

**2015 No. 396**

**MARRIAGE, SCOTLAND**

**CIVIL PARTNERSHIP, SCOTLAND**

**IMMIGRATION**

**The Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015**

*Made* - - - - - *26th February 2015*

*Coming into force* - - - - - *1st March 2015*

The Secretary of State makes this Order in exercise of the powers conferred by section 53(1), (2) and (3) and section 74(8)(c) and (d) of the Immigration Act 2014 (“the Act”)(a).

In accordance with section 74(2)(i) of the Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

**Citation and commencement and transitional and saving provisions**

**1.**—(1) This Order may be cited as the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015.

(2) It comes into force on 1st March 2015.

(3) Article 2(1) and (3) and the amendments made by Schedules 1 and 3, and article 2(4) and Schedule 4 so far as those provisions relate to amendments to sections 48 and 50 of the Immigration Act 2014, apply only to proposed marriages and civil partnerships in respect of which notice is submitted under section 3(1) of the 1977 Act(b), or section 88 of the 2004 Act(c), after the day on which this Order comes into force.

(4) If, when this Order comes into force, subsections (2)(b) and (4) of section 18 of the 2014 Act(d) are not in force (for all purposes), the following provisions have effect, in relation to a proposed marriage in respect of which the notice under section 3(1) of the 1977 Act is submitted before the date on which those subsections come into force (for all purposes), as if for “28 days” there were substituted “14 days”—

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(a) 2014 c. 22

(b) 1977 c. 15; section 3(1) was amended by section 2 of, and paragraph 3 of Schedule 2 to, the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16); paragraph 43 of Schedule 28 to the Civil Partnership Act 2004 (c. 33); section 50 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14); and sections 3 and 8 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5). Other amendments have been made to section 3 but they are not relevant to this Order.

(c) 2004 c. 33.

(d) 2014 asp 5.

- (a) sub-paragraphs (2) and (3) of paragraph 3 of Schedule 1A to the 1977 Act (as inserted by paragraph 3 of Schedule 1 to this Order),
- (b) paragraph (ab) in the definition of “relevant statutory period” in section 62 of the Immigration Act 2014 (as amended by paragraph 4 of Schedule 4 to this Order)(a).

(5) If, when this Order comes into force, subsections (7)(b) and (8(b)(ii) of section 24 of the 2014 Act are not in force (for all purposes), the following provisions have effect, in relation to a proposed civil partnership in respect of which the notice under section 88 of the 2004 Act is submitted before the date on which those subsections come into force (for all purposes), as if for “28 days” there were substituted “14 days”—

- (a) sub-paragraph (1)(a) of paragraph 4 of Schedule 10A to the 2004 Act (as inserted by paragraph 3 of Schedule 3 to this Order),
- (b) paragraph (bb) in the definition of “relevant statutory period” in section 62 of the Immigration Act 2014 (as amended by paragraph 4 of Schedule 4 to this Order).

(6) In this article—

“1977 Act” means the Marriage (Scotland) Act 1977;

“2004 Act” means the Civil Partnership Act 2004;

“2014 Act” means the Marriage and Civil Partnership (Scotland) Act 2014.

### **Extension of referral and investigation scheme**

2.—(1) Schedule 1 (which amends the Marriage (Scotland) Act 1977) has effect.

(2) Schedule 2 (which amends the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004)(b) has effect.

(3) Schedule 3 (which amends the Civil Partnership Act 2004) has effect.

(4) Schedule 4 (which amends the Immigration Act 2014) has effect.

(5) Schedule 5 (which makes provision about the disclosure of information) has effect.

Home Office  
26th February 2015

*James Brokenshire*  
Minister of State

## **SCHEDULE 1**

Article 2(1)

### **Amendments to the Marriage (Scotland) Act 1977**

1. The Marriage (Scotland) Act 1977 is amended as follows.

2. After section 3 (notice of intention to marry) insert—

#### **“Additional information if party not relevant national**

**3A.**—(1) This section applies to a marriage notice submitted to a district registrar in accordance with section 3 if one, or each, of the parties to the proposed marriage is not a relevant national.

(2) But this section does not apply if the parties are in a qualifying civil partnership (within the meaning of section 5(6)(c)) with each other.

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(a) Section 62 and the definition of “relevant statutory period” is also amended by paragraph 4 of Schedule 4 to the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 (S.I. 2015/395).

(b) 2004 c. 19.

(c) Section 5(6) was inserted by section 8(3) of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).

(3) For each party to the proposed marriage who is not a relevant national, the notice shall be accompanied by whichever of statements A, B or C is applicable to that person.

(4) Statement A is a statement that the person has the appropriate immigration status.

(5) Statement B is a statement that the person holds a relevant visa in respect of the proposed marriage.

(6) Statement C is a statement that the person neither—

(a) has the appropriate immigration status, nor

(b) holds a relevant visa in respect of the proposed marriage.

(7) If the notice is accompanied by the statement referred to in the first column of an entry in this table, the notice shall also be accompanied by the information and photographs referred to in the second column of that entry (insofar as that entry is applicable to the parties to the proposed marriage)—

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*If the notice is accompanied by this statement..... ..the notice shall also be accompanied by...*

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|   |   |
|---|---|
| Statement A (in respect of one or both of the parties to the proposed marriage) | For each party in respect of whom statement A is made, details of the particular immigration status which that party has  |
| Statement B (in respect of one or both of the parties to the proposed marriage) | 1. For each party, a specified photograph of that party<br>2. For each party in respect of whom statement B is made, details of the relevant visa which that party has  |
| Statement C (in respect of one or both of the parties to the proposed marriage) | 1. For each party, a specified photograph of that party<br>2. For each party, the usual address of that party<br>3. For each party who has previously used any name or names other than the person's name stated in the marriage notice, a statement of the other name or names<br>4. For each party who currently uses, or has previously used, an alias or aliases, a statement of the alias or aliases |

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(8) If the notice is accompanied by more than one of statements A, B and C, subsection (7) shall be complied with in relation to each of those statements; but where the notice is accompanied by statements B and C, subsection (7) does not require the notice to be accompanied by more than one specified photograph of each party.

(9) If the notice is accompanied by statement C for a party to the proposed marriage—

(a) the notice may also be accompanied by a statement (“statement D”) of that person's immigration position in the United Kingdom;

(b) if the notice is accompanied by statement D for a party to the proposed marriage, the person may provide the district registrar with details of his immigration position in the United Kingdom; and

(c) if any such details are provided, the district registrar shall record them.

(10) In this section and section 3B—

(a) a reference—

(i) to a person having the appropriate immigration status, or

(ii) to a person holding a relevant visa,

is to be construed in accordance with section 49 of the 2014 Act;

- (b) a reference to the particular immigration status which a person has is a reference to the immigration status set out in any of paragraphs (a) to (c) of section 49(2) of that Act which the person has;
- (c) a reference to a person's immigration position in the United Kingdom includes a reference to the person's not being entitled to be in the United Kingdom.

(11) In this section "specified photograph" means a photograph that is in accordance with regulations made by the Secretary of State under section 54(2) of, and paragraph 3 of Schedule 5 to, the 2014 Act (and for this purpose "photograph" includes other kinds of images).

### **Additional evidence if party not relevant national**

**3B.**—(1) If a marriage notice to which section 3A(1) applies ("the notice") is accompanied by statement A (referred to in section 3A(4)) and accordingly is also accompanied by details of the particular immigration status which a party to the proposed marriage has, the notice shall also be accompanied by specified evidence of that status.

(2) If the notice is accompanied by statement B (referred to in section 3A(5)), the notice shall also be accompanied by specified evidence of the holding of the relevant visa by the party to the proposed marriage.

(3) If, in accordance with section 3A(7), the notice is accompanied by the usual address of a party to the proposed marriage, the notice shall also be accompanied by specified evidence that it is that party's usual address.

(4) If the notice is accompanied by statement D (referred to in section 3A(9)), the notice may also be accompanied by evidence of the person's immigration position in the United Kingdom.

(5) If subsection (1) or (2) applies to the notice, and the notice is not accompanied by the specified evidence required by that subsection, the notice shall be accompanied by—

- (a) photographs and addresses of the kinds referred to in paragraphs 1 and 2 in the relevant entry in section 3A(7);
- (b) as respects the usual address of each party that is provided in accordance with paragraph (a), specified evidence that the address provided is that party's usual address; and
- (c) names and aliases of the kinds referred to in paragraphs 3 and 4 in the relevant entry in section 3A(7) (insofar as those paragraphs are applicable to the parties to the proposed marriage).

(6) In this section—

"relevant entry in section 3A(7)" means the second column of the last entry in the table in section 3A(7);

"specified evidence" means evidence that is in accordance with regulations made by the Secretary of State under section 54(2) of, and paragraph 3 of Schedule 5 to, the 2014 Act.

### **Declaration to accompany information and evidence**

**3C.** Where the marriage notice is accompanied by—

- (a) information provided in accordance with section 3A, and
- (b) information and evidence provided in accordance with section 3B,

that information and evidence shall also be accompanied by a declaration in writing and signed by the party who makes it that the party believes all of the information and evidence accompanying the notice to be true.

### **Rejection of false information or evidence**

**3D.**—(1) A district registrar may reject—

- (a) any evidence relating to a party’s nationality provided in accordance with section 3(4A)(a),
- (b) any information or photograph provided under section 3A or 3B, or
- (c) any evidence provided under section 3B,

if (in particular) the district registrar has reasonable grounds for suspecting that the information, photograph or evidence is false.

(2) If the district registrar rejects any information, photograph or evidence, the district registrar may proceed under this Act as if the rejected information, photograph or evidence had not been provided.

(3) This section does not limit the powers of district registrars to reject anything provided under any other enactment.

(4) In this section “enactment” includes an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament.

### **Marriage notice: treated as not given**

**3E.**—(1) Where any of the requirements mentioned in subsection (2) is applicable but not complied with by either or both parties to the proposed marriage, the parties are to be taken not to have submitted a marriage notice under section 3.

(2) The requirements are—

- (a) a requirement imposed by or under any of the following provisions of this Act—
  - (i) section 3(4A);
  - (ii) section 3A(3) to (8);
  - (iii) section 3B(3);
  - (iv) section 3B(5);
- (b) the requirement imposed by section 21(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004(b).

### **Referral of proposed marriage to Secretary of State**

**3F.**—(1) On every occasion when a marriage notice is submitted under section 3, a district registrar shall decide whether or not each of the parties to the proposed marriage is an exempt person.

(2) But this section does not apply if the parties are in a qualifying civil partnership (within the meaning of section 5(6)) with each other.

(3) In making a decision under subsection (1) about a party to a proposed marriage, a district registrar may rely on any advice given in relation to that decision by the Secretary of State.

(4) In a case where—

- (a) section 3A applies to the marriage notice, and
- (b) specified evidence required by section 3B(1) or (2) in relation to a party to the proposed marriage is not produced in accordance with that section,

the district registrar shall decide that that party to the proposed marriage is not an exempt person.

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(a) Section 3(4A) was inserted by section 17 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).

(b) Relevant amendments were made to section 21(4) by section 59(4) of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14) and to subsection (5) by article 2 of S.I. 2011/1158.

(5) If the district registrar decides that either of the parties is not an exempt person, or that both of the parties are not exempt persons, the district registrar shall—

- (a) refer the proposed marriage to the Secretary of State;
- (b) notify the parties to the proposed marriage that the proposed marriage must be referred to the Secretary of State;
- (c) give the parties to the proposed marriage prescribed information about—
  - (i) the effects of the referral;
  - (ii) the requirement under regulations to notify the Secretary of State of changes of address.

(6) The district registrar shall act in accordance with regulations when complying with the duty in subsection (5)(a) to refer a proposed marriage to the Secretary of State.

(7) If the district registrar refers the proposed marriage to the Secretary of State, this Act has effect in relation to the proposed marriage subject to the modifications in Schedule 1A.

(8) In this section—

- (a) a reference to a person being an exempt person has the same meaning as in section 49 of the 2014 Act;
- (b) “prescribed information” means information prescribed in regulations;
- (c) “regulations” means regulations made by the Secretary of State under section 54(2) of, and Schedule 5 to, the 2014 Act.”

3. After Schedule 1 (degrees of relationship) insert—

## “SCHEDULE 1A

section 3F(7)

### Modifications if proposed marriage referred under section 3F

#### **Introduction**

1.—(1) These are the modifications subject to which this Act has effect if the district registrar refers a proposed marriage to the Secretary of State.

(2) In this Schedule “referred marriage” means the proposed marriage referred to the Secretary of State.

#### **No Marriage Schedule to be completed until decision about investigation etc.**

2.—(1) The duty under section 6(1) to complete a Marriage Schedule in respect of the referred marriage does not apply unless and until one of the following events occurs.

(2) Event 1 occurs if—

- (a) the Secretary of State gives the district registrar the section 48 notice, and
- (b) that notice is of a decision not to investigate whether the referred marriage is a sham.

(3) Event 2 occurs if—

- (a) the relevant statutory period ends, and
- (b) the Secretary of State has not given the district registrar the section 48 notice.

(4) Event 3 occurs if—

- (a) the Secretary of State gives the district registrar the section 48 notice,
- (b) that notice is of a decision to investigate whether the referred marriage is a sham,
- (c) the Secretary of State gives the district registrar the section 50 notice, and

- (d) that notice is of a decision that both of the parties to the referred marriage have complied with the investigation.
- (5) Event 4 occurs if—
  - (a) the 70 day period ends, and
  - (b) the Secretary of State has not given the district registrar the section 50 notice.
- (6) Event 5 occurs if the Secretary of State gives the district registrar notice that the duty under section 6(1) is applicable.
- (7) The Secretary of State may give a notice for that purpose only if—
  - (a) the Secretary of State has given the district registrar the section 48 notice,
  - (b) that notice is of a decision to investigate whether the referred marriage is a sham,
  - (c) the Secretary of State has given the district registrar the section 50 notice, and
  - (d) that notice is of a decision that one or both of the parties to the referred marriage have not complied with the investigation.
- (8) This paragraph applies in addition to any other requirements applicable to the completion of the Marriage Schedule.
- (9) This paragraph is subject to paragraph 4.
- (10) In this paragraph—
  - “70 day period” has the same meaning as in section 50(11) of the 2014 Act;
  - “relevant statutory period” has the same meaning as in section 62 of the 2014 Act(a);
  - “section 48 notice” means notice under section 48(8C) of the 2014 Act(b);
  - “section 50 notice” means notice under section 50(7) of the 2014 Act.

**Marriage to be investigated: extension of 28 day period to 70 days**

- 3.—**(1) The modifications in this paragraph have effect if the Secretary of State gives the district registrar notice under section 48(8C) of the 2014 Act of a decision to investigate whether the referred marriage is a sham.
- (2) Section 6(4)(a)(c) has effect as if—
  - (a) for the words from “28 days” to “relates” there were substituted “the relevant 70 day period”, and
  - (b) in sub-paragraph (i), for “28 days” there were substituted “relevant 70 day period”.
- (3) Section 19(1)(d) has effect as if for the words from “28 days” to “that marriage” there were substituted “the relevant 70 day period”.
- (4) In sections 6(4)(a) and 19 (as modified by this paragraph) “relevant 70 day period” means the period—
  - (a) beginning the day after receipt of the marriage notice (as entered by the district registrar in the marriage notice book), and
  - (b) ending at the end of the period of 70 days beginning with that day.
- (5) This paragraph is subject to paragraph 4.

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- (a) The definition of “relevant statutory period” contained in section 62 is amended by Schedule 4 to this Order and Schedule 4 to the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland) Order 2015 (S.I. 2015/395).
- (b) Section 48C is inserted by paragraph 2 of Schedule 4 to this Order.
- (c) Section 6(4)(a) was amended by section 18 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5) (“2014 Act”) which increased the period within which a Marriage Schedule may not be issued (religious marriages) from 14 to 28 days of receipt of the marriage notice. There are other amendments to section 6 but they are not relevant to this Order.
- (d) Section 19 was similarly amended by section 18 of the 2014 Act. The period within which a marriage (civil marriages) may not be solemnised was increased from 14 to 28 days of receipt of the marriage notice. There are other amendments to section 19 but they are not relevant to this Order.

## Effect of reducing statutory period

### 4.—(1) Where—

#### (a) either—

(i) a district registrar is authorised to issue a Marriage Schedule under section 6(4)(a) (including as modified under paragraph 3), or

(ii) an authorised registrar is authorised to solemnise a marriage under section 19(1)(b) (including as modified under paragraph 3), and

(b) the authorisation mentioned in sub-paragraph (i) or, as the case may be, (ii) of paragraph (a) is given at a time when the duty under section 6(1) to complete a Marriage Schedule in respect of the referred marriage has not arisen in accordance with paragraph 2,

the duty under section 6(1) to complete the Marriage Schedule arises on the giving of the authorisation, subject to any other requirements applicable to the completion of the Schedule being met.

(2) But the requirements of paragraph 2 are not applicable in such a case.

(3) The Secretary of State is not prevented from deciding to conduct, conducting, or continuing, an investigation if a Marriage Schedule is completed or, as the case may be, issued or the marriage solemnised, as mentioned in sub-paragraph (1).

(4) But in such a case, nothing in the 2014 Act requires the Secretary of State to decide whether to conduct, or to continue, an investigation.

(5) In this paragraph “investigation” means an investigation, conducted following a decision by the Secretary of State under section 48 of the 2014 Act, whether a proposed marriage is a sham.”

### 4. In section 4(a) (marriage notice book) after subsection (5) insert—

“(6) This section is subject to section 3E.”

### 5. In section 6(b) (Marriage Schedule)—

#### (a) after subsection (4) insert—

“(4ZA) Unless subsection (4ZB) applies, if a proposed marriage is referred to the Secretary of State under section 3F(c) (“the referred marriage”) the Registrar General may not authorise the district registrar to issue the Marriage Schedule on the date mentioned in subsection (4)(a)(ii) without the consent of the Secretary of State.

(4ZB) This subsection applies if the request made under subsection (4)(a)(i) is made because a party to the referred marriage is gravely ill and not expected to recover.”;

#### (b) after subsection (7) insert—

“(8) This section has effect subject to section 6A.”

### 6. After section 6 insert—

#### “Marriage notice: false information or evidence

**6A.—**(1) A district registrar may refuse to complete a Marriage Schedule under section 6 in a case where—

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- (a) Subsections (2) to (2G) were substituted for subsection (2), and subsection (4) inserted, by section 48 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14) (“2006 Act”); subsection (5) was inserted by section 49 of that Act.
- (b) Subsection (1) was amended by sections 2 and 6 of, and paragraph 5 of Schedule 2 to, the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16); subsection (1A) was inserted by the Marriage and Civil Partnership (Scotland) Act (asp 5); subsection (4A) was inserted by section 50, and subsection (7) amended by section 48, of the 2006 Act; and subsection (5) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55).
- (c) Section 3F is inserted by paragraph 2 of this Schedule.



- (a) a marriage notice has been submitted under section 3(1), and
- (b) the district registrar has reasonable grounds for suspecting that a relevant decision was made incorrectly because of the provision of false information or evidence in or accompanying that notice.

(2) If the district registrar refuses to complete a Marriage Schedule under subsection (1), the parties to the proposed marriage are to be taken not to have submitted a marriage notice under section 3; but that does not prevent criminal proceedings from being brought against either party, or any other person, in relation to the submission of notice.

(3) This section is without prejudice to any other powers of district registrars to refuse to complete a Marriage Schedule.

(4) In this section—

“evidence” includes a photograph or other image;

“exempt person” has the same meaning as in section 3F;

“relevant decision” means a decision of a district registrar that a party to the proposed marriage is an exempt person.”

**7.** In section 19(a) (marriage ceremony and registration of marriage), after subsection (1) insert—

“(1ZA) Unless subsection (1ZB) applies, if a proposed marriage is referred to the Secretary of State under section 3F (“the referred marriage”) the Registrar General may not authorise an authorised registrar to solemnise the referred marriage on the date mentioned in subsection (1)(b) without the consent of the Secretary of State.

(1ZB) This subsection applies if the request made under subsection (1)(a) is made because a party to the referred marriage is gravely ill and not expected to recover.”

**8.** In section 26(2) (interpretation)—

(a) before the definition of “annulment” insert—

““2014 Act” means the Immigration Act 2014(b);”;

(b) after the definition of “religious or belief marriage”(c) insert—

““relevant national” means—

(a) a British citizen,

(b) a national of an EEA State other than the United Kingdom, or

(c) a national of Switzerland;”.

## SCHEDULE 2

Article 2(2)

### Amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

**1.** Section 21 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(d) (procedure for marriage: Scotland) is amended as follows.

**2.** For subsection (1) substitute—

“(1) This section applies to a marriage which is intended to be solemnised in Scotland unless each party to the marriage falls within exception A or exception B.

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(a) Subsection (1A) was inserted by section 50 of the 2006 Act.

(b) 2014 c. 22.

(c) the definition of religious or belief marriage was inserted by section 12(4) of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).

(d) 2004 c. 19; subsection (3) was repealed by and subsections (4) and (5) amended by S.I. 2011/1158; subsection (4) was also amended by section 59(4) of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14).

- (1A) A party to the marriage falls within exception A if the person is a relevant national.
- (1B) A party to the marriage falls within exception B if—
- (a) the person is exempt from immigration control, and
  - (b) the notice of intention to marry submitted under section 3 of the Marriage (Scotland) Act 1977(a) is accompanied by the specified evidence required by section 3B(1) of that Act that the person is exempt from immigration control.”

3. For subsection (5) substitute—

“(5) In this section—

- (a) “relevant national” has the same meaning as in section 62 of the Immigration Act 2014,
- (b) a reference to a person being exempt from immigration control is to be construed in accordance with section 49 of that Act.”

## SCHEDULE 3

Article 2(3)

### Amendments to the Civil Partnership Act 2004

1. The Civil Partnership Act 2004(b) is amended as follows.

2. After section 88(c) insert—

**“Additional information if party not relevant national**

**88A.**—(1) This section applies to a notice of proposed civil partnership submitted to a district registrar in accordance with section 88 if one, or each, of the parties to the proposed civil partnership is not a relevant national.

(2) For each party to the proposed civil partnership who is not a relevant national, the notice must be accompanied by whichever of statements A, B or C is applicable to that person.

(3) Statement A is a statement that the person has the appropriate immigration status.

(4) Statement B is a statement that the person holds a relevant visa in respect of the proposed civil partnership.

(5) Statement C is a statement that the person neither—

- (a) has the appropriate immigration status, nor
- (b) holds a relevant visa in respect of the proposed civil partnership.

(6) If the notice is accompanied by the statement referred to in the first column of an entry in this table, the notice must also be accompanied by the information and photographs referred to in the second column of that entry (insofar as that entry is applicable to the parties to the proposed civil partnership)—

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*If the notice is accompanied by this ...the notice must also be accompanied by... statement....*

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(a) 1977 c. 15; section 3(1) was amended by section 2 of, and paragraph 3 of Schedule 2 to, the Marriage (Prohibited Degrees of Relationship) Act 1986 (c. 16); paragraph 43 of Schedule 28 to the Civil Partnership Act 2004 (c. 33); section 50 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14); and sections 3 and 8 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5). Other amendments have been made to section 3 but they are not relevant to this Order.

(b) 2004 c. 33.

(c) Subsections (1), (2) and (5) were amended by, and subsection (5A) inserted by, section 52 of the Local Electoral Administration and Registration Services (Scotland) Act (asp 14); subsections (7) to (10) were inserted by sections 24 and 25 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).

|  |   |
|--|---|
| Statement A (in respect of one or both of the parties to the proposed civil partnership) | For each party in respect of whom statement A is made, details of the particular immigration status which that party has  |
| Statement B (in respect of one or both of the parties to the proposed civil partnership) | <ol style="list-style-type: none"> <li>1. For each party, a specified photograph of that party</li> <li>2. For each party in respect of whom statement B is made, details of the relevant visa which that party has</li> </ol>  |
| Statement C (in respect of one or both of the parties to the proposed civil partnership) | <ol style="list-style-type: none"> <li>1. For each party, a specified photograph of that party</li> <li>2. For each party, the usual address of that party</li> <li>3. For each party who has previously used any name or names other than the person's name stated in the civil partnership notice, a statement of the other name or names</li> <li>4. For each party who currently uses, or has previously used, an alias or aliases, a statement of the alias or aliases.</li> </ol> |

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(7) If the notice is accompanied by more than one of statements A, B and C, subsection (6) must be complied with in relation to each of those statements; but where the notice is accompanied by statements B and C, subsection (6) does not require the notice to be accompanied by more than one specified photograph of each party.

(8) If the notice is accompanied by statement C for a party to the proposed civil partnership—

- (a) the notice may also be accompanied by a statement (“statement D”) of that person’s immigration position in the United Kingdom;
- (b) if the notice is accompanied by statement D for a party to the proposed civil partnership, the person may provide the district registrar with details of his immigration position in the United Kingdom; and
- (c) if any such details are provided, the district registrar must record them.

(9) In this section and section 88B—

- (a) a reference—
  - (i) to a person having the appropriate immigration status, or
  - (ii) to a person holding a relevant visa,
 is to be construed in accordance with section 49 of the 2014 Act;
- (b) a reference to the particular immigration status which a person has is a reference to the immigration status set out in any of paragraphs (a) to (c) of section 49(2) of that Act which the person has;
- (c) a reference to a person’s immigration position in the United Kingdom includes a reference to the person’s not being entitled to be in the United Kingdom.

(10) In this section “specified photograph” means a photograph that is in accordance with regulations made by the Secretary of State under section 54(2) of, and paragraph 3 of Schedule 5 to, the 2014 Act (and for this purpose “photograph” includes other kinds of images).

### **Additional evidence if party not relevant national**

**88B.**—(1) If a notice of proposed civil partnership to which section 88A applies (“the notice”) is accompanied by statement A (referred to in section 88A(3)), and accordingly is also accompanied by details of the particular immigration status which a party to the proposed civil partnership has, the notice must also be accompanied by specified evidence of that status.

(2) If the notice is accompanied by statement B (referred to in section 88A(4)), the notice must also be accompanied by specified evidence of the holding of the relevant visa by the party to the proposed civil partnership.

(3) If, in accordance with section 88A(6), the notice is accompanied by the usual address of a party to the proposed civil partnership, the notice must also be accompanied by specified evidence that it is that party’s usual address.

(4) If the notice is accompanied by statement D (referred to in section 88A(8)), the notice may also be accompanied by evidence of the person’s immigration position in the United Kingdom.

(5) If subsection (1) or (2) applies to the notice, and the notice is not accompanied by the specified evidence required by that subsection, the notice must be accompanied by—

- (a) photographs and addresses of the kinds referred to in paragraphs 1 and 2 in the relevant entry in section 88A(6);
- (b) as respects the usual address of each party that is provided in accordance with subparagraph (a), specified evidence that the address provided is that party’s usual address; and
- (c) names and aliases of the kinds referred to in paragraphs 3 and 4 in the relevant entry in section 88A(6) (insofar as those paragraphs are applicable to the proposed civil partnership).

(6) In this section—

“relevant entry in section 88A(6)” means the second column of the last entry in the table in section 88A(6);

“specified evidence” means evidence that is in accordance with regulations made by the Secretary of State under section 54(2) of, and paragraph 3 of Schedule 5 to, the 2014 Act.

### **Declaration to accompany information and evidence**

**88C.** Where the notice of proposed civil partnership is accompanied by—

- (a) information provided in accordance with section 88A, and
- (b) information and evidence provided in accordance with section 88B,

that information and evidence must also be accompanied by a declaration in writing and signed by the party who makes it that the party believes all of the information and evidence accompanying the notice to be true.

### **Rejection of false information or evidence**

**88D.**—(1) A district registrar may reject—

- (a) any evidence relating to a party’s nationality provided in accordance with section 88(8)(a),
- (b) any information or photograph provided under section 88A or 88B, or
- (c) any evidence provided under section 88B,

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(a) Section 88(8)-(10) was inserted by section 25 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).

if (in particular) the district registrar has reasonable grounds for suspecting that the information, photograph or evidence is false.

(2) If the district registrar rejects any information, photograph or evidence, the district registrar may proceed under this Act as if the rejected information, photograph or evidence had not been provided.

(3) This section does not limit the powers of the district registrar to reject anything provided under any other enactment.

(4) In this section “enactment” includes an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament.

#### **Notice of proposed civil partnership: treated as not given**

**88E.**—(1) Where any of the requirements imposed by or under any of the provisions of this Act mentioned in subsection (2) is applicable but not complied with by either or both parties to the proposed civil partnership, the parties are to be taken not to have submitted notice under section 88.

(2) The provisions are—

- (a) section 88(8);
- (b) section 88A(2) to (7);
- (c) section 88B(3) or (5);
- (d) paragraph 9 of Schedule 23.

#### **Referral of proposed civil partnership to the Secretary of State**

**88F.**—(1) On every occasion when notice of proposed civil partnership is submitted under section 88, a district registrar must decide whether or not each of the parties to the proposed civil partnership is an exempt person.

(2) But this section does not apply if section 96 applies to the proposed civil partnership.

(3) In making a decision under subsection (1) about a party to a proposed civil partnership, a district registrar may rely on any advice given in relation to that decision by the Secretary of State.

(4) In a case where—

- (a) section 88A applies to the notice of proposed civil partnership, and
- (b) specified evidence required by section 88B(1) or (2) in relation to a party to the proposed civil partnership is not produced in accordance with that section,

the district registrar must decide that that party to the proposed civil partnership is not an exempt person.

(5) If the district registrar decides that either of the parties is not an exempt person, or that both of the parties are not exempt persons, the registrar must—

- (a) refer the proposed civil partnership to the Secretary of State;
- (b) notify the parties to the proposed civil partnership that the proposed civil partnership must be referred to the Secretary of State;
- (c) give the parties to the proposed civil partnership prescribed information about—
  - (i) the effects of the referral;
  - (ii) the requirement under regulations to notify the Secretary of State of changes of address.

(6) The district registrar must act in accordance with regulations when complying with the duty in subsection (5)(a) to refer a proposed civil partnership to the Secretary of State.

(7) If the district registrar refers the proposed civil partnership to the Secretary of State, this Act has effect in relation to the proposed civil partnership subject to the modifications in Schedule 10A.

(8) In this section—

- (a) a reference to a person being an exempt person has the same meaning as in section 49 of the 2014 Act;
- (b) “prescribed information” means information prescribed in regulations;
- (c) “regulations” means regulations made by the Secretary of State under section 54(2) of, and Schedule 5 to, the 2014 Act.”

3. After Schedule 10 (forbidden degrees of relationship)(a) insert—

## “SCHEDULE 10A

section 88F(7)

### Modifications if proposed civil partnership referred under section 88F

#### **Introduction**

1.—(1) These are the modifications subject to which this Act has effect if the district registrar refers a proposed civil partnership to the Secretary of State.

(2) In this Schedule “referred civil partnership” means the proposed civil partnership referred to the Secretary of State.

#### **No civil partnership schedule to be completed until decision about investigation etc**

2.—(1) The duty under section 94 (civil partnership schedule)(b) to complete a civil partnership schedule in respect of the referred civil partnership does not apply unless and until one of the following events occurs.

(2) Event 1 occurs if—

- (a) the Secretary of State gives the district registrar the section 48 notice, and
- (b) the notice is of a decision not to investigate whether the referred civil partnership is a sham.

(3) Event 2 occurs if—

- (a) the relevant statutory period ends, and
- (b) the Secretary of State has not given the district registrar the section 48 notice.

(4) Event 3 occurs if—

- (a) the Secretary of State gives the district registrar the section 48 notice,
- (b) that notice is of a decision to investigate whether the referred civil partnership is a sham,
- (c) the Secretary of State gives the district registrar the section 50 notice, and
- (d) that notice is of a decision that both of the parties to the referred civil partnership have complied with the investigation.

(5) Event 4 occurs if—

- (a) the 70 day period ends, and
- (b) the Secretary of State has not given the district registrar the section 50 notice.

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(a) Amendments have been made to this Schedule but they are not relevant to this Order.

(b) Section 94 has been amended by section 24(12) of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).

(6) Event 5 occurs if the Secretary of State gives the district registrar notice that the duty under section 94 is applicable.

(7) The Secretary of State may give a notice for that purpose only if—

- (a) the Secretary of State has given the district registrar the section 48 notice,
- (b) that notice is of a decision to investigate whether the referred civil partnership is a sham,
- (c) the Secretary of State has given the district registrar the section 50 notice, and
- (d) that notice is of a decision that one or both of the parties to the referred civil partnership have not complied with the investigation.

(8) This paragraph applies in addition to any other requirements applicable to the completion of the civil partnership schedule.

(9) This paragraph is subject to paragraph 4.

(10) In this paragraph—

“70 day period” has the same meaning as in section 50(11) of the 2014 Act;

“relevant statutory period” has the same meaning as in section 62(a) of the 2014 Act;

“section 48 notice” means notice under section 48(8D)(b) of the 2014 Act;

“section 50 notice” means notice under section 50(7) of the 2014 Act.

#### **Civil partnership to be investigated: extension of 28 day period to 70 days**

**3.—**(1) The modifications in this paragraph have effect if the Secretary of State gives the district registrar notice under section 48(8D) of the 2014 Act of a decision to investigate whether the referred civil partnership is a sham.

(2) Section 91(1)(c) has effect as if—

- (a) for the words from “being” to “section 90” there were substituted “being a date before the expiry of the relevant 70 day period”, and
- (b) the words from “; and if a date” to the end were omitted.

(3) Section 94(d) has effect as if for paragraph (b) there were substituted—

“(b) the relevant 70 day period has expired.”.

(4) In sections 91 and 94 (as modified by this paragraph) and in paragraph 4 “relevant 70 day period” means the period—

- (a) beginning the day after the particulars of the proposed civil partnership are entered in the civil partnership book in accordance with section 89 (civil partnership notice book), and
- (b) ending at the end of the period of 70 days beginning with that day.

(5) This paragraph is subject to paragraph 4.

#### **Effect of reducing statutory period**

**4.—**(1) Where—

- (a) either—

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(a) The definition of “relevant statutory period” contained in section 62 is amended by Schedule 4 to this Order and Schedule 4 to the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland) Order 2015 (S.I. 2015/395).

(b) Section 48D is inserted by paragraph 2 of Schedule 4 to this Order.

(c) Subsection (1) was amended by and subsection (2) inserted by section 24 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5) (“2014 Act”).

(d) Subsection (1) was amended by, and subsection (2) inserted by, section 24 of the 2014 Act.

- (i) a district registrar is authorised to fix a date for the date of registration of the referred civil partnership that is 28 days or fewer after publicisation by the district registrar under section 90(1), or
  - (ii) in the case of a referred civil partnership to which paragraph 3 applies, the district registrar is authorised to fix a date for the date of registration before the expiry of the relevant 70 day period, and
- (b) the authorisation mentioned in sub-paragraph (i) or, as the case may be, (ii) of paragraph (a) is given at a time when the duty under section 94 to complete a civil partnership schedule in respect of the referred civil partnership has not arisen in accordance with paragraph 2,

the duty under section 94 to complete the civil partnership schedule arises on the giving of the authorisation, subject to any other requirements applicable to the completion of the schedule being met.

(2) But the requirements of paragraph 2 are not applicable in such a case.

(3) The Secretary of State is not prevented from deciding to conduct, conducting, or continuing, an investigation if the civil partnership schedule is completed as mentioned in sub-paragraph (1).

(4) But in such a case, nothing in the 2014 Act requires the Secretary of State to decide whether to conduct, or to continue, an investigation.

(5) In this paragraph “investigation” means an investigation, conducted following a decision by the Secretary of State under section 48 of the 2014 Act, whether a proposed civil partnership is a sham.”

4. In section 89(a) (civil partnership notice book), after subsection (3) insert—

“(4) Subsection (1) is subject to section 88E.”

5.—(1) Section 91 (early registration) is amended as follows.

(2) After subsection (1) insert—

“(1A) Unless subsection (1B) applies, if a proposed civil partnership is referred to the Secretary of State under section 88F(b) (“the referred civil partnership”) the Registrar General may not authorise the district registrar to fix the specified date mentioned in subsection (1) as the date for registration of the referred civil partnership without the consent of the Secretary of State.

(1B) This subsection applies if the request made under subsection (1) is made because a party to the referred civil partnership is gravely ill and not expected to recover.”

6. After section 94 insert—

**“Notice of proposed civil partnership: false information or evidence**

**94A.**—(1) A district registrar may refuse to complete a civil partnership schedule under section 94 in a case where—

- (a) a civil partnership notice has been submitted under section 88(1), and
- (b) the district registrar has reasonable grounds for suspecting that a relevant decision was made incorrectly because of the provision of false information or evidence in or accompanying that notice.

(2) If the district registrar refuses to complete a civil partnership schedule under subsection (1), the parties to the proposed civil partnership are to be taken not to have submitted a notice of proposed civil partnership under section 88; but that does not prevent

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(a) Subsection (3) was inserted by section 24 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).  
 (b) Section 88F is inserted by paragraph 2 of Schedule 1 to this Order.



criminal proceedings from being brought against either party, or any other person, in relation to the submission of notice.

(3) This section is without prejudice to any other powers of district registrars to refuse to complete a civil partnership schedule.

(4) In this section—

“evidence” includes a photograph or other image;

“exempt person” has the same meaning as in section 88F;

“relevant decision” means a decision of a district registrar that a party to the proposed civil partnership is an exempt person.”

7. In section 126(1) (regulations) after “Chapters 2” insert “(except in section 88F)”.

8. In section 135(1) (interpretation) in the appropriate places insert—

(a) ““2014 Act” means the Immigration Act 2014(a);”;

(b) ““relevant national” has the same meaning as in section 30A(b);”.

## SCHEDULE 4

Article 2(4)

### Amendments to the Immigration Act 2014

1. The Immigration Act 2014 is amended as follows.

2. In section 48 (decision whether to investigate)—

(a) after subsection (1A)(c) insert—

“(1B) This section also applies if—

(a) a district registrar refers a proposed marriage to the Secretary of State under section 3F of the Marriage (Scotland) Act 1977, or

(b) a district registrar refers a proposed civil partnership to the Secretary of State under section 88F of the Civil Partnership Act 2004.”;

(b) after subsection (8B)(d) insert—

“(8C) In the case of a proposed marriage referred to the Secretary of State as mentioned in subsection (1B)(a), the Secretary of State must give notice of the decision made under this section to—

(a) both of the parties to the proposed marriage, and

(b) the district registrar who referred the proposed marriage to the Secretary of State.

(8D) In the case of a proposed civil partnership referred to the Secretary of State as mentioned in subsection (1B)(b), the Secretary of State must give the notice of the decision made under this section to—

(a) both of the parties to the proposed civil partnership, and

(b) the district registrar who referred the proposed civil partnership to the Secretary of State.”

3. In section 50(11) (conduct of investigation) after the definition of “relevant requirement” (in relation to a proposed marriage or civil partnership under the law of Northern Ireland)(e) insert—

---

(a) 2014 c. 22.

(b) Section 30A was inserted by section 52 of, and paragraph 27 of Schedule 4 to, the Immigration Act 2014 (c. 22).

(c) Subsection (1A) is inserted by a parallel extension order in respect of Northern Ireland (the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland) Order 2015 (S.I. 2015/395)) (“Northern Ireland Order”).

(d) Subsection (8B) is inserted by paragraph 2 of Schedule 4 to the Northern Ireland Order.

(e) Parallel amendments to section 50 are made by the Northern Ireland Order.

““relevant requirement” in relation to a proposed marriage or civil partnership under the law of Scotland, means any requirement imposed by law including a requirement imposed by or in accordance with—

- (a) subsection (3);
- (b) regulations under paragraph 4 of Schedule 5;
- (c) section 3(4A)(a), 3A or 3B of the Marriage (Scotland) Act 1977;
- (d) section 88(8)(b), 88A or 88B of the Civil Partnership Act 2004.”

**4.**—(1) Section 62(1) (interpretation of Part 4) is amended as follows.

(2) In the definition of “Registrar General” after paragraph (b)(c) insert—

“(c) in relation to regulations that apply to proposed marriages or civil partnerships under the law of Scotland, the Registrar General for Scotland.”

(3) In the definition of “relevant statutory period”—

(a) after paragraph (aa)(d) insert—

“(ab) in relation to a proposed marriage under the law of Scotland, the period—

- (i) beginning the day after receipt by the district registrar of the marriage notice (as entered by the district registrar in the marriage notice book in accordance with section 4(1) of the Marriage (Scotland) Act 1977(e)), and
- (ii) ending at the end of the period of 28 days beginning with that day;”;

(b) after paragraph (ba) insert—

“(bb) in relation to a proposed civil partnership under the law of Scotland, the period—

- (i) beginning the day after the particulars of the proposed civil partnership are entered in the civil partnership book in accordance with section 89(1) of the Civil Partnership Act 2004(f), and
- (ii) ending at the end of the period of 28 days beginning with that day;”.

(4) In the definition of “section 48 notice” after paragraph (b)(g) insert—

“(c) in relation to a proposed marriage or civil partnership under the law of Scotland, a notice given under section 48(8C) or (8D);”.

## SCHEDULE 5

Article 2(5)

### Information

#### PART 1

#### General provisions

#### Interpretation

**1.** In this Schedule—

“1977 Act” means the Marriage (Scotland) Act 1977;

- 
- (a) Section 3(4A) was inserted by section 17 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).
  - (b) Section 88(8) was inserted by section 25 of the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5).
  - (c) Sub-paragraph (b) is inserted by the Northern Ireland Order.
  - (d) Sub-paragraphs (aa) and (ba) are inserted by the Northern Ireland Order.
  - (e) 1977 c. 15; section 4 is amended by paragraph 4 of Schedule 3 to this Order; other amendments have been made to section 15 but they are not relevant to this Order.
  - (f) 2004 c. 33.
  - (g) The definition of “section 48 notice” is substituted by the Northern Ireland Order.

“2004 Act” means the Civil Partnership Act 2004;

“2014 Act” means the Immigration Act 2014(a);

“district registrar” is to be construed in accordance with section 7 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965(b) and includes a senior registrar, an assistant registrar and an interim district registrar for a registration district;

“registration official” means—

- (a) the Registrar General for Scotland; or
- (b) a district registrar.

### **Limitations on powers**

2. This Schedule does not authorise—

- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1988(c), of personal data which are not exempt from those provisions, or
- (b) a disclosure which is prohibited under Part 1 of the Regulation of Investigatory Powers Act 2000(d).

### **No breach of confidentiality etc**

3. Subject to paragraph 2, a disclosure of information which is authorised by this Schedule does not breach—

- (a) an obligation of confidence owed by the person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

### **Retention, copying and disposal of documents**

4. A person to whom a document is supplied under any provision of this Schedule may—

- (a) retain the document;
- (b) copy the document;
- (c) dispose of the document in such manner as the person thinks appropriate.

### **Saving for existing powers**

5. This Schedule does not limit any other power under which—

- (a) information may be disclosed, or
- (b) documents may be supplied.

## **PART 2**

### **Disclosure of information etc where proposed marriage or civil partnership referred to Secretary of State**

6.—(1) This paragraph applies if—

- (a) a district registrar refers a proposed marriage to the Secretary of State under section 3F of the 1977 Act, or

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(a) 2014 c. 22.

(b) 1965 c. 49; section 7 was amended by S.I. 1974/812 and section 7 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14).

(c) 1998 c. 29.

(d) 2000 c. 23.

- (b) a district registrar refers a proposed civil partnership to the Secretary of State under section 88F of the 2004 Act.
- (2) The Secretary of State may—
  - (a) disclose relevant information to a registration official, or
  - (b) supply a document containing relevant information to a registration official.
- (3) In this paragraph “relevant information” means any of the following information—
  - (a) the fact that the proposed marriage or civil partnership has been referred to the Secretary of State;
  - (b) the names of the parties to the proposed marriage or civil partnership;
  - (c) any information included with the referral in accordance with regulations under paragraph 5 of Schedule 5 to the 2014 Act;
  - (d) any address of a party to the proposed marriage or civil partnership notified to the Secretary of State in accordance with such regulations or regulations under paragraph 4 of that Schedule;
  - (e) details of any immigration enforcement action taken by the Secretary of State in respect of a party to the proposed marriage or civil partnership (including any action taken after the solemnisation of the marriage or formation of the civil partnership);
  - (f) details of any immigration decision taken wholly or partly by reference to the marriage or civil partnership (whether while it was proposed or after it was solemnised or formed).

## PART 3

### Disclosure of information etc for immigration purposes etc

#### **Disclosures by registration officials**

- 7.—**(1) A registration official may—
- (a) disclose any information held by the registration official, or
  - (b) supply any document held by the registration official,
- to the Secretary of State, or to another registration official, for use for either of the following purposes.
- (2) Those purposes are—
- (a) immigration purposes;
  - (b) purposes connected with the exercise of functions relating to—
    - (i) the referral of proposed marriages to the Secretary of State under section 3F of the 1977 Act, or
    - (ii) the referral of proposed civil partnerships to the Secretary of State under section 88F of the 2004 Act.
- (3) In this paragraph “immigration purposes” means—
- (a) the administration of immigration control under the Immigration Acts;
  - (b) the prevention, detection, investigation or prosecution of criminal offences relating to immigration;
  - (c) the imposition of penalties or charges under Part 3 of the Immigration and Asylum Act 1999<sup>(a)</sup> (bail);
  - (d) the provision of support for asylum-seekers and their dependants under Part 6 of that Act (support for asylum-seekers);

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(a) 1999 c. 33.

- (e) such other purposes as may be specified by the Secretary of State by order under section 54(6) of the 2014 Act.

8. A registration official may disclose to another registration official—

- (a) the fact that a suspicion about a marriage or civil partnership has been reported to the Secretary of State under section 24 or 24A of the Immigration and Asylum Act 1999(a), and
- (b) the content of any such report,

(whether or not the suspicion was reported by the registration official making the disclosure).

### **Disclosures by the Secretary of State**

9.—(1) The Secretary of State may—

- (a) disclose any information held by the Secretary of State, or
- (b) supply any document held by the Secretary of State,

to a registration official for use for verification purposes.

(2) In this paragraph “verification purposes” means—

- (a) assisting in the verification of information provided to a relevant official by a person giving—
  - (i) notice of intention to marry under section 3 of the 1977 Act, or
  - (ii) notice of intention to enter civil partnership under section 88 of the 2004 Act;
- (b) assisting in the verification of the immigration status of a person who contacts a relevant official in connection with the exercise of a function by a registration official;
- (c) assisting in the verification of whether a person who contacts a relevant official in connection with the exercise of a function by a registration official—
  - (i) is suspected of involvement in crime relating to immigration, or
  - (ii) has been convicted of an offence relating to immigration.

(3) In this paragraph “relevant official” means—

- (a) a registration official, or
- (b) any other person employed to assist the exercise of functions by registration officials.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order extends the referral and investigation scheme for sham marriages and civil partnerships contained in the Immigration Act 2014 (c. 22) to proposed marriages and civil partnerships in Scotland.

The Scheme is principally extended by way of amendments to the relevant legislation that applies in Scotland.

Schedule 1 to the Order amends the Marriage (Scotland) Act 1977 (c. 15) (“1977 Act”). Paragraph 2 inserts new sections 3A to 3F. Sections 3A to 3C require those who are not relevant nationals (a definition of relevant national is inserted by paragraph 8) to provide specified information and evidence at the same time as they submit notice of intention to marry and declare in writing that that information and evidence is true. Section 3D permits the district registrar to reject that information or evidence, or any evidence that may have been required by the district registrar in

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(a) Subsection (4) of section 24 was amended by S.I. 2008/678; subsection (5) was substituted and subsection (6) inserted by section 55 of the Immigration Act 2014 (c. 22). Section 24A was inserted by section 261 of, and paragraph 162 of Schedule 27 to, the Civil Partnership Act 2004 (c. 33); subsection (4) was amended by S.I. 2008/678; and subsection (5) substituted and subsection (6) inserted by section 55 of the Immigration Act 2014.

respect of a person's nationality, if it is suspected to be false. Section 3E treats notice as not submitted if certain information or evidence has not been provided. Section 3F requires a district registrar to refer a proposed marriage to the Secretary of State for possible investigation if the district registrar has decided that one or both of the parties is not an exempt person. An exempt person is a person who is a relevant national, is a non-EEA national with an EU right of permanent residence, is exempt from immigration control, is settled in the United Kingdom or has a relevant visa. What constitutes a relevant visa will be specified in regulations made by the Secretary of State. Section 3F(7) also introduces new Schedule 1A to the 1977 Act. This Schedule sets out the modifications that will apply to the 1977 Act when a marriage has been referred to the Secretary of State under section 3F. In particular, this Schedule makes provision for an extended waiting period whereby a marriage schedule may not be completed (and thereby the marriage may not go ahead) if the Secretary of State gives notice that she intends to investigate whether the proposed marriage is a sham.

Paragraph 5 inserts a new section 6(4ZA) and (4ZB) and paragraph 7 inserts a new section 19(1ZA) and (1ZB). Where a proposed marriage has been referred to the Secretary of State under section 3F, any request to reduce the period in which the marriage schedule may be completed (section 6) or issued (section 19) may only be authorised by the Registrar General with the consent of the Secretary of State, unless the request is made because one of the parties is gravely ill and not expected to recover.

Paragraph 6 inserts a new section 6A which will enable a district registrar to refuse to complete a marriage schedule where he or she has reasonable grounds for suspecting that the decision that a party to the marriage was an exempt person (see above) was made incorrectly because of the provision of false information or evidence.

Schedule 2 makes consequential amendments to section 21 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) ("2004 Act"), whereby a marriage notice may only be submitted to the district registrar in a prescribed registration district. Unless both parties to a proposed marriage are exempt from immigration control or relevant nationals they will be required to submit their marriage notice to such a district registrar (up until now it was those subject to immigration control who were subject to this requirement).

Schedule 3 makes the equivalent amendments to those made by Schedules 1 and 2 and described above to Part 3 of the Civil Partnership Act 2004 (c. 33). Except that the equivalent amendments to the provisions contained in section 21 of the 2004 Act, which are contained in Schedule 23 to the Civil Partnership Act 2004, are made by the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 (S.I. 2015/395).

Schedule 4 amends Part 4 of the Immigration Act 2014 to give effect to the referral and investigation scheme established by that Part to proposed marriages and civil partnerships under the law of Scotland (and referred to the Secretary of State by virtue of the amendments made to the 1977 Act and Part 3 of the Civil Partnership Act 2004 by Schedules 1 and 3 of this Order).

Schedule 5 makes provision for the disclosure of information where a proposed marriage or civil partnership is referred to the Secretary of State and for immigration purposes. It permits the disclosure of information to the Secretary of State by district registrars and the Registrar General for Scotland and from the Secretary of State to district registrars and the Registrar General for Scotland. It makes equivalent provision to that made by Parts 1, 2 and 4 of Schedule 6 to the Immigration Act 2014 in respect of England and Wales.

No impact assessment has been produced for this Order but an impact assessment was produced for the proposals now contained in Part 4 of the Immigration Act 2014 and which considered many aspects on a UK-wide basis. It is published at <https://www.gov.uk/government/publications/immigration-bill-part-4-marriage-and-civil-partnership>.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK2015022638 03/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/396>

ISBN 978-0-11-113105-3



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