

Guidance for Clergy – issued by UKBA **Foreign Nationals seeking to marry in the UK**

The guidance below should be read along side the general guidance. Nothing which follows supersedes or supplants that found in *Anglican Guide to Marriage in England and Wales*.

This guidance only refers to Anglican marriages conducted in the Church of England or Church in Wales. A marriage conducted in an Anglican Church in Scotland or Northern Ireland must begin with civil preliminaries.

Background and Benefits of a Sham Marriage

According to section 24(5) of the Immigration and Asylum Act 1999 a sham marriage is one entered into between a person who is neither a British citizen or a national of an EEA country and another person, and that the marriage has been entered into by the non-EEA national for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

A Third Country National who marries a British citizen or national of an EEA country can gain the right to live and work in the UK as well as gain access to public funds such as education, health services and welfare benefits that they would not otherwise have been entitled to. This may be motivation for a Third Country National to enter into a sham marriage whilst a British Citizen or EEA National may enter into a sham marriage for financial gain. In some instances the British citizen or EEA national may have been coerced into participating in the marriage by a third party facilitator.

Recent intelligence gathering work carried out by the UK Border Agency has shown that an individual sham marriage is often part of a wider organised crime network which may consist of multiple sham marriages and other criminal activity including illegal working, benefit fraud, money laundering and identity fraud offences.

A marriage does not in itself grant leave to remain in the UK, a person must also make an application to the UK Border Agency. The UK Border Agency can, and does, refuse to grant leave to applicants where it believes there to be evidence that a marriage is not genuine. UK Border Agency can also prosecute the participants and organisers of sham marriages and remove persons who have no valid leave to remain in the UK.

Legal Position

A person travelling to the UK to marry either a British citizen or an EEA national requires entry clearance. This will take the form of a fiancé(e) visa or an EEA Family Permit depending on the nationality of the intended spouse. This is the case whether the couple plan to marry in a church or elsewhere. Entry clearance will take the form of a visa placed in a travel document and

will normally have been issued at a British Embassy, High Commission or visa station in the person's country of origin.

Persons seeking to marry in the UK outside of the Anglican Church in England and Wales must do so via the civil preliminaries which involves giving notice at a Register Office. A person who is 'subject to immigration control' (definition below) can only give notice at a Designated Register Office (only in England and Wales, notice is given by post in Scotland and Northern Ireland). All persons seeking to marry via the civil preliminaries must provide proof of their nationality and Third Country Nationals currently must provide additional documents demonstrating their eligibility to marry in the UK.

A person who is already present in the UK (legally or illegally) and who is subject to immigration control currently needs a Certificate of Approval to marry either a British citizen or an EEA national. The UK Border Agency is in the process of removing Certificates of Approval from law as they were found to be discriminatory and incompatible with the European Convention on Human Rights. There are currently no plans for a direct replacement to Certificates of Approval.

The Immigration and Asylum Act 1999 places civil registrars under a legal obligation to report any suspicions they may have of a marriage or civil partnership being conducted for the purposes of evading immigration law to UK Border Agency. The Agency can then take action in the form of refusing to grant leave to remain in the UK or, if a criminal offence has been committed, prosecuting the persons concerned. Non British citizens can also be removed from the UK and barred from re-entering the country.

This law does not cover persons who wish to marry within the Anglican church in England or Wales and places no such legal obligation on members of the clergy. However, members of the clergy who suspect a couple may be marrying for immigration purposes can still report their suspicions to the UK Border Agency on a voluntary basis. The police can also be contacted if a member of the clergy suspects a marriage they have conducted or have been asked to conduct is for the purpose of evading immigration law or if they feel they are being put under undue pressure to conduct such a marriage.

It is recommended that members of the clergy keep records of any identity or nationality documents provided when non-British nationals approach them seeking to marry.

Definitions and Documentary Evidence

For immigration law purposes a person is either:

- a British citizen (definition below);
- a EEA national (list of countries below) or;
- a Third Country National

The UK Border Agency may describe a non-British citizen as being "subject to immigration control".

A person is subject to Immigration Control if they are not:

- a) a British citizen;
- b) a national of an European Economic Area (EEA) country exercising treaty rights in the UK (list of countries below);
- c) the holder of a valid passport of any nationality with a Certificate of Entitlement giving them the Right of Abode in the United Kingdom or;
- d) the holder of a passport with a certificate stamped to show that they are not subject to any condition on their stay by virtue of their employment (e.g. diplomat, member of visiting armed forces, overseas member of British armed forces or member of an international organisation).

When is a person a British citizen ?

A person born in the UK born before 1 January 1983 is automatically a British citizen and can prove their nationality on production of a British birth certificate.

Persons born on or after 1 January 1983 and before 1 July 2005 are British citizens if one of their parents was a British citizen or was settled in the UK (known as Right of Abode or Indefinite Leave to Remain), or they were legally adopted by such a person, **and** their parents were married.

If their parents were unmarried the person would only be a British citizen at birth if their mother was a British citizen or settled person. If only their father was a British citizen the person could apply for registration as a British citizen.

Persons born after 1 July 2005 are British citizens if one of their parents was a British citizen or was settled in the UK or they were legally adopted by such a person regardless of the parents' marital status. Such persons can prove their nationality on production of a full British passport or their birth certificate and proof of their parents' nationality. Persons adopted by a British citizen or a settled person should also be able to provide an adoption certificate.

Persons who were born abroad but have subsequently become British citizens should be able to provide a Registration or Naturalisation document from the UK Border Agency.

When is a person an EEA National ?

An EEA national is a national of one of the following countries:

Austria
Belgium
Bulgaria
Cyprus *
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Italy
Latvia

Liechtenstein
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Republic of Ireland
Romania
Slovakia
Slovenia
Spain
Sweden
Switzerland **

*although the whole island of Cyprus is a member state of the EEA and all Cypriots are EEA nationals, currently persons who can only present a travel document from the Turkish Republic of Northern Cyprus (TRNC) are subject to Immigration Control.
**for these purposes Switzerland is considered an EEA member state.

EEA nationals (and their immediate family members) have the right to live and work in the UK provided they are in employment or can support themselves and their family without becoming an unreasonable burden on UK public funds. This is known as “exercising Treaty rights”. Such persons do not require any additional documentation from the UK Border Agency to be present in the UK and do not require a Certificate of Approval to marry under the civil preliminaries.

It should be noted that a person can hold a passport from an EEA state without being a full citizen of that country. Such passports may be marked ALIEN and further nationality or identity documents may be available.

Factors which may arouse suspicion of a sham marriage

There are many factors that could give rise to suspicions that a potential marriage may not be genuine most of which can only be determined by meeting the couple.

The following list is not exhaustive but provides some common indicators:

- either party giving the impression of knowing very little about the other;
- either party referring to notes to give answers about their partner;
- the couple being unable or struggling to converse in a common language/an interpreter being present;
- one party appearing to direct all decisions and seeking to answer all questions with the other party appearing to have limited involvement or knowledge;
- a third party appearing to direct decisions;
- the couple wanting to get married as soon as possible;

- one of the parties being seen to receive payment;
- the couple leaving separately following the ceremony;
- wedding rings/dresses not being present or if present not being the correct size;
- very few or no guests;
- guests showing little participation in the ceremony or appearing to not know one or both parties well;
- there being very little interaction between the couple, appearing to be only acquaintances
- either party may appear unfamiliar to the documents they are presenting (may have been acquired as part of a package) or the documents may appear to have been altered

None of these reasons may in themselves necessarily indicate that the marriage is a sham and there may be other factors that may arouse suspicions. Many of these factors would be apparent to a member of the clergy in the course of their normal pastoral work in preparing a couple for marriage. Making such suspicions known to the Agency would allow us to make a more informed decision on whether the Third Country National is entitled to the leave that they are seeking.

The UK Border Agency does not make decisions on whether or not a marriage is a sham based on nationality or on the immigration status of a person and we would not expect members of the clergy to take these factors into account. The fact that a person has no lawful basis to be in the UK does not automatically mean that their reason for marrying is for an immigration advantage and other factors and evidence must be available.

A member of the clergy does not need to tell a couple that they have suspicions about the genuineness of their proposed marriage or that they intend to make UKBA aware of these suspicions. It is also important for members of the clergy to remember that UKBA can still take action after a marriage has taken place as a marriage alone does not give rise to the right to live and work in the UK.

If a member of the clergy feels that they are being pressurised to perform a marriage they are not content with by either the couple or a third party facilitator they should inform UKBA of this but should also consider informing the police.