

A GUIDE TO MARRIAGE



For a marriage to be legally recognised in England and Wales it must comply with certain legal requirements. However, many women find that their marriage, although formally recognised by their community or religion, is not in fact a lawful marriage according to English law.

Whether a marriage is legally recognised or not is very important because this can have significant consequences particularly in relation to financial and property rights. Not having a marriage which is recognised in law can leave a woman in a financially vulnerable position, for example she may have no claim to stay in the home she has been living in, or no access to financial support from her husband. It is therefore very important to be clear whether a marriage is recognised in English law and to understand the legal consequences of being married.

This information sheet sets out the criteria that must be complied with for a marriage to be legally recognised.

If you are not legally married and instead live with your partner it is important to be aware that the law does not give you any special legal status, there is no legal recognition of a 'common law' husband or wife. If you have chosen not to marry your partner and are concerned about your financial and property rights, please see Rights of Women's information sheet 'A guide to living together and the law'.

Can I marry anyone? – legal capacity to get married

Under section 11 of the **Matrimonial Causes Act 1973** in order to enter a legally recognised marriage the couple intending to marry must have what is called **legal capacity**. This means that they must be:

- **not closely related** e.g. not brother and sister, this is called “prohibited degrees of relationship”; and,
- **over 16 years old** with the consent of their parents, otherwise over 18; and,
- **one male and one female**; and,
- **not already married** or in a civil partnership.

If any of these criteria are not met the couple will **not be able to get married**. If, for some reason a marriage ceremony has occurred and one of the above factors apply, then the marriage is considered **void**. This means that the marriage is treated in law as never existing.

There are no reasons why I can't marry my partner – what else do I have to do to make sure my marriage is legally recognised?

In addition to having **legal capacity** to marry, the couple getting married have to make sure that certain tasks are completed before the marriage ceremony and also that the ceremony itself is conducted in a certain way. The tasks that must be carried out before the marriage are called the **civil preliminary formalities** and couples are required under sections 26-36 and Part III of the **Marriage Act 1949** to fulfil these and the prescribed elements of the ceremony itself.

It is important to understand what these requirements and formalities are because if they are not complied with, the marriage will not be legally recognised.

The preliminaries – what do I have to do before I get married?

The exact **civil preliminary formalities** that need to be followed depend on whether the marriage is a Church of England ceremony or another type of ceremony, for example a civil, Jewish, Quaker, Hindu, Sikh or Muslim ceremony.

If it is a **Church of England** ceremony (sometimes called an Anglican ceremony) then the couple have three options as to how they choose to comply with the required formalities. The couple can get either a **superintendent registrar's certificate** or a **Registrar-General's licence** before they marry (see below) or they can take the third and most common option of asking the local vicar in the parish where they live to arrange for the publication of the **banns**. This is a public announcement of the forthcoming marriage and usually occurs for three consecutive Sundays before the actual marriage ceremony is held.

If the marriage ceremony is not a Church of England ceremony then it can **only** take place if a **superintendent registrar's certificate** or (in very rare cases) a **Registrar-General's licence** has been granted. This is sometimes called satisfying the civil preliminary formalities.

To get a **superintendent registrar's licence** the couple (sometimes called 'the parties') must:

- have lived in the area for a minimum of 7 days before the marriage; and,
- attend the register office in person (to find your local register office you can look online at www.direct.gov.uk and follow the links, or contact your local authority); and,
- make a solemn declaration that there are no reasons why they cannot marry; and,
- pay a fee of £30.

The parties will also need to provide specific information relating to their **name**, **date of birth**, **relationship status** and **nationality**. If you have already been married or in a civil partnership or you are a widow, you will need to produce a decree absolute of divorce or final order of dissolution of a civil partnership or a death certificate.

Once the requirements have been completed a **notice of proposed marriage** is displayed on a public notice board in the register office for 15 days. If there are no objections after 15 days the superintendent will issue a **notice of marriage certificate** and the marriage ceremony can then take place.

A **Registrar-General's licence** is issued instead of a superintendent registrar's certificate only in **exceptional circumstances**. It is used in order to allow the marriage to take place elsewhere than certain prescribed places (see below). This might be necessary if a person is housebound and unable to travel.

The marriage ceremony

Where can I get married?

To be legally recognised, a marriage ceremony must take place at one of the following places:

- a **register office**; or

- an **approved premises**; or
- an **Anglican Church** (i.e. a church belonging to the Church of England and Wales); or
- a **registered building**.

A **register office** is contained usually in an official building of the local authority for your area, very often a Town Hall. If you choose to get married here the ceremony must be a **civil ceremony** which means that it must not contain any religious content or music (see below).

Approved premises are special places that have been approved by the local authority. They include many castles, stately homes and hotels. If you choose to get married in approved premises you must have a **civil ceremony**.

An **Anglican Church** is a church belonging to the Church of England and Wales. Couples will very often have to fulfil certain requirements, religious or otherwise, before the clergy will agree to them getting married in church. If you get married in church the ceremony will be a **religious ceremony**. This means it will have religious content and music.

A **registered building** is a building that is registered as a place of worship for religious purpose that is not a church belonging to the Church of England and Wales. Some but **not all** mosques, Hindu temples and Sikh temples are registered buildings. Synagogues do not have to be registered because different rules apply to Jewish marriages (see below). Local authorities keep lists of registered buildings in their areas and should be able to tell you whether your local place of worship is

registered or not. If you want to get married in a registered building the ceremony **is likely to be a religious ceremony** but it may also have to comply with **certain rules and contain certain civil content** to be legally recognised as a marriage in England and Wales. This depends on the type of religious ceremony it is (see below).

What must the marriage ceremony contain for it to be legally recognised?

Strict rules govern the ceremony itself. These rules depend on whether the ceremony is a civil ceremony, a Jewish or Quaker ceremony, a Church of England ceremony or some other kind of religious ceremony.

Again, it is essential that the rules are complied with otherwise the marriage will not be legally recognised.

Civil marriages

A civil ceremony can take place at a register office or at approved premises. At the civil ceremony the bride and groom are required to state that there is no reason why they cannot marry, called **lawful impediments**, and then **exchange vows** which can take various forms. The ceremony can include music or readings but these cannot be religious. The ceremony should be **conducted by the superintendent registrar** and/or the registrar of the registration district in which the ceremony takes place. There must also be a minimum of **two witnesses** present.

Sometimes a civil ceremony is followed by a religious ceremony. However, it is **only** the civil

ceremony which is legally binding on the couple.

Religious marriages

For legal purposes, there are three different types of religious marriage ceremonies. If the correct procedure is not followed the marriage will not be valid.

Church of England marriages must comply with the preliminary formalities set out above and the marriage must be **conducted by a clergyman** in the **presence of two witnesses** and must be according to the **rules of the Church of England**.

Quaker and Jewish marriages are recognised differently to other religious ceremonies. Provided that the **civil preliminary formalities** referred to above have been satisfied the marriage ceremony can be conducted according to Jewish or Quaker religious rules. For example, there is no need for the marriage ceremony to take place in a registered building, nor to be in public.

Other religious marriages, such as Muslim, Hindu and Sikh marriages are, like Quaker and Jewish marriages, first required to satisfy the **civil preliminary formalities** set out above. However, there are additional requirements that they must satisfy too. The marriage **must** take place in a registered building. Not all buildings are registered, so it is important to check first with your local authority. If the building is not registered then the marriage will not be legally recognised.

The ceremony itself can take any form, provided that:

- it is in **public**; and,
- there are at least **two witnesses** present; and,
- either a **registrar** of the district in which the ceremony is taking place or an **authorised person** is present; and,
- both parties make the **necessary declarations**, for example, declaring that there are no lawful objections to the marriage.

An **authorised person** is someone who has been certified by the **Registrar General** to be present, for example, the Imam of the mosque where the ceremony takes place could be certified as an authorised person. If there is someone that you wish to conduct, or be present at, your ceremony you should confirm with them whether they are certified as an authorised person. If you have any concerns it is also advisable to check with your local authority or register office.

It is important to note that when a religious ceremony has followed the civil formalities set out above, it is only the civil aspect of the marriage which is recognised. For example a Hindu, Muslim or Sikh marriage, although it may well be recognised in religious law, **is not recognised in English law unless the civil content and requirements are complied with as well.**

If you want to have a religious marriage or other type of marriage ceremony and, for example, the place you want to get married is not a registered building, or the person you want to conduct or be present during the ceremony is not an authorised person, then you will need to have a civil ceremony beforehand to ensure your marriage is legally recognised.

For all legally recognised ceremonies the married couple must be given a **marriage certificate**.

What if I have only had a religious marriage?

If a religious marriage ceremony only complies with the religious requirements of a particular faith but not with the necessary civil preliminaries and ceremony requirements set out above, then the marriage **will not be** recognised in English law.

This has very important consequences. A woman in this situation will not be entitled to make a claim for her husband's property or finances should the marriage break down (see Rights of Women's information sheet '**A guide to financial arrangements after marriage breakdown**'). She may also not be entitled to stay in the family home if the property (whether rented or owned) is in her husband's sole name. If a woman's husband dies and the marriage is not legally recognised she may not be able to inherit his property as she would do if the marriage was a legal marriage. Not being legally married may also affect her husband's rights with regard to any children of the family (see Rights of Women's information sheet '**A guide to parental responsibility**').

A woman whose marriage is not recognised in law will be treated as someone who lives unmarried with her partner. It is also very important to note that women in this position do not have the status of 'common law wife'. No such thing exists in English law. The status a woman in this position will have will be as an unmarried co-habitant.

I got married overseas, is my marriage valid?

Marriages which have taken place overseas (i.e. outside the United Kingdom) will only be legally recognised in English law if they are legally recognised in the country where they took place and also according to the **domicile** of the parties. The domicile of a person is the country whose laws that person must comply with in certain matters, such as marriage and divorce law. It usually relates to where you were born and brought up, although it can also relate to other factors.

For example, if you and your husband got married in Nigeria in a legally recognised ceremony according to the laws of Nigeria and were both born, raised and settled in Nigeria, it is likely that your marriage would be recognised in English law.

This is a complex subject and if you are not sure about your **domicile** it is important to seek legal advice.

Second marriages

Under the law of England and Wales a person commits the criminal offence of **bigamy** if they marry one person whilst they are married to someone else. If a person marries more than one person and lives with all of their wives or husbands this is called a **polygamous marriage**, and a person who does this in England and Wales is likely therefore to be committing the offence of bigamy.

This means that if you are married in a legally recognised ceremony in England and Wales, and if your husband is already legally married, then your marriage will **not** be legally

recognised and your husband may be committing a criminal offence.

Alternatively, if you have a religious marriage which is **not legally recognised** and your husband is already married to someone else, for example your marriage is a second Islamic marriage recognised in Islamic law, your husband will **not** be committing a criminal offence, **but** your marriage **will not be legally recognised** and you may be vulnerable to the difficulties mentioned above with regards to finances and property and your husband's rights in relation to your children.

If your marriage took place overseas and your husband has another wife then your marriage may be recognised as legal in England and Wales providing that your marriage was legally recognised in the country in which you got married and neither you nor your husband's **domicile** (see above) is England and Wales. If you are not sure about your domicile it is important to seek legal advice.

Forced Marriages

A **forced marriage** is **not** the same as an arranged marriage. An arranged marriage is where the bride and groom's families play a leading role in choosing the partners but the ultimate decision to marry is made by the bride and the groom. An arranged marriage, provided it follows the requirements above, is recognised in English law.

A forced marriage, however, is what is called a **voidable marriage**, which means it can be declared not to exist. This is because a forced marriage takes place without the **real consent** of one or both parties to the

marriage. When a person is forced to enter into a marriage they do not agree to, she (or he) may be acting under **duress**. Duress is pressure or force put upon the bride (and/or the groom) that deprives them of their choice to get married. Duress can include physical violence, but can also include threats of violence and other threats and harm, for example, emotional abuse and financial pressure.

A marriage which is voidable is a marriage in law until it is **annulled** (declared to not exist). The process of getting an annulment is similar to that of divorce but, unlike divorce, once a marriage is annulled it puts the parties back into their original position as if the marriage had never taken place. Also unlike divorce, it is **not** necessary to wait one year from the

date of the purported marriage before applying for annulment. It is important to note, however, that an annulment can only be granted if the application process has been **started within three years** of the date of the purported marriage.

If you are concerned that you have entered into a marriage which is voidable you should consult Rights of Women's information sheet '**A guide to divorce**' and seek legal advice.

The law relating to marriage can be complex. We have provided only a very basic overview of the law. We would strongly advise any woman concerned about these issues to seek legal advice from our advice line, a solicitor or the organisations listed below.

Please note that the law as set out in this information sheet is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general advice only.

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Rights of Women publications

- **Domestic Violence DIY Injunction Handbook (2nd edition)**
- **Child Contact Handbook (2nd edition)**
- **From Report to Court – A handbook for adult survivors of sexual violence**
- **From A-Z: a woman's guide to the law**
- **Seeking Refuge? A handbook for asylum-seeking women**

For further information on these, our information sheets and other publications visit our website at www.rightsofwomen.org.uk.

For free, confidential legal advice on family law including domestic violence, divorce and relationship breakdown, children and contact issues call 020 7251 6577 (telephone) or 020 7490 2562 (textphone). The advice line is open on Tuesdays, Wednesdays and Thursdays 2pm – 4pm and 7pm – 9pm and Fridays 12 noon – 2pm.

For free legal advice on sexual violence, criminal, immigration and asylum law please call 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open on Mondays 11am – 1pm and Tuesdays 10am – 12 noon.

Other useful contacts

Community Legal Advice (for general information and finding a family law solicitor)	0845 345 4345	www.communitylegaladvice.org.uk
HM Courts Service (useful for forms and guidance)	020 7189 2000	www.hmcourts-service.gov.uk
General Register Office	0845 603 7788	www.direct.gov.uk/gro
Forced Marriage Unit	020 7008 0151	www.fco.gov.uk
Resolution (for finding a solicitor and useful information on family law)	01689 820272	www.resolution.org.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

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