

Immigration Bill

Factsheet: sham marriages and civil partnerships (clauses 43–57)

Immigration Minister Mark Harper:

“Sham marriages have for too long been an easy target for migrants seeking to circumvent our immigration rules, often assisted by organised criminals. Registrars are frustrated when they marry couples who are obviously sham; we need more effective tools to deal with it.

“By extending the marriage and civil partnership notice period to 28 days in England and Wales and allowing this to be increased to 70 days in some circumstances we will make time to investigate, prosecute and remove those involved in sham marriages.”

Background

Sham marriages and civil partnerships – undertaken for immigration advantage by a couple who are not in a genuine relationship – pose a significant threat to UK immigration control. The Home Office estimates that 4,000 to 10,000 applications a year to stay in the UK are made on the basis of a sham marriage or civil partnership.

Registration officials already have a duty to report suspected sham marriages and civil partnerships to the Home Office. Since the abolition of the Certificate of Approval scheme¹, the number of reports of suspected sham cases received has continued to increase, with 1,891 reports received in 2012². At the moment we have the ridiculous situation where a registrar cannot stop a marriage or civil partnership they believe to be a sham, but the current 15 day notice period provides very little time for the Home Office to act before the ceremony takes place.

This legislation will increase the marriage and civil partnership notice period to 28 days in England and Wales and allow for it to be extended to 70 days where intelligence-based risk profiles and factors or other relevant information establish that there are reasonable grounds to suspect that a marriage or civil partnership is a sham. The Home Office will then investigate the genuineness of the couple's relationship and consider taking immigration enforcement action where we believe it to be a sham. We will not stop a marriage from taking place, unless the couple do not comply with the investigation, but an immigration advantage will not be gained if the marriage or civil partnership does go ahead. Those who seek to enter into a sham marriage or civil partnership will be removed and prosecuted.

¹ The Certificate of Approval scheme (introduced by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 required certain couples to obtain the Secretary of State's approval before they could marry or enter into a civil partnership. The scheme was found by the Courts to be incompatible with the ECHR and abolished in 2011.

² See response to Parliamentary Question 162071 by Richard Fuller MP on 2 July 2013 - <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130702/text/130702w0001.htm>

What we are going to do

- Extend and amend the marriage and civil partnership notice process to enable the Home Office to identify and investigate suspected sham marriages and civil partnerships. These investigations will form the basis for taking enforcement and other immigration action under existing powers in cases established as a sham.
- Extend powers for information to be shared by and with registration officials. This will improve the ability of the authorities to tackle sham marriages and civil partnerships and enable registration officials to report immigration offenders.

How we are going to do it

- All marriages following civil preliminaries and all civil partnerships in England and Wales will be subject to a 28-day notice period (currently 15 days) from when notice is given to the registration official.
- Non-European Economic Area (non-EEA) nationals will only be able to marry in the Church of England or the Church in Wales following civil preliminaries, except in limited circumstances.
- Notices of marriage or civil partnership involving a non-EEA national will be referred to the Home Office where that person could gain an immigration advantage from the marriage or civil partnership. This will apply where the non-EEA national does not have settled status or an EU law right of permanent residence in the UK and is not exempt from immigration control or holding a marriage or civil partnership visa.
- Notices referred to the Home Office under the scheme will be assessed against intelligence-based risk profiles and factors, together with reports from registration officials of suspected sham cases and other relevant information.
- Where the Home Office has reasonable grounds to suspect that a referred marriage or civil partnership is a sham, it will be able to extend the notice period to 70 days in order to investigate the genuineness of the couple's relationship.
- A couple will be unable to get married or enter into a civil partnership if they do not comply with such an investigation.

Benefits

- These powers will provide the Home Office with more time, information and evidence before the marriage or civil partnership takes place to identify sham cases and take appropriate action.

- Anyone found to be attempting to stay in the UK illegally through a sham marriage or civil partnership may be subject to enforcement action and any subsequent immigration application based on a sham may be refused.
- Anyone found to have committed a criminal offence related to a sham marriage or civil partnership, e.g. perjury, can be prosecuted.
- Will act as a significant deterrent against sham marriages and civil partnerships.

Next steps

- The scheme will be introduced from April 2015. Before then, the Home Office will work with the Local Registration Service and Local Authorities in England and Wales and with the Church of England and the Church in Wales on the detailed arrangements needed to introduce the scheme. There will also be extensive public communications to ensure that the changes are effectively communicated and understood.
- The Home Office will work with the Scottish Government and the Northern Ireland Executive to extend the scheme to the whole of the UK using the order-making power in the Bill.

Q&A

Will these changes affect marriages in the Anglican Church as well as civil marriages and other religious marriages?

Yes. A couple, one or both of whom is a non-EEA national, will only be able to marry in the Anglican Church in England and Wales following civil preliminaries, except in limited circumstances. The changes will not affect other couples marrying in the Anglican Church. We have consulted the Anglican Church on the detail of this new approach.

Will the extended notice period for a marriage following civil preliminaries or a civil partnership apply to British citizens?

Yes. To ensure that the scheme is compatible with equalities legislation we are extending the notice period to 28 days for everyone.

Will it still be possible to marry or register a civil partnership with less notice in exceptional circumstances?

Yes. The Registrar General and the Secretary of State will have powers to reduce the notice period where they are satisfied 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. The Registrar General will also continue to

have the power to authorise a marriage or civil partnership to proceed without a notice period in cases of terminal illness. A couple marrying in the Anglican Church in England or Wales will continue to be able to apply for the Archbishop of Canterbury's Special Licence, granted under the Ecclesiastical Licences Act 1533, where compassionate circumstances require the marriage to take place quickly.

If the Home Office believes the marriage or civil partnership is a sham will the couple be prevented from marrying or registering a civil partnership?

The new process is designed to stop those proposing to enter into a sham marriage or civil partnership gaining an immigration advantage. A sham couple may marry or register a civil partnership before a removal takes place, but that will not alter the decision to remove the non-EEA national. Any subsequent immigration application based on the sham marriage or civil partnership will generally be refused.

Has there been any discussion with the Church of England about these measures?

Yes. We have discussed the new measures with the Church of England and will continue to involve them in our plans for implementation. We are removing banns and the common licence route for non-EEA nationals to ensure that all couples within the scope of the referral scheme are correctly identified. While these are significant changes to the preliminaries for marriage according to the rites of the Church of England, the Church has indicated that it would have no technical difficulties in implementing what is proposed.

Do the proposed measures extend to Scotland and Northern Ireland?

The Bill provides the Home Office with an order-making power to extend the scheme to the whole of the UK, which we intend to use following discussion with the Scottish Government and Northern Ireland Executive. The Scottish Government shares our concern about sham marriage and is already taking action in Scottish law to extend the notice period to 28 days. We have already held some initial discussion with the Scottish Government about how the new scheme would work in Scotland. Scotland has different marriage legislation and has legitimate marriage tourism which we support and want to protect.

We are discussing the proposals with colleagues in Northern Ireland. Now that tough action has been taken in the Republic of Ireland on preventing sham marriages we are keen to ensure that Northern Ireland does not become a loophole in this area.

Further reading

1. Family Migration Consultation, July 2011
(<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf>)

2. Response to Family Migration Consultation, June 2012
(<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/cons-fam-mig.pdf>)
3. Impact Assessment <https://www.gov.uk/government/organisations/home-office/series/immigration-bill>
4. European Convention on Human Rights Memorandum
<https://www.gov.uk/government/organisations/home-office/series/immigration-bill>

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