



# Immigration Act 2014

## 2014 CHAPTER 22

### PART 4

#### MARRIAGE AND CIVIL PARTNERSHIP

#### CHAPTER 1

##### REFERRAL AND INVESTIGATION OF PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS

##### *Investigation*

#### **48 Decision whether to investigate**

- (1) This section applies if—
  - (a) a superintendent registrar refers a proposed marriage to the Secretary of State under section 28H of the Marriage Act 1949, or
  - (b) a registration authority refers a proposed civil partnership to the Secretary of State under section 12A of the Civil Partnership Act 2004.
- (2) The Secretary of State must decide whether to investigate whether the proposed marriage or civil partnership is a sham.
- (3) The Secretary of State may not decide to conduct such an investigation unless conditions A and B are met.
- (4) Condition A is met if the Secretary of State is satisfied that—
  - (a) only one of the parties to the proposed marriage or civil partnership is an exempt person, or
  - (b) neither of the parties are exempt persons.
- (5) Condition B is met if the Secretary of State has reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham.

- (6) In making the decision whether to investigate, regard must be had to any guidance published by the Secretary of State for this purpose.
- (7) In the case of a proposed marriage, 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 superintendent registrar who referred the proposed marriage to the Secretary of State.
- (8) In the case of a proposed civil partnership, the Secretary of State must give notice of the decision made under this section to—
  - (a) both of the parties to the proposed civil partnership,
  - (b) the registration authority who referred the proposed civil partnership to the Secretary of State, and
  - (c) if different, the registration authority responsible for issuing the civil partnership schedule under section 14(1) of the Civil Partnership Act 2004 in relation to the proposed civil partnership.
- (9) The Secretary of State must make the decision, and give the notice, required by this section within the relevant statutory period.

#### **49 Exempt persons**

- (1) A person who is a party to a proposed marriage or civil partnership is an exempt person if the person—
  - (a) is a relevant national;
  - (b) has the appropriate immigration status; or
  - (c) holds a relevant visa in respect of the proposed marriage or civil partnership.
- (2) A person has the appropriate immigration status if the person—
  - (a) has a right of permanent residence in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972;
  - (b) is exempt from immigration control; or
  - (c) is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).
- (3) The question of whether a person is exempt from immigration control is to be determined in accordance with regulations made for this purpose by the Secretary of State.
- (4) A person holds a relevant visa if the person holds a visa or other authorisation that is of a kind specified for this purpose in regulations made by the Secretary of State.
- (5) The Secretary of State may not specify a visa or other authorisation under subsection (4) unless the Secretary of State considers that the purpose of issuing that kind of visa or authorisation is, or includes, enabling a person to enter or remain in the United Kingdom to marry or form a civil partnership.

## 50 Conduct of investigation

- (1) An investigation must be conducted in accordance with any regulations made by the Secretary of State for this purpose.
- (2) In conducting an investigation, regard must also be had to any guidance published by the Secretary of State for this purpose.
- (3) A relevant party must comply with a requirement specified in regulations made under section 51(4) if—
  - (a) the section 48 notice given to the relevant party states that he or she must do so, or
  - (b) the Secretary of State subsequently notifies the relevant party (orally or in writing) that he or she must do so;and the relevant party must comply with that requirement in the manner stated in the section 48 notice or in the Secretary of State’s notification (if such a manner is stated there).
- (4) As part of an investigation, the Secretary of State must decide whether or not each of the relevant parties has complied with the investigation (the “compliance question”).
- (5) The compliance question must be decided in accordance with any regulations made by the Secretary of State for this purpose.
- (6) In deciding the compliance question, regard must also be had to any guidance published by the Secretary of State for this purpose.
- (7) Within the 70 day period, the Secretary of State must—
  - (a) decide the compliance question; and
  - (b) give notice of that decision to the persons to whom the Secretary of State gave the section 48 notice relating to the proposed marriage or civil partnership.
- (8) If the Secretary of State’s decision is that one or both of the relevant parties have not complied with the investigation, the notice under subsection (7) must include a statement of the Secretary of State’s reasons for reaching that decision.
- (9) Regulations made under this section may, in particular, make provision about—
  - (a) the circumstances in which a relevant party is to be taken to have failed to comply with a relevant requirement;
  - (b) the consequences of a relevant party’s failure to comply with a relevant requirement.
- (10) The provision that may be made under subsection (9)(b) includes provision for the compliance question to be decided (in whole or in part) by reference to a relevant party’s compliance or non-compliance with one or more relevant requirements.
- (11) In this section—

“70 day period” means the period of 70 days beginning with the day on which the relevant statutory period begins;

“investigation” means an investigation, conducted following a decision by the Secretary of State under section 48, whether a proposed marriage or civil partnership is a sham;

“relevant party” means a person who is a party to a proposed marriage or civil partnership that is the subject of an investigation;

“relevant requirement” means any requirement imposed by law, including a requirement imposed by or in accordance with—

- (a) subsection (3);
- (b) section 27E, 28B or 28C of the Marriage Act 1949;
- (c) regulations under section 28D of that Act;
- (d) section 8A, or any of sections 9 to 9B, of the Civil Partnership Act 2004.

## **51 Investigations: supplementary**

- (1) A section 48 notice which states that the Secretary of State has decided to investigate whether a proposed marriage or civil partnership is a sham must include—
  - (a) notice that the compliance question must be decided within the period of 70 days mentioned in section 50(7);
  - (b) notice of the date on which that period will end;
  - (c) notice that a relevant party may be required to comply with one or more requirements imposed by the Secretary of State subsequently in accordance with section 50(3); and
  - (d) prescribed information about the investigation.
- (2) The section 48 notice may also include such other information as the Secretary of State considers appropriate.
- (3) For the purposes of subsection (1)(d) “prescribed information” means information prescribed by the Secretary of State by regulations; and the information that may be prescribed includes information about—
  - (a) the conduct of the investigation;
  - (b) requirements with which the relevant parties must comply in relation to the investigation;
  - (c) the consequence of a failure to comply with those or any other requirements;
  - (d) the possible outcomes of the investigation;
  - (e) the consequences of those outcomes.
- (4) The Secretary of State may, by regulations, specify requirements relating to the conduct of investigations which may be imposed on a relevant party by the section 48 notice or by the Secretary of State subsequently in accordance with section 50(3).
- (5) Regulations made under subsection (4) may, in particular, specify any of the following requirements—
  - (a) a requirement to make contact with a particular person or description of persons in a particular way (including by telephoning a particular number) within a particular time period;
  - (b) a requirement to be present at a particular place at a particular time;
  - (c) a requirement to be visited at home;
  - (d) a requirement to be interviewed;
  - (e) a requirement to provide information (whether orally or in writing);
  - (f) a requirement to provide photographs;
  - (g) a requirement to provide evidence.
- (6) The provisions of this Part, and any investigation or other steps taken under those provisions (including the decision of the compliance question), do not limit the powers of the Secretary of State in relation to marriages or civil partnerships that are, or are

suspected to be, a sham (including any powers to investigate such marriages or civil partnerships).

- (7) In this section “investigation”, “relevant party” and “compliance question” have the same meanings as in section 50.

### *Referral*

## **52 Referral of proposed marriages and civil partnerships in England and Wales**

Schedule 4 (referral of proposed marriages and civil partnerships in England and Wales) has effect.

### *Scotland and Northern Ireland*

## **53 Extension of scheme to Scotland and Northern Ireland**

- (1) The Secretary of State may, by order, make such provision as the Secretary of State considers appropriate for extending the referral and investigation scheme to any of the following—
- (a) proposed marriages under the law of Scotland;
  - (b) proposed civil partnerships under the law of Scotland;
  - (c) proposed marriages under the law of Northern Ireland;
  - (d) proposed civil partnerships under the law of Northern Ireland.
- (2) An order under this section may—
- (a) make provision having a similar effect to the provision made by section 58, Schedule 4, or Parts 1, 2 and 4 of Schedule 6;
  - (b) confer functions on any person;
  - (c) amend, repeal or revoke any enactment (including an enactment contained in this Act).
- (3) The power under subsection (2)(b) to confer functions includes power to impose a duty of referral on persons exercising functions in Scotland or Northern Ireland in relation to marriage or civil partnership.
- (4) But an order under this section may not impose that or any other duty, or otherwise confer functions, on—
- (a) the Scottish Ministers,
  - (b) the First Minister and deputy First Minister in Northern Ireland,
  - (c) a Northern Ireland Minister, or
  - (d) a Northern Ireland department.
- (5) In this section—
- “duty of referral” means a duty to refer a proposed marriage or proposed civil partnership to the Secretary of State in a case where—
    - (a) one of the parties is not an exempt person, or
    - (b) both of the parties are not exempt persons;
  - “enactment” includes—

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*Status: This is the original version (as it was originally enacted).*

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- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- “referral and investigation scheme” means the provision made by sections 48 to 51.

#### **54 Supplementary provision**

- (1) This section applies if the referral and investigation scheme is extended by an order under section 53 (an “extension order”).
- (2) The Secretary of State may make administrative regulations in connection with the application of the scheme—
  - (a) to proposed marriages or civil partnerships under the law of Scotland (insofar as the scheme is extended to them), and
  - (b) to proposed marriages or civil partnerships under the law of Northern Ireland (insofar as the scheme is extended to them).
- (3) For that purpose “administrative regulations” means regulations of any kind set out in Schedule 5 (sham marriage and civil partnership: administrative regulations).
- (4) The Secretary of State may by order make provision about—
  - (a) the information that must or may be given, or
  - (b) the matters in respect of which evidence must or may be given,
 in relation to proposed marriages or civil partnerships under the law of Scotland or Northern Ireland in cases where one or both of the parties is not a relevant national.
- (5) An order under subsection (4) may amend, repeal or revoke any enactment (including an enactment contained in this Act or in provision made by an extension order or an order under subsection (4)).
- (6) If an extension order makes provision (“information disclosure provision”) having similar effect to the provision made by paragraph 2 of Schedule 6 about the disclosure of information for immigration purposes, the Secretary of State may by order specify other immigration purposes (in addition to those specified in provision made by an extension order or in any provision made under this subsection) for which information may be disclosed under the information disclosure provision.
- (7) The Secretary of State must consult—
  - (a) the Registrar General for Scotland before making administrative regulations, or an order under subsection (4), in relation to proposed marriages or civil partnerships under the law of Scotland;
  - (b) the Registrar General for Northern Ireland before making administrative regulations, or an order under subsection (4), in relation to proposed marriages or civil partnerships under the law of Northern Ireland.
- (8) Expressions used in this section or Schedule 5 that are also used in section 53 have the same meanings in this section or Schedule 5 as in section 53.