

Draft Order laid before Parliament under paragraph 3(1)(a) of Schedule 2 to the Human Rights Act 1998 and subsequently under paragraph 2(a) of that Schedule, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. XXX

IMMIGRATION

The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010

<i>Made</i>	- - - -	2010
<i>Coming into force</i>	- -	2010

Section 19(1) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004⁽¹⁾ has been declared ⁽²⁾ under section 4 of the Human Rights Act 1998⁽³⁾ to be incompatible with a Convention right ⁽⁴⁾.

The time for bringing an appeal has expired and no appeal has been brought within that time.

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order ⁽⁵⁾ to make such amendments to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 as she considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of Schedule 2 to that Act.

Accordingly, the Secretary of State makes the following Order in the exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a), (2) and (3) of Schedule 2 to, the Human Rights Act 1998:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010 and shall come into force 14 days after the day on which it is made.

(1) 2004 c.19.

(2) By the Administrative Court in the case of *The Queen on the application of Baiai and others v Secretary of State for the Home Department* [2006] EWHC 823 QB (Admin).

(3) 1998 c.42.

(4) See section 1(1) of the Human Rights Act 1998 for the definition of “Convention rights” and section 21(1) of that Act for the definition of “Convention”.

(5) See section 21(1) of the Human Rights Act 1998 for the definition of “remedial order”.

(2) Any repeal, revocation or other amendment made by this Order has the same extent as the provision which it repeals, revokes or otherwise amends (including extent by virtue of an Order in Council).

(3) In this Order, “the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

Amendment to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004

2.—(1) In the 2004 Act, the following (which relate to procedure for marriage) are repealed—

- (a) section 19(3),
- (b) section 19(4)(c) and (d),
- (c) in section 20(2), the words from the first “and” to “or (c),”
- (d) section 21(3),
- (e) in section 21(4)(a), the words “, if satisfied as is mentioned in subsection (3),”
- (f) in section 21(5), the words from “except that for the purposes of” until the end,
- (g) in section 22(3), the words “or (3)(c),”
- (h) section 23(3),
- (i) in section 23(4), the words “Subject to subsection (5),”
- (j) section 23(5), and
- (k) section 23(6)(c) and (d).

(2) In section 20(3) of the 2004 Act, for the words before paragraph (a) substitute “Regulations under section 19(2)(a)—”.

(3) Section 25(6) of the 2004 Act (application for permission) is repealed for all remaining purposes.

Amendment to the Immigration (Procedure for Marriage) Regulations 2005

3. In the Immigration (Procedure for Marriage) Regulations 2005(7), the following are revoked—

- (a) regulations 6 to 8, and
- (b) Schedule 2.

Amendment to the Civil Partnership Act 2004

4.—(1) In Schedule 23 to the Civil Partnership Act 2004(8), the following (which relate to procedure for the formation of civil partnerships) are repealed—

- (a) paragraph 2,
- (b) paragraphs 5 and 6,
- (c) paragraph 10(1),
- (d) in paragraph 10(2)(a), the words “, if satisfied as is mentioned in sub-paragraph (1),”
- (e) paragraph 10(3),
- (f) paragraph 14,

(6) Section 25 was repealed by the Immigration, Asylum and Nationality Act 2006, section 50(3)(b) from 2nd April 2007 (see The Immigration, Asylum and Nationality Act 2006 (Commencement No. 6) Order 2007 (S.I. 2007/1109)) subject to a saving made by Article 6.

(7) S.I. 2005/15.

(8) 2004 c.33.

- (g) paragraph 15(1),
- (h) in paragraph 15(2), the words “is satisfied as mentioned in sub-paragraph (1) but”, and
- (i) paragraph 15(3).

(2) In paragraph 10(2) of that Schedule, for the words “so submitted” substitute “submitted by virtue of paragraph 9(1)”.

Amendment to the Immigration (Procedure for Formation of Civil Partnership) Regulations 2005

5. In the Immigration (Procedure for Formation of Civil Partnership) Regulations 2005(9), the following are revoked—

- (a) regulations 3 and 4,
- (b) regulation 8, and
- (c) Schedule 1.

Amendment to the Immigration and Nationality (Fees) Order 2007

6. In the Immigration and Nationality (Fees) Order 2007(10), Article 3(2)(m) and (n) are revoked.

Amendment to the Immigration (Isle of Man) Order 2008

7.—(1) In Schedule 8 to the Immigration (Isle of Man) Order 2008(11), the following are revoked—

- (a) paragraph 7(5),
- (b) paragraph 7(6)(b),
- (c) paragraph 8(4)(c) to (f), and
- (d) paragraph 9.

(2) In paragraph 8(5) of that Schedule, after “subsections” insert “(3),”.

Home Office
Date

Name
Minister of State

(9) S.I. 2005/2917.
(10) S.I. 2007/807.
(11) S.I. 2008/680.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes changes to sections 19, 20, 21, 22, 23 and 25 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (“the 2004 Act”) to remove the incompatibility of section 19(1) with a Convention right.

Section 19(3) requires persons who are subject to immigration control, and who do not have an entry clearance granted for the purpose of marriage, to obtain the permission of the Secretary of State to marry in the United Kingdom. This is commonly referred to as the Certificate of Approval Scheme.

In the case of *The Queen on the application of Baiai and others v Secretary of State for the Home Department* [2006] EWHC 823 QB, the Administrative Court found that section 19(3) of the 2004 Act was contrary to article 14 of the European Convention on Human Rights (prohibition on discrimination) when read with article 12 (the right to marry) in that the exemption for persons marrying in the Church of England constituted discrimination on the grounds of religion and nationality. The Home Office did not seek to appeal the finding in respect of article 14.

In July 2008 [2008 UKHL 53] the House of Lords upheld the declaration of incompatibility, but confined it to section 19(1) of the 2004 Act, finding that the incompatibility derived solely from the Anglican exemption; namely that the requirement in section 19(3) to obtain the permission of the Secretary of State did not apply to persons entering Church of England marriages.

In order to remove the incompatibility, Article 2 makes changes to sections 19 and 20 of the 2004 Act, to remove the Certificate of Approval Scheme, as it applies in England and Wales.

Article 2 also makes consequential amendments to sections 21 to 23 of the 2004 Act in respect of Scotland and Northern Ireland, and to section 25.

Article 4 makes consequential amendments to Schedule 23 to the Civil Partnership Act 2004 in order to remove the Certificate of Approval Scheme as it applies to civil partnerships in England and Wales, Scotland and Northern Ireland.

Articles 3 and 5 make consequential amendments to the Immigration (Procedure for Marriage) Regulations 2005, and the Immigration (Procedure for Formation of Civil Partnerships) Regulations 2005, to remove various provisions relating to applications for permission to marry and enter a civil partnership.

Article 6 makes consequential amendments to the Immigration and Nationality (Fees) Order 2007, to remove provisions relating to the requirement to pay a fee for applications for permission to marry and to form a civil partnership.

Article 1(2) provides that any repeal, revocation or other amendment made by this Order shall have the same extent as the provision which it repeals, revokes or otherwise amends, including extent by virtue of an Order in Council. In this way, the Order removes the requirement to obtain permission to marry as it applies in the Isle of Man by virtue of an Order in Council.

Article 7 also makes consequential amendments to Schedule 8 to the Immigration (Isle of Man) Order 2008, which applied sections 19, 20 and 25 of the 2004 Act to the Isle of Man with various modifications.