



Home Office

## Immigration Act 2014

# Marriage and civil partnership referral and investigation scheme: statutory guidance for Home Office staff

March 2015

## Contents

Contents.....	2
Section 1.0 – Introduction.....	3
1.1 Purpose of this guidance .....	4
Section 2.0 – The investigation decision .....	5
2.1 Condition A .....	5
2.2 Condition B .....	7
2.3 Making the investigation decision .....	9
2.4 Giving notice of the investigation decision .....	10
2.5 A decision to investigate .....	10
2.6 Calculating the 28-day or 70-day notice period.....	12
Section 3.0 – Conduct of investigations .....	13
3.1 Purpose of investigation.....	14
3.2 Means of investigation .....	14
3.3 Providing information, evidence or photographs .....	15
3.4 Interviews: general.....	16
3.5 Arranging an interview .....	18
3.6 Rearranging an interview .....	19
3.7 Interviews at a relevant party’s home.....	20
3.8 Interviews at Home Office premises in the UK.....	20
3.9 Interviews at Home Office premises outside the UK.....	20
3.10 Interviews by telephone, by video-telecommunications link or over the internet where the relevant party is not at Home Office premises .....	21
3.11 Interviews while detained.....	21
3.12 Notifying a relevant party that they have failed to comply with a requirement .....	22
Section 4.0 – Compliance with an investigation .....	23
4.1 Deciding the compliance question .....	23
4.2 Reasonable excuse for non-compliance .....	24
4.3 The compliance decision.....	24

## Section 1.0 – Introduction

Part 4 of the Immigration Act 2014 (the 2014 Act) reforms the process for giving notice of marriage or civil partnership to give the Home Office a much stronger platform for effective, systematic action to disrupt and deter sham marriages and civil partnerships and prevent participants from gaining an immigration advantage.<sup>1</sup>

From 2 March 2015, the 2014 Act extended the marriage and civil partnership notice period from 15 days to 28 days for all couples in England and Wales marrying following civil preliminaries or forming a civil partnership, and required all couples involving a non-European Economic Area (non-EEA) national who wish to marry in the Anglican Church in England and Wales to complete civil preliminaries and give notice at a register office and be subject to the 28-day notice period.

From 2 March 2015, the marriage and civil partnership notice period in Scotland and in Northern Ireland was extended to 28 days for all couples, under changes implemented by the Scottish Government and the Northern Ireland Executive to marriage and civil partnership laws in Scotland and Northern Ireland.

From 2 March 2015, the 2014 Act, together with secondary legislation for Scotland<sup>2</sup> and Northern Ireland<sup>3</sup>, also introduced a referral and investigation scheme for proposed marriages and civil partnerships across the UK involving a non-EEA national who could benefit in immigration terms. All proposed marriages and civil partnerships in the UK involving a 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<sup>4</sup>, are to be referred to the Secretary of State by the registration official.<sup>5</sup>

The Secretary of State will assess all referrals against intelligence- and evidence-based risk profiles and other information to identify suspect proposed marriages and civil partnerships, and then consider in these cases whether there are reasonable grounds to suspect a sham marriage or civil partnership. Where the Secretary of State has reasonable grounds to suspect a sham and at least one of the parties is not exempt from the scheme, she may decide to investigate whether the marriage or civil partnership is a sham. Notification of that decision to the relevant registration official will have the effect of extending the notice period from 28 days to 70 days, which will allow the Home Office to investigate and take appropriate enforcement or

---

<sup>1</sup> Further information about the Immigration Act 2014 can be found at <https://www.gov.uk/government/collections/immigration-bill>

<sup>2</sup> The Referral and Investigation of Proposed Marriages and Civil Partnerships (Scotland) Order 2015 (S.I. 2015/396): <http://www.legislation.gov.uk/id/uksi/2015/396>

<sup>3</sup> The Referral and Investigation of Proposed Marriages and Civil Partnerships (Northern Ireland and Miscellaneous Provisions) Order 2015 (S.I. 2015/395): <http://www.legislation.gov.uk/id/uksi/2015/395>

<sup>4</sup> To be exempt from referral the person must be a British citizen; an EEA or Swiss national; or a non-EEA national who has provided the registration official with the specified evidence of an EU right of permanent residence in the UK, of exemption from immigration control or settled status in the UK, or of a valid marriage or civil partnership visitor visa or a valid fiancé(e) or proposed civil partner visa.

<sup>5</sup> Further information about these changes is available at <https://www.gov.uk/marriages-civil-partnerships/giving-notice-at-your-local-register-office>

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.

## **1.1 Purpose of this guidance**

This guidance has been published by the Secretary of State to assist Home Office staff (including “decision makers” and “investigation officers”) responsible for the operation of the referral and investigation scheme under the 2014 Act. They must have regard to this guidance under:

- Section 48(6) – in deciding whether to investigate a proposed marriage or civil partnership referred to the Secretary of State under the scheme (“the investigation decision”).
- Section 50(2) – in conducting an investigation under the scheme.
- Section 50(6) – in deciding whether or not each of the parties to a proposed marriage or civil partnership subject to an investigation under the scheme has complied with that investigation (“the compliance decision”).

## **Section 2.0 – The investigation decision**

Where a registration official refers a proposed marriage or civil partnership to the Secretary of State under the scheme, she must decide under section 48(2) of the 2014 Act whether to investigate whether the proposed marriage or civil partnership is a sham.

Under sections 24 and 24A of the Immigration and Asylum Act 1999, as amended by section 55 of the 2014 Act, a sham marriage or civil partnership is one in which:

- one or both of the parties is not a British citizen or an EEA or Swiss national;
- there is no genuine relationship between the parties; and
- either or both of the parties enter into the marriage or civil partnership for the purpose of circumventing UK immigration controls, including under the Immigration Rules or the Immigration (EEA) Regulations 2006.

Under section 48(3) of the 2014 Act, the Secretary of State may not decide to investigate whether a proposed marriage or civil partnership referred under the scheme is a sham unless conditions A and B are met.

Condition A is met if the Secretary of State is satisfied that only one or neither of the parties to the proposed marriage or civil partnership is an exempt person.

Condition B is met if the Secretary of State has reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham.

Section 48 does not require conditions A and B to be considered in any particular order, nor does it require a condition to be considered if the other condition is not met. Home Office staff may therefore conduct the checks necessary to establish whether the parties to a proposed marriage or civil partnership referred under the scheme are exempt persons before or after commencing or completing their consideration of whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham.

### **2.1 Condition A**

Condition A is met if the Secretary of State is satisfied that only one or neither of the parties to the proposed marriage or civil partnership is an exempt person.

Under section 49(1) of the 2014 Act, an exempt person:

- Is a relevant national, i.e. under section 62(1) is a British citizen or an EEA or Swiss national.
- Has the appropriate immigration status, i.e. under section 49(2):
  - has an EU right of permanent residence in the UK.

- is exempt from immigration control, as defined in paragraph 3 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 (S.I. 2015/122), e.g. has the right of abode in the UK under section 2(1)(b) of the Immigration Act 1971, is a member of a diplomatic mission or their family member, or is a member of HM forces or of Commonwealth forces undergoing training or visiting forces.<sup>6</sup>

- is settled in the UK within the meaning of section 33(2A) of the Immigration Act 1971, i.e. has Indefinite Leave to Enter or Indefinite Leave to Remain.

- Holds a relevant visa in respect of the proposed marriage or civil partnership, as defined in paragraph 4 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 (S.I. 2015/122), i.e.

- a marriage or civil partnership visitor visa granted under the Immigration Rules.

- a fiancé(e) or proposed civil partner visa or leave granted under or outside the Immigration Rules.

A couple in which both parties are exempt persons may be referred to the Secretary of State by the registration official where, for example, one or both of those persons does not provide the registration official with specified evidence that they are an exempt person. Such evidence is specified:

- For persons giving notice in England and Wales, by paragraphs 5 and 6 of the Referral of Proposed Marriages and Civil Partnerships Regulations 2015 (S.I. 2015/123)<sup>7</sup>; and
- For persons giving notice in Scotland or Northern Ireland, by paragraphs 8 and 9 of the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 (S.I. 2015/404).<sup>8</sup>

**The decision maker must satisfy themselves, based on checks of Home Office records, that only one or neither of the parties is an exempt person before deciding to investigate a proposed marriage or civil partnership referred to the Secretary of State under the scheme.**

---

<sup>6</sup> <http://www.legislation.gov.uk/id/uksi/2015/122>

<sup>7</sup> <http://www.legislation.gov.uk/id/uksi/2015/123>

<sup>8</sup> <http://www.legislation.gov.uk/id/uksi/2015/404>

## 2.2 Condition B

Condition B is met if the Secretary of State has reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham.

Proposed marriages and civil partnerships referred by registration officials to the Secretary of State under the scheme will be assessed against immigration records and against intelligence- and evidence-based risk profiles. Account will also be taken of reports from registration officials to the Secretary of State, under sections 24 and 24A of the 1999 Act, of suspected sham marriages and civil partnerships.

This process, which will be mainly automated, will be used to identify proposed marriages and civil partnerships in which additional scrutiny, by a manual assessment undertaken by the decision maker, is warranted in order to consider whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham.

This process will also enable the Home Office to identify quickly cases considered to be of low or no risk of being a sham so that the couple and the relevant registration official can be informed that, if the latter is satisfied that there is no legal reason to prevent it, the proposed marriage or civil partnership can proceed after the expiry of the 28-day notice period.

The intelligence- and evidence-based risk profiles will be drawn from recent section 24/24A reports of suspected shams submitted by registration officials, recent sham-based enforcement and prosecution cases and recent applications refused on the basis that the relationship is not genuine. The risk profiles will be kept under review and may change over time, but from 2 March 2015 the factors they will reflect will include whether either party to the proposed marriage or civil partnership:

- Is an immigration overstay or absconder or otherwise in breach of the conditions of their leave.
- Entered the UK illegally, or has been removed from the UK and should not be here.
- Has been convicted of a criminal offence or there is other evidence of links to criminality.
- Is recorded as deceased.
- Is currently or has previously been the subject of a section 24/24A report.
- Has previously obtained leave, or sought to do so, on the basis of deception or of false or forged documents.
- Has an outstanding immigration application based on their relationship with another spouse/partner, or has previously sponsored, or been sponsored by, another spouse/partner to come to or remain in the UK. This factor may also

be linked to a previous marriage or civil partnership which, if not dissolved, would be a legal barrier to the proposed marriage or civil partnership of which the relevant registration official should be informed by the Home Office.

- Has a factor(s) in their immigration history which, based on a current analysis of immigration intelligence, casework and enforcement operations drawn up and quality assured according to Director General-approved procedures, otherwise gives rise to a reasonable ground to suspect that the proposed marriage or civil partnership may be a sham.

The presence of one or more of these factors will **not** mean that the proposed marriage or civil partnership will automatically be investigated under the scheme. It may mean that additional scrutiny is warranted in order to consider whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham.

That additional scrutiny will involve a manual assessment, undertaken by a decision maker trained to undertake this function, of whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham. In undertaking this assessment the decision maker must take into account all the information available to them about both parties and the proposed marriage or civil partnership. The assessment should be informed, but not solely determined, by the presence of one or more of the factors mentioned above. The decision maker must consider the available information as a whole on a case-by-case basis in determining whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham.

The risk profiles used to inform consideration of whether there are reasonable grounds to suspect that the proposed marriage or civil partnership is a sham will **not** take account of the nationality of either party. Should the regular review of the risk profiling indicate that it would be strengthened by the inclusion of nationality, consideration will be given, in light of the detail of the process to be put in place, as to whether a Ministerial authorisation is necessary under Schedule 3, Part 4, paragraph 17(4)(a) of the Equality Act 2010.

**The decision maker must be satisfied that there are reasonable grounds for suspecting that it is a sham before deciding to investigate a proposed marriage or civil partnership referred to the Secretary of State under the scheme.**

Where the Home Office identifies that a proposed marriage or civil partnership involves an immigration offender, it may take appropriate enforcement action against that person, whether or not there are reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham and whether or not it decides to investigate the proposed marriage or civil partnership under the scheme.



## 2.3 Making the investigation decision

In respect of every proposed marriage or civil partnership referred by a registration official to the Secretary of State under the scheme, she must decide whether to investigate whether the proposed marriage or civil partnership is a sham.

Where the decision maker is satisfied that:

- Only one or neither of the parties to the proposed marriage or civil partnership is an exempt person, i.e. that condition A is met; **and**
- There are reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham, i.e. that condition B is met,

the decision maker may decide that the Home Office will investigate whether the proposed marriage or civil partnership is a sham. Notification of that decision to the relevant registration official will have the effect of extending the notice period from 28 days to 70 days. A decision to investigate whether a proposed marriage or civil partnership is a sham will be made by an Executive Officer (or equivalent) or more senior grade.

Under section 48 of the 2014 Act the Secretary of State is not required to decide to investigate a proposed marriage or civil partnership where conditions A and B are met. In deciding whether to do so, the decision maker may take into account matters of operational prioritisation and workflow management within the resources available at the time the decision is made.

Under section 48, where conditions A and B are met, the Secretary of State is not required to decide to investigate those proposed marriages or civil partnerships in which condition B is met by the greatest margin (amongst those referred under the scheme on a particular day or within a particular timeframe). In deciding whether to investigate a proposed marriage or civil partnership in which conditions A and B are met, the decision maker may take into account an operational assessment of the cases meeting those conditions where investigation may have the optimum impact in terms of countering sham marriages and civil partnerships and related immigration abuse. That operational assessment must be based on a current analysis of immigration intelligence, casework and enforcement operations drawn up and quality assured according to Director General-approved procedures.

Under section 48 the decision maker must make the decision whether or not to investigate and give notice of that decision to both parties to the proposed marriage or civil partnership, and to the relevant registration official, within the 28-day notice period.

## 2.4 Giving notice of the investigation decision

How notice of the investigation decision may be given and when such notice is presumed to have been received (unless the contrary is proved) is specified:

- For persons giving notice in England and Wales, by paragraphs 5 to 7 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 (S.I. 2015/122)<sup>9</sup>; and
- For persons giving notice in Scotland or Northern Ireland, by paragraphs 4 to 6 of the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 (S.I. 2015/404).<sup>10</sup>

## 2.5 A decision to investigate

Under section 51(1) of the 2014 Act, where the Secretary of State decides to investigate whether a proposed marriage or civil partnership referred under the scheme is a sham, the notice of this decision given to both parties under section 48 will set out the requirements with which they must comply as part of the investigation and the consequences of not doing so.

In particular, that section 48 notice will set out:

- Requirements with which the party must comply as part of the investigation, and it may specify how they must comply with them. The requirements which may be imposed are those specified in the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015 (S.I. 2015/397).<sup>11</sup> They include for example a requirement to:
  - Make contact with a particular team in a particular way within a particular time period, e.g. to arrange for an interview to take place by a particular date.
  - Be interviewed at home, at Home Office premises or by telephone.
  - Provide information, evidence or photographs.
- That the party must comply with such a requirement, and in any manner specified, if subsequently notified of it by the Secretary of State, orally or in writing.
- That the proposed marriage or civil partnership is now subject to a notice period of 70 days (not 28 days) and the date on which that period will end.

---

<sup>9</sup> <http://www.legislation.gov.uk/id/uksi/2015/122>

<sup>10</sup> <http://www.legislation.gov.uk/id/uksi/2015/404>

<sup>11</sup> <http://www.legislation.gov.uk/id/uksi/2015/397>

- That, within that 70-day period, the Secretary of State must decide whether or not each of the parties has complied with the investigation (the “compliance question”) and give notice of that decision to the parties and to the relevant registration official.
- Prescribed information about the investigation, as prescribed in paragraph 18 of the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015, which is to the effect that:
  - The Secretary of State may decide that a relevant party who has failed, without reasonable excuse, to comply with a relevant requirement, as set out in the section 48 notice or in any subsequent notification, has failed to comply with the investigation.
  - Where the Secretary of State decides that a relevant party has (or that both have) failed to comply with the investigation and gives both parties and the relevant registration official notice of that decision within the 70-day period, the parties will not be able to marry or enter into a civil partnership on the basis of the notice given. They must give notice again if they still wished to do so.
  - Where the Secretary of State determines, whether before or after it takes place, that the marriage or civil partnership is a sham, the Secretary of State or an immigration officer may take immigration enforcement action where appropriate against either relevant party (or both).
  - Where the Secretary of State determines, whether before or after it takes place, that the marriage or civil partnership is a sham, the Secretary of State may refuse an application made by either relevant party under the Immigration Rules or the Immigration (European Economic Area) Regulations 2006 to stay in the UK on the basis of their relationship with the other relevant party. A refusal of an application on these grounds will be without prejudice to the refusal of the application on any other basis.

In addition, where the Secretary of State decides to investigate whether a proposed marriage or civil partnership referred under the scheme is a sham, the section 48 notice of this decision given to both parties will inform them of the requirement to notify the Secretary of State of any change during the period of the investigation in the usual address of either party and to provide specified evidence of this. These requirements arise under paragraphs 8 and 9 of the Referral of Proposed Marriages and Civil Partnerships Regulations 2015 (for persons giving notice in England and Wales) and under paragraphs 11 and 12 of the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 (for persons giving notice in Scotland or Northern Ireland).

For persons giving notice in England and Wales, that section 48 notice will also inform both parties of the requirement to notify the Secretary of State of any change in the UK contact address of either party if they have provided one, and to notify the Secretary of State of a UK contact address if the usual address of either party changes to an address outside the UK.

Where the Secretary of State decides under section 48 of the 2014 Act not to investigate whether a proposed marriage or civil partnership referred under the scheme is a sham, the section 48 notice given to both parties and the relevant registration official will enable the marriage or civil partnership to take place after the 28 day notice period, provided that the registration official is satisfied that there is no legal reason why they cannot issue or complete the required certificate or schedule.

A decision by the Secretary of State not to investigate a proposed marriage or civil partnership does not constitute a determination as to the genuineness of the relationship on which it is based. If the marriage or civil partnership takes place, any decision taken on an application under the Immigration Rules or the Immigration (European Economic Area) Regulations 2006 to stay in the UK which is made on the basis of the marriage or civil partnership will continue to involve an assessment by the Home Office of the genuineness of the couple's relationship.

## **2.6 Calculating the 28-day or 70-day notice period**

The date on which the 28-day or 70-day notice period commences will vary according to the part of the UK in which notice was given:

	<b>Marriage</b>	<b>Civil Partnership</b>
<b>England and Wales</b>	Day after notice entered in marriage notice book	Day after notice is recorded in register
<b>Scotland</b>	Day after receipt of the notice	Day after notice publicised (which will be "on receipt")
<b>Northern Ireland</b>	Day notice is entered in the marriage notice book (which will be on receipt of both notices)	Day notice is recorded in the civil partnership notice book (which will be on receipt of both notices)

In Scotland, where the parties to a proposed marriage or civil partnership referred under the scheme have given notice separately, a different 28-day or 70-day notice period may apply to each party. To comply with sections 48(9) and 50(7) of the 2014 Act, decision makers should ensure that they notify the parties and the relevant registration official of the investigation decision within the 28-day notice period of the party whose notice was first received and, where relevant, of the compliance decision within the 70-day notice period of the party whose notice was first received.

## Section 3.0 – Conduct of investigations

Where the Secretary of State decides to investigate whether a proposed marriage or civil partnership referred under the scheme is a sham, the investigation must be conducted in accordance with the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015 (S.I. 2015/397).<sup>12</sup>

When carrying out such an investigation on behalf of the Secretary of State, the investigation officer may make such enquiries as they think fit for the purpose of determining whether the proposed marriage or civil partnership is a sham.

As part of the investigation each party may be required to provide information or evidence about in particular:

- Themselves and about the other party.
- Their relationship with the other party.
- Their living arrangements and those of the other party.
- Their future plans and those of the other party.

This guidance sets out how an investigation into a proposed marriage or civil partnership should be conducted by the investigation officer for the purpose of establishing whether it is a sham, including:

- The methods of investigation that can be used.
- The time periods relevant to the conduct of the investigation.
- The procedures and safeguards applicable to each investigation method.

The investigation will focus on the genuineness of the relevant parties' relationship and on determining whether the proposed marriage or civil partnership is a sham. It will often involve the relevant parties being required to make an initial contact with the Home Office, to arrange an interview and/or provide further information or evidence. The requirements with which the relevant parties will be asked to comply will be geared by the investigation officer so as to:

- Enable them to conduct the investigation, and enable a decision whether the relevant parties have complied with it, in good time for the Home Office to give the relevant parties and the relevant registration official notice of that decision before the end of the 70-day period.
- Prevent a relevant party or parties from frustrating the investigation process by withholding compliance until near the end of the 70-day notice period, thereby making it difficult for the Home Office to properly decide the

---

<sup>12</sup> <http://www.legislation.gov.uk/id/uksi/2015/397>

compliance question and give notice of the decision to the relevant parties and the relevant registration official before the end of the 70-day period.

### **3.1 Purpose of investigation**

The purpose of the investigation is to determine whether, on the balance of probabilities, the proposed marriage or civil partnership is a sham.

The investigation officer should undertake a focused investigation to obtain information and evidence relevant to assessing the genuineness of the couple's relationship and determining whether the proposed marriage or civil partnership is a sham.

Where the investigation determines that the proposed marriage or civil partnership is a sham, the Home Office may where appropriate:

- Take an enforcement decision (e.g. curtailment, removal) against the non-EEA or EEA national(s) involved.
- Refuse any application under the Immigration (European Economic Area) Regulations 2006 or the Immigration Rules which is based on the relationship in terms which will withstand any appeal.
- Seek the prosecution of those involved in a criminal offence, e.g. perjury or facilitation of illegal immigration, by consultation with or reference to the relevant prosecuting authority.

Whether or not the investigation determines that the proposed marriage or civil partnership is a sham, the Home Office may take appropriate removal action against immigration overstayers or illegal entrants identified under the referral and investigation scheme.

### **3.2 Means of investigation**

An investigation into a proposed marriage or civil partnership may involve imposing one or more of the following requirement(s) on one or both of the relevant parties:

- To provide information, evidence or photographs.
- To be interviewed in person at home.
- To be interviewed in person at Home Office premises in or outside the UK or while detained in the UK.
- To be interviewed by telephone, video-link or over the internet.

The most appropriate means of investigation will be considered by the investigation officer on a case-by-case basis, taking account of all the relevant information and

evidence already available to them about the relevant parties and their proposed marriage or civil partnership.

### **3.3 Providing information, evidence or photographs**

One or both parties to the proposed marriage or civil partnership may be required by the investigation officer to provide them with information, evidence or photographs relevant to determining whether the parties' relationship is genuine and whether the proposed marriage or civil partnership is a sham.

A relevant party may be required to provide information, evidence or photographs before, during or after an interview. A requirement to provide information, evidence or photographs may also be imposed whether or not an interview is to take place or has taken place.

Unless it is made at an interview, a requirement to provide information must be made in writing. A requirement to provide evidence or photographs must be imposed, or where it is made at an interview, must be followed up, in writing. The investigation officer may discuss the information, evidence or photographs to be provided with the relevant party or parties before requiring them to provide it.

Where a requirement to provide information, evidence or photographs is imposed or followed up in writing, the investigation officer must:

- Include a description of the information, evidence or photographs that must be provided.
- Set out how the information, evidence or photographs must be provided, whether by sending the information, evidence or photographs to the investigation officer (e.g. by post or email to a particular address) by a particular date, or by providing the information, evidence or photographs at an interview.
- Where the information, evidence or photographs is or are to be sent to the investigation officer, include the address to which the information, evidence or photographs must be sent and the date by which the information, evidence or photographs must be received.
- Where the evidence is in the form of a document, set out the circumstances in which a certified translation must also be provided and in which a certified copy may be provided.

A "certified translation" means a translation of the document provided which is certified as a true and accurate translation by the person who translated it; is signed and dated by that person; and states his or her name and contact details.

A "certified copy" means a copy of the original document which is certified as a true copy of the original; is signed and dated by the person who certifies it; and states that person's name, contact details and position or occupation. A document may not

be certified by either party to the proposed marriage or civil partnership, or by a person who is a family member of or who lives with either party.

Either party to the proposed marriage or civil partnership may be required to provide evidence in the form of an electronic document by showing it, during an interview, to the investigation officer, who may make a note of its contents in the interview record; photograph it; request a “screenshot” of the document; or where it is an email (or included in an email), by forwarding it to a Home Office or FCO email account.

### **3.4 Interviews: general**

As part of an investigation the investigation officer may require a relevant party to be interviewed, on their own, together with the other relevant party, or both.

Where a relevant party is in the UK, the investigation officer may require an interview with them to take place:

- In person at the relevant party’s home.
- In person at the other relevant party’s home (if different).
- In person at Home Office premises.
- By telephone, by video-telecommunications link or over the internet (where the relevant party must be present at Home Office premises).
- By telephone, by video-telecommunications link or over the internet (where the relevant party is not present at Home Office premises).
- In person or by telephone where the relevant party is detained under immigration powers or in prison.

Where a relevant party is outside the UK, the investigation officer may require an interview with them to take place:

- In person at Home Office premises.
- By telephone, by video-telecommunications link or over the internet (where the relevant party must be present at Home Office premises).
- By telephone, by video-telecommunications link or over the internet (where the relevant party is not present at Home Office premises).

A relevant party may be required to attend more than one interview.

An interview must take place during normal office hours, unless:

- A relevant party (or, as the case may be, both relevant parties) agrees that an interview may take place outside normal office hours.



March 2015

- An interview is commenced and has been substantially completed during normal office hours: it may then continue and be completed outside normal office hours.

“Normal office hours” are:

- In the UK, between 9.00 am and 6.00 pm, Monday to Friday, excluding Good Friday, Christmas Day or a bank holiday in the part of the UK in which the relevant party resides.
- Outside the UK, what are normally regarded as normal office hours on a day which is normally regarded as a working day in the country or territory in which the relevant party resides.

A relevant party:

- May be accompanied at an interview by an appropriate legal representative, i.e. a qualified person within the meaning of section 82 of the Immigration and Asylum Act 1999 – see the website of the Office of the Immigration Services Commissioner for more information at <http://home.oisc.gov.uk>
- May be accompanied at an interview by an interpreter (appointed by the relevant party if they wish or provided by the Home Office where necessary). If the relevant party is to be accompanied by an interpreter, the relevant party should inform the Home Office of this before the interview.
- May not be accompanied at an interview by any other person without the consent of the investigation officer.

Interviews must be conducted in a properly probing, but balanced way, with the questions directed to establishing whether the relevant parties are in a genuine relationship and whether their proposed marriage or civil partnership is a sham. For example, the relevant party or parties might be asked about:

- The background to, history of and subsistence of the parties’ relationship.
- The general background and the immigration history of the parties.
- The living arrangements of the parties.
- The arrangements for the proposed marriage or civil partnership.
- The parties’ future plans.

A failure to respond to any question asked during an interview, or a refusal to answer any further questions thereby bringing the interview to an end, may be regarded as a failure to comply with the requirement to be interviewed.

The person conducting the interview will make a written record of it and will provide the party or parties interviewed with a copy of this record if they request it. This record:

March 2015

- Must be completed during the interview.
- Must constitute a verbatim account of what is said or an account of the interview which adequately summarises it.
- Must be signed and dated by the person who made it.

### **3.5 Arranging an interview**

A relevant party may be required to contact the Home Office to arrange an interview.

A relevant party may be required to contact the Home Office by:

- Telephoning the telephone number;
- Sending a text message to the telephone number;
- Sending an email to the Home Office or FCO email address; or
- Writing to the address,

specified in the section 48 notice or in any subsequent notification, and quoting the Home Office reference number given in the notice or notification.

A relevant party may be required to contact the Home Office by a specified date, which must be at least three working days after the day on which the notice or the notification is given.

The “day on which the notice or the notification is given” means the day on which the relevant party is presumed to have received it (unless the contrary is proved), under paragraph 7 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 (S.I. 2015/122)<sup>13</sup> or paragraph 6 of the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 (S.I. 2015/404).<sup>14</sup> For example, this is:

- The second working day after the day on which it was posted, where the notice or notification is sent by first class post.
- The day on which it is sent, where the notice or notification is given by email.
- The day on which it is given, where the notice or notification is given orally.

A relevant party who contacts the Home Office in accordance with such a requirement:

---

<sup>13</sup> <http://www.legislation.gov.uk/id/uksi/2015/122>

<sup>14</sup> <http://www.legislation.gov.uk/id/uksi/2015/404>

- Must make themselves reasonably available so that a date and time, being a date no later than the date specified in the section 48 notice or in the notification, can be agreed for an interview to take place.
- May be required to agree the date and time for the interview, so far as practicable, on behalf of the other relevant party, where an interview is to take place with both relevant parties.

Every reasonable effort must be made to accommodate the preferred availability for interview of the party or parties. However, a party or parties subject to a requirement to be interviewed are required to make themselves reasonably available for interview. If it is not possible to accommodate the preferred availability for interview of the party or parties, the investigation officer may set an alternative date, place and time for the interview and inform the party or parties that, if they fail to attend, the Home Office may decide that they have failed to comply with the requirement to be interviewed. If the party or parties inform the Home Office of their inability or unwillingness to attend an interview at any of the dates, places and times proposed to them, the investigation officer may inform them that the Home Office may decide that they have failed to comply with the requirement to be interviewed.

The relevant party or parties must be given at least 3 working days' written notice by the Home Office of the date, place and time of the interview, unless the relevant party or parties agree to the interview taking place with less than 3 working days' notice. If they do, notice of the date, place and time of the interview can be given orally, e.g. by telephone.

### **3.6 Rearranging an interview**

Where a relevant party is required to attend an interview and the date or time for that interview is not, or is no longer, convenient for the relevant party or, where relevant, the other relevant party, the Home Office may agree to rearrange the interview.

The investigation officer must accommodate, where possible, what they consider to be a reasonable request to rearrange an interview. However, a party or parties subject to a requirement to be interviewed are required to make themselves reasonably available for interview. If it is not possible to accommodate the preferred availability for interview of the party or parties, the investigation officer may set an alternative date and time for the rearranged interview and inform the party or parties that, if they fail to attend, the Home Office may decide that they have failed to comply with the requirement to be interviewed.

Where the Home Office agrees to rearrange an interview, the relevant party or parties may be given less than 3 working days' written notice of the rearranged interview, but not less than 24 hours' notice unless the relevant party or parties agree to a rearranged interview taking place with less than 24 hours' notice.

The Home Office will not normally agree to rearrange an interview more than once.

### **3.7 Interviews at a relevant party's home**

For an interview to be conducted at a relevant party's home, two members of Home Office staff must be present.

During the interview they may make observations about, and ask the relevant party or parties about, the living arrangements of either or both of them, and they may ask to see evidence that the parties live together if they claim to do so.

The Home Office staff conducting the interview must make a written record (signed and dated by the person who made it) of those observations, of any response to them given by relevant party or parties, and of any evidence provided that the parties live together. The relevant party or parties must be provided with a copy of this record if they request it.

This written record is in addition to that which must be made of the interview itself, a copy of which must be provided to the relevant party or parties if they request it (see section 3.4).

### **3.8 Interviews at Home Office premises in the UK**

Where a relevant party is required to attend an interview at Home Office premises in the UK, the notice of the interview (see section 3.5) must make clear how the interview is to be conducted – whether in person, by telephone, by video-telecommunications link or over the internet, and whether it is to involve the other relevant party.

### **3.9 Interviews at Home Office premises outside the UK**

A relevant party may be required to attend an interview at Home Office premises outside the UK where they are resident outside the UK and those Home Office premises are located within a reasonable travelling distance of their place of residence (whether or not they are in the same country or territory).

Where a relevant party is required to attend an interview at Home Office premises outside the UK, the notice of the interview (see section 3.5) must make clear how the interview is to be conducted – whether in person, by telephone, by video-telecommunications link or over the internet, and whether it is to involve the other relevant party.

### **3.10 Interviews by telephone, by video-telecommunications link or over the internet where the relevant party is not at Home Office premises**

Where a relevant party (whether in or outside the UK) is required to attend an interview to be conducted by telephone, by video-telecommunications link or over the internet but is not required to be present at Home Office premises, the notice of the interview (see section 3.5) must make clear how the interview is to be conducted – whether by telephone, by video-telecommunications link or over the internet, and whether it is to involve the other relevant party.

To start an interview to be conducted by telephone, the investigation officer conducting the interview:

- Must telephone the relevant party on the number notified to that party which they have provided to the Home Office.
- May telephone the relevant party at any time within a period of 30 minutes beginning with the time notified to them. The relevant party must, as far as practicable, keep the relevant telephone line free during this period and then during the period of the interview. A failure to do so may be regarded as a failure to comply with the requirement to be interviewed.

At the start of a telephone interview:

- The investigation officer conducting the interview must identify themselves (and anyone accompanying them) by reference to their name, position and place of work.
- The relevant party or parties must confirm their identity by reference to their name, date of birth and nationality and to the Home Office reference number notified to them. If they do not do so, the investigation officer conducting the interview may decide to continue with the interview if they are otherwise satisfied that it is the relevant party or parties; to rearrange the interview; or that the relevant party or parties have failed to comply with the requirement to be interviewed.

### **3.11 Interviews while detained**

A relevant party in the UK may be required to attend an interview conducted in person or by telephone while they are detained under immigration powers or in prison. The investigation officer should make the arrangements for such an interview with the immigration removal centre or prison via the relevant local Immigration Enforcement office. Conducting such an interview should not be a reason to delay the relevant party's planned removal from the UK.

The notice of the interview (see section 3.5) must make clear how the interview is to be conducted – whether in person or by telephone. An interview with a relevant party who is detained cannot also involve the other relevant party.

At the start of a telephone interview with a relevant party who is detained:

- The investigation officer conducting the interview must identify themselves (and anyone accompanying them) by reference to their name, position and place of work.
- The relevant party must confirm their identity by reference to their name, date of birth and nationality and to the Home Office reference number notified to them. If they do not do so, the investigation officer conducting the interview may decide to continue with the interview if they are otherwise satisfied that it is the relevant party; to rearrange the interview; or that the relevant party has failed to comply with the requirement to be interviewed.

### **3.12 Notifying a relevant party that they have failed to comply with a requirement**

Under regulation 15 of the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015 (S.I. 2015/397),<sup>15</sup> where the Secretary of State believes that a relevant party has failed to comply with a requirement of the investigation, the Secretary of State may give notice in writing to the relevant party:

- Stating that the Secretary of State believes that the relevant party has failed to comply with a requirement and giving the reasons for that belief.
- Requiring the relevant party to contact the Home Office within the period stated (which may not be less than a period of three working days beginning with the day on which the notice is given) with a view to complying with that (and any other) requirement.
- Including relevant Home Office contact details. The notice may require the relevant party to make contact by telephone.

The Secretary of State is not required to give such a “regulation 15 notice” to a relevant party who they believe has failed to comply with a requirement of the investigation, and it is not necessary for a relevant party to have been given such a notice before the decision maker can decide whether they have complied with the investigation. The onus is on the relevant party to comply with the requirements set out in the section 48 notice or any subsequent notification to them.

It is a matter for the investigation officer to determine whether it is appropriate to issue a relevant party with a regulation 15 notice to assist the investigation officer’s conduct of the investigation and to inform the decision whether the relevant party has complied with the investigation.

---

<sup>15</sup> <http://www.legislation.gov.uk/id/uksi/2015/397>

## **Section 4.0 – Compliance with an investigation**

Where a proposed marriage or civil partnership is subject to an investigation, under section 50(4) and (7) of the 2014 Act the Secretary of State must, within the 70-day notice period, decide whether or not each of the relevant parties has complied with the investigation (the “compliance question”) and give notice of that decision to both parties and to the registration official to whom the section 48 notice was given of the decision to investigate.

For the proposed marriage or civil partnership to take place after the 70-day notice period, the Secretary of State must decide that both relevant parties have complied with the investigation. If the decision maker decides that either or both of the relevant parties have failed without reasonable excuse to comply with a requirement(s) notified to them, the decision maker may decide that either or both of the relevant parties have failed to comply with the investigation. If the decision maker so decides, the relevant parties will not be able to marry or enter into a civil partnership on the basis of the notice they have given. They would need to give notice again if they still wished to do so.

In determining whether both relevant parties have complied with the investigation, the decision maker must take account of all the relevant information and evidence available to them, including the written record of any interview; any written notice requiring the parties to attend an interview (or arrange to do so) or to provide information, evidence or photographs and their response; and any report of the investigation by the investigation officer (if they are not the decision maker).

### **4.1 Deciding the compliance question**

The decision maker may decide that a relevant party who fails, without reasonable excuse, to comply with a relevant requirement has not complied with the investigation.

Under section 50(11) of the 2014 Act, a “relevant requirement” includes:

- A requirement specified in the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015 (S.I. 2015/397).<sup>16</sup> That means a requirement to arrange an interview; to attend an interview and be interviewed; to provide confirmation of identity at the start of a telephone interview; and to provide information, evidence or photographs.
- The requirement to notify the Home Office of any change in the usual address of either party and to provide specified evidence of this.
- For persons giving notice in England and Wales, the requirement to notify the Home Office of any change in the UK contact address of either party if they have provided one, and to notify the Home Office of a UK contact address if the usual address of either party changes to an address outside the UK.

---

<sup>16</sup> <http://www.legislation.gov.uk/id/uksi/2015/397>

The decision maker may also decide that a relevant party who fails, without reasonable excuse, to contact the Home Office following receipt of a notice given under regulation 15 of the Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc) Regulations 2015 has not complied with the investigation (see section 3.12).

Where a relevant party is removed or deported from the UK, or leaves the UK by voluntary departure or under a relevant international project, after they have been given a section 48 notice but before the compliance question has been decided, the decision maker may decide that the relevant party (and the other relevant party) has complied with the investigation.

## **4.2 Reasonable excuse for non-compliance**

The decision maker must decide, in the light of all the circumstances of the case and all the relevant information and guidance available to them, whether any reason or excuse given by either or both of the relevant parties for the failure by either or both of them to comply with a requirement notified to them constitutes a “reasonable excuse” for that non-compliance.

Such a reasonable excuse may exist for example where:

- There are compelling, compassionate reasons for failing to comply with the requirement.
- There are reasons beyond the control of the relevant parties which prevented them from complying with the requirement.
- There has been administrative failure by the Home Office.

## **4.3 The compliance decision**

Where the decision maker decides that both relevant parties have complied with the investigation, the decision maker must give notice of that decision to both relevant parties and the relevant registration official before the end of the 70-day notice period. If there is no legal reason why they may not do so, the registration official will be able, after the end of this period, to issue the relevant parties with the certificates or schedule that will enable them to marry or form a civil partnership.

Where the decision maker decides that one or both of the relevant parties have not complied with the investigation, they must give notice of that decision to both relevant parties and the relevant registration official before the end of the 70-day notice period. That notice must include a statement of the decision maker’s reasons for reaching that decision. A decision that one or both of the relevant parties have not complied with the investigation will be made by a Higher Executive Officer (or equivalent) or more senior grade.



March 2015

How notice of the compliance decision may be given and when such notice is presumed to have been received (unless the contrary is proved) is specified:

- For persons giving notice in England and Wales, by paragraphs 5 to 7 of the Proposed Marriages and Civil Partnerships (Meaning of Exempt Persons and Notice) Regulations 2015 (S.I. 2015/122)<sup>17</sup>; and
- For persons giving notice in Scotland or Northern Ireland, by paragraphs 4 to 6 of the Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015 (S.I. 2015/404).<sup>18</sup>

END

---

<sup>17</sup> <http://www.legislation.gov.uk/id/uksi/2015/122>

<sup>18</sup> <http://www.legislation.gov.uk/id/uksi/2015/404>