EXPLANATORY MEMORANDUM TO

THE PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS (MEANING OF EXEMPT PERSONS AND NOTICE) REGULATIONS 2015

2015 No. 122

THE REFERRAL OF PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS REGULATIONS 2015

2015 No. 123

THE REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES AND REGISTRATION OF CIVIL PARTNERSHIPS (FEES) (AMENDMENT) ORDER 2015

2015 No. 117

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

2. Purpose of the Instrument

2.1 Part 4 of the Immigration Act 2014 ("2014 Act") 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. 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. Registration officials must refer a proposed marriage or civil partnership to the Secretary of State where one or both of the parties are not an exempt person within the meaning of section 49 of the 2014 Act.[1]

2.2 Subject to Parliamentary approval, the referral and investigation scheme will be extended to proposed marriages and civil partnerships in Scotland and Northern Ireland by the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015.

[1] An exempt person is one who is a British citizen; an EEA national or Swiss national; or a non-EEA national with an EU right of permanent residence in the UK or who is exempt from immigration control, settled in the UK, or the holder of a relevant marriage or civil partnership visa.

2.3 The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 prescribe the persons who are exempt from immigration control and the types of relevant visa for the purpose of determining whether a person is an exempt person under the scheme. They also make provision in England and Wales for the giving of notices by the Secretary of State to the parties to a proposed marriage or civil partnership which has been referred under the scheme and to registration officials.

2.4 The Referral of Proposed Marriages and Civil Partnerships Regulations 2015 apply to proposed marriages and civil partnerships in England and Wales and make provision for the type of evidence that a person who is not a relevant national[2] will be required to provide when giving notice of marriage or civil partnership to show that they are an exempt person; the requirement to notify the Secretary of State of changes of addresses; and the information to be given by registration officials to the parties about the effects of referral. They also set out the timing and manner of referrals to the Secretary of State by registration officials and the information that they must include.

2.5 The Registration of Births, Deaths and Marriages and Registration of Civil Partnerships (Fees) (Amendment) Order 2015 amends the Registration of Births, Deaths and Marriages (Fees) Order 2010 (S.I. 2010/441) and the Registration of Civil Partnerships (Fees) Order 2014 (S.I. 2014/1789) to increase the notice fees payable by a couple whose proposed marriage or civil partnership is subject to referral to the Secretary of State under the scheme.

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

3.1 None.

4. Legislative Context

4.1 To implement the referral and investigation scheme across the UK and to implement fully Part 4 of the 2014 Act various regulations and orders are being made:

- The draft Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 extends the referral and investigation scheme to Scotland and the draft Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 extends the scheme to Northern Ireland. Both Orders were laid before Parliament on 15 December 2014.

- The draft Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations, which will apply throughout the UK, were laid at the same time (all three were linked in the same explanatory memorandum).

[2] A relevant national is a British citizen, an EEA national or a Swiss national.

4.2 Subject to Parliamentary approval, once the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 have been made by her, the Secretary of State will make regulations under section 54 of, and Schedule 5 to, the 2014 Act dealing with matters equivalent to those dealt with in the Referral of Proposed Marriages and Civil Partnerships Regulations 2015 in relation to Scotland and Northern Ireland.

4.3 There are also regulations not subject to any Parliamentary procedure that are being made. These are:

- The Proposed Marriages and Civil Partnerships (Waiting Period) Regulations 2015 made by the Secretary of State, which will make provision for an application to the Secretary of State to reduce the 28 day or 70 day waiting period for proposed marriages or civil partnerships in England and Wales referred to her under the scheme.

- The Registration of Marriages Regulations 2015 made by the Registrar General for England and Wales, which will consolidate existing marriage regulations and, relevant here, specify evidence that must be provided when a person gives notice of marriage (including the evidence necessary to show that they are a relevant national).

- The Marriage (Authorised Persons) and Civil Partnership (Registration Provisions) (Amendment) Regulations 2015 made by the Registrar General for England and Wales make miscellaneous consequential amendments and, relevant here, specify evidence that must be provided when a person gives notice of civil partnership.

5. Territorial Extent and Application

5.1 The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 apply in part to all of the United Kingdom (regulations 1 to 4) and in part to proposed marriages and civil partnerships in England and Wales only (regulations 5 to 7).

5.2 The Referral of Proposed Marriages and Civil Partnerships Regulations 2015 and the Registration of Births, Deaths and Marriages and Registration of Civil Partnerships (Fees) (Amendment) Order 2015 apply to proposed marriages and civil partnerships in England and Wales only.

6. European Convention on Human Rights

6.1 As all three of these instruments are subject to the negative resolution procedure, and do not amend primary legislation, no statement is required.

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 UK 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 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.[3]

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 specified evidence that they are exempt from the scheme, will be referred to the Home Office. The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 and the Referral of Proposed Marriages and Civil Partnerships Regulations 2015 will enable registration officials to determine whether a proposed marriage or civil partnership is subject to referral to the Home Office under the scheme. Where it is, a higher fee of £47 is to be paid in England and Wales by each person giving notice of marriage or civil partnership. This represents an increase of £12 to the current £35 notice fee, which will be paid by those not subject to referral under the scheme. The additional cost reflects the additional work for registration officials generated by the referral.

7.3 Where the Home Office has reasonable grounds to suspect a sham, it 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 a sham is established. 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.

7.4 The scheme is planned to be introduced across the United Kingdom on 2 March 2015. The fee increase will apply to notices given on or after that date.

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

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[3] Further background information on the scheme can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256257/Sham_Marriage_and_Civil_Partnerships.pdf

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 these regulations.

8.3 The Secretary of State has consulted the Registrar General for England and Wales on the notice provisions contained in the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 and also on the Referral of Proposed Marriages and Civil Partnerships Regulations 2015.

8.4 Officials from the General Register Office for England and Wales have worked with representatives from the local registration service to establish, as far as possible, the true costs to Designated Register Offices of providing the additional services generated by the duty of referral. The outcome of these discussions and calculations is reflected in the fees set out in the Registration of Births, Deaths and Marriages and Registration of Civil Partnerships (Fees) (Amendment) Order 2015.

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 2014 Act), is currently being developed and will be published on gov.uk when the new scheme is introduced. The Home Office is also delivering training and developing guidance for registration officials across the United Kingdom.

9.2 The new notice fees will be reflected on gov.uk and officials in the General Register Office for England and Wales have notified members of the local registration service of them.

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

10.3 In accordance with the New Burdens Doctrine, the increased notice fees are set to recover the costs of Designated Register Offices in providing these additional services.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 The Home Office will keep the operation of the provisions in Part 4 continually under review. Civil registration fees are subject to periodic review as appropriate.

13. Contact

13.1. Alison Bennett at the Home Office can be contacted with queries regarding the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 and the Referral of Proposed Marriages and Civil Partnerships Regulations 2015, at Alison.Bennett@homeoffice.gsi.gov.uk or 020 7035 6903.

13.2 Dan Rogers at the General Register Office, part of Her Majesty's Passport Office, can answer queries regarding the Registration of Births, Deaths and Marriages and Registration of Civil Partnerships (Fees) (Amendment) Order 2015, at dan.rogers@gro.gsi.gov.uk or 0151 471 4327.