

M2 Capacity, Restrictions and Re-marriage

Summary of Learning Points

When you have read this Chapter you will have learnt the following:

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1. The legal impediments to marriage in respect of the following	1 - 4
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(ii) a pre-existing marriage or civil partnership	3
(iii) parties related within the prohibited degrees of relationship	4
2. What restrictions are in place when taking a notice of marriage with regard to	
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Capacity to marry

1. The following legal impediments to marriage must be borne in mind by registration officers so that they do not attest notices of marriage where the marriage would not be recognised by law.

Persons under minimum age

2. A marriage contracted between persons either of whom is under the age of 16 years is void. Notice may not be accepted for a marriage of anyone who is under the age of 16 unless both parties will have attained that age on or before the date on which each certificate is due to be issued and the necessary consent of the parents or guardians has been obtained (see M7).

Pre-existing marriage or civil partnership

3. A person who has a lawful spouse or civil partner living cannot contract a valid marriage or civil partnership either with their existing spouse / civil partner, or with any other person. The persons giving notice should be questioned carefully about condition (i.e. marital or civil partnership status) so that there can be no doubt whether any previous marriage or civil partnership has been legally terminated (see M8). If during questioning at the time of taking notice the couple indicate that they propose to go through another form of marriage before the ceremony for which they are giving notice, the advice at M2.17 should be given and the notice should not be taken if the couple still intend marrying at an earlier ceremony.

Prohibited degrees of relationship

4. A marriage solemnized between persons related within certain relationships by blood or adoption is void. A marriage between persons related within other relationships by affinity may be permitted provided statutory conditions are met (see M9).

Restrictions on giving notice

Residential qualifications

5. Normally, each of the parties must have resided in the district of a superintendent registrar for seven clear days before notice of marriage can be given to the superintendent registrar of that district. The day a person arrives in a registration district does not count towards the residential qualification and residence should be calculated from the following day. Each party must give notice in person. Both parties must have completed the qualifying period of residence in their respective registration district before either notice can be given. The party giving notice must be able to declare not only that he has resided for seven clear days in his registration district but also that the other party has, for the seven clear days immediately preceding, resided in a registration district. If the notices are given on different dates the marriage cannot take place until after the expiration of 28 clear days from the date when the later of the two notices was entered on <REDACTED>.

6. The only exceptions to this are:

- a) When one of the parties is, or both are, subject to immigration control they must attend together at any service point within a specified registration district (also known as a designated register office) to give their notices of marriage. They must both have completed the qualifying period of residence in a registration district, but this need not be the district in which notice is given.
- b) When neither of the parties is subject to immigration control and one of them is resident in Scotland, in a country to which the provisions of the Marriage of British Subjects (Facilities) Acts 1915 and 1916 apply (see M12) or is a sailor, marine or officer on one of HM Ships at sea (see M12). In these cases, only the party resident in England and Wales gives notice and the other notice is given in the other country or to the ship's commanding officer. None of these provisions applies when one of the parties is, or both are, subject to immigration control.
- c) When the marriage is to take place under the provisions of the Marriage (Registrar General's Licence) Act 1970 (see M11). In this case, only one notice is given to the superintendent registrar of the district where the marriage will be taking place.

7. A house-bound person is considered to reside at the place where he or she is housebound. A detained person is considered to reside at the place where he or she is detained (see M10).

8. A person whose home is within the superintendent registrar's district but who is temporarily absent from it, for education, employment or other purposes, such as a member of HM Forces, would be justified in regarding his home address as his place of residence for the purpose of giving notice of marriage if he retains a room at home for his own use and for his personal belongings, and returns there whenever opportunity offers.

Persons subject to Immigration control

9. Where one of the parties to a marriage is, or both parties are, subject to immigration control, and they are marrying by superintendent registrar's certificate, both notices of marriage must be given to the superintendent registrar/deputy superintendent registrar of a specified registration district (also known as a designated register office). Both parties must attend together and it is recommended that the notices are given separately (unless one of the parties is housebound or detained when the superintendent registrar or their deputy of a specified registration district attends the residence of the housebound or detained person, see M3 and M10 for further guidance).

Two marriage ceremonies on the same day

10. If the parties wish to have two valid marriage ceremonies performed on the same day, they should be advised that this is not possible (see para 12). They could have a civil marriage ceremony followed by a religious blessing (see para 18), or choose to have a religious marriage ceremony.

Re-marriage

Previous marriage ceremony in England or Wales

11. A couple who are already lawfully married cannot choose to re-marry each other, unless there is some doubt as to the validity of the earlier marriage. If a couple indicates that they are already married to each other, the superintendent registrar needs first to establish whether the earlier marriage was lawful.

12. A previous marriage ceremony in England and Wales which is outside the provisions of the Marriage Act 1949, e.g. the civil preliminaries required by law were not followed may still be capable of recognition as a lawful marriage despite the informality if **all** the following circumstances apply:

- i) the couple knew or believed the ceremony to be valid;
- ii) an authorised person or other religious minister e.g. priest, Imam, was present;
- iii) the ceremony took place in a building where marriages can normally take place; and,
- iv) the couple have lived together as husband and wife for a long period since the ceremony.

13. Where all the circumstances in paragraph 12 apply, the couple should be advised to seek legal advice about the implications of going through another marriage ceremony and the advantages of seeking a declaration of validity in respect of the previous ceremony from the courts. If, having sought legal advice, the couple still wish to marry, they should be told to submit a legal opinion setting out the reasons why, in view of the informality, [e.g that it took place outside the provisions of the Marriage Act 1949](#), it is considered that the previous ceremony is capable of recognition, [e.g they have been living as man and wife for a long period of time](#) and this should be forwarded to First Point of Contact (see Appendix 13). The marital condition should be entered as 'Previously went through a form of marriage at on; this condition should not be used in any other circumstances. If the marriage is not capable of recognition the marital condition should be recorded as it was prior to the previous ceremony.

14. A previous marriage ceremony between the parties outside the provisions of the Marriage Act 1949 in England or Wales should be ignored and the condition of each person recorded as it was prior to that ceremony if any of the following circumstances applies:

- i) the couple knew or believed that their previous marriage ceremony was not valid;
- ii) the couple knew or believed that the ceremony had to be followed by a civil ceremony or registration (and it was not);
- iii) the ceremony took place somewhere other than a building where marriages can normally take place e.g. a private house; or,
- iv) there has not been a long period of cohabitation since the ceremony.

Previous marriage ceremony outside England or Wales

15. If the parties claim to have been married outside England or Wales but suggest to the superintendent registrar that there was an informality in their marriage then they should be advised that they may only remarry if there are doubts about the validity of this marriage. The superintendent registrar may only accept notice subject to the production of documentary evidence of the solemnization of the former

marriage. Additionally the couple should provide a statement explaining why, in spite of the informality, that their marriage is capable of recognition. The evidence and the statement should be sent to First Point of Contact: 0300 123 1837 (see Appendix 13) for advice. It may also be necessary for the couple to obtain a legal opinion setting out why in view of the informality, the grounds on which it is considered that the marriage is capable of recognition, ([ie the failure to comply with the law of the country concerned may not in itself render the marriage invalid](#)). The condition of the parties should be described as 'Previously went through a form of marriage at on'; this condition should not be used in any other circumstances. [If evidence is provided to support the marriage not being capable of recognition the marital condition should be recorded as it was prior to this ceremony](#). See also M6.43.

Re-marriage where there is no apparent informality

16. If the parties wish to re-marry and there is no apparent informality in the earlier proceedings - they merely wish to go through another marriage ceremony with each other for whatever reason - they should be informed that as they are already lawfully married to each other, there is no statutory provision for a notice to be taken in these circumstances. The superintendent registrar has no power to re-marry people who are already married to each other (if that marriage has not been brought to an end).

Religious ceremony after a civil marriage

17. Section 46 of the Marriage Act provides that persons who have been married to each other in the presence of a superintendent registrar may, if they so wish, add the religious marriage ceremony of the church or denomination of which they are members. Such a ceremony may be performed by a clergyman or minister of the church or denomination, or someone nominated by him, in the church or chapel of which he is a regular minister. The parties must produce to the minister a certificate of their marriage in the register office or approved premises before the religious ceremony may take place.

18. Such a ceremony does not invalidate or supersede the marriage in the register office or approved premises and no record of it is made in the marriage registers kept under the Act. No legal preliminaries are required to be observed and therefore a superintendent registrar would not accept notice of such a ceremony.

19. Same sex couples will not be able to have a religious blessing according to the rites and ceremonies of the Church of England or Church in Wales. For any other religious blessing then the couple will need to obtain the consent of the relevant governing authority and for further details in this respect they should contact the officiating minister.

M2 Evaluation of learning

When you have finished reading this Chapter you may wish to evaluate what you have learnt by answering the following questions. The answers to these questions are at the end of the Handbook.

- Q1.** Identify the three main areas that govern a person's capacity to marry
- Q2.** In what circumstances may a person of 15 years of age give notice of their intention to marry?
- Q3.** How long must each of the parties normally reside in a registration district in England and Wales before notice of marriage can be given?
- Q4.** If a British national wished to give notice after residing in a registration district for 8 days, but the other British national has only resided in a registration district for 5 days, explain if notice of marriage can be taken.
- Q5.** A British national attends to give notice of marriage in a Catholic Church in another district. As it is not the usual place of worship for either of the couple. The man explains his girlfriend resided in the registration district where the church was for seven clear days and then gave her notice of marriage to the register office on the next day. This was last week and she has since returned to their home address. Explain if notice of marriage can be given.
- Q6.** If a notice of marriage was entered on the 1 March (and was not referred to Home Office Immigration) on what date would the superintendent registrars certificate be due for issue and the marriage may proceed?
- Q7.** What advice should be given to a person with indefinite leave to remain who would like to give notice to marry?
- Q8.** If a couple attend to give notice of marriage and they advise that they have been through a previous marriage ceremony in a Sikh Temple in England 10 years ago where the marriage was performed by a priest, what action should be taken?
- Q9.** If a couple attend to give notice of marriage and they advise that they married 8 years ago in a private house by an Imam and they believed the marriage to be valid at the time, what action should be taken?
- Q10.** What advice should be given to a couple if they wish to re-marry and there is no apparent informality in the proceedings of the first marriage and they have not legally ended that marriage?
- Q11.** What advice should be given to an opposite sex couple who ask if they can have a religious ceremony after their civil ceremony?
- Q12.** What advice should be given to a same sex couple who ask if they can have a religious (Methodist) ceremony after their civil ceremony?