

## **Brexit and Marriage to EEA nationals post March 2019**

At the time of writing this note there is no clear indication of what will be agreed, if anything, in relation to Brexit. It is currently not possible to predict what will happen post-Brexit and no formal advice has been received from Government Agencies or National Church on the subject.

If an agreement is reached in the form currently under discussion or in a similar form then it seems likely that there will be preservation of the treatment of EEA nationals and the status quo will be maintained. It should be noted that marriage is not expressly mentioned in any draft agreement so there is need for further clarification but the political commitment seems to be to keep things the same into the future. This should include the ability to marry for most and for the continued use of either banns or common licence as the preferred legal preliminary for EEA as well as UK nationals.

The ability for the Church of England to deal with legal preliminaries for foreign nationals was already limited a few years ago with the introduction of the Immigration Act 2014. The Church can now marry only EEA nationals (and Swiss citizens) by way of banns or common licence. All other nationalities must first obtain a Superintendent Registrar's Certificate (SRC) before marrying in Church. It is therefore possible, moving forward, that ALL marriages involving non-UK nationalities will need to be by way of an SRC. Perhaps this might be considered to be the 'worst case scenario'. Even if this were the case it seems that EEA nationals would not have particular difficulty obtaining an SRC in most cases (although it should be noted that both parties to a marriage **need to attend** a civil registry in England in order to obtain a SRC and this may cause problems in terms of time and expense for those resident abroad who rely on a qualifying connection to marry in a church and intend to fly back to the UK only to marry).

A colleague in a different Registry has had confirmation from the Right Honourable Caroline Nokes MP and Minister of State for Immigration that

“We recognise that existing immigration, marriage and civil partnership legislation may need to be amended to ensure parity in treatment between EU and non-EU citizens. In the event that we do make changes, there is likely to be a transition period for couples who have already given notice to marry.”

The point to note here is she says EU rather than EEA (whereas the current system is based on EEA nationals rather than EU nationals) and mentions a transition period for those who have 'already given notice to marry'. The Registry does not consider a conversation with the Vicar and the booking of a wedding 12 months in advance as 'notice to marry', which is a technical term with legal meaning. Notice to marry occurs at the point banns are called for the first time or a common licence is granted – therefore with a minimum three months' time limit. Notice for SRCs can be for up to 12 months however.

The EU Commission has suggested that the transition period for when Britain leaves the EU should not last beyond 31<sup>st</sup> December 2020. It is likely that any marriage taking place before that date should be able to continue as before provided the British government does not push for an earlier withdrawal of arrangements. No one currently knows what will happen beyond that point.

The couple should certainly keep an eye on Brexit negotiations and be careful about financial commitments until they have satisfied themselves of their own personal status. Couples should stay aware of the current situation and possibly seek reassurance from their own consulates and embassies. As and when we receive any further information, we will update this advice.

### **31 January update:**

The Home Office has now confirmed with the Archbishop's Faculty Office that it does not intend to make any changes to the current legislation in place on or immediately after the UK has left the EU other than a minor legislative fix to the definition of 'relevant national' (as mentioned in the Marriage Act) to reflect the fact that the UK will no longer be a member of the EEA. This means that after the UK has left the EU, EEA nationals and Swiss nationals can continue to marry after Banns or by Common Licence as they can now as the definition of 'relevant national' will continue to include these nationalities. Clergy can now reassure EU, EEA and Swiss citizens seeking to marry in 2019 and early 2020.