Home Office

Family Policy:
Partners, divorce and dissolution

Version 4.0

Contents

About this guidance

This guidance is for decision-makers handling cases that involve a partner, to recognise a genuine and subsisting relationship, and identify a valid divorce from marriage or dissolution of a civil partnership.

This guidance sets out the evidential requirements and factors that decision-makers should consider when assessing whether a relationship between an applicant and their partner is genuine and subsisting, and whether the requirements of the Immigration Rules are met.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Family Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance, then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **4.0**
- published for Home Office staff on **20 June 2022**

Changes from last version of this guidance

Update to reflect legal marriage age rising in England and Wales to 18.

Related content
Contents

Recognition of marriage and civil partnership

This section tells you about validity of marriage and civil partnerships in the UK and overseas.

Under paragraph GEN.1.2. of Appendix FM to the Immigration Rules, a partner is defined as a person in a genuine and subsisting relationship to a person who is their spouse or civil partner, fiancé(e) or proposed civil partner, or a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least 2 years prior to the date of application, unless a different meaning of partner applies elsewhere in the Appendix.

In this guidance and unless otherwise stated, the term 'partner' includes a fiancé(e), proposed civil partner, spouse, civil partner, unmarried partner or same sex partner.

To meet the requirements of Appendix FM for entry clearance or leave to enter or remain as a fiancé(e) or proposed civil partner, neither the applicant nor their partner can be married to, or in a civil partnership with, another person at the date of application. The intention of a fiancé(e) or proposed civil partner visa is to allow the marriage or civil partnership to take place in the UK.

For the purposes of Appendix FM and under paragraphs 22 to 25 of Appendix FM-SE to the Immigration Rules:

- a marriage in the UK must be evidenced by a valid marriage certificate recognised under the laws of England and Wales, Scotland or Northern Ireland
- a divorce in the UK must be evidenced by a decree absolute from a civil court
- a civil partnership in the UK must be evidenced by a civil partnership certificate recognised under the laws of England and Wales, Scotland or Northern Ireland
- the dissolution of a civil partnership in the UK must be evidenced by a final order of civil partnership dissolution from a civil court
- marriages, civil partnerships or evidence of divorce or dissolution from outside the UK must be evidenced by a reasonable equivalent to the evidence issued in the UK, which must be valid under the law in force in the relevant country

Marriage and civil partnership in the UK

Overview

All marriages which take place in the UK must, to be recognised as valid, be monogamous and must be carried out in accordance with the requirements of the Marriage Act 1949 (as amended), the Marriage Act (Scotland) 1977 or the Marriage Order (Northern Ireland) 2003.

The Civil Partnership Act 2004 provides for civil partnerships to be conducted in England and Wales, Scotland and Northern Ireland.

In England, Scotland, Wales and Northern Ireland two people may register a civil partnership provided:

- they are not already in a civil partnership or lawfully married
- they are not within a prohibited degree of relationship
- they are both aged 16 or over

Marriage and civil partnership legislation is devolved across the UK and the requirements and procedures (the preliminaries) that must take place before a marriage or civil partnership can proceed differ in England and Wales, Scotland and Northern Ireland.

A marriage or a civil partnership can take place in any register office in England, Wales, Scotland or Northern Ireland. Premises registered to conduct marriages are also able to register civil partnerships if they meet the requirements of the Marriage and Civil Partnership (Approved Premises) Regulations 1995 (as amended). A marriage or civil partnership will be legally registered once each of the couple has signed the marriage or civil partnership document in the presence of a registrar and 2 witnesses.

A marriage or civil partnership in the UK must be evidenced by a certificate issued by one of the following:

- Superintendent Registrar
- Registrar
- Clergy (of Church of England or Church in Wales)
- authorised person of a Registered Building
- the General Register Office
- Secretary of Marriage for a Synagogue
- Registering Officer for the Society of Friends

Since 4 May 2021, only the General Register Office, Superintendent Registrars and Registrars of marriage can issue marriage certificates in England and Wales.

England and Wales

The Marriage Act 1949 for England and the Marriage (Wales) Act 2010 regulate marriages in England and Wales. The Marriage (Same Sex Couples) Act 2013 permit the marriage of couples of the same sex in England and Wales. In England and Wales an existing civil partnership that took place under the law of England and Wales can be converted to a marriage.

Scotland

In Scotland, a marriage must be conducted in accordance with the Marriage (Scotland) Act 1977. The Marriage (Same Sex Couples) Act 2013 and the Marriage and Civil Partnership (Scotland) Act 2014 permit the marriage of couples of the same sex. It is also possible to convert a civil partnership to a marriage in Scotland where

that civil partnership took place under Scottish law. The couple will be given a marriage certificate. The date of the marriage will be recorded as the date the couple's civil partnership was formed.

Northern Ireland

In Northern Ireland, a marriage must be conducted in accordance with the Marriage (Northern Ireland) Order 2003.

Same-sex marriage in Northern Ireland has been legal since 13 January 2020, following the enactment of the Northern Ireland (Executive Formation) Act 2019.

Age to enter marriage or civil partnership in the UK

No valid marriage or civil partnership can take place in the England and Wales if one of the partners is aged under 18. Marriage can be conducted in Scotland and Northern Ireland from the age of 16. Any case involving a marriage which has taken place in the UK where the marriage certificate or other evidence (for example the passport) shows that one or both parties was under the age of 18 in England and Wales dated after 26 April 2022 or 16 in Scotland and Northern Ireland at the date of the marriage or civil partnership should be refused and the details to be passed to the General Register Office. Where a decision-maker comes across such a union and the minor is in the UK, they should make a referral to the appropriate local authority safeguarding officer.

Prohibited degree of relationship

You must be satisfied that the applicant and their partner are not within the prohibited degree of relationship as defined in the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and the Civil Partnership Act 2004. This definition is contained in paragraph 6 of the Immigration Rules.

In England and Wales, the Marriage Act 1949 prohibits a marriage between a person and any person mentioned in the following list:

- adoptive child
- adoptive parent
- child
- former adoptive child
- former adoptive parent
- grandparent
- grandchild
- parent
- parent's sibling
- sibling
- sibling's child

In the list 'sibling' means a brother, sister, half-brother or half-sister.

The Marriage Act 1949 prohibits a marriage between a person and any person in the following list, until both parties are aged 21 or over, and provided that the younger party has not at any time before attaining the age of 18 been a child of the family in relation to the other party:

- child of former civil partner
- child of former spouse
- former civil partner of grandparent
- former civil partner of parent
- former spouse of grandparent
- former spouse of parent
- grandchild of former civil partner
- grandchild of former spouse

Overseas marriage and civil partnerships

A marriage or civil partnership which has taken place overseas is recognised where:

- the type of marriage or civil partnership is recognised in the country in which it took place
- the marriage or civil partnership was properly conducted to satisfy the requirements of the law of the country in which it took place
- there is nothing in the laws of either person's country of domicile at the time of the marriage or civil partnership which prevents the marriage or civil partnership being recognised
- any previous marriages or civil partnerships of the couple have broken down permanently

Overseas relationships recognised as civil partnerships

The Civil Partnership Act 2004 provides for the recognition of an overseas relationship as a civil partnership in the UK where **all** the following conditions are met:

- the relationship is registered with a responsible authority in a country or territory outside the UK
- both parties are not already married or in a civil partnership
- the relationship is exclusive in nature
- the relationship is indeterminate in duration
- the relationship results in the parties being regarded as a couple or treated as married

Schedule 20 to the Civil Partnership Act 2004 (updated by The Civil Partnership Act 2004 (Overseas Relationships) Order 2012) provides a list of overseas relationships which will be recognised as civil partnerships in the UK.

The UK does not recognise any other civil partnership or other legal overseas relationship (which is not a marriage).

Same-sex couples, who married abroad under foreign law and were previously treated as civil partners in the UK, are now recognised as being married in England and Wales.

Age to enter marriage or civil partnership outside of the UK

A person who is domiciled in England and Wales, Scotland or Northern Ireland does not have the capacity to enter into a marriage where either party is under the age of 18 in England and Wales and 16 in Scotland and Northern Ireland, regardless of where the marriage was celebrated.

Cases may arise where, although the child may be a British citizen or have lived here all their life, they may be domiciled in a country that permits marriage or civil partnership under the age of 18 or 16 (because their domicile is dependent on that of a parent). It may therefore be possible for a child based in the UK to contract a valid marriage or civil partnership overseas before the age of 16.

You should be aware that the minimum age for marriage is below 16 in a number of countries. Countries that permit marriage before 16 include South Africa and certain states in the USA. It is also not uncommon for countries to have a different minimum age for marriage depending on the gender of the spouse.

A marriage or civil partnership that is lawfully contracted between an applicant and their sponsor before the age of 18 overseas, can only be taken into account under the Immigration Rules for entry to or leave to remain in the UK as a partner once the applicant and the sponsor are both 18 or older.

A marriage which was contracted when one or both partners was aged under 18 is recognised if:

- the marriage was valid in the country it took place
- both parties to the marriage had the legal capacity under the law of their domicile to marry each other or enter into a civil partnership

Marriage in a foreign embassy in the UK

A foreign embassy, high commission, consulate or other diplomatic premises in the UK is not regarded as being outside the UK because in the case of Radwan V Radwan (1972) ALL ER 967 it was found that a diplomatic premises forms part of the state in which it is situated.

Under the Marriage Act 1994 it is only possible for an embassy to be listed as an approved building for a civil marriage in the UK if the premises are regularly available to the public for use for the solemnisation of marriages or the formation of civil partnerships, and public access to any proceedings in approved premises must be permitted without charge. Currently no diplomatic premises in the UK are approved for marriage or civil partnership.

Proxy and marriages or civil partnerships conducted at sea

Proxy marriage or civil partnership

A proxy marriage or civil partnership is where one of the contracting parties has appointed someone (a 'proxy'), to represent them at the ceremony. Instances occur of marriages or civil partnerships contracted between a person resident in the UK and another party resident overseas. For example, one party will appoint a proxy (such as a sibling or parent) to stand in for them at the ceremony with the other overseas. On other occasions, the exchange of vows between the 2 parties may take place over the telephone between the 2 countries.

It is not possible to marry or enter into a civil partnership by proxy under UK law. But the UK may accept a marriage or civil partnership by proxy that took place under the law of another country based on The Upper Tribunal gave guidance in CB (Brazil) (validity of marriage: proxy marriage) [2008] UKAIT 00080 on the recognition of proxy marriages in the UK. This guidance provided that the three pre-requisites for a proxy marriage to be accepted as valid in the UK for immigration purposes. It is reasonable to expect the same of a proxy civil partnership. The pre-requisites are as follows:

- the marriage was performed and any other necessary steps were taken so that it satisfies the law of the country in which it took place
- the parties had 'capacity' to marry under the law of each of their 'domiciles'
- evidence has been provided to support the validity of the proxy marriage, for example a valid marriage certificate; a letter (or other evidence) from a registrar or government authority from the country in which the marriage was contracted confirming that it was registered properly

In addition to a valid marriage or civil partnership certificate, the following documents may also be required as evidence of a valid proxy marriage or civil partnership:

- certificate of marriage or civil partnership and an official translation in English
- the transcript of marriage or civil partnership celebrated overseas, processed by the closest consulate of the country that the ceremony took place
- an affidavit from the person or persons who represented the spouse or spouses, attesting to their involvement with, presence at and role at the ceremony
- the birth certificates of the spouses or civil partners

Marriage or civil partnership at sea

Under UK law, marriages or civil partnerships must be solemnised in readily identifiable premises (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.

Where a marriage is performed on a ship which is registered in a jurisdiction whose law permits marriages at sea, then the marriage may be entitled to recognition by the courts which can be taken into account in an immigration decision.

Related content
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Related external links
Marriage and civil partnerships in the UK legislation
Upper Tribunal's decision on bereavement benefits and telephone marriage

Sham marriage, sham civil partnership, and marriages or civil partnerships of convenience

Definitions

Within this guidance, the generic term of sham marriage has been used but this also covers sham civil partnerships.

Under S.24 of the Immigration and Asylum Act 1999, as amended by section 55 of the Immigration Act 2014, a sham marriage is one in which:

- one or both of the parties is not a relevant national (see definition of relevant national below)
- there is no genuine relationship between the parties
- either or both of the parties enter into the marriage or civil partnership for the purpose of circumventing UK immigration control

Section 24A of the 1999 Act sets out the same test in relation to a sham civil partnership.

The definition of relevant national, under S62 of the Immigration Act 2014, changed on 1 July 2021 to:

- a British citizen
- an Irish citizen
- an individual with EU Settlement Scheme (EUSS) settled status (indefinite leave to remain), EUSS pre-settled status (limited leave to remain), or with a decision pending on an application for EUSS leave that was submitted before 1 July 2021

The Immigration (European Economic Area) Regulations 2016 (EEA Regulations 2016), as saved, define a marriage, civil partnership, or durable partnership as one of convenience where it is entered into for the purpose of using those Regulations, or any other right conferred by the European Union Treaties, as a means to circumvent the Immigration Rules or any other criteria that the party to the marriage or civil partnership of convenience would otherwise have to meet in order to enjoy a right to reside under those Regulations.

The key feature of a marriage, civil partnership or durable partnership of convenience is that there is no genuine relationship between the parties.

Marriages of convenience are, for immigration purposes, synonymous with sham marriages.

You should be aware that the definition of a sham relationship is aligned to guidance published in:

- Marriage investigations:
  - sham marriages are also mentioned in the following guidance, but mostly in relation to removal decisions and removal pathways

There is also a reference to marriage investigations within:

- Criminal investigations: sham marriage

For more details see the following sections of Marriage investigations:

- definitions of sham marriage and civil partnership
- types of marriage investigation
- enforcement action and removal pathways following a sham determination

The sham marriage and civil partnership referral and investigation scheme

You should cross-reference the Marriage investigations guidance on the Migration and Borders Guidance Platform.

Part 4 of the Immigration Act 2014 introduced a referral and investigation scheme for proposed marriages and civil partnerships across the UK involving a non-EEA national who could benefit in immigration terms.

Under this scheme all proposed marriages and civil partnerships in the UK will be referred to the Home Office by the registration unless they involve couples where both parties are either relevant nationals, or provide specified evidence to show they are exempt from the scheme. This includes evidence that they have settled or have permanent resident status in the UK, are exempt from immigration control, or that they hold a marriage visitor visa or a fiancé(e) or proposed civil partner visa.

Under the referral scheme, the Home Office assesses all referrals against intelligence, evidence-based risk profiles and other information. Where there are reasonable grounds to suspect a sham marriage or civil partnership, the Home Office may decide to extend the notice period from 28 days (the standard notice period which applies to any couple, regardless of the nationality and immigration status) to 70 days to investigate.

Under this scheme, a couple will be unable to get married or enter into a civil partnership on the basis of that notice if they do not comply with the requirements of an investigation under the scheme. In these circumstances, it is likely that a determination about the genuineness of the relationship will not be taken unless there was sufficient evidence available already. The couple can give notice to marry again if they wish, resulting in a fresh referral to the Home Office through the scheme.

The purpose of the investigation is to determine whether, on the balance of probabilities, the proposed marriage or civil partnership is a sham.

For more details on the scheme, including background and processes see the marriage and civil partnership referral and investigations scheme section of Marriage investigations.

The sham marriage and civil partnership referral and investigation scheme is one of several types of Home Office sham marriage investigation, including:

- investigations following applications for permission to enter or stay
- investigations following intelligence, tasking or other encounters
- criminal investigations into sham marriages

See Marriage investigations: types of investigation for full details.

Marriage investigation: relationship not investigated under the referral scheme

It is important to note that where the Home Office has not investigated a proposed marriage or civil partnership referred under the scheme, there would not have been a full assessment of genuineness of relationship prior to the marriage or civil partnership.

In these circumstances, decision makers considering an immigration application based on the marriage or civil partnership must make further investigations if there is new, significant or compelling information that raises reasonable grounds to suspect the relationship may not be genuine and subsisting. All available information and evidence must be taken into account, including information relating to the earlier referral.

Marriage investigation: relationships previously determined as a sham

All applications should be considered under the Immigration Rules or the Immigration (European Economic Area) Regulations, as saved, and include an assessment of the genuineness of the relationship.

Where any Home Office marriage investigation has already determined the relationship as a sham,, it is expected that you will refuse the immigration application that relies on it on genuineness grounds (in addition to any other reasons that the relevant requirements of the Immigration Rules or the Immigration (European Economic Area) Regulations, as saved, have not been met) without further investigation, that is unless any new and significant information has come to light since the investigation took place.

Immigration enforcement teams also have the ability to identify sham marriages through other work, as detailed in Marriage investigations.

All information submitted with the application for leave or residence on the grounds that the relationship is genuine and subsisting together with the disclosable information obtained as part of the referral scheme or other investigation, and any other information such as a subsequent enforcement decision, must be considered and referenced in the consideration/decision letter.

If no new evidence is put forward by the applicant following the investigation, the application will be refused on the basis that the marriage or civil partnership is a sham or one of convenience.

You must not grant leave to individuals as partners where that relationship has been determined as a sham or one of convenience as part of a Home Office investigation. Such offences should be considered when determining suitability in family and private life claims.

Marriage investigation: relationships previously found to be genuine

You may encounter applications from couples where the Home Office previously considered that there were reasonable grounds to suspect that the proposed marriage or civil partnership was a sham or one of convenience and investigated but ultimately no sham marriage determination was made (for example, there may not have been sufficient evidence to make the determination at that time).

If new, significant or compelling information comes to light, in cases where the Home Office strongly suspected that the relationship was a sham or one of convenience at the time of the referral, decision-makers may need to arrange an interview or make further enquiries with regards to the genuineness of the relationship.

All information submitted with the application for leave or residence on the grounds that the relationship is genuine together with the disclosable information obtained as part of the referral scheme, and any other information, must be considered and referenced in the consideration/decision letter.

Related content
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Genuine and subsisting relationship

This section deals with assessing whether a relationship is genuine and subsisting.

Genuine and subsisting

Family migration under Appendix FM as set out in paragraphs E-ECP.2.6. and E-LTRP.1.7. must be based on, and an applicant and their partner must provide evidence of being in, a genuine and subsisting relationship.

You must be alert and sensitive to the extent to which religious and cultural practices may shape the factors present or absent in a particular case, particularly at the entry clearance or first application for leave to remain. For example, a couple in an arranged marriage may have spent little time together prior to the marriage. For many faiths and cultures, marriage marks the start of a commitment to a lifelong partnership and not the affirmation of a pre-existing partnership.

You must take into account normal practice for marriages and family living according to particular religious and cultural traditions when considering the factors present or absent in each case. Evidence of pre-marital co-habitation and joint living arrangements can be a factor associated with a genuine relationship; but such evidence is not a prerequisite. In some cultures, it is traditional for the household accounts and bills to be in the name of the male head of the household (who could be the male partner; their father or grandfather).

The list of factors to consider, as set out below, is not exhaustive and must not be considered as a checklist. Its purpose is to assist and focus consideration of whether an applicant meets the genuine and subsisting relationship requirement.

Decisions on whether a relationship is genuine and subsisting are to be considered, taking into account all available evidence and individual circumstances, on a case-by-case basis**.**

Factors which may be considered with a genuine and subsisting relationship

Factors which may be considered with a genuine and subsisting relationship:

- the couple are in a current, long-term relationship and provide satisfactory evidence of this
- the couple have been or are co-habiting and provide satisfactory evidence of this the couple have children together (biological, adopted or step-children) and shared responsibility for them
- the couple share financial responsibilities, for example a joint mortgage or tenancy agreement, a joint bank account, savings, utility bills in both their names
- the partner, applicant or both have visited the other’s home country and family and are able to provide evidence of this (the fact than an applicant has never

visited the UK must not be regarded as a negative factor, but it is a requirement of the Immigration Rules that the couple have met in person)
- the couple, or their families acting on their behalf, have made definite plans concerning the practicalities of the couple living together in the UK
- in the case of an arranged marriage, the couple both consent to the marriage and agree to the plans made by their families

Factors which may prompt additional scrutiny

Additional scrutiny means that where you have doubts relating to the genuine and subsisting nature of a relationship, you must consider whether further information needs to be obtained, and the application investigated further, before you are able to decide the case.

This would include, where appropriate, requesting further information and making checks with other government departments, or a request by the Home Office to the couple for further information or that the couple attend an interview or interviews to discuss their application.

If there is evidence that gives rise to substantial doubts that the applicant and sponsor have a genuine and subsisting relationship, such as from a local authority registration services report or from checks conducted with the Department for Work and Pensions (DWP), it is likely to be unnecessary to undertake an interview, a home visit or make further enquiries before concluding the relationship is not genuine.

Any case involving marriages or civil partnerships where the Home Office has already made a finding of sham as part of the referral and investigation scheme should be refused on the basis that they are not genuine unless any new, significant, information has been submitted.

In marriage or civil partnership cases, any information submitted as part of the application should be considered along with that submitted to the Home Office under the referral and investigation scheme, even where no finding of sham was made. You can refer to Criminal investigations: sham marriage.

Further enquiries may be required to accept a marriage as valid for immigration purposes where:

- the marriage was a religious marriage that took place in a country that does not normally recognise that type of religious marriage
- 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
- the person’s country of domicile is unclear, especially where their country of domicile would mean the type of marriage or civil partnership entered into would not be valid
- a previous marriage or civil partnership was ended by a divorce or dissolution obtained in a different country from the one where it was celebrated, and neither partner was:

    - habitually resident in the country where the divorce or dissolution was obtained
    - a national of the country where the divorce or dissolution was obtained
    - domiciled in the country (or US state) where the divorce or dissolution was obtained
- the marriage or civil partnership took place in the UK, a report – of a suspicious sham marriage or civil partnership – was made by a registration officer under section 24 or 24A of the Immigration and Asylum Act 1999
- there is evidence from a reliable third party (for example the Forced Marriage Unit (FMU), police, social services, registration officer, or a minister of religion) which indicates that the marriage or civil partnership is, or may be a sham or a forced marriage or partnership of convenience (it may not be possible for this information to be used in any refusal notice)
- there is an allegation or other information suggesting that this is a forced marriage or that the marriage or civil partnership may not be genuine or that the couple are not living together
- the applicant or their partner does not appear to have the capacity to consent to the marriage, civil partnership or relationship, for example one has or both parties have learning difficulties
- there is evidence of unreasonable restrictions being placed on the applicant or partner, for example, being kept at home by their family, being subject to unreasonable financial restrictions, attempts to prevent the police or other agencies having reasonable, unrestricted access to the applicant or partner
- the applicant or partner fail to attend an interview, without reasonable explanation, where required to do so to discuss the application or their welfare, or seeking to undermine the ability of the Home Office to arrange an interview, for example unreasonable delaying tactics by the couple or a third party
- the couple is unable to provide any information about their intended living arrangements in the UK or about the practicalities of the applicant moving to the UK
- the circumstances of the wedding or civil ceremony or reception, for example, no or few guests and/or no significant family members present
- the couple are unable to provide accurate personal details about each other
- the couple are unable to communicate with each other in a language understood by them both
- there is evidence of money having been exchanged for the relationship to be contracted, unless it is part of a dowry
- there is a lack of appropriate contribution to the responsibilities of the marriage, civil partnership or relationship, for example, a lack of shared financial or other domestic responsibilities
- co-habitation is not maintained, or there is little or no evidence that they have ever co-habited
- the applicant is a qualified medical practitioner or professional, or has worked as a nurse or carer, and the partner has a mental or physical impairment which currently requires medical assistance or personal care in their own accommodation
- the partner has previously sponsored another partner to come to or remain in the UK or, if applicable, claimed to be married or in a civil partnership in reply to an asylum questionnaire

- the partner has previously been sponsored as a partner to come to or remain in the UK (for example, the partner obtained settlement on this basis) and that marriage, partnership or relationship ended shortly after the partner obtained settlement (excluding circumstances where the partner is a bereaved partner, or where the partner obtained settlement on the basis of domestic violence perpetrated by their former partner)
- the partner was married to or in a civil partnership with the applicant at an earlier date, married or formed a partnership with another person, and is now sponsoring the original partner to come to or remain in the UK
- the past history of the partner and/or the applicant contains evidence of a previous sham marriage, civil partnership or forced marriage, or of unlawful residence in the UK or elsewhere
- the applicant has applied for leave to enter or remain in the UK in another category and been refused prior to making their application on the basis of their relationship with a partner
- the marriage or civil partnership has taken place overseas in a country that is not an obvious or popular destination for a marriage or civil partnership and has no obvious links to the couple

An application can be refused entry or leave where you are satisfied the relationship is not genuine and subsisting because there is:

- a public statement (a disclosable statement that is not in confidence) made by the applicant or partner that their marriage or civil partnership is a sham or one of convenience or has broken down permanently
- a public statement (a disclosable statement that is not in confidence) made by the applicant or partner that they have been forced into marriage
- evidence that a sibling of the partner or applicant has been forced into marriage
- the applicant, partner or an immediate family member of either, is or has been the subject or respondent of a forced marriage protection order under the Forced Marriage (Civil Protection) Act 2007, or the Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011

You must be sensitive to the fact that partners may not be aware of such statements and consider the section in this guidance on reluctant sponsors or forced marriage and civil partnership.

You must be aware that a person may be or might have been granted leave to enter or remain in the UK on the basis of their relationship even if the marriage is not valid, if they meet the definition of partner, other requirements of the rules and the relationship is genuine and subsisting.

The fact that a third party indicates that in their opinion a marriage, partnership or relationship is genuine must not be afforded any weight.

Where there is evidence that the applicant or their partner does not appear to have the capacity to consent to the marriage, partnership or relationship, for example one or both of the parties having learning difficulties, additional scrutiny may well consist of independent evidence/assessment from social services that each party had the capacity to consent to the marriage.

Any decision to grant or refuse an application should be made on the balance of probabilities. The test to be applied is one of civil not criminal law and this means that there does not have to be conclusive proof beyond all reasonable doubt where an application is refused. You must continue to look at all the circumstances of the case as a whole.

Related content
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Related external links
Marriage and civil partnership referral and investigation-scheme (GOV.UK)
Data protection (GOV.UK)

Arranged marriages

This section concerns arranged marriages.

In an arranged marriage, the family of both spouses take the leading role in arranging the marriage, but the choice of whether to accept the arrangement remains with the prospective spouses. This form of marriage is acceptable in the UK where both parties are free to decide whether to proceed with the marriage.

There is a clear distinction between a forced marriage and an arranged marriage. It is important that you understand the difference between them.

Related content
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Forced marriages and civil partnerships

This section concerns forced marriages and civil partnerships.

This guidance is intended to give you practical guidance in country and overseas when dealing with forced marriage or civil partnership cases. The aim of this is to assist applicants and sponsors who may be victims of forced marriage or civil partnership, and ensure that:

- you have guidance on how to identify a person who may be at risk of a force marriage or civil partnership
- you have an understanding of the process for dealing with such cases
- cases are dealt with consistently and appropriately

The UK government definition of forced marriage or civil partnership

A forced marriage or forced civil partnership is one in which one or both partners do not consent to the marriage but are coerced into it under duress. Duress can include physical, psychological, financial, sexual and emotional pressure. In cases of vulnerable adults who lack the capacity to consent to marriage or civil partnership, coercion is not required for a marriage or civil partnership to be forced. (source: Multi-agency practice guidelines: Handling cases of Forced Marriage).

A person 'who lacks the capacity' means a person who lacks the capacity to make a particular decision or take a particular decision for themselves at the time the decision or action needs to be taken. The Department for Constitutional Affairs (2007), Mental Capacity Act 2005, Code of Practice (TSO).

Forced marriages and civil partnerships can occur in the UK and often involve partners from overseas. The pressure put on people to marry or enter into a partnership against their will can be physical (including threats, actual physical violence and sexual violence) or emotional and psychological (for example, when someone is made to feel like they are bringing shame on the family). Financial abuse (taking wages or withholding money) can also be a factor. Forcing someone to marry or enter a civil partnership is a criminal offence.

The Anti-Social Behaviour, Crime and Policing Act 2014 makes it a criminal offence to force someone to marry. This includes:

- forcing someone to marry in the UK
- forcing someone to marry overseas
- taking someone overseas to marry against their wishes, whether or not forced marriage takes place
- marrying someone who lacks the mental capacity to consent to marriage (whether they are pressured or not)

- breaching a Forced Marriage Protection Order

Related content
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Forced Marriage Unit

The Forced Marriage Unit (FMU) is a joint Foreign and Commonwealth Office (FCO) and Home Office unit. The FMU works with other government departments, statutory agencies and voluntary organisations to develop effective policy for tackling forced marriage.

The FMU works closely with all the immigration directorates to ensure, where possible, that foreign nationals are not granted entry to the UK based on forced marriage. The FMU can help those who have already been forced into marriage to explore their options, including assisting those who are being forced to sponsor a spouse's visa for settlement in the UK.

The FMU can be contacted at any stage of the immigration process for advice about any case where it is suspected that a forced marriage has or is about to take place.

Contact details for the FMU can be found on GOV.UK: Forced Marriage Unit.

Allegations of forced marriage or civil partnership

You will generally identify an allegation of forced marriage or civil partnership in one of 3 ways:

From the evidence supplied. This could be from entry clearance details, inconsistencies in the evidence supplied, identification from one or more of the warning signs of forced marriage or civil partnership or from statements made in a written submission from the sponsor/partner.

Informed directly from the sponsor. This will be directly from the partner, alleging forced marriage or civil partnership, rather than implied in a letter. You should be aware of the possibility of malicious allegations from a jilted partner.

Informed by a third party. This could be from a friend, a relative, a healthcare professional, a teacher, an MP or the FMU. In incidences of third party information decision-makers should consider, to the extent possible, the reliability of the sources.

An allegation of force marriage or civil partnership must be considered seriously and carefully. Unless the sponsor is prepared to make a public statement that they were forced into marriage or civil partnership, it will be difficult to refuse an application; unless there are other legitimate evidential grounds on which to do so. The case, could however, be investigated thoroughly, as there may be additional evidence to support a refusal decision on other grounds.

Warning signs of forced marriage or civil partnership

In cases where there has been no direct contact from a reluctant sponsor, you should still look out for warning signs of a forced marriage or civil partnership which could include, but is not limited to, the following:

- the sponsor, applicant or both were aged under 21 at the time of the wedding
- the stay overseas has been short at the time of the marriage
- there has been no communication between the spouses for a long period of time
- the FMU has indicated that a forced marriage or civil partnership is suspected or has taken place
- a protection order under the Forced Marriage (Civil Protection) Act has been issued
- the applicant income solely comes from disability benefits (this could be warning signs for someone with a learning disability, information about their disability would then be required)

Actions where forced marriage or civil partnership is alleged or suspected

Reluctant sponsors

A reluctant sponsor is a British citizen or permanent resident who has been forced into marriage or civil partnership and is subsequently forced into sponsoring an immigration application for their partner.

In cases of forced marriage or civil partnership a sponsor may be under extreme pressure by their family either physically (when someone threatens to or actually harms them), or emotionally (they are told that they will bring shame on their family) if they do not support the application. **Therefore, it is very important that you always work sensitively with reluctant sponsors. You must respect the reluctant sponsor's wishes and take into consideration their personal safety.**

Where the reluctant sponsor contacts the Home Office either by letter/email, or in person with their reasons for not wanting to support their partner's application, or the Home Office receives an allegation about a forced marriage or civil partnership from a third party, or decision-makers suspect it is a forced marriage or civil partnership from the evidence in an application, you should always check with the FMU to see if they are aware of the case. You must seek agreement and advice before making contact with the sponsor or applicant in a suspected or alleged forced marriage or civil partnership.

You should never disclose to the sponsor's family or community members that they are reluctant. Doing so puts them at real risk of harm. You should only share information on reluctant sponsor cases with colleagues who have a real need to know about them.

If the application states that the sponsor is in the country where the visa application is being made, you should contact the Consular Officer and request that they take steps to check that the sponsor is happy to be there and is not being held against their will. In some posts, the Consular Section may be able to do a welfare check. You may also consider interviewing the sponsor but should seek FMU guidance before doing so.

Confidential Statements

Non-disclosable statements or statements that are made in confidence cannot be submitted as evidence in an appeal hearing and it will not be possible for an immigration judge to consider them. Therefore, a judge will not be aware of the allegation that the case involves forced marriage or civil partnership.

Public statement

Where a public statement is made that is not in confidence, that a marriage or civil partnership is forced, the application should be refused. However, you should still consider the application in full and if you are satisfied that other criteria of the rules are met.

Unwillingness to make a public statement

You must not seek to engineer a refusal where there is reluctance or refusal to make or disclose a statement. In these circumstances you can only refuse the application if there are other grounds for refusal and evidence to support a refusal on another ground. If those grounds are not present, and all other requirements are met, then the application should be granted.

You should not, for example, attempt to refuse on maintenance and accommodation requirements or that the sponsor does not meet the minimum income requirement unless there is genuine evidence that the Immigration Rules have not been met.

Grounds for refusal in forced marriage or civil partnership cases

In cases where a public statement has been made, you must ensure the refusal notice makes this clear.

Intentions must be voluntary, genuine and non-coerced so a forced marriage or civil partnership would fail to meet the Immigration Rules in this respect. A forced marriage or civil partnership would not be regarded as subsisting as matter of substance because it was forced so would therefore fail to meet the requirements in that respect.

When a reluctant sponsor is unwilling to publicly disclose that they do not support a visa, you will not be able to state this in the refusal notice as this may put the sponsor at risk.

If there is evidence of a forced marriage or civil partnership, you should seek to refuse on lack of intentions and/or the marriage or civil partnership is not subsisting. However, unless the sponsor is willing to disclose their statement publicly, any refusal on intentions or subsisting grounds will be difficult to sustain at appeal.

The most suitable grounds for refusing an application in forced marriage or civil partnership cases are as follows:

- E-ECP.2.10 and E-LTRP.1.10: Each party does not intend to live permanently with the other
- E-ECP.2.6 and E-LTRP.1.7: The marriage or civil partnership is not genuine and subsisting

Additional grounds can be used in the refusal notice in forced marriage or civil partnership cases but only if there is evidence that the requirements of the Immigration Rules are not met. You should not seek to refuse on any grounds unless there is genuine evidence that the requirements of the particular rule are not met.

Curtailment

Where a UK sponsor notifies the Home Office of the breakdown of their marriage or civil partnership during the period when their partner still has limited leave to remain or enter in that capacity, it is possible to consider whether that leave should be curtailed. This is irrespective of whether the marriage or civil partnership was forced or not. Curtailment is not however automatic. There is no right of appeal against any curtailment decision made on or after 6 April 2015.

The Home Office will not be able to curtail leave on the grounds that the marriage or civil partnership has broken down unless the UK settled sponsor is prepared to make a disclosable public statement confirming the marriage civil partnership no longer subsists and that they do not intend to live with estranged partner in the future.

Further details on:

- Curtailment (Migration and Borders Guidance platform)
- Curtailment (GOV.UK)

Forced marriage protection orders

Part 4A of the Family Law Act 1996 (which was introduced by the Forced Marriage (Civil Protection) Act 2007) or the Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011) enables the courts to make Forced Marriage Protection Orders (FMPO) to prevent or pre-empt forced marriages from occurring and to protect those who have already been forced into marriage. Some FMPO last for a specific period for example, 6 months and the threat to the person may still exist after the order has expired.

The Police and the FMU can provide advice in cases where a FMPO may have been breached, for example, such as one not to remove the sponsor from the UK. The FMU can also be contact for advice.

Where the sponsor confirms the existence of a FMPO in a public statement the FMPO can be taken into account in deciding whether to refuse an application as it may support a refusal on the grounds that each party does not intend to live

permanently together with the other and/or that the marriage or civil partnership is not subsisting.

Related content
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Related external links
Forced Marriage Protection Orders
Forced marriage (Scotland)
Forced marriage.(Northern Ireland)
In forced marriage cases, the Multi-Agency Statutory Guidance for dealing with forced marriage (England and Wales) should also be considered along with this guidance to ensure we take into account the personal safety of the victim of forced marriage.

Possible bigamy, polyandry or perjury

This section concerns bigamous (where a man has more than one wife or partner) (also referred to often as polygamous) or polyandrous (where a woman has more than one husband or partner) marriages or civil partnerships and perjury.

Introduction

Cases where it would appear that one or both parties to a marriage or civil partnership contracted in the UK have committed bigamy (sometimes also referred to as polygamy), polyandry, or perjury should be reported to the appropriate General Register Office (GRO) (for England and Wales, or Scotland, or Northern Ireland).

It is Government policy to prevent the formation of polygamous households in the UK. S.2 of the Immigration Act 1988 and paragraphs 278 and 280 of HC395 of the Immigration Rules (applicable before 9 July 2012) and Appendix FM (after 9 July 2012) are intended to achieve this policy.

The following points should be noted in the first instance:

Primary consideration should be given to whether the marriage or civil partnership in the UK is valid under UK law. If the marriage or civil partnership is polygamous or polyandrous it is not valid and cannot be accepted as proof of a genuine relationship.

Where the marriage has taken place outside of the UK, it may be valid if contracted in accordance with the laws of the country in which it was celebrated, provided there is nothing in either person's country of domicile which prevents a polygamous or polyandrous marriage or civil partnership from being valid. However, only one partner can rely on a valid polygamous or polyandrous marriage or civil partnership for the purpose of leave to enter or remain in the UK as a partner.

The order in which person marries or enters into a civil partnership with a person is irrelevant in determining whether a spouse or partner can come to the UK. A person may not be granted entry or leave to remain as a partner where there is, or has been, another partner granted entry or leave to remain in the UK as their partner's spouse or civil partner, where the marriages or civil partnerships have not ended permanently due to death, divorce or dissolution – see section on presumption of death.

Polyandrous marriages (more than one husband)

Government policy relating to polygamy, as reflected in S.11(d) of the Matrimonial Clauses Act 1973 and S.2 of the Immigration Act 1988, is extended by virtue of paragraphs 278-280 of HC395 to cover the position of polyandrous husbands.

Paragraphs 278-280 of HC 395 build on the policy relating to polygamy and cater for applications involving polygamous and polyandrous marriages. This ensures that the

Immigration Rules relating to the admission of spouses, and children of polygamous marriages, are not discriminatory.

The instructions contained in the above paragraphs (Introduction, Application of paragraphs 278 and 279 of HC 395 to wives of polygamous marriages, Wives of a polygamous marriage entering in their own right and divorces) should therefore be applied equally to polyandrous husbands in all applications lodged on or after 2 October 2000.

Effect of S.2 of the Immigration Act 1988 on actual and potentially polygamous marriages

S.2 of the 1988 Act gives effect to the government's decision that the formation of a polygamous household in this country should be prevented.

S.2 of the Immigration Act 1988:

- prohibits certain polygamous wives from exercising the right of abode (any applications from those wives to enter the UK has to be considered under the Immigration Rules)
- has amended the rules in order to restrict settlement to one wife

Prior to 1982, the interpretation of S.11(d) of the Matrimonial Causes act 1973 meant that if a person **domiciled in England and Wales** went through a polygamous form of marriage abroad, the marriage would be regarded as being void under English law, irrespective of whether it was actually polygamous (that is, the man only had one wife).

However, the Court of Appeal decided in the case of Hussain v Hussain (1982) 3 AU ER 369, that since a **man domiciled in England and Wales** has no capacity to take a second wife and under Muslim law a wife is precluded from having more than one husband, the marriage could not be regarded as potentially polygamous and therefore was **not** void under s.11(d) of the Matrimonial Causes act 1973.

Prior to the 1982 interpretation, it had been the practice of the Home Office to accept for immigration purposes a potentially polygamous marriage which was in reality monogamous.

Until 8 January 1996 when the Private International Law (Miscellaneous Provisions) Act 1995 came into force a marriage contracted by a woman domiciled in this country with a man domiciled in a country that permits polygamy was by virtue of section 11(d) void, but it was our practice to accept the marriage for immigration purposes.

However, since the Private International Law (Miscellaneous Provisions) Act 1995 came into force, marriages which are in reality monogamous but are celebrated under a law which permits polygamy, are now to be regarded as valid. **This is fully retrospective.** All potentially polygamous marriages, which are **actually monogamous,** are therefore now valid under UK law. The marriage will, however,

be deemed to be void by any subsequent marriage of one of the parties or by an annulment.

Actual polygamous marriages celebrated on or after 1 August 1971

Polygamous marriages contracted overseas can only be valid in the UK if neither party was domiciled in England and Wales (S.11(d) of the Matrimonial Clauses Act 1973 refers) or another part of the UK.

To decide whether a polygamous marriage is valid the following questions must be asked:

- **did both parties have the personal capacity to enter into the marriage?** (personal capacity includes such issues as whether the parties were of the necessary age to marry, whether they have the mental capacity, and whether or not the parties were within the prohibited degrees of relationship (that is not too closely related))
- i**s it valid under the laws of the country in which it was celebrated?**

The decision to be made is whether the polygamous marriage ceremony complied with the laws of that country. For example, while Nigerian **custom law** permits polygamous marriages, a second polygamous marriage **would not** be valid if the man's first marriage had been to a woman under Nigerian **Civil Law**. Overall, polygamous marriage will not be considered valid in the UK if either party was domiciled in the UK when the marriage took place. The marriage must have taken place in a country where both parties were resident and polygamous marriages are lawful.

Local overseas posts are best placed to determine whether a particular marriage is valid under the laws of the country in which it was celebrated.

Marriages celebrated before 1 August 1971

The recognition (or otherwise) of polygamous marriages celebrated before 1 August 1971 is a matter of common law.

Whether a marriage is to be regarded as monogamous (one partner at one time) or polygamous (more than one partner at one time) must initially be determined by where the marriage is celebrated.

If the law of the country where the marriage takes place prohibits polygamy, (as English law does) then all marriages celebrated under that law must be monogamous, regardless of whether a party to such a marriage is permitted to practise polygamy in his country of domicile. Such a person can nevertheless contract a valid marriage here, as long as he is not already married, either here or abroad. Any further marriage contracted in this country would be void as it would be bigamous.

If the country in which the marriage is celebrated permits polygamy, any marriage contracted there by a person whose country of domicile permits him to enter into a polygamous union will be polygamous.

The Immigration Act 1988 does not affect the validity or otherwise of polygamous marriages. They are to be addressed as set out above. The 1988 act mainly acts to limit the consequential immigration rights of actually polygamous wives.

Polygamous wives

This section should be read in conjunction with the general guidance above on the validity in the UK of polygamous / potentially polygamous marriages.

S.2 of the Immigration Act 1988 prohibits certain polygamous wives from exercising their right of abode. Such applications have to be considered in accordance with paragraphs 278 to 280 of the Immigration Rules which contain provisions to restrict settlement in most cases to one wife.

S.2 of the 1988 Act states that:

> "no wife who has the right of abode in the UK under S.2(1)(b) of the 1971 Act (as amended) on the basis of her polygamous marriage, and who has not prior to 1 August 1988, and since her marriage to her husband been in the UK, should be allowed to enter the UK in the exercise of that right of abode (or be granted a certificate of entitlement in respect of that right) if there is another woman living who is the wife or the widow of the husband and who:
>
> - is, or at any time since her marriage to the husband has been, in the UK
> - or, has been granted a certificate of entitlement in respect of the right of abode under S.2(1) (b) of the 1971 Act (as amended) or an entry clearance to enter the UK as the wife of the husband"

Any woman who claims that S.2 of the 1988 act does not apply to her must prove her claim by showing one of the following applies:

- she has been in the UK prior to 1 August 1988 and since her marriage to her husband
- she has been in the UK since her marriage to her husband and at a time when the husband was not married to a woman as described above

A marriage may be considered polygamous under S.2 of the 1988 act even though at its inception neither party had any spouse additional to the other.

A polygamous wife who is either prohibited from exercising her right of abode under section 2 of the Immigration Act 1988 or who never had it, will, unless she is a returning resident (see section on polygamous spouses entering under their own right), have to apply for entry clearance if she wishes to join her husband in the UK.

In accordance with paragraph 278, entry clearance should be refused if the woman's husband has another living wife and any of the following apply to that wife:

- she has been in the UK since her marriage to the husband
- she has been granted a certificate of entitlement in respect of the right of abode under S.2(1) (b) of the 1971 Act as amended
- she has been granted entry clearance to enter the UK as the wife of the husband

Paragraph 279 states that the above restrictions will not apply to a woman who can prove either of the following:

- she has, before 1 August 1988, and since her marriage to the husband, been in the UK as the wife of her husband
- she has, since her marriage to her husband, been in the UK at any time when he was not married to a woman as is described in the provisions of Paragraph 278 of the rules

Such a woman should be treated as though she were not a polygamous spouse.

The presence of any wife in the UK as a visitor, illegal entrant or on temporary admission does not count for the purposes of considering an application from a polygamous spouse.

Referral to the General Register Office

Notifying the relevant General Register Office (GRO) of such cases is only justified where there is documentary evidence of the offence on file. Bigamy, polyandry and perjury are criminal offences and therefore need to be **proved beyond reasonable doubt**. In such circumstances, the relevant GRO will normally only accept referrals where there is documentary evidence to indicate that bigamy or perjury has been committed. Oral and written statements given to immigration officials are not accepted by the relevant GRO as evidence of a previous marriage or civil partnership. Such evidence may, however, be used as a basis for further enquiries.

Where the relationship appears to be bigamous polygamous or polyandrous, but the couple submit evidence at a later date to the effect that one or both were in fact divorced or the partnership has been dissolved, these documents should be referred to the relevant GRO 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 registration official should not be referred to the relevant GRO unless there is evidence to suggest that the documents may be forgeries.

You should provide details, including supporting documentary evidence to the relevant GRO office listed below:

General Register Office (GOV.UK)

The relevant GRO will usually confirm either that there is no case to pursue or that the matter of bigamy, polyandry, perjury or both has been referred to the police. If the matter is with the police, you may contact the police for progress on the outcome

of any charges brought. The police action may take some months to come to court if at all.

It is ultimately for a court to decide whether a marriage, civil partnership, divorce or dissolution of civil partnership is valid. However, although the standard of proof required before referring a suspected case of bigamy, polygamy, polyandry, or perjury to the relevant GRO must be beyond reasonable doubt, the appropriate standard of proof to support a decision in an immigration case is that of the balance of probabilities. It may still be appropriate to refuse an application even if the evidence on file would not be sufficient for police action.

You should bear in mind that in refusing an application in these circumstances, we are seeking to argue that a marriage or civil partnership is not valid despite the applicant having a genuine marriage or civil partnership certificate. It is not sufficient to rely upon statements made by the applicant; the onus is on the Home Office to make further enquiries.

Previously declared marriages or civil partnerships

When considering a case where an applicant has married or entered into a civil partnership after arrival in the UK and there is evidence on file of a previously declared marriage or civil partnership, the following procedure should be followed:

1) Where there is a statement on the VAF to indicate that the applicant has a spouse or partner in their country of origin, you should put this to the applicant, together with the full name of the spouse or civil partner and any other information we have, for comment.

2) If the applicant does not reply, the application should be refused on the grounds that the applicant has failed to respond satisfactorily to our enquiries.

3) If the applicant produces satisfactory evidence that they are divorced, their civil partnership has been dissolved, they are or widowed, the application may be granted.

If the applicant is a West African stating that an earlier marriage had been customary and that a customary divorce had taken place before they married in the UK, you should refer to ‘West African customary divorces’. You should make enquiries where there is any doubt concerning the status of customary marriages and divorces in the applicant's home country. Enquiries may also be appropriate where there are substantial grounds for believing that the marriage was not customary as claimed or obtain evidence from local sources about the marriage and divorce.

In deciding an application, you must consider the duty placed on the Home Office in arguing that a marriage or civil partnership registered in the UK is invalid. All the evidence on file must be carefully assessed and where the applicant produces a fair response and you have been unable to obtain further information to the contrary, it may be appropriate to take the view that we do not have sufficient evidence to conclude that the applicant and sponsor are not in a relationship as claimed. In such cases the application should be granted.

An application should be refused where there is documentary evidence of a previous marriage or civil partnership which has not been dissolved. All cases should be referred to the GRO. Where enquiries do not produce documentary evidence of a pre-existing marriage or civil partnership, it may still be appropriate to refuse the application if the available evidence strongly indicates that the applicant was not free to marry or enter into a civil partnership and they have not provided a convincing explanation.

Children of polygamous marriages

Under Paragraph 296 of the Immigration Rules a child who does not have right of abode in the UK should be refused entry clearance or leave to enter or remain, if a parent is party to a polygamous marriage and they would be refused admission or leave to remain themselves for the purposes of settlement or with a view to settlement under Paragraph 278. It will rarely be appropriate to grant entry clearance where their natural mother is still alive and still in a position to take care of them. IDI Chapter 8 Section FM3.1 Children gives more detail.

Where a child has a right of abode (as a British citizen), but they are the offspring of a polygamous marriage, such a child would be admitted on this basis in their own right.

Domicile has relevance in the context of the legitimacy of children of polygamous marriages.

Wives of polygamous marriage entering in their own right

A polygamous wife may be admitted entry to or leave to remain in the UK in their own right. A polygamous spouse will not, however, qualify for entry clearance in a temporary capacity leading to settlement (for example, as a spouse of a points-based) if that would result in the formation of a polygamous household in the UK.

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Divorce and dissolution in the UK

This section deals with divorce, presumption of death, void and voidable marriages and dissolving civil partnerships in the UK.

Divorce in the UK

The only valid way of divorcing in the UK is by obtaining on application an order from a civil court.

In England and Wales, a conditional order is the court's decision to grant a divorce provided that nothing comes to light which may alter that decision within the period of time specified on the certificate. If nothing comes to light, a final order is then issued. A final order is the legal document that ends a marriage and will be sealed (black) by the issuing court.

Although a foreign embassy, high commission, consulate or other diplomatic premises outside the UK are for legal purposes regarded as being inside the UK, a divorce obtained from any such premises in the UK is not valid here.

Presumption of death

Under section 1 of the Presumption of Death Act 2013 or the Presumption of Death (Scotland) Act 1977, 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 either of the following applies:

- the petitioner/applicant is domiciled in England, Wales and Scotland, or the missing person was domiciled on the day on which he or she was last known to be alive.
- either the missing person or the petitioner/applicant spouse has been habitually resident throughout the period of 1 year ending with that day

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
- a decree/declaration of presumption of death and dissolution of the marriage

Void and voidable marriage in England and Wales

A void marriage is one that is deemed never to have existed, and in such cases a nullity of marriage order does not alter the status of the parties but is merely a declaration that they were never lawfully married. This is not the same as a nullity of marriage order of a voidable marriage which must be accepted as having existed until the date of the order. Prior to 1 August 1971 there was no difference between

void and voidable marriages because any annulment obtained before 1 August 1971 would render the marriage as being void regardless of the grounds.
Under section 11 of the Matrimonial Causes Act 1973 a marriage celebrated in the UK on or after 31 July 1971 shall be void on the grounds that:

- it is not a valid marriage under the provisions of the Marriage Acts 1949 to 1970 because the parties are within the prohibited degrees of relationship or either party is under the age of 16 or the parties have intermarried in disregard of certain requirements as to the formation of marriage
- at the time of the marriage either party was already lawfully married
- 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 (see Polygamy)

In Scotland, S.20A of the Marriage (Scotland) Act 1977 provides grounds on which a marriage is void:

- if at the time of the marriage ceremony one of the couple consented under duress or in error
- one of the couple was incapable of understanding the nature of marriage or consenting to the marriage

A marriage celebrated in the UK on or after 31 July 1971 shall be voidable on the following grounds:

- that the marriage has not been consummated owing to the incapacity of either party to consummate it (does not apply to the marriage of a same sex couple)
- that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it (does not apply to the marriage of a same sex couple)
- that either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise
- that 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 1983 of such a kind or to such an extent as to be unfitted for marriage
- that at the time of the marriage the respondent was suffering from venereal disease in a communicable form
- that at the time of the marriage the respondent was pregnant by some person other than the applicant
- that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage
- that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004

A voidable marriage one in which an application for nullity has either been filed, but the case has not yet been heard or is in the process of being heard. A decree

absolute of nullity/nullity of marriage order is granted on or after the 1 August 1971 under the Nullity of Marriage Act.

Dissolution of civil partnerships in England and Wales

The Civil Partnership Act 2004 states explicitly that a civil partnership ends only on the death of one of the civil partners, on the issue by a court of a dissolution order, a nullity order or a presumption of death order.

The most common scenario will be for one of the civil partners to seek a dissolution order which will terminate the civil partnership; similar to a divorce for married couples.

However, if there is a material defect in the capacity (for example, their age or mental capacity) of either party to enter into a civil partnership, then a nullity order may be sought from the court.

If one or both civil partners have decided to end the civil partnership legal advice is desirable. The case will usually be dealt with by civil partnership proceedings in a County Court, although the High Court will also sometimes deal with complex cases.

An application for a dissolution cannot be made to the court before the end of the period of one year from the date of formation of the civil partnership.

To end a civil partnership the applicant must prove to the court that the civil partnership has irretrievably broken down. Proof of irretrievable breakdown of marriage can be evidenced in the following ways:

- unreasonable behaviour by the other civil partner
- separation for 2 years with the consent of the other civil partner
- separation for 5 years without the consent of the other civil partner
- if the other civil partner has deserted the applicant for a period of 2 years or more

The court will be required to inquire as far as is possible into the facts alleged by the applicant and into any facts alleged by their civil partner. If the court is satisfied on the evidence that the civil partnership has broken down irretrievably, a dissolution order can be granted.

The grounds on which a separation order may be sought are exactly the same as those on which an application for a dissolution order may be sought. The difference between the 2 orders is that whereas a person whose civil partnership has been dissolved is free to marry or form a new civil partnership, a separated person remains in law the civil partner of the other person.

Although still lawfully in a civil partnership, the separated couple are nevertheless able to use the courts to resolve any disputes they may have about the maintenance of property and the care of any children from the relationship.

In exceptional circumstances one party to a civil partnership may decide no valid civil partnership was ever formed by the couple, and seek a court order (a ‘nullity’ order) to the effect that the civil partnership was either void or voidable at its inception.

Related content
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Overseas divorce

This section deals with overseas divorce.

The Recognition of Divorces and Legal Separations Act 1971 set out the criteria for the recognition in the UK of an overseas divorce where it was obtained by means of judicial or other proceedings, valid in the country where it was obtained and either spouse was habitually resident in that country or a national of that country.

The Family Law Act 1986 instituted new provisions for the recognition of overseas divorces which took place on or after 4 April 1988.

An overseas divorce obtained by means of proceedings shall be recognised under section 46(1) of the Family Law Act 1986 if it is valid in the country in which it was obtained and at the relevant date **either** party was one of the following:

- habitually resident or domiciled in that country
- a national of that country

Divorce obtained other than by means of court proceedings

An overseas divorce obtained other than by means of court proceedings shall be recognised under section 46(2) of the Family Law Act 1986 if the following apply:

- it is valid in the country in which it was obtained
- both parties were domiciled in that country or one was domiciled there and the other was domiciled in a country which recognised the divorce, at the relevant date
- neither party had been habitually resident in the UK throughout the period of the year immediately preceding that date

The ‘relevant date’ means either the date on which proceedings were begun or, if there were no proceedings, the date on which the divorce was obtained.

Under section 49 of the 1986 act, in relation to a country comprising territories in which different systems of law are in force (for example, the United States of America) certain modifications are made to the recognition of divorce under section 46 such that each territory should be treated as if it were a separate country.

Talaq divorces

The talaq is the traditional Muslim divorce process and the triple talaq is a traditional Islamic law, in which the husband simply states, "I divorce you" 3 times. This has the effect of dissolving the marriage instantly. In 2017, India’s top court banned Islamic instant divorce and ruled the practise unconstitutional. Talaq divorce for Pakistan and for Bangladesh and for all Pakistani nationals overseas was formalised by the Muslim Family Laws Ordinance 1961, (MFLO) which remains in force in Bangladesh.

This requires that when a man pronounces talaq he must give written notice to his wife and also the Chairman of the Local Union Council. After this, a period of 90 days (or the end of pregnancy if the wife is pregnant), known as the Iddat period, must elapse before the divorce becomes effective. There is a process for reconciliation between the parties which may be attempted during this period. This form of 'full' talaq is a proceeding for the purposes of section 46(1) of the Family Law Act 1986.

The English courts do not recognise a unilateral divorce by a husband of his wife.

If a husband pronounces talaq divorce in the UK and then notifies his wife and the Union Council Chairman in Pakistan or Bangladesh, the divorce will not be recognised. The UK courts have held that an overseas divorce is capable of recognition in the UK only if the divorce has been instituted and obtained in the same country outside the UK.

If a full talaq divorce takes place in Bangladesh or Pakistan it will be recognised in the UK if the procedures laid down under the Muslim Family Laws Ordinance 1961 were complied with, and the following applies:

- the husband or the wife is a Bangladeshi or Pakistani citizen
- he or she is habitually resident in Bangladesh or Pakistan
- he or she is domiciled in Bangladesh or Pakistan

The MFLO procedures have not been formally extended to Azad Kashmir. The only form of divorce which can be recognised there is the traditional bare form. If a bare talaq divorce takes place in Azad Kashmir, it will be recognised in the UK only if the following applies:

- the husband and wife are both domiciled in Azad Kashmir
- neither partner has been habitually resident in the UK in the year immediately preceding the pronouncement of the divorce

If a bare talaq divorce takes place elsewhere in Pakistan or Bangladesh, it will not be recognised in the UK.

It should be noted that it is possible to obtain a dissolution of marriage in either a Family Court or the High Court in Azad Kashmir. Such divorce decrees are 'proceedings' and should be considered as such under section 46(1) of the Family Law Act 1986.

Transnational and telephone divorces

To be recognised in the UK, an overseas divorce must be instituted and obtained in the same country that the marriage took place. Therefore, no form of talaq pronounced in the UK is capable of recognition as a valid form of divorce. Divorces purporting to be a full talaq where the proceedings started in this country with the man pronouncing talaq 3 times here, and then writing to the Union Council and his wife in Pakistan, are not recognised here. This was held by the House of Lords in

1986 in the case of Ghulam Fatima and more recently in the case of Berkovits v Grinberg [1995] 2 All ER 681.

Telephone divorces, for example, where the husband who lives in Islamabad, pronounces talaq over the telephone to his wife who lives in London, would be considered to be transnational and are not recognised under the provisions of the Family Law Act 1986.

West African customary divorces

Although there is statutory provision for marriages and divorces throughout West Africa, the form of marriage and divorce most commonly encountered, especially amongst citizens of Ghana and Nigeria, is one that has taken place according to tribal custom.

Tribal divorces are essentially an agreement between the heads of both families that a couple's marriage has broken down and they should divorce, returning any dowry. It is not necessary for either party to be present when the families agree to the dissolution of the marriage.

There are customary courts which may dissolve customary marriages. The recognition of such a divorce would fall to s.46(1) of the Family Law Act 1986. A customary divorce may fall to be recognised under s.46(2) of the Act, but special attention should be paid to the whereabouts of the parties during the 12 months preceding the divorce.

It is no longer a statutory requirement in Ghana to register customary marriages or divorces.

It is the practice of the General Register Office (GRO) to accept as evidence of a customary divorce:

- affidavits sworn by persons who state themselves to be the heads of both the parties' families
- if provided, the registration document
- certification from the Ministry of Foreign Affairs and the Judicial Services of Ghana (the certification provides evidence that the affidavits and registration document are genuine)

The divorce is effective from the date the heads of family agree the divorce. You should also use that date as the effective date for consideration.

Occasionally the Ghanaian courts issue a judgment confirming a customary divorce. This is still regarded by GRO as a non-proceedings divorce which falls to be recognised under s.46(2).

Divorce in the Philippines

At present, it is only possible to obtain a divorce in the Philippines which allows both parties to re-marry if both parties are Muslims. A decree of legal separation may be obtained in certain circumstances but this does not terminate the marriage.

Article 41 of the Philippines Family Code allows for a person to re-marry if their spouse has been missing for 4 consecutive years (where there is a well-founded belief that the absent spouse is dead), or 2 years (if there is a danger of death in the circumstances prescribed in Article 391 of the Civil Code). For a person to re-marry, they must institute a summary proceeding for a 'declaration of presumptive death'.

If the absent spouse at a later stage reappears and makes an 'affidavit of reappearance' the second marriage is automatically terminated (Article 42). If a Filipino were to re-marry in the UK, it would normally be for the Registrar to decide whether to accept the declaration of presumptive death. All applications for leave from Filipinos on the basis of marriage in the UK who were previously married should be treated with caution, especially where the Registrar was not aware of the previous marriage.

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Domicile

For more information about domicile and marriage please refer to domicile guidance.

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