

# REGISTRATION OF MARRIAGE BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Registration of Marriage Bill [HL] as introduced in the House of Lords on 29 June 2017 (HL Bill 19).

- These Explanatory Notes were originally drafted by the Home Office and published on 29 June 2016 when the Bill was introduced in the House of Commons. These Notes have been updated and republished with the consent of the Bishop of St Albans, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Bill

- 1 The purpose of the Bill is to reform the way in which marriages are registered in England and Wales, moving from a paper based system to registration in an electronic register. This will facilitate change to the register entry both now and in the future, including a line for the inclusion of each spouses' mother in the marriage entry, and create a more secure system for the maintenance of marriage records.

## Policy background

- 2 The Bill contains powers for the Secretary of State to make provision in regulations to move the registration of marriages from a paper based system to registration in an electronic register. It is intended that the powers will be used to make the changes set out in paragraphs 27 to 38 below.
- 3 At present, couples who wish to marry may follow either civil or ecclesiastical preliminaries to marriage. If one of the couple is a non-EEA national, changes made by the Immigration Act 2014 mean that civil preliminaries must be followed.
- 4 Currently, couples following civil preliminaries are required to each give a notice of marriage to the superintendent registrar for the registration district in which they have been resident for the previous 7 days. If one or both of the couple is a non-EEA national without settled status both notices must be given at one of 75 specified registration districts and the couple may be referred to the Home Office for investigation as to the genuineness of the relationship<sup>1</sup>.
- 5 After giving notice, there is a statutory waiting period of 28 days before the marriage can take place. During this period the notice information is publicly displayed at the register office. After the expiry of the 28 day waiting period (which may be extended to 70 days for those subject to referral to the Home Office) and if there is no impediment to the marriage, the superintendent registrar will issue each person with a 'certificate', which acts as authority for the marriage to proceed. The two certificates are taken to the marriage and given to the person who is to register the marriage. The marriage cannot go ahead without the certificates being issued.
- 6 Following the marriage ceremony the person responsible for registering the marriage (who may be a registrar, a member of the clergy or a person authorised on behalf of other religious groups) will register the marriage in a marriage register book and hand write marriage certificates. Marriages in religious buildings are registered in duplicate registers and when the duplicate registers are full, one is kept at the religious building and the other is deposited with the superintendent registrar at the local register office.
- 7 Certified copies of marriage register entries are transmitted to superintendent registrars and then on to the Registrar General via a system of 'quarterly returns'. The Registrar General then holds a central repository of all marriages which have been registered in England and Wales, from which marriage certificates can be issued.
- 8 This Bill enables the introduction of a 'schedule' system for the registration of marriages in England and Wales, similar to that already in place for civil partnerships in England and Wales and for marriages and civil partnerships in Scotland and Northern Ireland. The basis of this system is that the parties sign a document (called a 'marriage schedule') instead of signing

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<sup>1</sup> Under provisions inserted into the Marriage Act 1949 by Part 4 of the Immigration Act 2014.

the marriage register book. The schedule is then returned to the register office for the marriage to be registered in an electronic register maintained by the Registrar General.

- 9 Under the proposed new system, instead of superintendent registrars in the district(s) of the parties' residence issuing two certificates authorising the marriage to proceed, the superintendent registrar in the district in which the marriage is to be solemnized will issue one schedule for the couple. The schedule will contain all the information to be entered into the marriage register. The marriage will not be able to proceed without a schedule being issued.
- 10 The schedule will be taken to the marriage and, following the ceremony, it will be signed by the couple, witnesses, the person officiating and the person responsible for ensuring the schedule is signed. This is in place of signing the current marriage register book.
- 11 The couple will be responsible for ensuring the signed schedule is returned to the register office to be registered in the electronic marriage register. However, for all civil marriages (and those religious marriages attended by a registrar) it is anticipated that the registrar will retain the schedule and take it back to the register office to be registered.
- 12 Those marrying in the Church of England or Church in Wales will still be able to marry by ecclesiastical preliminaries, i.e. banns, common licence or Archbishop of Canterbury's Special Licence. These preliminaries will continue to act as the authority for the marriage to proceed.
- 13 Where ecclesiastical preliminaries are used, the member of the clergy will issue a 'marriage document' similar to the schedule issued by the superintendent registrar but which does not act as the authority for the marriage to proceed. This will be taken to the marriage and signed by the couple, their witnesses and the member of the clergy. The couple will be responsible for returning the signed schedule to the register office.
- 14 In all cases, marriage certificates can be issued from the electronic register when the marriage has been registered. Only registration officials (the Registrar General, superintendent registrars and registrars of marriage) will be able to issue marriage certificates.
- 15 With the introduction of a schedule system there will no longer be a requirement for the system of quarterly returns as all marriage entries will be held on the single electronic register maintained by the Registrar General.
- 16 The provisions of this Bill do not prevent churches or other religious buildings from keeping their own record of marriages. There is no change to the content of the marriage ceremony and couples will still be able to obtain a marriage certificate following the registration of their marriage.
- 17 The changes will also increase the security of marriage records by removing the requirement for open marriage register books and blank certificates to be held in churches and other religious buildings, where they can be a target of theft.
- 18 Since 1837, the marriage register entry in England and Wales (and consequently marriage certificates, which are a certified copy of the entry) has included details of the fathers of the spouses, but not their mothers. Although changes to the content of the register entry could be made by secondary legislation (as the particulars required to be registered are prescribed in regulations under section 55(1) of the Marriage Act 1949), any change would necessitate replacement of all 84,000 marriage register books currently in use. The change to an electronic system will enable the form and content of the marriage register entry to be easily amended to include, for example, the details of both parents of the couple, without having to replace all marriage register books.

## Legal background

- 19 The registration of marriages in England and Wales is principally governed by the Marriage Act 1949 and regulations made under it (the Registration of Marriages Regulations 2015 (SI 2015/207) and Marriage (Authorised Persons) Regulations 1952 (SI 1952/1869)). The Marriage (Registrar General's Licence) Act 1970 provides an alternative procedure for marriages involving a person who is seriously ill and not expected to recover, and imports the registration provisions from the 1949 Act.
- 20 The Bill will enable regulations subject to the affirmative resolution procedure to amend these and other enactments to make provision for the registration of marriages in England and Wales.

## Territorial extent and application

- 21 Clause 6(1) and (2) sets out the territorial extent of the Bill, that is the jurisdictions of whose laws the Bill forms part. The extent of a Bill can be different to its application. Application is where a Bill produces a practical effect.
- 22 Legislative competence for marriage (and civil registration) has been devolved to Scotland and Northern Ireland and separate legislation exists to govern marriages solemnized in those jurisdictions. Legislative competence in these areas has not been devolved to the National Assembly for Wales.
- 23 Clauses 1 and 2 of the Bill extend and apply to England and Wales only. These clauses enable regulations to make provision for the registration of marriages in England and Wales.
- 24 Clauses 3 to 5 extend and apply to England and Wales, Scotland and Northern Ireland. These clauses enable regulations to make amendments to primary and secondary legislation in consequence of the changes made to marriage registration in England and Wales. These clauses have wider extent because there will be a need to make consequential amendments to interlinking Scottish marriage legislation and to Westminster legislation (for example in the immigration sphere) that extends to the United Kingdom.
- 25 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. In the view of the Bishop of St Albans, the matters to which the provisions of the Bill relate are not within the legislative competence of any of these legislatures.
- 26 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

## Commentary on provisions of Bill

### Clause 1: Power for Secretary of State to make regulations about marriage registration

- 27 Clause 1(1) empowers the Secretary of State to make regulations providing for the registration of marriages in England and Wales.
- 28 Subsection (2) enables the regulations under subsection (1) to amend any Act of Parliament passed before this Bill or in the same Session.
- 29 Subsection (3) sets out amendments that the regulations may, in particular, make to the Marriage Act 1949 ('the 1949 Act'):
  - a. Paragraph (a) enables the replacement of the existing superintendent registrar's certificates for marriage (which serve as the authority for the marriage to proceed after civil preliminaries) with a marriage 'schedule', which will function not only as the authority for the marriage, but also as the document the parties sign at the solemnization (instead of a register book) and which records the particulars to be registered.
  - b. Paragraph (b) makes similar provision for marriages following ecclesiastical preliminaries, providing for a document that will form the basis of the registration of (although not the authority for) a marriage conducted according to the rites of the Church of England or Church in Wales.
  - c. Paragraphs (c), (d) and (f) enable the amendments to provide for the signing of the above-mentioned documents, their delivery to a registrar, and the registration of the particulars they contain.
  - d. Paragraph (e) enables amendments to be made to require the Registrar General to maintain a marriage register, which will replace the bound marriage register books currently held in register offices but also in some 30,000 churches and other religious buildings.
  - e. Paragraph (g) enables the regulations to amend the 1949 Act to make other provision in relation to the registration of marriages.
- 30 Subsection (4) empowers the Secretary of State to amend the 1949 Act to create a specific criminal offence, aimed at enforcing the registration of marriages. This offence is to be modelled on section 24(2)(e) of the Marriage (Scotland) Act 1977. If a signed schedule or marriage document is not delivered to the registrar to be registered within a certain timescale, the registrar may require a party to the marriage to attend personally at the register office for the purpose of delivering the signed document. Subsection (4) enables the regulations to provide that failure to attend constitutes a criminal offence. The maximum penalty (a fine not exceeding level 3 on the standard scale, currently £1000) is specified in the Bill.

### Clause 2: Power for Registrar General to make regulations

- 31 Clause 2 empowers the Secretary of State to sub-delegate certain administrative aspects of the registration provisions to regulations made by the Registrar General with the approval of the Secretary of State. The provisions that may be delegated are:
  - a. Power to prescribe the form and content of documents including the marriage schedule and marriage document. These documents will include the particulars to be registered in respect of each marriage. This power is also likely to be used to prescribe notices to be given by the registrar to the parties to the marriage in the event that a signed marriage schedule or document is not delivered for registration.

- b. Power to make provision in relation to corrections to, or the re-issue of a marriage schedule or marriage document before the marriage is solemnized. Such provision will be necessary to enable the re-issue of documents that have been lost or damaged, or to enable corrections in case of error or where a party's details have changed, for example.
  - c. Power to make provision in relation to the keeping of a signed marriage schedule or document after the particulars set out in it have been entered in the marriage register. It is likely that the signed documents will be retained either by the Registrar General (as is the case for civil partnerships) or by superintendent registrars.
  - d. Power to make provision in relation to corrections to entries in the marriage register or a pre-commencement marriage register book.
  - e. Power to make provision in relation to the keeping of pre-commencement register books, for example whether they should remain in the custody of those who currently hold them (such as members of the clergy and persons authorised by other religious groups).
  - f. Power to make provision in relation to the keeping in a church or chapel of records of marriages solemnized according to the rites of the Church of England. It is not intended that such provision will apply in respect of marriages solemnized in the Church in Wales.
- 32 Subsection (2) clarifies that provision in relation to the keeping of books, documents or other records (such as signed marriage schedules, or records held by the Church of England) may specify who may keep them and how they must be stored, and the circumstances in which the book, document or other record must be annotated. This might be used to require pre-commencement marriage register books to be marked to show that they are no longer in use. Subsection (2)(c) also enables the sub-delegated regulations to require books, documents or other records to be sent to the Registrar General or a superintendent registrar.
- 33 Subsection (3) provides that if the Secretary of State exercises the power to sub-delegate regulation-making powers to the Registrar General, any such regulations must be made by statutory instrument and may give the Registrar General power to make different provision for different cases. This mirrors the provision associated with the Registrar General's existing powers to make regulations under section 74(3) of the 1949 Act. Regulations made by the Registrar General are subject to no Parliamentary procedure but require the approval of the Secretary of State.

### Clause 3: Consequential provision

- 34 Clause 3 enables the Secretary of State to make regulations making provision in consequence of regulations under clause 1. This consequential provision includes provision amending primary legislation (which includes Scottish and Northern Irish primary legislation and Acts or Measures of the National Assembly for Wales, as well as Measures of the Church Assembly or of the General Synod of the Church of England) passed before this Bill or in the same Session.

### Clause 4: Supplementary provision about regulations

- 35 Clause 4 makes supplementary provision applicable to regulations under clause 1 or clause 3.
- 36 This clause also sets out the Parliamentary procedure for regulations made under those clauses. Subsection (3) provides that where regulations under clauses 1 or 3 amend or repeal any provision of primary legislation (with or without other provision), they will be subject to the affirmative resolution procedure. Otherwise, regulations under clauses 1 or 3 will be subject to the negative resolution procedure.

## Clause 5: Interpretation

37 This clause is self-explanatory.

## Commencement

38 Clause 6 provides for commencement and this clause comes into force on the day the Act is passed. The remaining clauses 1 to 5 will come into force on such day as the Secretary of State may by regulations appoint.

## Financial implications of the Bill

39 In 2015, it was estimated that the set up costs of the new registration system will be £1,142,000 for the General Register Office (GRO) and £156,000 for the local registration service. But the reforms of the marriage registration system along the lines set out in these Notes are expected to lead to net savings of £29,532,000 over 10 years (including savings at the GRO and in the local registration service). Further net savings of £4,306,000 are expected for the clergy and other religious groups involved in the registration of marriages. The detailed financial implications of the Bill are set out in an accompanying impact assessment published on 2 November 2015.

## Related documents

40 The following document is relevant to the Bill and can be read at the stated locations:

- Impact assessment:  
<https://www.publications.parliament.uk/pa/bills/lbill/2017-2019/0019/Impact-assessment.pdf>

## Annex A – Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Clause 1	Yes	Yes	No	No	No	No	No
Clause 2	Yes	Yes	No	No	No	No	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No

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