

*Status: Point in time view as at 01/01/2007.*

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## SCHEDULES

### SCHEDULE 23

Section 249

#### IMMIGRATION CONTROL AND FORMATION OF CIVIL PARTNERSHIPS

##### PART 1

##### INTRODUCTION

###### *Application of Schedule*

- 1 (1) This Schedule applies if—
  - (a) two people wish to register as civil partners of each other, and
  - (b) one of them is subject to immigration control.
- (2) For the purposes of this Schedule a person is subject to immigration control if—
  - (a) he is not an EEA national, and
  - (b) under the Immigration Act 1971 (c. 77) he requires leave to enter or remain in the United Kingdom (whether or not leave has been given).
- (3) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time).

###### *The qualifying condition*

- 2 (1) For the purposes of this Schedule the qualifying condition, in relation to a person subject to immigration control, is that the person—
  - (a) has an entry clearance granted expressly for the purpose of enabling him to form a civil partnership in the United Kingdom,
  - (b) has the written permission of the Secretary of State to form a civil partnership in the United Kingdom, or
  - (c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.
- (2) “Entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971.
- (3) Section 25 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (regulations about applications for permission to marry) applies in relation to the permission referred to in sub-paragraph (1)(b) as it applies in relation to permission to marry under sections 19(3)(b), 21(3)(b) and 23(3)(b) of that Act.

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### Commencement Information

- II** Sch. 23 para. 2 wholly in force at 5.12.2005; Sch. 23 para. 2 not in force at Royal Assent see s. 263; Sch. 23 para. 2(1)(3) in force for certain purposes at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1 and Sch. 23 para. 2 in force otherwise at 5.12.2005 by S.I. 2005/3175, art. 2(1), Sch. 1

## PART 2

### ENGLAND AND WALES

#### *Application of this Part*

- 3 This Part of this Schedule applies if the civil partnership is to be formed in England and Wales by signing a civil partnership schedule.

#### *Procedure for giving notice of proposed civil partnership*

- 4 (1) Each notice of proposed civil partnership under Chapter 1 of Part 2 of this Act—
- (a) must be given to a registration authority specified for the purposes of this paragraph by regulations made by the Secretary of State, <sup>F1</sup> . . .
  - (b) must be delivered to the relevant individual in person by the two proposed civil partners.
  - [<sup>F2</sup>(c) may be given only if each of the proposed civil partners has been resident in the area of a registration authority for the period of 7 days immediately before the giving of his or her notice (but the area need not be that of the registration authority to which the notice is given and the proposed civil partners need not have resided in the area of same registration authority), and
  - (d) must state, in relation to each of the proposed civil partners, the registration authority by reference to the area of which paragraph (c) is satisfied.]
- (2) “The relevant individual” means such employee or officer or other person provided by the specified registration authority as is determined in accordance with regulations made by the Secretary of State for the purposes of this sub-paragraph.
- (3) Regulations under sub-paragraph (2) may, in particular, describe a person by reference to the location or office where he works.
- (4) Before making any regulations under this paragraph the Secretary of State must consult the Registrar General.

### Textual Amendments

- F1** Word in Sch. 23 para. 4(1)(a) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 19(2)(a)** (subject to art. 1(2)(3))
- F2** Sch. 23 para. 4(1)(c)(d) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 19(2)(b)** (subject to art. 1(2)(3))

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#### Commencement Information

- I2** Sch. 23 para. 4 wholly in force at 5.12.2005; Sch. 23 para. 4 not in force at Royal Assent see s. 263; Sch. 23 para. 4 in force for certain purposes at 15.4.2005 by S.I. 2005/1112, **art. 2**, **Sch. 1** and Sch. 23 para. 4 in force otherwise at 5.12.2005 by S.I. 2005/3175, **art. 2(1)**, **Sch. 1**

#### Declaration

- 5 The necessary declaration under section 8 must include a statement that the person subject to immigration control fulfils the qualifying condition (and the reason why).

#### Recording of notice

- 6 (1) The fact that a notice of proposed civil partnership has been given must not be recorded in the register unless the registration authority is satisfied by the production of specified evidence that the person fulfils the qualifying condition.
- (2) “Specified evidence” means such evidence as may be specified in guidance issued by the Registrar General.

#### Modifications etc. (not altering text)

- C1** Sch. 23 para. 6 wholly in force at 5.12.2005; Sch. 23 para. 6 not in force at Royal Assent see s. 263; Sch. 23 para. 6 in force for certain purposes at 15.4.2005 by S.I. 2005/1112, **art. 2**, **Sch. 1** and Sch. 23 para. 6 in force otherwise at 5.12.2005 by S.I. 2005/3175, **art. 2(1)**, **Sch. 1**

#### Supplementary

- 7 (1) Part 2 of this Act has effect in any case where this Part of this Schedule applies subject to any necessary modification.
- (2) In particular <sup>F3</sup>—
- (a) section 8(4)(b) has effect as if it required a declaration that the notice of proposed civil partnership is given in compliance with paragraph 4(1) above, and
- (b) section 52 has effect as if the matters proof of which is not necessary in support of the civil partnership included compliance with this Part of this Schedule.]
- (3) An expression used in this Part of this Schedule and in Chapter 1 of Part 2 of this Act has the same meaning as in that Chapter.

#### Textual Amendments

- F3** Words in Sch. 23 para. 7(2) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), **art. 3**, **Sch. para. 19(3)** (subject to **art. 1(2)(3)**)

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### PART 3

#### SCOTLAND

##### *Application of this Part*

8 This Part of this Schedule applies if the civil partnership is to be formed in Scotland.

##### *Procedure for giving notice of proposed civil partnership*

- 9 (1) Notice under section 88—
- (a) may be submitted to the district registrar of a district specified for the purposes of this paragraph by regulations made by the Secretary of State, and
  - (b) may not be submitted to the district registrar of any other registration district.
- (2) Before making any regulations under this paragraph the Secretary of State must consult the Registrar General.

#### **Commencement Information**

- I3** Sch. 23 para. 9 wholly in force at 5.12.2005; Sch. 23 para. 9 not in force at Royal Assent see s. 263; Sch. 23 para. 9 in force for certain purposes at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#) and Sch. 23 para. 9 in force otherwise at 5.12.2005 by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

##### *Pre-condition for making entry in civil partnership notice book etc.*

- 10 (1) Where the district registrar to whom notice is submitted by virtue of paragraph 9(1) is the district registrar for the proposed place of registration, he shall neither—
- (a) make an entry under section 89, nor
  - (b) complete a civil partnership schedule under section 94,
- in respect of the proposed civil partnership unless satisfied, by the provision of specified evidence, that the intended civil partner subject to immigration control fulfils the qualifying condition.
- (2) Where the district registrar to whom notice is so submitted (here the “notified registrar”) is not the district registrar for the proposed place of registration (here the “second registrar”)—
- (a) the notified registrar shall, if satisfied as is mentioned in sub-paragraph (1), send the notices and any fee, [<sup>F4</sup>paid, or any certificate or declaration submitted, in pursuance of section 88 in relation to the proposed civil partnership], to the second registrar, and
  - (b) the second registrar shall be treated as having received the notices from the intended partners on the dates on which the notified registrar received them.
- (3) “Specified evidence” means such evidence as may be specified in guidance issued by the Secretary of State after consultation with the Registrar General.

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#### Textual Amendments

- F4** Words in Sch. 23 para. 10(2)(a) substituted (S.) (1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 59\(5\), 63\(2\)](#); S.I. 2006/469, [art. 3](#), Sch. 2

#### Commencement Information

- I4** Sch. 23 para. 10 wholly in force at 5.12.2005; Sch. 23 para. 10 not in force at Royal Assent see s. 263; Sch. 23 para. 10(1)(3) in force for certain purposes at 15.4.2005 by [S.I. 2005/1112, art. 2, Sch. 1](#) and Sch. 23 para. 10 in force otherwise at 5.12.2005 by [S.I. 2005/3175, art. 2\(1\), Sch. 1](#)

### Supplementary

- 11 (1) Part 3 of this Act has effect in any case where this Part of this Schedule applies subject to any necessary modification.
- (2) An expression used in this Part of this Schedule and in Part 3 of this Act has the same meaning as in that Part.

## PART 4

### NORTHERN IRELAND

#### Application of this Part

- 12 This Part of this Schedule applies if the civil partnership is to be formed in Northern Ireland.

#### Procedure for giving civil partnership notices

- 13 (1) The civil partnership notices must be given—
- (a) only to a prescribed registrar, and
  - (b) in prescribed cases by both parties together in person at a prescribed register office.
- (2) Before making any regulations under this paragraph the Secretary of State must consult the Registrar General.

#### Commencement Information

- I5** Sch. 23 para. 13 wholly in force at 5.12.2005; Sch. 23 para. 13 not in force at Royal Assent see s. 263; Sch. 23 para. 13 in force for certain purposes at 15.4.2005 by [S.I. 2005/1112, art. 2, Sch. 1](#) and Sch. 23 para. 13 in force otherwise at 5.12.2005 by [S.I. 2005/3175, art. 2\(1\), Sch. 1](#)

#### Accompanying statement as to the qualifying condition

- 14 A civil partnership notice given by a person subject to immigration control must be accompanied by a statement that the person fulfils the qualifying condition (and the reason why).

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*Civil partnership notice book and civil partnership schedule*

- 15 (1) No action must be taken under section 140(1) or 143 (civil partnership notice book and civil partnership schedule) unless the prescribed registrar is satisfied by the production of specified evidence that the person fulfils the qualifying condition.
- (2) If the prescribed registrar is satisfied as mentioned in sub-paragraph (1) but is not the registrar for the purposes of section 140(1), the prescribed registrar must send him the civil partnership notices and he is to be treated as having received them when the prescribed registrar received them.
- (3) “Specified evidence” means such evidence as may be specified in guidance issued by the Secretary of State after consultation with the Registrar General.

**Commencement Information**

- 16** Sch. 23 para. 15 wholly in force at 5.12.2005; Sch. 23 para. 15 not in force at Royal Assent see s. 263; Sch. 23 para. 15(1)(3) in force for certain purposes at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#) and Sch. 23 para. 15 in force otherwise at 5.12.2005 by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

*Supplementary*

- 16 (1) Part 4 of this Act has effect in any case where this Part of this Schedule applies subject to any necessary modification.
- (2) In particular, section 176 has effect as if the matters proof of which is not necessary in support of the civil partnership included compliance with this Part of this Schedule.
- (3) In this Part of this Schedule—
- “prescribed” means prescribed by regulations made by the Secretary of State;
  - “registrar” means a person appointed under section 152(1)(a) or (b) or (3);
  - other expressions have the same meaning as in Chapter 1 of Part 4 of this Act.
- (4) Section 18(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) (provisions as to holders of offices) shall apply to this Part of this Schedule as if it were an enactment within the meaning of that Act.

**Commencement Information**

- 17** Sch. 23 para. 16 wholly in force at 5.12.2005; Sch. 23 para. 16 not in force at Royal Assent see s. 263; Sch. 23 para. 16(3)(a) in force for certain purposes at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#) and Sch. 23 para. 16 in force otherwise at 5.12.2005 by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

**PART 5**

REGULATIONS

- 17 Any power to make regulations under this Schedule is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

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