

## M23 Invalidity and Offences

### Summary of Learning Points

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

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<b>1. The grounds on which a marriage will be void including</b>	1 - 5
(i) what action a registration officer should take if an offence is identified	2
(ii) if certain requirements are knowingly and wilfully disregarded by any person	3- 4
(iii) marriage by Registrar General's Licence	5
<b>2. The offences committed by any person who knowingly and wilfully solemnizes a marriage</b>	
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## General

1. A marriage will only be void if there is a specific statutory provision which renders it void. Section 11 of the Matrimonial Causes Act 1973 provides that a marriage celebrated after 31 July 1971 can only be void on the grounds listed in that section. These grounds are shown in paragraphs 3-5 below. If a proposed marriage will be void, it is likely that a registration officer would be justified on public policy grounds in refusing to solemnise that marriage where there is reasonable evidence of an irregularity. An offence (apart from bigamy) will not in itself invalidate a marriage but a registration officer should not solemnise a marriage if he would be committing an offence by doing so. Where a marriage has not taken place and a registration officer is aware of an irregularity which might void that marriage or that solemnisation might be an offence, he should contact the General Register Office <Redacted> immediately for further advice. Advice on the action which should be taken if an irregularity is discovered after a marriage has been solemnised is given at M1.6- 8.

2. Under Regulation 20 of the Registration of Marriages Regulations 1986 (SI 1986/ 1442), if it appears to a registration officer that an offence under or breach of the Marriage Act 1949 or the Marriage (Registrar General's Licence) Act 1970 or, so far as they relate to marriages, the Perjury Act 1911 or the Forgery and Counterfeiting Act 1981 has been committed, he should report the matter to the General Register Office <Redacted> with such documents he has relating to the offence or breach, and await instructions before any further action is taken. Offences which relate to marriage are shown in paragraphs 5-16 below.

## Grounds on which a marriage will be void

3. Section 11 of the Matrimonial Causes Act 1973 provides that a marriage celebrated after 31 July 1971 shall be void on the following grounds only:

(a) that it is not a valid marriage under the provisions of the Marriage Acts 1949 to 1986 (that is to say where—

(i) the parties are within the prohibited degrees of relationship;

(ii) either party is under the age of sixteen; or

(iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);

(b) that at the time of the marriage either party was already lawfully married or a civil partner;

(c) [repealed]

(d) in the case of a polygamous marriage entered into outside England and Wales, that either party was at the time of the marriage domiciled in England and Wales. (For the purposes of this paragraph a marriage is not polygamous if at its inception neither party has any spouse additional to the other.)

4. The disregard of certain requirements in section 11(a)(iii) above are mainly to be found in section 49 of the Marriage Act 1949, which provides that if any persons knowingly and wilfully intermarry under the provisions of Part III of the Act—

- (a) without having given due notice of marriage to the superintendent registrar;
- (b) without a certificate for marriage having been duly issued in respect of each of the persons to be married by the superintendent registrar to whom notice of marriage was given;
- (d) on the authority of certificates which are void by virtue of subsection (2) of section thirty-three of this Act *[after the expiration of the applicable period: 1 month when notices have been given under section 39A (former civil partners, one of whom has changed sex); 3 months when one of the parties is housebound/ detained or has given notice in Scotland; 12 months in any other case]*;
- (e) in any place other than the church, chapel, registered building, office or other place specified in the notices of marriage and certificates of the superintendent registrar;
- (ee) in the case of a marriage purporting to be in pursuance of section 26(1)(bb) of this Act *[a marriage on approved premises]*, on any premises that at the time the marriage is solemnized are not approved premises;
- (f) in the case of a marriage in a registered building (not being a marriage in the presence of an authorised person), in the absence of a registrar of the registration district in which the registered building is situated;
- (g) in the case of a marriage in the office of a superintendent registrar, in the absence of the superintendent registrar or of a registrar of the registration district of that superintendent registrar;
- (gg) in the case of a marriage on approved premises, in the absence of the superintendent registrar of the registration district in which the premises are situated or in the absence of a registrar of that district; or
- (h) in the case of a marriage to which section 45A of this Act applies *[the marriage of a housebound/ detained person otherwise than by the rites of the Church of England]*, in the absence of any superintendent registrar or registrar whose presence at that marriage is required by that section;

the marriage shall be void.

5. Under section 13 of the Marriage (Registrar General's Licence) Act 1970, the provisions of section 49 of the Marriage Act 1949 apply to a marriage under the authority of the Registrar General's licence:—

- (a) with the substitution in paragraph (b) for the words from “certificates for marriage” onwards of the words “a Registrar General's licence”;
- (c) with the substitution for paragraph (d) of the words “on the authority of a licence which is void by virtue of section 8(2) of the Marriage (Registrar General's Licence) Act 1970” *[after the expiration of one month]*;
- (d) with the substitution for paragraph (e) of the words “in any place other than the place specified in the notice of marriage and the Registrar General's licence”;

(e) with the substitution for paragraphs (f) and (g) of the words “in the absence of a registrar or, where the marriage is by civil ceremony, of a superintendent registrar, except where the marriage is solemnised according to the usages of the Society of Friends or is a marriage between two persons professing the Jewish religion according to the usages of the Jews”.

## Offences

6. Under section 75(1) of the Marriage Act 1949, any person who knowingly and wilfully-

(a) [repealed]

(b) solemnizes a marriage according to the rites of the Church of England without banns of matrimony having been duly published (not being a marriage solemnized on the authority of a special licence, a common licence or certificates of a superintendent registrar);

(c) solemnizes a marriage according to the said rites (not being a marriage by special licence or a marriage in pursuance of section 26(1)(dd) of this Act [*the marriage of a housebound/ detained person*], in any place other than a church or other building in which banns may be published;

(d) solemnizes a marriage according to the said rites falsely pretending to be in Holy Orders;

shall be guilty of felony and shall be liable to imprisonment for a term not exceeding fourteen years.

7. Under section 75(2) of the Marriage Act 1949, any person who knowingly and wilfully-

(a) solemnizes a marriage (not being a marriage by Registrar General's licence or special licence, a marriage according to the usages of the Society of Friends or a marriage between two persons professing the Jewish religion according to the usages of the Jews) in any place other than—

(i) a church or other building in which marriages may be solemnized according to the rites of the Church of England, or

(ii) the registered building, office, approved premises or person's residence specified as the place where the marriage was to be solemnized in the notices of marriage and certificates required under Part III of this Act;

(aa) solemnizes a marriage purporting to be in pursuance of section 26(1)(bb) of this Act [*a marriage on approved premises*] on premises that are not approved premises;

(b) solemnizes a marriage in any such registered building as aforesaid (not being a marriage in the presence of an authorised person) in the absence of a registrar of the district in which the registered building is situated;

(bb) solemnizes a marriage in pursuance of section 26(1)(dd) of this Act [*the marriage of a housebound/ detained person*], otherwise than according to the

rites of the Church of England, in the absence of a registrar of the registration district in which the place where the marriage is solemnized is situated;

(c) solemnizes a marriage in the office of a superintendent registrar in the absence of a registrar of the district in which the office is situated;

(cc) solemnizes a marriage on approved premises in pursuance of section 26(1)(bb) of this Act [*a marriage on approved premises*] in the absence of a registrar of the district in which the premises are situated;

(d) solemnizes a marriage on the authority of certificates of a superintendent registrar before the expiry of the waiting period in relation to each notice of marriage; or

(e) solemnizes a marriage on the authority of certificates of a superintendent registrar after the expiration of the period which is, in relation to that marriage, the applicable period for the purposes of section 33 of this Act;

shall be guilty of felony and shall be liable to imprisonment for a term not exceeding five years.

8. Under section 75(3) of the Marriage Act 1949, a superintendent registrar who knowingly and wilfully-

(a) issues any certificate for marriage before the expiry of **28** days from the day on which the notice of marriage was entered in the marriage notice book [unless the notice was given under section 39A (former civil partners, one of whom has changed sex) when there is no waiting period or if the Registrar General has reduced the waiting period, in which case it is the reduced period];

(b) issues any certificate for marriage after the expiration of the period which is, in relation to that marriage, the applicable period for the purposes of section 33 of this Act;

(c) issues any certificate the issue of which has been forbidden under section thirty of this Act by any person entitled to forbid the issue of such a certificate; or

(d) solemnizes or permits to be solemnized in his office or, in the case of a marriage in pursuance of section 26(1)(bb) or (dd) of this Act [*a marriage on approved premises or the marriage of a housebound/ detained person*], in any other place any marriage which is void by virtue of any of the provisions of Part III of this Act;

shall be guilty of felony and shall be liable to imprisonment for a term not exceeding five years.

9. Under section 76 of the Marriage Act 1949 –

(1) Any person who refuses or without reasonable cause omits to register any marriage which he is required by this Act to register, and any person having the custody of a marriage register book or a certified copy of a marriage register book or part thereof who carelessly loses or injures the said book or copy or carelessly allows the said book or copy to be injured while in his

keeping, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where any person who is required under Part IV of this Act to make and deliver to a superintendent registrar a certified copy of entries made in the marriage register book kept by him, or a certificate that no entries have been made therein since the date of the last certified copy, refuses to deliver any such copy or certificate, or fails to deliver any such copy or certificate during any month in which he is required to do so, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(3) Any registrar who knowingly and wilfully registers any marriage which is void by virtue of any of the provisions of Part III of this Act shall be guilty of felony and shall be liable to imprisonment for a term not exceeding five years.

10. Under section 77 of the Marriage Act 1949, any authorised person who refuses or fails to comply with the provisions of this Act or of any regulations made under section seventy-four thereof shall be guilty of an offence against this Act, and, unless the offence is one for which a specific penalty is provided under the foregoing provisions of this Part of this Act, shall be liable, on summary conviction, to a fine not exceeding the prescribed sum or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, and shall upon conviction cease to be an authorised person.

11. Under section 16(1) of the Marriage (Registrar General's Licence) Act 1970, it shall be an offence knowingly and wilfully—

(a) to solemnise a marriage by Registrar General's licence in any place other than the place specified in the licence;

(b) to solemnise a marriage by Registrar General's licence without the presence of a registrar except in the case of a marriage according to the usages of the Society of Friends or a marriage between two persons professing the Jewish religion according to the usages of the Jews;

(c) to solemnise a marriage by Registrar General's licence after the expiration of one month from the date of entry of the notice of marriage in the marriage notice book;

(d) to give false information by way of evidence as required by section 3 of this Act [*evidence to satisfy the Registrar General of capacity, consent, eligibility etc.*];

(e) to give a false certificate as provided for in section 3(1)(d) of this Act [*the certificate of a registered medical practitioner*];

and any person found guilty of any of the above-mentioned offences shall be liable on summary conviction to a fine not exceeding the prescribed sum or on indictment to a fine or to imprisonment not exceeding three years or to both such fine and such imprisonment.

12. Under section 16(2) of the Marriage (Registrar General's Licence) Act 1970, a superintendent registrar who knowingly and wilfully solemnises or permits to be solemnised in his presence, or a registrar who knowingly and wilfully registers a marriage by Registrar General's licence which is void by virtue of Part III of the principal Act as amended by this Act shall be guilty of an offence and shall be liable

on summary conviction to a fine not exceeding the prescribed sum or on indictment to a fine or to imprisonment not exceeding three years or to both such fine and such imprisonment.

13. Under section 3(1) of the Perjury Act 1911, if any person—

(a) for the purpose of procuring a marriage, or a certificate or licence for marriage, knowingly and wilfully makes a false oath, or makes or signs a false declaration, notice or certificate required under any Act of Parliament for the time being in force relating to marriage; or

(b) knowingly and wilfully makes, or knowingly and wilfully causes to be made, for the purpose of being inserted in any register of marriage, a false statement as to any particular required by law to be known and registered relating to any marriage; or

(c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false, or

(d) with respect to a declaration made under section 16(1A) or 27B(2) of the Marriage Act 1949 [*the marriage of parties related within the degrees of affinity*]—

(i) enters a caveat under subsection (2) of the said section 16, or

(ii) makes a statement mentioned in subsection (4) of the said section 27B,

which he knows to be false in a material particular

he shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to penal servitude for a term not exceeding seven years or to imprisonment for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine and on summary conviction thereof shall be liable to a penalty not exceeding the prescribed sum.

14. Under sections 1 to 5 of the Forgery and Counterfeiting Act 1981, a person who –

(a) makes, copies or uses a false instrument with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, or

(b) possesses a birth, adoption, marriage, civil partnership or death certificate which he knows or believes to be false without lawful authority, or with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice –

is liable on summary conviction to a fine and/or imprisonment or on conviction on indictment to imprisonment.

15. Bigamy is an offence under section 57 of the Offences Against the Person Act 1861 -

Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding seven years:

Provided, that nothing in this section contained shall extend to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.