FACULTY OFFICE

A RESPONSE TO THE LAW COMMISSION

GETTING MARRIED: A CONSULTATION PAPER ON WEDDINGS LAW

Introduction

The Faculty Office of the Archbishop of Canterbury was created by Act of Parliament in 1533 to exercise the Archbishop's dispensation jurisdiction (which had hitherto belonged to the Pope and been exercised by the Papal Legate in England and Wales) and which, in relation to the current Consultation, concerns the issue of special marriage licences. The Archbishop of Canterbury's jurisdiction to issue special marriage licences extends to both Provinces of the Church of England ("CofE") and to the Church in Wales ("CiW") but not to the Channel Islands or the Isle of Man.

The Faculty Office staff have an extensive knowledge of the law of marriage, particularly as it affects the Anglican Church in England & Wales. It publishes a booklet entitled "Anglican Marriage in England and Wales – A Guide to the Law for Clergy" (currently in its Third Edition issued in 2010 with supplements issued in 2013 and 2015). A further supplement is in the course of preparation which will include changes to be brought in as a result of proposed changes to the sham marriage provisions following the UK's departure from the European Union; a Fourth Edition is planned subject to the outcome of this Consultation and any resultant legislative changes. The Faculty Office staff regularly provide advice to clergy and couples on Anglican marriage preliminaries in particular and have also arranged training days for clergy. From its position of knowledge and experience of Anglican marriage preliminaries and marriage law in general the Faculty Office has made representations when either the UK Government or the General Synod of the CofE have sought to change the law of marriage preliminaries or the guidance relating to it.

We are grateful to be able to respond to the Consultation document by the Law Commission "Getting Married: A Consultation Paper of Weddings Law" as the proposals contained within that document are far reaching and radical. Although the Faculty Office representatives have been involved with earlier conversations with members of the Law Commission project team, this is the first time that the Faculty Office has made a formal representation on the topics of the Consultation. Whilst the Consultation covers the full ambit of weddings law in England and Wales, this response will primarily focus on the aspects of the Consultation which directly or indirectly impact on weddings taking place within the Anglican Churches in England and Wales – the CofE and the CiW.

As a first observation, the Consultation paper is thoroughly researched and well written. It provides an excellent survey of the history and the law of marriage preliminaries. The proposals are internally consistent (and in that sense logically sound) and well presented. We are grateful to be working with such a document which starts from a good understanding of the legal and factual position. We would also make it clear at the outset, that we accept that there are some aspects of the law of marriage in England and Wales which are outdated, potentially overly complicated and unduly restrictive and which would benefit from modernisation and reform. The Marriage Act 1949 has been amended, and often complicated, by subsequent legislation (often 'hidden' within other apparently unconnected legislation[1]) such that it has become complex and unhelpful in places. We therefore support a renewed and codified piece of legislation to govern the creation of legally binding marriages in England and Wales. Generally, we consider that the paper puts forward some sound proposals which might be taken forward to legislation.

However, we express serious objection to some of the key proposals, in particular the move away from the registration of buildings for marriage to the licensing of celebrants who are able to conduct marriages in any proper place. While the paper is predicated on the idea that the existing system is creaking at the seams ("Weddings law in England and Wales is in desperate need of reform", para 1.3), that couples are dissatisfied with the choice of marriage venues that they currently have to choose from ("the law does not work for many", para 1.5; "Simply put, the law is not giving all couples a choice to marry in a way that is meaningful to them", para 1.46), and many couples do not comply with the proper formalities because of confusion or incompatibility with modern circumstances ("some couples celebrate in a way the law does not recognise at all, sacrificing the protections of legal marriage"); we consider these to be exaggerated or unrepresentative.

There are some aspects of the proposed scheme for reform which we cannot support for reasons which go beyond the law of marriage per se but because they would result in a fundamental change in the relation of the State to its established Church.

Our main points to make are:

- Anglican marriage preliminaries should be retained. The Consultation paper is largely agnostic on the issue and we would advocate their retention. Anglican marriage preliminaries existed in the early canon law when marriages in church became common after 1215. In 1753 those preliminaries were put on a statutory footing and have remained there to the present day. From time to time proposals have been brought forward to abolish them and replace them with a universal civil preliminary such as the superintendent registrar's certificate ("SRC"). However, such proposals have, hitherto, been rejected. We do not consider that there is now a case for such radical change.

  The existing system has built into it a sufficient degree of certainty and flexibility:

  (a) Banns – ensure that the couple approach the parish priest at the outset and an opportunity is then presented to ensure that the couple and minister develop an

[1] cf. S.114 of the Protection of Freedoms Act 2012, the Ss, 48-62 of the Immigration Act 2014

appropriate pastoral relationship so that the couple are properly prepared for marriage, and any impediment or pastoral complications can be worked through. Replacing banns with a civil preliminary would more likely lead to couples short-circuiting the traditional early approach to the priest and presenting them with a civil preliminary at a later juncture with an expectation to be married forthwith. Even if the priest required notice of the marriage, in practice many clergy would be "bounced into" taking such weddings. Note that it is a requirement of the Canons of the CofE that couples be adequately prepared for marriage (Canon B30(3)). While the Consultation is correct in stating that the publication of banns has a limited reach to flush out possible objections to the marriage (although, we would submit, a rather greater reach than posting a notice in a registry office window as with the present system for civil preliminaries), this could perhaps be improved by allowing for publication on an online forum as well.

(b) Common licences – these are useful when there has been a problem with the banns, such as a failure to call them in one parish, or the marriage is complicated for some reason (eg a question of possible impediment, a foreign divorce, or the parties are residing outside of the country). These are quick and straight-forward to obtain, with the diocesan registrar (one of the legal officers for the diocese) supervising the administration of the licences.

(c) Special marriage licences – these provide additional flexibility to the system, not only by dispensing with the requirement to be married in a registered building, but also when other preliminaries are not available. For example, with the closure of registry offices over the first national lockdown from March 2020, special marriage licences were the only way of terminally ill people and their close family members being able to marry during the pandemic. Civil preliminaries ceased to be available[2].

- Anglican marriage preliminaries should not be considered simply as a different species of marriage preliminary. They are <u>the</u> preliminary for Anglican Church weddings and have been since the Fourth Lateran Council in 1215 (SRC's can be used for Anglican marriages but the clergy are not obliged to accept them). When in 1836, civil preliminaries were introduced in England and Wales, they became an <u>additional</u> preliminary but in no way replaced Anglican marriage preliminaries. The effect of abolishing them would be to prevent the CofE as the established Church from determining (albeit in accordance with statute law) who is to be married in their churches. If they were to be replaced by civil preliminaries, the State would be the sole gatekeeper of who was to be allowed to marry in the CofE. It would be constitutionally radical to move from a Church-State system of marriage preliminaries to a State only system. This move should not be considered mere "simplification" and "streamlining".

- The follow-on consequence of a move to a universal civil preliminary is that it places reliance upon civil registry officers to act properly and expediently in all circumstances. If there had been a universal civil preliminary at the time of the first national lockdown from

[2] See further our response to Consultation Question 3.

March 2020, there would have been no ability for the CofE and CiW to marry the 104 terminally ill people or their close family members that they did because all the registry offices were closed. Also, should registration officers go on strike or be overwhelmed and under-funded we could see delays and problems as can be seen in other areas of Government (eg processing social welfare claims; the Windrush scandal etc). Indeed, we are already aware of couples having long waits to secure an appointment with a civil registrar to give notice, particularly where one or both of the parties are non-relevant nationals. An advantage of the Anglican marriage preliminaries is that they are decentralised and flexible so that if banns do not work, a common licence or a special licence probably will. Instead of making things easier for couples, abolishing Anglican marriage preliminaries could make things more difficult by placing reliance on a single bureaucratic system rather than a more decentralised parochial and diocesan one.

- There is a presumption in the Consultation paper that the move from a system of registering buildings to licensing celebrants will make the law on marriage less confusing for couples. We would query the thinking in this proposal. At present, the premise that a building is registered for marriages is actually quite easy to explain and be understood. Although a buildings-based system does not allow for the whole range of choices that some couples would want to have and may conflict with the customs and practices of some religious groups, it is a simple and certain system. A move to licensing celebrants is likely to confuse the picture because of the potential of those who are not licensed to hold themselves out as such. Also, if couples begin to see lawful weddings take place outside and in unconventional locations, they are more likely to be tricked into a false sense of "anything goes" and are less likely to check the credentials of the person offering the wedding service. We suspect there will be more people falling foul of the rules, not fewer, should there be a move away from registered buildings or locations to licensed celebrants.

Limitations of this response

We will seek to engage with the issues raised by the Consultation by responding to the specific questions. However, we are not commenting on all of those questions which do not directly affect Anglican weddings.

Please note that whilst we have shared this document with the Archbishop of Canterbury and members of his Office at Lambeth Palace and with the legal officers of the CofE and the CiW, the views expressed in this response are those of the staff of the Faculty Office alone based on their knowledge and extensive experience of the current law and its practical outworking within the Anglican Churches in England and Wales.

Consultation Questions 1 and 2 – problems with recognition and legal barriers to marriage

We have no comment but suggest that the Law Commission is less likely to hear from those couples who did not experience barriers to their marriages than those who did and that the response is, therefore, not likely to be representative and may amplify certain minority concerns.

Consultation Question 3 – weddings during the Covid-19 Pandemic

One of the circumstances in which a special marriage licence might be required is to authorise a wedding according to rites and ceremonies of the CofE or CiW where one of the parties to the wedding, or a close relative (normally limited to a parent, sibling or child) of one of the parties, is terminally ill in hospital, a hospice or at home and cannot be moved to an Anglican church or chapel that is registered for marriages (an "emergency special marriage licence"). The Faculty Office does not make any charge for the issue of an emergency special marriage licence[3]. In a normal year, the Faculty Office issues an average of about 40 emergency special marriage licences to authorise such weddings. However, in the period of the first national lockdown (between 23 March and 4 July) when weddings were not otherwise permitted, the Faculty Office issued 104 emergency special marriage licences. The principal reason for this significant increase was the non-availability of the civil marriage equivalent – the registrar general's licence issued pursuant to the Marriage (Registrar General's Licence) Act 1970[4] – due to the closure of local registration offices and/or restrictions on superintendent registrars' ability or willingness to attend hospitals or hospices.

In addition, the Faculty Office issued a small number of special marriage licences to authorise the weddings in hospital chapels of frontline NHS workers involved in treating Covid-19 patients and who were, therefore, at greater risk of contracting Covid-19 themselves. We were also able to issue a very few licences to authorise the marriages at home of Armed Forces personnel due to be deployed overseas and whose planned weddings in church had had to be cancelled due to the restrictions on weddings[5].

During the second lockdown in England (between 5 November and 2 December) the Government introduced tighter restrictions on gatherings[6] so that the only marriages which could take place were those: "(i) in accordance with the Marriage (Registrar General's Licence) Act 1970 or (ii) by special licence under the Marriage Act 1949 where at least one of the parties to the marriage is seriously ill and not expected to recover". This fettered the Faculty Office's ability to respond to some marriage requests during that period.

The Faculty Office is aware of at least one situation where a bride was, therefore, unable to be married in the presence of her dying mother who was not expected to survive until the end of lockdown period. A number of military personnel due to be deployed also had their wedding plans disrupted, although in most cases, they have been able to be married in the short period between the end of the lockdown and their imminent deployments.

[3] The current fee payable on lodging an application for a special marriage licence is £325.
[4] The Registrar General's licence is more restricted that the special Licence as it can only be issued where it is one of the parties to the intended marriage who is terminally ill and who, in the opinion of a medical practitioner is unlikely to recover. A special licence is available to authorise the marriage of a close relative and also for a patient who is not necessarily terminally ill but who is facing emergency and potentially life threatening or life altering medical procedure.
[5] All these weddings took place with the minimum number of people present for a legal wedding ceremony (ie, the couple, two witnesses and the officiating minister).
[6] The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020

Consultation Questions 4, 5 and 6 – giving notice

The only circumstance in which a wedding according to the rites of the CofE and CiW must be authorised by a civil marriage preliminary (ie an SRC) is where one or both of the parties to a marriage is not a "relevant national"[7]. Since 2 March 2015, a CofE/CiW marriage where one or both of the parties are non-relevant nationals has not been able to proceed after the ecclesiastical preliminaries of banns or common marriage licence. A marriage by special licence is legally possible but, as a matter of policy, the Faculty Office will only issue a special licence to authorise such a marriage where an SRC is not available due to the building in which the marriage is to be solemnised not being a parish church or otherwise registered for marriages (for example, a school or college chapel). However, we are aware that many couples, particularly where one or both are not relevant nationals, have experienced long delays to secure an appointment to give notice of their intended marriage at designated register offices both since the introduction of the sham marriage scheme and since the reopening of register offices following the lockdown.

The requirement for a couple to be resident in an English or Welsh registration district for seven clear days prior to giving notice of their intention to marry has resulted in significant difficulties for couples who live overseas but who wish to marry in England or Wales. A not un-typical example is that of a British woman who went travelling following university, met an Australian man whilst travelling and settled in Australia where they both now live and work but who wished to return to be married in the parish church of the village where her parents live in England. The groom, having secured a marriage visitor visa, and his bride must either: (a) take an extended period of, probably largely unpaid, leave in order to come to the UK, be resident for at least seven clear days before giving notice, wait for 28 days before their SRC is issued and they can marry; or (b) travel to the UK for the minimum seven day period before giving notice and then return to Australia and come back within the 12 month validity period of the SRC to be married. Both options will be, often prohibitively, expensive.

We would therefore support the abolition of the seven-day residency requirement before giving notice. We would also support the possibility of starting the notice period by giving notice online, by post or in person at any registration district with the requirement for attendance at an interview at a later date for online or postal applications. We have no view on the required minimum period between the in person interviews and the date of the marriage save that it should be the minimum practicable period.

Consultation Question 7 – interviews carried out remotely

We have no comment.

Consultation Question 8 – notice to be given extra-territorially

We agree that it should be possible for notice to be given outside England and Wales in the circumstances outlined.

[7] Section 62(1) of the Immigration Act 2014

Consultation Question 9 – public notice online

We agree that publication of notices of marriage online seems appropriate as the current practice of displaying the information on the door of the register office is not adequate to provide members of the public with notice of the wedding and the opportunity to provide evidence of a valid impediment. One of the criticisms often levelled at the calling of banns is that it is only publicised to the, in the case of many parishes, falling numbers of people attending services but we would argue that very many more people regularly hear banns being called during the three required callings in up to three separate churches than make a point of checking the notices of marriage on a register office door! Adequate safeguards would need to be in place to remove the requirement for public notice in situations which would expose, or might risk exposing, either of the couple to a risk of harm or where there is other good and substantial reason why public notice ought to be dispensed with. If, as we suggest they ought to be, ecclesiastical preliminaries are retained, we think that some form of online publication might also need to be provided for to provide parity with civil preliminaries.

If it were to become a requirement that marriages taking place by Anglican preliminaries required posting notice online for the world to see, we would however have some concerns. Note that even if the names were to be posted online, that would not guarantee that those who know of an impediment would find out and object. It is more likely that the media, professional agents, and obsessives would be the people monitoring the online system. Thus a "celebrity" wedding may get attention, but the more "ordinary" wedding, not. The obsessives are also a concern – those people who have an unhealthy interest in another, perhaps stalk them or are involved in anti-social or predatorial behaviour, such as abusive ex-partners. With Anglican marriage preliminaries, banns are published but common and special marriage licences are intentionally not. In fact, the reason for applying for a licence is sometimes to avoid publicity. Thus, the Faculty Office has occasionally approved applications from members of the clergy who live out their whole lives in the eyes of their parish but want for understandable reasons to marry in a separate parish from where they minister and without banns, to be able to celebrate their marriage as a family rather than an occasion to which their whole congregation is a party. We would be concerned to preserve the ability for couples not to have to publish their intention to marry for good reason. Of course, when it comes to special marriage licences, those reasons would normally be explored to discover whether they are proper reasons rather than an attempt to hide an impediment or avoid a properly founded objection to the marriage.

Consultation Question 10 – schedule to be valid for 12 months

We agree that the schedule should be valid for 12 months from that date upon which it was issued.

Consultation Questions 11 and 12 – schedule to identify the officiant

We are not convinced of the need to identify the officiant in all cases, and especially where a civil preliminary is used to authorise an Anglican wedding. We also envisage difficulties if the intended officiant is not available at very late notice, perhaps after the register office has closed and where the wedding is scheduled to take place before it re-opens. However, we accept

that this may be necessary if proposals to partially or wholly de-regulate the location of where a marriage can take place are taken forward, with the focus moving principally to the authorisation of officiants. This is another reason why, as stated elsewhere in our response, a move to a celebrant-based system may be more and not less complicated than the present buildings-based system.

Consultation Question 13 – banns in Scotland, Northern Ireland or Eire

We agree that banns published in Scotland, Northern Ireland or Eire should no longer authorise an Anglican marriage in England or Wales. The Faculty Office has recommended since at least 2010 that banns called in Scotland should not be relied upon and since 2013 that banns called in the island of Ireland should not be relied upon; rather couples where one or both are resident in Scotland, Northern Ireland or Eire should instead obtain a common marriage licence. We have spoken to the diocesan registrar for the Dioceses of Carlisle and Newcastle who has confirmed that this is also the advice which is followed in these dioceses which border Scotland where this would be most likely to be an issue. In practice, therefore, we do not anticipate that this change will have any significant impact.

Consultation Question 14 – churches injured by war damage

We are agnostic about this. Section 19 of the Marriage Act 1949 was a product of its time and need not necessarily be carried forward to any up dated Marriage Act. On the other hand, while section 19 stems from a time when the damage of churches by acts of war was common, that is not to say that there might not come a time again where churches are damaged by acts of war (or indeed acts of terrorism if the provision was to be widened). In such a case, an express provision would continue to be useful. It might usefully be wrapped up with the provision in the Marriage Act concerning churches closed for repair works and other reasons (section 18).

Consultation Question 15 – banns to be called where the marriage is to be solemnized only

We are inclined to disagree that the requirement for couples to give notice to call banns in up to three separate parishes (ie the parish where the wedding is taking place and in the parish or parishes in which the bride and groom reside) be abandoned in favour of banns being read in the single church where the wedding is to take place. The banns are intended to give publicity, and if they are not published in the parishes where the parties actually live, their utility will be reduced.

We note the concerns set out in paragraphs 4.116 and 4.117 of the Consultation paper that banns do not provide effective publicity. However, we do not accept that banns are any less effective than the current requirement for notice to be published on the door of the register office for civil preliminaries as noted in our reply to Question 9 above. We would submit that banns called on three occasions, in potentially up to three separate parish churches, are heard by significantly more people than would ordinarily read notices of marriage posted at a register office. The observation that the other ecclesiastical preliminaries of common licences and special marriage licences allow an Anglican marriage to proceed "with no real publicity at all" is valid. Consideration would need to be given as to whether and where online publication

should take place and adequate provision made for exceptions to the requirement for publication (for weddings taking place after either civil or ecclesiastical preliminaries) in appropriate circumstances including provision for waiving the requirement altogether or for reducing the publication period. Our view however is that one of the purposes of a common licence or special licence is to dispense with the requirement for publicity and the question of impediment is handled through other means and we do not consider that there is a need to change this.

Consultation Question 16

(1) – power of clergy to call for documentary evidence

The Consultation assumes that clergy to do not already have the power to call for documentary evidence from those couples it marries. First of all, in order not to fall foul of the requirements not to marry non-relevant nationals otherwise than after the issuing of an SRC, section 8 of the Marriage Act as amended by section 57 of the Immigration Act 2014 requires that "specified evidence that both of the persons are relevant nationals" be provided. The "specified evidence" means evidence in accordance with regulations made by the Registrar General (Marriage Act 1949 section 28G) (see the Registration of Marriages Regulations 2015), and set out in guidance issued by the GRO. On top of that, a person who wishes to marry in reliance on the Church of England Marriage Measure 2008 or the Marriage (Wales) Act 2010 (ie by way of a qualifying connection) must provide such written or other information as the minister of the parish requires in order to satisfy him or herself that the qualifying connection exists (CEMM s.1(8); M(W)A s.2(8)). If necessary, the minister may call for information to be provided or supported by means of a statutory declaration (CEMM s.1(9); M(W)A s.2(9)).

In England, in deciding whether the information provided is sufficient, the minister must have regard to the statutory guidance issued by the House of Bishops under section 3 of the Church of England Marriage Measure 2008. There is a recommended form to be used. Really, we do not consider that there is an existing lacuna. If the member of the clergy had concerns about another element of the proposed marriage, eg a suspicion of bigamy, we are confident that they would be justified in demanding further particulars. We are also aware that most clergy will meet couples on multiple occasions prior to the day of the wedding, and so there ought to be adequate opportunity to cross-reference the documentary evidence with the personal information disclosed by the couple at interview. If, however, it was thought sensible to give clergy a right upon reasonable grounds to demand all documents relating to any aspect of a proposed marriage, we would not be against such a provision.

(2) – requirement that clergy meet with each of the couple separately, before banns are published

We agree that Anglican clergy should ideally meet with couples together and with each of the couple separately. The Canons of the CofE impose a duty on an officiating minister to prepare a couple for marriage[8] and to inquire as to impediments[9]. Unless it is intended to impose an

[8] Canon B30
[9] Canon B34

obligation on the superintendent registrars to meet with each of a couple separately, we do not believe that such a requirement should be made of Anglican clergy. We accept that there is a need for clergy to be vigilant to ensure, so far as possible, that they are not inadvertently officiating at a forced or sham marriage. However, it is not always practicable for clergy to meet couples in person sufficiently in advance of a wedding to make it a *requirement* before banns are published. We think that the number of forced or sham marriages which have taken place in the CofE and CiW will be very small and it may be disproportionate to require interviews with the parties separately in each case, rather than when the circumstances give rise to a suspicion. It would, in our view, be disproportionate to make everyone carry out the most rigorous of procedures for the sake of the minority of cases, rather than escalating the minority of cases to more rigorous checks when certain "red flags" are present.

Consultation Question 17 - requirement for both parties to make a declaration of no impediment in case of a common licence

We consider that this is probably disproportionate to the concern expressed in the Consultation paper. Note that it is not unusual in common licence cases for one party to be out of the country (such as a member of the Armed Forces on deployment), and in such circumstances it is more convenient for the resident party to make the declaration. We are not aware of incidences of deception by parties married by common licences who have avoided making the declaration themselves and think it is unlikely that there is a real problem to be corrected here. Note also, that if there were to be an impediment, both parties have to make a declaration of no impediment during the marriage service itself and would be committing a fraud regardless of whether they had in fact been the person making the original affidavit. We believe that it should remain a requirement that such declaration continue to be made under Oath as is currently required under section 16(1) of the Marriage Act 1949 although an Affirmation made in the circumstances set out in section 5 of the Oaths Act 1978 might also be appropriate. We do not believe that a move to a Statement of Truth would be appropriate.

Consultation Question 18 - whether Anglican preliminaries should be retained

We would invite you to refer to the opening remarks at the beginning of our main submission which make the case strongly that Anglican marriage preliminaries should be retained. They are sufficiently flexible but certain and work effectively in practice.

We need also to address a misconception in the Consultation paper that “The very fact that there is a separate system of Anglican preliminaries raises issues of inequality of treatment…”[10]. Similarly, “The issue of equality was emphasised by the National Secular Society in championing universal civil preliminaries”[11]. A choice of forms of preliminaries and ceremonies does not mean that there is inequality. There are several reasons why there should continue to be a separate form of preliminary for Anglican marriages:

- The CofE is the established Church which brings with it both special responsibilities and a distinct status within the Constitution, and in Wales the CiW retains the functions and

[10] Consultation paragraph 4.108
[11] Consultation paragraph 4.166

duties that it had prior to disestablishment. Parishioners and those with a qualifying connection have a legal right to be married in the Anglican parish church with which they have a legal qualification. Similarly, they have rights of burial where there is an open churchyard. For this reason, it is difficult to read across the provisions which relate to marriages in Anglican Churches with those which are non-Anglican. Couples have a common law right to be married in their parish church and Anglican clergy are under a duty to marry parishioners save only in certain very specific circumstances[12]. This right applies uniquely in the case of the Anglican Churches and applies to all people whether or not they profess the Christian Faith as Anglicans or any other denomination, any other Faith or none. The Measures of the CofE have the same effect in law as Acts of Parliament and any attempt to restrict or override CofE legislation would affect the CofE's unique status within the Constitution. While the Anglican Churches must marry all those who qualify to be married by reason of residence and otherwise, subject to specified nationality and impediments and other specified reasons, they also have an internal system contained in the canon law and embedded in the Marriage Act for relating the individual's right to be married with the discharge by the Church of its functions. Part of what the system of Anglican marriage preliminaries provides is a gatekeeper function of how couples come to be married in Church. For example, if a person is divorced but has a former spouse still living, a member of clergy may (but not must) refuse to take the wedding or allow their church building to be used (Matrimonial Causes Act 1965). If a person presents who wishes to marry the adult child of his or her former spouse (something that the statute law allows under the Marriage (Prohibited Degrees of Relationship) Act 1986), a member of the clergy may refuse to marry them or make their church building available for the wedding and it is recommended that such weddings take place by common licence rather than by banns because of the increased complexity. Before the advent of the Immigration Act 2014, the House of Bishops' had made directions urging the marriage of foreign nationals to take place by common licence rather than by banns. All this goes to show that the preliminary is doing things that the Church considers important to protect its interest as the established Church (or in Wales, a quasi-established Church) and to ensure that it discharges its functions in accordance with canon law and statute law. If Anglican marriage preliminaries were to be abolished, the CofE's and CiW's ability to regulate their official role in the nations to conduct weddings of those with an entitlement would be severely weakened. At the moment, the Churches provide a one-stop shop from the point of first enquiry until the solemnisation of the marriage, aside than with the marriage of non-relevant nationals.

- It is not correct to compare the role of the established Church in conducting weddings with other religious and non-religious groups and seek to find unequal treatment. The Church is simply not in the same position as non-established groups which are not obliged to marry those with a qualification and indeed are able to set up their own rules of who

[12] Anglican clergy have the right to decline to marry couples where one or both have been married before and have a former spouse still living (and Incumbents in the CofE can decline the use of their parish church even where another member of the clergy would be willing to officiate). Clergy may also decline to marry persons of acquired gender. Anglican clergy are not permitted to officiate at the marriage of a same-sex couple pursuant to the Marriage (Same-Sex Couples) Act 2013

they want to marry. From cradle to grave, the Church offers the occasional offices of baptism, confirmation, marriage and burial as its service to the nation and those functions are embedded in law. It follows that it will have its own system of authorisation and regulation relating to an aspect of those occasional offices, including for marriages. To try and make every aspect of an Anglican marriage the same as a marriage, say, in accordance with the Hindu religion, is illusory and unhelpful. It is also unlikely, particularly since the ability to marry specified nationals was removed under the Immigration Act 2014, that any real adversity through inequality of treatment is likely to be experienced by actual couples, rather than as articulated by secularist campaign groups. The main bone of contention remains the prohibition on the conducting of same-sex marriages by the CofE and CiW but that is outside of the scope of this Consultation.

- It should be for the General Synod of the CofE, not Parliament, to legislate on this. In 2017 when General Synod debated whether to adopt universal civil preliminaries it considered the matter at considerable length and rejected the proposal. Therefore, serious constitutional issues would arise if this step were to be taken by Parliament without reference to the CofE's own "parliament". The quotations selected from that debate for inclusion in the Consultation paper were all taken from the side of those who wanted to do away with banns, and those voices did not prevail.

- It should be noted that when the first Marriage Act was enacted in 1753 it put onto the statute book what the Church had being doing for centuries before under its canon law. In successive Marriages Acts, that has been preserved. If suddenly its unique position in the legislation were to be altered, so that the Anglican Churches were placed on the same footing as any other group, with its clergy as mere licensed celebrants, this would cause potential problems. The canon law of the CofE only formally binds the clergy, not lay people, unless it is declarative of pre-reformation canon law or custom. This is one of the principles which has been derived from the famous case of *Middleton v Crofts* (1736) which was about a marriage taking place outside of the canonical hours. Also, the Constitution of the CiW only binds its "members", not the public as a whole. If the statutory framework for Anglican marriages were to be taken away, the CofE would just have its internal canons which are held by judicial authority not to have any binding legal effect on the laity (unless declaratory of pre-Reformation canon law and custom). Similar consequences may flow for the CiW. If therefore, the parts of the Marriage Act to do with the Anglican Churches were to be stripped out, the Churches could find themselves struggling to enforce their internal laws (the canons) on individuals who continued to have legal rights to be married in parish churches but were no longer bound (by reason of the Marriage Act) to follow the Church's laws. While this might be worked carefully through, we do not think it to be a helpful use of the Law Commission's or Parliament's time and resources.

- While the Consultation paper picked up on some grumbles from some clergy about not wanting to read banns or getting it wrong, these are not representative of a CofE or CiW view. Most clergy value the pastoral relationship which comes from the discharge of an official function. Unfortunately training of clergy on the importance of these issues can be

patchy and the Faculty Office and diocesan registries do what they can to improve consistency. We would advocate mandatory training to clergy at incumbent level in the law of Anglican marriage preliminaries but that is a matter more for the Anglican Churches than for this Consultation. All clergy with a licence must undergo continuing ministerial development, and we suggest that marriage law should form part of that. Where mistakes happen and banns are not called properly, the diocese or the Faculty Office will normally intervene with a common or special licence. It is important to bear in mind that where individual clergy have trouble with a specific case, they should consult their diocesan registrar, a legally qualified official, who will have the expertise to give advice.

As might be anticipated we have strong views that Anglican ecclesiastical marriage preliminaries should continue to be recognised as legal preliminaries to weddings officiated according to the rites and ceremonies of the CofE and CiW. Whilst we accept that some respondents might view the special provisions applicable to the Anglican Churches in England and Wales to be inappropriate or outdated we cannot support a move to compulsory civil preliminaries. The CofE is an established Church which brings with it both special responsibilities and a distinct status within the Constitution. No-one is compelled to be married in an Anglican church; couples are free to choose to have a secular wedding with entirely civil preliminaries or to marry in accordance with the rites and ceremonies of another Christian denomination or a different Faith.

Put shortly, we do not agree that universal civil preliminaries for all marriages should be introduced. The unique ability of the Anglican Churches to offer, to most couples, a one-stop-shop for their wedding must be retained. While on the international stage, especially in those countries with turbulent histories of Church and State relations and violent revolution, this may appear quixotic, it works well and suits the circumstances which prevail in England and Wales.

Consultation Question 19 - requirement that an officiant be present at wedding

We agree that it should be the responsibility and duty of the officiant to ensure that:

(1) The parties freely express their consent to marry each other;
(2) The other legal requirements of the ceremony/service are met; and
(3) The document which leads to the registration of the marriage is signed by the couple, their witnesses and the officiant.

Consultation Questions 20 and 21 - registration officers to officiate at civil weddings only; only one registration officer needs to be present

We agree that a civil registration officer should only be able to officiate at civil weddings and that one registration officer should be needed to officiate.

Consultation Question 22 - all clerks in Holy Orders to be officiants by virtue of their office

We agree that clerks in Holy Orders of the CofE and CiW, by virtue of their office, should continue to be recognised as officiants at a wedding without the need for any other authorisation. However, in the interests of safeguarding children and vulnerable adults, we would suggest that recognition should be limited to those holding a current office or licence or

permission to officiate issued by the bishop of the diocese in which they normally serve. This will ensure that they have clear authority and the appropriate checks have been made, including an Enhanced Disclosure and Barring Service Check. The CofE and CiW should be free to determine by their own rules and procedures whether, and if so on what basis, a clerk in Holy Orders holding an office, licence or permission to officiate in one diocese might be permitted to officiate at a wedding in another.

Consultation Question 23 - who chooses who the officiant is outside of the Anglican Churches

We have no comment.

Consultation Question 24 - non-religious belief organisations to be able to officiate at weddings, defined using a variation on the *Hodkin* description of religion

There are some conceptual problems with this. The *Hodkin* description of religion is a well-intentioned way of trying to define all possible religions but by extending it to non-religious bodies ends up with a description that is so far ranging that it could cover almost anything. We are concerned that some quite spurious applications will be made from organisations which may claim to have a profound and sophisticated ethical framework but actually have very little in the way of an ethical or intellectual framework behind them. While the potential is also there for new religious bodies, such non-religious organisations – eg an organisation that promotes "hedonism" defined in a vulgar and superficial way will not necessarily be a proper body to be conducting marriages according to its secular doctrine and there could be real harm to a common understanding of the dignity and solemnity of marriage through allowing this. While one might argue that the GRO would be in a good position to make that determination, in practice it is very difficult for a public body to be making determinations on the profundity and seriousness of particular groups without fear of challenge on the basis of discrimination[13]. We fear that this will open the way for increasing sectarianism, if competing ideological groups each have their own mode of marriage.

We agree however that, yes, if there were to be allowed non-religious belief groups who could nominate celebrants to take weddings, that there be a list excluding political and sporting organisations for example. But we fear that list will not be long enough to prevent some undesirable or unmeritorious organisations becoming authorised and wonder what public harm might be caused by groups claiming to have an ethical view but actually being a front for a political one (eg a body which promotes natural medicine but which is actually about "anti-vaxxing") or is purely organised for reasons of levity or fun-making (eg a *Lord of the Rings* appreciation group). Some organisations might try to register to boost their coffers – for example a charity running a miniature railway might want to get registered to conduct their own weddings on their trains. While this may seem harmless fun, it would be the motive of raising funds rather than the motive of promoting a belief about marriage which is likely to be the dominant one.

[13] The Charity Commission grapples with these issues – see for example the decision of the Charity Commission on *The Temple of the Jedi Order*. We are unsure whether the GRO is best suited for grappling with similar or indeed more difficult conceptual issues about which non-religious organisations should qualify.

We suspect that the Law Commission have arrived at this proposal by comparing religious groups with non-religious groups (particularly the humanists) and finding an artificial inequality of treatment. We are not persuaded that non-religious belief groups really need to be treated with parity for the purpose of conducting marriages. Nor are we clear that they have a distinct ideology of marriage that will be compatible with the common themes of most religious marriages and the understanding of civil marriage as it has been interpreted by the courts. For example, if a group considers all marriages to be for mutual convenience and that lifelong marriage is a form of imprisonment of individual autonomy and professes taking multiple partners, this would conflict with the traditional interpretation of marriage that has come from the Christian Church and which the State has not abrogated. If marriage is an institution, people must understand what that institution is before they subscribe to it. In the case of *Hyde v Hyde and Woodmanse* (1866) the judge made the following observations:

"Marriage has been well said to be something more than a contract, either religious or civil - to be an Institution. It creates mutual rights and obligations, as all contracts do, but beyond that it confers a status. The position or status of "husband" and "wife" is a recognised one throughout Christendom: the laws of all Christian nations throw about that status a variety of legal incidents during the lives of the parties and induce definite lights upon their offspring. What, then, is the nature of this institution as understood in Christendom? Its incidents vary in different countries, but what are its essential elements and invariable features? If it be of common acceptance and existence, it must need (however varied in different countries in its minor incidents) have some pervading identity and universal basis. I conceive that marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others."[14]

While UK law now rightly recognises marriages between couples of the same sex, the rest of the statement, is we understand, still a sufficient statement of what the law in England and Wales accepts to be defining of what a marriage solemnised in England and Wales must be – ie a voluntary monogamous union for life (hence adultery being a ground for divorce). For understandable reasons, not least because it is not within the Law Commission's brief, the Consultation does not seek to define what marriage is. However, if it is to be accepted that marriage is, under the law of England and Wales, to be life-long and monogamous, while accepting that some marriages do fail, surely it cannot be that non-religious belief organisations be allowed to conduct weddings according to a belief framework that is antithetical to the institution of marriage as understood by the law of England and Wales. There is a real danger therefore in opening the gates to non-religious belief organisations without first, from a public policy perspective, considering what marriage is supposed to be for and what ethical characteristics should be promoted by the State in continuing to require that marriages be solemnized in accordance with rules laid down by the State rather than becoming a purely domestic matter which is not of the State's concern.

Consultation Questions 25 - minimum requirements for religious organizations

[14] *Hyde v Hyde and Woodmanse* (1866) L.R. 1 P. & D. 130, per Lord Penzance.

For the reasons given in our reply to Question 24, we consider that more thinking needs to go into this topic. While a religious organisation would need "a wedding service or a sincerely held belief about marriage"[15], that sincerely held belief would need to be broadly compatible with certain norms of what a marriage is intended to be within UK law, eg monogamous, mutually supportive and intended to be life-long accepting that some marriages do fail. Having a "wedding service" could amount to anything and is the most basic and perfunctory of requirements and having a "sincerely held belief about marriage" is very difficult for registration officers to adjudicate upon.

Consultation Question 26 – public policy concerns

We agree that any religious organisation or non-religious belief organisation which promotes purposes that are unlawful or contrary to public policy or morality should be expressly excluded from conducting legally effective marriages. We do not believe that any organisation which might be seen to detract from the dignity and solemnity of marriage should be permitted to conduct legally effective marriages. Going further than the Consultation's proposals, the content of the marriage service or sincerely held belief about marriage must not be contrary to public policy, eg contain an expression which supports polygamy, or which would suggest that the marriage is for a finite period.

Consultation Question 27 – option of nomination of officials by office rather than by name

We have no comment

Consultation Question 28 – nominations to be made to the GRO

We agree that the GRO should be responsible for keeping a public list of all nominated officiants from religious organisations other than the CofE and CiW and any non-religious belief organisations. As a comment, the CofE is introducing a register of all beneficed, licensed clergy and those with permission to officiate, and so it will be able to demonstrate who ought to be capable to officiate at weddings in the CofE. As this will change frequently, it will not be appropriate to try to integrate it with any list held by the GRO.

Consultation Question 29 to 34 – the registration of "independent officiants"

We only wish to comment on Consultation Question 33 which concerns the proposal that independent officiants should not be able to profit from their role. We consider that the suggested prohibition might be circumvented if the officiant were an employee or contractor of the hotel or other "venue". The remuneration could be structured so that the officiant was not personally profiteering but that the officiant was acting at the direction of the venue, and the venue was then able to profit by use of its employee or contractor. The officiant would be a "tame" person, enabling a commercial organisation to benefit and we would question how far that officiant could assert their independence to ensure, for example that the wedding is conducted in a proper way, if the commercial considerations of the employer were put first.

Consultation Questions 35 and 36 – exercise of role by "independent officiants"

[15] Consultation paragraph 5.132

We are concerned about the introduction of the concept of the independent officiant who is able to officiate at weddings. We generally see this concept as open to abuse in a way that is not a risk with registration officers and religious officials at present. We see this as an opportunity to further commercialise weddings by independent officiants offering ever greater novelty in a way that may not edify the institution of marriage and may serve to divert couples down commercial routes from which they would have been free had the wedding been conducted by a registration officer or religious official. Unless the fees which independent officiants could charge were regulated in some way, this could result in more expensive rather than less expensive weddings.

We agree that all officiants should have a duty and responsibility to uphold the dignity and solemnity of marriage. However, we are concerned that by essentially opening up marriage to a 'free-market' such a duty and responsibility might prove difficult to enforce. Clear guidelines issued by the GRO as to the conduct of wedding and, *inter alia*, what is meant by dignity and solemnity would need to be provided as these are potentially subjective terms – what one person might regard as being dignified and solemn could well be very different from another's view and might very well change from one generation to the next. For example, we might not view a themed wedding officiated by a person dressed as Darth Vader to be dignified or solemn but to fans of Star Wars[16] this might be their idea of a dream wedding. There is a conceptual problem with opening up weddings to limitless choice. While this may, upon first thought, seem non-contentious, couples may feel obliged to have a highly novel wedding officiated at by an independent officiant who offers the latest in gimmickry. Many clergy speak about how couples often have ideas about how they want their wedding to be conducted but equally, they rely upon being guided towards time honoured and respectful forms of service, readings and music. It is not just a couple which "makes" a wedding. There is often a dialogue with the institutions, such as religious organisations who have developed a liturgy, ritual and texts to inform the couple and those watching what the wedding (and the marriage) are really about and for. If the State is to continue to uphold the institution of marriage, then it needs to regulate weddings carefully. Total freedom to tailor a wedding from scratch including the vows and rituals risks cheapening weddings or introducing elements which are inconsistent with the way in which marriage has been understood by society, institutions and the matrimonial laws of England and Wales. While a "wedding" can and should be personalised to a degree, marriage is not itself an entirely elastic concept. It is an "institution" with norms.

Consultation Questions 37 to 41

We have no comment.

Consultation Question 42 – how consent is to be expressed

(1) We agree that the parties should be required to express their consent to be married to each other in whatever manner is provided for in the relevant rite or ceremony. We express no opinion on the requirement to confirm publicly that there is no impediment to the wedding provided that organisations whose current approved rites and

[16] This comment applies equally to other characters and/or film franchises!

ceremonies contain such a statement should be permitted to continue to use the same. It should be borne in mind, however, that an impediment could have been created since notice was given, and so having a requirement to declare that there is no impediment immediately before the solemnization of the marriage as occurs in the Anglican rites is not mere duplication – it serves a purpose.

(2) We agree that religious organisations and non-religious belief organisations should be able to submit details of their wedding ceremonies to the GRO. Indeed, we would be inclined to suggest that they ought to be *required* to do so. The same provisions should be applicable to independent celebrants. Please see our statements above that concern how the institution of marriage is articulated, explained and embodied through the wedding service itself.

(3) We agree that the marriage schedule (or the marriage document in the case of Anglican weddings following ecclesiastical preliminaries) should contain a declaration that the couple freely expressed their consent to be married to each other and that the signing of the document is, itself, written evidence of the expression of such consent.

(4) We do not agree that the marriage should be formed at the point when the parties have expressed consent to be married to each other. Rather it should be formed at the point at which the rite or ceremony has been completed and the officiant has declared the existence of the marriage; the signing of the marriage schedule or marriage document by the couple, their witnesses and the officiant should be the preferred evidence produced to the registration officer for the purposes of registration of the marriage. There may be situations where a marriage schedule or marriage document cannot be signed by both parties (for example an emergency deathbed marriage where a party is physically unable to sign or even dies before being able to sign but after the declaration of the existence of the marriage) where exceptions will need to be made supported by appropriate evidence or confirmation from the officiant and/or the witnesses that the existence of the marriage had been declared before the party died.

Consultation Question 43 – choice of form and ceremony

We agree that weddings should take place according to the form (rite) and ceremony chosen by the parties in Consultation with the officiant subject to their being in accordance with the rites and ceremonies approved by the relevant religious or non-religious belief organisation and, as appropriate, the GRO. It is important that couples should not have boundless choice over the form and ceremony and that there should be proper regulation of what can be approved. Otherwise, the concept of marriage as articulated in the form or ceremony becomes so elastic as to make marriage itself an elastic and disputed institution. In the Anglican Churches as with other religious organisations, the meaning and teaching of marriage is conveyed in the form of ceremony itself.

Consultation Question 44 – form of Anglican, Jewish or Quaker weddings

There could be a difficulty if the choice of Anglican marriage ceremony ceases to be in any way prescribed by law and becomes a matter for canon law only. As has been stated above, the Anglican Churches are legally responsible for marrying parishioners, but the Marriage Act

requires that such weddings must be "according to the rites of the CofE". It is important that this concept remain upon the Statute Book, as otherwise some might argue that the canon law requirements should not bind them (generally it is understood that the canons cannot bind the laity unless they are declaratory of pre-reformation canon law[17]) and they can be freer to determine the order of service or make alterations to it. Such debates about the application of the canon law were more common before the Marriage Act 1753. To remove requirements from the statute and to rely upon the canons only, could lead to such debates reviving. We anticipate that if the legal stipulation were to be removed from the statute some couples would seek to vary one of the authorised rites to their own liking, and some clergy might feel under pressure to cave into such demands and risk confusion.

Consultation Question 45 – religious content in civil weddings

We express no view on whether, and if so what, religious content might be permitted in civil wedding ceremonies save that whatever provisions are made should be exercised uniformly by all civil officiants rather than being left to the interpretation or preferences of individuals. For example, we are aware of significant differences in the views of some registrars as to what does, might or does not constitute religious music. By way of specific example, the writers have attended civil weddings at which an instrumental version of the Bach/Gounod or Schubert settings of *Ave Maria* was deemed acceptable (albeit that the lyrics could not be sung) and another where the couple were declined permission to use Mendlessohn's *Wedding March from A Midsummer Night's Dream* as this was deemed too religious.

Consultation Question 46 – religious wedding to follow civil ceremony

We would not support the repeal of the provision to permit a (non-legal) religious service to be conducted after a (legally binding) civil wedding ceremony. There may be very valid reasons why a religious service according to the rites and ceremonies of the Anglican Churches or other denominations or faiths might not be possible or appropriate[18] but where a religious ceremony thereafter is desired and appropriate. It is helpful to have the express provision that there may be an Anglican (non-legal) marriage following a civil marriage (as opposed to a service of blessing only) as otherwise there might be some considerable doubt as to whether it was possible and appropriate to conduct a (non-legal) wedding service. There are good reasons why the predecessor provision to this provision was included when civil weddings were first allowed in the nineteenth century.

Consultation Question 47 – requirement for open doors

We do not have any strong views either way on this proposal. It should be noted that, although Anglican weddings do not expressly have the same "open doors" requirement, it is the expectation that Anglican weddings taking place in parish churches will be open to the public, except perhaps in special cases. We can see benefits of retaining the requirement as part of a regime to try to reduce forced weddings taking place in private behind closed doors or to allow persons who might know of a genuine impediment to the wedding from making their

[17] *Middleton v Croft* (1736) 95 ER 211
[18] cf. the marriage of HRH The Prince of Wales to the (now) Duchess of Cornwall

objection. Equally, we can see benefits, particularly as regard security if the couple have high public profiles or there are other security concerns. Additionally, where weddings take place on private property or locations where members of the public are not ordinarily permitted for the security and welfare of residents or occupants (for example the chapel of a public/private school during term time) there may be good reason to exclude the public. And, of course, during the current Covid-19 pandemic there have been legal restrictions on the numbers of people permitted to be present in the building where a wedding is taking place for public health and safety reasons. For all these reasons, it might be better to have the couple apply to the superintendent registrar to have their wedding behind closed doors and to state the reasons for that.

Consultation Question 48 – weddings to take place anywhere

We would have concerns if civil weddings or weddings conducted by non-religious belief organisations were to be de-restricted as regard venue or location subject to a requirement that the dignity and solemnity of the occasion should not be diminished. We would prefer that if a wedding needs to take place otherwise than in a registered building or location, there be a system of the superintendent registrar, in conjunction with the local authority, temporarily designating another building or place for that purpose. This concept is already understood in the case of temporary event notices that local authorities administer for licensable activities such as public entertainment or the sale of alcohol. A marriage combined with a reception, especially where alcohol is served, might in any event need a temporary event notice under licensing laws.

It is our view that weddings according to the rites and ceremonies of religious belief organisations ought properly to be conducted within a building where the public worship of that organisation is ordinarily conducted or, at the least, within the curtilage of such building. For the Anglican Churches, this would be primarily a parish church or other building licensed by the bishop for the solemnisation of marriages; or otherwise a building used for Anglican worship on the authority of a special marriage licence. The CofE should be permitted to make its own rules[19] if the status quo were to be changed and the CiW should be free to recommend or promote appropriate legislation to make similar provision[20] through the Welsh Assembly or the UK Parliament as appropriate. However, we would advocate for a continuing requirement in the Marriage Act for the solemnization of Anglican weddings to be in a building licensed by the bishop for marriage (unless by special marriage licence). For those religious groups (eg some Muslims) who would ordinarily not marry in a place of worship, we suggest the use of a temporary designation of another place by the superintendent registrar, in conjunction with the local authority, temporarily designating another building or place for that purpose.

Put fundamentally, every person in England and Wales resides within a parish for which a parish priest has cure of souls, ie responsibility for their pastoral welfare. The CofE's and CiW's service to the nation is to provide a Christian presence in every community. All parishioners may look to their parish church for occasional offices and have the right to be married there.

[19] See, for example, the CofE Marriage Measure 2008
[20] Ditto the Marriage (Wales) Act 2010

If weddings could take place anywhere, this would risk undermining the role of the parish church. Many of these buildings have served their communities for many hundreds of years. The CofE is responsible for about 16,000 parish churches, 12,500 of which are listed of historic or architectural interest. About 45% of all Grade 1 listed buildings are CofE church buildings. Parish churches are at the heart of many communities, particularly rural ones. Every care should be made not to destabilise this. Additionally, to de-regulate where an Anglican marriage can take place might well create additional issues as regard the retention of ecclesiastical preliminaries which we have already indicated ought to be retained for the reasons we have outlined. For example, if a CofE marriage were to be permitted to take place on a village green or in an unlicensed chapel of ease with no restrictions, it is unclear where the banns preceding that marriage should properly be read.

The Archbishop of Canterbury, through his Faculty Office, can already dispense a couple from the requirement to be married in a building which is otherwise licensed for marriages and this could, theoretically, extend to any location which is deemed appropriate. The dispensation is exercised by the Registrar of the Faculty Office in accordance with a *fiat* issued by successive Archbishops shortly after their coming into Office and, at their discretion, amended at any time during their period in Office. There is, therefore, already sufficient flexibility under existing Anglican ecclesiastical provisions to mirror, to the extent considered appropriate, any relaxation as to where marriages according to the rites and ceremonies of the CofE and CiW may be conducted.

Similarly, the General Synod of the CofE could, if deemed appropriate, pass legislation to amend and further relax the concept of qualifying connections as set out in the Church of England Marriage Measure 2008 to provide additional opportunities for couples to show, or develop, connections with a particular parish such that they might have the legal right to be married in the parish church of that parish or other licensed building within it. The Governing Body of the CiW could act similarly in seeking or promoting legislation to liberalise the available connections.

However this commentary is speculative. With the matter having been given very considerable attention in the build up to the Church of England Marriage Measure 2008 and then to a lesser degree for a technical amendment to the legislation in 2012, we would submit it is not timely to seek to re-run the arguments which were articulated and debated at length within the CofE on where Anglican marriages should be solemnized. Although greater flexibility was introduced in 2008, the principle of the centrality of parish churches was retained as a key tenet of the Anglican law of marriage. We would ask that Parliament not override the considered decision of the CofE.

Consultation Question 49 – civil weddings locations need not be publicly accessible

We have no comment except that we are not convinced that the principle of marriages being publicly accessible should be jettisoned without there being significant arguments in favour of doing so.

Consultation Question 50 – use of religious venues

We are ambivalent on whether there should be a legal prohibition on civil weddings from taking place in a religious venue or non-religious belief venue. It might properly be left to the governing body or other responsible body to determine the nature of the wedding ceremony which they will permit to be conducted within a venue for which they are responsible. We are not convinced that maintaining a distinction between civil marriage and religious marriage or creating an additional construct of non-religious belief marriage is helpful. A marriage conducted or created through any authorised form of ceremony might simply be referred to as a (legally binding) marriage.

Consultation Questions 51, 52 and 53

Subject to our comments regarding marriages in Anglican buildings and according to the rites and ceremonies of the Anglican Churches we have no further view or comment on these questions.

Consultation Question 54 – inclusion of further particulars on the marriage schedule/document

We agree with this proposal. Presumably the form of preliminary might usefully be added (as at present), assuming the existence of more than one legal preliminary to a marriage.

Consultation Question 55 – registration in the Welsh language or in both English and Welsh

We agree with this proposal in principle.

Consultation Question 56 – option for electronic registration to await new infrastructure

We would suggest that any move away from the current process for registration of marriages should be delayed until the infrastructure is in place to facilitate the production of electronic marriage schedules and marriage documents, the electronic registration of marriages and the creation of an electronic register. Provisions to permit a mothers' or parents' names on existing marriage registers could be easily achieved to ensure that the current "clear and historic injustice"[21] is remedied in the meantime.

Consultation Question 57 – what should render a marriage void

We agree that any one of the four factors cited in the first part of this question should on its own render a marriage void.

We are not persuaded that mistakes in the issuing of a marriage schedule or a marriage document should not render a marriage void where the party issuing the same knew, or ought to have known, that the document was issued in error. We have seen a number of SRCs issued by civil registrars for Anglican weddings involving non-relevant nationals where the couple do not have the legal right to be married in the parish church named in the SRC and which has, therefore, been issued unlawfully and is an invalid preliminary. If a couple, or an officiant, proceeded with the wedding in the knowledge that the preliminary was invalid, the marriage

[21] The Bishop of St Albans speaking in the House of Lords at the introduction of his Bill to permit mother's names to be recorded in marriage registers

ought to be void or voidable. We do agree that typographical errors or genuine mistakes ought not to render the marriage void.

We are not persuaded that an absence of witnesses should not render a marriage void. We believe that witnesses play and useful and important role in the process of a wedding particularly in minimising the risk of forced or sham marriages and ensuring that the parties to a marriage are competent to participate. They are, perhaps, especially important at the marriage of a minor (16 or 17 year old) or at a deathbed wedding where the capacity of the parties might later be questioned.

We agree that a failure to sign the schedule or marriage document, or to register the marriage should not render the marriage void. We do, however, believe that there should be other penalties for a failure properly to register a marriage within the requisite period.

Generally, we are not convinced that the law in this area is ripe for reform and we would be minded to recommend that the existing provisions around void and voidable marriages are retained. The present provisions are the product of hundreds of years of matrimonial law and we do not profess to have had the time to dedicate to examining the consequences which would flow from changing them.

The absence of impediment is not mentioned at this stage, but we assume that this is covered elsewhere in the proposal.

Consultation Question 58 – factors for a non-qualifying ceremony

We can see some merit to this proposal on paper but recognise that there may be unforeseen consequences to changing the law in this area.

Consultation Question 59 – presumption in favour of validity

We agree with both parts of this proposal.

Consultation Question 60 – three-year limit on petitioning for nullity

We are uncertain about this and would consider it helpful if the matter could be looked at by the CofE House of Bishops. There is a difficulty both conceptually and possibly theologically in not having a cut-off point for petitioning for nullity as opposed to divorce from the marriage bond. There comes a time, if a couple have been living in a supposed marriage and may have had children in the marriage, where it would be inappropriate for a court to determine that, in fact, there had never been a marriage all along. While an Act of Parliament can technically do anything, there are certain legal fictions which would be nonsensical and late applications for nullification of marriage may fall into that category.

Consultation Question 61 - offences

We agree with this proposal.

Consultation Question 62 – the ill, housebound and detained

We are not aware of any particular issues with the operation of the law for those who are detained in prison or hospital or who are housebound. There are practical challenges for

couples in giving notice as they are dependent upon the availability (and/or willingness on occasions) of a superintendent registrar to attend the detainee and the willingness of the authorities of the establishment where the detained person is being held to provide access. We are aware of one situation (prior to the passing of the Immigration Act 2014) where a person was being held in an immigration removal or detention centre where the superintendent registrar was either unwilling or unavailable to attend and/or the governor declined to permit them access to take notice. We were alerted to the issue by a member of the Anglican clergy who had come to know the couple well before the prospective groom's arrest and detention, and who was convinced of the genuineness of their relationship and desire to marry, who enquired about the availability of a special licence.

The principal issue with the availability of the Registrar General's licence is that it is strictly limited to situations where one of the parties to the intended marriage is terminally ill. It therefore precludes the possibility of someone who is facing potentially life threatening or life changing emergency surgery or other medical procedures (but which, if successful, would not amount to a terminal diagnosis) from being married before undergoing the surgery/procedure. It also precludes a close relative of the terminally ill person (eg a parent, child or sibling) from being married in the presence of their dying relative. Both these scenarios can be, and are regularly, facilitated by the issue of a special marriage licence but this does, of course, mean that the couple are required to be married according to the rites and ceremonies of the CofE or CiW which may not, necessarily, be desired or appropriate.

Consultation Questions 63 to 66 – preliminary comment

Before we deal with the detail of these questions, we are extremely concerned to note that notwithstanding the fact that the possibility of retaining Anglican preliminaries has not been discounted, no reference is made to emergency special marriage licences. During the first lockdown, and the second, we were made aware of a number of situations where superintendent registrars were unable or unwilling to attend to take notice of marriage for a Registrar General's licence and hospital chaplains therefore contacted the Faculty Office so that dying patients could be married. The assumption that Anglican preliminaries will be dispensed with in Chapter 11 is unhelpful.

Consultation Question 63 – giving notice by the terminally ill

We are not convinced that the requirement for a registration officer to interview both parties prior to the schedule (or marriage document, assuming Anglican preliminaries will be retained) is practicable unless that person is also to be the officiant. Time is very often of the essence in emergency (deathbed) marriages and any additional requirements that are put in place will only serve to delay the ceremony. It is absolutely appropriate for the officiant to have had the opportunity to speak to both parties together and separately to satisfy themselves that there is both informed consent and capacity but in cases where the patient is seriously ill and in an intensive care or high dependency unit the restrictions on non-hospital staff or close relatives having access to the patient might preclude such an interview taking place.

We are aware of very many situations where there has been only a matter of a very few hours between a patient first indicating to hospital staff, chaplains or other clergy their desire to be

married and their dying. In many (most) cases we have been able to issue an emergency special marriage licence in time (often within 2 or 3 hours) but in some it has not been possible to achieve. Any imposition that might extend the time between that first request and the wedding taking place can only serve to increase the number of occasions when time runs out for the patient, with all the implications for inheritance and pension provision that might follow for the surviving partner.

Consultation Question 64 – abolition of Registrar General's licence

We agree that a specific form of civil preliminary for emergency weddings is unnecessary provided that rules are in place permitting the waiving of notice periods to facilitate the issue of a schedule. There also needs to be flexibility to allow close relatives of a terminally ill patient to be married in the presence of their dying relative. This option is already available under the more flexible provisions of the special licence and appropriate provision ought to be made for those who do not wish to be married pursuant to the rites and ceremonies of the CofE or CiW.

Consultation Question 65 – period of validity of marriage schedules for the terminally ill

We agree with this proposal although, in the vast majority of cases, it will be unnecessary.

Consultation Question 66 – period of validity of marriage schedules for the housebound or detained

We agree with this proposal.

Consultation Question 67 – scope of secondary legislation to cover emergencies

(1) We agree that there ought to be provision to extend the validity of schedules and other marriage preliminaries in the event of a national emergency. However, there ought to be a duty on couples to inform the issuing authority of any change in the information provided prior to the issue of the schedule or other preliminary.
(2) We are not convinced that this element of the proposal is sensible or appropriate. It could be open to abuse and would impact on the prevention of forced or sham marriages to an unacceptable degree.
(3) We do not think this proposal is sensible or workable. With the experiences of attending meetings over Zoom, Teams or other platforms during the Covid-19 pandemic, we would argue that it is more difficult to match what people are saying with their body language and other gestures in remote meeting settings. In the context of a wedding, it would be impossible for the officiant and/or the witnesses to be confident that the couple were giving informed consent to each other or whether there were out of shot influences enforcing their giving of consent under duress or other threat. It would also be impossible to be certain that all parties were present in the jurisdiction or even, possibly, that they were the intended parties. Even in the context of the current pandemic, there ought not to have been any reason why a marriage with the minimum five attendees (couple, officiant, two witnesses) could or should not have been able to gather and be present in the same location to permit a legally binding marriage to be conducted. Also, although like many we are enthusiastic adopters of videoconferencing technology for personal and business purposes, we would be

reluctant to entertain the idea that everything in life can me mediated through means of videoconference. Although not a new technology, the widescale adoption has only been recent and due to the Covid-19 pandemic. We would suggest that it would be rushing matters to think that such events as marriages can and should take place by videoconference.

(4) It follows from (3) above that we do not agree that this is necessary.

We agree that emergency provisions ought to be open to all couples depending upon the nature and length of the emergency.

We agree that emergency provisions ought to be able to facilitate weddings of those who might be at risk of death as we were able to arrange during the first lockdown[22] in relation to frontline NHS workers[23]. We would recommend that this ought also to be extended to include military personnel due to be deployed overseas whether such deployment is to a war-zone, peace-keeping role or other duties.

Consultation Question 68 – weddings at sea

Subject to our view that wedding according to the rites and ceremonies of religious organisations ought properly to be conducted normally within the premises of such organisations, we have no comment on the proposal to permit weddings to take place in the territorial waters adjacent to England and Wales.

Consultation Questions 69 to 72 – weddings at sea

We have no comment on these proposals.

Consultation Question 73 – demand for weddings at sea

We have no information which would enable us to express a view on this question.

Consultation Question 74 – return of the marriage schedule for weddings at sea

This may be a reason why permitting weddings in international waters ought not be permitted. We see no reason why special provision ought to be made in such cases or why similarly lax provision should not be permitted where, for example, a couple married on shore immediately depart for an extended honeymoon. The longer the period between a wedding and the requirement to return the schedule or marriage document, the greater the risk that the registration formalities will not be properly completed. Perhaps, until such time as a fully electronic registration process and marriage register is in place, provision ought to be made for a soft copy of the schedule or marriage document to be scanned and emailed to the registration officer in the first instance with the hard copies to be provided as soon as is reasonably possible.

[22] See our response to Consultation Question 3

[23] See for example the report on pg 1 of the Daily Telegraph 27th May 2020 on the wedding of Jann Tipping and Dr Annalan Navaratnam

Consultation Question 75 – additional fees when registration officer travels

This proposal appears reasonable.

Consultation Question 76 – fees for giving notice by the terminal ill

The Faculty Office does not make any charge for the issue of an emergency special marriage licence in cases where one of the parties to a marriage, or a close relative of one of the parties, is terminally ill and where the timing of the wedding is determined by medical necessity. We see this as a pastorally sensitive ("compassionate" if you prefer) response and the other fees for weddings are often also waived by the officiating clergy for the same reasons. We therefore take the view that there should be no fee payable or, at the very least, a substantially reduced fee set at a national level and well below cost level for emergency weddings.

Consultation Questions 77 to 82 – fees for civil weddings

We have no view on the fees charged for civil weddings save to say that we believe all fees should be set annually at national level and there should be no scope for variation across England and Wales.

Consultation Question 83 - fees for solemnization of weddings of the terminally ill

As set out in our response to Consultation Question 76 above, we do not consider it appropriate for fees to be charged for emergency weddings where a party (or a close relative of a party) is terminally ill and the timing and location of the wedding is dictated by medical necessity. If a fee is charged for a wedding after civil preliminary conducted by a registration officer it should be set by national regulation and at a level well below cost.

Consultation Question 84 -fees for applications to be an officiant

As this does not affect Anglican clergy, we have no comment on this proposal.

Consultation Question 85 – whether the current law discourages weddings

(1) We do not believe that the current law of marriage[24] discourages or prevents couples from getting married. It is certainly the case that there are fewer weddings taking place but we believe that there are many factors which have contributed to this downward trend which are wholly unrelated to the marriage law of England and Wales. Principal amongst these are the significant changes in social attitudes in the last half century or more. Attitudes to co-habitation have altered and the stigma attached to having children out of wedlock has been almost entirely eradicated as a result of the general liberalisation of moral attitudes and the availability of State support for single and unmarried-parent families. The welcome relaxation in rules around adoption allowing single people and those in non-traditional nuclear families to adopt is another example of this.

[24] There may well be other legislative provisions which have contributed to the number of marriages dropping such as the removal of some tax incentives for married couples.

Whilst it is certainly the case that the current restrictions on where couples can be married and, to a lesser extent in our view, how they can be married (in terms of the type of ceremony) affect how couples might choose to celebrate their marriage, we do not believe that couples who wish to marry would regard such matters as a reason not to get married.

A significant factor in a decision not to marry may very well be the cost (cited as being an average of between £18,000 and £30,000[25]). However, the costs of the legal aspects of a marriage represent a tiny fraction of the overall costs. The costs and expenses of venues, accommodation, florists, dresses & other attire, catering, cakes, entertainment (which, in many cases increase exponentially the moment that it is identified as being for a wedding as distinct from any other form of celebration) etc are all wholly unrelated to the law of marriage. Whilst most, if not all, of these items can be dispensed with or the costs mitigated in various ways (as many couples have been forced to discover during the current pandemic restrictions), the desire or family/peer pressure to have a huge and expensive celebration may be significant considerations. From our anecdotal experience, the high cost of weddings is a result of the "marriage industry", not a result of the limitation on the number or type of venues. We would not anticipate therefore that the costs of weddings would go down as a result of a move from a buildings based to a celebrant based system as the proposals make the case for.

(2) It will be apparent from what we have set out above, that we do not consider that any of the proposals set out in the paper will make any significant difference to facilitating couples getting married and nor are they likely to lead to a significant increase in the numbers of couples who are legally married. The costs of the legal preliminaries, whether civil or ecclesiastical, and of the wedding ceremony itself represent a tiny proportion of the costs of most weddings taking place in England and Wales and creating a free-market will have no impact on the significant costs of the wedding industry.

Consultation Question 86 – impact of the current and proposed law, particularly around costs of weddings

(1) We have no comment on the availability and costs of register office weddings.
(2) We have no comment on the costs of marrying in approved premises.
(3) The costs of marrying in CofE registered places of worship are set by the General Synod and approved by Parliament as a statutory instrument[26]. Under the current law which requires that banns be called in the parish where the wedding is taking place and the parish or parishes where the couple live (if different), the cost of calling banns could be as little as £31 if they are marrying in the parish where they both live or as much as £123 if banns need to be called in three separate parishes. The fee for a common licence is set by the chancellor of the diocese who in most, but not all, cases follows

[25] Paragraph 13.18 on pg 371 of the Consultation paper.
[26] https://www.legislation.gov.uk/uksi/2019/752/made

the lead of the Master of the Faculties in setting the fee for a common licence issued out of the Court of Faculties (otherwise, the Faculty Office) which currently stands at £200. We do not believe that the fees set pursuant to the current legal framework of the CofE represent a bar on people choosing to marry in a parish church or other licensed building. In any event, in the case of financial hardship, many clergy will either be able to waive the fees or have access to discretionary funds which can assist couples with the costs.

(4) The cost of making an application for a special marriage licence to authorise a marriage in a building which is not ordinarily available for marriages or to which a couple do not have a legal connection[27] is currently £325. This sum is set and reviewed annually by the Master of the Faculties. The fee covers the costs of processing the application and dealing with the legal formalities of the affidavit and issue of the licence itself. As indicated above, the fee is waived in cases where the timing of the wedding is dictated by medical necessity and otherwise at the discretion of the Registrar of the Faculty Office. There has always been a distinction between the cost of a common licence[28] issued out of the Faculty Office and an Archbishop of Canterbury's special marriage licence due to the differing basis upon which they are required. A special licence is always discretionary in nature as there is no right in law to the issue of a special licence.

(5) As a wedding according to the rites and ceremonies of the Anglican Churches is legally recognised, we have no comment to make on this aspect.

As regard the potential benefits to couples of the proposed scheme:

(1) We have no comment on the costs or availability of register office weddings

(2) We have no particular comments save that:

   a. Assuming that Anglican preliminaries are to be retained, the proposal that banns need only be called in the parish where the wedding is to take place will result in a potential saving for some couples of up to £92 based on the current Fees Order. We do not consider this to be significant in the whole scheme of things so as to merit change;

   b. If the proposals sweep away the body of CofE legislation setting out where couples have the legal right to be married and allow them to request to be married in any church of their choosing under free-market principles, there could be real detrimental effects for parishes in terms of lost income and it must be remembered that many churches are buildings of great national heritage significance, which are maintained by the local congregation and community.

(3) As regard Anglican weddings, the proposals will have no impact.

Consultation Question 87 – impact of current and proposed law on venues

We have no particular comment as the current law and the potential benefits of the proposed scheme are largely related to civil weddings in secular venues. However, as we have set out

[27] Either a residential or electoral roll connection under the Marriage Act 1949 or a qualifying connection under the CofE Marriage Measure 2008 or the Marriage (Wales) Act 2010

[28] Issued pursuant to Section 16 of the Marriage Act 1949

above, we are concerned that, far from being beneficial for Anglican Church buildings, the proposals might very well have a significant detrimental effect. What the proposals amount to is a liberalisation of the "marketplace" and market forces regulated in a light-touch manner can cause damage to established institutions and ways of life.

Consultation Question 88 – impact on local authorities of proposals

We have no particular comment on the impact of the current law or the potential benefits to local authorities, save that, in the event that Anglican preliminaries are no longer available, the local authorities will benefit from the additional income generated from a move to a universal civil preliminary, with a corresponding detrimental effect on the finances of Anglican parishes. Any universal civil system relies upon a well-resourced and well-trained civil service. We would be concerned that should superintendent registrars become the only persons responsible for issuing marriage preliminaries, such a system could, in some circumstances, become overwhelmed, be subject to industrial action, underfunding or impairment by reason of cyber-attack or other criminal activity. Whilst some of these scenarios might seem extreme, our experience during the pandemic (which was not foreseen or even imagined this time last year) has shown the benefits of the ecclesiastical system.

Consultation Question 89 – impact of current and proposed law on marriages taking place overseas

As regard the impact of the current law on:

(1) Residents of England & Wales travelling to other jurisdictions to get married, we cannot see that any perceived restrictions in the current law are likely to be a significant factor in a decision to marry overseas. The ability to be married on a beach or other open-air venue may well be attractive to some couples;
(2) Overseas residents, particularly if they are not relevant nationals do face significant difficulties in marrying in England & Wales due to the residency requirements for securing SRCs. If a couple are both UK/relevant nationals, there are fewer difficulties in marrying in the Anglican Churches given the relative ease with which common licences and special marriage licences can be obtained. This will only increase as the transitional arrangements for the UK's departure from the EU end, and EU and Swiss nationals (without settled or pre-settled status) get added to the list of non-relevant nationals. For those nationals the law is becoming more, not less restrictive.

As regard the impact of the proposed scheme relating to:

(1) Residents of England & Wales travelling to other jurisdictions to get married, it is possible that the proposed relaxation in the locations in which weddings may be conducted might encourage some couples who would otherwise opt to marry overseas to marry here. However, the vagaries of the UK weather are, we would suggest, unlikely to see many couples currently opting to marry on a beach in the Greek Islands or the Caribbean deciding instead to be married on a beach in Bournemouth, Blackpool, Bridlington, Barmouth or Barry Island.

(2) Overseas residents will find it easier to secure a civil preliminary if the residency requirement is removed which will bring civil preliminaries in line with relevant ecclesiastical preliminaries in that regard which would be welcome.

Consultation Question 90 – impact of the current and proposed law on the maritime industry

We have no comment to make.

Consultation Question 91 – financial impact of proposals

The potential costs of the provisional proposals in financial terms are outside our area of expertise and knowledge. However, the potential detriment to the Constitution of the country and the establishment of the CofE if any proposal to sweep away the historic role of the CofE in the formation of marriages and the historic right and ability to control and issue its own set of marriage preliminaries should not be underestimated. The proposals represent a direct assault on the fundamental relationship between the Church and the State. The removal of the Archbishop of Canterbury's jurisdiction to issue special marriage licences, aside from the constitutional impact, will have a significant financial impact on the Faculty Office and our ability to undertake other aspects of our constitutional and statutory functions both in this country and overseas.

Ian Blaney (Deputy Registrar) and Neil Turpin (Chief Clerk) for The Faculty Office

December 2020