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CHAPTER 8  
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SPOUSES

**POLYGAMOUS AND POTENTIALLY POLYGAMOUS MARRIAGES**

1. INTRODUCTION

It is Government policy to prevent the formation of polygamous households in this country. Section 2 of the Immigration Act 1988 and Paragraphs 278 and 279 of HC 395 are intended to achieve this policy. This Annex provides guidance to caseworkers about the circumstances in which a wife of a polygamous marriage will or will not qualify for leave to enter or remain. The following points should be noted in the first instance:

- primary consideration should be given to whether the marriage is valid in United Kingdom law. If it is not, the application should be refused on that account alone - without considering the provisions of the Rules relating to polygamy;
- the order in which polygamous wives come to the United Kingdom for settlement is the important factor – not the order in which they marry the husband. If wife number 2 is admitted to the United Kingdom on the basis of the marriage **before** wife number 1, she may prevent wife number 1 from coming as well;
- Applications received before 1 August 1988 are **not** covered by Section 2 of the 1988 Act and may be granted if the marriage is valid and, unless the applicant is a Section 1(5) beneficiary, if the public funds requirements of the Rules are met.
- Government policy relating to polygamy, as reflected in section 11 (d) of the Matrimonial Causes Act 1973 and section 2 of the Immigration Act 1988, is extended by virtue of paragraphs 278-280 of HC395 (as amended by Cm 4851), to cover the position of polyandrous husbands. See section 9.

***Annex B provides guidance relating to the recognition of marriage and divorce.***

2. EFFECT OF SECTION 2 OF THE 1988 ACT ON ACTUAL AND POTENTIALLY POLYGAMOUS MARRIAGES

Section 2 of the Act gives effect to the Government's decision that the formation of a polygamous household in this country should be prevented. Section 2:

- removes from certain polygamous wives the right of abode (such applications now have to be considered under the Immigration Rules).
- has amended the Rules in order to restrict settlement to one wife.

Caseworkers should refer to the Right of Abode Unit, Nationality Directorate *any* cases in which it appears that a polygamous wife may have the right of abode (even if Section 2 seems to apply). If she retains the right of abode, the Right of Abode Unit will deal with the case. If, on the other hand, the Right of Abode Unit considers that she has lost her right of abode, the file will be returned to general casework group to deal.

### 3. **ACTUAL POLYGAMOUS MARRIAGES CELEBRATED ON OR AFTER 1 AUGUST 1971**

Polygamous marriages contracted overseas can only be valid here if neither party was domiciled in:

- England and Wales (Section 11(d) of the *Matrimonial Causes Act 1973* refers);  
or
- another part of the United Kingdom (the details of the relevant legislation are held in INPD).

***ANNEX D provides guidance relating to domicile.***

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?
- is it valid under the laws of the country in which it was celebrated?

Caseworkers must decide whether the polygamous marriage ceremony complied with the laws of that country. For example, while Nigerian *customary 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*. Further advice about the marriage laws of overseas countries can be obtained from INPD.

### 4. **MARRIAGES CELEBRATED BEFORE 1 AUGUST 1971**

For details of how to deal with any marriages celebrated before 1971, please consult INPD.

### 5. **POTENTIALLY POLYGAMOUS MARRIAGES**

Prior to 1982, the interpretation of Section 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 (ie the man had married only 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 Section 11(d).

Prior to the 1982 interpretation, it had been the practice of this Department to accept for immigration purposes a potentially polygamous marriage which was de facto 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 actually (de facto) 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 United Kingdom law. The marriage will, however, be deemed to be void by any subsequent marriage of one of the parties or by an annulment.

## 6. APPLICATION OF PARAGRAPHS 278 AND 279 OF HC 395 TO WIVES OF POLYGAMOUS MARRIAGES

A polygamous wife, who either lost the right of abode under Section 2 of the Immigration Act 1988 or who never enjoyed it, must apply for entry clearance to join her husband here, unless she is a returning resident. Entry clearance will be refused if her husband has another wife living who:

- is, or at any time since her marriage has been in the United Kingdom; or
- has been granted a Certificate of Entitlement in respect of the right of abode under Section 2(1)(a) of the Immigration Act 1988; or
- has been granted an entry clearance to enter the United Kingdom on the basis of her marriage.

### 6.1. Exceptions

The above paragraph does **not** apply to certain women: a woman who seeks entry clearance or leave to enter or remain on the basis of her marriage should have her application considered as if she were **not** a polygamous wife in the following circumstances:

- she has been in the United Kingdom before 1 August 1988 having been admitted on the basis of her marriage; or
- she has, since her marriage been in the United Kingdom at any time when her husband was **not** married to a woman as described in paragraph 6.1 above.

***However, the onus of proof is on the woman in order to claim such an exemption.*** Presence in the United Kingdom as:

- a visitor; or

- an illegal entrant; or
- on temporary admission

does not count for the purposes of paragraphs 278 and 279 of HC 395.

## 6.2. Children of polygamous marriages

Where the application for leave to enter or remain in the United Kingdom by a wife, who is party to a polygamous marriage is refused, any children that she may have by her husband will not qualify for entry either (paragraph 296 of HC 395 refers). Very exceptionally, they may qualify for leave to enter but 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.

The above paragraph would not apply to a child who has the right of abode, even if he is the offspring of a polygamous marriage. Such a child would be admitted on this basis in his own right.

## 7. WIVES OF A POLYGAMOUS MARRIAGE ENTERING IN THEIR OWN RIGHT

The restrictions imposed by paragraphs 278 and 279 of HC 395 do not apply to wives who have a right of entry to the United Kingdom in their own right. For example, if a polygamous wife had obtained settlement previously and qualifies for entry as a returning resident under Paragraph 18 of HC 395. A polygamous wife may also qualify in her own right as a visitor or student.

## 8. DIVORCES

Entry clearance may not be withheld from a second wife where the husband has divorced his previous wife and the divorce is thought to be one of **convenience**. This is so, even if the husband is still living with the previous wife and to issue the entry clearance would lead to the formation of a polygamous household.

A polygamous wife may apply for entry and claim that the previous marriage had been dissolved or terminated by the death of the previous wife. Caseworkers should be wary of death and divorce certificates, **especially where talaq and customary law are involved**.

***ANNEX B provides guidance on the recognition of marriage and divorce.***

## 9. POLYANDROUS MARRIAGES

Paragraphs 278 - 280 of HC 395 (as amended by Cm 4851) build on the policy relating to polygamy so as to cater for applications involving both polygynous 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 paragraphs 1, 6, 7 and 8 above should therefore be applied equally to polyandrous husbands in all applications lodged on or after 2 October 2000.