EXPLANATORY MEMORANDUM TO

THE REFERRAL AND INVESTIGATION OF PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS (SCOTLAND) ORDER 2015

2015 No. xxx

THE REFERRAL AND INVESTIGATION OF PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS (NORTHERN IRELAND AND MISCELLANEOUS PROVISIONS) ORDER 2015

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THE PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS (CONDUCT OF INVESTIGATIONS, ETC.) REGULATIONS 2015

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1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

   This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 Part 4 of the Immigration Act 2014 establishes a scheme (known as the "referral and investigation scheme") for the referral of certain proposed marriages and civil partnerships in England and Wales to the Secretary of State[1]. Where a referral is made to her, the Secretary of State must decide whether to investigate whether the proposed marriage or civil partnership is a sham. The Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 ("Scotland Order") extends the referral and investigation scheme to proposed marriages and civil partnerships in Scotland and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 ("Northern Ireland Order") extends it to proposed marriages and civil partnerships in Northern Ireland.

2.2 The Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015 ("Conduct of Investigations Regulations") make provision for how the Secretary of State will conduct an investigation into whether a proposed marriage

[1] The marriage or civil partnership will be referred where one (or both) of the parties is <u>not</u> a British citizen, EEA national or Swiss national; a non-EEA national with an EU right of permanent residence in the UK; exempt from immigration control; settled in the UK; or the holder of a relevant marriage or civil partnership visa.

or civil partnership referred to her is a sham. They set out certain requirements (such as the requirement to attend an interview) with which parties to a proposed marriage or civil partnership must comply during that investigation, and the consequences of their failing to do so. They also set out the information that must be included in a notice given to the parties which informs them that the Secretary of State has decided to investigate whether their proposed marriage or civil partnership is a sham.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 Part 4 of the Immigration Act 2014 extends the notice period before a couple in England and Wales may marry following civil preliminaries or register their civil partnership from 15 days to 28 days. On 4 December 2014 the Northern Ireland executive made regulations increasing the period of notice that couples in Northern Ireland wishing to marry or register their civil partnership must give from 14 days to 28 days to take effect from 2 March 2015.[2] Similar provision is made for Scotland in the Marriage and Civil Partnership (Scotland) Act 2014, although the relevant provisions have not yet been commenced. It is anticipated that they will be before, or in time for, the planned implementation of the referral and investigation scheme on 2 March 2015. However, as this is a devolved matter and therefore one for the Scottish government, the Scotland Order includes savings provisions to the effect that any reference in the Order to 28 days is to take effect as 14 days until those provisions are commenced.

4. Legislative Context

4.1 Part 4 of the Immigration Act 2014 ("2014 Act") includes several provisions which confer powers to make secondary legislation. The Scotland Order, Northern Ireland Order and Conduct of Investigations Regulations are the first set of instruments, and which are subject to the affirmative resolution procedure, required to implement the referral and investigation scheme across the UK. Whilst Part 4 makes provision for the referral and investigation scheme in England and Wales and makes the necessary amendments to the relevant marriage and civil partnership legislation in England and Wales, it does not provide for the establishment of that scheme in Scotland and Northern Ireland. It does however provide for its extension by Order (see section 53), which is the basis on which the Scotland and Northern Ireland Orders are being made.

4.2 Further instruments which will be required to implement the scheme and which will be made in the New Year are as follows:

- Regulations applying across the UK made by the Secretary of State under sections 49 and 61 of the 2014 Act and subject to the negative resolution procedure. These

[2] The Marriage (Amendment) Regulations (Northern Ireland) 2014 S.I. 2014/296 (N.I.) and the Civil Partnership (Amendment) Regulations (Northern Ireland) 2014 S.I. 2014/297 (N.I.)

will deal with matters such as persons who will be exempt from immigration control for the purposes of the scheme and the giving of notices.

- Regulations applying in England and Wales made by the Secretary of State under sections 28D, 28G, 28H and 31(5ED) of the Marriage Act 1949 and sections 9B, 9E, 12(7) and 12A of the Civil Partnership Act 2004 and subject to the negative resolution procedure. These will deal with matters such as the type of evidence of their immigration status persons (who are not "relevant nationals"[3]) will be required to submit with their marriage or civil partnership notice and requirements to notify the Secretary of State of changes of addresses.

- Regulations applying in England and Wales made by the Registrar General for England and Wales under section 28G of the Marriage Act 1949 and section 9E of the Civil Partnership Act 2004 and not subject to any Parliamentary procedure. These will deal with matters such as the type of evidence relevant nationals will be required to submit if they want to marry in the Anglican Church following publication of banns or the grant of a common licence and the type of evidence that must otherwise be provided when giving notice of marriage or civil partnership in England and Wales.

- Regulations applying in Scotland and Northern Ireland made by the Secretary of State under Schedule 5 to the 2014 Act and subject to the negative resolution procedure. These will deal with matters equivalent to those dealt with by the regulations being made by the Secretary of State under the Marriage Act 1949 and Part 1 of the Civil Partnership Act 2014 in respect of England and Wales (see above).

5. Territorial Extent and Application

5.1 The Scotland Order applies to proposed marriages and civil partnerships in Scotland. The Northern Ireland Order applies to proposed marriages and civil partnerships in Northern Ireland and, in respect of a small number of miscellaneous provisions, to proposed marriages and civil partnerships in England and Wales and in Scotland.

5.2 The Conduct of Investigations Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 James Brokenshire MP, the Minister for Immigration and Security, has made the following statement regarding Human Rights:

In my view the provisions of the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015, the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous

[3] "Relevant nationals" are defined by section 62 of the 2014 Act as British citizens and EEA and Swiss nationals.

Provisions) Order 2015 and the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015 are compatible with the Convention rights.

7. Policy Background

What is being done and why

7.1 Sham marriages and civil partnerships for immigration advantage are a major threat to the United Kingdom's immigration control. The Home Office estimates that around 4,000 applications a year to stay in the United Kingdom are based on a sham marriage or civil partnership. Part 4 of the Immigration Act 2014 provides for a new referral and investigation scheme in England and Wales to tackle sham marriages and civil partnerships. The Scotland Order and Northern Ireland Order extend that scheme across the UK. The scheme will give us a much stronger platform for effective, systematic action to disrupt and deter sham marriages and civil partnerships and prevent them gaining an immigration advantage.

7.2 All proposed marriages and civil partnerships involving a non-European Economic Area (non-EEA) national with limited or no immigration status in the UK, or who does not provide evidence to be specified in regulations (see above) that they are exempt from the scheme, will be referred to the Home Office. Where we have reasonable grounds to suspect a sham, we will be able to extend the notice period in these referred cases to 70 days in order to investigate and take appropriate enforcement or casework action where we establish a sham. A couple will be unable to get married or enter into a civil partnership on the basis of that notice if they do not comply with an investigation under the scheme.

7.3 The scheme is planned to be introduced across the United Kingdom on 2 March 2015.

7.4 By channelling to the Home Office all proposed marriages and civil partnerships which could bring an immigration benefit, the new scheme will give us much more time and information to identify and act against sham marriages and civil partnerships before they happen, and where they do go ahead, we will have the evidence we need on file to be able to refuse, as appropriate, any subsequent immigration application.

7.5 The Conduct of Investigations Regulations make provision for how the Secretary of State will conduct investigations under the scheme, where there are reasonable grounds to suspect a sham and the Secretary of State decides to investigate this. There will be a range of potential ways of investigating, including an interview and/or home visit if this is considered necessary. An appropriate enforcement or casework decision may be taken where the Home Office establishes that the proposed marriage or civil partnership is a sham. Failure to comply with an investigation under the scheme will mean the couple will be unable to get married or enter into a civil partnership on the basis of that marriage or civil partnership notice (and will need to give notice again if they wish to proceed).

8. Consultation

8.1 In July 2011, the government consulted on proposed reforms to family migration, including measures to tackle sham marriages. The consultation ran for 12 weeks and more than 5,000 responses were received. An overview of the responses is included in *Response to the Family Migration consultation* available at: https://www.gov.uk/government/consultations/family-migration-consultation

8.2 No formal consultation has been conducted on the Scotland and Northern Ireland Orders, but the government has worked closely with the devolved administrations, National Records for Scotland and the General Register Office for Northern Ireland to agree the content of the Orders.

8.3 No public or other consultation was held on the Conduct of Investigations Regulations.

9. Guidance

9.1. Guidance, including statutory guidance to which the Secretary of State must have regard when deciding whether to investigate and when conducting an investigation (see section 48(6) and section 50(2) and (6) of the Immigration Act 2014), is currently being developed and will be published on gov.uk when the new scheme is introduced. The Home Office is also developing separate training and guidance for registration officials across the United Kingdom.

10. Impact

10.1. An Impact Assessment has not been prepared for any of these instruments as no impact on the voluntary or private sectors is foreseen.

10.2 The Impact Assessment prepared for the measures contained in Part 4 of the Immigration Act 2014 estimated that, over the 10-year period from implementation, the scheme is expected to cost an estimated £70m, and generate benefits of an estimated £188m - mainly from reduced costs to public services arising from the immigration removals which the scheme will facilitate. The Impact Assessment is available at: https://www.gov.uk/government/publications/immigration-bill-part-4-marriage-and-civil-partnership

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The Home Office will keep the operation of the provisions in Part 4 continually under review.

13. Contact

13.1. Alison Bennett at the Home Office can be contacted with queries regarding this instrument, at Alison.Bennett@homeoffice.gsi.gov.uk or 020 7035 6903.