

The Recognition in English Law of Marriages in Embassies or Consulates

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Summary

Some Embassies and Consulates in London perform marriages within their buildings in accordance with their own domestic law. Whilst this may be permitted according to the law of the country of the embassy or consulate, these marriages may not be recognised in English law. This may have very significant adverse consequences for the couple concerned.

English law is very liberal in its recognition of foreign marriages. But a ceremony within the territory of England and Wales must comply with the law and marriage procedure of English law in order to be a recognised marriage. For these purposes, weddings in embassies and consulates are treated as marriages in England. They are not treated as if a foreign marriage and/or according to foreign law.

Why is the recognition of a marriage important?

The recognition in England of a marriage can be critical in matters such as immigration, tax, state benefits, wills and inheritances, financial claims upon separation and the parental responsibility of children.

For example, certain visas might only be available to spouses and, in order to be eligible for such a visa, the marriage must be recognised under English law. Tax reliefs and state benefits may only be available to married couples. On the death of one spouse, the other might only stand to inherit their estate if the marriage is recognised in England. The father of a child born in England who is not named on the birth certificate will have parental responsibility for that child if he was married to the mother at the time of the birth. But if that marriage is not recognised in English law, he will not have automatic parental responsibility.

Similarly, if a spouse wishes to avail themselves of the financial remedies available upon a divorce in England, they must show a recognisable marriage. If the marriage is not recognised under English law, then there can be no divorce and the spouses cannot bring financial claims. This can often lead to extreme hardship for one of them as the couple are treated as being cohabitantes rather than spouses. Cohabitation law in England and Wales, as it currently stands, confers very limited rights to financial claims and no rights to ongoing financial support unless there is a child involved.

Conventional marriages conducted in England in accordance with English law will of course be recognised in England. But what of foreign nationals marrying abroad or in embassies or consulates?

Recognition of Foreign Marriages

A marriage performed outside of England and Wales will be recognised in England and Wales so long as:

- (1) it is compliant with the laws of that country (the maxim *lex loci celebrationis* applies) and
- (2) both spouses had mental and other capacity to enter the marriage and consented to the marriage.

Embassy or Consular Marriages

Marriages entered into in foreign embassies in England may be recognised in the foreign country if they were conducted in accordance with the foreign law. For example, a wedding carried out in the Swedish Embassy in England may if conducted in accordance with Swedish law be recognised in Sweden. But unless it also complied with English law it would not be recognised in England. Whilst embassies and consular offices enjoy protected status in international law and are inviolable, they remain, for these purposes, buildings located on English soil and in English territory. They are in England. It therefore follows that English law applies for these purposes and in respect of the required formalities for a recognised marriage. The Vienna Convention on Diplomatic Relations 1961 established the inviolability of foreign embassies, consulates and the rights and duties of sending and receiving states. It did not establish that those offices are foreign land in the receiving country. There is a common misconception that embassies and consulates are extraterritorial lands of the sending state; but this is not correct in English law for purposes such as marriage.

The High Court of England has confirmed on a number of occasions that this is the law in relation to the recognition, of marriages (and divorces) which take place in an embassy or consulate of another country.

In 1973 in the case of *Radwan* the High Court concluded as a matter of private international law that a divorce (in this instance) pronounced in the United Arab Republic (as it then was) Consulate did not take place as if in that state, but instead took place in England. Whilst accepting the inviolability of the embassy or consulate according to the Vienna Convention, the High Court found that this inviolability did not of itself make the premises a foreign territory outside of England. Commercial transactions, marriages, births and other events are seen to have taken place in England, not in the sending country of the embassy or consulate. The High Court drew on the similar findings of the then authorities in Australia, France, Germany and Italy.

More recently, and directly in relation to marriages, in 2012 the English High Court in the case of *Dukali v Lamrani* stated that the marriage of a Moroccan couple who entered into a marriage in the Moroccan Consulate in London celebrated and formalised in accordance with Moroccan law was not recognised in English law. They were, for English law purposes, unmarried. The 'wife' was not able to bring financial claims following their separation.

English Requirements for marriage

A marriage which takes place in England, even one which takes place in an embassy or consulate, will only be recognised under English law as a valid civil marriage if it complies with the provisions of the Marriage Acts 1949 to 1994. Those Acts include provision for where a marriage is permitted to take place and the requisite notice periods.

Broadly, a marriage in England is only permitted to take place in a Register Office, or approved premises or an approved place of worship. All local Register Offices retain a list of approved premises. Unless an embassy or consulate has registered their premises as approved premises for the purposes of English civil marriages, any marriage taking place there will not be recognised because it is not taking place on approved premises.

Unless the marriage is taking place in the Church of England or Church of Wales, sufficient civil notice must be given by a spouse to the Superintendent Registrar for the locality in which they live. The Registrar must then certify that the marriage can take place. The marriage must then take place in the presence of a Registrar of Marriages or an Authorised Person who will register the marriage and issue a marriage certificate. Unless the couple or the embassy or consulate on their behalf give requisite notice and arrange for a Registrar of Marriages or similar authorised person to attend to officiate, it will not be a valid and recognised English marriage.

What can be done?

If a marriage takes place in an embassy or consulate in England and the spouses want their marriage to be recognised in England, they have at least two options:

- Ensure that the marriage in the embassy or consulate complies not only with the legal requirements of the country of the embassy or consulate in question, but also with English law. This will mean ensuring that the embassy or consulate is an approved premises, that there is a Registrar of Marriages or an Authorised Person present, and that the spouses each provide sufficient notice to and get approval from their local Superintendent Registrar. It would in effect mean parallel or two separate ceremonies, within one overall ceremony; one under the law of the country of the embassy or consulate and the other under English law; or
- Either before or after the marriage in the embassy or consulate, get married in accordance with English law. This would mean having a separate ceremony or visiting the English Marriage Registrar formally and legally to undertake and register the marriage in accordance with the formalities required in English law

If a marriage has already taken place in an embassy or consulate urgent advice should be taken as to whether or not the marriage will be recognised in England. Unless English marriage requirements were also fulfilled, the marriage will not be recognised in England. If the couple still want to be married in accordance with English law, then they must go through an English civil marriage ceremony. Care should however be taken to ensure that any subsequent marriage does not invalidate the earlier marriage in any other country, including the country in which the original embassy or consulate marriage took place.

Conclusion

Failure to ensure that a marriage is recognised in England can have long term damaging effects including in relation to tax and state benefit entitlements, on death and in the event of a relationship breakdown. Home Office guidance states that couples who were married in an embassy in England (other than in accordance with English law) are not considered to be spouses for immigration purposes. If the couple are not married in accordance with English law, they are treated as cohabitants which means they have very little rights or entitlements against each other on relationship breakdown. In the event of the death of either party, they would not be automatically entitled under some pensions and policies. It is crucial to take early specialist legal advice. The International Family Law Group LLP is able to provide advice and assistance to individuals, embassies and consulates affected by this issue.

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