



Anglican Marriage in England and Wales:
A Guide to the Law for Clergy (3rd edition)

SECOND Supplement: April 2015

Addition to Glossary (page 8) –

M(SSC)A - Marriage (Same Sex Couples) Act 2013

IA - Immigration Act 2014

1.1 Status and date of these notes – These notes supplement the 3rd edition of the Anglican Marriage booklet (A Guide to the Law for Clergy) and the First Supplement dated July 2013, both published by the Faculty Office. The Second Supplement is believed to state the law as at 2nd March 2015.

2.2 Exceptions to the rule – replace (iv) with:

(iv) where the superintendent registrar's certificate ('SRC') procedure has been used instead of the grant of a licence or publication of banns. Since the commencement, on 2nd March 2015, of the relevant sections of the IA, a national of a country outside the European Economic Area (EEA) or Switzerland cannot marry after banns or by common licence. There is no current statutory basis for requiring a minister to solemnize a marriage after the SRC procedure, but this represents a potential conflict with the human right to marry and to manifest religion/belief. See also section **2.7** on Human Rights.

2.6 The choice between the four preliminaries to Anglican marriage – From 2nd March 2015 any Anglican wedding involving a non-EEA national must take place by the SRC procedure (MA s.5(3)), unless the couple meet the criteria for the granting of a special licence. A marriage of a non-EEA national by banns or common licence is now unlawful. Any member of the clergy who knowingly and wilfully solemnised such a marriage would be committing a criminal offence (MA s.75).

Accordingly, all sections of these notes that discuss banns and common licences should now be regarded as relating only to UK/EEA nationals – unless otherwise specified. Wherever the European Economic Area is mentioned in this Supplement, this should be read as including Switzerland. A list of current member states of the European Economic Area can be found on the internet (www.gov.uk/eu-eea).

2.7 Human Rights – Since 13 March 2014, it has been lawful for a civil marriage in this country to be between couples of the same sex (M(SSC)A s.1). The Act also allowed religious organisations to opt in to conduct marriage ceremonies for same sex couples, provided the relevant governing authority of that religious organisation had given written consent to marriages of same sex couples (M(SSC)A s.4 and s.5). The legislation stated (both for England and Wales) that any duty of a member of the Anglican clergy to solemnize marriages (and the corresponding right of any person to have his/her marriage solemnized by a member of the clergy) is not extended by that Act to marriages of same sex couples (M(SSC)A s.1(4)). Where two persons of the same sex consent to or acquiesce in the solemnization of a marriage between them in the Church of England, such a marriage is void (MA s.25(4)). The marriage of same sex couples in the Church of England at a

future date would require primary legislation by General Synod. It would be lawful for a same-sex marriage to be solemnized in the Church in Wales only if, after a resolution had been passed by the Governing Body of the Church in Wales, the Lord Chancellor had made an order that provided for the marriage of same sex couples according to the rites of the Church in Wales (M(SSC)A s.8).

4. Factors governing the choice of location – If a non-EEA national wishes to apply for an SRC, they are now permitted to have a marriage (by the SRC procedure) in any church in which previously they could marry after banns (MA s.35(3B)). The categories of location and the ‘qualifying connections’ set out in sections 4 and 5 still apply to all couples, except that non-EEA nationals must obtain an SRC instead of banns or a common licence (MA s.5(3)); but see 8.1 & 8.2.

7.5 Publication [of banns] outside England – the changes to the law brought about by the IA regarding banns (and common licences) do not apply where the publication of banns for a non-EEA national is permitted on board a British warship at sea (MA s.5(3)(a)).

7.6 Dates and time of publication [of banns] – add:

No member of the clergy is obliged to publish banns of matrimony unless he/she is provided by both parties specified evidence in accordance with regulations made by the Registrar General (MA s.28G) to prove that both are nationals of the United Kingdom, any country within the European Economic Area, or Switzerland (MA s.8). As to the specified evidence, clergy should follow guidance circulated by the General Register Office; acceptable forms of evidence include a passport or a national identity card issued by an EEA state or Switzerland. Clergy are encouraged to follow advice issued by the Church of England Records Centre (including the Church of England Records Management Guide No. 1 “Keep or Bin? - The Care of Your Parish Records”) regarding the handling of personal data and retention/destruction of specified evidence, in accordance with the Data Protection Act.

As marriages cannot be solemnized after banns where either or both of the parties are non-EEA nationals, it is now strongly recommended that every minister (or, in appropriate circumstances, the relevant lay person) who receives a written notice for the publication of banns sees evidence of the couple's nationality, unless the minister is already satisfied of this (e.g. through personal knowledge of the couple). Where an application for banns has been made before 2nd March 2015, but the wedding is to take place after 2nd March 2015, the officiating minister should still be satisfied, by personal knowledge or by documentary evidence, of the nationalities of both parties and that the couple are entitled to use banns as the legal preliminary for their wedding.

8.1 The SRC procedure and Anglican marriage & 8.2 Notice in district of residence – add:

If a non-EEA national wishes to contract an Anglican marriage, he/she and his/her fiancé(e) must now each apply for an SRC. Such couples are permitted to have a marriage by the SRC procedure in any church in which, before 2nd March 2015, they could have been married after banns (or by common licence) (MA s.35(3B)). **This has not been extended to UK/EEA nationals; any UK/EEA national wishing to obtain an SRC must still be a parishioner or on that church's electoral roll.**

An application for SRC involving non-EEA nationals must be made by the couple giving notice of the proposed marriage together, in person, at any designated register office (this is a register office designated to deal with applications from non-EEA nationals). An exception to this rule applies where each party who is a non-EEA national is exempt from immigration control (e.g. has right of abode in the UK), in which case notice must be given at the parties' local register office. The list of designated register offices can be found on the Home Office website (www.gov.uk/government/publications/designated-register-offices-in-england-and-wales).

Both parties must have been resident for at least seven full days in a registration district in England or Wales before the day on which they give notice.

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 will also need to provide details of the church or chapel where they intend to marry, the consent of the minister in charge of the church or chapel, and their entitlement to marry there. They should check with the register office what documents and other information they will need to bring with them.

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' legal entitlement (e.g. residence, electoral roll membership, qualifying connection), if any, to marry in that church building. Even if an SRC is issued, the minister must still satisfy himself/herself that the couple have the necessary legal entitlement (for example as required by CEMM s.1(8)). It will also mean that arrangements can be made for the marriage preparation required by Canon B 30.

8.3 Procedure following notice – The period for the details to be displayed in the marriage notice book, previously fifteen days, has been increased to twenty-eight days for all applicants (MA s31(1) as amended by IA Sch 4 s.10(2)).

Registration officials will be required to refer all marriage notices to the Home Office if one or both of the parties is a non-EEA national who does not provide specified evidence that they have (a) settled status in the UK (Indefinite Leave to Enter or Remain), (b) an EU law right of permanent residence in the UK, (c) a marriage visa, or (d) exemption from immigration control (e.g. with the right of abode in the UK). Registration officials will be required to tell a couple when their proposed marriage is to be referred to the Home Office under the scheme and to explain to them the implications of this.

The Home Office may decide to extend the twenty-eight day notice period to seventy days only where there are reasonable grounds for suspecting a sham marriage. The Home Office will write to both parties and the registration official to inform them of the decision as to whether the couple can proceed with their marriage after twenty-eight days, or whether their notice period has been extended to seventy days to allow an investigation to take place.

If the couple's notice period is extended to seventy days, they will be required to comply with any Home Office investigation. If they do not comply with the investigation, they will be unable to marry on the basis of that notice.

8.5 Validity period – Given the changes to marriage law brought about by the IA, including the extension of the notice-period at the register office and the potential seventy-day investigation period, it is no longer recommended that clergy accept an SRC only within the three-month period of it being issued, but should now do so at any time within the twelve-month period of its validity.

9.1 Advantages of a common licence – Replace “it is recommended where a party or parties is resident outside England or Wales or where a party is a foreign national” with:

Marriage by common licence is necessary where either or both parties are resident outside England/Wales.

9.2 Qualifications for the [common] licence – Add:

A common licence cannot be granted unless the persons to be married deliver to the person granting the licence specified evidence that both of the persons are nationals of the United Kingdom, any country within the European Economic Area, or Switzerland. The “specified evidence” means evidence in accordance with regulations made by the Registrar General (MA s.28G), and set out in guidance issued by the General Register Office. Acceptable forms of evidence include a passport or a national identity card issued by an EEA state or Switzerland.

9.4 *Foreign nationality or domicile* – The final paragraph should be deleted, and replaced by:
Following the changes brought about by the IA, any foreign national who is a non-EEA national must marry by the SRC procedure (unless the marriage takes place by Special Licence).

It has been the longstanding policy of the Faculty Office to recommend to diocesan registrars and clergy that the wedding of foreign nationals takes place by common licence. Given that a common licence is no longer a permitted legal preliminary for non-EEA nationals, this advice has been largely superseded by the commencement of the IA. Ultimately it is a decision for the member of the clergy in question to advise couples where one or both are EEA (non-UK) nationals on whether banns or a common licence are the suitable legal marriage preliminary, having sought guidance where necessary from the diocesan registrar. In particular, where a national of an EEA state (or Switzerland) has lived in this country for a substantial period of time, and has effectively established residency, it may be appropriate for a wedding in the Church of England to proceed by way of banns.

For weddings in the Church in Wales involving European (non-UK) nationals, clergy should have regard to any guidance which has been issued since the publication of these notes, and are encouraged to consult their diocesan registrar when a particular case arises.

9.5 *Marriages of foreign nationals subject to immigration control* – Since 2nd March 2015 all couples seeking an Anglican marriage where one or both are non-EEA nationals must follow the SRC procedure (unless the marriage takes place by Special Licence). There is a referral and investigation procedure where neither of the parties are exempted from that scheme, including the possibility of the notice-period being extended for up to seventy days.

The marriage law sections in the IA were enacted by the Government due to a contemporary concern that some couples (where either or both of the parties is a non-EEA national) might be contracting marriage solely for immigration reasons. The IA includes a new statutory definition of a ‘sham marriage’, i.e. a marriage where there is no genuine relationship between the parties of the marriage and that it is being entered into for the purpose of avoiding UK immigration law or enabling a party to obtain a right to reside in the UK (IA s.55). Clergy should still be mindful that a marriage might be suspect even if it does not fall within this definition of a ‘sham marriage’, for instance where one of the parties appears to be subject to coercion. Clergy should bring such cases to the attention of the police and their diocesan registrar.

10.2 *Procedure [for a Special Licence]* – add:

All applicants for a special licence are now required to submit copies of their passports or other sufficient evidence as proof of nationality; advice should be sought from the Faculty Office where necessary.

The application form, guidance notes and fee for a special licence are subject to revision in April of each year, and clergy and applicants are encouraged to ensure they use the up-to-date format.

10.3 *Foreign nationals, minors, divorced and unbaptized persons [and the Special Licence procedure]* – The Faculty Office's procedures for Special Licence applications from non-EEA nationals will involve close scrutiny of the applicants' immigration documents, consultation where necessary with the Home Office, and the interviewing of both applicants by a member of staff of the Faculty Office at its offices in Westminster.

There is one addition to the Staff List of the Faculty Office:

THE FACULTY OFFICE

Clerk: Mrs Alena-Rose Douglas, B.A., M.A.