
EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends the referral and investigation scheme (“the Scheme”) for sham marriages and civil partnerships contained in the Immigration Act 2014 (c. 22) to proposed marriages and civil partnerships in Northern Ireland. It also makes a number of small changes to legislation that applies to England and Wales and Scotland where those changes are necessary for the amendments made by this Order to work or where amendments are also required in respect of Scotland but it is expedient for those amendments to be included in one order rather than contained separately in the parallel order that is being made to extend the Scheme to Scotland (the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order [S.I. 2015/396] (“Scotland Order”)).

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

Schedule 1 to the Order amends the Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I. 3)) (“2003 Order”) and the Marriage Regulations (Northern Ireland) 2003 (S.R. (NI) 2003 No. 468). Paragraph 3 inserts new Articles 3A to 3E into the 2003 Order. Articles 3A to 3C require those who are not relevant nationals (a definition of relevant national is inserted by paragraph 2) to provide specified information and evidence at the same time as they serve notice of intention to marry and declare in writing that that information and evidence is true. Article 3D permits the registrar to reject that information or evidence, or any evidence that may have been required by the registrar in respect of a person’s nationality, if it is suspected to be false. Article 3E requires a registrar to refer a proposed marriage to the Secretary of State for investigation if the 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. Article 3E(6) also introduces new Schedule 2 to the 2003 Order. This Schedule sets out the modifications that will apply to the 2003 Order when a marriage has been referred to the Secretary of State under Article 3E. In particular this Schedule makes provision for an extended statutory 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 amends Article 4 of the 2003 Order, which requires the registrar to enter particulars of the proposed marriage in the marriage notice book. By virtue of the amendment made the registrar may not enter the particulars where certain information and evidence required by Articles 3A, 3B and 5 have not been provided. If this is the case marriage notice will be treated as not having been given (new paragraph 2B).

Paragraph 6 inserts a new Article 7A which will enable a registrar to refuse to complete a marriage schedule (or, if it has already been completed, cancel it) 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.

Paragraphs 8 and 9 amend the Marriage Regulations (Northern Ireland) 2003. In particular where a proposed marriage has been referred to the Secretary of State any application to the registrar to reduce the notice period may only be authorised by the Registrar General with the consent of the Secretary of State unless it is made because one of the parties is gravely ill and not expected to recover.

Schedule 2 makes consequential amendments to section 23 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), whereby a marriage notice may only be submitted

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to a prescribed registrar. 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 a prescribed registrar.

Schedule 3 makes the equivalent amendments to those made by Schedules 1 and 2 and described above to Part 4 of the Civil Partnership Act 2004 (c. 33), Schedule 23 to that Act, and the Civil Partnership Regulations (Northern Ireland) 2005 (S.R.(NI) 2005 No. 482). The provisions of Schedule 23 that apply to Scotland are also amended by this Schedule.

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 Northern Ireland (and referred to the Secretary of State by virtue of amendments made to the 2003 Order and Part 4 of the Civil Partnership Act 2004 by Schedules 1 and 3 to this Order). Various amendments that apply to England and Wales are also made by this Schedule (so as to enable the amendments made in respect of Northern Ireland in this Order and those made in respect of Scotland in the Scotland Order to work).

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 registrars and the Registrar General for Northern Ireland and from the Secretary of State to registrars and the Registrar General for Northern Ireland. 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 as no impact on the voluntary or private sectors is foreseen, 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> and a hard copy is available from the Home Office.