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## EXPLANATORY NOTE

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

This Order makes changes to sections 19, 20, 21, 22, 23 and 25 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (“the 2004 Act”) to remove the incompatibility of section 19(1) with a Convention right.

Section 19(3) requires persons who are subject to immigration control, and who do not have an entry clearance granted for the purpose of marriage, to obtain the permission of the Secretary of State to marry in the United Kingdom. This is commonly referred to as the Certificate of Approval Scheme.

In the case of *The Queen on the application of Baiai and others v Secretary of State for the Home Department* [2006] EWHC 823 QB, the Administrative Court found that section 19(3) of the 2004 Act was contrary to article 14 of the European Convention on Human Rights (prohibition on discrimination) when read with article 12 (the right to marry) in that the exemption for persons marrying in the Church of England constituted discrimination on the grounds of religion and nationality. The Home Office did not seek to appeal the finding in respect of article 14.

In July 2008 [2008 UKHL 53] the House of Lords upheld the declaration of incompatibility, but confined it to section 19(1) of the 2004 Act, finding that the incompatibility derived solely from the Anglican exemption; namely that the requirement in section 19(3) to obtain the permission of the Secretary of State did not apply to persons entering Church of England marriages.

In order to remove the incompatibility, Article 2 makes changes to sections 19 and 20 of the 2004 Act, to remove the Certificate of Approval Scheme, as it applies in England and Wales.

Article 2 also makes consequential amendments to sections 21 to 23 of the 2004 Act in respect of Scotland and Northern Ireland, and to section 25.

Article 4 makes a consequential amendment to the Immigration, Asylum and Nationality Act 2006 (Commencement No. 6) Order 2007 to remove the saving in relation to section 25 of the 2004 Act contained in article 6 of that Order.

Article 5 makes consequential amendments to Schedule 23 to the Civil Partnership Act 2004 in order to remove the Certificate of Approval Scheme as it applies to civil partnerships in England and Wales, Scotland and Northern Ireland.

Articles 3 and 6 make consequential amendments to the Immigration (Procedure for Marriage) Regulations 2005, and the Immigration (Procedure for Formation of Civil Partnerships) Regulations 2005, to remove various provisions relating to applications for permission to marry and enter a civil partnership.

Article 7 makes consequential amendments to the Immigration and Nationality (Fees) Order 2007, to remove provisions relating to the requirement to pay a fee for applications for permission to marry and to form a civil partnership.

Article 1(2) provides that any repeal, revocation or other amendment made by this Order shall have the same extent as the provision which it repeals, revokes or otherwise amends, including extent by virtue of an Order in Council. In this way, the Order removes the requirement to obtain permission to marry as it applies in the Isle of Man by virtue of an Order in Council.

Article 8 also makes consequential amendments to the Immigration (Isle of Man) Order 2008, which applied sections 19, 20 and 25 of the 2004 Act to the Isle of Man with various modifications.