

**EXPLANATORY MEMORANDUM TO THE  
IMMIGRATION (PROCEDURE FOR MARRIAGE) REGULATIONS 2005**

**2005 No. 15**

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

**2. Description**

2.1 United Kingdom marriage laws set out the procedures to be followed by the parties to a marriage which is to be solemnised in the UK. The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (“the 2004 Act”) sets out additional procedures to be followed where a party to such a marriage is subject to immigration control, and these Regulations make further provision in relation to those additional procedures. The new procedures are intended to deal with the increasing number of sham marriages in the UK (ie marriages entered into for the sole purpose of circumventing UK immigration control) by making it more difficult for such marriages to take place.

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

3.1 None.

**4. Legislative Background**

4.1 These are the first Regulations made under sections 19 to 25 of the 2004 Act, which set out additional procedures to be followed where a party to a prospective marriage in the UK is subject to immigration control. In summary, the couple must give notice of the marriage at a register office specified for that purpose and the party subject to immigration control must meet an additional qualifying condition at the notice stage.

4.2 Existing marriage legislation relating to England and Wales requires that where a marriage is intended to be solemnised on the authority of certificates of a superintendent registrar, the parties to the prospective marriage must first give notice of that marriage to such a registrar. Section 19 of the 2004 Act requires that, where a party to such a marriage is subject to immigration control, notice must be given to the superintendent registrar of a specified registration district, and the notice must be delivered in person by the two parties. These Regulations specify registration districts in England and Wales for this purpose, the specified districts are listed in Schedule 1. The restricted number of locations at which notice can be given will enable the Immigration Service to target their intelligence and enforcement effort in order to tackle this form of abuse of marriage laws and immigration control.

4.3 Similarly, marriage legislation for Scotland and for Northern Ireland requires notice to be given of a prospective marriage. Sections 21 and 23 of the 2004 Act require that, where a party to a marriage to be solemnised in Scotland or Northern Ireland is subject to immigration control, the notice must be given to the district registrar of a prescribed registration district (in Scotland) or a prescribed registrar (in Northern Ireland). The current position in both Scotland and Northern Ireland is that notice of a marriage may be given in writing (ie by post), therefore these Regulations prescribe every registration district in Scotland and the registrar of every register office in Northern Ireland for these purposes.

4.4 Under sections 19(3), 21(3) and 23(3) of the 2004 Act, persons subject to immigration control wishing to marry in the UK must meet an additional qualifying condition when giving notice of their marriage. This qualifying condition requires them either to hold UK entry clearance for the purpose of marriage, or to have the written permission from the Secretary of State to marry in the UK (a certificate of approval) or to be in a category exempted in regulations under sections 19(3)(c), 21(3)(c) and 23(3)(c). These Regulations exempt for these purposes persons who are “settled in the United Kingdom” as defined in paragraph 6 of the Immigration Rules (essentially this covers persons with indefinite leave to remain in the UK who are ordinarily resident here).

4.5 These Regulations also make provision in relation to applications for the written permission of the Secretary of State for permission to marry in the UK. Section 25 of the 2004 Act enables the Secretary of State to specify the information to be contained in and with such application, to levy a fee for consideration of these applications and to specify to whom the fee should be paid. The Regulations require that applications must be made in writing and submitted by post, and must be accompanied by a fee of £135. This fee has been determined on a cost recovery basis in accordance with Treasury guidelines. Schedule 2 sets out the information which must be provided with an application, this includes the personal details and immigration status of both the applicant and their partner, as well as the passport or travel documents of both parties. Where either party has previously been married they will be expected to provide evidence that they are now free to marry.

## **5. Extent**

5.1 The instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy Background**

7.1 The objective of these Regulations, together with sections 19 to 25 of the 2004 Act, is to reduce abuse of UK immigration control by people entering into sham marriages. Registrars have a duty to report any suspicious marriages to the Immigration

Service under Section 24 of the Asylum and Immigration Act 1999. There were 756 such reports in 2001 when reporting was introduced and this figure rose to 1256 reports in 2002, 2712 reports in 2003 and over 3000 reports last year.

7.2 Reducing the number of sham marriages that take place in the UK has real political importance. It safeguards our marriage laws, the role of registrars and the importance that marriage is given in society. The ability to maintain an effective immigration control is also crucial, both in itself, and in promoting community cohesion and good relations between people of different nationalities and ethnic groups within the UK. Arrangements under which people are able, or are perceived to be able, to circumvent the Immigration Rules create mistrust and foster resentment between different groups. Marriage has increasingly been seen as being used for this end in recent years, and has been widely reported in the media as such. The strengthening of the procedures are intended to ensure that marriages will only be entered into by those who are genuinely seeking a long term and subsisting relationship.

7.3 Consultation on identifying which registration districts should be specified and described for these purposes has taken place with the following bodies:

ONS (The Registrar General for England and Wales)  
Department for Constitutional Affairs  
The Scottish Executive  
The Registrar General for Scotland  
The Registrar General for Northern Ireland  
LACORS (Local Authority Co-ordinators of Regulatory Services)  
Society of Registration Officers  
Affected local authorities across the UK.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector will be minimal. There will be marginal displacement of work from non-designated register offices in England and Wales to designated offices. The costs of the additional work for IND in considering applications for permission to marry in the UK will be offset by the application fee.

## **9. Contact**

9.1 Brenda Hawkyard at the Immigration and Nationality Directorate of the Home Office, email: [brenda.hawkyard@homeoffice.gsi.gov.uk](mailto:brenda.hawkyard@homeoffice.gsi.gov.uk) or telephone: 020 8760 8368, can answer any queries regarding the instrument.