M8 Condition

Summary of Learning Points

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

Example 1 Couple who are within scope of the referral scheme

< REDACT >

M8 Condition (Marriage or civil partnership status)

General

1. A previous marriage or civil partnership, unless null and void or terminated by the death of one of the spouses or civil partners, remains a legal impediment to a further marriage to a new partner until the existing marriage/civil partnership has been dissolved or annulled by judicial or other proceedings effective in the country where it took place and recognised as valid in English law.

2. The person giving the notice should be asked whether either of the parties has been through any form of marriage or civil partnership before in this or any other country. Where an individual has previously been through a form of marriage or civil partnership the attesting officer has the power to require evidence how this relationship ended. One of the following original documents must be provided:

i) decree absolute of divorce or decree of nullity of marriage granted by a court of civil jurisdiction in England and Wales;

ii) dissolution order or nullity order obtained in England or Wales in accordance with Part 2 of the Civil Partnership Act 2004;

iii) a document, or documents, confirming divorce or annulment granted by a court of civil jurisdiction in any part of the British Islands and recognised in the United Kingdom in accordance with section 44 of the Family Law Act 1986;

iv) a document, or documents, confirming the dissolution or annulment of civil partnership granted by a court of civil jurisdiction in the United Kingdom and recognised in accordance with section 233 of the Civil Partnership Act 2004;

v) a document, or documents confirming divorce or annulment obtained in a country outside the British Islands and recognised in the United Kingdom in accordance with either;

   a) sections 45 to 49 of the Family Law Act 1986; or

   b) articles 21 to 27, 41(1) or 42(1) of the Council Regulation;

vi) a document, or documents confirming the dissolution or annulment of civil partnership obtained outside the United Kingdom and recognised in accordance with either;

   a) sections 234 to 237 of the Civil Partnership Act 2004; or

   b) regulations made under section 219 of the Civil Partnership Act 2004;

vii) the death certificate of the spouse or civil partner;

viii) the presumed death certificate of spouse or civil partner issued under paragraph 3 of Schedule 1 to the Presumption of Death Act 2013.

If none of the documents listed in sub-paragraphs (i) to (viii) are available then the registration officer should contact the General Register Office.

Marriage or civil partnership terminated by death

3. If either of the parties is a widower, widow or surviving civil partner the registration officer should ask for the production of a certificate of the death of the former spouse or civil partner, or other evidence that may be available, together with evidence to link the deceased with the person giving notice if they are not detailed on the death certificate. In any case where a foreign death certificate is produced, it is suggested a full third party translation is

produced. It is not necessary to submit a foreign death certificate to the General Register Office unless the registration officer is in any doubt.

4. Where one of the parties has a previous marriage or civil partnership that has not been dissolved and the party has no definite evidence that his or her spouse or civil partner is dead, the superintendent registrar should bring the following points to the notice of both parties.

a) A person who has a spouse or civil partner living cannot lawfully contract a further marriage to a new partner.

b) If there are facts from which the death of the person's spouse or civil partner can be inferred, a further marriage entered into by that person might well be held by the Court to be valid, unless evidence was produced that the spouse or civil partner was in fact still alive at the time of the further marriage. If it turned out that in fact the spouse or civil partner was still living at the time of the further marriage that marriage, would be, and would have been from the beginning void, however honestly and reasonably it might, at the time, have been believed that the spouse or civil partner was not alive (but see d).

c) The law requires that each of the parties to a proposed marriage should sign a declaration that he or she believes that there is no impediment of kindred or alliance other lawful hindrance to the proposed marriage. The making of such a declaration means that, to the best of the belief of the person making it, the former spouse or civil partner is dead. A person making a false declaration is liable to heavy penalties.

d) Section 1 of the Presumption of Death Act 2013 enables certain persons (subject to specified criteria) to apply to the High Court for a declaration that a person who is missing – and who is thought to have died or has not been known to be alive for at least 7 years – is presumed to be dead. A declaration made under that Act, after the appeal period has ended or the appeal process has been completed, is effective for the purposes of ending a marriage or civil partnership to which the missing person is a party. Although the Act provides for the making of a variation order, for example, where the missing person who is the subject of a declaration of presumed death, is subsequently found to be living, the Act also provides that the making of a variation order in those circumstances does not revive a marriage or civil partnership that was brought to an end by virtue of the making of the declaration.

e) Section 55 of the Civil Partnership Act 2004 enables a civil partner who alleges that reasonable grounds exist for supposing that the other civil partner is dead, to apply to the Court for the presumption of the death of the other party and the dissolution of the civil partnership. This only applies where, at the time of making such an application, the High Court does not have jurisdiction to entertain an application by the civil partner under section 1 of the Presumption of Death Act 2013 for a declaration that the other civil partner is presumed to be dead.

Evidence of probable death

5. Where a death is alleged to have occurred outside of England or Wales and either party is stated to be a widower, widow or surviving civil partner but there is no certain knowledge that the former spouse or civil partner is dead, the party seeking to give notice should be asked about the circumstances in which the death is believed to have occurred, and to produce such evidence as may be available as to the facts of the case. If evidence is produced which satisfies the superintendent registrar that there are reasonable grounds for the party's belief that the former spouse or civil partner is dead, he should report the facts to

the General Register Office (First Point of Contact).

Presumption of death

6. If either party wishes to apply to the High Court for a declaration that their spouse or civil partner is presumed to be dead, under section 1 of the Presumption of Death Act 2013, the party concerned should be advised to contact the High Court. The Act requires the Registrar General to maintain a register of missing persons who the courts determine to be presumed dead, called the Register of Presumed Deaths. Certificates of presumed death are only issuable from the register by the General Register Office, on payment of the statutory fee for the standard service (see Appendix 6A). Certificates of presumed death are acceptable for the purposes of giving notice of marriage (see M5.23).

Marriage terminated by decree of divorce or nullity

7. If either party has been through any form of marriage or civil partnership and the previous marriage or civil partnership has been dissolved or annulled by decree of the Court, notice may not be accepted until the party giving it is able to declare that the decree has been made absolute or final, or where granted outside England and Wales, is of final effect. In certain countries outside England and Wales there is no decree nisi (or interlocutory decree) with a marriage, or conditional order with a civil partnership, e.g. in Scotland, the decree granted by the Court of Session in Edinburgh or by The Sheriff Courts is final when pronounced.

8. A person wishing to give a notice of marriage who asserts that he or she has previously been through a form of marriage or civil partnership but that it was void must, in the absence of a decree of nullity or nullity order, produce other satisfactory evidence of invalidity to the superintendent registrar. If there is any doubt that the previous marriage or civil partnership was void or the evidence produced in support of that contention is not conclusive the superintendent registrar must report the case to the General Register Office.

Decree or dissolution granted by the Court in England or Wales

9. The minimum period which must normally elapse before a decree nisi of divorce or nullity for a marriage, or conditional order in the case of a civil partnership can be made absolute or final is 6 weeks. Parties may be under the impression that a decree nisi or conditional order becomes absolute or final automatically at the end of the prescribed period. But this is not so, and parties should be told that to be able to make the required declaration in a notice of marriage they must be aware that the decree or dissolution has in fact been made absolute or final. If the parties state that the decree or dissolution has been made absolute, or final, the notice may be given but they should be requested to produce a certificate of decree absolute or final order of dissolution bearing an original seal of the Principal Registry in London or the district registry or designated county court at which it was granted before the superintendent registrar's certificates may be issued. Superintendent registrars should note that while the certificate issued may be either an original or a photocopy, the seal itself should be an original.

10. Where the superintendent registrar is not fully satisfied that the decree or dissolution has been made absolute or final, he may consider he has reasonable grounds for refusing to issue his certificate for marriage. In these circumstances, the superintendent registrar should

pay particular attention to the advice in M16.39. He should also discuss the situation with a member of the General Register Office.

Marriage ended by divorce, annulment or nullity outside England or Wales

11. When one of the parties is stated to have a divorce obtained outside England or Wales, a certified copy of the document showing that the previous marriage has been finally dissolved must be produced to the superintendent registrar with a full English translation (where necessary) (see 24ii below).

12. A fee is payable for the consideration of a divorce, annulment or nullity document obtained outside of the British Islands (the United Kingdom, Channel Islands and the Isle of Man). There are different fees depending on whether the document is one which can be accepted by the superintendent registrar or needs to be referred to the General Register Office. A full list of fees can be found in the document **Table of Fees** on the Registrars website.

13. Before taking the notice the superintendent registrar should inform the couple there is a fee for considering the document which is non-refundable, even if it turns out that the divorce, annulment or nullity is not capable of recognition. The superintendent registrar should undertake an initial review of the document to establish whether it is one which the superintendent can accept or whether it needs to be referred to the General Register Office so the couple can be advised of the correct fee. It is advisable for the fee to be taken before the document is considered in any detail.

14. It may be the case that the document appears to be one the superintendent registrar can accept, but after further consideration it is identified that the document needs to be referred to the General Register Office. In these circumstances the superintendent registrar should ensure the additional fee is collected before referring the document to the General Register Office. More guidance on the fees for considering divorce, annulment and nullity documents can be found in the document **Foreign Divorce Checklist** on the Registrars website.

15. It is possible for a discretionary reimbursement, reduction, waiver or refund to be applied to a fee. Before considering whether such action is appropriate, superintendent registrars should refer to the refunds policy document which can be found in the document **Waiver, refund and reduction policy guidance** on the Registrars website.

16. Any fees collected on behalf of the General Register Office will be forwarded at the end of each year. The reconciliation process can be found in the document **Collection, Accrual & Reconciliation Process** on the Registrars' website.

17. The following paragraphs set out what documents are acceptable and whether or not they need to be submitted to the General Register Office. Where a document does have to be submitted it must be accompanied with a Foreign Divorce / CP Dissolution referral to GRO (form FD1), it can be < REDACTED > emailed to < REDACTED > direct from the issuing court, or if the parties have produced a certified copy, from the superintendent registrar direct. It is not necessary to follow a fax or email with hard copies through the post.

18. The parties giving notice should be advised that no superintendent registrar's certificate for the marriage will be issued until the agreement of the Registrar General has been obtained. Furthermore, without causing undue alarm to the parties, they should also be

informed that if it appears to the Registrar General that the divorce is not recognised in English law, the proposed marriage could not proceed.

In such instances, the Registrar General will write direct to the parties at the address given on their notice, unless provided with a change of address, explaining the reasons for this.

Where the couple have been referred to Home Office Immigration (HOI), then the Registrar General will also notify HOI if the divorce is not recognised in English law. HOI will continue with their investigations and write to the couple advising of their decision as follows -

a) Where a couple have complied: HOI will write to the couple to advise that although they have complied with the investigation everything else must be in order before they can proceed with their marriage.
b) Where the couple have not complied: HOI will write to the couple to advise that they have not complied with the investigation. < REDACTED >

A flowchart detailing the process of referring a foreign divorce to GRO for couples who fall within the referral scheme to Home Office Immigration is at Example 1 at the end of this chapter.

19. Where a decree of divorce or nullity was granted by the court in Scotland, Northern Ireland, the Isle of Man or the Channel Islands, the superintendent registrar must require the production of a copy of the decree bearing an original seal. A Scottish marriage certificate officially endorsed with details of the divorce may be accepted provided the divorce took place in England or Wales or in one of the countries referred to at the beginning of this paragraph. If the endorsement shows that the divorce took place elsewhere notice may be accepted on the understanding that no superintendent registrar's certificate for marriage will be issued. The matter must be referred to the General Register Office.

Where a decree of nullity was granted on or after 1 August 1971, a copy of the decree together with a complete copy of both sides of the notice should be sent to the General Register Office (Casework Department). The parties giving the notice should be advised that no superintendent registrar's certificate for the marriage will be issued until the agreement of the Registrar General has been obtained.

20. Where a decree of divorce was granted by a court of civil jurisdiction in one of the countries listed below, notice of marriage may be accepted and the superintendent registrar's certificate issued subject to production of a certified copy of the decree absolute. The parties to the proposed marriage should be advised that their overseas divorce/CP dissolution has been viewed under the relevant UK legislation. Based upon the information provided, the attesting officer is satisfied that the divorce/CP dissolution appears capable of recognition to allow their marriage to proceed, providing all other conditions are met. However, they should be warned that only a court can rule on the validity of any marriage, divorce or CP dissolution.

Australia	Fiji	*New Zealand
Barbados	Irish Republic	South Africa (excluding Bohuthatswana, Ciskei, Transkei and Venda)
Bermuda	Jamaica	Tanzania
Canada	Kenya	Zimbabwe

*It should be noted that the decrees of divorce granted in New Zealand since 1980 may contain references to an appeal period where the decree was other than by joint petition. If the decree bears the seal of the court it may be accepted as evidence of finality as no seal is added until after the expiry of any appeal period.

21. In any case where the acceptability of a decree absolute of divorce obtained from one of the countries listed above is in doubt, advice should be sought from the General Register Office. A decree of nullity granted by the court in any of the countries listed in the table above must be referred to the General Register Office.

22. Where a decree of divorce was granted by a court of civil jurisdiction in one of the following countries, the superintendent registrar's certificate may be issued if either party to the divorce was a national of that country on the date of commencement of the divorce proceedings **and** the evidence produced that the divorce is final meets the criteria set out in < REDACTED >

Austria	Hungary	Russia
Bulgaria	Poland	Sweden
Germany	Romania	USA (Excluding Nevada)

Where the document is not in English, a full translation of the divorce/annulment document is required, which can be made by a friend or relative of the parties provided they add their name and address and certify it as a true and accurate translation.

Where a divorce has been granted by one of the countries or states listed above, and the superintendent registrar is satisfied that the conditions on nationality and the finality of the divorce are met, the superintendent registrar's certificate(s) may be issued for the purpose of marriage. However the parties must first be warned in the same terms as M8.20

23. If any of the following circumstances apply the documents must be submitted to the General Register Office along with a fully completed Foreign Divorce / CP Dissolution referral to GRO (FD1):

i) neither of the parties to the divorce was a national of the country in which the divorce was granted at the date of the commencement of the divorce proceedings;

ii) the document is not shown in the examples in the foreign divorce library;

iii) the country of divorce is different to the country it has been registered, as referred to in the foreign divorce library.

iv) there is any doubt about the document or nationality when the divorce proceedings commence; or,

v) the document relates to a nullity instead of divorce.

24. Where the decree of divorce or nullity was granted by the Court in any other country, and in all instances where the previous marriage was terminated by native law and custom, the following must be submitted by the superintendent registrar to the General Register Office along with a fully completed Foreign Divorce / CP Dissolution referral to GRO (FD1):

i) certified evidence of the divorce/annulment, or, provided the original or court certified document has been produced, a legible photocopy certified by the superintendent registrar as a true copy of the original. Email direct from the court or issuing office may also be accepted.

ii) where the document is not in English, a full translation of the divorce/annulment document, which can be made by a friend or relative of the parties, providing they add their name and address and certify it as a true and accurate translation.

25. In addition, talaq divorces, eg from Pakistan, should be accompanied by a written statement from the party to whom the divorce relates, confirming who pronounced the talaq and their physical whereabouts (specifically which country) at the time of the pronouncement of talaq (section 2 of the additional sheet on the FD1 refers) We understand that dependent on the nationality of the parties they may not be familiar with the word talaq. If this is the case we suggest you ask them who divorced who or who pronounced the divorce and what was their physical whereabouts (which country) at this time.

Israeli 'Get' divorces should be accompanied by a statement from the party to whom the divorce relates with details of the whereabouts of the man when the Scribe was appointed, where the Get was written and where it was handed to the wife (section 3 of the additional statement sheet on the FD1 refers).

In the case of a customary divorce, obtained, for example, in Ghana or Nigeria, the party's residence in the United Kingdom has a bearing on the recognition of the divorce. A written statement from the party to whom the divorce relates, confirming the whereabouts of the parties for the full 12 months prior to the date of divorce and their countries of domicile at the date of the divorce should be submitted with the documents and a full certified third party translation if the document is not in English (section 4 of the additional sheet on the FD1 refers).

Customary divorces from Nigeria and Ghana can be difficult to identify. Often the families will make a sworn affidavit at a court advising that they have agreed to divorce the couple. Although you may be presented with what appears to be a Court document, the court itself has not dissolved the marriage. Individuals themselves may also believe that they have a Court divorce rather than a customary one. If in doubt we would recommend that both sections 1 and 4 of the additional sheet of the FD1 are completed.

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Civil partnership ended by dissolution or nullity outside England or Wales

26. In all cases where the civil partnership dissolution or nullity order was not granted by a court in England or Wales, a referral to the General Register Office is required.

27. A fee is payable for the consideration of a divorce, annulment or nullity document obtained outside of the British Islands (the United Kingdom, Channel Islands and the Isle of Man). Before taking the notice the authorised person should inform the couple that there is a fee for the consideration of the document which is non-refundable, even if it turns out that the dissolution or annulment is not capable of recognition. A full list of fees can be found at the **Table of Fees** on the Registrars website. More guidance on the fees for considering dissolution and nullity documents can be found in the document < REDACTED >

29. It is possible for a discretionary reimbursement, reduction, waiver or refund to be applied to a fee. Registration officers should refer to the refunds policy document which can be found in the document **Waiver, refund and reduction policy guidance** on the Registrars website in order to determine whether this is appropriate.

30. Any fees collected on behalf of the General Register Office will be forwarded at the end of each year. The reconciliation process can be found in the document < REDACTED >

31. Once the payment has been taken, the following should be submitted to GRO, along with a fully completed FD1:

i) certified evidence of the dissolution/annulment, or, provided the original or court certified document has been produced, a legible photocopy certified by the superintendent registrar as a true copy. A fax or email direct from the court or issuing office may also be accepted.

ii) where the document is not in English, a full translation of the dissolution/nullity document, which can be made by a friend or relative of the parties, providing they add their name and address and certify it as a true and accurate translation.

Void and voidable marriages or civil partnerships

32. A void marriage or civil partnership is one which is null and void from the beginning (e.g. a bigamous marriage, or a civil partnership where one party was not free to register) and has no effect on the condition of either party to the marriage. While it may be desirable for a party to a void marriage or civil partnership to obtain a decree of nullity in order that the invalidity of the marriage or civil partnership is put beyond all doubt, it is not essential. A void marriage or civil partnership should however be distinguished from a voidable marriage or civil partnership. A voidable marriage or civil partnership is one which is regarded as a valid subsisting marriage or civil partnership until it is annulled by decree of the Court. It remains a legal impediment to a further marriage until a decree absolute (or decree having final effect) or final order of nullity is granted.

33. In order to determine the description of the party's condition to be entered in the notice of marriage (and in the register entry)

a) the superintendent registrar must, where a decree nisi of nullity was granted before 1971, treat the marriage as if it never existed; and

b) where a decree nisi of nullity was granted on or after 1 August 1971, or where a final order of nullity was granted in respect of a civil partnership, the superintendent registrar will need to establish whether the marriage or civil partnership was void or voidable.

34. For those cases where it is necessary to establish whether a previous marriage or civil partnership, annulled by decree of the Court, was void or voidable the following advice is given:

a) Decree granted by the court in England or Wales

The decree, in respect of a **void** marriage or civil partnership, states that the "marriage/civil partnership ..... be pronounced and declared to have been by law void ....." and certifies that the decree or order "was on ..... made final and absolute/final and that the said marriage/civil partnership was by law void and that the said petitioner was and is free from all bond of marriage/civil partnership with the said respondent".

The decree or nullity order, in respect of a **voidable** marriage or civil partnership, states that the "marriage/civil partnership ..... be annulled": and certifies that the decree or order "was on ..... made final and absolute/final and that the said petitioner was from that date and is free from all bond of marriage/civil partnership with the said respondent".

b) Decree granted by a Court outside England and Wales

The question whether the marriage or civil partnership was void or voidable will depend on the law of the country where the decree was granted. Where the date on which the decree (or interlocutory decree if there were two stages) was granted was on or after 1 August 1971, or where it relates to a civil partnership, the decree or order must be examined to see if it indicates whether the marriage or civil partnership was void or voidable (for cases where this is not clear see M6.40 for the description to be used for the condition of the party).

Polygamous or potentially polygamous marriages

35. Where either party has entered into more than one marriage at the same time under a law which permits polygamy, the superintendent registrar should be satisfied, by production of a death certificate or evidence of divorce, that no such marriages are still subsisting. A decree of divorce which contains a reference to section 47 of the Matrimonial Causes Act 1973 or the Matrimonial Proceedings (Polygamous Marriages) Act 1972 may not be conclusive evidence that there is no other marriage still subsisting.

Where such a decree is produced, the superintendent registrar should obtain an additional statement from the person to whom it relates confirming, if such is the case, that he/she has not been through a form of marriage with any person other than ... to whom he/she was married at ... on ... which was dissolved at ... on ...

Foreign Divorce Examples

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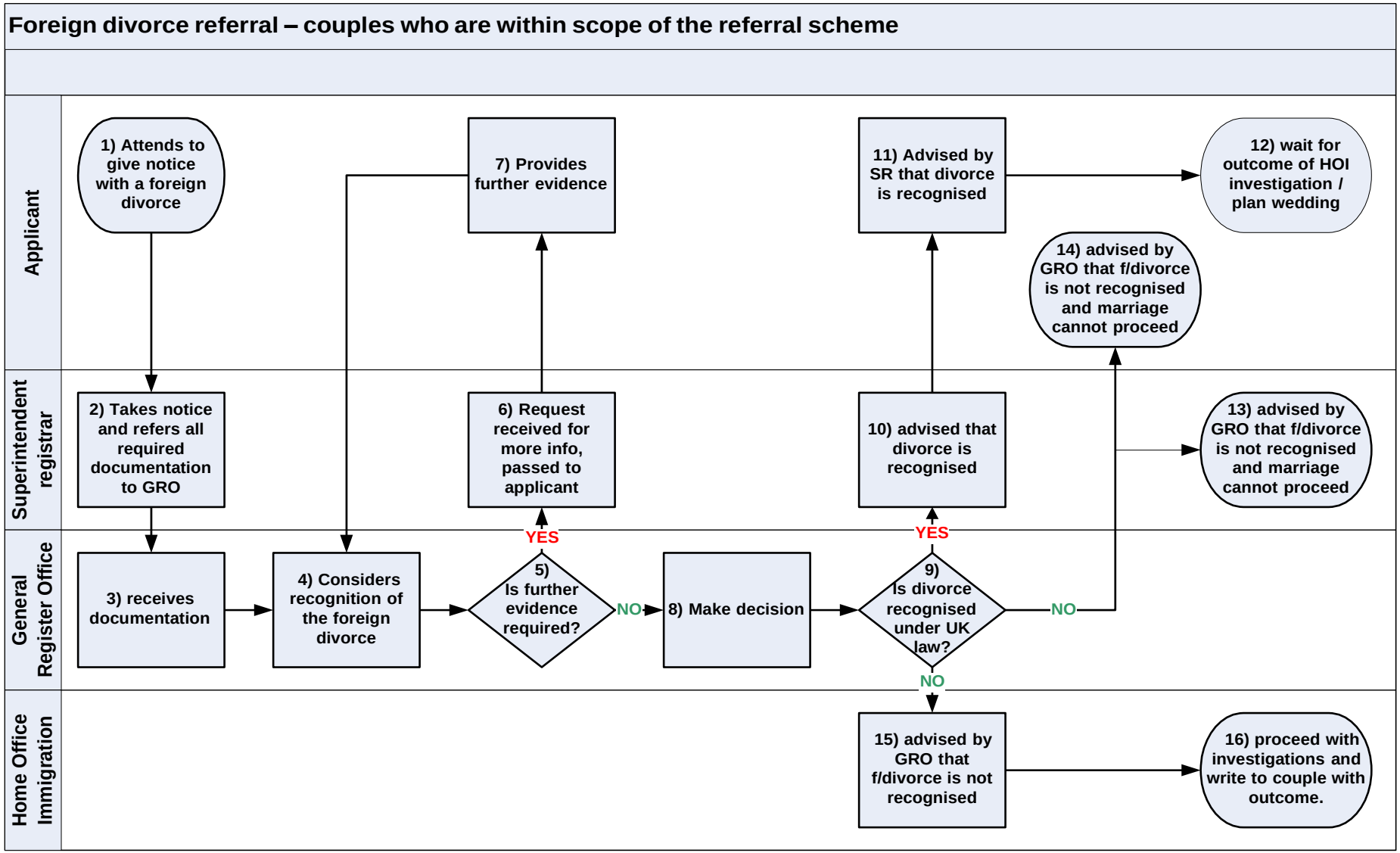
Example 1


Foreign divorce referral – couples who are within scope of the referral scheme
Applicant
Superintendent registrar
General Register Office
Home Office Immigration
1) Attends to give notice with a foreign divorce
2) Takes notice and refers all required documentation to GRO
3) receives documentation
4) Considers recognition of the foreign divorce
5) Is further evidence required?
YES
NO
6) Request received for more info, passed to applicant
7) Provides further evidence
8) Make decision
9) Is divorce recognised under UK law?
YES
NO
10) advised that divorce is recognised
11) Advised by SR that divorce is recognised
12) wait for outcome of HOI investigation / plan wedding
13) advised by GRO that f/divorce is not recognised and marriage cannot proceed
14) advised by GRO that f/divorce is not recognised and marriage cannot proceed
15) advised by GRO that f/divorce is not recognised
16) proceed with investigations and write to couple with outcome.

M8 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. A lady attends to give notice of her intention to marry. The bride states she has been married previously and that her husband died 5 years ago. She produces the death certificate of her husband which does not show her as the informant. What further information should be requested?

Q2. A Somalian lady with indefinite leave to remain in the UK attends with her British fiancé to give notice of their intention to marry. She states that she was married in Somalia 15 years ago but that her husband was killed in the civil war and there is no record of his death. What action would you take and can notice be given?

Q3. A lady attends to give notice of her intention to marry. She believes that her husband is dead as she has not been seen or heard of him for ten years? What advice should be given?

Q4. A bride attends to give notice of her intention to marry. She states that she has been married before, that she is divorced but she cannot find her decree absolute issued by a court in this country. Explain if notice can be given.

Q5. A Russian couple attend to give notice of their intention to marry. The groom has been married previously and he produces a Russian divorce document together with a translation as evidence he is free to marry. Can notice be taken and what action should be followed?

Q6. Apart from nationality, whereabouts and domicile, what further information should be supplied to the Registrar General from a groom who has presented a divorce obtained in Pakistan?

Q7. A bride states she has been previously married but that it only lasted a few days. As evidence that she is free to marry she presents a document from a court in this country stating that the marriage between her and her husband ‘be annulled’, certifying that the decree ‘was on the 1 August 2001 made final and absolute and that the said petitioner was from that date and is free from all bond of marriage with the said respondent’. Explain if this is to be treated as a void or voidable marriage and what condition should be recorded in the notice.