EXPLANATORY MEMORANDUM TO

THE SHAM MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND AND NORTHERN IRELAND) (ADMINISTRATIVE) REGULATIONS 2015

2015 No. 404

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[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. Those provisions have been extended to Scotland and Northern Ireland by the Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015[2] ("Scotland Order") and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015[3] ("Northern Ireland Order").

2.2 The Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 make provision for the type of evidence that a person who is not a relevant national[4] will be required to provide when giving notice of marriage or civil partnership in Scotland or Northern Ireland to show that they are an exempt person; the requirement to notify the Secretary of State of changes of address; 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 in Scotland and Northern Ireland and the information that they must include. They also make provision in Scotland and Northern Ireland 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.

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[1] The marriage or civil partnership will be referred where one (or both) of the parties is not a British citizen; an EEA national or Swiss national; or a non-EEA national with an EU right of permanent residence in the UK, exempt from immigration control, settled in the UK or who is the holder of a relevant marriage or civil partnership visa.
[2] S.I. 2015/396.
[3] S.I. 2015/395.
[4] A relevant national is a British citizen, an EEA national or a Swiss national.

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

3.1 The referral and investigation scheme is to be introduced across the UK on 2 March 2015. The Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 have been made at the first opportunity to do so, following the making of the Scotland Order and the Northern Ireland Order (by virtue of section 54(1) of the 2014 Act, the Regulations may only be made once the referral and investigation scheme has been extended to Scotland and Northern Ireland). A single implementation date avoids any risk of displacement of sham marriages and civil partnerships from one part of the UK to another and ensures that there is no confusion about when the scheme will start, for those couples who may be affected.

3.2 The government regrets that for these regulations it has not been possible to comply with the convention that regulations should be laid before Parliament no less than 21 days before they will come into force but invites the Committee to note that the government announced the intended 2 March 2015 start of the scheme across the UK on 24 November 2014, giving couples around three months' notice of its introduction. In accordance with section 54(7) of the 2014 Act and reflecting the requirements they place on registration officials in Scotland and Northern Ireland, there has also been a need for detailed consultation on the Regulations with the Registrar General for Scotland and the Registrar General for Northern Ireland. The Regulations make provision for proposed marriages and civil partnerships in Scotland and Northern Ireland on an equivalent basis to regulations for proposed marriages and civil partnerships in England and Wales laid on 5 February.

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 have been made:

- The Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015[5] extends the referral and investigation scheme to Scotland and the Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015[6] extends the scheme to Northern Ireland.

- The Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015[7], which apply throughout the UK, make provision for how the Secretary of State will conduct an investigation into whether a proposed marriage or civil partnership referred to her is a sham.

[5] S.I. 2015/396.
[6] S.I. 2015/395.
[7] S.I. 2015/397.

- The Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015[8] 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.

- The Referral of Proposed Marriages and Civil Partnerships Regulations 2015[9] apply to proposed marriages and civil partnerships in England and Wales and make equivalent provision to the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 (save for the notice provisions that are contained in the latter).

4.2 There are also regulations not subject to any Parliamentary procedure that have been made. These are:

- The Proposed Marriages and Civil Partnerships (Waiting Period) Regulations 2015[10] 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[11] 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[12] made by the Registrar General for England and Wales, which will 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 Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 apply to proposed marriages and civil partnerships in Scotland and Northern Ireland.

6. European Convention on Human Rights

[8] S.I. 2015/122
[9] S.I. 2015/123
[10] S.I. 2015/159
[11] S.I. 2015/207
[12] S.I. 2015/177

6.1 As this instrument is subject to the negative resolution procedure, and does 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 Scotland Order and the 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.[13]

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 Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 will enable registration officials to determine whether a proposed marriage or civil partnership in Scotland or Northern Ireland is subject to referral to the Home Office under the scheme.

7.3 Where the Home Office has reasonable grounds to suspect a sham, it will be able to extend the notice period before the marriage or civil partnership may take place 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 will be introduced across the United Kingdom on 2 March 2015.

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.

[13] 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 outcome

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 Scotland and the Registrar General for Northern Ireland on the provisions contained in these 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 2014 Act), will be published on gov.uk when the new scheme is introduced.

10. Impact

10.1. An Impact Assessment has not been prepared for this instrument 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 businesses.

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 the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 at Alison.Bennett@homeoffice.gsi.gov.uk or 020 7035 6903.