

2015 No. 122

MARRIAGE

CIVIL PARTNERSHIP

IMMIGRATION

The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015

Made - - - - - *2nd February 2015*

Laid before Parliament *5th February 2015*

Coming into force - - - *2nd March 2015*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 49(3) and (4), 61(1) and (2) and 74(8)(d) of the Immigration Act 2014^(a) (“the Act”).

In accordance with section 61(3) of the Act the Secretary of State has consulted the Registrar General for England and Wales before making these Regulations^(b).

PART 1

General

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015.
- (2) They come into force on 2nd March 2015.
- (3) Regulations 5 to 7 extend to England and Wales only.

Interpretation

2. In these Regulations—

(a) 2014 c. 22.

(b) The definition of “Registrar General” in section 62 of the Immigration Act 2014 was amended to include the Registrars General for Scotland and Northern Ireland by paragraph 4 of Schedule 4 to the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 (S.I. 2015/XXXX) in relation to the former and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 (S.I. 2015/XXXX) in relation to the latter (subject to Parliamentary approval of those Orders).

“1949 Act” means the Marriage Act 1949(a);
“1971 Act” means the Immigration Act 1971(b);
“2004 Act” means the Civil Partnership Act 2004(c);
“2014 Act” means the Immigration Act 2014;
“party” means a party to a proposed marriage or civil partnership and “other party” is to be construed accordingly.

PART 2

Exempt Persons

Persons exempt from immigration control

3.—(1) A person (“P”) is exempt from immigration control if P—

- (a) has the right of abode in the United Kingdom under section 2(1)(b) of the 1971 Act (Commonwealth citizens with a right of abode)(d),
- (b) is exempt from the provisions of the 1971 Act by virtue of section 8(3) or (4) of that Act(e) (exceptions for seamen, aircrews and other special cases),
- (c) subject to paragraph (2), is exempt from the provisions of the 1971 Act by virtue of the Immigration (Exemption from Control) Order 1972(f) (“the 1972 Order”), or
- (d) is exempt from the provisions of the 1971 Act by virtue of section 20 of the State Immunity Act 1978(g) (heads of State).

(2) Sub-paragraph (c) of paragraph (1) does not apply to a person who is exempt from the provisions of the 1971 Act solely by virtue of article 5 of the 1972 Order.

Relevant visa

4.—(1) Subject to paragraph (2), the kinds of visa or other authorisation specified for the purpose of section 49(4) of the 2014 Act are—

- (a) entry clearance or leave to enter as a visitor under the immigration rules for the purpose of marriage or civil partnership,
- (b) entry clearance, leave to enter or leave to remain as a fiancé(e) or proposed civil partner under Appendix FM to the immigration rules,
- (c) entry clearance, leave to enter or leave to remain as a fiancé(e) or proposed civil partner under Appendix Armed Forces to the immigration rules,
- (d) entry clearance, leave to enter or leave to remain as a fiancé(e) or proposed civil partner given outside the provisions of the immigration rules.

(2) A visa or other authorisation mentioned in paragraph (1) (“a relevant visa”) is specified for the purpose of section 49(4) only if the relevant visa was given to a party in respect of a proposed

(a) 1949 c. 76.
(b) 1971 c. 77.
(c) 2004 c. 33.
(d) Section 2 was substituted by section 39 of the British Nationality Act 1981 (c. 61) and subsection (2) was subsequently amended by section 3 of the Immigration Act 1988 (c. 14).
(e) Subsection (3) was amended by paragraph 2 of Schedule 4 to the British Nationality Act 1981 and section 4 of the Immigration Act 1988; subsection (3A) (which qualifies subsection (3)) was inserted by section 4 of the Immigration Act 1988 and substituted by section 6 of the Immigration and Asylum Act 1999 (c. 33); subsection (4) was amended by paragraph 2 of Schedule 4 to, the British Nationality Act 1981 and Part 2 of Schedule 1 to the Statute Law (Repeals) Act 1995 (c. 44).
(f) S.I. 1972/1613 as amended by S.I. 1975/617, S.I. 1977/693, S.I. 1982/1649, S.I. 1985/1809, S.I. 1997/1402, S.I. 1997/2207 and S.I. 2004/3171.
(g) 1978 c. 33.

marriage to, or (as the case may be) a proposed registration of a civil partnership with, the other party (whether or not the other party is named in the relevant visa).

(3) In this regulation—

“entry clearance” has the same meaning as in section 33 of the 1971 Act(a) (interpretation);

“immigration rules” means the rules laid down under section 3(2) of the 1971 Act (general provisions for regulation and control);

“leave to enter” or “leave to remain” means leave to enter, or remain in, the United Kingdom given in accordance with section 3 of the 1971 Act(b).

PART 3

Notices

Notices given by the Secretary of State to a party

5.—(1) This regulation applies to a notice required to be given by the Secretary of State to a party under—

- (a) Part 4 of the 2014 Act,
- (b) the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015(c),
- (c) section 31(5EB) of the 1949 Act(d) (application to reduce waiting period), or
- (d) section 12(5) of the 2004 Act(e) (application to shorten waiting period).

(2) A notice to which this regulation applies may be—

- (a) given by hand to the party or the party’s representative,
- (b) sent by fax to the party or the party’s representative,
- (c) sent by postal service in which delivery or receipt is recorded (“recorded delivery”) to the party’s usual address (or, if the party’s usual address is not in the United Kingdom, the party’s UK contact address),
- (d) sent by ordinary first or second class postal service (“ordinary post”) to the party’s usual address (or, if the party’s usual address is not in the United Kingdom, the party’s UK contact address),
- (e) sent by recorded delivery to the party’s representative,
- (f) sent by ordinary post to the party’s representative,
- (g) sent by email to the party or the party’s representative,
- (h) sent by document exchange to the party’s or the party’s representative’s document exchange number or address,
- (i) sent by courier to the party’s usual address (or, if the party’s usual address is not in the United Kingdom, the party’s UK contact address),
- (j) sent by courier to the party’s representative.

(a) The definition of “entry clearance” was amended by section 39(6) of, and paragraph 2 of Schedule 4 to, the British Nationality Act 1981 (c. 61) and section 10 of, and paragraph 5 of the Schedule to, the Immigration Act 1988 (c. 14).

(b) Relevant amendments made to section 3 are as follows: subsection (1) was amended by section 39(6) of, and paragraphs 2 and 4 of Schedule 4 to, the British Nationality Act 1981 (c. 61), section 12 of, and paragraph 1 of Schedule 2 to, the Asylum and Immigration Act 1996 (c. 49), section 169 of, and paragraphs 43 and 44 of Schedule 14 to, the Immigration and Asylum Act 1999 (c. 33), sections 16 and 58 of, and the Schedule to, the UK Borders Act 2007 (c. 30) and section 50 of the Borders, Citizenship and Immigration Act 2009 (c. 11); and subsection (3) was amended by section 10 of, and paragraph 1 of the Schedule to, the Immigration Act 1988 (c. 14).

(c) S.I. 2015/XXXX.

(d) Subsections (5EA) to (5EE) were inserted by paragraph 10 of Schedule 4 to the Immigration Act 2014 (c. 22).

(e) Subsections (5) to (8) were inserted by paragraph 23(3) of Schedule 4 to the Immigration Act 2014.

(3) But a notice may not be given under sub-paragraph (b), (g) or (h) of paragraph (2) unless a fax number, or (as the case may be) email address or document exchange number or address, has been provided by the party or the party's representative for that purpose.

(4) Where—

- (a) both parties to a proposed marriage or civil partnership have the same usual address (or if that usual address is not in the United Kingdom, the same UK contact address) or the same representative, and
- (b) the Secretary of State is required to give notice to both parties at the same time under a provision mentioned in paragraph (1),

the notices may be included in the same envelope addressed to both parties and sent to that address or that representative in accordance with sub-paragraphs (c) to (f) or (h) to (j) of paragraph (2).

(5) In sub-paragraphs (c), (d) and (i) of paragraph (2) and in paragraph (4), a reference to a party's—

- (a) “usual address” is a reference to that party's usual address notified in accordance with—
 - (i) section 27E(7) or 28C(6) or regulations made under section 28D of the 1949 Act^(a), or
 - (ii) section 8A(7) or 9A(6) or regulations made under section 9B of the 2004 Act^(b);
- (b) “UK contact address” is a reference to that party's UK contact address notified in accordance with—
 - (i) section 27E(7) or 28C(6) or regulations made under section 28D of the 1949 Act, or
 - (ii) section 8A(7) or 9A(6) or regulations made under section 9B of the 2004 Act.

(6) In this regulation and regulation 7 a reference to a party's “representative” is a reference to a representative authorised by the party to accept notice given in accordance with this regulation on the party's behalf.

Notices given by the Secretary of State to superintendent registrars and registration authorities

6.—(1) This regulation applies to a notice required to be given by the Secretary of State to a superintendent registrar under—

- (a) Part 4 of the 2014 Act,
- (b) section 31(5EB) of the 1949 Act, or
- (c) paragraph 2 of Schedule 3A to the 1949 Act^(c) (referred marriages: no certificate to be issued until decision about investigation).

(2) This regulation also applies to a notice required to be given by the Secretary of State to a registration authority under—

- (a) Part 4 of the 2014 Act,
- (b) section 12(5) of the 2004 Act, or
- (c) paragraph 2 of Schedule 3A to the 2004 Act^(d) (referred civil partnerships: no civil partnership schedule to be issued until decision about investigation).

(3) A notice to which this regulation applies may be—

- (a) given by hand,
- (b) sent by email to an email address notified for that purpose,

(a) Section 27E was inserted by paragraph 4, and sections 28C and 28D by paragraph 7, of Schedule 4 to the Immigration Act 2014 (c. 22).

(b) Section 8A was inserted by paragraph 20, and sections 9A and 9B by paragraph 21, of Schedule 4 to the Immigration Act 2014.

(c) Schedule 3A was inserted by paragraph 9 of Schedule 4 to the Immigration Act 2014.

(d) Schedule 3A was inserted by paragraph 25 of Schedule 4 to the Immigration Act 2014.

- (c) otherwise transmitted electronically in an agreed form,
 - (d) sent by postal service in which delivery or receipt is recorded to an address notified for that purpose (“the notified address”),
 - (e) sent by ordinary first or second class postal service to the notified address,
 - (f) sent by courier to the notified address.
- (4) In paragraph (3)—
- “agreed” means agreed between the superintendent registrar or (as the case may be) the registration authority and the Secretary of State,
- “notified” means notified to the Secretary of State by the superintendent registrar or (as the case may be) the registration authority.

Presumptions about receipt of notice

7.—(1) Where a notice is given in accordance with regulation 5 or 6, it is presumed to have been received by the person to whom it is given (unless the contrary is proved)—

- (a) where the notice is sent by postal service in which delivery or receipt is recorded, on the second day after it was sent by postal service;
- (b) where the notice is sent by ordinary first or second class postal service, in the ordinary course of post;
- (c) where the notice is sent by document exchange, on the next working day after the day on which it was sent;
- (d) where the notice is given by hand or sent by fax, email or courier, on the day it was given or (as the case may be) sent; and
- (e) where the notice is transmitted electronically under paragraph (3)(c) of regulation 6, on the day after the day on which it was transmitted.

(2) For the purposes of paragraph (1)(a) and (b) the day on which a notice is presumed to have been received is to be calculated—

- (a) excluding the day on which the notice is posted; and
- (b) excluding any day which is not a working day.

(3) In this regulation “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a) in the part of the United Kingdom to which the notice is sent.

Home Office
2nd February 2015

James Brokenshire
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 4 of the Immigration Act 2014 (c. 22) establishes a scheme for the referral of proposed marriages and civil partnerships in England and Wales to the Secretary of State. Part 4 was extended to cover proposed marriages and civil partnerships in Scotland and Northern Ireland by the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order (S.I. 2015/xxxx) and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order (S.I. 2015/xxxx).

On receipt of a referral the Secretary of State must decide whether to investigate whether the proposed marriage or civil partnership is a sham. All proposed marriages or civil partnerships where one party is, or both parties are, not exempt must be referred to the Secretary of State. Exempt persons include (amongst others) those are who are exempt from immigration control and

(a) 1971 c. 80.

those who have a relevant visa. Regulation 3 sets out who is exempt from immigration control for this purpose and regulation 4 specifies the kinds of visa which are relevant visas for this purpose.

Regulations 5 to 7 make provision for giving of notices by the Secretary of State both to the parties to the proposed marriage or civil partnership and to the superintendent registrar or registration authority which has referred the proposed marriage or civil partnership and (if different) the registration authority responsible for issuing the civil partnership schedule. Regulations 5 and 6 provide for the way in which notices may be given and regulation 7 sets out when, unless the contrary is proved, a notice will be presumed to have been given. Regulations 5 to 7 apply in England and Wales only. Separate, but equivalent, provision will be made in respect of Scotland and Northern Ireland in regulations made under Schedule 5 to the Immigration Act 2014.

An impact assessment has not been prepared for these Regulations as no impact on the voluntary or private sectors is foreseen. An impact assessment was prepared in respect of the proposals now forming Part 4 of the Immigration Act 2014 and is available at <https://www.gov.uk/government/publications/immigration-bill-part-4-marriage-and-civil-partnership>.

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