

TRUST POLICY AND PROCEDURE FOR EMERGENCY MARRIAGE AND CIVIL PARTNERSHIP

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For urgent advice contact Chaplaincy on 89500 RDH or 566333 Burton or refer to Appendix 4 and 5 for procedures and covering letter. Do not adapt the wording of the letter as it will be refused by the Registrar’s Office.

TRUST POLICY AND PROCEDURE FOR
EMERGENCY
MARRIAGE AND CIVIL PARTNERSHIP

1. Introduction

Marriages or the Registration of Civil Partnerships of seriously ill patients rarely occur in hospital but when they are requested a prompt and effective response is required.

In speaking of emergency marriages in hospital, the distinction needs to be drawn between:-

- (a) Cases where a patient is not expected to recover or to be able to leave hospital, but is not in immediate danger of dying
- (b) Cases where there is an expectation or risk of death within a short time.

This policy is concerned with Category (b) and exists for staff to facilitate proceedings in a manner which is acceptable to the parties involved within the Law.

It should be noted that so far as category (a) is concerned, it is possible for an Anglican hospital Chaplain to solemnise a marriage in the hospital according to the rites of the Church of England on the authority of a Superintendent Registrar's Certificate (SRC, Marriage Act 1983). However, the statutory requirements for the marriage of a "house-bound" person will need to be complied with, including the normal requirement that the certificate cannot be issued until 7 days after notice has been given to the Superintendent Registrar. This procedure is therefore not appropriate for cases in category (b). If it is possible to obtain an SRC this should be done in preference to an Archbishop's Special Licence, on the basis that the SRC is the more statutorily normal preliminary intended for this circumstance.

In addition according to the rites of the Church of England, the Archbishop of Canterbury has ruled that the son or daughter of a seriously ill patient may be married at the patient's bedside if, in the Archbishop's judgement, the circumstances justify this.

2. Purpose and Outcomes

This policy outlines the conditions and legal requirements and identifies the paperwork and supporting documentation required as well as the procedure to be adopted when a request for Emergency Marriage or the Registration of a Civil Partnership is made.

When staff receive such a request it is important that they understand the procedure to adopt and to carry it out in a timely manner. This policy exists to enable staff to carry out the legal requirements and to meet the duty of care to the patient and their intended partner.

The aim is to ensure that patients who are seriously ill have their request met wherever possible within the constraints of the Law.

3. Definitions Used

Seriously ill patient:	A patient, who in the opinion of the attending doctor should not be moved, is not expected to recover and there is an expectation or risk of death within a short time.
Marriage;	The voluntary union for life of one person with another to the exclusion of all others.
Marriage Ceremony:	The means of solemnising a marriage by an authorised minister of religion or an officer of the state.
Civil Partnership:	The voluntary legal union of two people who do not wish to enter a marriage
Registration Ceremony:	The formation of a Civil Partnership by means of registering a partnership
The Registrar:	The officer of the state licenced to officiate at a marriage ceremony or the Registration of a Civil Partnership.
Mental Capacity	<p>Capacity is the ability of a person to make decisions that may have legal consequences for themselves and/or for others affected by the decision.</p> <p>The decision to marry or enter a Civil Partnership is not covered by the Mental Capacity Act 2005 because the test for marriage is a common law test (i.e. it follows judgement in court cases). See Mental Capacity Act 2005 Section 27.</p>

4. Key Responsibilities/Duties.

The Chaplain

The Chaplain will take the lead role and will ensure that the request conforms to the requirements of the Law in order for the application to proceed. The Chaplain will liaise with the Registrar, the Nurse in Charge of the ward, the doctor responsible for the patient's care and the patient and his/her partner in order for the ceremony to take place.

Church of England Priest

Where the Marriage Ceremony is to be conducted according to the rites of the Church of England a Church of England priest will act as the officer of the State (Registrar).

The Registrar

In all other cases where the Marriage/ Civil Partnership is not conducted according to the rites of the Church of England the Marriage/ Civil Ceremony must be carried out by the Registrar. Following the legal ceremony a Minister or other Faith leader or officiant may be invited to carry out relevant ceremonies if that is the couple's wish.

The Nurse in Charge of a Ward

Following a request for Marriage or for a Registration of a Civil Partnership from a patient the nurse in charge must contact the Chaplain.

5. Management of Emergency Marriage and Civil Partnership

5.1 Notification of Request

The Chaplain must be notified and will assume the lead role in enabling the Marriage or the Registration to take place by liaising with all relevant parties.

5.2 Planning the Ceremony

The prognosis and life expectancy of the patient must be taken into account when planning the ceremony. The Chaplain will liaise with the Nurse in Charge, treating doctor and other relevant staff. A Check List will be kept to ensure that all aspects of planning are covered. See Appendices 3 and 4.

5.3 Medical Statement

The attending doctor must complete a medical statement which is required by the Registrar (see Appendix 5). Please also document all discussions with the patient, family members and colleagues in the medical records.

The doctor must be satisfied that the patient understands the nature and purport of marriage/civil partnership. Specifically, the patient must have a comprehension of the nature of the marriage contract and the duties and responsibilities that arise from being legally married/in a civil partnership. The principles of the Mental Capacity Act (sections 1 to 3) can be used as guidance to determine whether the patient has capacity to understand the above. The Chaplain may also give guidance on this issue.

5.4 Validity

The Chaplain must satisfy him/herself that the Marriage/ Civil Partnership will be valid and that there is no cause why the Marriage or Civil Partnership should not take place. See Appendices 1 and 2.

The Chaplain will take on an enabling role to satisfy validity where other authorised persons are conducting the ceremony. See Appendix 3.

If the patient or partner has special needs, including communication difficulties, advice should be sought from the appropriate member of staff e.g. Acute Liaison Nurse for Learning Disabilities or Interpreters/Signers (BSL).

6. Monitoring Compliance and Effectiveness

There will be an annual review of all requests for emergency Marriage and Civil Partnership. Each request will be accompanied by a report which will include the outcome.

Because this procedure can take some time to carry out and each occasion is unique it is not always possible to enable a ceremony before a patient dies. In each case the procedure must be monitored to indicate areas that may need improvement or better communication.

7. References

Source of Data	Date of Publication/issue
Ecclesiastical Licences Act	1533
Marriage Acts	1949 to 2019
Marriage (Registrar General's Licence	1970
Notes for the Application for the Archbishop of Canterbury's Special Licence	1994
Civil Partnership Act	2004 2019
Equality Act	2010
Mental Capacity Act	2005
Matrimonial Causes Act	1973
Mental Health Act	1983
Marriage (Same Sex Couples) Act	2013

Appendix 1

Legal Requirements.

The usual form of Marriage in hospital is that of a Civil Ceremony. The Marriage can be solemnised on the authority of either:

The Registrar General according to Civil Ceremony, or
The Archbishop of Canterbury according to the rites of the Church of England.

There are legal requirements that apply to those intending to marry:

- The couple must both be a minimum of 16 years of age and if either are under 18 years proof of consent of parents or legal guardian must be provided.
- They must understand the nature and purport of the marriage contract and the duties and responsibilities normally associated with marriage (including the capacity to consent to a sexual relationship).
- By reason of kindred or affinity they must not be prohibited from marrying.
- They must not be in an existing marriage or Civil Partnership
- They must be freely able to consent.
- In the case of foreign nationals, they must be able to fulfil any legal requirements. For non-EU nationals please refer to UK Border Agency Guidance at Appendix 6.

In addition, to obtain a Special Licence for a Church of England ceremony, there are further requirements.

- The parties intending to marry must be of opposite gender. It is not possible for same sex couples to marry according to the rites and ceremonies of the Church of England. One of the parties should be able to show a genuine and long-standing connection with the church.
- They should have good pastoral reasons why the licence should be granted.
- The incumbent of the parish in which the couple would have been married must be consulted.

Special licences are not normally granted where one of the parties is divorced and has a former spouse still living.

NB: It is possible for the son or daughter of a seriously ill patient to be married at the patient's bedside. This applies only to situations where the parties concerned wish for a marriage according to the rites of the Church of England and can satisfy the conditions of such a marriage. The Registrar General has not allowed similar provision for a Civil Ceremony.

There are legal requirements that apply to those intending to enter a Civil Partnership:

To ensure that patients who are seriously ill have their request for registration fulfilled wherever possible. There are legal requirements that those intending to register their partnership must satisfy. These apply to both the patient and his/her partner as follows:

- The couple must both be a minimum of 16 years of age and if either are under 18 years proof of consent of parents or legal guardian must be provided.
- They must understand the nature and purport of the Civil Partnership and the duties and responsibilities normally associated with the relationship (including the capacity to consent to a sexual relationship).
- Not prohibited by reason of kindred or affinity.
- Not in an existing Civil Partnership or Marriage
- Freely able to consent.
- In the case of foreign nationals able to fulfil any legal requirements. For non-EU nationals please refer to UK Border Agency Guidance at Appendix 6.

Appendix 2

Supporting Information

Validity

To fulfil the requirements of validity for a Marriage/Civil Partnership in hospital some documentary evidence will be required. This will depend upon the circumstances of each person and advice should be sought from the civil or religious authority. The usual documentation required is:

- A medical statement concerning the patient (Appendix 5)
- Birth certificates of both parties
- Evidence of dissolution of any previous marriage or registered partnership
- Death certificate of former spouse and previous marriage certificate
- Proof of residence (utility bills, bank statements etc.)
- Where applicable, a full gender recognition certificate issued before the intended date of marriage.

In some circumstances there may be a requirement for:-

- Passports
- Application forms and affidavit (supplied by the Archbishop's Faculty Office) for Archbishop's Special Licence.

Church of England Marriage

A marriage according to the rites of the Church of England will be dealt with through the **Faculty Office** of the Archbishop of Canterbury. The Chaplain will need, on behalf of the couple, to provide good reason for the application and demonstrate their genuine and long-standing connections with the church. As part of this, he/she should liaise with the incumbent of the church where the couple would normally worship. Before a licence can be issued, an application form has to be sent by the Faculty Office, completed by the Chaplain and one of the couple and returned. This can be done by fax, provided the original copy is also sent by post. The Faculty Office will give guidance, but licences are issued at the absolute discretion of the Archbishop.

Once the application has been approved, one of the parties has to swear an affidavit to confirm the information given. This will be done in front of the Chaplain. The form of affidavit then has to be sent to the Faculty Office:

The Registrar
Faculty Office of the Archbishop of Canterbury 1 The
Sanctuary
Westminster London
SW1P 3JT

Tel: 0207 222 5381 Mon – Fri 10.00hrs – 16.00hrs Tel: 0207
823 5663 Emergency Number
Fax: 0207 222 7502

The marriage must be registered in the appropriate parish register available from the vicar or church warden. This will change from, at the latest, December 2019 as marriage registration will be managed by the Registry Office in all cases. Further advice will be forthcoming from the Faculty Office.

Any Other Marriage

Any marriage other than Church of England will be dealt with through the appropriate **Registrar's Office**. Notice of the marriage must be given in person by the patient's partner to the Superintendent Registrar. A marriage according to a religious rite other than Anglican will require the attendance of a Chaplain or Minister of that practice who may need to obtain the authority of their own denomination.

Registration of the marriage will be carried out by the Registrar.

The out of hours contact numbers for the Registrars are confidential and are available in the Emergency Marriage/ Civil Partnership file in the Chaplaincy Offices.

Appendix 3

Procedure

In the event of a patient and/or their partner expressing the intention to be married, the nurse in charge must contact the Chaplain..

The Chaplain will ensure that the request conforms with the legal requirements in order for the application to proceed.

If all requirements are met:-

The nurse in charge and Chaplain will agree a timetable following discussions with the patient and partner. The Chaplain will liaise with the civil and religious authorities as necessary.

The nurse in charge or Chaplain will ask the attending doctor (Registrar level or above) to assess the patient and sign the medical statement for the Registrar supplied by the Chaplain (Appendix 5)

The wishes of the patient and partner are paramount when making practical arrangements
e.g. privacy, the attendance of significant others, flowers, photographs, refreshments. Civil ceremonies can only take place on the hospital ward. Day rooms or the patient's room should be used as appropriate,

If the patient or their partner has any special needs the nurse in charge will liaise with the appropriate members of staff.

It is the responsibility of the Chaplain to ensure that two people are available to witness the Marriage/ Civil Partnership. Members of staff may be witnesses, but are under no obligation to do so.

If the patient and / or their partner is dissatisfied with the decisions made, the Chaplain and the nurse in charge should discuss this with them. If the situation cannot be resolved, the matter must be discussed with line management.

All relevant details of the intended Marriage/ Civil Partnership will be recorded in the patient's health record by the Senior Nurse.

A religious ceremony, taking the form of prayers and a blessing is possible after the registration of the Civil Marriage. This will be arranged by the Chaplain.

Costs

These should be discussed with the relevant authorities and change annually.

Appendix 4

Emergency Marriage & Civil Partnership: initial process

Emergency Marriage and Civil Partnership - Trust Policy and Procedure document can be found on Flo through the Policies and Guidelines red icon.



Contact a Chaplain	Date & time	Signature
Mon-Thurs 9am-5pm: through ext. 89500 Fri 5pm - Mon 9am: through switchboard for the on call Chaplain		

Chaplain facilitates the process of the Emergency Marriage or Civil Partnership	Date & time	Signature
<p><i>following the Trust Policy and Procedure for Emergency Marriage and Civil Partnership (Derby Hospital sites)</i></p> <ul style="list-style-type: none"> • liaise with both parties to discuss their request for marriage, and to check they are both legally free to marry (<i>Appendix 1 page 9</i>) • explain the original documents required for obtaining a Registrar General's Licence for an Emergency Marriage • ask a doctor (Consultant or Registrar level) treating the patient to sign the medical statement (<i>essential wording: template Appendix 5</i>) • liaise with the Registrar and ensure that the partner registers the request for an Emergency Marriage at Derby Register Office <p>Once a licence has been granted, the <u>Registrar arranges a time with the couple</u> to come to the hospital ward to perform the Civil Marriage ceremony (<i>please note, a Civil Marriage ceremony cannot legally take place in a chapel, or have any religious content whatsoever, including music.</i> <i>The Chaplain can be available to offer prayers and a blessing for the couple, should they wish it, as a separate arrangement once the Civil Marriage ceremony has taken place.</i>)</p>		

Chaplain notes

Draft Letters

(Copy onto hospital letter-head)

The Superintendent Registrar (or relevant Registrar in Burton)
The Register Office
Derby Council House
Corporation Street
Derby DE1 2SF

EMERGENCY MARRIAGES IN HOSPITAL

Patient's full name:

Hospital:

Ward:

I certify that:

I am in attendance on the above named patient;

the patient is seriously ill and is not expected to recover.

the patient cannot be moved from the hospital to a place registered for marriage;
and

the patient understands the nature and purport of the marriage.

Yours Sincerely

Doctor's signature:

Doctor's name printed:

Doctor's qualifications and GMC number:

Date:

OR for marriage according to the rites of the Church of
England

(Copy onto hospital letter-head)

The Registrar
Faculty Office of the Archbishop of Canterbury
1 The Sanctuary
Westminster
London SW1P 3JT

Dear Sir,

Patient's full name:

Hospital:

Ward:

I certify that:

- I am in attendance on the above named patient;
- the patient is seriously ill and is not expected to recover;
- the patient cannot be moved from the hospital to a place registered for marriage;
- the patient understands the nature and purport of the marriage.

Yours Sincerely

Doctor's signature:

Doctor's name printed:

Doctor's qualifications and GMC number:

Date:

Appendix 6

Guidance for Clergy – issued

by UKBA Foreign Nationals seeking to marry in the UK

The guidance below should be read alongside the general guidance. Nothing which follows supersedes or supplants that found in *Anglican Guide to Marriage in England and Wales*.

This guidance only refers to Anglican marriages conducted in the Church of England or Church in Wales. A marriage conducted in an Anglican Church in Scotland or Northern Ireland must begin with civil preliminaries.

Background and Benefits of a Sham Marriage

According to section 24(5) of the Immigration and Asylum Act 1999 a sham marriage is one entered into between a person who is neither a British citizen or a national of an EEA country and another person, and that the marriage has been entered into by the non-EEA national for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.

A Third Country National who marries a British citizen or national of an EEA country can gain the right to live and work in the UK as well as gain access to public funds such as education, health services and welfare benefits that they would not otherwise have been entitled to. This may be motivation for a Third Country National to enter into a sham marriage whilst a British Citizen or EEA National may enter into a sham marriage for financial gain. In some instances the British citizen or EEA national may have been coerced into participating in the marriage by a third party facilitator.

Recent intelligence gathering work carried out by the UK Border Agency has shown that an individual sham marriage is often part of a wider organised crime network which may consist of multiple sham marriages and other criminal activity including illegal working, benefit fraud, money laundering and identity fraud offences.

A marriage does not in itself grant leave to remain in the UK, a person must also make an application to the UK Border Agency. The UK Border Agency can, and does, refuse to grant leave to applicants where it believes there to be evidence that a marriage is not genuine. UK Border Agency can also prosecute the participants and organisers of sham marriages and remove persons who have no valid leave to remain in the UK.

Legal Position

A person travelling to the UK to marry either a British citizen or an EEA national requires entry clearance. This will take the form of a fiancé(e) visa or an EEA Family Permit depending on the nationality of the intended spouse. This is the case whether the couple plan to marry in a church or elsewhere. Entry clearance will take the form of a visa placed in a travel document and will normally have been issued at a British Embassy, High Commission or visa station in the person's country of origin.

Persons seeking to marry in the UK outside of the Anglican Church in England and Wales must do so via the civil preliminaries, which involves giving notice at a Register Office. A person who is 'subject to immigration control' (definition below) can only give notice at a Designated Register Office (only in England and Wales, notice is given by post in Scotland and Northern Ireland). All persons seeking to marry via the civil preliminaries must provide proof of their nationality and Third Country Nationals currently must provide additional documents demonstrating their eligibility to marry in the UK.

A person who is already present in the UK (legally or illegally) and who is subject to immigration control currently needs a Certificate of Approval to marry either a British citizen or an EEA national.

The UK Border Agency is in the process of removing Certificates of Approval from law as they were found to be discriminatory and incompatible with the European Convention on Human Rights. There are currently no plans for a direct replacement to Certificates of Approval.

The Immigration and Asylum Act 1999 places civil registrars under a legal obligation to report any suspicions they may have of a marriage or civil partnership being conducted for the purposes of evading immigration law to UK Border Agency. The Agency can then take action in the form of refusing to grant leave to remain in the UK or, if a criminal offence has been committed, prosecuting the persons concerned. Non British citizens can also be removed from the UK and barred from re-entering the country.

This law does not cover persons who wish to marry within the Anglican church in England or Wales and places no such legal obligation on members of the clergy. However, members of the clergy who suspect a couple may be marrying for immigration purposes can still report their suspicions to the UK Border Agency on a voluntary basis. The police can also be contacted if a member of the clergy suspects a marriage they have conducted or have been asked to conduct is for the purpose of evading immigration law or if they feel they are being put under undue pressure to conduct such a marriage.

It is recommended that members of the clergy keep records of any identity or nationality documents provided when non-British nationals approach them seeking to marry.

Definitions and Documentary Evidence

For immigration law purposes a person is either:

- a British citizen (definition below);
- a EEA national (list of countries below) or;
- a Third Country National

The UK Border Agency may describe a non-British citizen as being “subject to immigration control”.

A person is subject to Immigration Control if they are not:

- a) a British citizen;
- b) a national of an European Economic Area (EEA) country exercising treaty rights in the UK (list of countries below);
- c) the holder of a valid passport of any nationality with a Certificate of Entitlement giving them the Right of Abode in the United Kingdom or;
- d) the holder of a passport with a certificate stamped to show that they are not subject to any condition on their stay by virtue of their employment (e.g. diplomat, member of visiting armed forces, overseas member of British armed forces or member of an international organisation).

When is a person a British citizen ?

A person born in the UK born before 1 January 1983 is automatically a British citizen and can prove their nationality on production of a British birth certificate.

Persons born on or after 1 January 1983 and before 1 July 2005 are British citizens if one of their parents was a British citizen or was settled in the UK (known as Right of Abode or Indefinite Leave to Remain), or they were legally adopted by such a person, **and** their parents were married.

If their parents were unmarried the person would only be a British citizen at birth if their mother was a British citizen or settled person. If only their father was a British citizen the person could apply for registration as a British citizen.

Persons born after 1 July 2005 are British citizens if one of their parents was a British citizen or was settled in the UK or they were legally adopted by such a person regardless of the parents' marital

status. Such persons can prove their nationality on production of a full British passport or their birth certificate and proof of their parents' nationality. Persons adopted by a British citizen or a settled person should also be able to provide an adoption certificate.

Persons who were born abroad but have subsequently become British citizens should be able to provide a Registration or Naturalisation document from the UK Border Agency.

When is a person an EEA National ?

An EEA national is a national of one of the following countries:

Austria	Liechtenstein
Belgium	Lithuania
Bulgaria	Luxembourg
Cyprus *	Malta
Czech Republic	Netherlands
Denmark	Norway
Estonia	Poland
Finland	Portugal
France	Republic of Ireland
Germany	Romania
Greece	Slovakia
Hungary	Slovenia
EU Marriage	

EEA nationals (and their immediate family members) have the right to live and work in the UK provided they are in employment or can support themselves and their family without becoming an unreasonable burden on UK public funds. This is known as “exercising Treaty rights”. Such persons do not require any additional documentation from the UK Border Agency to be present in the UK and do not require a Certificate of Approval to marry under the civil preliminaries.

It should be noted that a person can hold a passport from an EEA state without being a full citizen of that country. Such passports may be marked ALIEN and further nationality or identity documents may be available.

Factors which may arouse suspicion of a sham marriage

There are many factors that could give rise to suspicions that a potential marriage may not be genuine most of which can only be determined by meeting the couple.

The following list is not exhaustive but provides some common indicators:

- either party giving the impression of knowing very little about the other;
- either party referring to notes to give answers about their partner;
- the couple being unable or struggling to converse in a common language/an interpreter being present;

- one party appearing to direct all decisions and seeking to answer all questions with the other party appearing to have limited involvement or knowledge;
- a third party appearing to direct decisions;
- the couple wanting to get married as soon as possible;
- one of the parties being seen to receive payment;
- the couple leaving separately following the ceremony;
- wedding rings/dresses not being present or if present not being the correct size;
- very few or no guests;
- guests showing little participation in the ceremony or appearing to not know one or both parties well;
- there being very little interaction between the couple, appearing to be only acquaintances
- either party may appear unfamiliar to the documents they are presenting (may have been acquired as part of a package) or the documents may appear to have been altered

None of these reasons may in themselves necessarily indicate that the marriage is a sham and there may be other factors that may arouse suspicions. Many of these factors would be apparent to a member of the clergy in the course of their normal pastoral work in preparing a couple for marriage. Making such suspicions known to the Agency would allow us to make a more informed decision on whether the Third Country National is entitled to the leave that they are seeking.

The UK Border Agency does not make decisions on whether or not a marriage is a sham based on nationality or on the immigration status of a person and we would not expect members of the clergy to take these factors into account. The fact that a person has no lawful basis to be in the UK does not automatically mean that their reason for marrying is for an immigration advantage and other factors and evidence must be available.

A member of the clergy does not need to tell a couple that they have suspicions about the genuineness of their proposed marriage or that they intend to make UKBA aware of these suspicions. It is also important for members of the clergy to remember that UKBA can still take action after a marriage has taken place as a marriage alone does not give rise to the right to live and work in the UK.

If a member of the clergy feels that they are being pressurised to perform a marriage they are not content with by either the couple or a third party facilitator they should inform UKBA of this but should also consider informing the police.