EXPLANATORY MEMORANDUM TO

THE REGISTRATION OF MARRIAGES REGULATIONS 2021

2021 No. 411

1. Introduction

1.1 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 These Regulations, in conjunction with other primary and secondary legislation will amend the Marriage Act 1949 (the '1949 Act'), to enable the introduction of an electronic 'schedule system' for the registration of marriages in England and Wales, thus changing the way in which marriages are registered in the future. These changes will facilitate the signing of marriage schedules at the marriage ceremony rather than signing a paper marriage register. The schedule system also provides the opportunity to modernise marriage registration processes. This includes updating the content of the marriage entry to include the details of both parents of the couple, instead of just the father's name and occupation as is currently the case.

2.2 These Regulations will also amend the seldom used Marriage of British Subjects (Facilities) Acts 1915 and 1916, so that they no long apply in England and Wales. Finally, these Regulations will make a consequential amendment under section 5 of the Immigration and Social Security Co-ordinations (EU Withdrawal) Act 2020 to amend section 28B of the 1949 Act to specify the evidence that must accompany a notice of marriage for immigration purposes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The entire instrument applies to England and Wales only.

3.3 The instrument does not have any minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of part of this instrument would not be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales only except for:

- regulations 1 to 3, which extend to England, Wales, Scotland and Northern Ireland,
- provisions in Schedule 1 containing consequential amendments to legislation that extends to England, Wales, Scotland and Northern Ireland, which have the same extent as the legislation they amend, and
- consequential provisions in paragraphs 16 to 20 of Schedule 2, which extend to England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Minister for Future Borders and Immigration, Kevin Foster MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Registration of Marriages Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The majority of this instrument is being made under sections 1 and 5(1), (4) and (5) of the Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019 to amend the Marriage Act 1949 in order to implement the new schedule based system and change the way marriages are registered in England and Wales in the future.

6.2 This instrument makes consequential amendments to other primary and secondary legislation and includes transitional provisions to enable a smooth transition to the new registration system. It also amends the seldom used Marriage of British Subjects (Facilities) Acts 1915 and 1916 so that they no long apply in England and Wales.

6.3 This instrument will amend the regulation making power in section 74(1) of the 1949 Act to enable the Registrar General to make the Registration of Marriage (Amendment) Regulations 2021, which are not subject to any Parliamentary procedure and which will prescribe the content of a marriage schedule, a marriage document, the marriage certificate and other associated matters.

6.4 This instrument will also amend the regulation making power in section 71A of the 1949 Act in relation to fees, to enable the Marriage and Civil Partnership (Conversion of Civil Partnership and Fees) (Amendment) Regulations 2021 to be made, which will make amendments to fees regulations required as a result of the schedule system, including the removal of fees which will no longer be relevant.

6.5 The early commencement of some provisions in the instrument (on the day after the day on which the instrument is made) is to enable the above regulations to be made and to enable the issue of marriage documents and marriage schedules by the clergy and superintendent registrars in preparation for marriages taking place on or after 4th May 2021. The instrument will not impose any new duties on people from that early date of commencement.

6.6 This instrument makes a consequential amendment under section 5 of the Immigration and Social Security Co-ordinations (EU Withdrawal) Act 2020 to amend section 28B of the 1949 Act to specify the evidence that must accompany a notice of marriage where a party to the marriage is a relevant national by virtue of having status, or a

pending application for status (within the meaning of regulation 4 of the Citizens Rights (Application Deadline and Temporary Protection (EU Exit) Regulations 2020 S.I 2020/1209) under the EU Settlement Scheme ("the EUSS"). This amendment will be commenced on 1 July 2021.

7. Policy background

What is being done and why?

7.1 Under current legislation (the 1949 Act and associated regulations) the marriage register entry only provides space for the name of the father of each party to the marriage to be entered, but not that of the mother. There has been growing pressure from the public and MPs to bring forward reform of the marriage register entry to enable the details of both parents to be recorded. There have also been online public petitions on the subject: one on Change.Org in 2014 attracted in excess of 70,000 signatures.

7.2 Whilst it would be possible to simply amend the marriage entry under secondary legislation to include mothers' details, this would entail replacing 84,000 current marriage registers and associated certificate stock held in around 30,000 register offices and religious buildings, at an estimated cost of some £3million. A similar exercise would then be necessary to introduce any further changes to the entry in the future.

7.3 Modernising the system of marriage registration from a hard-copy marriage register to an electronic system of registering marriages will enable changes to be made to the marriage entry more easily and at a lower cost. It will also allow more flexibility which reflects the changing family circumstances in society today, for example the inclusion of same sex parents in the marriage entry.

7.4 The basis of a schedule system is that the couple will sign a document at their marriage ceremony (called a marriage schedule) instead of signing a 'paper' marriage register book. For all marriages taking place, other than in the Church of England or Church in Wales, the superintendent registrar in the district in which the marriage is to be solemnized will issue one marriage schedule for the couple to be signed at the marriage ceremony. For marriages taking place in the Church of England or Church in Wales following ecclesiastical preliminaries, e.g. the calling of banns or the issue of a common licence, the member of the clergy will issue a 'marriage document' similar to the schedule issued by the superintendent registrar.

7.5 The marriage schedule or marriage document will contain all the information to be entered into the marriage register. At the marriage ceremony it will be signed by the couple, their witnesses and the person(s) officiating at the marriage. The signed marriage schedule or marriage document will then be returned to the register office, by the person officiating at the marriage ceremony, e.g. registrar, clergy etc, in the district in which the marriage took place, to be registered in the electronic marriage register by a registrar. A marriage certificate can then be issued to the couple.

7.6 All marriage certificates in the future will be issued from the register office in the district where the marriage took place, or, after the marriage has been registered, they may also be issued on request from the General Register Office. Religious buildings will no longer hold blank stocks of marriage certificates or issue certificates in the future. A schedule system is already in place for marriages and civil partnerships in Scotland and Northern Ireland and for civil partnerships in England and Wales.

7.7 Currently the Marriage of British Subjects (Facilities) Acts 1915 and 1916, enable a notice to be taken for a marriage to take place in England and Wales, or in a specified Commonwealth country, between two British subjects where one is a resident in England or Wales and the other is a resident in specified Commonwealth countries or territory. These Acts however are seldom used. As such, to enable a smooth transition to the new registration system, this instrument will amend the Marriage of British Subjects (Facilities) Acts 1915 and 1916 so that they no long apply in England and Wales.

7.8 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 amended a wide range of legislation to apply the sham marriage and civil partnership referral and investigation scheme established under the Immigration Act 2014 to EEA citizens. As part of this overall package of amendments, this instrument will amend section 28B of the 1949 Act to specify the evidence that must accompany a notice of marriage where a party to the marriage has status, or a pending application for status submitted by the deadline of 30 June 2021, under the EU Settlement Scheme ("the EUSS"). These amendments follow the ending of free movement as a result of the UK's withdrawal from the EU. Irish citizens and individuals with status under the EUSS (or who have a pending application under the EUSS) will continue to be exempt from the sham marriage scheme, in line with British citizens.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union as it makes changes as a consequence of, or in connection with, the end of free movement as enacted by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. This instrument makes changes to section 28B of the Marriage Act 1949 to align with similar provisions made to the Civil Partnership Act 2004 by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 reflecting the end of the EU free movement arrangements in the UK.

9. Consolidation

9.1 This instrument does not consolidate other legislation.

10. Consultation outcome

10.1 No formal consultation has been conducted on this instrument. This instrument does not alter the fundamental requirements of how couples get married, instead they amend the process of registration. Due to the growing pressure from the public to amend the marriage entry to include mothers' details, the then Prime Minister announced, in 2014, that the Home Office should look at how this could be achieved. As such, a formal consultation was not considered necessary.

10.2 In the formulation of policy, officials from the General Register Office have worked with the Ministry of Justice, Government Equalities Office, registration officials, the

Church of England, Church in Wales and other religious groups in developing the schedule system and this instrument.

10.3 Officials also worked with representatives from the National Records for Scotland to review how the schedule system operates in Scotland, this has facilitated the consideration of areas of best practice during developing the policy proposals. Officials also worked with the devolved administrations on any consequential amendments to legislation in Scotland and Northern Ireland as a consequence of the transition to a schedule system in England and Wales.

11. Guidance

11.1 Guidance for couples getting married is currently being developed and will be published on gov.uk prior to the introduction of the schedule system. The General Register Office is also developing guidance for registration officials and religious bodies in England and Wales and this will be made available prior to implementation.

12. Impact

12.1 There is no, or no significant, impact on businesses, charities or voluntary bodies.

12.2 The impact on the public sector of the new registration system will be the generation of savings estimated at c.£33.8m over a ten year period from implementation across the public sector and religious bodies.

12.3 An Impact Assessment has not been prepared for this instrument because the impact of the schedule system on the public sector is outlined in the Impact Assessment prepared for Registration of Marriage Bill 2017 – 2019 and that assessment remains up-to-date. The content of the Bill is included in sections 1 and 5 of the Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019 which provide the power for provisions in this instrument relating to the schedule system. The Impact Assessment can be found at: https://publications.parliament.uk/pa/bills/lbill/2017-2019/0019/Impact-assessment.pdf.

13. Regulating small business

13.1 This legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Officials at the General Register Office will engage regularly with key stakeholders, e.g. registration officials and religious bodies to ensure the new marriage schedule system is embedded and running effectively.

15. Contact

15.1 Linda Edwards at the General Register Office Telephone: 07766727246 or email: linda.edwards@gro.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Ward, Deputy Director for Civil Registration Reform, at the General Register Office, Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Future Borders and Immigration, Kevin Foster MP, can confirm that this Explanatory Memorandum meets the required standard.