

# Chapter 10 - Evidence of age, marriage and death

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# Chapter 10 - Evidence of age, marriage and death

## Introduction

### General

10000 To satisfy the conditions for certain benefits and increases, proof of age, marriage or death of the claimant or some other person is essential. For example, a claim for RP depends on the claimant having reached pensionable age, but a claim for WB or BB depends on the claimant's age, marriage to the deceased and his death.

10001 With other benefits a question arises only in limited circumstances, for example, a claimant in receipt of JSA(IB) has to provide evidence of age when nearing the qualifying age for SPC so that PP can be considered<sup>1</sup>.

**Note:** See DMG Chapter 77 for guidance on the qualifying age for SPC.

*1 JSA Regs, reg 83 & 84 & Sch 1*

10002 The onus of providing satisfactory proof of age, marriage or death is on the claimant or their representative<sup>1</sup>. However, claimants or their representatives should be helped as much as possible by

1. advising the claimant about the kind of evidence that may be needed **and**
2. advising how to obtain that evidence **and**
3. undertaking searches to verify the events or dates in question.

*1 SS (C&P) Regs, reg 7(1)*

10003 Where there is any doubt about the evidence, questions about age, marriage or death are put to the DM. The DM should decide whether or not there is enough evidence to determine the question.

### Marriage of same sex couple

10004 Throughout this Chapter, unless the context otherwise requires, references to

1. marriage includes marriage of a same sex couple
2. a married couple includes a married same sex couple
3. a person who is married includes a person who is married to a person of the same sex<sup>1</sup>.

This also applies, for example, to a marriage that has ended or a person whose marriage has ended<sup>2</sup>.

*1 Marr (SSC) Act 13, Sch 3, Part 1, para 1(1); 2 Sch 3, Part 1, para 1(2)*

- 10005 For the purpose of DMG 10004, unless the context otherwise requires, it does not matter how a reference is expressed<sup>1</sup>. Therefore, for example, a reference to
1. husband includes a man who is married to another man
  2. wife includes a woman who is married to another woman
  3. widower includes a man whose marriage to another man ended when the other man died
  4. widow includes a woman whose marriage to another woman ended when the other woman died.

**Note:** For the avoidance of doubt, in a marriage between a man and a woman, the terms husband and wife are to be applied as appropriate to the sex.

*1 Marr (SSC) Act 13, Sch 3, Part 1, para 1(3)*

- 10006 Same sex couples can marry
1. in England and Wales from 29.3.14<sup>1</sup> **and**
  2. in Scotland from 16.12.14<sup>2</sup>.

In Scotland, before 16.12.14, a marriage of a same sex couple under the law of England and Wales was treated as a civil partnership formed under the law of England and Wales. Therefore, the spouses were treated as civil partners.

*1 Marr (SSC) Act 13; 2 Marr & CP (Scot) Act 14*

10007 - 10009

## **Questions where no claim exists**

- 10010 A DM can only give a decision about a person's age, marriage or death as part of an outcome decision on a claim, revision or supersession (see DMG Chapter 01). The DM should not give a decision on such a question raised by a person if
1. the question is not raised as part of a claim for benefit or an application for revision or supersession **or**
  2. a decision on the claim for benefit or application for revision or supersession can be given without deciding the question.
- 10011 A refusal to give a decision on an age, marriage or death question under DMG 10010 will not be an outcome decision and will not carry a right of appeal (see DMG Chapter 01).

10012 - 10029



# Types of evidence

## Primary evidence

10030 The best evidence of age, marriage or death that can be provided is a certified copy of an entry which has by law to be made in a register concerning the event. The certificates are issued by

1. the Registrar General **or**
2. a Superintendent Registrar **or**
3. a Registrar of Births and Deaths **or**
4. a Registrar of Marriages **or**
5. in Scotland, the Registrar General for Scotland or a District Registrar **or**
6. a member of the clergy of the Church of England **or**
7. a Roman Catholic priest who is authorized to make an entry of marriage in a Register of Marriages<sup>1</sup> **or**
8. a person authorized to keep a register of marriages<sup>2</sup> for example a Secretary of a Synagogue or a Registering Officer of the Society of Friends having the custody of the Register in which the event is recorded **or**
9. a Marriage Officer<sup>3</sup>.

**Note 1:** The certificate of a Marriage Officer relates to marriage of a British subject before a British ambassador, consul or other official on one of Her Majesty's ships in foreign stations or within the lines of British Army or Royal Air Force units serving abroad.

**Note 2:** Ecclesiastical certificates of Roman Catholic and Jewish marriages are not extracts from a statutory register and can only be used as secondary evidence.

**Note 3:** See DMG 10036 for guidance on secondary evidence if primary evidence is not available.

*1 Marriage Act 49; 2 s 63; 3 Foreign Marriages Act 1892, s 11*

10031 If there are no material differences in the information available, the DM may accept

1. an extract from an entry in a statutory register **or**
2. a verified entry on Departmental records **or**
3. an extract from the record of the Registrar General.

10032 If there is a material difference the DM should ask for the claimant's observations before making a decision. Discrepancies in the dates of events will need special attention. In particular, inconsistencies between the age given on a claim form and on a certificate, or as shown by any other available evidence, may cause doubt as to identity.

10033 The DM should consider all the evidence to determine whether, in spite of any discrepancies, the other details agree enough to exclude the possibility that the certificate refers to someone other than the claimant.

10034 The DM must consider the possibility that information on a statutory certificate may be wrong if there is strong evidence to suggest this<sup>1</sup>.

*1 R(S) 15/52*

10035 The DM should accept a certificate issued abroad as the equivalent of a certificate in DMG 10030. If

1. a claimant was born, married or died abroad **and**
2. the certificate produced was issued by the appropriate registration authority abroad

the certificate should be accepted unless there is reason to doubt its validity.

**Note:** Photocopies of original documents are not primary evidence (see DMG 10040).

## **Secondary evidence**

10036 If primary evidence is not available, the DM should ask for the claimant's observations before making a decision. Unsupported secondary evidence carries less weight than primary evidence. The DM should ensure that as much information as possible has been obtained, before considering the relative value of each piece of evidence.

10037 - 10039

## Photocopied documents

10040 Photocopies of original documents carry little or no weight. But photocopies that are certified as a true copy of the original by a person of good standing carry more weight. A person of good standing is a

1. civil servant **or**
2. member of the United Kingdom foreign service including Her Majesty's overseas civil service, British Diplomatic Service, and consular official **or**
3. doctor or surgeon registered under the law of the country where the declaration is made **or**
4. minister of religion **or**
5. barrister, solicitor or advocate authorized to practise in the country where the declaration is made **or**
6. notary public or any person allowed to administer oaths in the country where the declaration is made **or**
7. an officer of a bank authorized to sign documents on the claimant's behalf **or**
8. magistrate **or**
9. chartered accountant.

10041 - 10049



# Evidence of age

## Birth certificates

10050 Births must be registered

1. in England and Wales - within 42 days of the date of the birth<sup>1</sup> **and**
2. in Scotland - within 21 days<sup>2</sup>.

*1 Births & Deaths Registration Act 1953, s 2;*

*2 Registration of Births, Deaths & Marriages (Scotland) Act 1965, s 14*

10051 A birth certificate is a certified copy of the entry in the Register of Births. A full birth certificate shows the

1. date and place of birth **and**
2. sex of the child **and**
3. forenames of the child **and**
4. parents' names, addresses and occupations.

As well as being satisfactory evidence of the date of birth, a full birth certificate contains evidence of parentage. These details should be presumed correct unless there is strong evidence to the contrary.

10052 There are two other types of birth certificates issued by a Statutory Authority. These are a

1. short form of birth certificate **and**
2. certificate of registration of birth.

### Short form of birth certificate

10053 A short form of birth certificate shows the

1. date and place of birth **and**
2. forenames and surname of the child **and**
3. sex of the child **and**
4. registration district and sub-district.

It is accepted by the Secretary of State as satisfactory evidence of age unless identity is in doubt, when supporting evidence is required. This certificate does not contain evidence of parentage. The information given on it enables the full entry in the register to be traced through General Register Office and the recorded parents' names to be obtained.

## **Certificate of registration of birth**

10054 A certificate of registration of birth is not a birth certificate but merely certifies that a birth has been registered and contains the

1. registration district and sub-district **and**
2. date of signature **and**
3. name of the informant **and**
4. sex of the child that has been born (or still born) **and**
5. name of the child - but not in all cases **and**
6. date of birth.

Unless this certificate gives both the surname and forenames of the child, the Secretary of State will not accept it as satisfactory evidence and the case is passed to the DM for a formal decision. The certificate is useful for tracing the record of births through General Register Office and may support other and more definite evidence.

## **Certificate of baptism**

10055 A certificate of baptism is not primary evidence of a date of birth (see DMG 10030). It should be referred to the DM with any other available evidence.

### **Protestant baptismal certificate**

10056 A date of birth given by the claimant or suggested by other evidence may be accepted if

1. it is earlier than the date of baptism (but not by more than one month) **and**
2. there is no conflicting evidence.

If no date of birth is given or suggested, a date one month before the date of baptism should be accepted. But see DMG 10062.

10057 - 10059

## **Roman Catholic baptismal certificate**

10060 If the baptism took place in Eire or Northern Ireland the date of birth given by the claimant or suggested by other evidence may be accepted if it is

1. the same as the date of baptism **or**
2. the day before the baptism.

In any other case the date of baptism should be accepted as the date of birth.

10061 If the baptism took place in Great Britain it will usually have been one to three weeks after the birth. The date of birth may be accepted as

1. the date given by the claimant or suggested by other evidence - if it is in the three weeks before the baptism **or**
2. if no date is given or suggested - a date one week before the date of baptism.

## **Baptism not within normal periods**

10062 Baptism does not always take place within the periods in DMG 10056 - 10061. If other evidence suggests an earlier date of birth, all the evidence must be considered before deciding the date of birth.

## **Material discrepancies in birth or baptismal certificate**

10063 If a birth or baptismal certificate shows a different name from the one by which the claimant has been known (for example due to adoption at an early age and the use of a name given by the adoptive parents) the DM should obtain evidence linking the two names. If the claimant is unable to produce this evidence the certificate can only be accepted as secondary evidence. The DM should consider it with any other available evidence before accepting that it refers to the claimant.

## **Adoption certificates**

10064 Every adoption order has to be entered in an Adopted Children Register. The entry should be regarded as if it was a certified copy of an entry in the Register of Births<sup>1</sup>.

*1 Adoption Act 1976, s 50; Adoption (Scotland) Act 1978 s 45*

10065 The DM should accept an adoption certificate showing the date of birth as evidence of birth.

10066 - 10069

## Secondary evidence of age

10070 Where the DM does not accept the evidence of age, all the available evidence should be considered. A convenient way for the DM to assess the merits of the evidence is to list against each item the date of birth deduced from that item. The DM may then establish the date of birth by considering the items on the list overall. Documents such as birth certificates carry most weight unless their validity is in doubt.

### **Example** (dates used for illustration only)

A man claimed to have been born on 8.8.23. He had no birth certificate and registration of his birth could not be traced. He contended that he was two years younger than his sister who, he alleged, was born on 9.8.21. She had no birth certificate, and the registration of her birth could not be traced.

The evidence in the case was as follows

<b>Nature of evidence</b>	<b>Date of birth deduced</b>
Census return dated April 1931, gave claimant's age 6, sister's age 8	8.8.24
Sister's marriage certificate dated January, 1943 gave sister's age 20	8.8.24
Discharge certificate from Royal Marines gave claimant's date of birth 8.8.23, based on age given on enlistment in February 1942.	8.8.23

For a RP claim, the DM established the man was born on 8.8.24<sup>1</sup>.

*1 CP 11/49(KL)*



10071 Examples of secondary evidence of age include

1. child's certificate of vaccination or health record card
2. entry in Family Bible or other book containing an old entry of date of birth-for example a Birthday book
3. school reports, register or prize
4. confirmation certificate
5. indentures of apprenticeship
6. insurance policy taken out before middle life (see DMG 10072)
7. certificate of service in the Forces or any other employment under the Crown or in the Mercantile Marine
8. Approved Society or Ministry of Labour and National Service records
9. certificate of naturalization (see DMG 10073)
10. deduction from the proved ages of brothers and sisters
11. statements from employers or acquaintances who have reason to know the claimant's age: For example, a school friend
12. National Health Service medical card
13. passport
14. baptismal certificate.

**Note:** Unsupported secondary evidence carries less weight than primary evidence (see DMG 10036).

### **Insurance policies**

10072 The value of any statement of age in an insurance policy may vary according to the age admitted at the time the policy began. The DM should bear in mind that an older person may have understated their age. If the policy is endorsed "Age admitted", it can be accepted as reasonably good evidence.

### **Certificate of naturalization**

10073 The date of birth or statement of age in a certificate of naturalization may be based solely on the claimant's personal and unsupported statement at the time the document was prepared.

## **Evidence indicates year of birth only**

10074 Sometimes the available evidence may establish the year of birth, but not the day or month. Where

1. a claim for benefit is made **and**
2. entitlement depends upon the claimant reaching a certain age or the rate of benefit payable varies according to the claimant's age

the onus of proving that the age condition is satisfied rests with the claimant. No presumptions can be made in the claimant's favour.

### **Example 1**

A male RP claimant can prove only that he was born in 1946. He is not entitled to RP for any day before 31.12.11.

### **Example 2**

A single ESA claimant can prove only that he was born in 1986. For any day in 2011 falling before 31.12.11 the rate of ESA payable in the assessment phase is that for a single claimant aged less than 25.

### **Example 3**

An IBLT claimant can prove only that he was born in 1973. The relevant period of incapacity for work begins in 2008. The IB age addition should be awarded at the 35 - 44 years rate; there is no presumption that the claimant was born on any day later than 1.1.73.

### **Example 4**

An IS claimant who can prove only that her partner was born in 1931 qualifies for a HPP from 31.12.11.

10075 Once the DM has determined a date of birth using these principles, they should apply that date to all subsequent claims for any benefit. If the age question arises on another occasion, the DM

1. should consider the question on the evidence then available (see DMG 10003) **and**
2. may be able to reconsider the earlier decision if the claimant has provided additional information.

10076 A claimant must prove that the age condition for entitlement is satisfied for each claim made. The DM need not determine what the claimant's date of birth might be but should decide that

1. the claimant has not established that the relevant age has been reached **and**
2. benefit is therefore not payable or payable at a lower rate.

10077 The decision should show only the year of birth where

1. a question of a person's age is being decided in advance of a claim **and**
2. it is not possible to decide on what day in a year the person was born.

### **No documentary evidence available**

10078 If a claimant cannot produce any documentary evidence to support a date of birth the DM has to decide what the date of birth is on the balance of probability.

10079 A claimant's own statement is evidence and, like any other evidence, it has to be weighed carefully. Confirmation of a claimant's own evidence is not always necessary<sup>1</sup>. But, a person cannot give first hand evidence about the date of birth and the DM must therefore consider any further evidence supplied by, for example, any living relatives. The DM should accept the claimant's statement unless there is

1. reason to doubt the claimant's statement **or**
2. other contradictory evidence.

*1 R(I) 2/51; R(SB) 33/85*

### **Point in time at which a person reaches a particular age**

10080 A person is treated as having reached a particular age in years on the midnight immediately before the anniversary<sup>1</sup>. In Scotland, where a person is born on 29 February, the anniversary in any year other than a leap year is 1 March<sup>2</sup>.

*1 FLR Act 69, s 9(1); Age of Legal Capacity (Scotland) Act 1991, s 6(1); 2 s 6(2)*

#### **Example**

Jean is born on 5.5.50. She reaches age 60 at midnight between 4.5.10 and 5.5.10.

10081 - 10087



## People born abroad

- 10088 Persons born abroad can often produce a birth certificate which can be accepted as satisfactory evidence of age. In other cases secondary evidence (see DMG 10071) is obtained and considered in the usual manner.

## Claims from immigrants

- 10089 It may be difficult to verify the age of claimants or their dependants where the birth took place

1. outside the UK **and**
2. in a part of the world where births were not officially registered.

**Note:** In certain parts of the world, a person's age is far less materially important than it would be in the United Kingdom, and claimants in or from such countries may have little idea how old they really are.

- 10090 The DM has to determine the date of birth on a balance of probability taking into account all the evidence, explanations and circumstances<sup>1</sup>. When doing so the DM should note that

1. an opinion about the claimant's age, based on a physical examination and given by a doctor in this country, is generally good evidence (see DMG 10091)
2. documentary evidence such as sworn affidavits and witness statements, intended to disprove an earlier statement in favour of a later one, are not necessarily sufficiently convincing to disprove the earlier statement.

*1 R(P) 1/75*

- 10091 Where DMG 10090 1. applies the weight to be given to this evidence varies according to

1. the nature of the physical examination **and**
2. how far the accepted signs of age are explored **and**
3. the degree of certainty expressed by the opinion (see DMG 10099 et seq).

- 10092 Where a person makes a claim for benefit, for example RP, which shows a date of birth different from that previously recorded but which is not shown to be verified, DMs should note that

1. a copy of the record sheet should be obtained from HMRC records
2. unless there is reason for doubt they should accept the date of birth on the copy record sheet from HMRC records where the entry is marked as verified
3. where the recorded date of birth is not shown as verified claimants should be asked to confirm in writing

3.1 that they gave that date of birth when registering for NI purposes **and**

3.2 why they did so

4. they should normally accept the date of birth given on registration unless the claimant

4.1 denies giving that date on registration **or**

4.2 now alleges that it is not correct (see DMG 10093).

10093 Where DMG 10092 4. applies claimants should be asked to state in writing why they

1. did not give that date when registering for NI **or**

2. otherwise dispute the accuracy of that date.

10094 Where a claimant produces

1. a passport showing an altered date of birth **or**

2. two passports, the current one showing the claimed date of birth

the DM should establish the reason for the change before deciding which of the dates is to be accepted.

### **Claimant from Pakistan or Azad Kashmir**

10095 Claimants in or from Pakistan or Azad Kashmir may produce a form of birth certificate which

1. includes details such as the father's religion **and** caste **and** the name of the attendant midwife **and**

2. certifies that it is based on old records kept by the village watchman or the police.

However birth registration in Pakistan was not compulsory until 1961<sup>1</sup>. No conclusive proof is held of the existence of official birth records in Pakistan before 1961 and at the same time as the birth.

*1 Basic Democracies Order 1959; Muslim Family Laws Ordinance 1961*

10096 The territory of Azad Kashmir (Free Kashmir) is self-administering but has adopted much of Pakistan's legislation. But the territory is unable to ensure strict compliance with the legislation and documentary evidence of date of birth (including alleged certificates of birth) originating from there cannot generally be relied on. This applies even where

1. it bears authoritative stamps **and**

2. the signatures of persons of official status.

The DM should examine such documents critically.

10097 DMG 10095 - 10096 is based upon a statement obtained by the then Head of Contributions Branch when he visited Pakistan and Azad Kashmir (Appendix 1 and 2 to this Chapter).

### **Medical advice on age of claimant where other evidence is unsatisfactory**

10098 The DM should consider obtaining medical advice if

1. a claimant alleges a date of birth several years earlier than that recorded at HMRC **and**
2. action as in DMG 10089 et seq does not resolve the issue.

10099 Where DMG 10098 applies the papers should be passed to Medical Services to arrange for the claimant to be physically examined. A medical opinion should be obtained as to whether the results of the examination support

1. the claimant's contention to have reached the age alleged **or**
2. the range of years within which those results show that the claimant's age probably lies.

**Note:** The medical examination should enable a reasonably reliable assessment of age up to about five years either way.

10100 The papers should include

1. two identical recent photographs of the claimant (as a safeguard against impersonation) **and**
2. where the claimant has provided a passport, two copies of the
  - 2.1 page containing the identity details and photograph (so as to provide something against which the recent photographs can be compared) **and**
  - 2.2 first page (as later proof that the document copied was in fact a passport) **and**
3. a summary of the claimant's environmental history, countries in which the claimant has lived, and for how long.

10101 If the examining medical practitioner's report confirms the claimant's alleged date of birth, the DM should accept the date of birth shown on the claim form. If the report does not confirm the alleged date of birth, the DM should disallow the claim on the ground that the claimant has not established that the necessary age has been reached for claiming benefit. The DM does not need to determine the claimant's date of birth.

10102 If a claimant appeals against a DM's decision based on medical advice obtained as in DMG 10099 - 10100, the DM's submission to the FtT should include the following

"It is generally agreed that there is no medical test or group of medical tests which will enable the age of an adult to be accurately determined, particularly in the higher age groups. It is doubtful whether X-ray appearances alone can enable the age of an individual in middle or old age to be determined within an age range of less than 20 years. There are, however, certain clinical features which when observed and considered by an experienced medical practitioner may enable him to say whether on balance of probability the results of medical examination support an individual's contention that he has reached a stated age or, alternatively, to say within what age group of about 10 years he probably belongs."

## **Julian Calendar**

10103 The Julian calendar was in use in the Russian Empire until 1918. A birth certificate for a person born before that date in areas then belonging to the Russian Empire is based on that calendar. If the date of birth shown on the certificate is

1. before March 1900 add twelve days to the date shown **or**
2. between March 1900 and 1917 add thirteen days.

10104 - 10119



# Evidence of marriage

## Introduction

10120 The guidance in this part of this Chapter applies to

1. opposite sex couples **and**
2. same sex couples.

**Note 1:** See DMG 10004 et seq for further guidance on marriage of same sex couples.

**Note 2:** A civil partnership may be converted into marriage (see DMG 10139).

## Registration of marriage in Great Britain

10121 A British marriage certificate is evidence of a valid marriage. The onus of proving that it is not valid is on the person who questions it<sup>1</sup>. The DM should accept a marriage certificate as proof of marriage unless there are grounds to suspect an obstacle to the marriage such as a material discrepancy between the information on the marriage certificate and the details already held.

*1 CG 203/49(KL)*

10122 The absence of registration does not invalidate a marriage but it does place the burden of proving its validity on the claimant. A statement by the claimant is useful evidence and corroboration is not necessary. But a person's own evidence can be overruled where it is contradictory or inherently improbable<sup>1</sup> (see DMG Chapter 01).

*1 R(I) 2/51; R(SB) 33/85*

10123 In England, Wales and Northern Ireland there cannot be a valid marriage without a ceremony<sup>1</sup>.

*1 Marriage Acts 1949 to 1986*

10124 In Scotland a marriage may be by the consent or presumed consent of two parties who are otherwise free to marry (see DMG 10200 et seq.).

10125 Validity of the marriage is presumed<sup>1</sup> where the usual evidence of marriage is not produced **or** is not readily available and it is proved that there was a ceremony of marriage followed by living together for a long period. Whilst there cannot be any definition of a "long period" in terms of a set number of years, DMs may wish to note that a county court has held that, looked at in the light of the realities of contemporary marriage, a period of six and a half years was a "long period" of cohabitation, although it was held that it only just falls within such definition. Each case must be considered on its own facts and will depend on whether or not clear evidence emerges to rebut the presumption.

**Note:** The presumption described in this paragraph can only be rebutted by clear and convincing evidence.

*1 R(U) 1/68, para 13; CAO v. Bath, 21 October 1999, app. to R(G) 1/00*

10126 If there is a reason for believing that there was not a valid ceremony but there is a presumption in favour of the marriage, the onus of proof falls on the person challenging the marriage. This onus can only be discharged by evidence clearly disproving the presumption. In law a presumption of marriage cannot easily be disproved; the determining authority requires a high standard of proof.

10127 If doubt exists as to the validity of a marriage, unless it is necessary to establish divorce, the case is referred to the RVU before enquiries are made or the case is submitted to the DM for disallowance.

10128 - 10129

### **Competing marriage claims**

10130 Where two or more people claim to have been married to the same person, for example where each is claiming BB, the two cases should be referred together to the RVU.

10131 A DM can only give a decision about a person's marriage as part of an outcome decision on a claim, revision or supersession<sup>1</sup> (see DMG 10010 - 10011 for further guidance).

*1 SS Act 98, s 8, 9 & 10*

### **Ceremonies other than Church of England or Church of Scotland**

10132 Certificates may be produced relating to ceremonies other than those performed under the rites of the Church of England or Church of Scotland. Where a statutory certificate or, in a Jewish marriage, a "Beth Din" certificate is produced, the marriage question is not normally referred to the DM. In the following paragraphs, inter-marry means a marriage between people following different customs.

#### **Roman Catholic and Nonconformist marriages**

10133 The DM should note that

1. Roman Catholic priests and Nonconformist ministers in England and Wales may be authorized to celebrate marriages without the attendance of a Registrar<sup>1</sup>
2. a marriage celebrated in a "registered building" in the presence of an authorized person is a valid marriage, and the position is the same as for marriage in the Church of England.

If the conditions in **2.** are **not** met, the marriage should have been attended by a Registrar, but the Registrar's absence does not invalidate the marriage unless both parties were aware of the need for that official's attendance. In such cases the investigating officer will have obtained a signed statement about the parties' awareness of the need for the attendance of a Registrar before the case is submitted to the DM.

*1 Marriage Act 1949, s 44*

## **Jewish marriages**

10134 A marriage according to Jewish custom between people of the Jewish religion may be solemnised on giving notice to, and obtaining a certificate from, the Superintendent Registrar. A Jewish marriage is void if

1. the requirements of the Jewish law have not been fully complied with **or**
2. both of the parties, one not being Jewish, knowingly and wilfully inter-marry without having given notice of marriage to the Superintendent Registrar **or** without a certificate of marriage having been issued by the Registrar to whom notice of marriage was given.

If the marriage was not registered, the claimant will have been advised to seek the advice of the Jewish Ecclesiastical Court (Beth Din), and to obtain a written statement from the Court that the marriage was valid according to Jewish law.

## **Quaker marriages**

10135 A marriage according to the customs of the Society of Friends (Quakers) between members of that Society may be solemnised on the authority of a certificate of the Superintendent Registrar to whom notice of marriage must have been given. A Quaker marriage is void if

1. either or both parties to the marriage are not members of the Society and no certificate signed by the Registering Officer of the Society authorizing the marriage has been produced to the Superintendent Registrar **or**
2. both of the parties, one not being a member of the Society, knowingly and wilfully inter-marry without
  - 2.1 having given notice of marriage to the Superintendent Registrar **or**
  - 2.2 a certificate of marriage having been issued by the Registrar to whom notice of marriage was given.

If a Quaker marriage is alleged and a statutory certificate or evidence from the General Register Office cannot be obtained, a signed statement should be obtained from the claimant covering the points mentioned before the case is submitted to the DM.

## **Comparable position under Scottish law**

10136 In Scotland, before 1978

1. Episcopal ministers could marry only persons whose banns had been published both in the Episcopal congregation which the parties attended regularly and in the local (Church of Scotland) Parish Church

2. marriages by Roman Catholic priests or ministers of other churches were valid if they took place after a proclamation of banns in the local Parish church or after notice to the Registrar.
3. marriages according to Jewish or Quaker custom were valid if
  - 3.1 notice to the Registrar had been given **and**
  - 3.2 a certificate has been obtained **and**
  - 3.3 both parties were Jewish or at least one party was a Quaker or an attender associated with them.

In all these cases, the marriage should have been registered with the Registrar of the Parish in which it was solemnised.

10137 Since 1978 a marriage according to any rite may be valid if

1. it follows the issue of a marriage schedule by the District Registrar **and**
2. it is celebrated by an authorised celebrant.

**Note:** Authorized celebrants include clergymen of the major denominations and members of other religious bodies whose individual nomination is approved by the Registrar General. All religious marriages must be registered at the office of the District Registrar within three days.

### **Gypsy marriages**

10138 A gypsy marriage ceremony is not a valid marriage according to English law<sup>1</sup>. In Scotland the DM may need to consider the possibilities of the marriage being one by cohabitation with habit and repute, or one of the other irregular forms of marriage which were abolished from 1.7.40 (see DMG 10200 et seq).

*1 R(S) 4/59*

### **Conversion of civil partnership to marriage**

10139 In England and Wales a civil partnership may be converted into a marriage<sup>1</sup>. When this happens, the marriage is treated as subsisting from the date the civil partnership was formed<sup>2</sup>. In Scotland, a civil partnership may be changed into a marriage. People in Scotland also have the option to have a marriage ceremony. In either case the marriage is treated as subsisting from the date the civil partnership was formed.

*1 Marr (SSC) Act 13, s 9; Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014; 2 Marr (SSC) Act 13, s 9(6)*

10140 - 10144

## Marriages within prohibited degrees of relationship

### England and Wales

10145 In England and Wales marriage is forbidden between

1. all in the direct line (for example grandfather and granddaughter) **and**
2. all within the second degree (that is any nearer than first cousin) **and**
3. people acting in the place of parents (for example uncle and niece, or grand-uncle and grand-niece) **and**
4. brother and sister, whether full or half-blood.

There is no distinction between legitimate and illegitimate relationship, except in Scotland where illegitimate relationships are ignored when considering whether the marriage falls within the third of these categories.

10146 The rules which forbid marriage between parties descending from a common ancestor may apply when there is a relationship between one of the married parties and the blood relatives of the other<sup>1</sup>, for example

1. a man cannot marry his stepchild unless
  - 1.1 both parties have reached the age of 21 **and**
  - 1.2 the younger party has not at any time before reaching the age of 18 been a child of the other party's family
2. a woman cannot marry her daughter's husband unless
  - 2.1 the daughter and the daughter's father are dead **and**
  - 2.2 both parties are over the age of 21.

Any cases covered by this paragraph should be referred to the RVU.

*1 Marriage Act 1949, first Sch; Marriage (Prohibited Degrees of Relationship) Act 1986, Sch 1*

10147 Exceptions from the prohibited degrees of relationship allow a person to marry certain kin of a former spouse. A marriage after 13.4.60 (whether in or out of Great Britain) is not void or voidable because of the relationship between a man and a woman who

1. is the sister, aunt or niece of a former wife of his (living or dead) **or**
2. was formerly the wife of his brother, uncle or nephew (living or dead)<sup>1</sup>.

**Note: This provision does not apply to Northern Ireland.** Words of kinship apply to kin of the whole and of the half-blood.

*1 Marriage (Enabling) Act 1960, s 1(1)*

- 10148 However, a marriage is not validated<sup>1</sup> if
1. at the time of the marriage either party is domiciled in a country outside GB **and**
  2. under the law of that country there cannot be a valid marriage between the parties.

*1 Marriage (Enabling) Act 1960, s 1(3)*

- 10149 Under earlier legislation the marriage of persons in the same relationship as those mentioned in DMG 10147 was not void or voidable if the relative was deceased. If such a marriage was before 13.4.60 it was given retrospective validity unless this would make a subsequent lawful marriage of one of the parties bigamous<sup>1</sup>.

*1 Marriage Act 1949, first Sch, Part 11; Marriage (Prohibited Degrees of Relationship) Act 1986, Sch 1*

## Scotland

- 10150 In Scotland, marriage is forbidden between certain relationships (whether legitimate or illegitimate and whether full or half-blood)<sup>1</sup>. These relationships are
1. all in the direct line (for example grandparent and grandchild) **and**
  2. brother and sister **and**
  3. uncle and niece or aunt and nephew **and**
  4. former husband or wife and persons related in the direct line (as above) to the former spouse (for example former husband's father, former wife's son etc) **and**
  5. adoptive parents and children.

A marriage within these relationships is void if it takes place in Scotland or while either party is domiciled in Scotland.

*1 Marriage (Scotland) Act 1977, Sch 1; Marriage (Prohibited Degrees of Relationship) Act 1986, Sch 2*

## Marriage under false names

- 10151 In England and Wales, if banns were published before the marriage and either or both parties were married under false names, the marriage is invalid if
1. the falsification of names was deliberate and with the intention of concealing identity **and**
  2. both parties were aware of the falsification.

If only one party was aware of it or if the marriage was before a Registrar, or took place in church by licence and not after banns, the marriage is valid.

- 10152 In Scotland a marriage may not be invalid even though one or both parties uses a name other than that given to them when their birth was registered. A marriage is null and void if
1. one party misleads the other concerning their identity **and**
  2. this is done in a way that invalidates the consent which is the essential part of the marriage contract.

## **Marriages celebrated in Great Britain under Hindu or Islamic law**

- 10153 The DM should note that
1. marriages celebrated in GB which are polygamous in form (see DMG 10391 and 10409) are not valid unless they also conform with the English or Scottish marriage laws<sup>1</sup>
  2. a second marriage is void if evidence is held that an earlier valid marriage whether
    - 2.1 contracted in GB or elsewhere **and**
    - 2.2 monogamous or polygamouswas in being at the time of the registered marriage but was not declared to the registrar.

*1 Marriage Act 1949; Marriage (Scotland) Acts 1939 & 1977; R v. Bham [1966] 1 QB 159*

- 10154 Where a marriage was celebrated in Scotland but not registered, the DM should consider whether it may be proved by cohabitation with habit and repute (see DMG 10211 - 10220). If there is evidence of an earlier valid marriage which has remained valid throughout the period of the potentially irregular marriage, further enquiries will be needed.

## **Foreign marriages**

- 10155 If a person is married abroad a marriage certificate issued by the appropriate registration authority should normally be accepted as evidence of a valid marriage under the religious or national law of the country in which it is conducted, unless there is
1. evidence which casts doubt as to its validity (see DMG 10157 - 10163) **or**
  2. doubt about the authenticity of the document produced.
- 10156 Where, the marriage takes place in a country which permits polygamy, there may be provisions governing the acceptance of such a marriage as valid for SS purposes if the marriage is monogamous. See DMG 10310 et seq and DMG 10157 - 10163.

## Domicile

10157 Domicile is a legal concept used to link any individual with a particular legal system, and is used to determine which country's laws govern questions of a person's personal status. Domicile and nationality are separate matters. The DM cannot find out where a person is domiciled by finding out that person's nationality. Nor can the DM decide a person's domicile simply by finding out where that person lives. Residence and domicile are not the same thing.

10158 The question of a person's domicile (see DMG 10165) may be important when establishing the validity of a marriage. The DM should not raise the domicile question unless it is necessary. The DM should accept that a marriage is valid unless there is good reason for supposing it is not. Detailed enquiry into the domicile of married parties to establish their capacity to enter into the marriage is not usually necessary.

### Example

Person A is domiciled in England and Person B is domiciled in Pakistan. They marry in a telephone ceremony. The validity of the marriage is governed by the laws of both England and Pakistan. A telephone marriage is not valid in England. Therefore the marriage of Person A and Person B is not valid in England.

10159 Under English law a person

1. receives **a domicile of origin** at birth and cannot ever be without a domicile
2. can acquire **a domicile of choice** by residing in a country other than that of the domicile of origin with the intention of staying there either permanently or indefinitely
3. may only abandon a domicile of choice if that person ceases to

**3.1** reside **and**

**3.2** intend to reside

there (it is enough to prove an absence of intention to reside).

**Note:** When a person abandons a domicile of choice that person either acquires a new domicile of choice or their domicile of origin revives<sup>1</sup>.

*1 R(G) 1/93*

10160 The DM must take into account all the circumstances when deciding whether a person has acquired a domicile of choice, including

1. that person's motive for taking up residence initially **and**
2. whether or not that residence is precarious.

There must be an intention to remain in that country indefinitely. The decision in each case is one of fact<sup>1</sup>.

*1 Scarman J in the Estate of Fuld (No. 3) [1968] p 674, 684*



10161 The standard of proof required to show that a person has acquired a domicile of choice is the balance of probabilities. However the degree of proof required to meet this standard can vary according to the subject matter being considered. A strong case must be made to establish a change and to replace the domicile of origin with a domicile of choice<sup>1</sup>.

*1 Buswell v IRC [1974] 2 All ER 520*

10162 There are two elements that must be shown in order to prove that a domicile of choice has been acquired. Firstly the person must have taken up residence in the country concerned. Secondly the person must have the necessary intention. The intention that has to be shown relates to the permanence of the person's residence in the country concerned. The person may have made statements about this but often the intention has to be inferred from the person's actions and the circumstances of the case. It must be shown that the person settled in the relevant country with the intention to "make his home in the new country until the end of his days unless and until something happens to change his mind"<sup>1</sup>.

*1 Inland Revenue Commissioners v Bullock [1976] 3 All ER 353*

10163 The guidance concerning the burden of proof given in DMG Chapter 01 should be applied. Initially the burden lies with the claimant to prove that the conditions for a claim or application are satisfied. The burden of proving that the conditions for revision or supersession are satisfied lies with the person who applies for revision or supersession so, if it is the Secretary of State who seeks to revise or supersede then the onus of proof lies with the DM.

10164 Questions of domicile are likely to arise where a marriage has been contracted abroad or a divorce or decree of nullity of marriage is obtained abroad. In general, a foreign marriage is valid under English and Scottish law if

1. it satisfies the law of the jurisdiction where the marriage takes place **and**
2. each party has capacity according to domicile at the time of the alleged marriage.

10165 The question of domicile may be vital for questions of

1. validity of marriage **and**
2. recognition of divorce **and**
3. decrees of nullity of marriage

when it is necessary to decide which country's laws apply. For example, the domicile of a person who enters into a polygamous or potentially polygamous marriage is crucial in determining whether a marriage is valid under English or Scottish law and in Scottish law the question whether there is an irregular marriage of habit and repute may arise (see DMG 10211).

10166 Domicile is a complex legal concept and the DM should consult the RVU for advice if necessary. DMs should always seek advice where

1. a statutory certificate is not produced **or**
2. they have any doubt about the validity of a marriage **or**
3. there is doubt whether recognition should be given to a porce or decree of nullity of marriage **or**
4. two “marriages” are involved, one under English or Scottish law and the other in a country which permits polygamy **or**
5. a claimant
  - 5.1 has more than one wife under the law of a country which permits polygamy **and**
  - 5.2 maintains that he is domiciled in England and Wales, or Scotland.

**Note:** For the purpose of 5. a claimant may do this, for example by making an appeal against a decision that the marriage is polygamous in fact (see DMG 10310).

### **Effect of change of domicile on marriage**

10167 The DM should note that

1. a person’s domicile of origin is the country in which he was born (see DMG 10159) **and**
2. if that country is a country which permits polygamy, for example Pakistan, and the person’s only marriage took place there it is potentially polygamous **and**
3. if the person
  - 3.1 moves to GB with the intention of living here permanently **and**
  - 3.2 acquires British domicile as his domicile of choice then that marriage becomes monogamous **and**
4. if
  - 4.1 the person enters into a second marriage in a country which allows polygamy whilst his first marriage still exists **and**
  - 4.2 he remains domiciled in GB then the second marriage will be void but the first marriage remains valid.

### **Both parties to marriage dead**

10168 If a marriage is not proved by direct evidence and both parties to the marriage are dead, a ceremony may be inferred and a valid marriage presumed if

1. there is evidence of cohabitation with repute **and**

2. any children are registered as legitimate, unless in England and Wales there is very strong evidence that there was no such ceremony.

In Scotland a ceremony is not essential to establish marriage by cohabitation with habit and repute.

10169 - 10179



# Marriage - provisions applying only in England and Wales

## Previous marriage - onus of proof

- 10180 If a DM challenges a marriage on the grounds that the parties were not free to marry, the onus is on the DM to produce
1. evidence that a previous marriage of either party took place and that marriage has not been dissolved **and**
  2. facts from which it can reasonably be inferred that the spouse of the previous marriage was alive at the date of the marriage now in question.

If the DM can do this and the claimant then contends that the former marriage was invalid the onus is on the claimant to prove this contention<sup>1</sup>.

*1 CG 203/49(KL); R(G) 1/51*

- 10181 A marriage which is invalid on the ground that one of the parties was not free to marry does not necessarily constitute the criminal offence of bigamy.
- 10182 The advice of the RVU should be sought in cases where DMG 10180 applies.

## Marriage between minors

- 10183 Although persons under 18 years of age are generally required to obtain the consent of certain persons before they can marry<sup>1</sup>, lack of consent will not invalidate the marriage.

*1 Marriage Act 1949, s 3 as amended by the FLR Act 69*

## Marriage of persons under 16

- 10184 A marriage where either party is under the age of 16 is void and cannot give title to any benefit on the husband's insurance. This provision has applied since 10.5.29. Before that date a marriage was void if the woman was under the age of 12 or the man was under 14.

## Presumption of death

- 10185 The DM should note that
1. if a married person in England or Wales
    - 1.1 has not seen or heard of their spouse for more than 7 years and wishes to remarry, the Registrar normally requires them to make all possible enquires in the area where, if living, their spouse would be most likely to have been heard of **and**
    - 1.2 finds nothing to suggest that their spouse is still alive or has been living within the last 7 years, they can presume their spouse's death

2. there can be no presumption that a spouse died at any particular time
3. the presumption is sufficient for a person to remarry at a registrar's office if they sign a statement that they have made all the necessary enquiries (see DMG 10466 et seq).

10186 If a person's second spouse dies they should be regarded as being widowed. If there is evidence that the first spouse was alive at the time of the second marriage the second marriage is invalid. For example, in such a situation, a woman cannot be accepted as the widow of her second husband<sup>1</sup>.

*1 R(G) 1/51*

## **Dissolution of marriage**

10187 The signed statement of presumption of death in DMG 10185 3. does not validate the second marriage. The marriage is validated by a decree of presumption of death and dissolution of marriage<sup>1</sup> (obtained from the Divorce Division of the High Court). When considering the effect of such a decree the DM should note that

1. a person who obtains a decree and does not remarry is a widow or widower
2. if it is discovered later that the spouse was alive at the time of the decree, the person who obtained the decree is then treated as divorced
3. if a person remarries and later the second spouse dies, the person continues to be treated as being widowed even though it is proved later that the first spouse was alive at the time of the second marriage
4. the decree does not establish that the death occurred at any particular time between the marriage and the decree so its value to a BB claimant is reduced.

**Note:** Where 3. applies the decree of presumption of death and dissolution of marriage operates to make the second marriage legal.

*1 Mat Causes Act 65, s 14*

10188 - 10199

# Marriage - provisions applying only in Scotland

10200 Scottish law on marriage is different from English law in some important respects. Under Scottish law the essence of marriage is consent. Once parties have fully and validly exchanged their consent in the way described by the law nothing more is required to create the marriage.

## Regular marriage

10201 Before 1.7.40 the only form of regular marriage in Scotland was a marriage celebrated by a minister of a religion of any denomination after

1. proclamation of the banns **or**
2. the publication of a notice by the Registrar of the District in which the party intending to marry was usually resident.

10202 Between 1.7.40 and 31.12.77 a marriage contracted before an authorised registrar, after the publication of notice of intention to marry, was also a regular marriage.

10203 Registration of either of these forms of regular marriage was compulsory. Before 1.7.40 this had to take place within three days. Those contracted before a registrar had to be registered immediately.

10204 Since 1.1.78, the requirements for a regular marriage are the

1. issue of a Marriage Schedule by the District Registrar (after receipt of a marriage notice or approved certificate for each of the parties) **and**
2. solemnisation of the marriage by
  - 2.1 a person who is an authorized celebrant (religious marriage) **or**
  - 2.2 an authorised registrar (civil marriage).

Authorized celebrants include Ministers of major denominations, and members of other religious bodies (not necessarily Christian) whose individual nomination is approved by the Registrar General<sup>1</sup>.

*1 Marriage (Scotland) Act 1977, s 6 & 8*

10205 A religious marriage must be registered at the office of the District Registrar within three days. A registrar must register all marriages solemnised as soon as possible.

10206 A marriage contracted after 1.1.78 which does not comply with DMG 10204 may be void. If a marriage is found or declared to be void the entry relating to it in the register of marriages will be cancelled.

**Note:** Where a regular marriage is found to be void subsequent cohabitation by the parties may constitute an irregular marriage by cohabitation with habit and repute.

10207 The onus of proving a marriage is on the claimant. Where a marriage certificate is produced, there is a presumption in favour of validity of that marriage unless there is evidence to the contrary. The validity of a regular marriage which has been registered cannot be questioned on the ground that the person who celebrated or solemnized it was not competent or qualified to do so.

10208

## **Irregular marriage**

10209 The following paragraphs give general guidance on irregular marriage in Scotland. These provisions can also apply to people who have previously lived in Scotland where an irregular marriage could have been constituted prior to their leaving. Where the existence of an irregular marriage is claimed, the DM should ask for the opinion of the Department's solicitor via BB DMs at Dover Benefit Centre.

10210 From 1.7.40 the only form of irregular marriage that could be established was marriage by cohabitation with habit and repute<sup>1</sup>.

*1 Marriage (Scotland) Act 1939*

## **Abolition of marriage by cohabitation with habit and repute**

10211 The rule of law by which marriage could be constituted by cohabitation with habit and repute ceased to have effect<sup>1</sup> from 4.5.06<sup>2</sup>. This means that where the cohabitation begins on or after 4.5.06 it will not provide a basis to constitute an irregular marriage.

*1 Family Law (Scotland) Act 2006, s 3; 2 The Family Law (Scotland) Act 2006 (Commencement, Transitional Provisions and Savings) Order 2006*

10212

## **Savings provision**

10213 However, the rule of law allowing marriage by cohabitation with habit and repute will still apply where the cohabitation with habit and repute



1. ended before 4.5.06 **or**
2. began before, but ended on or after 4.5.06 **or**
3. began before, and continues after 4.5.06<sup>1</sup>.

*1 Family Law (Scotland) Act 2006, s 3(2)*

10214 In many cases therefore it will still be necessary to refer habit and repute cases to The Department's Solicitor via BB DMs at Dover Benefit Centre as described in DMG 10209.

10215 The rule of law allowing marriage by cohabitation with habit and repute will also continue to apply where<sup>1</sup>

1. the cohabitation with habit and repute began **on or after 4.5.06 and**
2. the conditions in DMG 10216 are satisfied.

*1 Family Law (Scotland) Act 2006, s 3(3)*

10216 The conditions referred to in DMG 10215 **2.** are<sup>1</sup> that

1. the cohabitation with habit and repute was between two persons, one of whom is domiciled in Scotland **and**
2. the person with whom the person in **1.** was cohabiting died domiciled in Scotland **and**
3. before the cohabitation with habit and repute began, the persons in **1.** and **2.** purported to enter into a marriage outside the UK **and**
4. in consequence of the purported marriage, the persons in **1.** and **2.** believed themselves to be married to each other and continued in that belief until the death of the person in **2.** **and**
5. the purported foreign marriage was invalid under the law of the country where it took place **and**
6. the person in **1.** became aware of the invalidity of the purported foreign marriage only after the death of the person in **2.**

**Note:** Thus the status of the marriage is preserved for the surviving spouse if it turns out, after the death of the other spouse, that the foreign marriage was invalid.

*1 Family Law (Scotland Act) 2006, s 3(4)*

10217 - 10219

### **Habit and repute**

10220 Although irregular marriage by cohabitation with habit and repute will diminish in importance from 4.5.06, the guidance in the following paragraphs is retained because cohabitation in Scotland with habit and repute before 4.5.06 will be relevant to benefits for some time to come.

10221 The basis of marriage by cohabitation with habit and repute as with regular marriage in Scotland is interchange of consent<sup>1</sup>. No ceremony is required for such a marriage. Habit and repute arises from both parties

1. cohabiting together openly and constantly as if they were husband and wife  
**and**
2. behaving towards each other as above for such a length of time in the society or neighbourhood of which they are members as to produce a general belief that they are married<sup>2</sup>.

*1 R(G) 7/56; 2 R(S) 4/85*

10222 An irregular marriage cannot be established if there is an impediment to marriage, for example, one party is already married to someone else or is under 16<sup>1</sup>.

*1 R(P) 1/51; R(G) 5/83*

10223 When considering cohabitation and its duration the DM should note that

1. the cohabitation founded upon must have been in Scotland<sup>1</sup>
2. no minimum period has ever been laid down but the length of time which would prove sufficient should be judged in the light of all the circumstances of each case<sup>2</sup>
3. the period should be measured in years rather than months<sup>3</sup>
4. where any impediment to marriage has been removed and the parties became aware that they are free to marry, some account may be taken of the period of cohabitation prior to the removal of the impediment, or the parties' knowledge of its removal<sup>4</sup>
5. there must be sufficient period of cohabitation after the removal of the impediment to establish exchange of consent to marry.

*1 R(G) 1/71; 2 R(G) 5/83; 3 R(G) 8/56; R(G) 1/71; 4 R(G) 5/83*

10224 The DM does not usually need to determine the actual date of a marriage by cohabitation with habit and repute. Most questions arise after the death of one of the parties, so it is enough to determine whether a marriage existed at the date of death.

**Note:** The date of the removal of an impediment to marriage can never be the date at which an irregular marriage can be regarded as constituted. There has to be some period of cohabitation after this.

10225 There can be no effective consent to marriage<sup>1</sup> if the parties

1. were not aware **or**
2. had no reasonable grounds for believing

that the impediment to marriage had been removed.

*1 R(G) 1/55; R(G) 2/82*

10226 The parties must cohabit together openly and constantly as if they were husband and wife. Cohabitation as

1. mere cohabittees **or**
2. lovers **or**
3. man and housekeeper **or**
4. landlady and lodger

is not enough<sup>1</sup>.

*1 R(S) 4/85*

10227 The parties' own view of their relationship is likely to be reflected by the views of others. It is the views of the social network in which the parties lived that is important. If

1. their social contacts are limited to a few neighbours and shopkeepers, a general reputation of marriage in that circle is enough **or**
2. they have a wider social network, the views of neighbours, friends, relatives and colleagues might be important.

The repute need not be universal, but must be general and not seriously divided<sup>1</sup>.

*1 R(G) 2/82; R(S) 4/85*

10228 Presumption of implied consent to marriage arising from cohabitation with habit and repute may be disproved if the parties do not believe in the idea of formal marriage. There can be no presumption of consent to marriage<sup>1</sup> if both parties reject at least some of the package of

1. legal ties **and**
2. constraints of marriage **and**
3. consequences of marriage.

Where there is an intention to marry at some stage in the future, but at present consent only to a relationship which left both free, any presumption of marriage may be disproved.

*1 R(G) 4/84*

10229 Questions whether parties have contracted an irregular marriage by habit and repute seldom arise while both parties are still alive. Marriage is a contract involving many rights and obligations, for example maintenance and succession rights. It is very difficult for persons who are living together to prove that they have contracted an irregular marriage by habit and repute. There may be adequate reasons for such people not having entered into a regular marriage. But in normal circumstances there is nothing to prevent their arranging a regular marriage<sup>1</sup> if they wish to be married.

*1 R(S) 4/85*

10230

### **Irregular marriages before 1.7.40**

10231 DMG 10232 - 10233 gives guidance on two other forms of irregular marriage. These were abolished in July 1940 but are still valid if entered into before that date.

10232 Declaration *de praesenti* means all that was necessary to constitute marriage by declaration was that a man and woman should exchange consent to immediate marriage. The consent may be by word of mouth or in writing. As with marriage by cohabitation with habit and repute, the registration of any children resulting from such a marriage as illegitimate is not fatal to the proof of marriage.

10233 Promise *subsequente copula* means a marriage formerly established by a promise of marriage followed by sexual intercourse. The promise must have been given and intercourse have taken place in Scotland.

10234 From 1.7.40 no irregular marriage contracted by either of these ways is valid<sup>1</sup>, but any irregular marriage contracted before that date is not affected. Marriage by cohabitation with habit and repute cannot now be registered unless established by Court declarator.

*1 Marriage (Scotland) Act 1939*

### **Marriage between minors**

10235 The consent of parents or guardians is not required by the law of Scotland even where either one or both of the parties is a minor (a person under 18 years of age). Sometimes minors resident in England and Wales who do not have parental consent to their marriage go to Scotland where they can be married without such consent.

## **Marriage of persons under 16**

10236 A marriage where either person is under the age of 16 is void<sup>1</sup> and cannot give entitlement to any benefit on the husband's insurance. This provision has applied since 10.5.29. Before that date, a marriage was void if the woman was under the age of 12 or the man was under 14.

*1 Marriage (Scotland) Act 1977, s 1*

10237 - 10249



# Void and voidable marriages

## Void marriages

10250 A void marriage cannot be treated as valid under any circumstances<sup>1</sup>. For benefit purposes it must be regarded as never having existed.

*1 R(G) 3/59*

10251 In England and Wales a marriage celebrated after 31.7.71 is void<sup>1</sup> if

1. it is not a valid marriage<sup>2</sup> because
  - 1.1 the parties are within the prohibited degrees of relationship **or**
  - 1.2 either party is under age 16 **or**
2. it is not a valid marriage<sup>3</sup> because the parties have knowingly and wilfully intermarried contrary to certain requirements as to the formation of marriage **or**
3. at the time of the marriage either party was already lawfully married **or**
4. from 10.12.14, it follows the purported conversion of a void civil partnership<sup>4</sup>.

**Note 1:** See DMG 10145 et seq for guidance on prohibited degrees of relationship.

**Note 2:** See DMG 10311 for guidance on when a polygamous or potentially polygamous marriage is void.

**Note 3:** See DMG 10600 et seq for guidance on gender recognition legislation.

**Note 4:** See DMG 10720 et seq for guidance on void civil partnerships.

**Note 5:** Before the introduction of same sex marriages<sup>5</sup>, a marriage was also void if the parties were not respectively male and female.

*1 Mat Causes Act 73, s 11; R(G) 3/59; 2 Marriage Act 1949, s 1(1) & (2); 3 CAO v. Bath, 21 October 1999, opp. to R(G) 1/00; Marriage Act 1949, s 25 & 49; 4 Mat Causes Act 73, s 12A(1); 5 Marr (SSC) Act 13*

10252 In Scotland similar principles apply and a marriage is void if there is

1. lack of capacity because
  - 1.1 one party is under the age of 16 **or**
  - 1.2 of insanity (including intoxication) **or**
2. defect of consent where
  - 2.1 the consent, though apparently given to marriage, is in reality directed towards some other relationship **or**
  - 2.2 the marriage was induced by fraud **or**
  - 2.3 the marriage was induced by force or fear **or**
  - 2.4 the marriage was induced by error **or**
3. illegality where

- 3.1 at least one of the parties is still subject to a prior **and** subsisting marriage **or**
- 3.2 the parties are within the prohibited degrees of relationship (see DMG 10145 et seq) **or**
- 4. non-compliance with certain of the statutory formalities.

10253 A void marriage is regarded as never having taken place. A void marriage may be treated as such by a decree of nullity or by the agreement of both parties. One of the parties may obtain a decree for their own protection, or to acquire certain rights, for example financial support.

10254 See DMG 10288 and 10289 for information on where to look for evidence of a marriage being declared a nullity.

10255 - 10259

## Voidable marriages

10260 In England and Wales a voidable marriage is one which is regarded as a valid and subsisting marriage until it is declared null and void<sup>1</sup>. It may be voided if

- 1. the marriage has not been consummated owing to the incapacity of either party or to the wilful refusal of either party to consummate it **or**
- 2. either party to the marriage did not validly consent to it, whether because of duress, mistake, unsoundness of mind or otherwise **or**
- 3. at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder<sup>2</sup> of such a kind or to such an extent as to be unfit for marriage **or**
- 4. at the time of the marriage one party was suffering from venereal disease in a communicable form **or**
- 5. at the time of the marriage the woman was pregnant by some person other than the other party **or**
- 6. from 10.12.14, following the conversion of a civil partnership
  - 6.1 on the date the civil partnership is formed, any of DMG 10721 **1 – 3** is satisfied<sup>3</sup> **or**
  - 6.2 an interim GRC has been issued to either party to the marriage at any time on or after the date on which the civil partnership was formed<sup>4</sup> **or**
  - 6.3 when the civil partnership was formed, the respondent had an acquired gender<sup>5</sup>.

**Note:** See DMG 10720 et seq for guidance on voidable civil partnerships.

*1 Mat Causes Act 73, s 12; 2 MH Act 83, s 1; 3 Mat Causes Act 73, s 12A(2)(a); CP Act 04, s 50(1)(a), (b) & (c); 4 Mat Causes Act 73, s 12A(2)(b); 5 s 12A(2)(c); CP Act 04*

10261 In Scotland the only ground upon which a marriage is voidable is impotence.



10262 The operative date declaring the marriage void in a voidable marriage in England and Wales<sup>1</sup> is the date of decree absolute.

*1 Mat Causes Act 73*

10263 Where the decree was granted after 31.7.71 a voidable marriage remains valid and existing until a decree of nullity obtained by either of the parties (and in the lifetime of both) becomes absolute<sup>1</sup>. There is no equivalent statutory provision in Scottish law. The principle that a voidable marriage is void from its commencement once a decree of nullity (in Scotland, until Declaration of Nullity of Marriage) has been pronounced rests on the common law. This principle has been eroded by statutory provisions dealing with, for example, the legitimacy of children.

**Note:** Different legislation applies in Northern Ireland<sup>2</sup>.

*1 Mat Causes Act 73, s 16; 2 Article 18 Mat Causes (NI) Order 1978*

10264 A decree of nullity granted after 31.7.71 for a voidable marriage annuls the marriage only after the decree has been made absolute. The marriage is treated as if it had existed up to that time<sup>1</sup> and this

1. deprives a widow of her former entitlement to a service pension<sup>2</sup> **and**
2. applies to WB.

There is no equivalent provision in Scottish law and before 31.7.71 there was no legislative provision in English law. Under English law before 31.7.71, for NI purposes, it was decided, however, that a valid marriage existed<sup>3</sup> from the date of solemnisation to the date that the decree of nullity became absolute.

*1 Mat Causes Act 73; 2 Regina v. Secretary of State Ex Parte Ward; 3 R(G) 3/72*

10265 Whether a decree of nullity granted after 31.7.71 for a voidable marriage annuls the marriage from the beginning or from the date the decree has been made absolute

1. depends on the law under which the decree is made **and**
2. not on the law under which the marriage was entered into.

Where a woman was married in Scotland but then obtained a decree of nullity in the High Court in Northern Ireland, the marriage existed up to the time the decree has been made absolute<sup>1</sup>. This is the case even where the plaintiff is resident in Scotland at the time of obtaining the decree.

*1 R(G) 1/85*

10266 A decree of nullity on the grounds of DMG 10260 (excluding the ground of unconsummated marriage) will not normally be granted unless proceedings were instituted within three years from the date of marriage. There is discretion to grant a decree when proceedings are instituted after that period<sup>1</sup>.

*1 Mat & Fam Proceedings Act 84, s 2*

10267 For RP purposes there are specific circumstances in which a voidable marriage which has been annulled would be treated as a valid marriage which has been terminated by divorce (see Benefit Specific Guidance).

10268 In cases where a decree of nullity was granted in England and Wales on or after 1.8.71 (and the marriage is voidable as opposed to void) it is not possible to reinstate any WB to which a woman was entitled before the marriage<sup>1</sup>.

*1 R(G) 1/73; R(G) 2/73*

10269 See DMG 10288 and 10289 for where to look for evidence that a marriage has been declared a nullity.

10270 - 10279

# Divorce and separation

## Decree nisi

10280 The DM should note that

1. in England and Wales every decree of divorce in the first instance is a decree nisi (nisi is Latin for unless)
2. a person may petition for divorce when the marriage has existed for one year or, in exceptional cases, before the end of the one year period<sup>1</sup>
3. a decree nisi (which does not exist under Scottish law) does not dissolve a marriage
4. a marriage is dissolved and marital status altered for legal purposes only when the decree is made absolute, normally six weeks after the decree nisi<sup>2</sup>
5. if a man dies after a decree nisi but before a decree absolute for dissolution of marriage has been granted, his wife becomes his widow, because in law, she is still a married woman.

*1 Mat Causes Act 73, s 3; Mat & Fam Proceedings Act 84, s 1;*

*2 Mat Causes Act 73, s 1(5)*

## Decree absolute

10281 A woman has the status of a single woman from the first moment of the day on which her decree of divorce is made absolute. But if her husband dies on that day before notice of application to make the decree absolute is lodged with the registrar, the woman has the status of a widow. This is because her marriage was terminated by her husband's death, and not by any judicial act.

10282 Where either party is described as divorced on a marriage certificate, the DM may assume that

1. evidence of divorce was produced at the time of the marriage **and**
2. no further enquiry is necessary.

In all other cases an alleged divorce should be verified if it is relevant to the claim.

## **Decree absolute declared void**

10283 A decree absolute may later be declared void, for example because no satisfactory financial arrangements have been made for the other spouse. The effect of this is that the divorce had not been granted. The marriage remains in existence until

1. the death of one of the parties **or**
2. a further order of the court affecting the marital status of the parties is made.

## **Recognition in United Kingdom of divorce, annulment and legal separation granted in the British Islands**

10284 A divorce or annulment granted in any part of the British Islands (England and Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man<sup>1</sup>) by a court of civil jurisdiction is regarded as effective throughout any part of the British Islands<sup>2</sup>. A judicial separation (see DMG 10297) obtained in a court of civil jurisdiction, is also recognised throughout any part of the British Islands.

*1 Inte Act 78, Sch 1; 2 FL Act 86, s 44*

## **Dissolution of marriage and divorce in Scotland**

10285 A marriage recognised by Scottish law can be terminated only by

1. death **or**
2. decree of divorce **or**
3. decree of dissolution of marriage on presumed death of a spouse

when a marriage is dissolved by divorce the parties cease to be husband and wife as soon as the Court's decree is pronounced. There is no decree nisi in Scotland.

10286 Although a decree of divorce has immediate effect, if the decree is reclaimed (appealed) and the appeal is successful the parties are deemed to have been continuously married. A Certificate of divorce, which is the least formal proof of a divorce, is not issued until the reclaiming days have expired. Two other alternative documents are issued in order to prove divorce, a Certified Copy Interlocutor or an Extract Decree of divorce.

10287 The jurisdiction of the courts in marriage depends on the residence of the parties at the time of the marriage. In divorce, the Scottish Courts have jurisdiction if either of the parties to the marriage was

1. domiciled in Scotland on the date when the action for divorce was begun **or**
2. habitually resident in Scotland throughout the period of one year before the date upon which the action was begun.

A divorce granted under the law of any other part of the British Islands is recognised in Scotland. For divorces granted overseas see DMG 10291.

- 10288 Records of Scottish divorces and of declarators of nullity or marriage are kept at New Register House, Edinburgh. They can be traced if details are given of
1. the date **and** place of divorce or the declarator of nullity of marriage **or**
  2. the date **and** place of the marriage which has been dissolved or declared to be a nullity.
- 10289 For divorces or declarators of nullity of marriage granted before 1.5.84, New Register House may be able to confirm that a divorce or declarator of nullity has been granted but will not hold a copy of the court decree. To obtain a copy of that or to trace a divorce or declarator of nullity of marriage of which New Register House do not have a record, people would need to apply to the Extracts Department of the Court of Session in Edinburgh. The Extracts Department will need an approximate year of divorce in order to search for a divorce or declarator of nullity of marriage.
- 10290 A person who has been married cannot remarry unless the first marriage has been terminated
1. by divorce **or**
  2. by death of the spouse **or**
  3. by decree of dissolution of marriage on presumed death of the spouse.
- The mere disappearance of a spouse whose whereabouts cannot be traced is not enough to make a later marriage valid (see DMG 10470 - 10496).

## **Foreign divorces, annulments and separations**

- 10291 A question of foreign law is a question of fact<sup>1</sup>. If the validity of a foreign divorce is incidental to a benefit question the DM should accept a divorce which was valid under the law of each party's antenuptial domicile<sup>2</sup>. If the validity of the divorce is incidental to the benefit question, then the divorce must also meet the conditions for recognition in the UK (see DMG 10292).

*1 R(G) 2/00; Lazard Brothers & Co v. Midland Bank Ltd. H.L. [1933] A.C. 289;*

*2 R(G) 2/00; Schwebel v. Ungar [1964] 48 Dominion Law Reports (2d) 644*

### **Example 1**

A claim to BB is based on a marriage celebrated under the law of Bangladesh. Entitlement to benefit depends on the validity of that marriage. The claimant had been previously married and her previous husband had divorced her by an informal talaq (see DMG 10413). The validity of the divorce is incidental to the validity of the second marriage and the claimant does not have to show that the conditions for recognition of the divorce in DMG 10293 and 10295 are satisfied.

## Example 2

In another claim to BB there is a question whether the claimant's marriage was monogamous and this depends on the validity of her husband's divorce from his first wife. The validity of the divorce is an independent question and conditions for recognition in DMG 10292 must be satisfied.

- 10292 A foreign divorce obtained by means of proceedings (i.e. a decree obtained through the process in the courts of law in the foreign country) is recognised in the UK if
1. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained<sup>1</sup> **and**
  2. either party was at that time habitually resident in that country **or** was domiciled in that country **or** a national of that country<sup>2</sup>.

*1 FL Act 86, s 46(1)(a); 2 s 46(1)(b)*

- 10293 A foreign divorce obtained otherwise than by means of proceedings<sup>1</sup> is recognised in the UK if
1. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained **and**
  2. each party was at that time domiciled in that country **or** either party was domiciled in that country and the other was domiciled in a country where the divorce, annulment or separation is recognised as valid **and**
  3. neither party was habitually resident in the UK throughout the period of one year before the date on which it was obtained.

*1 FL Act 86, s 46(2); Chaudhary v. Chaudhary [1984] 3 All E.R. 1017*

- 10294 There is no real difference between "ordinary" and "habitual" resident. Each should be given its natural and ordinary meaning<sup>1</sup>. For example, in the case of a man who worked in Mexico from 1958 to 1974, it was not in doubt that the person went to Mexico to join an associate company of his former English employers and was expected to be there for several years. It was decided that the man was habitually resident in Mexico at the time of his divorce in 1959<sup>2</sup>.

*1 Kapur v. Kapur [1985] Vol 15 Fam Law 22; 2 R(P) 2/90*

- 10295 Recognition may be refused if
1. the divorce, annulment or legal separation was obtained without steps having been taken to give the other party notice of the proceedings **or**
  2. either party to the marriage was not given an opportunity to take part in the proceedings<sup>1</sup>.

*1 FL Act 86, s 51(3)(a)*

10296 Any documentary evidence of divorce must be checked for authenticity. Where documentary evidence is not available, an enquiry should be made into the form of the divorce. The DM should obtain evidence of

1. who initiated the divorce
2. how the divorce was negotiated
3. whether the spouse initiating the divorce took proceedings personally or through a representative and, if so, how the representative was authorised to act
4. whether there was any cash transaction, for example the return of all or part of the dowry.

10297 If the husband states that he conducted the proceedings outside GB, the DM should confirm

1. that he was absent from GB at the date of divorce **and**
2. where he was residing during the twelve month period before the date of divorce.

10298 Further guidance on divorce under Hindu law, Islamic law and by native law and custom is given at DMG 10390 - 10443. The DM should refer

1. any cases of doubt or difficulty **and**
2. all cases involving recognition of a foreign divorce where the marriage was celebrated in GB

to the RVU for advice.

## **Judicial separation**

10299 A decree of judicial separation does not dissolve a marriage but only entitles the parties to live apart.

10300 - 10309





## Marriage in countries which permit polygamy

10310 From 28.8.72 a marriage celebrated under a law which permits polygamy is treated as having the same consequences as a monogamous marriage for any day throughout which the polygamous marriage is in fact monogamous<sup>1</sup>. (From 6.4.75 new statutory provisions applied)<sup>2</sup>. This is described as a potentially polygamous marriage (see DMG 10321). The DM should note that

1. polygamous marriage means a marriage celebrated under a law which permits polygamy<sup>3</sup>
2. monogamous marriage means a marriage celebrated under a law which does not permit polygamy<sup>4</sup>
3. a polygamous marriage which is in fact monogamous is a polygamous marriage in which neither party has any spouse additional to the other<sup>5</sup>
4. the day on which a polygamous marriage is contracted or terminates for any reason is treated as a day throughout which that marriage was in fact monogamous.

**Note:** The guidance in 4. only applies if at all times on that day after it was contracted, or before it ended, it was monogamous<sup>6</sup>.

*1 National Insurance, Industrial Injuries & Family Allowance (Polygamous Marriages) Regulations; 2 SS & FA (Poly Marr) Regs; 3 reg 1(2); 4 reg 1(2); 5 reg 2(2)(a); 6 reg 2(2)(b)*

10311 A polygamous or potentially polygamous marriage is void<sup>1</sup> if it is

1. celebrated after 31.7.71 **and**
2. entered into outside England or Wales **and**
3. either party was domiciled in England or Wales at the time of the marriage.

**Note 1:** This does not apply in Scotland (see DMG 10325).

**Note 2:** See DMG 10251 for further guidance on void marriages

*1 Mat Causes Act 73, s 11*

10312 - 10319

## Effect of polygamous marriage on earlier monogamous marriage which still subsists

10320 Where

1. a person enters into a marriage under a law which permits polygamy **and**
2. an earlier marriage of that person under a law which does not permit polygamy still subsists at the time of the later marriage

the earlier marriage does not lose its monogamous characteristics and remains valid.

**Note:** The same applies if two Muslims contract a marriage which conforms with English law (see DMG 10153) and one of them subsequently contracts a second marriage under a law which permits polygamy.

10321 Whether a marriage is potentially polygamous depends on whether

1. the law under which it was conducted allows polygamy **and**
2. at the time of the marriage, the law of the country which allows polygamy would prevent the parties concerned from entering into a potentially polygamous marriage.

10322 A decision of the Court of Appeal<sup>1</sup> concerned a marriage celebrated under the Muslim religion in Pakistan in 1979 between

1. an English domiciled husband **and**
2. a Pakistani domiciled wife.

The husband later challenged the validity of the marriage on the ground that it was polygamous<sup>2</sup> (Under Pakistani law a husband, but not a wife, may marry a second spouse during their marriage). The Court of Appeal held that a "polygamous marriage" referred to the capacity of the parties entering into the marriage and not to whether a polygamous marriage was permissible under the appropriate local laws. Neither the husband nor wife could validly contract a second marriage, the husband because of English law and the wife because of Pakistani law. As a result their marriage was monogamous and valid under English law.

*1 Hussain v Hussain [1982] 3 WLR 679; 2 Mat Causes Act 73, s 11(d)*

10323 The effect of DMG 10322 is to allow men who are domiciled in the UK, like those who are not, to have their Muslim marriages treated as valid in the UK if the marriage in question is in fact monogamous and remains so. But a woman who is domiciled in the UK and who marries a man domiciled elsewhere whose law would allow him to contract polygamy cannot benefit from the ruling in DMG 10322.

### **Effect of Scottish Law**

10324 The provisions<sup>1</sup> under DMG 10311 have no direct equivalent in Scottish law. But a Scottish Court can rule on the validity of a marriage celebrated under a law which permits polygamy. A polygamous marriage is illegal apart from whether it is void as in DMG 10252 where

1. one or both parties are not domiciled in Scotland<sup>2</sup> **and**
2. a marriage in Scotland between the parties would be void from the beginning under the law of the domicile of one or both parties.

*1 Mat Causes Act 73, s 11(d); 2 Marriage (Scotland) Act 1977, s 5(4)(f)*

10325 DMG 10321 and 10322 do not apply in Scotland. Under DMG 10324 where a marriage is entered into on a potentially polygamous basis, it is still valid in Scotland unless under the law of the foreign country it could not have been entered into on that basis.

### **Countries which permit polygamy**

10326 Polygamy is permitted in

1. India **and**
2. Pakistan **and**
3. Bangladesh **and**
4. Azad Kashmir **and**
5. most West African countries, including Ghana, and Nigeria **and**
6. Kenya **and**
7. Uganda **and**
8. Yemen.

Polygamous marriages may be contracted under Islamic law, (that is the Muslim religion) and by native law and custom. The position of persons who are Hindu by religion has been changed by legislation in some countries (see DMG 10391 - 10408). Complex questions concerning marriages in the above countries should be sent to DMA Leeds for advice.

## Registration of marriage

10327 In most of these countries there is no statutory provision for the registration of marriages under Hindu law or by native law and custom. But provision is often made for registration of marriages under Islamic law. Claimants married under the Muslim or Muhammadan religion may therefore be able to produce a statutory marriage certificate (see DMG 10409 - 10423).

## Evidence of another marriage

10328 The DM should note that

1. evidence of another marriage may be given
  - 1.1 on the marriage certificate on the claimant/husband's signed statement about his marital status **or**
  - 1.2 on claims for increases of benefit for another wife **or**
  - 1.3 for children born before the date of the present marriage
2. if the claimant alleges an earlier marriage has been terminated by death or divorce of another wife before the date of the present marriage, the death or divorce should be proved.
3. if the death or divorce occurred after the date of the present marriage, the marriage, although it may be valid under the law of the country where it was celebrated, will not at all times have been monogamous, and is invalid for any period before 28.8.72.

For the purpose of **3.** the marriage is monogamous in fact from the date of termination, provided there is no other marriage. The marriage therefore has the same effect as a monogamous marriage from the later of the date of termination or 28.8.72 (see DMG 10310).

## Secondary and supporting evidence of marriage

10329 When verifying documents the DM should note that

1. all documents produced should be carefully examined to confirm their authenticity
2. they should show
  - 2.1 the seal or rubber stamp of the issuing authority **and**
  - 2.2 the date of issue, which should be the date of the event certified or a date shortly after this **and**
  - 2.3 where provision is made on the document, the amount of the fee paid

3. if the seal or rubber stamp provides for further details to be entered, for example the number of the Union Council, it should be checked that these details are complete
4. if there is any doubt about the authenticity of a document, the case should be referred to the RVU for advice.

10330 Where a statutory marriage certificate is not available, the DM must assess the validity of marriage on the secondary evidence available. An affidavit is only secondary evidence and the DM should not generally accept this without further supporting evidence. Supporting evidence which should have been obtained before the case is referred to the DM includes

1. a full description of the marriage ceremony, including the ages of the parties at marriage
2. whether both parties were present at the ceremony and, if not, who represented the missing party as proxy
3. whether proxy marriages are valid in that country
4. who performed the ceremony
5. what gifts, dowry or bride-price were exchanged (the latter applies only to an African tribal marriage by native law and custom)
6. the names of at least two witnesses to the ceremony.

In addition, the claimant may have chosen to provide details of passport entries.

**Note:** If there is any doubt about a document's authenticity, the case should be referred to the RVU for advice.

### **Original statement as to marital status altered**

10331 The DM should view a change of story with suspicion and examine it closely where

1. a claim has been disallowed because the marriage is invalid or polygamous **and**
2. the husband denies his original statement as to marital status and seeks to prove that the marriage is valid and monogamous.

The onus is on the claimant to prove that the original statement was incorrect.

10332 - 10339

## Effect of Polygamous Marriages Regulations on individual benefits

- 10340 The words marriage, husband, wife and widow describe a matrimonial relationship of a monogamous character and do not include polygamous relationships<sup>1</sup>. For example "wife" cannot be extended to include "wives" and therefore an increase of RP cannot be paid in respect of the wives of a polygamous marriage.

*1 R(G) 18/52; R(G) 1/70*

### Retirement Pension - Category A on late husband's contributions

- 10341 A woman widowed under pensionable age may use her late husband's contributions to help her qualify for Cat A RP if

1. she remains a widow up to that age **and**
2. throughout the day on which her husband died her polygamous marriage was in fact monogamous (see DMG 10310).

**Note:** See DMG Chapter 75 for guidance on pensionable age.

### Retirement Pension - Category B

- 10342 If a woman's polygamous marriage is in fact monogamous throughout the day on which the conditions for entitlement to RP on her husband's contributions are satisfied, she is entitled to Cat B RP on her husband's contributions from and including that day<sup>1</sup>. That day means

1. in the case of a woman who is already married at the time she reaches pensionable age, the date on which both she and her husband have reached pensionable age and satisfied the conditions for entitlement to RP
2. in the case of a woman who married after reaching pensionable age, the later of the date of the marriage or the date on which they both satisfy the age and retirement conditions.

**Note:** See DMG Chapter 75 for guidance on pensionable age.

*1 SS & FA (Poly Marr) Regs, reg 3(1)*

- 10343 If a woman's polygamous marriage is not in fact monogamous on the date on which she would have qualified for Cat B RP on her husband's contributions, she may qualify if her polygamous marriage later becomes in fact monogamous. Entitlement will be from and including the first day throughout which the polygamous marriage is in fact monogamous<sup>1</sup>.

*1 SS & FA (Poly Marr) Regs, reg 3(1) & (2)*

10344 Once a woman has qualified for Cat B RP on her husband's contributions because her polygamous marriage was in fact monogamous on a particular day, the marriage is treated as in fact monogamous for any period falling after that day. This applies whether or not it has at all times been or continues to be in fact monogamous<sup>1</sup>. The effect of this is that

1. even if her marriage subsequently becomes actually polygamous, it is not regarded as having come to an end **and**
2. she continues to be entitled to the pension at the married woman's rate until she is widowed or divorced, when the higher rate becomes payable.

*1 SS & FA (Poly Marr) Regs, reg 3(1)*

10345 A woman is treated as a widow for RP purposes if throughout the day on which her husband died their polygamous marriage was in fact monogamous (see DMG 10310)<sup>1</sup>. This means that if she is widowed on or after reaching pensionable age, she can qualify for Cat B RP on her late husband's contributions if the conditions for entitlement are satisfied.

*1 SS & FA (Poly Marr) Regs, reg 3(1)*

10346 A widow is entitled to Cat B RP on her late husband's contributions when she reaches pensionable age and retires if she

1. was widowed under pensionable age **and**
2. qualified for WP because her polygamous marriage was in fact monogamous throughout the day of her husband's death.

This entitlement is at the same weekly rate as the WP to which she was entitled<sup>1</sup>.

*1 SS CB Act 92, s 48B(4) & (5)*

### **Retirement Pension - Category C for wives, widows and former wives**

10347 A woman whose husband is entitled to Cat C RP is entitled to a Cat C RP at the lower rate if she is over pensionable age and satisfies the conditions for the receipt of RP<sup>1</sup>. She has entitlement if their polygamous marriage was in fact monogamous (see DMG 10310) throughout the day on which<sup>2</sup>

1. she is over pensionable age **and**
2. the prescribed conditions for the award of benefit are otherwise satisfied<sup>3</sup>.

**Note:** See DMG Chapter 75 for guidance on pensionable age.

*1 SS CB Act 92, s 78(2); 2 SS & FA (Poly Marr) Regs, reg 3(1); 3 reg 3(1)*

10348 If their marriage is not in fact monogamous on that date, she may qualify for benefit if the marriage later becomes in fact monogamous, but only from and including the first day throughout which the polygamous marriage is in fact monogamous<sup>1</sup>.

*1 SS & FA (Poly Marr) Regs, reg 3(2)*

10349 Once a woman has qualified for a pension as a married woman under the above provisions she continues to be treated as a married woman even if her marriage subsequently becomes actually polygamous. This means that her pension is paid at the married woman's rate until her husband dies, when she becomes entitled to the higher rate as his widow.

10350 A woman retains her right to a higher rate Cat C RP where

1. she has already qualified for a Cat C RP in her own right as a woman over 60 at 5.7.48 **and**
2. this has been awarded under existing provisions at the higher rate (because her polygamous marriage had not in fact at all times been monogamous).

She retains this right even though she would have qualified for only the married woman's rate if the regulations had come into force earlier.

### **Retirement Pension - Category D for women**

10351 Before 22.12.84 a woman who qualified for Cat D RP in her own right as a person over 80 was treated as a married woman if her polygamous marriage was in fact monogamous throughout the day on which the conditions for the award of that pension were satisfied (see DMG 10310). This meant that the pension was payable at the married woman's lower rate.

10352 From 22.12.84

1. there is only one rate of Cat D RP **and**
2. it is always paid at the higher rate.

This is as a result of EC legislation which aims to remove discrimination on the grounds of sex or marital status in SS matters<sup>1</sup>.

*1 Directive 79/7/EEC*

10353 - 10359



## Retirement Pension for divorced women

- 10360 A woman may use her former husband's contributions to enable her to satisfy the conditions for a Cat A BP<sup>1</sup> where
1. her last or only marriage has been terminated by divorce when over pensionable age **and**
  2. her polygamous marriage was monogamous throughout the day it ended (see DMG 10310).

*1 SS & FA (Poly Marr) Regs, reg 3(4)*

- 10361 A woman may also be able to use her former husband's contributions to qualify for Cat A RP if
1. her last or only marriage has ended by divorce when under pensionable age **and**
  2. she does not re-marry before she reaches pensionable age **and**
  3. her marriage was monogamous throughout the day on which it ended (see DMG 10310).

## Retirement Pension Increments for wives and widows

- 10362 A woman who has qualified for Cat B RP because she satisfies the conditions in DMG 10342 - 10346 also qualifies for RP Increments on her husband's insurance as a wife and widow<sup>1</sup>. But where her polygamous marriage was not monogamous on

1. the date on which she reached pensionable age **or**
2. the date of her marriage if later

the husband's period of deferment for any period before the date on which her polygamous marriage became in fact monogamous is not taken into account for the wife's Incs. But it may be taken into account for widow's Incs.

*1 SS & FA (Poly Marr) Regs, reg 3(3)*

## Incapacity Benefit

- 10363 A woman is treated as a married woman for benefit for any day throughout which her polygamous marriage is in fact monogamous (see DMG 10310) but not for any other day<sup>1</sup>.

*1 SS & FA (Poly Marr) Regs, reg 2*

## Widow's Benefit

- 10364 A widow is entitled to WB if
1. throughout the day on which her husband died their polygamous marriage was in fact monogamous (see DMG 10310) **and**
  2. the conditions for entitlement are otherwise satisfied.

This applies to women who were widowed before 28.8.72 and who would have qualified for benefit under the provisions if they had been introduced at an earlier date. This means that a decision disallowing WB on the grounds that the claimant was not the widow of the deceased because her marriage had and not at all times been monogamous, may be subject to reconsideration on the grounds of a relevant change of circumstances<sup>1</sup>.

*1 R(G) 3/58*

## Graduated retirement benefit for widows

- 10365 A woman who is treated as a widow because her polygamous marriage was in fact monogamous throughout the day on which her husband died (see DMG 10310) is entitled to GRB as his widow if the conditions for entitlement are otherwise satisfied.

## Dependency increases for benefits other than Income Support

- 10366 A person receiving a benefit paid on a daily basis is entitled to an increase of benefit for a spouse for any day throughout which their polygamous marriage is in fact monogamous (see DMG 10310) if the conditions for entitlement are otherwise satisfied, but not for any other day<sup>1</sup>.

*1 SS & FA (Poly Marr) Regs, reg 2*

- 10367 A person is only entitled to an increase of benefit for a child or children for any day for which the person

1. is entitled **or**
2. treated as entitled

to CHB for the child or children and the conditions for an increase of benefit are otherwise satisfied.

**Note:** The provision<sup>1</sup> that a person residing with a spouse is treated as entitled to any CHB to which the spouse is entitled applies for any day throughout which their polygamous marriage is in fact monogamous<sup>2</sup>. This does not however apply for any day when the polygamous marriage is not in fact monogamous.

*1 SS CB Act 92, s 122(4); 2 SS & FA (Poly Marr) Regs, reg 2*

10368 If, after determination of a claim for CHB made by one or both spouses, the person who claims CDI is not the spouse entitled to CHB, that person may be treated as entitled to CHB<sup>1</sup>. In this case both spouses may satisfy the conditions for entitlement to a dependency increase for a child on the basis of

1. actual entitlement to CHB in the case of the spouse receiving CHB **and**
2. treated entitlement to CHB in the case of the spouse not receiving CHB.

The DM should determine which claimant has priority of entitlement to the increase<sup>2</sup>.

*1 SS Ben (Dep) Regs, reg 6(1)(a); 2 SS (OB) Regs, reg 15*

10369 A person in receipt of a benefit paid on a weekly basis is entitled to an increase of benefit for a spouse for any week if throughout the payday appropriate to that week

1. their polygamous marriage is in fact monogamous (see DMG 10310) **and**
2. the conditions for the increase of benefit are otherwise satisfied.

### **IS, JSA(IB) and ESA(IR)**

10370 Whilst these provisions<sup>1</sup> do not apply to IS, JSA(IB) and ESA(IR), the question whether two or more people are polygamously married is relevant for IS, JSA(IB) and ESA(IR) purposes (see DMG Chapter 23 for guidance on IS and JSA(IB) and DMG Chapter 43 for guidance on ESA(IR)).

*1 SS & FA (Poly Marr) Regs*

10371 - 10389



# Marriage and divorce under Hindu law, Islamic law and by native law and custom

10390 Guidance about marriage and divorce under Hindu law, Islamic law and by native law and custom is given in the following paragraphs. The general form of marriage and divorce under the respective law is described first, followed by modifications of that law in specific countries. The DM should refer any case of doubt or difficulty to the RVU for advice.

## Hindu Law

10391 Hindu law permits polygamy. Divorce is not known to general Hindu law because from the Hindu point of view, marriage cannot be dissolved. But this may be modified by custom or by legislation enacted by a particular country.

10392 The essentials of a lawful Hindu marriage are

1. the parties must give their consent to the marriage
2. there must be a ceremony in the presence of witnesses at which both parties are present<sup>1</sup>.

*1 R(G) 3/74*

10393 When considering a Hindu marriage the DM should note that

1. the marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage (for example in one community the ceremony consists merely of the husband winding a piece of cloth around the bride)
2. where the ceremony includes the Saptapadi (that is the taking of 7 steps by the bridegroom and bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken
3. where the marriage is solemnized in the form of Anand Karaj, that is the going round the Granth Sahib by the bride and bridegroom together, the marriage becomes complete and binding as soon as the fourth round has been completed
4. the ceremony is usually performed by a priest of the religion
5. there is no minimum age for marriage except where the particular country's legislation makes provision
6. a couple who marry when children, do not normally start living together until they reach puberty (often not until the age of 17 or 18)

## India-The Hindu Marriage Act 1955

- 10394 This Act<sup>1</sup>, effective from 18.5.55, applies to all Hindus in India (excluding Azad Kashmir) or domiciled in India. The term Hindu includes any person who is
1. a Hindu by religion in any of its form or developments, including Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj **and**
  2. a Buddhist, Jaina or Sikh by religion.

*1 Hindu Marriage Act 1955*

- 10395 The main conditions which must be satisfied for a valid marriage are that neither party has a spouse living at the time of the marriage and that the parties are not within the degrees of prohibited relationship. If either of these conditions is not met, the marriage is void. The degrees of prohibited relationship within which two people are not allowed to marry are

1. lineal descendants (for example, parent and child) **and**
2. brother and sister, uncle and niece, aunt and nephew, cousins.

- 10396 The age rules which apply to a Hindu marriage are that

1. from 1.10.78 the minimum age of marriage for a male is 21 years and for a female 18 years<sup>1</sup>
2. before 1.10.78 the minimum age for marriage was 18 years for a male and 15 years for a female (but a bride less than 18 years must have the consent of her parent or guardian in marriage)
3. the marriage of a child below the minimum age does not make the marriage invalid.

*1 Child Marriage Restraint (Amendment) Act 1978*

- 10397 The marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage. Facilities for registering a Hindu marriage may or may not be available.

- 10398 From 18.5.55 the Act affects marriages contracted before that date so that

1. if a Hindu domiciled in India had two wives at 18.5.55 his marriage has not at all times been monogamous and is invalid for SS purposes until 28.8.72
2. from 28.8.72 DMG 10310 et seq applies
3. if a Hindu had two wives at some time before 18.5.55 but only one of the marriages subsisted at that date, that marriage is monogamous and valid for SS purposes
4. if one marriage took place before and the other after 18.5.55, or both were celebrated after 18.5.55. the second marriage is invalid.

10399 Under the Act decrees of judicial separation, decrees of nullity and decrees of divorce are pronounced by the District Courts. These Courts are presided over by a judge and a certificate signed by a Magistrate is not therefore evidence of a valid decree. When considering the issue of divorce the DM should note that

1. a petition for divorce cannot normally be presented
  - 1.1 within one year (three years, before 27.5.76) of the date of the marriage **or**
  - 1.2 within one year (two years, before 27.5.76) of the passing of a decree for judicial separation
2. the respective parties are free to marry again at once when
  - 2.1 a marriage has been dissolved by a decree of divorce **and**
  - 2.2 there is no right of appeal against the decree
3. if there is a right of appeal neither party may marry again until
  - 3.1 30 days after the decree **or**
  - 3.2 until the appeal has been dismissed if an appeal has been lodged within that 30 day period.

**Note:** Before 27.5.76, the respective parties could not marry again until one year after the decree of divorce.

10400 Although divorce was not known to general Hindu law prior to the Act, it was allowed if the custom of the particular community allowed it. But in each case

1. the custom in question had to be clearly established by evidence to the satisfaction of the court concerned **and**
2. the Indian courts always required strict proof of any custom which in any way modified the general principles of Hindu law.

10401 For a contention of divorce to succeed before 18.5.55, it must have been established by appropriate evidence and reference to authority

1. what the custom was
2. that its forms were observed **and**
3. that the Indian courts have recognised it<sup>1</sup>.

*1 R(G) 1/70*

10402 The Act preserves rights recognised by custom or conferred by special enactment to obtain the dissolution of a Hindu marriage. The term “custom” is defined in the Act as “any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family”. In the case of an alleged divorce after the Act the absence of Court recognition does not preclude proof of a Hindu custom by other means<sup>1</sup>.

*1 R(G) 1/70*

- 10403 Where a divorce by customary rites is alleged, claimants should be asked to
1. state their religion, eg Sikh or Hindu, and, if they are Hindu, to state their caste and their divorced spouse’s caste and the name of the village where the divorce took place **and**
  2. submit any documentary evidence of the divorce they may hold.

The above information and the claimants’ papers should be referred to the RVU.

### **Jamaica - The Hindu Marriage Law 1957**

- 10404 This law effective from 19.12.57, applies to marriages between parties where they each belong to and profess the Hindu faith or religion. A marriage since 19.12.57 is void if
1. either party has a wife or husband alive at the time of contracting the marriage **or**
  2. the parties are within the degrees of prohibited relationship **or**
  3. either party is under the age of 16 at the date of marriage.

- 10405 When considering DMG 10404 the DM should note that
1. a marriage must be solemnized by a marriage officer who is a priest of the Hindu religion and licensed as a Hindu marriage officer
  2. the parties must consent to marry each other in the presence of the marriage officer who solemnizes the marriage
  3. consent must be given by a parent or guardian of a party who is a minor, that is a male under 21 years of age or a female (unless a widow or divorcee) who is under 18 years of age
  4. a certificate of the marriage must be completed immediately after the ceremony and sent to the Registrar General from whom a copy may be obtained.

Marriages entered into before the law came into force on 19.12.57 may be registered under this law.



## **Kenya - The Hindu Marriage and Divorce Act 1960**

10406 This Act effective from 19.7.60 is similar to the Indian Act in DMG 10394 et seq. A marriage since 19.7.60 is void if at the date of the marriage either party had a husband or wife living. Under the Act a Hindu marriage may only be dissolved through the Courts. A divorce by customary rites, for example through a Panchayat, is no longer recognised.

## **Uganda - The Hindu Marriage and Divorce Ordinance 1961**

10407 The ordinance which is effective from 1.9.61, is similar to the Indian Act in DMG 10394 et seq. A marriage since 1.9.61 is void if at the date of the marriage either party had a husband or wife living. The DM should note that

1. the minimum ages for marriage are 18 years for a male and 16 years for a female
2. where the bride is under 18 years of age the consent of the parent or guardian in marriage must be obtained
3. the marriage is not invalidated by the fact that the parties have not attained the minimum age.

10408 The only divorce recognised by law in Uganda is that granted by the Courts. There is no customary right of divorce. The parties to a divorce may marry again as soon as the decree nisi is made absolute, which is normally six months after the date of the decree nisi.

## **Islamic law (that is, the Muslim (Muhammadan) religion)**

10409 Islamic law permits polygamy. Generally a man is allowed to have up to four wives at a time but a woman may have only one husband at a time.

10410 The minimum ages for marriage under religious law depend upon puberty and the various schools of Islamic law. But the legislation of the particular country may impose a minimum age for marriage.

10411 When considering a marriage under Islamic law, the DM should note that

1. marriage arises from a contract which must be in unmistakable terms
2. the contract is contained in the declaration and acceptance, uttered at one meeting either by the parties themselves on their own behalf or others as proxies for them and in the presence of two witnesses
3. although a priest normally officiates at the marriage contract, recites benedictions and reads from the Koran, etc, relatives often perform the ceremony
4. it is essential that the parties accept the marriage state before at least two witnesses.

10412 Registration of Muslim marriages is common and claimants may be able to produce a statutory marriage certificate or document. Among the countries which provide for registration of marriages under the Muslim religion are

1. Bangladesh
2. Gambia (The)
3. Ghana
4. Jamaica
5. Kenya
6. Malawi
7. Malaysia
8. Pakistan
9. Yemen
10. Uganda.

10413 When considering divorce under Islamic law DMs should note that

1. divorce is brought about by the pronouncement of Talaq
2. it is normally only the husband who has the right to divorce
3. whether the wife has a right to divorce is stated on the marriage certificate because the terms of her right have to be agreed at the time of the marriage
4. Talaq (“divorce thee”) must be pronounced three times in front of two witnesses, orally or in writing
5. they should normally accept a wife’s right to divorce if the necessary entry on the marriage certificate has been made unless there is evidence of a local tradition which prevents it.

10414 Where both parties were living outside GB in a country permitting Talaq, the divorce, subject to DMG 10413, should be accepted although a copy of the divorce letter should be produced. The Talaq procedure is discussed in case law<sup>1</sup>. As from 1.1.74 the pronouncement of Talaq in the United Kingdom does not have the effect of terminating a marriage. Proceedings in this country are not regarded as validly dissolving a marriage unless they take place in a court of law<sup>2</sup>.

*1 R(G) 2/75; 2 Domicile and Matrimonial Proceedings Act 1973, s 16(1); R(G) 1/94*

## **Bangladesh - the Muslim Family Laws Ordinance 1961**

10415 The position in Bangladesh is that all existing laws in force in that territory on 25.3.71 continue in force until repealed, altered or amended. The Muslim Family Laws Ordinance has not been repealed, altered or amended in Bangladesh, and the DM should assume its provisions apply to citizens of Bangladesh as they do to citizens of Pakistan.

## **Ghana - Muslim marriage and divorce**

10416 In Ghana, Muslim

1. marriages must be performed by a licensed Muslim priest **and** registered within a week of the celebration of marriage **and**
2. divorces must be registered within one month of the divorce having been effected **and**
3. marriages and divorces are not valid unless registered.

**Note:** Certificates of marriage and divorce are issued.

## **Kenya - Muslim marriage and divorce**

10417 If at the time a person contracts a marriage in Kenya in accordance with Muslim law he is already married to another wife

1. under the Kenya Marriage Ordinance **or**
2. under the law of any Christian country **or**
3. in accordance with native law and custom

the marriage under Muslim law is not recognised and is not a valid marriage.

10418 Marriage or divorce under Muslim law must be registered within 7 days of

1. the celebration of the marriage **or**
2. the pronouncement of the divorce.

An attested copy of the entry is provided free to each of the applicants for registration. Failure to register does not make a marriage or divorce invalid provided it would otherwise be valid.

## Pakistan - The Muslim Family Laws Ordinance 1961

10419 This ordinance<sup>1</sup>, effective from 15.7.61, provides for the registration of marriage and divorce. It sets out conditions for the lawful marriage and divorce of Muslims in Pakistan and Muslim citizens of Pakistan wherever they may be. Those conditions are that

1. marriages if not solemnized by the Nikah Registrar should be reported to him (a copy of the marriage certificate (Nikah Nama) can be obtained from the records kept by Union Councils)
2. even if a person fails to notify the Nikah Registrar, the marriage remains valid; the only penalty is a fine or imprisonment or both
3. the Ordinance permits polygamy, whilst still married a man can contract another marriage with the previous written consent of the Arbitration Council
4. an application for permission for another marriage has to mention
  - 4.1 the reasons for the proposed marriage **and**
  - 4.2 whether the consent of the existing wife or wives has been obtained
5. any marriage taking place without the permission of the Arbitration Council does not become invalid, though sanctions may be applied if any dowries involved are not repaid.

**Note:** On receipt of an application under 4. the Arbitration Council may grant the permission for another marriage whether or not permission has been obtained from the existing wife or wives.

*1 Muslim Family Laws Ordinance 1961*

10420 There is no provision under the Ordinance for the registration of marriages which took place before the Ordinance came into force. A Nikah Nama giving a date of marriage earlier than 15.7.61 is not authentic. The marriages of Muslims from Azad Kashmir may have been registered under the Ordinance but often are not.

10421 The provisions which apply to divorce<sup>1</sup> are that

1. as soon as possible after the pronouncement of Talaq the man must
  - 1.1 give the Chairman of the Union Council written notice that Talaq has been pronounced **and**
  - 1.2 supply a copy of the notice to the wife
2. the Chairman has to constitute an Arbitration Council within 30 days of receipt of the notice to bring about a reconciliation between the parties
3. the Arbitration Council has to take all steps necessary to bring about a reconciliation
4. if no reconciliation is made, the divorce becomes effective 90 days after the date of the original notice
5. a man may not marry until the 90 day period has expired but if he does so his marriage is not invalid but he is liable to imprisonment or a fine, or both
6. where a woman is able to divorce her husband the same provisions apply except that any remarriage within the 90 day period is invalid<sup>2</sup>.

**Note:** If the notice in 1. is not given, the person pronouncing the divorce is punishable by imprisonment or a fine, or both.

*1 Muslim Family Laws Ordinance 1961, s 7; 2 s 8*

10422 A divorce obtained by Talaq as in DMG 10421 is recognised in the UK as having been obtained by means of proceedings<sup>1</sup> (see DMG 10292). For example, a national of Pakistan habitually resident in the UK can return to Pakistan to commence proceedings under the Muslim Family Laws Ordinance.

*1 FL Act 86, s 46*

10423 An oral Talaq as in DMG 10413 is obtained otherwise than by means of proceedings (see DMG 10293). An oral Talaq would normally be invalid in Pakistan and Bangladesh because it did not comply with the registration requirements of the Muslim Family Laws Ordinance. A claimant may be able to provide expert evidence that Union Councils were not operative at the relevant time or that Bangladeshi or Pakistani case law has found unregistered divorces valid in similar circumstances to his own case. In the absence of such evidence, the DM should rely on Commissioners' decisions that an unregistered Talaq is not valid<sup>1</sup>.

*1 R(G) 2/71; R(G) 4/93; R(G) 2/00*

10424 - 10429

## **Native law and custom**

10430 Many countries recognise marriages by native law and custom and a few, such as China and Hong Kong, by customary rites. The following paragraphs consider those marriages by native law and custom in West African countries. The DM should refer the case to the RVU for advice without further enquiry where a marriage is said to have been

1. celebrated by native law and custom in a country outside West Africa **or**
2. by customary law other than in Hong Kong.

10431 Native law and custom in West African countries generally permits polygamy. Documentary evidence of a marriage by native law and custom is seldom available and the DM should consider all secondary evidence produced, for example passport entries, affidavits, the description of the marriage ceremony, etc.

10432 The essential elements of a marriage by native law and custom are

1. consent to the marriage by the bride and the parents of both parties to the marriage **and**
2. some declaration made in the presence of witnesses **and**
3. the giving and acceptance of a dowry.

Marriage may be by proxy if the customary ceremony takes place and the dowry is given and accepted by the relatives of the parties to the marriage.

10433 The form of the ceremony reflects the customs of the tribe to which the parties to the marriage belong. It usually includes feasting which can extend over a period. There is no minimum age for marriage, but marriage does not usually take place before the parties have reached puberty, although they may have been “promised” at an early age.

10434 The refund of an agreed part of the dowry by the family concerned is essential to a divorce by native law and custom. If this is not done the Customary Courts will not hold that a valid divorce had taken place, even though the divorce was by mutual consent. Either party of the marriage may initiate divorce proceedings. In some countries a divorce is valid only if granted by the Customary Courts.

## Ghana

10435 The DM should note that

1. Ghanaian law recognises marriages under native law and custom which permits polygamy
2. marriage by proxy is common
3. the bridegroom does not have to be present provided the ceremony is performed in accordance with native custom
4. the marriage becomes valid once the relatives of the bride, with the consent of the bride, accept the dowry from the relatives of the intended bridegroom
5. there is no provision for registration of marriages and no official certificates are available, although records may sometimes be kept by the Chiefs or the Native Courts
6. where persons are married in a place of worship or before a Registrar, it is unlawful for either of them during its subsistence to contract a marriage by Native law and custom
7. where persons contract a marriage by native law and custom, it is unlawful for either of them during its subsistence to marry in a place of worship or before a Registrar.

10436 A marriage may be dissolved by native law and custom. The DM should refer any such case to the RVU.

## Nigeria

10437 Nigerian law recognises marriages contracted under native law and custom which permits polygamy. The Customary Courts only regard as valid a marriage performed before witnesses and relatives in which the customary gifts are exchanged and a wedding feast is held. The essentials of a marriage under customary law are

1. consent to the marriage by the parents of both parties to the marriage and by the parties themselves
2. the giving and acceptance of a dowry or bride price, some part of the price being paid to the bride's father **and**
3. the bride being led to the bridegroom by members of her family.

10438 When considering Nigerian marriages the DM should note that

1. the ceremony is varied, sometimes it is quite lengthy, extending over some months
2. proxy marriages are valid provided there is a ceremony at which the absent party's representative (usually a relative) makes the "pledges" on his behalf
3. the Nigerian Marriage Ordinance, that is the law on civil and church marriages, provides that a person married under the Ordinance is incapable during its subsistence of contracting a native marriage and such a native marriage is thus void
4. the Nigerian Marriage Ordinance provides that a person who contracted a native marriage is incapable during its subsistence of contracting a marriage under the Ordinance and such a marriage is void
5. marriages by native law and custom are not registered nor is any official certificate available.

10439 When considering divorce in Nigeria DMs should note that

1. divorce, apart from in the City of Lagos, may be granted by a competent Customary Court after judicial proceedings
2. either party to the marriage can initiate proceedings
3. a certified true copy of the proceedings and judgement of divorce cases in Customary Courts can be obtained on payment of a small fee
4. they should refer cases to the RVU where a divorce is said to have been obtained by native law and custom in the City of Lagos or where it is claimed that there is a tribal custom of extra-judicial divorce.



## Hong Kong

10440 For people who are resident there, Hong Kong Law recognises marriages contracted in five different ways which are

1. Chinese Customary Marriage which is a marriage celebrated in conformity with the accepted rites and ceremonies of the parties' families
2. Chinese Modern Marriage in conformity with the Chinese Civil Code of 1930.
3. modern Marriages contracted in China
4. foreign Marriages including marriages contracted in China under the monogamous marriage law of the Chinese People's Government
5. registry Marriages which are marriages contracted under the Hong Kong Marriage Ordinance.

**Note 1:** For the purpose of 1. usually there is a ceremony, more or less formal, which includes a feast and a dowry for the bride and gifts may be exchanged.

**Note 2:** For the purpose of 2. there must be an open ceremony (not defined) in the presence of two witnesses. From 7.10.71 all such marriages where the parties had capacity are validated<sup>1</sup>.

*1 Hong Kong Marriage Reform Ordinance 1971*

10441 The minimum age for marriage is 16. Registration was not compulsory, except for Registry marriages, before 7.10.71. From that date all marriages must comply by being registered<sup>1</sup>. Polygamy was allowed in customary, modern and reputed marriages. From 7.10.71 all marriages are to be monogamous.

*1 Hong Kong Marriage Ordinance 1971*

10442 Some Chinese regard themselves as married by habit and repute, no actual ceremony having taken place. The DM should refer these cases to the RVU.

10443 Divorce in unregistered marriages was by mutual consent, sometimes in the presence of witnesses. Occasionally there may be a declaration in writing. The DM should refer all cases to the RVU. From 7.10.71 divorce is obtainable only through the Courts or by giving notice to a designated public officer.

10444 - 10459



# Evidence of death

## Proof of death

10460 Death is usually proved by registration of the event. But if the alleged death has occurred abroad and a certified extract from the Registrar of Deaths is unobtainable, other evidence can be accepted if it is enough to prove

1. the date of the event **and**
2. the identity of the deceased.

**Note:** Notifications may be received on-line from the General Register Office and Tell Us Once.

10461 Where death is proved by

1. a statutory certificate **or**
2. reference to the Registrar General **or**
3. a notification issued by the
  - 3.1 Navy, Army or Air Department of the Ministry of Defence **or**
  - 3.2 Registrar General of Shipping and Seamen

it should normally be accepted provided that there is no dispute as to the identity of the deceased.

**Note:** In a case where the date of death is not established and the documentary evidence shows both the date when the deceased was last seen and the date when the body was found the DM should make every effort to establish a likely date of death.

## Inquest held

10462 In **England and Wales**, when a body is found the Coroner is always informed. The subsequent inquest may establish that death occurred some date before discovery of the body. If there has been an inquest the DM should consider obtaining a copy of the Coroner's findings. Other evidence may be a certificate from a doctor who examined the body certifying that from its condition death must have occurred at an earlier specified date.

10463 In **Scotland** fatal accident inquiries are the responsibility of the Procurator Fiscal for the district with which the circumstances of death appear to be most closely connected. The DM should address inquiries to the Procurator Fiscal, or if an inquiry has been held, to the Sheriff Clerk of the Sheriff Court where the Inquiry took place.

## Delay in issue of a statutory certificate

- 10464 If there has been a delay in the issue of a statutory certificate, for example if inquest proceedings are adjourned, but there is clear evidence of death such as press notices, police statements, etc, and no doubt as to identity, the Secretary of State may accept such evidence.

## Coroner's verdict

- 10465 A Coroner's finding of a date of death is not binding on the statutory authorities. The DM
1. should accept the Coroner's finding if there is no contradictory evidence
  2. may accept a different date of death where the evidence clearly indicates that the finding is incorrect.

## Presumption of death by a Court of Law

- 10466 In **England and Wales** where a Court of Law has presumed death, the DM should normally accept this as sufficient for death to be presumed for SS purposes. If the DM holds evidence which was not before the court throwing doubt on the presumption the DM should examine the papers critically before reaching a decision different from that of the court.
- 10467 The DM should note that
1. under English probate law, leave may be given to swear the death (on the basis that death is presumed) for probate purposes (see DMG 10468)
  2. a decree of presumption of death and dissolution of marriage may also be granted by the divorce division of the High Court<sup>1</sup> (see DMG 10185 - 10186).

*1 Mat Causes Act 73, s 19*

- 10468 For the purpose of DMG 10467 1. the granting of probate does not necessarily involve any finding of fact on the court's part, but leave to swear death is not given lightly. Probate granted under these circumstances is not necessarily accepted as evidence of death. However, in most cases where evidence is sufficient to obtain a grant of probate this should be enough for the DM to accept that death may be presumed

10469 In **Scotland** a decree of presumption of death is conclusive for all purposes<sup>1</sup>, and is binding on the DM. If further information comes to light which throws doubt on the presumption the Department may apply for a variation of the decree through the Lord Advocate.

**Note:** Any payment of benefit made from the date of death to the date of the order of variation is treated as properly paid and as a result no overpayment will have occurred. The effect of a decree of presumption of death is considered at some length in case law<sup>2</sup>.

*1 Presumption of Death (Scotland) Act 1977; 2 R(G) 1/80*

## **Presumption of death on available evidence**

10470 Where death cannot be accepted under DMG 10460 - 10469 the DM should weigh the evidence to decide where the balance of probability lies<sup>1</sup>. The DM should consider

1. the circumstances of the person's disappearance (eg; exceptionally severe weather conditions, shipping disaster etc)
2. their age and occupation
3. their mode of living
4. their state of health at the date of disappearance
5. whether they had any motive for disappearing, for example financial embarrassment, threat of court proceedings, desertion from forces, or reason for concealing whereabouts from spouse (for example a maintenance order)
6. the period that has elapsed since they were last seen or heard of
7. what steps have been taken to trace them
8. whether any person who would be expected to hear from them or of them if they were alive has in fact heard from them or of them since they left home; if so, where and whether there was any clue to their disappearance in their last letter, etc.

The DM, if satisfied that the fact of death can be accepted, will need to establish the date of death.

*1 R(G) 4/57*

10471 Where the circumstances of the disappearance

1. point to a particular day, that day should be presumed to be the date of death, for example where the person had fallen overboard from a ship at sea
2. do not point to a particular date of death but point to a period within which death, probably occurred, the DM should presume the latest date in that period to be the date of death.

10472 - 10489

## Presumption of death after seven years

### England and Wales

10490 Where there is insufficient evidence for death to be presumed under DMG 10470 - 10471, the DM may presume death if satisfied that a person has not been seen or heard of for seven years by the people who would be expected to have seen or heard of that person. The seven year rule is a method of establishing that a person is dead not<sup>1</sup> the date of a person's death.

**Note:** The relevant case law was made when a ten year rule applied.

*1 CG 73/50(KL)*

10491 After establishing as in DMG 10490 that the person concerned is dead, the DM should determine the date of death. The DM should decide the question whether a person is dead at a given time on all the evidence available. In particular the DM should consider whether because of

1. the circumstances in which the person was last seen **and**
2. the enquiries made at the time

it is more likely than not that the death occurred at a date earlier than the expiration of seven years, for example the date of disappearance.

### Scotland

10492 Where death cannot be accepted under DMG 10460 - 10469 the DM may, in the absence of a decree of court, determine whether a person has died and the date of death<sup>1</sup>. This applies if the date of presumption of death which the interested party seeks to show is on or after 1.3.78 and only if the

1. missing person was domiciled in Scotland on the date on which they were last known to be alive or had been habitually resident there throughout the period of one year ending with that date<sup>2</sup> **or**
2. the interested party
  - 2.1 is the spouse of the missing person **and**
  - 2.2 is domiciled in Scotland at the date of raising the question with the DM or was habitually resident there throughout the period of one year ending with that date<sup>3</sup>.

**Note:** Where the missing person is stated to have died before 1.3.78 the DM is bound by Scottish common law then relevant<sup>4</sup>.

*1 Presumption of Death (Scotland) Act 1977, s 2(3); R(G) 1/80;*

*2 Presumption of Death (Scotland) Act 1977, s 1(3)(a); 3 s 1(3)(b); 4 R(G) 1/80*

10493 Where the DM is satisfied that the circumstances of the case warrant making a determination of the date of death as in DMG 10492 the DM should decide<sup>1</sup> on the balance of probabilities (see DMG 10470) either that

1. it has been shown that the claimant has died (see DMG 10494) **or**
2. the missing person has not been known to be alive for a period of at least seven years (see DMG 10495 - 10496) .

*1 Presumption of Death (Scotland) Act 1977, s 2(3)*

10494 Where DMG 10493 **1.** applies the DM should

1. determine the date of death **and**
2. where death has been shown but it is uncertain when, within any period of time, the missing person died, find that the person died at the end of that period.

10495 Where DMG 10493 **2.** applies the DM should find that the missing person died at the end of the day occurring seven years after the date on which the person was last known to be alive.

10496 Also, in applying DMG 10493 **2.** it is still necessary to show that the person is a missing person<sup>1</sup>. This involves considering the circumstances of the disappearance of the person claimed to be missing. The circumstances of the disappearance may also be relevant in considering the weight to be given to any evidence that the person is known to be alive<sup>2</sup>.

*1 Presumption of Death (Scotland) Act 1977, s 1; 2 R(G) 1/80*

## **Death in a country which permits polygamy**

10497 The DM should note that

1. claimants often cannot produce documentary evidence of a wife's death
2. a death certificate showing the death was registered sometime after the death should be checked for authenticity since these are often false
3. a document issued at the time of death, for example a telegram or letter from relatives notifying the death, is more likely to be genuine (see DMG 10498).

10498 If the evidence in DMG 10497 **3.** is not held a statement from a person who

1. was present at the death or funeral **and**
  2. can state that the first wife was dead **and**
  3. can state that the first wife had died before the husband had married again
- is acceptable as secondary evidence.

10499 If there is any doubt about the wife's death, the case should be referred to the RVU.

10500 - 10599





# Gender Recognition

## Introduction

10600 Legislation<sup>1</sup> provides a legal framework that gives transsexual people with legal recognition in their acquired gender. The legislation took effect on 4.4.05.

*1 GR Act 04*

10601 From

1. 10.12.14 in England and Wales **and**
2. 16.12.14 in Scotland

a married person can change their gender without ending their marriage<sup>1</sup>. In order to receive a full GRC a person's spouse has to consent to the marriage continuing after its issue.

*1 GR Act 04, s 4; 2 s 4(2)(b)*

10602 - 10604

## Gender Recognition Certificate

10605 A person aged 18 or over may make an application for a GRC on the basis of

1. living in the other gender<sup>1</sup> **or**
2. having changed gender under the law of a country or territory outside the UK<sup>2</sup>.

Applications are determined by a GRP<sup>3</sup>.

*1 GR Act 04 s 1(1)(a); 2 s 1(1)(b); 3 s 1(3)*

10606 - 10609

## The application process

10610 There are four ways of obtaining a GRC, these are described below. In all cases an application must include a statutory declaration as to whether or not the applicant is married or a civil partner<sup>1</sup>.

*1 GR Act 04, s 3(6)(a) & 3B(6)(a)*

10611 If the applicant is married, an application must include

1. a statutory declaration as to whether the marriage is a marriage under the law of
  - 1.1 England and Wales **or**
  - 1.2 Scotland
  - 1.3 Northern Ireland
  - 1.4 a country or territory outside the UK<sup>1</sup> **and**

2. if the marriage is a protected marriage a statutory declaration by
  - 2.1 the applicant's spouse that they consent to the marriage continuing after the issue of a full GRC<sup>2</sup> **or**
  - 2.2 the applicant that their spouse has not made the statutory declaration in 2.1<sup>3</sup>.

**Note 1:** If 2.1 applies, the GRP must give the spouse notice that the application has been made<sup>4</sup>.

**Note 2:** See DMG 10656 for guidance on the meaning of protected marriage.

*1 GR Act 04, s 3(6A) & 3B(7); 2 s 3(6B)(a) & 3B(8)(a); 3 s 3(6B)(b) & 3B(8)(b); 4 s 3(6C) & 3B(9)*

## Fast track applications

- 10612 If an application on the grounds given in DMG 10605 1. is made during the two years beginning with 4.4.05, it can be granted if<sup>1</sup> the GRP is satisfied that the applicant
1. has or has had gender dysphoria, or (in the case of an application made after 3.10.05 has undergone surgical treatment for the purpose of modifying sexual characteristics<sup>2</sup>) **and**
  2. has lived in the acquired gender throughout the period of **six** years ending with the date on which the application is made<sup>3</sup> **and**
  3. intends to continue to live in the acquired gender until death **and**
  4. has provided certain required evidence.

**Note:** For the purpose of 2. a statutory declaration that this has happened is required.

*1 GR Act 04, s 27; 2 s 27(2); 3 s 27(3)*

## The evidence requirements

- 10613 An application under DMG 10612 made within the six months beginning on 4.4.05 must include<sup>1</sup> a report made by

1. a registered medical practitioner **or**
2. a chartered psychologist practising in the field of gender recognition.

*1 GR Act 04 s 27(5) & s 3(1)*

- 10614 An application under DMG 10612 based on the applicant having (or having had) gender dysphoria must include<sup>1</sup> a report made by

1. a medical practitioner practising in the field of gender dysphoria **or**
2. a chartered psychologist practising in the field of gender dysphoria which include details of the diagnosis of the applicant's gender dysphoria.

*1 GR Act 04, s 27(5) & s 3(2)*

10615 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
2. treatment for the purpose of modifying sexual characteristics has been prescribed or is planned

the reports referred to in DMG 10614 must include<sup>1</sup> details of that treatment.

*1 GR Act 04, s 27(5) & s 3(3)*

10616 -10629

## Overseas recognition

10630 A person may also apply on the basis of having changed gender under the law of a country or territory outside the UK<sup>1</sup>.

*1 GR Act 04, s 1(1)(b)*

10631 With this type of application, the GRP must grant the application if it is satisfied that<sup>1</sup>

1. the country or territory under the law of which the applicant has changed gender is an approved country or territory **and**
2. certain evidence requirements are met<sup>1</sup> (see DMG 10633).

*1 GR Act 04, s 1(2); s 3(5)*

10632 An "approved country or territory" means one prescribed as such by an order made by the Secretary of State<sup>1</sup>. A list of approved countries/territories is given at Appendix 3 to this Chapter.

*1 GR Act 04, s 2(4); GR (AC & T) Order*

## The evidence requirements

10633 An application under DMG 10605 **2.** must include<sup>1</sup> evidence that the applicant has changed gender under the law of an approved country.

*1 GR Act 04 s 3(5)*

10634 - 10649

## Standard applications

10650 The GRP will not consider standard applications until 4.10.05. A standard application may be made if the GRP is satisfied that the applicant<sup>1</sup>

1. has or has had gender dysphoria **and**
2. has lived in the acquired gender throughout the period of **two** years ending with the date on which the application is made **and**
3. intends to continue to live in the acquired gender until death **and**
4. complies with certain evidence requirements.

*1 GR Act 04, s 2(1)*

## The evidence requirements

10651 A standard application must include<sup>1</sup>

1. a report made by
  - 1.1 a registered medical practitioner practising in the field of gender dysphoria **and**
  - 1.2 another registered medical practitioner (who may, but need not, practise in that field) **or**
2. a report made by
  - 2.1 a chartered psychologist practising in the field of gender dysphoria **and**
  - 2.2 a registered medical practitioner (who may, but need not, practise in that field).

*1 GR Act 04, s 3(1)*

10652 The reports made by a registered medical practitioner or a chartered psychologist must include<sup>1</sup> details of the diagnosis of the applicant's gender dysphoria.

*1 GR Act 04, s 3(2)*

10653 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
  2. treatment for that purpose has been prescribed or planned for the applicant
- at least one of the reports required under DMG 10651 **1.** or **2.** must include<sup>1</sup> details of that treatment.

*1 GR Act 04, s 3(3)*

10654

## Applications on alternative grounds

10655 Applications on alternative grounds can be made from 10.12.14 in England and Wales and 16.12.14 in Scotland. Applications must state that it is made on alternative grounds and it must be granted if the GRP is satisfied that

1. the applicant was a party to
  - 1.1 a protected marriage **or**
  - 1.2 a protected civil partnershipon or before the date of the application **and**
2. the applicant
  - 2.1 was living in the acquired gender for **six** years before
    - 2.1.a 10.12.14 in England and Wales **or**

- 2.1.b** 16.12.14 in Scotland **and**
- 2.2** continued to live in the acquired gender until the date of the application **and**
- 2.3** intends to continue to live in the acquired gender until death **and**
- 3.** the applicant
  - 3.1** has or has had gender dysphoria **or**
  - 3.2** has undergone surgical treatment for the purpose of modifying sexual characteristics **and**
- 4.** the applicant is ordinarily resident in England, Wales or Scotland **and**
- 5.** complies with certain evidence requirements<sup>1</sup>.

*1 GR Act 04, s 3A*

### **Meaning of protected marriage**

10656 A protected marriage is a marriage made under the law of

- 1.** England and Wales **or**
- 2.** a country or territory outside the UK<sup>1</sup>.

**Note:** A protected Scottish marriage has the same meaning<sup>2</sup>.

*1 GR Act 04, s 25; 2 Marr & CP (Scot) Act 14, s 30(7)*

### **Meaning of protected civil partnership**

10657 A protected civil partnership is a civil partnership under the law of England and Wales<sup>1</sup>.

**Note:** A protected Scottish civil partnership has the same meaning<sup>2</sup>.

*1 GR Act 04, s 25; 2 Marr & CP (Scot) Act 14, s 30(7)*

### **The evidence requirements**

10658 An application on alternative grounds must include a report made by

- 1.** a registered medical practitioner **or**
- 2.** a registered psychologist practising in the field of gender dysphoria<sup>1</sup>.

*1 GR Act 04, s 3B(2)*

10659 If the application is based on the applicant having, or having had, gender dysphoria

- 1.** for the purpose of DMG 10658 **1.**, the registered medical practitioner has to be practising in the field of gender dysphoria **and**
- 2.** the report made by a registered medical practitioner or a chartered psychologist must include details of the diagnosis of the applicant's gender dysphoria<sup>1</sup>.

*1 GR Act 04, s 3B(3)*

10660 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
  2. treatment for that purpose has been prescribed or planned for the applicant
- the report required under DMG 10658 must include details of that treatment<sup>1</sup>.

*1 GR Act 04, s 3B(4)*

10661 – 10664

## Foreign gender change

10665 Unless DMG 10667 applies, the general rule<sup>1</sup> is that a person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the UK.

*1 GR Act 04, s 21(1)*

10666 In Scotland and Northern Ireland<sup>1</sup>, in accordance with DMG 10665, a person is not to be regarded as married by reason of having entered into a marriage following recognition of a gender change under the law of a country outside the UK<sup>2</sup>.

*1 GR Act 04, s 21(1A); 2 s 21(2)*

10667 However a national of another country within the EU or EEA who

1. has been granted legal recognition of their gender change under the law of that country **and**
2. has an enforceable right under EC law to recognition of their acquired gender in the UK

will not need to make an application under DMG 10630<sup>1</sup>.

*1 GR Act 04, s 21(6)*

Full gender recognition certificate

10668 The GRP will issue a full GRC<sup>1</sup> where the applicant is

1. neither a civil partner nor married **or**
2. a party to a protected marriage and their spouse consents to the marriage continuing after the issue of a full GRC **or**
3. a party to a protected civil partnership and the GRP has decided to issue a full GRC to the other civil partner.

**Note 1:** See DMG 10656 for guidance on the meaning of protected marriage and DMG 10657 for guidance on the meaning of protected civil partnership.

**Note 2:** If a full GRC is issued, the GRP must notify the applicant's spouse of its issue<sup>2</sup>.

**Note 3:** Where **3.** Applies the GRP must issue both certificates on the same day<sup>3</sup>.

*1 GR Act 04, s 4(2); 2 s 4(3A); 3 s 5B(3)*

10669

## **Interim gender recognition certificate**

10670 The GRP will issue an interim GRC<sup>1</sup> if the applicant is a party to

1. a protected marriage and their spouse does **not** consent to the marriage continuing after the issue of a full GRC **or**
2. a marriage which is not a protected marriage **or**
3. a protected civil partnership and the other civil partner has **not** made an application for a GRC **or**
4. a protected civil partnership and the GRP decides not to issue a full GRC to the other civil partner **or**
5. a civil partnership which is not a protected civil partnership.

**Note:** See DMG 10656 for guidance on the meaning of protected marriage and DMG 10657 for guidance on the meaning of protected civil partnership.

*1 GR Act 04, s 4(3)*

## **Full gender recognition certificate issued after interim certificate**

### **Applicant married**

10671 If a person has an interim GRC, the GRP must issue a full GRC if

1. the person was a party to
  - 1.1 a protected marriage when the interim GRC was issued **or**
  - 1.2 a civil partnership when the interim GRC was issued and that civil partnership has been converted into a marriage **and**
2. other conditions are met<sup>1</sup>.

**Note:** See DMG 10656 for guidance on the meaning of protected marriage.

*1 GR Act 04, s 4A*

### **Applicant no longer married or civil partner**

10672 A court which

1. makes absolute a decree of nullity granted on the ground that an interim GRC has been issued to a party to the marriage or a civil partner **or**
2. grants in Scotland, a decree of
  - 2.1 divorce in respect of a marriage **or**

**2.2** dissolution in respect of a civil partnership  
on the ground that an interim GRC has been issued  
must, on doing so, issue a full GRC<sup>1</sup>.

*1 GR Act 04, s 5(1) & 5A(1)*

10673 - 10679

## **Consequences of issue of certificate**

10680 Where a full GRC is issued to a person, that person's gender becomes for all purposes the acquired gender<sup>1</sup>.

*1 GR Act 04, s 9(1)*

## **Parentage**

10681 The fact that a person's gender has become the acquired gender does not affect the status of the person as the father or the mother of a child<sup>1</sup>.

*1 GR Act 04, s 12*

10682 - 10699



# Civil partnerships

## Introduction

10700 Legislation<sup>1</sup> provides a legal framework that enables recognition of same sex relationships through the status of civil partner and the new legal relationship of civil partnership. This legislation took effect on 5.12.05.

*1 CP Act 04*

10701 A civil partnership is a relationship between two people of the same sex which is formed when they register as civil partners. The law also provides that a person can be treated as having formed a civil partnership by virtue of having registered certain overseas relationships. A civil partnership ends only on death, dissolution or annulment.

10702 - 10709

## Eligibility

### England and Wales

10710 In England and Wales two people are **not** eligible<sup>1</sup> to register as civil partners if

1. they are not of the same sex
2. either of them is already a civil partner or lawfully married
3. either of them is under 16
4. they are within prohibited degrees of relationship<sup>2</sup> (see DMG Chapter 11, Appendix 2).

**Note:** Where **3.** applies 16 and 17 year olds must have the consent of parents or other appropriate persons (such as a guardian).

*1 CP Act 04, s 3; 2 Sch 1, Part 1*

### Scotland

10711 In Scotland, two people are **not** eligible<sup>1</sup> to register as civil partners if

1. they are not of the same sex
2. either of them is married or already in a civil partnership
3. either of them is under 16
4. they are related in a forbidden degree (see DMG Chapter 11, Appendix 2)
5. either of them is incapable of
  - 5.1 understanding the nature of civil partnership **or**
  - 5.2 validly consenting to the formation of a civil partnership.

*1 CP Act 04, s 86*

10712 - 10714

## Registration

### England and Wales

10715 Each registration authority (a county council or equivalent) will designate civil partnership registrars. Under the standard procedure, each partner must give notice of the proposed civil partnership to a registration authority and at the same time make declarations as to their eligibility<sup>1</sup>. There will follow a minimum 15 day waiting period during which eligibility is confirmed<sup>2</sup>.

*1 CP Act 04, s 8; 2 s 10 & 11*

10716 Two people are to be regarded as having registered as civil partners once each of them has signed the civil partnership document<sup>1</sup>

1. at the invitation of, and in the presence of, a civil partnership registrar **and**
2. in the presence of each other and two witnesses.

The civil partnership registrar and the two witnesses must also sign the document and the civil partnership is then registered<sup>2</sup>. A civil partnership schedule is then issued<sup>3</sup>.

*1 CP Act 04, s 2(1); 2 s 2(3); 3 s 14*

### Scotland

10717 The Registrar General will appoint district registrars and may appoint one or more assistant registrars in each district<sup>1</sup>. In order to register as civil partners each of the intended partners must submit a notice to the district registrar and must make and sign the necessary declaration as to their eligibility<sup>2</sup>. The date of registration will be a date more than 14 days after the publication of the notice of the proposed civil partnership by the district registrar<sup>3</sup>.

*1 CP Act 04, s 87; 2 s 88; 3 s 90*

10718 Two people are to be regarded as having registered as civil partners once each of them has signed the civil partnership schedule in the presence of<sup>1</sup>

1. each other **and**
2. two witnesses both of whom have attained the age of 16 **and**
3. the authorised registrar

who are present at the registration office or place agreed<sup>2</sup>. The authorised registrar and the two witnesses must also sign the civil partnership schedule<sup>3</sup> and the civil partnership is then registered<sup>4</sup>.

*1 CP Act 04, s 85(1); 2 s 93; 3 s 85(4); 4 s 95(2)*

10719

## Void and voidable

### England and Wales

10720 Where two people register as civil partners in England and Wales, the civil partnership will be void if<sup>1</sup>

1. at the time of registration they were not eligible (see DMG 10710) **or**
2. at the time of registration they both knew
  - 2.1 that due notice of proposed civil partnership had not been given
  - 2.2 that the civil partnership document had not been duly issued
  - 2.3 that the civil partnership document is void because registration occurred outside the relevant time limit
  - 2.4 that the place of registration was not the specified place
  - 2.5 that a civil partnership registrar was not present **or**
3. the civil partnership document is void because one of the intended civil partners is a child (under the age of 18) and the issue of the civil partnership document has been forbidden by a person whose consent is required for the child to form a civil partnership.

**Note:** If a void civil partnership is converted to a marriage, that marriage is also void. See DMG 10250 et seq for guidance on void marriages.

*1 CP Act 04, s 49*

10721 A civil partnership is voidable if<sup>1</sup>

1. either partner did not consent to its formation (whether as a result of duress, mistake, unsoundness of mind or otherwise)
2. at the time of the formation of the civil partnership, either partner, though capable of giving valid consent, was suffering from mental disorder of such a kind or to such extent as to be unfitted for civil partnership
3. at the time of the formation of the civil partnership, the respondent was pregnant by some person other than the applicant
4. after the formation of the civil partnership, an interim GRC under specific legislation has been issued to either partner
5. the respondent is a person whose gender at the time of its formation has become the acquired gender under specific legislation.

**Note:** If a voidable civil partnership is converted to a marriage, that marriage is also voidable. See DMG 10260 et seq for guidance on void marriages.

*1 CP Act 04, s 50*

## Scotland

10722 Where two people register in Scotland as civil partners the civil partnership is void only if<sup>1</sup>

1. they were not eligible to do so **or**
2. although they were eligible, either of them did not validly consent to the formation of the partnership.

**Note:** If a void civil partnership is converted to a marriage, that marriage is also void. See DMG 10250 et seq for guidance on void marriages.

*1 CP Act 04, s 123*

10723 - 10729

## Dissolution

### England and Wales

10730 Either civil partner may apply to a court for a dissolution order on the ground that the civil partnership has broken down irretrievably<sup>1</sup>.

*1 CP Act 04, s 44*

10731 The applicant must satisfy the court of one or more facts<sup>1</sup>. Those facts are

1. that the other partner has behaved in such a way that the applicant cannot reasonably be expected to live with them<sup>2</sup>
2. that
  - 2.1 the couple have lived apart for a continuous period of two years immediately preceding the application **and**
  - 2.2 the other partner consents to a dissolution order being made<sup>3</sup>
3. that the applicant and the other partner have lived apart for a continuous period of five years immediately preceding the application<sup>4</sup>
4. that the other partner has deserted the applicant for a continuous period of two years immediately preceding the application<sup>5</sup>.

*1 CP Act 04, s 44(3) & (5); 2 s 44(5)(a); 3 s 44(5)(b); 4 s 44(5)(c); 5 s 44(5)(d)*

## Scotland

10732 In Scotland an action for the dissolution of a civil partnership may be brought in the Court of Session or in the sheriff court. The person taking the action is called "the pursuer" and the other partner is "the defender". The court may grant a dissolution decree if it is established that the civil partnership has broken down irretrievably.

10733 Irretrievable breakdown is taken to be established if<sup>1</sup>

1. since the date of registration, the defender has behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender
2. the defender has wilfully and without reasonable cause deserted the pursuer and during a continuous period of two years immediately succeeding the desertion
  - 2.1 there has been no cohabitation between the parties **and**
  - 2.2 the pursuer has not refused a genuine and reasonable offer by the defender to continue to stay together
3. there has been no cohabitation between the civil partners at any time during a continuous period of two years after the date of registration and immediately preceding the bringing of the action, the defender consents to the dissolution
4. there has been no cohabitation between the civil partners at any time during a continuous period of five years after that date and immediately preceding the bringing of the action.

*1 CP Act 04, s 117(3)*

10734 - 10739

## Presumption of death orders

### England and Wales

- 10740 In England and Wales on an application by a civil partner, a court may make a presumption of death order if it is satisfied that reasonable grounds exist for supposing that the other partner is dead<sup>1</sup>.

*1 CP Act 04, s 55*

- 10741 In any proceedings before the court, the fact that

1. for a period of seven years or more the other civil partner has been continually absent from the applicant **and**
2. the applicant has no reason to believe that the other partner has been living within that time

is evidence that the other civil partner is dead until the contrary is proved<sup>1</sup>.

*1 CP Act 04, s 55(2)*

### Scotland

- 10742 In Scotland, where a person who is missing is thought to have died or has not been known to be alive for a period of at least seven years the Court of Session can issue a decree of presumption of death on an action of declarator<sup>1</sup> if

1. the pursuer of the action and the missing person were registered as civil partners in Scotland **and**
2. it appears to the court to be in the interest of justice to assume jurisdiction in the case<sup>2</sup>.

*1 Presumption of Death (Scotland) Act 1977, s 1(1); 2 s 1(3)*

10743 – 10749

## Overseas relationships

10750 In certain circumstances two people who have registered a relationship outside of the UK are treated as having formed a civil partnership.

### Definition

10751 An "overseas relationship" is<sup>1</sup> a relationship which is

1. either a "specified relationship" (see DMG 10752) or one which meets the general conditions (see DMG 10760) **and**
2. registered with a responsible authority in a country or territory outside the UK by two people
  - 2.1 who were of the same sex at the date of registration **and**
  - 2.2 neither of whom is already a civil partner or lawfully married.

**Note:** Marriage between two people of the same sex is not an overseas relationship<sup>2</sup>.

*1 CP Act 04, s 212; 2 s 212(1A)*

### Specified relationships

10752 A specified relationship is one set out in legislation<sup>1</sup>. Appendix 4 to this Chapter lists the countries and types of relationship that constitute a specified relationship.

**Note:** Advice may be sought from the RVU on whether the evidence provided shows that there is a specified relationship, properly registered.

*1 CP Act 04, s 213 & Sch 20*

10753 The Secretary of State has the power to amend the list of specified relationships by means of Statutory Instrument<sup>1</sup>.

*1 CP Act 04, s 213*

10754 - 10759

### General conditions

10760 Couples who have registered relationships overseas which are not specified relationships may also be treated as civil partners provided the relationship meets the general conditions<sup>1</sup>. These are that, under the law of the relevant country

1. the relationship may not be entered into if either party is already in a registered relationship or lawfully married **and**
2. the relationship is of indeterminate duration **and**
3. the effect of entering into the relationship is that the parties are
  - 3.1 treated as a couple either for general or specified purposes **or**
  - 3.2 treated as married.

**Note:** DMs should seek advice from the RVU before deciding whether a relationship meets the general conditions and whether it is properly registered.

*1 CP Act 04 s 214*

10761 - 10999





# Appendix 1

## Records of birth in Pakistan and Bangladesh – (see DMG 10097)

Prior to the operation of the Basic Democracy Order 1959 there was no statutory system of registration of births. Although there was a voluntary system under which in rural areas the village chowkidar would when notified inform the tehsildar for the administrative area (now known as police) this rarely occurred. In urban areas the Municipalities and Cantonment Board Authorities were responsible but it would be unlikely for illiterate parents to notify a birth.

Consequently there are very few contemporaneous records of birth maintained in respect of periods prior to 1960 even in large towns.

Where a person born prior to 1960 seeks a certificate of birth in a rural area he applies to the Union Council Chairman of the place of his birth. Affidavits and declarations are usually obtained from two persons who are often friends or relatives. The date of birth as confirmed by these persons is then entered in the record maintained under the Basic Democracy Order 1959 and copies of this entry are given as a certificate of birth.

Because under the old system registrations were passed to the administrative officer for the area, and in the belief that it gives some measure of authenticity, some Union Council Chairmen ask the local police officer to put the Police Station stamp on the certificate. The Police Station stamp should not be taken to indicate that the date of birth has been confirmed by records held at the Police Station nor that the police authority is satisfied as to the veracity of statements made in declarations or affidavits.

The document produced by the claimant which purports to be a certificate of birth is not a true copy of a registration of birth made contemporaneously with the birth.



## **Appendix 2**

### **Records of birth in Azad Kashmir – (see DMG 10097)**

There is no statutory system for the registration of birth in Azad Kashmir but the arrangements under the Basic Democracy Order 1959 are generally followed on a voluntary basis.

Prior to 1947 the village chowkidar might have been informed of a birth in his village. If so he was expected to notify the tehsildar for the administrative area (now police authority) but in many cases he failed to do so. During the 1947 war all records held by the police authorities were lost or destroyed and therefore there are no contemporaneous records prior to 1947 in rural or municipal areas. From 1962 Union Councils were required to pass records of birth to the District Medical Officer but from 1969 records were required To Whom It May Concern: be sent to the Police authority for the area.

A certificate that the date of birth is confirmed by records held by a District Medical Officer does not imply that the District Medical Officer has made enquiries about the date of birth or that he has made any medical examination of the person concerned to establish his age.

When a person born prior to 1948 seeks a certificate of birth he applies to the Union Council Chairman of the place of his birth. Affidavits or declarations are usually obtained from two persons who are often friends or relatives. The date of birth as confirmed by these persons is then entered in the record of registration of births for the current year and notified to the local Police Station. The Union Council Chairman will then give a certified copy of this registration of birth and in some cases it may be taken to the Police Station for insertion of the Police Station stamp. This stamp should not be taken to indicate that the date of birth has been confirmed by records held at the Police Station nor that the police authority is satisfied as to the veracity of statements made in declarations or affidavits.

The document produced by the claimant which purports to be a certificate of birth is not a true copy of a registration of birth made contemporaneously with the birth.



## Appendix 3

### Gender Recognition - List of approved countries and territories (see DMG 10632)

The Australian territories of Australian Capital Territory and Northern Territory and the states of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia,

Austria,

Belgium,

Bulgaria,

the Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan and the Yukon Territory,

Croatia,

Republic of Cyprus,

Czech Republic,

Denmark,

Estonia,

Finland,

France,

Germany,

Greece,

Iceland,

Italy,

Japan,

Liechtenstein,  
Luxembourg,  
Malta,  
the Federal District of Mexico,  
Moldova,  
Netherlands,  
New Zealand,  
Norway,  
Poland,  
Romania,  
Russian Federation,  
Serbia,  
Singapore,  
Slovakia,  
Slovenia,  
South Africa,  
South Korea,  
Spain,  
Sweden,  
Switzerland,  
Turkey,  
Ukraine,

the District of Columbia and all of the states of the United States of America except for Idaho, Ohio, Tennessee and Texas,

Uruguay.





## Appendix 4

### Civil partnerships - specified relationships - (see DMG 10752)

A relationship is a specified relationship as defined in DMG 10752 if it is registered in a country or territory given in the first column below and fits the description given in the second column

<b>Country or Territory</b>	<b>Description</b>
Andorra	unió estable de parella
Argentina	marriage
Argentina:	
Autonomous City of Buenos Aires	unión civil
Australia: Australian Capital Territory	civil partnership
Australia: New South Wales	a relationship registered under the Relationships Register Act 2010
Australia: Queensland	civil partnership
Australia: Tasmania	significant relationship
Australia: Victoria	registered domestic relationship
Austria	eingetragene Partnerschaft
Belgium	the relationship referred to as cohabitation légale, wettelijke samenwoning or gesetzliches zusammenwohnen
Belgium	marriage
Brazil	marriage
Brazil	união estável
Canada	marriage
Canada: Manitoba	the relationship referred to as common-law relationship or as union de fait
Canada: Nova Scotia	domestic partnership
Canada: Quebec	the relationship referred to as union civile or as civil union
Colombia	unión de hecho

Czech Republic	registrované partnertsví
Denmark	marriage
Denmark	registeret partnerskab
Ecuador	unión civil
Finland	the relationship referred to as rekisteröity parishude or as registered partnerskab
France	pacte civile de solidarité
Germany	Lebenspartnerschaft
Greenland	the relationship referred to as nalunaarsukkamik inooqatigiinneq or as registreret partnerskab
Hungary	bejegyzett élettársi kapcsolat
Iceland	marriage
Iceland	staðfesta samvist
Ireland	civil partnership
Isle of Man	civil partnership
Jersey	civil partnership
Liechtenstein	eingetragene Partnerschaft
Luxembourg	the relationship referred to as partenariat enregistré or eingetragene partnerschaft
Mexico: Coahuila	pacto civil de solidaridad
Mexico: Mexico City Federal District	marriage
Mexico: Mexico City Federal District	sociedad de convivencia
Netherlands	geregistreerde partnerschap
Netherlands	marriage
New Zealand	civil union
Norway	marriage
Norway	registeret partnerskab
Portugal	marriage
Slovenia	zakon o registraciji istospolne partnerske skupnosti
South Africa	civil partnership

South Africa	marriage
Spain	marriage
Sweden	marriage
Sweden	registerat partnerskap
Switzerland	the relationship referred to as eingetragene Partnerschaft, as partenariat enregistré or as unione domestica registrata
United States of America:	
California	domestic partnership
United States of America:	
California	marriage
United States of America:	
Colorado	the relationship between designated beneficiaries
United States of America:	
Connecticut	civil union
United States of America:	
Connecticut	marriage
United States of America:	
Delaware	civil union
United States of America:	
District of Columbia	marriage
United States of America:	
Hawaii	civil union
United States of America:	
Hawaii	reciprocal beneficiary relationship
United States of America:	
Illinois	civil union
United States of America:	
Illinois	civil union
United States of America:	
Iowa	marriage

United States of America:	
Maine	domestic partnership
United States of America:	
Massachusetts	marriage
United States of America:	
Nevada	domestic partnership
United States of America:	
New Hampshire	marriage
United States of America:	
New Jersey	civil union
United States of America:	
New Jersey	domestic partnership
United States of America:	
New York	marriage
United States of America:	
Oregon	domestic partnership
United States of America:	
Rhode Island	civil union
United States of America:	
Vermont	civil union
United States of America:	
Vermont	marriage
United States of America:	
Washington	state registered domestic partnership
United States of America:	
Wisconsin	domestic partnership
Uruguay	unión concubinaria

***The content of the examples in this document (including use of imagery) is for illustrative purposes only***