

M3 Nationality and Immigration

Summary of Learning Points

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M3 Nationality and immigration

Evidence of nationality

1. In every case, the registration officer attesting a notice must request documentary evidence of the nationality of the person who will be giving notice. This evidence is necessary to determine whether:

- i) a person is required to attend a specified registration district, and
- ii) whether the couple will be referred to Home Office Immigration (HOI) in accordance with the Immigration Act 2014 referral and investigation scheme ("the scheme").

Specified Registration Districts

2. Where one or both parties are not exempt from immigration control then they will be required to attend at one of the 75 specified registration districts within England and Wales. These specified registration districts are also known as designated register offices and will be described as such throughout this chapter.

Who attends at their 'local' register office to give notice?

3. Where both parties to the marriage are a British citizen, EEA national, Swiss national or a non-EEA national who is exempt from immigration control they must attend at their local register office (this could also be a designated register office) to give notice.

An EEA national includes: a national from the European Economic Area (EEA) and includes the following countries; Austria, Belgium, Bulgaria, Croatia, Cyprus*, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Irish Republic, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden.

* although the whole island of Cyprus is a member state of the EEA and all Cypriots are EEA nationals, at the present time a person who can only present a travel document from "the Turkish Republic of Northern Cyprus" (TRNC) is subject to immigration control unless they can also produce a document showing that they are entitled to citizenship of the Republic of Cyprus.

A non-EEA national who is exempt from immigration control includes:

- i) A person with the right of abode in the United Kingdom ;
- ii) Members of diplomatic missions and members of their household;
- iii) Members of HM Forces, Commonwealth forces or associated training with HM forces and members of visiting armed forces;
- iv) Heads of State;
- v) Consular Officers and employees.

A non-EEA national who is exempt from immigration control will need to provide specified evidence to show that they are able to give notice at their 'local' register officer and that they are exempt from referral to the Home office.

If one or both of the parties states that they have one of the above exemptions but are unable to provide documentary evidence to support this they must give notice at a designated register office and the couple will fall in scope of the scheme and be referred to Home Immigration.

For further guidance you should contact the General Register Office (First Point of Contact: 0300 123 1837)

Who is required to attend at a designated register office (DRO)?

4. A non-EEA /non-Swiss national who is not exempt from immigration control is required to attend with their partner to give notice at a designated register office. People who are not exempt from immigration control include:

- i) A person who has settled status in the UK (such as indefinite leave to enter/remain;
- ii) A family member of an EEA national who has a current residence permit e.g. EEA Family Member permit or EEA permanent residence card (if there is

- doubt whether they have permanent residence, then the registration officer should contact the SR's helpline, see paragraph 14) ;
- iii) The holder of a valid visa, entry clearance or valid leave granted as a fiancé/e or marriage visitor.
 - iv) A non-EEA national who has limited or no immigration status in the UK, e.g. a person with valid leave as student, a person whose leave to remain has expired or an illegal entrant.

If a registration officer has any doubts about the immigration status of the person as stated in the documentation presented they should contact the < Redacted >

Referral and investigation scheme under the Immigration Act 2014

5 All non-EEA nationals giving notice of marriage will be required to make a statement, on the notice form, relating to each of the parties immigration status. This statement and evidence provided will determine whether the couple is referred for investigation to HOI.

Not all non-EEA nationals who are required to attend a designated register office to give notice will be subject to the referral and investigation scheme under the Immigration Act 2014.

All proposed marriages which fall within scope of the scheme will be referred to HOI for them to decide whether to investigate if the proposed marriage is a sham. < Redacted >

Who is referred to Home Office Immigration (HOI) for investigation?

6. The following couples will be subject to referral to HOI:
- i) where one or both of the parties is a non-EEA/ non-Swiss national with limited or no immigration status in the UK. This includes those persons who do not have settled status, an EU Law right of permanent residence in the UK, a valid visa, entry clearance or leave granted as a fiancé/e or marriage visitor; an EEA Family member without permanent residence or
 - ii) where one or both parties is a non-EEA national who makes a statement on the notice declaring they have settled status, an EU law right of permanent residence in the UK or a valid visa, entry clearance or leave granted as a fiancé/e or marriage visitor but are unable to provide evidence that their immigration status means that they are not exempt under the scheme.

Please note that providing evidence of immigration status is different to providing evidence of nationality; evidence of nationality must be produced in all cases. If a non-EEA national does not provide evidence of their immigration status when giving notice they will be subject to referral to HOI. < Redacted >

7. Registration officers should appreciate that it is the **couple** to the marriage who are referred to HOI under the referral and investigation scheme. Therefore, even if only one of the parties is a non-EEA national without the appropriate immigration status or relevant visa for the purpose of marriage both of them will be referred to HOI.

Registration officers are required to inform the couple that their proposed marriage is being referred to the Home Office. This includes advising the couple on the effects of the referral and what action they must take if they change address or haven't heard from the Home Office, see M6.60 for further guidance. Registration officers are also required to give both parties the Home Office leaflet advising them of the effects of the referral and how to notify the Home Office of a change of address.

A flowchart detailing where a couple must give notice, which statement should be made on the notice and whether the couple are subject to referral to HOI can be found at the end of this chapter at Annex B.

Specified evidence of British Nationality

8. For British citizens, the evidence of nationality that must be produced includes:
- i) a British passport; or
 - ii) birth certificate (bc); or
 - iii) a certificate of registration as a British citizen granted by the Secretary of State; or
 - iv) certificate of naturalisation as a British citizen granted by the Secretary of State.

If a British Citizen does not provide their Passport when giving notice they must provide one of the additional documents listed below –

- (a) utility bill dated no more than three months before the date on which notice of marriage is given;
- (b) bank or building society statement or passbook dated no more than one month before the date on which notice of marriage is given;
- (c) council tax bill dated no more than one year before the date on which notice of marriage is given;
- (d) mortgage statement dated no more than one year before the date on which notice of marriage is given;
- (e) current residential tenancy agreement;
- (f) valid United Kingdom driving licence in the name of the person giving notice of marriage (full or provisional issued by the United Kingdom, Isle of Man or Channel Islands);

Where none of the documents listed in sub-paragraphs (a) to (f) are available, the Registrar General should be contacted to determine what other document it would be reasonable to accept in the particular circumstances of the case.

9. Prior to 1983, a person born in the UK obtained British citizenship automatically. For a person born in the UK after 1 January 1983, nationality is dependent upon the nationality of the parents.

Any person who produces a birth certificate showing they were born in the UK on or after 1 January 1983 should also be asked to provide a British passport or a naturalisation / registration certificate from the Home Office to confirm that they are a British national. If these additional documents cannot be produced, evidence of the nationality of one of the parents (either British passport or bc) will be needed; it follows that if the parent was born in the UK prior to 1 January 1983 they would be a British citizen and so would their child.

If the parents were married at the time of the birth, a child can take nationality from either parent. If unmarried, nationality is taken from the mother. If the mother is either not British or there is no evidence supplied to confirm her British nationality, where the couple have married since the birth and the father is a British national evidence of his father's nationality (i.e. British passport or bc) and proof of the marriage should be produced to establish the nationality of the child.

Where the person is adopted they can take the nationality of either adopted parent, irrespective of whether they are married or not. The adopted person should produce their adoption certificate together with the birth certificate of the relevant adopted parent.

If a registration officer has any doubts about the nationality of the person giving notice then they should contact the Home Office Nationality Group < Redacted >

For further guidance see a flow chart of this process at the end of this chapter in Annex C.

Specified evidence of EEA or Swiss nationality

10. Nationals of Switzerland or one of the EEA countries listed at M3.2(iii) must produce one of the following:

- i) valid EEA or Swiss identity card; or
- ii) valid EEA or Swiss passport.

Specified evidence of nationality for non-EEA nationals

11. A person who is not a British / Swiss/ EEA national must produce one of the following documents:

- i) valid non-EEA passport; or
- ii) valid biometric immigration document issued by the Home Office; or
- iii) valid travel document issued in the UK at the discretion of the Secretary of State to persons who have been unreasonably refused a national passport and who have been granted limited leave to enter or remain or humanitarian protection or indefinite leave to remain (the holders nationality will be stated in full); or
- iv) valid 1951 Convention travel document issued to a person granted refugee status (the holders nationality will be stated in full); or
- v) valid travel documents issued to a person under the 1952 Stateless Persons Convention (nationality is recorded as code XXA).

If none of the documents (or groups of documents) listed in sub-paragraphs (i) to (v) are available to confirm the person's name, surname, date of birth and nationality, such other document or combination of documents as the Registrar General determines it is reasonable to accept in the particular circumstances of the case.

The passport or travel document presented must detail the person's nationality. All UK issued travel documents have a common biodata page (see Annex A). Nationality is a field roughly in the middle of that page.

12. A passport showing the holder is an 'alien' means the holder is not a national of the country that issued the passport. If one of these passports is produced, the General Register Office should be telephoned for advice.

Absence of documents

13. Where a passport or other documentation has been submitted to the Home Office as part of an application, the notice giver should be advised that the 'Return of Documents' form on GOV.UK can be used to request these documents back: <https://www.gov.uk/visa-documents-returned>

If a person cannot provide the required documentary evidence of their nationality (as specified in paragraphs 8 – 12 above), advice should be sought from the General Register Office who will determine what other document it would be reasonable to accept in the particular circumstances of the case.

Validity of documents

14. A registration officer who has doubts about the immigration status of the person as stated in any documentary evidence that has been issued by the Home Office should contact Home Office Immigration < Redacted >

British Overseas Passports

15. Holders of a British Overseas Passport are subject to the same immigration controls as any other non-EEA national and the passport should be checked in the usual way for any appropriate stamps.

Sham marriages

16. The Immigration and Asylum Act 1999 defines that a marriage (whether or not it is void) is a “sham marriage” if:

- a) either, or both, of the parties to the marriage is not a relevant national,
- b) there is no genuine relationship between the parties to the marriage, and
- c) either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes;
 - i) avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules;
 - ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in the United Kingdom.

Reporting a suspected sham marriage

17. Where a registration officer has reasonable grounds for suspecting that a marriage will be or is a sham marriage, the officer concerned is under a statutory duty to report those suspicions without delay to Home Office Immigration (HOI). This could be:

- i) as a result of information received in advance of a notice of marriage being given, e.g. at the booking of an appointment
- ii) when taking a notice of marriage
- iii) at any time before, during or after the solemnization of a marriage.

18. Some grounds may become apparent when the parties are seen together which is one of the reasons why both parties have to attend together to give notice when one or both of them are subject to immigration control. Other grounds may become apparent when the parties are seen separately. For this reason, it is strongly recommended that, in all cases, one party gives their own notice without the other party being present. The grounds for the suspicion and, therefore, the reason for the report might include:

- i) either party giving the impression of knowing very little about the other person;
- ii) either party referring to notes to answer questions about the other person;
- iii) a reluctance to provide evidence of name, age, condition or nationality;
- iv) the parties are unable to converse in the same language;
- v) one of the parties may have exceeded their period of permitted stay in the UK
- vi) one of the parties is seen to receive payment for the marriage;
- vii) an allegation that it is a sham marriage has been made by a credible third person, e.g. Immigration Officer or Police Officer;
- viii) there is little interaction between the couple; or,

- ix) one of the parties seemed unable to give the full name or address of the other person.

19. None of these reasons may in itself indicate that the marriage is a sham and there may be other factors that arouse an officer's suspicions that are not listed, for example the registration officer suspects that false documents or documents that do not belong to the person have been presented as evidence. But it is generally expected that it will be a combination of factors, together with the officer's observations of the couple's behaviour, which indicate that the marriage may be a sham. Where a registration officer is in any doubt about whether or not to report a marriage to HOI, advice may be sought from the General Register Office.

20. Any report of a sham a marriage should be < Redacted >

At the same time, a copy should be retained in the records of the reporting officer.

21. The report of a suspected sham marriage to HOI should not prevent a marriage being solemnized, providing the parties are free to marry each other. Particular care must be taken to treat everyone equally and without discrimination. A person should not be treated less favourably on grounds of his or her race, colour, ethnic or national origins, nationality or citizenship when carrying out any function that involves providing a facility or service to the public.

22. If a registration officer has taken copies of the documents presented when the notice was given notice and that officer now wishes to share these with the Home Office Immigration (HOI) team they can do so by sending scanned copies of the documents by email. < Redacted > A further copy of the S24 report should not be provided as this can lead to duplication in HOI's systems.

23. Registration officers should be aware that any report of a sham marriage sent to HOI is unlikely to be produced as evidence in a tribunal or appeal hearing. However this remote possibility should not deter registration officers from reporting their suspicions to the Home Office, but the use of inflammatory or derogatory language must be avoided. In instances where registration officers are called as a court witness they should discuss any concerns that they have with their local authority and the court's witness support team.

24. A sham marriage should not be confused with a traditional arranged marriage that is usually organised by family members where there may be no intention to circumvent immigration law. Similarly, a forced marriage is also not necessarily a sham marriage. If you suspect that a planned marriage / civil partnership is forced, the guidance in M17.26 of the Handbook applies. You may also wish to refer the link below under "guidance for registrars at:-

<https://www.gov.uk/forced-marriage#guidance-for-professionals>

< Redacted >

As of 21st December 2006, if a person holds both a British Citizen passport and a foreign passport they cannot have a Certificate of Entitlement to the Right of Abode placed in their foreign passport.

All British Citizens automatically have the right of abode. Some people may have dual nationality one of which is British Citizenship but do not have a British Citizen passport. They may have a Certificate of Entitlement to the Right of Abode in their foreign passport. They should be treated as a British Citizen; therefore they are not subject to immigration control and their passport is never endorsed.

Diplomatic and Forces exemptions:

These stamps will be shown in a person's passport show that the holder is not subject to any condition or limitation on their stay in the United Kingdom by virtue of their employment (e.g. diplomat, member of visiting armed forces etc). The pentagonal Home Office stamp will appear on the two rectangular Home Office stamps

< Redacted >

Documents presented to Designated Register Offices:

Where acceptable evidence of these immigration statuses are presented the couple will not be referred to HOI.

Indefinite Leave to Remain (ILR):

Plus Home Office embossing seal

Plus Home Office ink authenticating stamp

Indefinite Leave to Enter (ILE):

Plus Immigration Officer ink date stamp

Visa or entry clearance as a fiancé/e or marriage visitor:

Where the following documents are submitted these couples will be referred to the Home Office:

UK Residence Permit with Limited Leave to Remain

Biometric Residence Permit for a student:

Other documentation which may be presented:

Home Office Travel Documents:

(Black) Certificate of Travel (COT) previously known as the Certificate of Identity, this is now a black document. This is issued to applicants who have been given leave to enter or remain in the United Kingdom, who do not hold any official documents of Identity. This document would normally be issued where the applicant has been refused a passport from their national country. Maximum validity is 5 years but can be less depending on their leave and status.

(Blue) Convention Travel Document (CTD) this is a blue document. It is issued to recognised refugees under the 1951 United Nations Convention and are better known as refugee passports. These are valid for travel to all countries except the country they are fleeing from.

(Red) Stateless Persons Document (SPD) this is a red document. These are people who do not have a confirmed nationality. These documents are issued under the Stateless International Convention 1954 United Nations Convention (ratification of the 1951 Convention). This document allows the traveller to travel to any country. Both the Convention Travel Document and the Stateless Persons Document, maximum validity is 10 years but can be less depending on their leave or status.

Annex B: Where to give notice, completion of statement and referral to HOI.

Taking notice and referral to Home Office Immigration - Side 1

Description of the couple	Where notice is taken	Form to be used	Photo required	Referred to HOI
The couple are both British, EEA national or Swiss nationals.	Local Register Office	Form 48 / CP48	NO	NO
One party is British, EEA national or Swiss national. Other party is a non EEA National with right of abode or diplomatic/military exemption.	Local Register Office	Form 49 / CP49 British, EEA national or Swiss national selects option 5(i) for themselves and 6(ii) for their partner. Person with right of abode or diplomatic / military exemption selects option 5(ii) for themselves and 6(i) for their partner.	NO	NO
One party is British, EEA national or Swiss national. Other party is a non EEA national with ILR/ILE / residence permit.	Designated Register Office	Form 49 / CP49 British, EEA national or Swiss national selects option 5(i) for themselves and 6(ii) for their partner. Person with ILR/ILE / res. permit selects option 5(ii) for themselves and 6(i) for their partner.	NO	NO
One party is British, EEA national or Swiss national. Other party is a non EEA national with a marriage or civil partnership visa.	Designated Register Office	Form 49 / CP49 British, EEA national or Swiss national selects option 5(i) for themselves and 6(iii) for their partner. Person with marriage or CP visa selects option 5(iii) for themselves and 6(i) for their partner.	YES	NO
One party is British, EEA national or Swiss national. Other party is a non EEA national without appropriate immigration status or relevant visa.	Designated Register Office	Form 49 / CP49 British, EEA national or Swiss national selects option 5(i) for themselves and 6(iv) for their partner. Person without appropriate imm. status or relevant visa selects option 5(iv) for themselves and 6(i) for their partner.	YES	YES
Both parties are non EEA Nationals with right of abode or diplomatic / military exemption.	Local Register Office	Form 49 / CP49 Each person selects option 5(ii) for themselves and 6(ii) for their partner.	NO	NO
One party is a non EEA National with right of abode or diplomatic / military exemption. Other party is a non EEA national with ILR/ILE / residence permit.	Designated Register Office	Form 49 / CP49 Each person selects option 5(ii) for themselves and 6(ii) for their partner.	NO	NO
One party is a non EEA National with right of abode or diplomatic / military exemption. Other party is a non EEA national with a marriage or civil partnership visa.	Designated Register Office	Form 49 / CP49 Person with right of abode or diplomatic / military exemption selects option 5(ii) for themselves and 6(iii) for their partner. Person with marriage or CP visa selects option 5(iii) for themselves and 6(ii) for their partner.	YES	NO

Designated Register Office = service point within one of the 75 specified registration districts within England and Wales.

Annex C: Establishing British nationality

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M3 Evaluation of Learning

When you have finished reading this Chapter you may wish to evaluate what you have learnt by answering the following questions. The answers to these questions are at the end of the Handbook.

- Q1.** If a person attends to give a notice of marriage stating they were born on the 31 January 1983 in London but they do not possess a passport, what evidence would you request to determine British nationality?
- Q2.** If a couple attend at a service point within a non-designated registration district to give notices of marriage claiming they are both Polish, what evidence would you expect them to produce to prove their nationality and can notice be taken?
- Q3.** A person attends to give a notice of marriage and presents a passport issued in Germany stating the holder is an 'alien'. What procedure should be followed?
- Q4.** An American serviceman based in England attends to give notice of marriage. What documentation would need to be provided before a notice of marriage can be taken and where would that notice be given?
- Q5.** A person attends to give notice of marriage and presents a current passport which shows the holder has 'right of abode'. Where must the notice of marriage be given?
- Q6.** A person has been residing in the same registration district for the past year and attends their local non-designated register office to give notice of intention to marry producing a Brazilian passport stamped 'Indefinite Leave to Remain' in the UK, what action should be taken?
- Q7.** If a person attends a non-designated register office to give a notice of marriage holding a current British Overseas Passport what action should be taken?
- Q8.** What procedure should be followed if a registration officer believes a proposed marriage may be a sham and can the marriage proceed?
- Q9.** A British national wishes to give notice to marry a Chinese national who claims to have neither evidence of the appropriate immigration status nor a relevant visa for the purpose of marriage. Where can they give notice and what else would you advise them?

