then Registrar General was attempting to negotiate a four year lease on 47 years of his indexes for a fee of £1,000 and an annual rent of £4,200 plus Value Added Tax (a total of £20,915 at today's rates of VAT)[19] — and that after seventy years of our saying that copies of those indexes should be distributed as widely as possible to relieve the appalling conditions in the public search room at the G.R.O.

Where, oh where, Mr. Chairman, is the Registrar who tomorrow will enter his office, go down into the strong room, take the older registers, put them in the boot of his car, drive over to his County Record Office, and say, 'Please, County Archivist, I have these records in my care. They are the results of my and my predecessors dedicated labours over many years. Hundreds if not thousands of people out there want to see them. I seem to have less and less room for them and nowadays there is hardly anyone on the staff who can read them. Will you take them into your tender care and look after them? You or the Mormons can film them and you can then produce the films in your search room?'

Has the time not come, I ask, to *make* history instead of further delaying and hindering its study?

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