
EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and replaces (with some technical amendments) the Consular Marriages and Marriages under Foreign Law Order 2014 (S.I. 2014/1110 “the original order”).

This Order is made under Schedule 6 of the Marriage (Same Sex Couples) Act 2013 which empowers Her Majesty, by Order in Council, to make provision for two people to marry in countries or territories outside the United Kingdom in the presence of a registration officer (consular official). Schedule 6 also empowers Her Majesty, by Order in Council, to make provision for the issuing of certificates of no impediment where a marriage is to take place under foreign law.

Part 2 of this Order sets out the process for consular marriages, which are those conducted by registration officers. Article 2 provides that consular marriages may only take place in those territories or countries which have notified the Secretary of State that they do not object to such marriages. This enables countries or territories to specify that they do not permit certain types of marriage, for example those marriages involving one of their own nationals, or marriages of couples of the same sex.

Article 4 sets out a residency requirement of seven days before the notice of intention to marry can be made. Article 4 also sets out the details which must be included in a notice of intention to marry. This includes the part of the United Kingdom, which must be either England and Wales or Scotland, which the parties have jointly elected as the relevant part of the United Kingdom. The relevant part of the United Kingdom determines the law under which the parties will be married and the conditions governing that marriage. Consular marriages under this Order may only be solemnized according to the law of England and Wales or the law of Scotland. Consular marriages solemnized according to the law of Northern Ireland will continue to be conducted under the Foreign Marriage Act 1892 and the Foreign Marriage Order 1970. Article 4 stipulates that the notice must be displayed for 14 days in a conspicuous place. This enables objections to be entered.

Article 5 makes provision for consent to be provided or withheld according to the law of the relevant part of the United Kingdom. Article 6 makes provision for entering an objection to the proposed marriage. Article 7 provides that once a marriage notice has been issued, the marriage must take place within 3 months otherwise the marriage will not be valid.

Article 8 sets out the oath that must be made by each party to the marriage before the marriage is solemnized and article 9 makes provision about the solemnization of the marriage itself.

Article 10 makes provision about keeping a register of marriage and sending copies of this register to the Registrar General for England and Wales (who will forward on any entries of marriages solemnized under the law of Scotland to the Registrar General for Scotland). It also ensures that fees can be charged in relation to certified copies issued by Registrar Generals.

Article 11 provides that once a consular marriage has been solemnized, this is to be accepted as conclusive proof that the requirements were complied with in relation to the marriage. Article 12 gives the Secretary of State the discretion to waive certain requirements if there is good reason to do so. Article 13 makes provision for an appeal against a registration officer’s decision to refuse to marry two people on the basis that to do so would be inconsistent with international law or the comity of nations.

Part 3 of the Order makes provision about certificates of no impediment where these are required under foreign law to be produced before a British National may marry under that law. Articles 14 and 15 contain provisions for Superintendent Registrars (in England and Wales – Scotland and

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Northern Ireland have separate legislative provision) to issue certificates of no impediment for overseas marriages. Article 14 contains the details of information required in an application and article 15 provides for fees to be paid and the application notice to be displayed in a conspicuous place. Articles 16 and 17 contain provisions enabling consular certificates of no impediment to be issued; article 16 sets out a residency requirement of three days before a British National may make an application for a certificate of no impediment. Article 16 also sets out the details required in the application notice. Article 17 provides that the application notice must be displayed for seven days in a conspicuous place. This enables objections to be made. The registration officer cannot issue a certificate if there is any reason to believe that the certificate should not be issued.

Part 4 of the Order contains revocations and makes consequential amendments.