

IMMIGRATION AND ASYLUM ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IX: Registrar's certificates: procedure

423. Part IX of the Bill makes procedural changes designed to tackle abuse of the immigration system by those who are prepared to enter into marriage for the purpose of evading immigration control. There is evidence to show that a large number of sham marriages are being contracted in the United Kingdom every year.
424. Part IX is to be read with section 24 which places a duty on superintendent registrars to notify immigration authorities of suspected cases of sham marriages. Part IX amends the Marriage Act 1949, which applies to England and Wales, to ensure that both parties attend to give notice of marriage, thus giving the superintendent registrar the opportunity to meet both parties and obtain suitable documentation from them as to their name, age, marital status (where someone has been previously married) and nationality. The provisions also allow only one procedure for giving notice by reducing the existing 21 day waiting period to a 15 day notice period (which can be reduced on the authority of the Registrar General in exceptional circumstances) and abolishing the existing licence procedure by which parties can currently give one day's notice of their intention to marry. Part IX also applies to Northern Ireland in respect of evidence of name, age, marital status and nationality and amends the Marriages (Ireland) Act 1844 and the Marriage Law (Ireland) Amendment Act 1863.
425. The provisions apply to all civil and religious marriages after civil preliminaries. The Act does not extend to marriages after ecclesiastical preliminaries because the procedure involved is considered already sufficiently detailed to ensure that the system is not abused for immigration advantage. There is no evidence that religious marriages after ecclesiastical preliminaries are abused for immigration advantage.

Section 160: Abolition of certificate by licence

426. At present in England and Wales notice by civil preliminaries may be given either by certificate (which requires a 21 day waiting period) or by licence (where there is a one day waiting period). For England and Wales this section provides for the existing procedures to be replaced by a single procedure with a 15 day waiting period, with a discretion vested in the Registrar General to reduce in exceptional circumstances.
427. Subsections (1) to (4) remove references in the Marriage Act 1949 to marriages "with licence" and remove references to the notification period of 21 days and substitute 15 days. Subsection (5) amends the Marriage Act 1949 to empower the Registrar General to reduce the 15 day notice period in exceptional circumstances, eg unforeseen work contracts or military service in a foreign country, or serious illness of a close relative. The Registrar General is given power to make procedural regulations and to delegate his authority to a superintendent registrar in prescribed circumstances with provision for an appeal to the Registrar General against the superintendent registrar's refusal to reduce the 15 day waiting period. Provision is made for fees to be prescribed.

Section 161: Notice of marriage

428. At present in England and Wales, for a certificate without licence where both parties to the marriage reside in the same registration district, only one notice of marriage is required. Where they reside in different registration districts, notice must be given in each district, although there are no restrictions as to which party should give that notice. This section amends the Marriage Act 1949 so that each party is required to personally appear before the superintendent registrar to give notice of marriage in the registration district where they reside. It also adds to the matters that have to be stated a requirement to state nationality. Equivalent provision is made for Northern Ireland.
429. For marriages in England and Wales, subsection (1) results in a duty on both partners to give notice; subsection (2) results in a duty to give details of nationality; and subsection (3) means that marriages may only be solemnised on production of two superintendent registrar's certificates, ie one from each party. Subsection (4) provides for details of nationality to be stated in a notice of marriage given in Northern Ireland.

Section 162: Power to require evidence

430. This section empowers registrars to request specified evidence in order to establish the name and surname, age, marital status and nationality of the person giving notice. A superintendent registrar may also request specified evidence relating to the other party to the proposed marriage in exceptional circumstances, for example where the evidence seen leads the registrar to suspect that the information given in respect of that party may be inaccurate. Such evidence may be requested at any time after notice of marriage has been given but only up until the superintendent registrar's certificates for the marriage have been issued. Subsection (1) applies the power to England and Wales and amends the Marriage Act 1949. Subsection (2) applies the power to Northern Ireland and amends the Marriage Law (Ireland) Amendment Act 1863.

Section 163: Refusal to issue certificate

431. This section provides a superintendent registrar with a statutory power to refuse to issue his authority for a marriage where he is not satisfied that one or both of the couple is legally free to contract the marriage. It also provides for an appeal procedure to the Registrar General against the superintendent registrar's refusal to issue a certificate and for persons making frivolous representations against a marriage to be liable for any costs incurred. Subsections (1) and (2) apply this provision to England and Wales. Subsections (3) and (4) make similar amendments for Northern Ireland.