Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

2004 CHAPTER 19

Procedure for marriage

19 England and Wales

(1) This section applies to a marriage—

(a) which is to be solemnised on the authority of certificates issued by a superintendent registrar under Part III of the Marriage Act 1949 (c. 76), and

(b) a party to which is subject to immigration control.

(2) In relation to a marriage to which this section applies, the notices under section 27 of the Marriage Act 1949—

(a) shall be given to the superintendent registrar of a registration district specified for the purpose of this paragraph by regulations made by the Secretary of State,

(b) shall be delivered to the superintendent registrar in person by the two parties to the marriage,

(c) may be given only if each party to the marriage has been resident in a registration district for the period of seven days immediately before the giving of his or her notice (but the district need not be that in which the notice is given and the parties need not have resided in the same district), and

(d) shall state, in relation to each party, the registration district by reference to which paragraph (c) is satisfied.

(3) The superintendent registrar shall not enter in the marriage notice book notice of a marriage to which this section applies unless satisfied, by the provision of specified evidence, that the party subject to immigration control—

(a) has an entry clearance granted expressly for the purpose of enabling him to marry in the United Kingdom,

(b) has the written permission of the Secretary of State to marry in the United Kingdom, or

(c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.

(4) For the purposes of this section—

(a) a person is subject to immigration control if—

(i) he is not an EEA national, and

(ii) under the Immigration Act 1971 (c. 77) he requires leave to enter or remain in the United Kingdom (whether or not leave has been given),

(b) "EEA national" means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

(c) "entry clearance" has the meaning given by section 33(1) of the Immigration Act 1971, and

(d) "specified evidence" means such evidence as may be specified in guidance issued by the Registrar General.

20 England and Wales: supplemental

(1) The Marriage Act 1949 (c. 76) shall have effect in relation to a marriage to which section 19 applies—

(a) subject to that section, and

(b) with any necessary consequential modification.

(2) In particular—

(a) section 28(1)(b) of that Act (declaration: residence) shall have effect as if it required a declaration that—

(i) the notice of marriage is given in compliance with section 19(2) above, and

(ii) the party subject to immigration control satisfies section 19(3)(a), (b) or (c), and

(b) section 48 of that Act (proof of certain matters not essential to validity of marriage) shall have effect as if the list of matters in section 48(1)(a) to (e) included compliance with section 19 above.

(3) Regulations of the Secretary of State under section 19(2)(a) or (3)(c)—

(a) may make transitional provision,

(b) shall be made by statutory instrument, and

(c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Before making regulations under section 19(2)(a) the Secretary of State shall consult the Registrar General.

(5) An expression used in section 19 or this section and in Part III of the Marriage Act 1949 (c. 76) has the same meaning in section 19 or this section as in that Part.

(6) An order under the Regulatory Reform Act 2001 (c. 6) may include provision—

(a) amending section 19, this section or section 25 in consequence of other provision of the order, or

(b) repealing section 19, this section and section 25 and re-enacting them with modifications consequential upon other provision of the order.

21 Scotland

(1) This section applies to a marriage—

(a) which is intended to be solemnised in Scotland, and

(b) a party to which is subject to immigration control.

(2) In relation to a marriage to which this section applies, notice under section 3 of the Marriage (Scotland) Act 1977 (c. 15)—

(a) may be submitted to the district registrar of a registration district prescribed for the purposes of this section, and

(b) may not be submitted to the district registrar of any other registration district.

(3) Where the district registrar to whom notice is submitted by virtue of subsection (2) is the district registrar for the registration district in which the marriage is to be solemnised, he shall not make an entry under section 4, or complete a Marriage Schedule under section 6, of the Marriage (Scotland) Act 1977 in respect of the marriage unless satisfied, by the provision of specified evidence, that the party subject to immigration control—

(a) has an entry clearance granted expressly for the purpose of enabling him to marry in the United Kingdom,

(b) has the written permission of the Secretary of State to marry in the United Kingdom, or

(c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.

(4) Where the district registrar to whom notice is submitted by virtue of subsection (2) (here the "notified registrar") is not the district registrar for the registration district in which the marriage is to be solemnised (here the "second registrar")—

(a) the notified registrar shall, if satisfied as is mentioned in subsection (3), send the notices and any fee, certificate or declaration which accompanied them, to the second registrar, and

(b) the second registrar shall be treated as having received the notices from the parties to the marriage on the dates on which the notified registrar received them.

(5) Subsection (4) of section 19 applies for the purposes of this section as it applies for the purposes of that section except that for the purposes of this section the reference in paragraph (d) of that subsection to guidance issued by the Registrar General shall be construed as a reference to guidance issued by the Secretary of State after consultation with the Registrar General for Scotland.

22 Scotland: supplemental

(1) The Marriage (Scotland) Act 1977 shall have effect in relation to a marriage to which section 21 applies—

(a) subject to that section, and

(b) with any necessary consequential modification.

(2) In subsection (2)(a) of that section "prescribed" means prescribed by regulations made by the Secretary of State after consultation with the Registrar General for Scotland; and other expressions used in subsections (1) to (4) of that section and in the Marriage (Scotland) Act 1977 have the same meaning in those subsections as in that Act.

(3) Regulations made by of the Secretary of State under subsection (2)(a) or (3)(c) of that section—
- (a) may make transitional provision,
- (b) shall be made by statutory instrument, and
- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

23 Northern Ireland

(1) This section applies to a marriage—
- (a) which is intended to be solemnised in Northern Ireland, and
- (b) a party to which is subject to immigration control.

(2) In relation to a marriage to which this section applies, the marriage notices—
- (a) shall be given only to a prescribed registrar, and
- (b) shall, in prescribed cases, be given by both parties together in person at a prescribed register office.

(3) The prescribed registrar shall not act under Article 4 or 7 of the Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I.3)) (marriage notice book, list of intended marriages and marriage schedule) unless he is satisfied, by the provision of specified evidence, that the party subject to immigration control—
- (a) has an entry clearance granted expressly for the purpose of enabling him to marry in the United Kingdom,
- (b) has the written permission of the Secretary of State to marry in the United Kingdom, or
- (c) falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State.

(4) Subject to subsection (5), if the prescribed registrar is not the registrar for the purposes of Article 4 of that Order, the prescribed registrar shall send him the marriage notices and he shall be treated as having received them from the parties to the marriage on the dates on which the prescribed registrar received them.

(5) The prescribed registrar shall not act under subsection (4) unless he is satisfied as mentioned in subsection (3).

(6) For the purposes of this section—
- (a) a person is subject to immigration control if—
  - (i) he is not an EEA national, and
  - (ii) under the Immigration Act 1971 (c. 77) he requires leave to enter or remain in the United Kingdom (whether or not leave has been given),
- (b) "EEA national" means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),
- (c) "entry clearance" has the meaning given by section 33(1) of the Immigration Act 1971, and
- (d) "specified evidence" means such evidence as may be specified in guidance issued by the Secretary of State after consulting the Registrar General for Northern Ireland.

24 Northern Ireland: supplemental

(1) The Marriage (Northern Ireland) Order 2003 (S.I. 2003/413 (N.I.3)) shall have effect in relation to a marriage to which section 23 applies—

(a) subject to section 23, and

(b) with any necessary consequential modification.

(2) In section 23 "prescribed" means prescribed for the purposes of that section by regulations made by the Secretary of State after consulting the Registrar General for Northern Ireland and other expressions used in that section or this section and the Marriage (Northern Ireland) Order 2003 have the same meaning in section 23 or this section as in that Order.

(3) Section 18(3) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) (provisions as to holders of offices) shall apply to section 23 as if that section were an enactment within the meaning of that Act.

(4) Regulations of the Secretary of State under section 23—

(a) may make transitional provision,

(b) shall be made by statutory instrument, and

(c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

25 Application for permission under section 19(3)(b), 21(3)(b) or 23(3)(b)

(1) The Secretary of State may make regulations requiring a person seeking permission under section 19(3)(b), 21(3)(b) or 23(3)(b)—

(a) to make an application in writing, and

(b) to pay a fee.

(2) The regulations shall, in particular, specify—

(a) the information to be contained in or provided with the application,

(b) the amount of the fee, and

(c) how and to whom the fee is to be paid.

(3) The regulations may, in particular, make provision—

(a) excepting a specified class of persons from the requirement to pay a fee;

(b) permitting a specified class of persons to pay a reduced fee;

(c) for the refund of all or part of a fee in specified circumstances.

(4) Regulations under this section—

(a) shall be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.