



# information sheet

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## Immigration Act: Marriage

September 2014

The Immigration Act introduces significant changes to the requirements for marriage and civil partnerships. Of particular significance are changes to the notice requirements; these will affect everyone in England and Wales, regardless of the nationality or immigration status of the couple involved. The changes made by the Act are detailed below. While the majority are not yet in force (as indicated below in brackets), they could be brought into operation at any time.

### Changes to notice requirements (not yet in force)

The requirement to give notice of an impending marriage or civil partnership will be increased from 15 days to 28 days by the Act. This applies to everyone in England and Wales, regardless of their nationality. Notice must be given to a Registrar by both parties in person, and they will be required to provide specified evidence of nationality, rather than the current position whereby the Registrar /registration authority just needs to be satisfied of nationality. People who do not have the correct documents face being prevented from getting married or forming a civil partnership as they will be unable to comply with the new notice requirements.

### New investigation powers (not yet in force)

If one party to the proposed marriage/civil partnership is a non-EEA national<sup>1</sup> this will trigger an obligation on the Registrar/registration authority to inform the Home Office, because of the possible immigration advantage that may be derived. Once the Secretary of State has been notified, she has 28 days to decide whether or not to mount an investigation into the proposed union. If she does not investigate further, she will notify the Registrar / registration authority and the couple, who may then proceed to marry / form a civil partnership. However if the Secretary of State has "*reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham*" then she can mount an investigation, which extends the notice period to 70 days. The decision whether or not to investigate will

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<sup>1</sup> Unless exempt from immigration control, e.g. someone with settled status, permanent residence or a person who has entry clearance as a fiancé or proposed civil partner.

be made on the basis of “intelligence-based risk profiles” and other factors as she deems relevant. There may be home visits and / or interviews. The kinds of things that may trigger suspicion (according to the factsheet<sup>2</sup> released by the Home Office) are if one of the parties:

- Is of a nationality at high risk of involvement in a sham;
- Has a visa of a category which is linked to sham cases;
- Has no immigration status or leave which is due to expire shortly;
- Has previously sponsored another partner to enter or remain in the UK.

### **Consequences of marriage / civil partnership being deemed a ‘sham’ (not yet in force)**

If the couple are deemed by the Secretary of State to have failed to comply with the investigation then the Register will not get the go-ahead for the marriage to take place. If the couple have complied with the investigation, but the marriage is deemed a sham, they will still be able to marry, but the Secretary of State can withhold any immigration advantage that would normally flow from the marriage. The Home Office may also take enforcement action (such as prosecution or removal) so that the couple could be physically separated and thereby prevented from marrying / forming a civil partnership, at least in the UK.

### **Definition of a ‘sham’ (not yet in force)**

On a more positive note, the definition of what is a “sham” will be tightened up, meaning that the Secretary of State must conclude that there is no genuine relationship between the parties before she can deem their union a sham. Under the old definition a marriage / civil partnership could be deemed a sham – even if the pair were in a genuine relationship – if the purpose of the union was for immigration reasons: e.g. a couple who are in love and wish to marry, but hastened their marriage for an immigration-related reason. The change clarifies that this kind of situation should not be treated as a sham.

### **Other changes**

Amongst the other changes made by what is a lengthy section of the Immigration Act are:

- New powers of disclosure of information between Registrars and the Home Office (**in force**);
- The ending of the exemption from civil preliminaries for non-EEA nationals who are marrying in the Church of England (not yet in force);
- An extension of the duty on Registrars to report suspicions of a possible sham marriage – this duty now attaches at an earlier stage, before notice has been formally given (e.g. where a person is making enquiries) (**in force**).

Overall, the changes will mean that it will be more difficult for a couple to marry where one of them is subject to immigration control. Such a couple will face increased oversight and scrutiny of their union in future.

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<sup>2</sup> Available here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277462/Factsheet\\_12\\_Sh\\_m\\_marriage.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277462/Factsheet_12_Sh_m_marriage.pdf)