

Marriage licences and the impact of the Immigration Act 2014

12 May 2016

Since 2 March 2015 where one or both of the parties to an intended marriage is a non EEA national, the parties have had to obtain a superintendent registrar's certificate ("SRC") to authorise the marriage; the parties cannot be married by Banns or by Common Licence. (It is possible, rarely, for a marriage of a foreign national to be authorised by the Archbishop of Canterbury through the Special Licence procedure).

Accordingly, it is an absolute requirement for the priest preparing a couple for marriage to ask for proper evidence that both of parties are EEA nationals. A passport or identity card must be examined in all cases, and this includes situations where the person may be known to the priest or where the priest thinks that the parties are both EEA nationals; it includes British nationals. The check must be uniformly applied so that there is no discrimination between any persons on the ground of race.

The Diocesan Registrar's advice is that the evidence of nationality should be noted, e.g. passport number, in the priest's record of marriage preparation, because the onus will be on the priest to demonstrate that proper care has been taken to avoid the marriage of any foreign national outwith the new system.

The First Schedule below sets out a list of EEA countries; for the purpose of the legislation, Switzerland is included. The Second Schedule sets out the current national guidance in relation to what identity documentation should be sought.

If one or both parties is a non EEA national, then the procedure is as below:

Superintendent registrar's role

If approached by a couple where one or both is a non EEA national, a priest must advise them to apply to give notice of the marriage at a designated civil register office as soon as practicable. A superintendent registrar will be able to issue a superintendent registrar's certificate to authorise the marriage of the parties in any church or chapel in which they could, if they were both EEA nationals marry after banns or by way of common licence. This would include the church of a parish where a party has a "qualifying connection".

The guidance given to superintendent registrars is that couples should always contact the minister of the church where they are applying to be married before approaching the civil authorities. Also the registrars will be required to check with the priest that a couple have a qualification to marry in the particular church before accepting notice. Whilst the expectation is that the superintendent registrar will check to see whether there is a qualifying connection with the intended place of marriage, it remains the priest's responsibility to ensure the connection is properly evidenced and established. The priest should not rely on the SRC for that purpose.

There is a 28 day waiting period between the giving of the notice to the superintendent registrar and the issue of the SRC. The superintendent registrar will give notice to the Home Office if a marriage involving a non EEA national means a party could gain an immigration advantage from the marriage. Where the Home Office has reasonable grounds to suspect that the intended marriage is a sham it will be able to extend the waiting period to 70 days in order to investigate whether the marriage is genuine. If the couple do not co-operate with the investigation, a SRC will not be granted. In special circumstances the Registrar General and the Secretary of State have powers to reduce the notice period where they are satisfied that there are compelling grounds to do so. (e.g. a member of the Armed Forces is about to depart on active service).

Priest's role

It is important to note that the fact that a SRC has been issued is not conclusive as to whether a marriage is to be considered genuine - even in relation to immigration issues. The superintendent registrar will not investigate every case where an application is made and also further and additional information may come to the notice of the priest which is not known to the registrar. Accordingly, therefore, it is still incumbent on the priest to investigate the true basis of the marriage. If the interviewing priest has reasonable grounds to suspect that the intended marriage is being entered into solely in order to obtain an immigration advantage and that the parties do not intend to live together as husband and wife, the priest should not proceed with the marriage and should report the matter to the Diocesan Registrar. Under canon law the priest is under a duty to explain marriage obligations and in the course of this explanation the priest should become aware of whether the intended marriage is a sham. If the couple are not willing to co-operate with the priest's duty (which is placed on them by canon law) to explain the doctrine of marriage they should be informed that the marriage may not proceed until such time as this has been carried out.

The Archbishop of Canterbury's Special licence

The Special licence procedure will continue to be available to authorise marriages to couples who do not have a legal right to be married in a particular parish church or where the building itself is not licenced for marriages, for example, cathedrals, school and college chapels. A Special Licence will also continue to be necessary for marriages in hospital or home where there is urgent medical necessity. The Faculty Office in London (0207 222 5381) administers this system, not the Diocesan Registry:

Transitional arrangements

Transitional arrangements apply to marriages in respect of which common licence has been granted or applied for before 2 March 2015. Accordingly a marriage can be solemnized after 2nd March 2015 on the basis of a common licence provided it takes place within three months of the date on which the licence is applied for (the date on which the affidavit is sworn).

First Schedule (EEA countries)

Austria Belgium Bulgaria Croatia Cyprus Czech Republic Denmark Estonia Finland France Germany	Greece Hungary Iceland Italy Latvia Liechtenstein Lithuania Luxemburg Malta Netherlands	Norway Poland Portugal Republic of Ireland Romania Slovakia Slovenia Spain Sweden Switzerland
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N.B. While Switzerland is not in the EEA, Swiss nationals have the same rights as EEA nationals for this purpose. Iceland Liechtenstein and Norway are members of the EEA but not of the EU.

Second Schedule (Identity Requirements)

Nationality should be checked by asking to see the person's passport or national identity card. If each party has a valid relevant passport nothing further needs to be produced. Other acceptable documents include a certificate of registration or certificate of naturalization as a British Citizen issued by the Secretary of State.

If a person was born in the UK before 1 January 1983, and can produce a UK birth certificate and evidence of their address such as a recent utility bill, bank statement or driving licence which will also serve to provide evidence of the party's current use of the name on the birth certificate (or provide evidence of the change of name) then that is sufficient proof of nationality

If the person was born in the UK on or after 1 January 1983, then in addition, they must produce their parent's birth certificate *and* evidence that their parent had British citizenship or permanent leave to remain *at the time of the person's birth*. If British citizenship is proven through the marriage of the person's father then the marriage certificate should also be produced. If there is any doubt as to nationality, the person should be directed to the Superintendent Registrar, and, if they will not accept that advice willingly they should be referred to the Diocesan Registrar.