

Immigration Act 2014 – Implementation Date

We now know that section 57 of the Immigration Act 2014 will be brought into effect on **2 March 2015**. This will restrict the scope for the Chancellor and Archdeacons to grant Common Licences to non-EEA nationals (as well as marriages after banns).

After 2 March 2015, all non-EEA nationals will need to be married by Superintendent Registrar's Certificate (SRC), unless they have been granted, or have applied for and are subsequently granted, a Common Licence.

The Church of England Legal Office has issued guidance in this regard which can be found at the end of this note and will be posted on the Diocesan and Church of England website. However, we are still waiting to hear from the Home Office regarding the operation of transitional provisions.

The law is changing to allow qualifying connections to be used for the first time when applying for SRCs but you will need to check that couples have a valid qualifying connection or have time to establish a qualifying connection before proceeding.

All non-EEA nationals who are subject to immigration control will need to give notice at a Designated Register Office (see the link in the Legal Office guidance); those exempt from immigration control may give notice at their local register office.

As couples may contact you following their engagement during the Christmas and New Year period, please keep in mind the imminent changes and check their nationalities before proceeding. Those who need to establish a worshipping qualifying connection may need to allow slightly longer than usual because of the possibility of extending the notice period to 70 days, if they are subject to immigration control.

We are circulating this material directly to the Archdeacons and Surrogates, and should be grateful if you would ensure that Parish Administrators or others who handle marriage arrangements in your parishes are aware of the impending change.

John Rees, Diocesan Registrar
Sara Leader, Diocesan Registry Clerk
December 2014
Telephone: 01865 297211
Email: sleader@wslaw.co.uk

THE IMMIGRATION ACT 2014

CHANGES TO MARRIAGE LAW: NON-EEA NATIONALS

The Immigration Act 2014¹ makes important changes to the law relating to the marriage of persons from outside the European Economic Area ('EEA'). It is essential that all clergy and anyone else involved with the legal aspects of marriage in church (including any lay persons who publish banns) are aware of the new legal position.

1. **With effect from 2nd March 2015, where one or both of the parties to an intended marriage is a non-EEA national the parties will each have to obtain a superintendent registrar's certificate ('SRC') to authorise the marriage (unless an Archbishop's special licence has been granted). It will cease to be lawful for the marriage of a non-EEA national to be solemnized after the publication of banns of matrimony or on the authority of a common licence.** This is subject to transitional arrangements described in paragraph 13.
2. For these purposes, **EEA nationals** are British citizens and nationals of the following states: Austria, Belgium, Bulgaria, Croatia, 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. Anyone else must be treated as a **non-EEA national**.
3. When application is made for banns to be published, all couples should be asked to provide specified evidence² that both of them are EEA nationals. The Government has not yet made the Regulations specifying the forms of evidence that will be acceptable for this purpose but they are likely to include a UK passport, an EEA passport or an EEA identity card. If the parties cannot provide specified evidence that they are both EEA nationals they will each need to obtain an SRC.
4. Similarly, when application is made for a common licence, all couples will have to provide specified evidence that they are both EEA nationals. Again, if they cannot do so they will each need to obtain an SRC.
5. An application for SRCs must be made by the couple giving notice of the proposed marriage together in person at a designated register office³ unless each party who is a non-EEA national is exempt from immigration control (i.e. has a right of abode in the UK or is in a special category, e.g. foreign diplomats), in which case notice must be given at the parties' local register office. Both parties must have been resident for at least 7 days in a registration district in England or Wales before the day on which they give notice.
6. The couple should always contact the minister of the church where they wish to marry before giving notice at the register office. This will enable the minister and the parties to establish the nature of the parties' entitlement, if any, to marry in the church (e.g. residence, electoral roll membership, qualifying connection). It will also mean that arrangements can be made for the marriage preparation required by Canon B 30.
7. When attending at the register office or designated register office to give notice, each party will need to provide evidence of their name, date of birth, nationality and place of residence and may also be required to provide additional information, evidence or photographs. They may also need to provide details of the church or chapel where they intend to marry and of their entitlement to marry there. They should check with the register office what documents and other information they will need to bring with them.
8. There is a **28 day waiting period** following the giving of the notice. The waiting period may be extended as described in the following paragraph.
9. Every notice of a proposed marriage involving a non-EEA national who has limited or no immigration status in the UK, or who does not provide specified evidence that they are exempt from the scheme, will be referred by the superintendent registrar to the Home Office. Where the Home Office has reasonable grounds to suspect that a proposed marriage which has been referred

to it is a sham, it will be able to extend the waiting period to **70 days** in order to investigate whether the proposed marriage is genuine. If the couple do not co-operate with the investigation SRCs will not be issued.

10. The Registrar General and the Secretary of State will have powers to reduce the notice period where they are satisfied that there are compelling reasons to do so because of exceptional circumstances of the case, e.g. where a member of HM Forces is departing on active service.
11. On the expiry of the waiting period, and subject to the parties having co-operated with any investigation, a superintendent registrar will be able to issue an SRC to each party to authorise their marriage in any church or chapel in which they could, if they were both EEA nationals, marry after banns or on the authority of a common licence. This will now include the church of a parish where a party has a 'qualifying connection' under the Church of England Marriage Measure 2008. An SRC is valid for a period of 12 months from the date on which notice of the proposed marriage was given at the register office.
12. **The fact that an SRC has been issued is not conclusive as to whether a marriage is to be considered genuine, even in relation to immigration issues.** The Home Office will not investigate every case where a referral of a proposed marriage has been made, and even if it has done so, further information may come to the notice of the clergy. If any member of the clergy has reasonable grounds for suspecting that an 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 member of the clergy involved should not proceed with the marriage and should report the matter to their diocesan registrar without delay. **Any member of the clergy who thinks that he or she has been subjected to threats or any other improper pressure in connection with an intended marriage should immediately report the matter to the police and their diocesan registrar.**
13. **Transitional arrangements** will apply to marriages in respect of which a common licence has been granted or applied for in writing before 2nd March 2015. Where that is the case, the marriage in question can lawfully be solemnized after 2nd March in reliance on a common licence (provided that it is solemnized within three months of the date on which the licence is granted). Applications for common licences to enable marriages to take place under these transitional arrangements will continue to be dealt with under the special procedures that have been in operation since the House of Bishops guidance on the marriage of non-EEA nationals⁴ was issued in 2011.
14. **The Archbishop of Canterbury's Special Licence** will continue to be available to authorise marriages according to the rites of the Church of England, and will continue to be necessary where a couple does not have a legal right to be married in a particular parish church or where the building itself is not licensed for marriages, including school and college chapels, cathedrals, etc. For further information see www.facultyoffice.org.uk.
15. A Special Licence will also continue to be necessary for Anglican marriages to take place in a hospital or hospice or at home, where there is urgent medical necessity and where no other preliminary is available.

This note replaces the guidance on the marriage of non-EEA nationals issued by the House of Bishops on 11th April 2011 which has been superseded by the changes introduced by the Immigration Act 2014.

The Legal Office
Church House, Westminster

18th December 2014

¹ See sections 57 and 58 and Schedule 4.

² The evidence in the case of an application for banns or for a common licence must be evidence that is in accordance with Regulations made under section 28G of the Marriage Act 1949.

³ Details of designated register offices can be found here: <https://www.gov.uk/government/publications/designated-register-offices-in-england-and-wales>.

⁴ Available here: <https://www.churchofengland.org/media/1228433/house%20of%20bishops%20guidance.pdf>.