

IMMIGRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Marriage and Civil Partnership

Chapter 1: Referral and Investigation of Proposed Marriages and Civil Partnerships

Schedule 4: Referral of proposed marriages and civil partnerships in England and Wales

Part 1: Marriage

Introduction

251. *Paragraph 1* provides that the 1949 Act is amended in accordance with Part 1 of Schedule 4.

Supply of additional information and evidence

252. *Paragraph 2* amends section 27 of the 1949 Act to require a person giving notice of marriage to give their date of birth.
253. *Paragraph 3* inserts a new section 27ZA (entry of particulars in notice book: compliance with requirements) to instruct a superintendent registrar not to enter particulars relating to a marriage where various requirements imposed under the 1949 Act or the 2004 Act (including, in particular, requirements inserted into those Acts by this Act) have not been complied with.
254. *Paragraph 4* inserts a new section 27E (additional information if party not relevant national) into the 1949 Act. Section 27E does not apply to a proposed marriage under section 39A of the 1949 Act (marriage of former civil partners one of whom has changed sex). Where applicable, section 27E requires that, if either or both parties giving notice are not relevant nationals (British citizens, EEA nationals or Swiss nationals) they must declare that (i) they have the appropriate immigration status under section 49(2) (and, if so, what that is); (ii) they have a relevant visa under section 49(4) (and, if so, what that is); or (iii) they have neither the appropriate immigration status nor a relevant visa. Where either or both parties do not have the appropriate immigration status or a relevant visa, it also provides that the notice may be accompanied by a statement of their immigration position in the UK.
255. The new section 27E also requires that, where one or both parties has a relevant visa, both parties must provide specified photographs of themselves.
256. The new section 27E also requires that where one or both parties declare that they have neither the appropriate immigration status nor a relevant visa, both parties must provide specified photographs of themselves; their usual address; if their usual address is outside

*These notes refer to the Immigration Act 2014 (c.22)
which received Royal Assent on 14 May 2014*

the UK, an address in the UK at which they can be contacted by post; and, information about any other names previously used, and any aliases previously or currently used.

257. *Paragraph 5* amends section 28 of the 1949 Act to require the parties to declare that the information and evidence provided with the notice is true.
258. *Paragraph 6* amends section 28A (power to require evidence) of the 1949 Act and *paragraph 7* inserts new section 28B (provision of evidence), section 28C (additional evidence if party not relevant national), section 28D (change of usual address or UK contact address), section 28E (rejection of false information or evidence), section 28F (amendment of notice and evidence provisions) and section 28G (specified evidence).
259. The new section 28B (provision of evidence) requires that a notice of marriage under section 27 of the 1949 Act must be accompanied by evidence, specified in regulations made under the new section 28G, of the person's name and surname, date of birth, place of residence and nationality. Section 28B(2) requires a person giving notice of marriage to provide evidence of whether he or she has previously been married or formed a civil partnership and, if so, as to the ending of the marriage or civil partnership.
260. The new section 28C (additional evidence if party not relevant national) requires that, where either party is not a relevant national (British citizen, EEA national or Swiss national) a notice of marriage under section 27 of the 1949 Act must be accompanied by evidence, specified in regulations made under the new section 28G, that they have the appropriate immigration status under section 49(2) or a relevant visa under section 49(4), if either is the case. Where the notice is not accompanied by this evidence, it requires that the notice be accompanied by specified photographs of both parties; their usual address and specified evidence of this; if their usual address is outside the UK, an address in the UK at which they can be contacted by post; and information about any other names previously used, and any aliases previously or currently used.
261. The new section 28D (change of usual address or UK contact address) requires that, once notice has been given, any change of usual address or UK contact address (where such an address has been provided), must be notified by the couple to the Secretary of State, according to regulations subject to the negative resolution procedure.
262. The new section 28E (rejection of false information or evidence) provides that a superintendent registrar may reject any information, photograph or evidence provided in giving notice under section 27 of the 1949 Act, in particular where they have reasonable grounds for suspecting that the information, photograph or evidence is false. If any information, photograph or evidence is rejected, the superintendent registrar may proceed as if it had not been provided.
263. The new section 28F (amendment of notice and evidence provisions) provides that, subject to consultation with the Registrar General, the Secretary of State may, by order subject to the affirmative procedure, amend the information or evidence required to give notice of marriage under section 27 of the 1949 Act and make consequential amendments, including to primary legislation.
264. The new section 28G (specified evidence) provides for the Registrar General to make regulations, with the approval of the Secretary of State, about specified evidence for the purposes of section 8, 16 or 28B. Section 28G also provides that, subject to consultation with the Registrar General, the Secretary of State may make regulations, subject to the negative resolution procedure, about specified evidence for the purposes of new section 28C. The regulations under this section may make provision for example for the kind of evidence to be supplied, the form in which it is to be supplied, and the manner in which it is to be supplied.

Referral to Secretary of State

265. *Paragraph 8* inserts a new section 28H (referral of proposed marriage to Secretary of State) in the 1949 Act. This requires the superintendent registrar, when notice of

marriage is given under section 27 of the 1949 Act, to decide whether both parties to the proposed marriage are exempt persons under section 49(1) (unless the marriage is one to which section 39A of the 1949 Act applies because it is a marriage between former civil partners, one of whom has changed sex). Where the superintendent registrar decides that one or both of the parties is not an exempt person, the registrar must refer the proposed marriage to the Secretary of State. The registrar must also refer the marriage if one or both of the parties is not a British citizen, EEA national or Swiss national and evidence required under new section 28C(2) or (3) has not been provided. They must do so in accordance with regulations about the form, manner and timing of the referral (and the information to be included with it) made by the Secretary of State (after consulting the Registrar General), subject to the negative resolution procedure. The superintendent registrar must also notify the parties that the proposed marriage must be referred to the Secretary of State, what this means and of any requirements in regulations under new section 28D about notifying the Secretary of State of any change in usual or UK contact address.

266. *Paragraph 9* inserts Schedule 3A (modifications if proposed marriage referred under section 28H) before Schedule 4 to the 1949 Act. This provides that the duty placed on the superintendent registrar under section 31(2) of the 1949 Act to issue a certificate for marriage does not apply unless and until one of five events occurs. Event 1 occurs where the Secretary of State has given the superintendent registrar notice under section 48(7) of a decision not to investigate; event 2 occurs where the statutory 28 day period has ended and the Secretary of State has not given the superintendent registrar notice under section 48(7); event 3 occurs where the Secretary of State has given the superintendent registrar notice under section 50(7) that the parties to the referred marriage have complied with the investigation; event 4 occurs where the 70 day period has ended and the Secretary of State has not given the superintendent registrar notice under section 50(7); and event 5 occurs if the Secretary of State gives the superintendent registrar notice that the duty under section 31(2) of the 1949 Act applies.
267. *Paragraph 9* also extends the notice period to 70 days if the Secretary of State gives the superintendent registrar notice under section 48(7) of a decision to investigate whether a referred marriage is a sham. Where a proposed marriage is referred to the Secretary of State, the statutory notice period (whether 28 or 70 days) can be shortened by the Secretary of State in exceptional circumstances, in which case the Secretary of State must notify the applicant and the superintendent registrar of the reduced period, enabling the superintendent registrar to issue a certificate in respect of the referred marriage under section 31(2) of the 1949 Act.

Notice period

268. *Paragraph 10* amends the notice period in section 31 of the 1949 Act (marriage under certificate without licence) from 15 days to 28 days. Paragraph 10 also requires, for a proposed marriage referred to the Secretary of State under new section 28H, any application for a reduction in the notice period to be submitted to the Secretary of State and for the decision to be made by the Secretary of State and notified to the applicant and the superintendent registrar, in accordance with regulations made by the Secretary of State after consultation with the Registrar General.

Marriage referred to Secretary of State: issue of certificates

269. *Paragraph 11* inserts a new section 31ZA (notice of marriage: false information or evidence) in the 1949 Act.
270. The new section 31ZA provides that, where notice of marriage has been given under section 27 of the 1949 Act, the superintendent registrar may refuse to issue the certificate where they have reasonable grounds for suspecting that an incorrect decision was made because false information or evidence was provided.

Certificates

271. *Paragraph 12* amends section 35 (marriage in registration district in which neither party resides) of the 1949 Act, to allow non-EEA nationals to marry in any Anglican place of worship that Church preliminaries would have allowed, notwithstanding that such couples must now complete civil rather than Church preliminaries.

One party resident in Scotland

272. *Paragraph 13* provides that where one party is resident in England and the other party is resident in Scotland notice may be given in accordance with section 27 and the other provisions of the 1949 Act.

Proof of certain matters not necessary to validity of marriages

273. *Paragraph 14* amends section 48 (proof of certain matters not necessary to validity of marriages) of the 1949 Act to include any of the five events listed in paragraph 2(2) to (6) of Schedule 3A (modification if proposed marriage referred under section 28H) to the 1949 Act.

Regulations etc

274. *Paragraph 15* provides that regulations or orders made under the 1949 Act may make provision for different cases.

Offences

275. *Paragraph 16* amends the relevant period in section 75 of the 1949 Act (offences relating to solemnization of marriages) from 15 days to 28 days.

Relevant nationals

276. *Paragraph 17* amends section 78 (interpretation of the 1949 Act) to add relevant definitions.