

Deaths involving British nationals in Spain

Information Source: Consular Handbook & Local information

The death of a relative or friend is always distressing. But if it happens abroad the distress can be made worse by practical problems. Consular Directorate in the Foreign and Commonwealth Office and our Consulates in Spain are ready to help in any way that they can. You may be uncertain what to do next or who to contact for advice. These notes are designed to help you through the practical arrangements you will need to make. While care has been taken in compiling these notes, no legal liability for their contents is accepted by the British Embassy, British Consulates General in Spain or HM Government.

You should be aware that Spanish procedures differ significantly to those in the United Kingdom. While we understand your need to make arrangements as quickly as possible, this may not always be possible.

Standard procedures

According to Spanish national law, remains must either be (i) preserved or (ii) embalmed by an undertaker within 48 hours of the death. In the case of foreign nationals undertakers usually embalm the remains (as opposed to preservation) as this is a national legal requirement for transfer of remains out of Spanish territory.

Except in remote rural areas, Spanish undertakers are modern, well-equipped companies used to working with foreigners. Most have at least one English-speaking staff member.

Following the death of a British national in Spain, their next of kin, or a formally appointed representative, must decide whether to repatriate the deceased to the UK, or carry out a local burial or cremation. If the deceased was covered by travel insurance, it is important for next of kin to contact the insurance company without delay. If there is no insurance cover, the cost of repatriation or burial will need to be met by the family. Neither the Foreign and Commonwealth Office nor our Consulates in Spain have budgets to meet these costs.

Consular staff in London will pass on to the Consulate in Spain the wishes of the next of kin about disposal of the remains, and details of who is taking responsibility for the costs involved.

It is important to remember that if the deceased was travelling with a tour operator, they can be a valuable source of assistance and advice.

- **Repatriation**

If the deceased is covered by travel insurance, the insurance company will normally have a standing agreement with an International funeral director in Britain to arrange repatriations. If the deceased is not covered by insurance, next of kin will need to appoint an undertaker in Spain or an International funeral director themselves. A list of British companies is attached to the back of this document. Spanish undertakers have links with international undertakers in the UK and they normally work well together to ensure that all necessary requirements are met in Spain and in the UK.

Local Undertakers in Spain are equipped to carry out repatriation procedures and will provide the special caskets required for the international carriage of human remains. A local civil registry death certificate, a certificate of embalming, and a certificate giving permission to transfer the remains to the UK is required to ship the remains. This will be arranged by the Spanish Undertaker. Our Consulates can provide covering certificates for British Customs. Local formalities for repatriation normally take 8 to 10 days to complete.

In certain circumstances immediate repatriation may not always be possible. Our consular staff will try and inform next of kin as soon as possible if this is the case.

- **Local Burial**

If next of kin choose to proceed with a local burial, they will need to instruct a local funeral director. Our Consulates in Spain can provide a list of local and international funeral directors on request, including indications of costs. If an English speaking firm is not available, consular staff can assist you by helping with communication of your wishes to a local firm of funeral directors. Please note that in Spain 'burial' often means an above ground crypt. Rights to this are normally held for only 5 years, unless specifically purchased in perpetuity.

- **Local Cremation**

Cremation is now widely accepted in Spain and, except in rural areas, there are modern, well equipped, crematoria. If next of kin choose local cremation and wish to take the ashes back to the UK themselves, they can do so with minimal bureaucracy. If this is not possible, local undertakers will be able to arrange the necessary paperwork and transportation. There are no restrictions on movement of ashes within the EU. Airline regulations stipulate that ashes must be placed in luggage for the hold or sent as cargo and cannot be transported as hand luggage.

Inquests

If the circumstances of the death were not unusual (see below), registration of the death is permitted and the remains will be released for repatriation or burial within a few hours. However, if an Examining Magistrate is not satisfied after a preliminary examination of the facts, a post-mortem may be required. Further investigations and interviews with witnesses may also be called for before a decision is made as to cause of death.

In cases of sudden or unexpected death, whether by accident or misadventure, or where a person dies unattended, the Examining Magistrate will prepare a summary report of his investigation after which the remains will be released for burial. The Magistrate's report will be retained by the Court and may only be released to the legal representative (a local lawyer) of the next of kin. However, if death was caused by a criminal act, the police will be ordered to conduct a full investigation. The State Prosecutor will then decide whether to prosecute. This can delay the release of the remains for burial.

- **Post-Mortems/Removal of organs**

Post-mortems are carried out by court appointed forensic doctors. During a post-mortem, organs can be removed and retained for testing, including toxicological studies, at the discretion of the doctor, without consent of next of kin. Next of kin are not informed about the removal of any organs. The deceased's remains can be buried or cremated in Spain or returned to the UK before tests on removed organs are completed. Any organs removed are retained for the duration of the tests, and are then put in storage for a period of time before being destroyed. Organs cannot be removed for any purpose other than testing without prior consent of the deceased (for research) or next of kin (transplants). Where we are aware of organs having been removed we will inform NoK via consular staff in London. NoK should also be informed of retained organs by the local funeral directors though this does not happen in all cases.

UK coroners

The Coroner in England and Wales is obliged in law to hold an inquest into the cause of any unnatural or violent death of a person whose remains physically lies in his or her area, even if the death occurred overseas and a post-mortem has already been carried out before repatriation of the remains to the UK. In some countries the cause of death is not given on the death certificate and Coroners do not generally have access to judicial files from other countries. Consequently Coroners may order a second post mortem (ie subsequent to the first post mortem carried out abroad), as part of the inquest and it is at this stage that families are made aware that organs have been removed and not replaced.

Coroners can request copies of post-mortem and police reports from the Spanish authorities. However, these will only be provided once any judicial proceedings are completed. In some instances this can take many months.

In Scotland, the Crown Office and Procurator Fiscal Service (COPFS) deals with the investigation of all sudden, suspicious, accidental, unexpected and unexplained deaths which occur in Scotland. However, the COPFS does not have the jurisdiction to investigate deaths that occur outside Scotland apart from a few limited circumstances. Broadly, those circumstances include terrorism, cases where the death may have been caused in Scotland but the person died outside Scotland and cases where the death was as a result of murder or culpable homicide caused by another British citizen or subject.

Coroners in Northern Ireland are not obliged to hold an inquest into cause of death. However, next of kin can apply for a judicial review if no inquest is held.

- **Usual procedure for the repatriation of organs**

The next of kin may request the return of any removed organs via the offices of the UK Coroner, or by instructing their legal advisor in Spain if they have one.

The Coroner will make a formal request via Passports and Documentary Services Group, Consular Directorate, for the return of the missing remains organs. Consular Directorate will advise the Coroner and the family of the cost for this service. Repatriation or local burial/cremation of remains organs can be very expensive and neither the Foreign and Commonwealth Office nor the Consulates in Spain have budgets to meet these costs. If the family wish to proceed then the request will be forwarded to the appropriate Consulate for action. If the family decide against repatriation, burial or cremation the organs will eventually be destroyed by the Forensic Laboratory.

The Consulate will make a formal request to the relevant Spanish Court asking on behalf of the family, for the return of the missing parts. Once the Forensic Laboratory has completed its tests and the Consulate is notified by the Court that the organs are available for collection, Consular Directorate will inform the family advising them to instruct their Funeral Director to collect the parts and arrange for their repatriation or local disposal in accordance with families wishes.

If the request for the return of the organs is made through the family's local Spanish Lawyer, much of the same procedures will apply but it is the lawyer who will make the formal approach to the Court and the Consulate would have no standing to get involved with the Court,

Organ donation

Each comunidad has a regional office and there is also a national office in Madrid. Each regional office and the national office are able to issue organ donor cards. Even if a person carries a card or has expressed a desire for his organs to be donated, under Spanish law the NOK have to give permission to the Hospital authorities. Without the authority of the NOK, organs cannot be donated (Ley de Transplantes).

Madrid Office:

Oficina Coordinadora de Transplantes de la Comunidad de Madrid

Plaza Carlos Trías Bertrán, 7

28020 Madrid (In the Azca Building "Moda Shopping" in Nuevos Ministerios)

Tel: 91 4265911

Organización Nacional de Transplantes Madrid

Tel: 91 314 2406

Release of information

Access to information concerning a death, other than post-mortem and police reports, is restricted. The Spanish authorities will not provide this information directly to next of kin, or to third parties including our Consulates. Requests for this information should be made through a legal representative. Our consular staff can provide lists of English speaking lawyers throughout Spain. The release of any information can take many months, and the documents will be in Spanish.

Legal Aid

British nationals without the available means to appoint legal representation can apply for legal aid in most European countries. The Legal Services Commission in **London (tel: 020 7759 0000, website www.legalservices.gov.uk)** is responsible for legal aid applications overseas. The Legal Services Commission currently forwards applications for legal aid to their counterparts in Spain, where cases will be considered for their eligibility (based on Spain's criteria).

Consular death registration

There is no obligation for the death overseas of a British national to be registered with the British Embassy. However, there are the advantages that a British form of death certificate is then available, and that a record of the death is afterwards held at the General Register Office in the UK.

To apply from within the UK, you should contact **Nationality and Passports Section of Consular Directorate, Old Admiralty Building, London SW1A 2AF Tel: 020 7008 0186, bmdenquiries@fco.gov.uk**. If you are applying from within Spain, you should contact the nearest Consulate.

Contact details in the UK

**Foreign and Commonwealth Office, London
Spain Desk, Consular Directorate
Tel: 020 7008 8770 (9am - 6pm)
020 7008 1500 (24 hours)**

