

## Marriage

### 1. Marriage in the United Kingdom

1.1 To be valid, all marriages which take place in the United Kingdom must be:

- Monogamous; and
- carried out in accordance with the requirements of the **Marriage Acts 1949-1994**

1.2 The domicile of the parties is not relevant. This also applies to a marriage conducted on the premises of a foreign embassy or consulate, which is regarded, in English law, as being a part of the country in which it is situated and not as foreign territory. However, such a marriage will only be valid if the building has been listed as an approved building for civil marriages under the **Marriage Act 1994**.

1.3 A claim to have been married in the United Kingdom must be supported by a marriage certificate issued by a Superintendent Registrar or an authorised minister of religion. If some other document is produced, and it is possible that the marriage has not been registered, the applicant should be advised, if he or she does not possess an official certificate, to consult the nearest Superintendent Registrar. In cases of doubt or difficulty NPSCU (EOP2) should be consulted.

1.4 A marriage certificate issued by a Superintendent Registrar or a duly authorised minister of religion in the United Kingdom may usually be accepted for nationality purposes. However, it should always be remembered that the onus is on the parties concerned to show that they had the capacity to contract the marriage.

1.5 The General Register Office do not feel able to make extensive enquiries, and the validity in English law of a foreign divorce is *assumed* by them unless it is clearly irregular (i.e. clearly invalid in the country in which it was obtained, or granted only for religious purposes) (see also **DIVORCE**). The parties are warned that no assurance can be given that the divorce, or the marriage they are about to contract, would be recognised by the courts in this country or elsewhere.

### 2. Marriage overseas

2.1 For a foreign marriage to be valid in English law, the following conditions must normally be fulfilled:

- The marriage ceremony must be recognised as a valid form of marriage by the law of the place of celebration (mixed marriages and "common law" marriages are sometimes excepted - see paragraphs 9-10 below)
- Each of the parties to the marriage must have the capacity, under the law of the place where he or she is domiciled at the time of the marriage, to marry the other party in the manner proposed (see **DOMICILE**)
- Any previous marriage of either party must first have been validly terminated in the eyes of English law (but see paragraph 8 below)

2.2 All civil marriages, and all religious marriages which have been registered with the civil authority of the country in which they are celebrated, may be accepted as satisfying the first criterion at paragraph 2.1. In other cases, the relevant files should be referred to NPSCU (EOP2) who will, if necessary, make further enquiries.

2.3 There is a presumption in English law that if a couple go through a ceremony of marriage, and thereafter live together as man and wife, the marriage is valid in all respects. However, this is a rebuttable presumption and, if we have sufficient evidence to conclude that the marriage is not valid in our law, we may properly refute a claim or refuse an application based on that marriage.

2.4 Some countries allow marriage between members of the same sex. Until such time as the legal position has been tested in the courts, the validity of such marriages under United Kingdom law must be considered uncertain.

There is, however, provision in the Civil Partnership Act 2004 for certain legal relationships formed outside the UK between members of the same sex to be treated as civil partnerships for the purposes of that Act and, therefore, of the British Nationality Act 1981. Please see the further information in paragraphs 10 & 16 below.

2.5 Marriage accepted for immigration purposes

2.5.1 In most cases where the marriage has been accepted for immigration purposes it will be safe to assume that a foreign marriage is valid in our law. However the case should be referred to NPSCU (EOP2) who will, if necessary, make further enquiries if, for example, it appears that:

- the marriage was a church marriage in a Muslim country; or
- it was a religious or a customary marriage which has not been registered with the civil authorities of the country in which it was celebrated; or
- either of the partners was clearly not domiciled in the country where the marriage took place and, under the law of the country of domicile, the type of marriage entered into would not be valid; or
- a previous marriage was ended by a divorce obtained in a different country from the one where the marriage, which it purports to dissolve, was celebrated, and neither spouse was:
  - i. habitually resident in the country where the divorce was obtained; or
  - ii. a national of the country where the divorce was obtained; or
  - iii. domiciled in the country where the divorce was obtained (see **DIVORCE**). (For this purpose each State of the United States of America is regarded as a separate country); or
- it is a "common law" marriage (see paragraph 10 below)

2.5.2 UKPS maintains an index of cases in which it has been decided that:

- a. a marriage is not valid for immigration purposes, and
- b. a certificate of entitlement to the right of abode has, instead, been issued to a child of the couple on the basis that he or she benefits under s.1 of the **Legitimacy Act** (see **LEGITIMACY**)

### **3. Marriage at sea**

#### 3.1 Marriage on board UK registered ships

Marriages on board UK-registered ships have been recognised in the past. However the current view is that, since marriages must be solemnised in readily identifiable premises (e.g. so that the public would have access to witness the ceremony and if necessary, object to the marriage) a marriage at sea on a UK-registered ship is not recognisable under UK law except in very limited circumstances – such as when it is impracticable for the parties to wait until the ship has reached port.

#### 3.2 Marriage on board non-UK registered ships

Where a marriage is performed on a ship which is registered in a jurisdiction whose law permits marriages at sea then the marriage will be valid.

### **4. Evidence of marriage**

4.1 A claim to marriage in the United Kingdom must always be supported by a marriage certificate issued by a Superintendent Registrar or an authorised minister of religion (see paragraph 1.3 above).

4.2 Where a marriage was contracted overseas before registration became possible it may be appropriate to accept as evidence of the marriage:

- a joint passport; or
- a passport that describes a woman as 'wife of .....'; or even
- a passport in which the husband's name is shown

4.3 It is sometimes necessary to obtain statutory declarations made by 2 disinterested people who were present at, or knew of, the wedding. A specimen Statutory Declaration form can be found in the Annex to this section.

4.4 As a last resort it may be possible to accept an affidavit, though only in exceptional circumstances. All cases (other than those covered by paragraph 4.5) which depend upon a marriage, and in which a marriage certificate has not been produced, should be referred to a senior caseworker.

4.5 We should take into account any evidence already on file. If documents have been examined in the past we do not need to ask to see them again. If a marriage has been accepted as valid by an Entry Clearance Officer, Immigration Officer, Home Office or dependent territory official, or any tribunal or court in the United Kingdom or the dependent territories we do not need to ask for any further evidence, except where later

information provides reasonable grounds to doubt the previously accepted position. However, it should be noted that, on occasions, a subsisting relationship is accepted for immigration purposes, whereas for nationality purposes a valid marriage is required.

## 5. Bogus marriages and marriages of convenience

5.1 Bogus marriages are invalid or entirely fictitious and may involve forgery or the misuse of documents relating to another person. It should be noted that a marriage which involves impersonation may still be a valid marriage, and that it is the impersonator who is legally married and not the identity which he or she has used.

5.2 Marriages of convenience are contracted for the specific purpose of evading immigration control or gaining an easier route to citizenship.

5.3 These types of marriage are frequently arranged by intermediaries ("fixers") for payment, and where it is suspected that a particular marriage may be bogus or one of convenience, NPSCU (EOP1) may be consulted, if required.

5.4 Where we are in any doubt about documents produced in support of an application or claim in which the marriage is material, or about an aspect of the marriage, further enquiries should be made (see in particular **Chapter 18**, which covers deception).

## 6. Presumption of death

6.1 Under **s.19** of the **Matrimonial Causes Act 1973**, any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may petition the court for a decree of presumption of death and dissolution of the marriage if:

- in any case) the petitioner is domiciled in England and Wales; and
- (in the case of a petition presented by a wife) she is resident in England and Wales and has been ordinarily resident there for a period of 3 years immediately preceding the commencement of the proceedings

6.2 Any case in which it is claimed a previous marriage was terminated by the death, or presumed death, of a partner must be supported by either

- a death certificate; or
- a decree of presumption of death and dissolution of the marriage

## 7. Bigamy

7.1 Where evidence on file points to the commission of bigamy or perjury, Marriage and General Section, ONS should be notified (see **OFFICE FOR NATIONAL STATISTICS** in Volume 2 Section I). They will then investigate the matter and will refer it, if appropriate, to the police for further enquiries (see also paragraph 14 below). NB. ONS will normally only accept referrals where there is documentary evidence to indicate that bigamy or perjury has been committed - allegations that a person has committed bigamy or perjury, and statements to officials to that effect, are not accepted by ONS as evidence of a previous marriage, but may be used as a basis for further enquiries.

7.2 Where the marriage appears to be bigamous, but evidence is submitted to the effect that one or both parties were in fact divorced, these documents should be referred to ONS for their consideration, as they will need to be satisfied that the documents are genuine and satisfy current legislation. Documents already seen and accepted by a registrar should not be referred to ONS unless there is evidence to suggest that the documents may be forgeries.

## 8. Polygamy and potential polygamy

8.1 A polygamous marriage is one in which the male partner has more than one wife. A *potentially* polygamous marriage exists where the male partner has only one wife but, under the law of the place in which the marriage was celebrated, has the capacity to take another wife (or wives) without divorcing the first. The most frequently encountered polygamous marriages are those performed according to Muslim rites.

8.2 **Section 2** of the **Immigration Act 1988** gave effect to Parliament's decision at that time that the formation of polygamous households in the United Kingdom should be prevented. Accordingly, **s.2** provided that a woman would no longer be granted entry clearance on the basis of marriage where entry clearance had previously been granted to another wife of the same man. The **1988 Act** made similar provision in respect of the issue of certificates of entitlement to the right of abode (see "**RIGHT OF ABODE**"), and provided that such wives would be subject to immigration control. The restrictions applied from 1 August 1988.

8.3 Actually polygamous marriages celebrated on or after 1 August 1971

8.3.1 Under **s.11(d)** of the **Matrimonial Causes Act 1973**, polygamous marriages contracted abroad can only be valid in English law if the conditions outlined at 2.1 above are met. The marriage will not be valid if either party is domiciled:

- in the UK; or
- in any other country whose law does not permit polygamous marriage

8.4 Potentially polygamous marriages

8.4.1 Until 8 January 1996, when **Part II** of the **Private International Law (Miscellaneous Provisions) Act 1995** came into force in England, Wales and Scotland (or 14 February 1996, under an Order in Council in Northern Ireland), a potentially polygamous, but de facto monogamous, marriage celebrated on or after 1 August 1971 was held to be valid in United Kingdom law only if:

- the man was domiciled in the United Kingdom; and
- the marriage was entered into overseas

8.4.2 Any marriage celebrated on or before 31 July 1971 was regarded as void if, despite having taken place in a country whose law permits polygamy, it was:

- polygamous in form and, at the time of the marriage; and
- either party was domiciled in the United Kingdom or in another country whose law did not permit polygamy

8.4.3 The **1995 Act**, which has retrospective effect, provides that a potentially polygamous, but de facto monogamous, marriage is valid in United Kingdom law if:

- either the man or the woman is domiciled here; and
- the marriage was entered into in a country whose law permits polygamy

8.4.4 However, the marriage would not be valid where, in the case of a marriage celebrated before commencement of the new legislation, either party has (before commencement) remarried or obtained a decree of annulment. Nor would the **1995 Act** have any effect where the marriage was considered void under the law either of the country in which it was celebrated, or of any other country in which either party was domiciled at that time.

8.4.5 The retrospective nature of the legislation may mean that some automatic claims to British nationality which were rejected because they hinged on the validity of a potentially polygamous marriage will need to be reassessed.

8.4.6 The position on citizenship applications, rejected due to our inability to regard a potentially polygamous marriage as valid, is different. Since those applications were refused in accordance with the law as it stood at the time, they cannot be re-opened (INPD(L) should be consulted if a request is received to re-consider a decision to refuse). However, fresh applications may now be able to succeed.

## 9. Recognition of "mixed" marriages

9.1 The laws of some countries do not allow marriages between people of different races or religions, notably:

- Israel, which does not recognise a marriage between a Jew and a gentile (although civil divorces can be granted where the parties are of mixed faith)
- South Africa where intermarriage between people of different races was not acceptable before the **Mixed Marriage Act** was repealed on 19 June 1985

9.2 These restrictions are, however, considered to be repugnant to English ideas of law and justice, and marriages of both types have previously been accepted.

## 10. Common law and same sex relationships

10.1 A common law "marriage" is one which has not been contracted in accordance with civil or ecclesiastical laws but:

- was entered into by private agreement; and
- has existed for a long time; and
- seems permanent

10.2 Such marriages are sometimes accepted for immigration purposes, as are same sex partnerships.

10.3 Since "marriage" for the purposes of the British Nationality Acts means marriage that is recognised for all purposes as subsisting according to English law, common law

relationships cannot be treated as marriages for nationality purposes (i.e. to establish an automatic claim to citizenship, or eligibility for registration/naturalisation, or for the purposes of the fee concession in joint applications for naturalisation).

10.4 The same will normally be true of same sex relationships. However those in a same sex relationship can, from 5 December 2005, enter into a civil partnership or have their relationship recognised as such under the terms of the Civil Partnership Act 2004 – please see the entry in Volume 2, general information under C, CIVIL PARTNERSHIP ACT 2004.

## **11. Scotland: marriage by cohabitation with habit and repute**

11.1 If a man and a woman:

- cohabit as husband and wife (very probably in Scotland) for a considerable time; and
- are generally held and reputed to be husband and wife; and
- are free to marry each other, they will be presumed to have tacitly consented to be married and (if this presumption is not rebutted) will be held to be legally married. To prove the fact of marriage on this basis for our purposes an applicant would have to obtain a grant of declarator from a Scottish court.

## **12. Child marriage**

12.1 The laws of a number of countries permit children under 16 to contract valid marriages in certain circumstances. Before such a marriage can be recognised under English law, the conditions outlined at 2.1 above must be met. For further information about the validity of a child marriage celebrated abroad, see the relevant paragraph on the country concerned below. If advice is still required, the file may be referred to INPD(L).

12.2 No marriage celebrated in the United Kingdom involving a person under 16 would be recognised as valid.

## **13. Proxy and telephone marriage**

13.1 The law of the United Kingdom does not allow for marriages to be contracted in this country either:

- with one of the parties represented by an appointed proxy; or
- where the proceedings are conducted over the telephone

13.2 However, the laws of certain other countries can recognise either form of marriage as valid where they are contracted in that country. Where the local law does permit marriage either by proxy or telephone and the proceedings of any particular marriage appear to satisfy the requirements of that law then, in accordance with the normal rules on recognition of foreign marriages (see paragraph 2, above), the marriage should be

treated as valid for all purposes of United Kingdom law. Guidance on the local validity of foreign proxy and telephone marriages may be sought from INPD(L) (EOP2).

### 13.3 The validity of trans-national proxy and telephone marriages

13.3.1 Some instances occur of marriages contracted between a person resident in the United Kingdom and another party resident overseas. Sometimes, for example, a man will appoint a proxy (e.g. a brother) to stand in for him at the ceremony with the bride overseas. On other occasions, the exchange of vows between the 2 parties may take place over the telephone between the 2 countries. In the absence of a clear interpretation of the law on the validity of such trans-national marriages, there is authority for determining their validity in the following way.

#### 13.3.2 Where:

- a. the law of the country requires a ceremony, and
- b. a ceremony takes place with the participation of a proxy in that country, then the country where the marriage is celebrated is the country in which the ceremony occurred, not the country from which the proxy was appointed and instructed by the sponsor.

Thus such a marriage might well be valid.

13.3.3 Where no ceremony is required under the law, and a marriage can be concluded by an exchange of promises, it will be more difficult to identify the country in which the marriage is celebrated and under the law of which it must be recognised.

13.3.4 Where the exchange of promises is by means of a telephone link between 2 parties, one in the United Kingdom and one abroad, then it is considered that the marriage would not be valid since this form of marriage is not recognised as valid under the law of one countries in which it was celebrated (i.e. the United Kingdom).

13.3.5 Where both parties are in different countries, both of which recognise telephone marriages, we cannot deny the validity of the marriage.

## 14. Void and voidable marriage

14.1 A marriage may be annulled by a court on the grounds that it was:

- void or, to use the full term, void ab initio, or
- voidable

### 14.2 Void marriage

14.2.1 Under **s.11** of the **Matrimonial Causes Act 1973**, a marriage celebrated on or after 31 July 1971 shall be void on the grounds that:

- it is not a valid marriage under the provisions of the **Marriages Acts 1949 to 1970** (that is to say where:
  - i. the parties are within the prohibited degrees of relationship; or

- ii. either party is under the age of 16; or
  - iii. the parties have intermarried in disregard of certain requirements as to the formation of marriage); or
- at the time of the marriage either party was already lawfully married; or
  - the parties are not respectively male and female; or
  - in the case of a polygamous marriage entered into outside England and Wales, either party was at the time of the marriage domiciled in England and Wales. (NB. For these purposes, a marriage is not polygamous if, at its inception, neither party has another spouse in addition to the other)

14.2.2 A void marriage is one that is presumed never to have existed, and in such cases a decree of nullity does not alter the status of the parties but is merely a declaration of the existing position. A person cannot be eligible for the grant of citizenship by virtue of such a "marriage", whether or not a decree of nullity has been obtained. For the validity of a registration or naturalisation based on such a marriage see **Chapter 55** of Volume 1.

#### 14.3 Voidable marriage

14.3.1 Under **s.12** of the **Matrimonial Causes Act 1973**, a marriage celebrated on or after 31 July 1971 shall be voidable on the grounds that:

- the marriage has not been consummated owing to the incapacity of either party to consummate it; or
- the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise; or
- at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder within the meaning of the **Mental Health Act 1959** of such a kind or to such an extent as to be unfitted for marriage; or
- at the time of the marriage the respondent was suffering from venereal disease in a communicable form; or
- at the time of the marriage the respondent was pregnant by some person other than the petitioner

14.3.2 A voidable marriage is one in which a petition for nullity has either:

- been filed, but the case has not yet been heard; or
- is in the process of being heard

14.3.3 Under **s.5** of the **Nullity of Marriage Act 1971**, a decree absolute of nullity, granted on or after 1 August 1971 on the grounds that a marriage is voidable, has no retrospective effect. Notwithstanding the decree, the marriage must be treated as if it had existed up to the date of the decree absolute. In other words, such a decree may be regarded in exactly the same way as a divorce decree.

14.3.3 Before the **Nullity of Marriage Act 1971** came into effect on 1 August 1971, an English decree absolute of nullity, obtained on the grounds that the marriage was voidable, purported to be retrospective. Although the extent of the retrospective effect of the decree was not entirely clear, there was considerable judicial authority for saying that, from the date of the decree absolute, the marriage was deemed never to have existed. Any cases concerning a decree of nullity obtained before 1 August 1971 should be referred to NPSCU.

#### 14.4 Foreign decree of nullity

14.4.1 Where there is a foreign decree, it will normally be necessary to obtain advice as to its effect. Any such cases should be referred to NPSCU which will consult the Office for National Statistics to establish how the parties' marital status would be shown if they were to remarry in the country where the nullity was obtained.

14.5 All cases involving annulled marriages, whether void or voidable, should be referred to a senior caseworker before a decision is conveyed to the applicant.

### 15. Marriage in accordance with different laws and religions

#### 15.1 Bangladesh

15.1.1. Most marriages in Bangladesh are in accordance with the Muslim religion and are governed by the **Muslim Family Laws Ordinance 1961** (see paragraph 15.10 below) and the **Muslim Marriages and Divorce (Registration) Act 1974**.

15.1.2 Under the **Child Marriage Restraint Act 1929**, the minimum marriageable age for a Muslim female was 14, and 18 for a male; the **1961 Ordinance** raised the female's age to 16 but the male's remained at 18. The **Child Marriage Restraint (Amendment) Ordinance 1984** raised the ages again to 18 for the female and 21 for the male. Child marriages are illegal, and are punishable by a fine and/or imprisonment. They are regarded as "irregular" although the couple would be regarded as husband and wife, and the marriage would be recognised as valid.

#### 15.2 Chinese marriages

15.2.1 The problem of marriages which are conducted in accordance with Chinese customs is that customs vary so much in different parts of China, and in Hong Kong, that nobody can be sure what they are, and many of the marriages have never been registered. A **Chinese Marriage Law**, which came into force on 1 May 1950, abolished feudal, polygamous marriages, and provided that marriages had to be registered with a government official. In 1960 a White Paper was issued on Chinese marriages in Hong Kong, recommending that customary marriages should be discouraged or, if they did take place, that the couple should be encouraged to participate in an additional

ceremony which accorded with the **Marriage Ordinance**. On 7 October 1971 the Hong Kong **Marriages Reform Ordinance** came into effect, and customary marriages contracted in Hong Kong after that date are not valid.

15.2.2 Chinese customary marriages which took place in Hong Kong before 7 October 1971 remain valid under **s.7** of the **1971 Ordinance**. Where an application for, or claim to, British nationality involves such a marriage, it will normally be necessary for the person concerned to obtain statutory declarations by 2 independent persons who were present at or know of the marriage.

15.2.3 Any case involving a Chinese customary marriage contracted outside Hong Kong should normally be referred to INPD(L) which will seek further advice if necessary.

### 15.3 Cyprus

15.3.1 In 1951, the **Turkish Family (Marriage and Divorce) Law 1951** came into force, prohibiting polygamy. (Previously Sheri Law, which permitted polygamy, applied to all Moslems in Cyprus as regards marriage and divorce.) The **1951 Law** applies only where at least one of the parties:

- is a Turkish national; and
- professes the Moslem faith; and
- is resident in Cyprus

15.3.2 A marriage officer solemnizes the marriage, registers it and issues a certificate to each of the parties.

15.3.3 Until 16 June 1923, marriages were governed by the **British Subjects' Marriage Laws 1889 & 1921**. On that date, the **Marriage Law CAP 279** came into force which now governs all other types of marriage in Cyprus. Under **s.21** of that law, a marriage will not be valid if:

- both parties are aware that a false name or names are being used; or
- the appropriate certificate or licence is not issued; or
- the person officiating is not a Registered Minister or Marriage Officer; or
- it would have been void on the grounds of kindred or affinity (had it been celebrated in a country to which either of the parties belongs)

### 15.4 Egypt

15.4.1 Foreign nationals (irrespective of their religious persuasion) cannot contract a Muslim marriage in Egypt. A civil marriage before the Marriage Notary Public is therefore the only available form of marriage for foreign nationals.

15.4.2 An Egyptian man living outside Egypt may appoint a proxy to act on his behalf in Egypt, although the proxy should be appointed through the Egyptian Consul in the country concerned.

## 15.5 Ghana

15.5.1 The **Customary Marriage and Divorce (Registration) Law 1985** provided for the proper registration of customary marriages and divorces in Ghana, and was retroactive (i.e. applied to customary marriages and divorces contracted before, as well as after, its enactment). Non-compliance was punishable by fine or imprisonment, but the marriage would still be regarded as valid. However, the **Customary Marriage and Divorce (Registration)(Amendment) Law 1991** provided that registration of customary marriages and divorces would no longer be mandatory.

15.5.2 Since it is possible for Ghanaians living outside Ghana to obtain the proper certificates, certificates of marriage or divorce, authenticated by the Ghanaian High Commission, should be requested in all cases where the marital status of an applicant is important. Statutory declarations made by a parent or other family elder of either party to an unregistered customary marriage should only be accepted where they complete a chain of otherwise first class documentary evidence of a claim to citizenship.

## 15.6 Hindu marriage

15.6.1 The **Indian Special Marriage Act 1872** required the bride to be at least 14 years old, and the bridegroom at least 18. Under the **Hindu Marriage Act 1955**, which came into force on 18 May 1955 and applies to Hindus, Sikhs, Jains and Buddhists, a female may not marry if she is below the age of 15, and a male may not marry if he is below the age of 18 (these ages were raised in 1978 to 18 and 21 respectively). A marriage between younger children would be contrary to the **Child Marriage Restraint Act 1929**, and the people responsible for it could be punished, but the marriage would still be regarded as valid in Indian law.

## 15.7 Iraq

15.7.1 The **Iraq Personal Status Act** fixes the age of legal capacity for marriage at the age of majority (18 years). However, a minor of 15 years may be granted permission to marry by the court, subject to:

- proof of the minor's "physical ability"; and
- the consent of his or her guardian (this can be waived by the court if it is withheld unreasonably)

15.7.2 Both parties need to undertake a blood test before the marriage is performed. Although all marriages are required to be registered with the civil authorities, failure to register a marriage would not render it invalid.

## 15.8 Kenya

15.8.1 There are 5 recognised forms of marriage in Kenya:

- Christian marriages under the **Marriage Act** or the **African Christian Marriage and Divorce Act**
- Civil marriages under the **Marriage Act**
- Hindu marriages under the **Hindu Marriage and Divorce Act**

- Islamic marriages recognised under the **Mohammedan Marriage and Divorce Registration Ordinance**, which are potentially polygamous except among the Shia Amami Ismailis (NB. This Ordinance does not apply to certain Shia Moslems)
- African customary marriages, which are polygamous

15.8.2 Marriages among the Shia Imami Ismailis are the only Muslim marriages in Kenya that are not potentially polygamous; they are in fact strictly monogamous.

#### 15.9 Morocco

15.9.1 Marriage in Morocco is governed by Islamic law which permits polygamy. Before 1958, child marriages were valid, provided the consent of the parents or guardian(s) was obtained. But in 1958, a code of practice was introduced which established the marriageable ages for males and females at 18 and 15 respectively. The consent of the bridegroom's father or guardian is only required if he is under 20 years of age, but the consent of the bride's father or guardian is required in all cases.

#### 15.10 Muslim marriage - the Muslim Family Laws Ordinance 1961

15.10.1 The **Muslim Family Laws Ordinance 1961** came into effect on 15 July 1961 and applies to all Muslim citizens of Bangladesh and Pakistan (and possibly some other Muslim countries), wherever they may be. It provides for all Muslim (or Mohammedan) marriages to be registered by a Nikah Registrar appointed by the Union Council. The Pakistan courts have, in the past, refused to recognise marriages which have not been registered in accordance with the Ordinance. Polygamy (up to 4 wives) is allowed on condition that the man obtains permission for each marriage from the Arbitration Council. The Ordinance is regarded as directive rather than mandatory since it makes no reference to the validity of marriages which do not conform to its requirements.

15.10.2 Proxy marriages are not specifically permitted by the **Muslim Family Laws Ordinance 1961**, but they may be regarded as valid if the bridegroom is domiciled in a country which accepts both marriage by proxy and polygamous marriage and makes a signed declaration authorising the proxy to undertake on his behalf certain obligations, which are strictly carried out. The Nikah (marriage certificate) should show the details in the original declaration or power of attorney.

15.10.3 See also the paragraphs relating to marriage in Bangladesh and Pakistan, as appropriate. Where a Muslim ceremony has taken place in a country other than Pakistan or Bangladesh, the appropriate entry on the country concerned should first be consulted. If doubt remains as to the validity of a Muslim marriage, the case may be referred to INPD for advice.

#### 15.11 Nigeria

15.11.1 Marriage in Nigeria is governed by the **Marriage Act 1914** and **Matrimonial Causes Act 1970**. The Acts do not define marriageable age. Before 1970, the English age of marriage as prescribed by the **Marriage Act 1949** (i.e. 16) was thought to be applicable to marriages in Nigeria. Another view taken was that the common law age of puberty should apply to marriage (i.e. 14 years for males, 12 years for females).

15.11.2 The latter view was supported by the **Matrimonial Causes Act 1970**, which bans the application of British law and provides that the marriage will be void where either party is below marriageable age. However, it does not define "marriageable age".

15.11.3 The **1914 Act** provides that parental consent is required in order to obtain a Registrar's Certificate where either party is

- under 21 years; and
- neither a widow nor a widower

However, failure to obtain such consent would not render the marriage void.

15.11.4 Although the **1914** and **1970 Acts** do not govern marriages under Native Law and Custom, they stipulate that persons who have contracted a marriage in accordance with the provisions of either the **1914** or **1970 Act** cannot contract a valid customary marriage. To do so is an offence carrying a mandatory sentence of imprisonment. Similarly, where a person is already married under Customary Law, a second marriage under statute will be invalid and punishable by imprisonment.

15.11.5 Polygamy is accepted under Customary Law.

Broadly speaking, there are 4 essential elements of a valid customary marriage:

- Consent of the Parties (i.e. of the spouses, parents, and extended families)
- Capacity (e.g. relating to age, subsistence of any other marriage, degrees of relationship and status)
- Dowry
- Formal Giving Away (of the bride)

15.11.6 The validity of a Customary Law marriage will depend largely on the region where the ceremony takes place, since the importance of each of these elements, and the ceremonies conducted, will vary depending on the region.

15.12 Pakistan

15.12.1 Most marriages in Pakistan are in accordance with the Muslim religion, and are governed by the **Muslim Family Laws Ordinance 1961** (see 15.10 above).

15.12.2 Under the **Child Marriage Restraint Act 1929**, the minimum age for a Muslim girl's marriage was 14, and 18 for a boy. The girl's age was raised to 16 by the **Muslim Family Laws Ordinance 1961**, and the boy's remained at 18. Although child marriages are illegal, and punishable by a fine and/or imprisonment, they are nevertheless regarded as valid.

15.12.3 The **Christian Marriage Act 1872** provides for marriages in Pakistan when at least one of the parties is a Christian. Such a marriage solemnised other than in accordance with the provisions of the **1872 Act** would be void.

### 15.13 Philippines

15.13.1 Marriage in the Philippines is, for the most part, governed by the **Family Code of 1987**.

This provides that a marriage which is polygamous or bigamous (unless it falls within the circumstances described in paragraph

15.13.2 below) will be void. A marriage would also be void if:

- either party is below the age of 18 – girls were previously allowed to marry below the age of 16. A marriage may also be annulled if either party was below the age of 21 and did not have consent to marry; or
- the parties are within the prohibited degrees of relationship

15.13.2 A person may contract a second "bigamous" marriage if the previous spouse has been missing for either:

- 4 years, and is presumed dead; or
- 2 years, and there is a likelihood of death (in certain limited circumstances prescribed in the **Civil Code**)

15.13.3 In such cases, a declaration of presumptive death must be obtained - formerly, a person was presumed dead after an absence of 7 years, and no declaration was required. If the absent spouse reappears at a later date, and an affidavit of reappearance is recorded, then the second marriage will automatically be regarded as terminated (any children of the second marriage would nevertheless be treated as legitimate).

15.13.4 Affidavits are sometimes submitted as evidence of legal separation in support of a claim that an applicant was free to remarry. However, with the one exception outlined above, a person cannot contract a second marriage, which would be regarded as valid in Philippines law, during the subsistence of an existing marriage, and such claims must therefore be rejected.

15.13.5 **Article 21** of the **Philippine Civil Code** provides that marriage licences cannot be issued to foreign nationals wishing to marry in the Philippines unless they provide a certificate confirming they have the legal capacity to contract the marriage (i.e. a certificate of no impediment issued in accordance with the **Marriage with Foreigners Act 1906**). A marriage celebrated without a certificate of no impediment being obtained may nevertheless be accepted as valid in UK law.

15.13.5 **Article 35** provides that a marriage celebrated without a licence will, with certain exceptions, be void ab initio (see paragraph 14.2) unless it is of the most exceptional character.

#### 15.14 Tanzania

15.14.1 Ismaili marriages, like all other Muslim marriages, are considered in Tanzania to be polygamous or potentially polygamous, whether contracted before or after the **Law of Marriage Act 1971**.

#### 15.15 Turkey

15.15.1 Marriages in Turkey are governed by the **Turkish Civil Code 1926**. In order to be legally valid:

- the marriage has to be monogamous; and
- the marriage must be solemnized and registered by the civil authorities; and
- neither party must suffer from a mental illness

15.15.2 The marriageable ages prescribed in the Code are 18 for males and 17 for females, although in exceptional cases a court may reduce the age limit to 15 provided the consent of a parent or guardian is obtained. See the corresponding entry on Turkey in "**DIVORCE**" for details of restrictions where one of the parties is divorced, widowed, or where a previous marriage has been annulled.

#### 15.16 Uganda

15.16.1 The **Marriage and Divorce of Mohammedans Ordinance 1906** regulates Mohammedan (Muslim) marriage and divorce in Uganda.

#### 15.17 Zimbabwe (Southern Rhodesia)

15.17.1 The **Southern Rhodesia (Marriage, Matrimonial Causes and Adoptions) Order 1972** came into force on 12 December, and was retroactive to the illegal declaration of independence. It provided that marriages, divorces and annulments performed or granted in Southern Rhodesia since the illegal declaration of independence should not be regarded as invalid merely because the officials or authorities concerned were appointed by, or were acting for, the illegal regime.

15.17.2 The **Southern Rhodesia (Matrimonial Jurisdiction) Order 1970**, which came into force on 16 November 1970, gave limited relief to people who had not been able to obtain a divorce in Southern Rhodesia which was valid in United Kingdom law. Its general effect was to give the same jurisdiction to the courts of each part of the United Kingdom to entertain proceedings for divorce or nullity of marriage of a person, domiciled or resident in Southern Rhodesia, as if that person had been domiciled or resident in that part of this country, whether England and Wales, or Scotland, or Northern Ireland.

15.17.3 The **1970 Order** required that persons should have 6 months residence in the part of the United Kingdom concerned before they could institute proceedings here. If they were resident in Southern Rhodesia on or after 11 November 1965, and then lived in some other country before becoming resident in the United Kingdom, the residence in another country would be disregarded in calculating any period of residence required under United Kingdom law. This took into account the fact that some of the people who left Southern Rhodesia after the illegal declaration of independence might well have spent some time in other countries before deciding to come here.

15.17.4 Both these orders were repealed by **Schedule 3** to the **Zimbabwe Act 1979**. The validity of marriages etc contracted after the return to legality may be determined in the normal way. Annex to **MARRIAGE** Specimen Form of Statutory Declaration to be used in respect of a marriage which took place in India or Pakistan and for which there is no marriage certificate (**NOT** to be used for making the actual declaration). The declaration should, if possible, be made by someone who is **NOT** a relative of either of the persons whose marriage is the subject of the declaration.

I, .....(full names) of.....(full address) born at.....on..... do solemnly and sincerely declare that

1. I was present at the wedding of.....(bride) and..... (bridegroom) which took place at .....on .....in accordance with the religious rites of.....

2. The marriage ceremony was performed by .....(name of person performing ceremony) who to the best of my knowledge, information and belief, was qualified to perform the ceremony by virtue of.....(qualifications of person performing the ceremony).

3. I have known

- (a) .....(name of bride) for..... years
- (b) .....(name of bridegroom) for..... years

4. To the best of my knowledge, information and belief neither party had been previously married, [or, the earlier marriage(s) of .....had been previously terminated by..... on.....]

5. To the best of my knowledge, information and belief

- (a) the bride's father's name is .....
- (b) the bridegroom's father's name is .....

[If made in the United Kingdom] And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1935.

[If made in India] And I make this solemn declaration conscientiously believing the same to be true by virtue of the provisions of the Indian Oaths Act, 1969.

[If made elsewhere than in the United Kingdom or India] And I make this solemn declaration conscientiously believing the same to be true.

Declared by the above named)

..... (Signature of Declarant)

at..... this....day of.....19..

Before me..... (signature) A Commissioner for Oaths, Justice of the peace,  
Magistrate, or Notary public.

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